

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Letitia H. Verdin, Circuit Court Judge

Case No. 2014-CP-23-03197
Appellant Case No. 2016-001425

RECEIVED

JAN 20 2017

SC Court of Appeals

Natasha Turner,

Respondent/Appellant,

v.

Michael T. Kellett and
Carmen Kellett,

Appellants/Respondents.

RECORD ON APPEAL

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STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF GREENVILLE)

C/A NO.: 2014-CP-23-3197

Natasha Turner)

Plaintiff,)

vs.)

Carmen Kellett and Michael T. Kellett,)
f/d/b/a Buddy's Garage)

Defendants.)

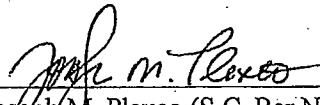
SUMMONS

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSIMER
2014 JUN 10 AM 11:58

TO THE DEFENDANTS NAMED ABOVE:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is herewith served upon you and which is filed in the office of the Clerk of Court for Greenville County this same date and to serve a copy of your Answer to the Complaint upon the subscriber at 707 East North Street, Greenville, South Carolina, 29601, within thirty (30) days after the service hereof, exclusive of the day of such service. If you fail to answer the Complaint within that time, the Plaintiff will be awarded a default judgment against you for the relief demanded in the Complaint.

JOSEPH M. PLAXCO, LLC



Joseph M. Plaxco (S.C. Bar No. 100975)
707 East North Street
Greenville, South Carolina 29601
(864) 240-9112
(864) 232-7707 (fax)
jmplaxco.law@gmail.com

Greenville, South Carolina

Dated this 10th day of June, 2014.

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF GREENVILLE)

C/A NO.: **2014-CP-23-3197**

Natasha Turner)

Plaintiff,)

vs.)

Carmen Kellett and Michael T. Kellett,
f/d/b/a Buddy's Garage)

Defendants.)

COMPLAINT
(Non Jury Trial)

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSIMER
2014 JUN 10 AM 11 58

THE PLAINTIFF, Natasha Turner, would show unto the Court as follows:

JURISDICTIONAL STATEMENT

1. The Plaintiff, Natasha Turner, ("Turner") is a resident of Greenville County, State of South Carolina.
2. The Defendants, Carmen Kellett and Michael T. Kellett, (together "the Kelletts") upon information and belief, are residents of Greenville County, State of South Carolina and formerly owned and operated Buddy's Garage in Travelers Rest, Greenville County, State of South Carolina as a sole proprietorship. Upon information and belief, Buddy's Garage has closed and is no longer in operation.
3. All of the acts and/or omissions of the Kelletts and/or their agent(s) that comprise the subject of this civil action transpired and occurred in Greenville County, State of South Carolina.
4. Therefore, this Court has jurisdiction of this civil action and parties.
5. All acts of the Kelletts' agents set out in this complain were performed by said agents in the course and scope of said agent's employment.

STATEMENT OF THE FACTS

6. On May 7, 2013, Turner took her 2006 Mitsubishi Lancer ES automobile to Buddy's Garage, then owned and operated by the Kelletts as a sole proprietorship, for the

purpose of having repairs after Turner's automobile had been damaged in a collision. Specifically, upon information and belief, the repairs were to include replacement of the transmission, as well as the bumper.

7. When Turner took her car to Buddy's Garage, she was required to pay \$2,500.00, which she was told by an agent of Buddy's Garage would constitute prepayment for all parts and labor required to complete the job. Said payment was made by check, a copy of which is attached as Exhibit A and incorporated herein by reference.
8. Around June 4, 2013, Buddy's Garage notified Plaintiff's insurance carrier, GEICO, that an extra \$1,815.26 would be required to complete the work on Plaintiff's automobile.
9. GEICO paid this amount by check payable to Turner. (See Exhibit B showing GEICO's payment of \$1,815.26.) Turner endorsed the check to Buddy's Garage as requested.
10. Between the time that Turner brought her car to Buddy's and June 4, 2013, Turner inquired several times as to when her automobile would be ready. An agent of Buddy's Garage, a mechanic, repeatedly told Turner that repairs were underway but not yet completed.
11. On July 15, 2013, Defendant Carmen Kellett represented that the repairs were complete and Turner picked up the car. After picking up the car, Turner found that the bumper was not repaired and that the transmission was not operating properly.
12. Turner contacted Defendant Carmen Kellett and expressed her concerns about her automobile, but Defendant Carmen Kellett advised that Buddy's Garage would refund only two hours of labor valued at \$130.00. (See Exhibit C showing un-cashed check in the amount of \$130.00 payable to Plaintiff by Defendant Michael Kellett.)
13. Defendant Carmen Kellett represented to Turner that Buddy's mechanic was in possession of the bumper and paint-kit, and that Turner would have to deal with the mechanic for repairs and repainting of the bumper.
14. The invoice from Buddy's Garage, marked as Exhibit D, shows that the balance needed for GEICO's supplemental payment as described in Paragraph 8 was

\$1,367.89, and not \$1,815.26, as GEICO paid out. Upon information and belief, the difference between these amounts, \$447.37, is still in possession of the Kelletts.

15. Upon information and belief, correction and computation of body work not preformed by the Kelletts will cost at least \$1,575.25. Further, on information and belief, no needed repairs were made to the car's transmission other than replacement of a pan on the side of the transmission. Upon information and belief, the cost to have the transmission replaced will be approximately \$1,500.00.

**FOR A FIRST CAUSE OF ACTION
(Conversion of Funds)**

16. All prior allegations of this Complaint are realleged where not inconsistent with this cause of action.
17. The Kellett's retention of the funds that Turner deposited with Buddy's Garage constitutes conversion of Turner's property, which conversion was willfully and intentionally done with the knowledge that the funds belonged to Turner, who had and has an immediate right to the possession of such funds.
18. The damages to Turner are a direct and proximate result of the Kelletts' conversion. Such conduct on the part of the Kelletts was in willful, intentional, and wanton disregard for Turner's rights, by reason of which Turner is entitled to actual, special, consequential and punitive damages.

**FOR A SECOND CAUSE OF ACTION
(Fraud)**

19. All prior allegations of this Complaint are realleged where not inconsistent with this cause of action.
20. The Kelletts, as owners of Buddy's Garage, through the mechanic as their agent, represented by words, conduct, silence, or other action or inaction, that Turner's automobile had been properly fixed and that all repairs as charged were completed to a reasonable satisfaction.
21. This representation was false.
22. This representation related to a present or a preexisting fact.

23. The Kelleths intended to deceive Turner.
24. Turner had a right to, and in fact did, rely on the Kelleths' representations.
25. These representations were material, for they related to information that any reasonable customer of an automobile repair shop would need to know in order for her to make an informed decision with regard to accepting her automobile as fixed from the repair shop.
26. The Kelleths either knew of the falsity of the representation or possessed a reckless disregard for its truth or falsity, and intended that Turner act upon their representations.
27. Turner was ignorant of the falsity of the representations.
28. The damages to Turner are a direct and proximate result of the Kelleths' fraudulent representation. Such conduct on the part of the Kelleths was in willful, intentional, and wanton disregard for Turner's rights, by reason of which Turner is entitled to actual, special, consequential and punitive damages.

FOR A THIRD CAUSE OF ACTION
(Misrepresentation)

29. All prior allegations of this Complaint are realleged where not inconsistent with this cause of action.
30. The Kelleths made a false representation to Turner.
31. The Kelleths had a pecuniary interest in making such false representation.
32. The Kelleths owed a duty of care to see that truthful communication concerning the statements made to Turner regarding the status the work performed of her automobile.
33. The Kelleths breached that duty by failing to exercise due care.
34. Turner justifiably relied on the representation.
35. The damages to Turner are a direct and proximate result of the Kelleth's misrepresentation. Such conduct on the part of the Kelleths was in willful, intentional, and wanton disregard for Turner's rights, by reason of which Turner is entitled to actual, special, consequential and punitive damages.

FOR A FOURTH CAUSE OF ACTION
(Violation of Unfair Trade Practices Act)

36. All prior allegations of this Complaint are realleged where not inconsistent with this cause of action.
37. Upon information and belief, the Kelletts were involved in an unfair and deceptive act in the conduct of trade or commerce by offering for services that, once retained to perform such services, did not perform as represented and/or advertised, and in such other ways as may be shown at the trial of this matter.
38. That the unfair and deceptive acts undertaken by the Kelletts affects the public interest in that they are capable of repetition, and such acts are offensive to public policy and are unethical.
39. That as a result of the unfair and deceptive acts of the Kelletts, Turner sustained monetary loss.
40. That, upon and information and belief, the Kellett's actions in violation of the South Carolina Unfair Trade Practices Acts were willful and knowing such that Plaintiff is entitled to treble damages, attorney's fees, costs, and such other further recovery as the Court determines to be just and fair.

FOR A FIFTH CAUSE OF ACTION
(Breach of Contract)

41. All prior allegations of this Complaint are realleged where not inconsistent with this cause of action.
42. Turner and the Kelletts and/or their agent entered into an oral agreement whereby the Kelletts would properly repair Turner's automobile in consideration for the payment(s) Turner made to the Kelletts.
43. The Kelletts failed to repair Turner's automobile as agreed upon, thereby breaching their contract with the Plaintiff.
44. The damages to Turner are a direct and proximate result of the Kellett's breach of contract. Such conduct on the part of the Kellett's was in willful, intentional, and wanton disregard for Turner's rights, by reason of which Turner is entitled to actual,

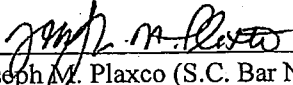
special, consequential and punitive damages.

WHEREFORE, having fully pled, Plaintiff Natasha Turner prays that this Court grant the following relief:

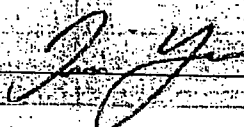
- A. An award for actual, special, consequential and punitive damages for Defendants' conversion as set forth in the First Cause of Action herein;
- B. An award for actual, special, consequential and punitive damages for Defendants' fraud as set forth in the Second Cause of Action herein;
- C. An award for actual, special, consequential and punitive damages for Defendant's misrepresentation as set forth in the Third Cause of Action herein;
- D. An award for treble damages, attorney's fees, and costs for Defendants' intentional and willful violation of the Unfair Trade Practices Acts as provided for in § 39-5-140 of the South Carolina Code;
- E. An award for actual, special, consequential and punitive damages for Defendant's breach of contract as set forth in the Sixth Cause of Action herein; and
- F. For all other and such relief as this Court may deem to fair, just and equitable.

JOSEPH M. PLAXCO, LLC

Non-Jury Trial


Joseph M. Plaxco (S.C. Bar No. 100975)
707 East North Street
Greenville, South Carolina 29601
(864) 240-9112 (phone)
(864) 232-7707 (fax)
jmplaxco.law@gmail.com

Greenville, South Carolina
Dated this 10th day of June, 2014

TITLEMAX OF BEREA, SC #1 1607205566 2 VANCE BUILDING ROAD GREENVILLE, SC 29617 (864) 233-1999		EXHIBIT A 4942 64-1341/631	1607205566 5/14/2013
PAY TO THE ORDER OF BUDDYS GARAGE		\$ 2,500.00	
Two Thousand Five Hundred and 00/100		DOLLARS	
MEMO: CHECK FOR ACCT #24760212 VIN: 3K3AJ26B4G0060284			
1607205566 10611194150009146428815W			

TITLEMAX OF BEREA, SC #1 1607205566	
Date 5/14/2013	Memo CHECK FOR ACCT #24760212 VIN: 3K3AJ26B4G0060284
Account	Payee BUDDYS GARAGE
Payment \$2,500.00	

TITLEMAX OF BEREA, SC #1 1607205566	
Date 5/14/2013	Memo CHECK FOR ACCT #24760212 VIN: 3K3AJ26B4G0060284
Account	Payee BUDDYS GARAGE
Payment \$2,500.00	

Claim Center

NATASHA TURNER

Policy Period: 03/22/2013 to 09/22/2013
Policy Number: 4236183085
Home Phone: [REDACTED]

My Service Center

Vehicle Driver Coverage Documents Personal Information Claims

[View & Manage Claims > 0145579530101037](#)

Tuesday, July 16, 2013 12:59 PM

[Basic Claim Information](#)
[Vehicle Damage Inspection](#)
[Supplemental Vehicle Inspection](#)
[Rental Vehicle](#)
[Payments](#)
[Document Center](#)
[Text Messaging](#)
[Claim Contacts](#)
[Contact Us](#)

Payments made by GEICO, to you or on your behalf.

Date	Paid To	Mailed To	Check#	Amount	Comment
06/04/2013	NATASHA L TURNER	NATASHA L TURNER 108 HODGENS DR TRAVELERS RST SC 29650	612708595	\$1,815.26	COLLISION COVERAGE
05/07/2013	RED'S AUTOMOTIVE & WRECKER	RED'S AUTOMOTIVE & WRECKER 140 GARNER RD SPARTANBURG SC 29303	E00378475	\$473.00	734113122 734113122

[Need Help? FAQs](#)



© 2000-2013 GEICO

EXHIBIT C

MICHAEL KELLETT
P.O. BOX 5511
GREENVILLE, SC 29606

2627
67-1927/2532

7-15-13

Pay to the order of NATASHA TURNER \$ 130.00

☒ ONE HUNDRED THIRTY DOLLARS ^{100/100}

 **S.C. TELCO**
FEDERAL CREDIT UNION
Greenville, SC 29601

Refund on loan Bumpers Michael Kellett

⑆253279277⑆ ⑆000000052726⑆ 2627

NAPA'S LANCE		5821216	1243	601-1115	15-813 PM	P.M.	CVL 686	1222
ADDRESS		108 Hodgins DR.		SERIAL NO./V.I.N.	JAZA326E46U06825		YEAR, MAKE AND MODEL	
CITY		TR		CALL WITH EST.	☒ YES ☐ NO	CALL WHEN READY	☒ YES ☐ NO	ORDER WRITTEN BY
STATE		SC		ZIP	29690		COLOR	GRAY
				IF OVER 5			CUSTOMER'S ORDER NO.	

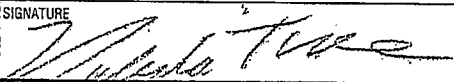
SERVICES REQUESTED/DESCRIPTION OF WORK	AMOUNT	QTY	PART NO. AND DESCRIPTION	AMOUNT
R&R Trans	8.5	562.50	Trans Ass. (22,000 miles)	100.00
R&R Front bumper Assembly	2.5	162.50	Bumper Cover (Front)	283.00
R&R Rear bumper Assembly	2.5	162.50	(Rear) Bumper Cover	145.00
Paint both bumpers			Bumper Reinforcing beam (Front)	395.00
	260.00	1	Bumper Reinforcing beam (Rear)	305.00
		1	Lf Support	20.00
		1	Rt Support	20.00
		1	Battery	124.00
275.00 10 Days Refunded 2 hrs labor 30.00 CK# 166725566 AJ PD. 2500.00 Bal. 1367.89				
TOTAL LABOR		1137.50		
We recommend the following services:				
I see nothing else wrong with			Geico Check #	
C.C.R.			612708595	
Tow			125.00	
ESTIMATED COSTS		PAID BY		
LABOR \$	TOTAL \$	☐ CASH ☐ CHECK ☐ CREDIT CARD MC VISA AMEX		
REVISED ESTIMATE		CC NUMBER EXP.		
		☐ ACCOUNT TERMS		
PARTS \$	LABOR \$	I hereby authorize the above repair work to be done along with the necessary materials. You and your employees may operate vehicle for purposes of testing, inspection, or delivery at my risk. An express mechanics lien is acknowledged on above vehicle to secure the amount of repairs thereto. It is understood that you will not be held responsible for loss or damage to vehicle or articles left in vehicle in case of fire, theft or any other cause beyond your control.		
AUTHORIZED BY	DATE/TIME	SIGNATURE		
				
 BUDDYS GARAGE 380 Tigerville Rd. Travelers Rest, SC 29690 864-834-9111 834-4420		SAVE OLD PARTS ☐ YES ☐ NO		
1222		TOTAL TAX 218.50		
		TOTAL 3867.89		

EXHIBIT D

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

Natasha Turner,)

Plaintiff)

vs.)

Carmen Kellett and Michael T.)
Kellett, F/D/B/A Buddy's Garage)

Defendants.)

IN THE COURT OF COMMON PLEAS

C.A. NO.: 2014-CP-23-3197

ANSWER AND COUNTERCLAIM

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSIMER
2014 OCT 30 PM 3 15

The Defendants, by way of Answer and Counterclaim, would show unto the Court as follows:

1. Any and all of Plaintiff's allegations as contained in the Complaint are hereby denied, unless herein specifically admitted.
2. As to paragraph 1 of the Plaintiff's Complaint, the Defendant admits the allegations thereof.
3. As to paragraphs 2 through 44 of the Plaintiff's Complaint, the Defendant denies the allegations thereof.

FOR A SECOND DEFENSE

4. The foregoing are realleged as if fully reiterated herein.

5. The Plaintiff's pleadings fail to state facts sufficient to constitute a cause of action and the Plaintiff's complaint should accordingly be dismissed.

FOR A THIRD DEFENSE
(Res Judicata)

6. The foregoing are realleged as if fully reiterated herein.

7. The Defendants would show that this matter is res judicata and the Plaintiff's complaint should accordingly be dismissed.

FOR A FOURTH DEFENSE
(Accord and Satisfaction)

8. The foregoing are realleged as if fully reiterated herein.

9. The Defendants would show that this matter has been settled between the parties by an accord and satisfaction and should accordingly be dismissed.

BY WAY OF COUNTERCLAIM

10. The foregoing are realleged as if fully reiterated herein.

11. The Defendants would show that as this matter is res judicata and has been settled by accord and satisfaction, that this is a frivolous case and the Defendants accordingly request reimbursement of their costs and attorney fees and any other punitive awards that the court may choose to award under the applicable statutes in South Carolina in regard to frivolous proceedings.



Attorney for Defendants
600 East Washington Street, Suite 616
Greenville, SC 29601
Ph: (864) 298-0071
SC Bar 2460

October 30, 2014
Greenville, South Carolina

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)
)
Natasha Turner,)
)
)
Plaintiff,)
)
vs.)
)
Carmen Kellett and Michael T.)
Kellett,)
)
Defendants.)
_____)

IN THE COURT OF COMMON PLEAS

C.A. NO.: 2014-CP-23-3197

CERTIFICATE OF SERVICE BY MAIL

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSIMER
2014 OCT 30 PM 3 15

I certify that on today's date of Thursday, October 30, 2014 that I deposited the following into the US Mail addressed to the Plaintiff's lawyer Joseph Plaxo: Defendants' Answer by Deposit into the United States Post Office on October 30, 2014 postage prepaid and addressed to:

Joseph Plaxo
707 East North Street
Greenville, SC 29601



Ivan Toney
Attorney for Defendants
600 East Washington Street, Suite 616
Greenville, SC 29601
Ph: (864) 298-0071
SC Bar 2460

Greenville, South Carolina
Thursday, October 30, 2014

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE)	THIRTEENTH JUDICIAL CIRCUIT
Natasha Turner)	C/A NO: 2014-CP-23-3197
Plaintiff)	
vs.)	
Carmen Kellett and Michael T.)	ANSWER, COUNTERCLAIM and
Kellett f/d/b/a Buddy's Garage)	CROSSCLAIM
Defendants)	
vs.)	
Michael Finchem,)	
Defendant)	

The Defendant herein would respectfully show unto this Court that:

JURISDICTION AND VENUE

1. Each and every allegation in Plaintiff's Complaint is/are hereby denied except for those allegation(s) which are expressly admitted.
2. The Defendants admit the allegation(s) in Plaintiff's Complaint, paragraphs 1 and 2.
3. The Defendants deny the allegation(s) in paragraph 3.
4. The Defendants admit the allegation(s) in paragraph 4.
5. The Defendants deny the allegation(s) in paragraph 5.
6. The Defendants admit the allegation(s) in paragraph 6.
7. In answering paragraphs 7 and 8 of Plaintiff's Complaint, the Defendants are without sufficient facts and/or information to respond; as such, the Defendants deny said allegation(s).
8. The Defendants admit the allegation(s) in paragraph 9.
9. The Defendants deny the allegation(s) in paragraphs 10, 11, and 12.

10. Defendants admit the allegation(s) in paragraphs 13, 14, 15, 16, 17 and 18.
11. As to "First Cause of Action," the Plaintiff has failed to state sufficient facts to constitute a cause of action under Rule 12(b)(6).
12. The Defendants deny the allegation(s) in paragraphs 19, 20, 21, 22, 23, 24, 25, 26, 27, and 28.
13. As to "Second Cause of Action," the Plaintiff has failed to state sufficient facts to constitute a cause of action under Rule 12(b)(6).
14. The Defendants deny the allegation(s) in paragraphs 29, 30, 31, 32, 33, 34, and 35.
15. As to "Third Cause of Action," the Plaintiff has failed to state sufficient facts to constitute a cause of action under Rule 12(b)(6).
16. The Defendants deny the allegation(s) in paragraphs 36, 37, 38, 39, and 40.
17. As to "Fourth Cause of Action," the Plaintiff has failed to state sufficient facts to constitute a cause of action under Rule 12(b)(6).
18. The Defendants deny the allegation(s) in paragraphs 41, 42, 43, and 44.
19. As to "Fifth Cause of Action," the Plaintiff has failed to state sufficient facts to constitute a cause of action under Rule 12(b)(6).
20. As to all of the Plaintiff's Causes of Action, the Defendants cite and allege the doctrine of Respondeat Superior, which holds that a Principal may not be held liable for the actions of his Agent where the alleged injury occurs while the employee is acting outside the legitimate scope of authority.

COUNTERCLAIM (Plaintiff) and CROSSCLAIM (Defendant Michael Finchem)

21. Each and every allegation in the Defendant's Answer is/are fully incorporated as if set forth fully herein.

22. The Defendant, Michael Finchem, was employed as a mechanic at Buddy's Garage during the period of time set forth in Plaintiff's Complaint up to on/about July 10, 2013, when his employment was terminated.

23. Defendant Finchem was the "agent" referenced in the Plaintiff's Complaint, and dealt exclusively with the Plaintiff in the transactions alleged in said Complaint.

24. Further, Defendant Finchem continued the business relationship with the Plaintiff after his termination from Buddy's Garage.

CONVERSION

25. All prior allegation(s) set forth in this Answer and Crossclaim are realleged where not inconsistent with this cause of action.

26. Defendant Finchem, acting as "agent" of the Defendants, and as part of his ongoing scheme of fraud, theft, and deception perpetrated on the Defendants as well as a number of customers of Buddy's Garage, willfully and intentionally retained the funds deposited by the Plaintiff, knowing they rightfully belonged to the Plaintiff until the agreed work was done. Acting outside the scope of his employment and without the knowledge or consent of the Defendants, Finchem did not perform the work as agreed and yet maintained said funds for himself.

27. The Defendants cite and allege the doctrine of Respondeat Superior, which holds that a Principal may not be held liable for the actions of his Agent where the alleged injury occurs while the employee is acting outside the legitimate scope of authority.

28. The damages to the Defendants and those alleged by the Plaintiff are a direct and proximate result of Defendant Finchem's deceptive and unlawful scheme, which were unknown to and without consent of the Defendants.

FRAUD

29. All prior allegation(s) set forth in this Answer and Crossclaim are realleged where not inconsistent with this cause of action.

30. Defendant Finchem, acting as "agent" of the Defendants, materially represented by words, conduct, silence, or other action or inaction, to both the Defendants and the Plaintiff, that the Plaintiff's vehicle was properly fixed.

31. Defendant Finchem knew that the representations, relating to present or preexisting facts, was false and intended to deceive the Defendants and the Plaintiff and to induce their reliance on the same.

32. The Defendants had a right to, and in fact did, rely on Finchem's representations. Further, the Defendants were ignorant of the falsity of the representations.

33. The damages to the Defendants and those alleged by the Plaintiff are a direct and proximate result of Defendant Finchem's deceptive and unlawful scheme, which were unknown to and without consent of the Defendants.

MISREPRESENTATION

34. All prior allegation(s) set forth in this Answer and Crossclaim are realleged where not inconsistent with this cause of action.

35. Defendant Finchem made false representations to the Defendants as well as the Plaintiff, with a clear pecuniary interest in said false representations; the Defendants justifiably relied upon said misrepresentations.

37. The damages to the Defendants and those alleged by the Plaintiff are a direct and proximate result of Defendant Finchem's deceptive and unlawful scheme, which were unknown to and without consent of the Defendants.

38. The Defendants have been forced to retain counsel to defend against this suit, and as such are entitled to attorney's fees per the same.

PRAYER FOR RELIEF

WHEREFORE, the Defendants pray for an Order of this Court issuing the following relief:

- A. Dismissal with prejudice of the Plaintiff's Complaint against Defendants Kellett/Buddy's Garage;
- B. An award for actual, special, consequential, and punitive damages to Defendants for Defendant Finchem's Conversion, Fraud, and Misrepresentation;
- C. An award for attorney's fees for the same; and
- D. For all other and further relief as this Court may deem just and proper.


Kraig Alan Pringle, SC Bar No. 73694
114 Whitsett Street
Greenville, South Carolina 29601
(864) 235-5557, (864) 467-1945 facsimile
Attorney for Defendants

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2014CP233197

Natasha Turner

Carment Kellett
Michael T. Kellett

Verified

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENS
2015 DEC 11
2 34

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for: ☐ Plaintiff ☐ Defendant
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ ACTION DISMISSED (CHECK REASON): ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit);
☐ Rule 43(k), SCRPC (Settled); ☐ Other: _____
- ☐ ACTION STRICKEN (CHECK REASON): ☐ Rule 40(j) SCRPC; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____
- ☐ DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☒ See attached order; (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
Natasha Turner	Carment Kellett	* 10,567.86
	Michael T. Kellett	* 10,567.86 <i>JK</i>

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

[Signature]
Circuit Court Judge

2162

Judge Code

12/11/2015

Date

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

Natasha Turner

Plaintiff,

v.

Carmen Kellett and Michael T. Kellett

Defendant

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

Case No.: 2014-CP-23-3197

ORDER

ENTERED COMPUTER

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSIMER
2015 DEC 11 PM 2 34

WLB

This matter came before the Court on November 19, 2015 as a non-jury trial. Based on the evidence and testimony presented at trial, the Court hereby finds in favor of the Plaintiff as to her claims of conversion of funds, fraud, misrepresentation, and violation of the Unfair Trade Practices Act against the Defendant. The Court further finds that the Plaintiff is entitled to requested damages of \$447.37 for conversion of funds, \$1,575.25 for uncompleted work, and \$1,500 for a replacement transmission. In addition, the Court finds a violation of the Unfair Trade Practices Act in this case to be willful and thus the violation warrants treble damages. Therefore, Plaintiff is entitled to a total of \$10,567.86 in damages.

IT IS SO ORDERED.

December 11, 2015



Letitia H. Verdin
Circuit Judge

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

Natasha Turner)

Plaintiff,)

vs.)

Carmen Kellett and Michael Kellett, f/d/b/a Buddy's Garage)

Defendant.)

IN THE COURT OF COMMON PLEAS

13th JUDICIAL CIRCUIT

CASE NO.: 2014 -CP-23 -3197

**MOTION AND ORDER INFORMATION
FORM AND COVERSHEET**

Plaintiff's Attorney: Joseph Plaxco, Bar No. <u>100975</u> Address: 707 E. North St. Greenville, SC Phone: 864-240-9112 Fax 864-232-7707 E-mail: <u>joseph.plaxco@plaxcolaw.com</u> Other: _____		Defendant's Attorney: Clifford Gaddy, Jr., Bar No. _____ Address: 408 N. Church St. Greenville, SC Phone: 864-250-5155 Fax _____ E-mail: _____ Other: _____	
☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) ☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) ☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)			
SECTION I: Hearing Information			
Nature of Motion: <u>Motion to Amend Order</u>			
Estimated Time Needed: <u>30 mins</u>		Court Reporter Needed: ☒ YES / ☐ NO	
SECTION II: Motion/Order Type			
☐ Written motion attached ☐ Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order.			
Signature of Attorney for ☐ Plaintiff / ☐ Defendant		Date submitted _____, 20____	
SECTION III: Motion Fee			
☒ PAID - AMOUNT: \$25.00 ☐ EXEMPT: (check reason) ☐ Rule to Show Cause in Child or Spousal Support ☐ Domestic Abuse or Abuse and Neglect ☐ Indigent Status ☐ State Agency v. Indigent Party ☐ Sexually Violent Predator Act ☐ Post-Conviction Relief ☐ Motion for Stay in Bankruptcy ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRPC) ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: _____ ☐ Other: _____			
JUDGE'S SECTION			
☐ Motion Fee to be paid upon filing of the attached order. ☐ Other: _____		JUDGE CODE _____ Date: _____, 20____	
CLERK'S VERIFICATION			
Collected by: _____		Date Filed: _____, 20____	
☐ MOTION FEE COLLECTED: \$ _____ ☐ CONTESTED - AMOUNT DUE: \$ _____			

SCCA 233 (11/2003)

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)
)
Natasha Turner,)
)
Plaintiff)
)
vs.)
)
Carmen Kellett and Michael T. Kellett,)
)
Defendants)

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

23

Case No.: 2014-CP-3197

NOTICE AND MOTION FOR
AMENDMENT OF ORDER

TO: CLIFFORD F. GADDY, Attorney for the Defendants:

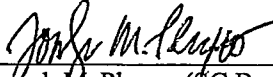
PLEASE TAKE NOTICE that the Plaintiff will appear before the Court at such time and place as the Court may direct, and pursuant to Rule 52 (b) Rules of Civil Procedure will move that the Court's Order dated December 11, 2015 be amended to more fully set out the Court's findings of fact and conclusions of law; and to provide for attorney fees and punitive damages. This motion is made on the ground that more detailed findings and conclusions may be required under Rule 52 (a), RCP and will facilitate an expeditious review of the Court's decision in the event of an appeal by the Defendants and that the award of punitive damages and attorney fees are specifically provided for under the South Carolina Unfair Trade Practices Act.

Plaintiff will also move that the Order be amended to include an award of punitive damages for the Defendants' willful fraud and conversion of plaintiff's money, upon the ground that the remedies provided under the Unfair Trade Practices Act, § 39-5-160, are cumulative and supplementary to all other powers and remedies provided by law.

Plaintiff will also that the Order be amended to include an award of attorney fees and costs, upon the ground that under the Unfair Trade Practices Act, § 39-5-140 such an award is mandated for a violation of the Act.

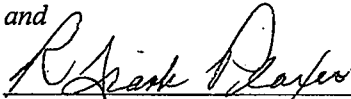
Proposed findings and conclusions are set out in the Brief filed with this Motion.

Respectfully submitted,



Joseph M. Plaxco (SC Bar 100975)
707 East North St.
Greenville, South Carolina 29601
(864) 240-9112
(864) 232-7707 (fax)

and



R. Frank Plaxco (SC Bar 4476)
36 Harvest Lane
Greenville, South Carolina 29601
(232)-9828

January 5, 2016

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)
Natasha Turner,)
Plaintiff,)
vs.)
Carmen Kellett and Michael T. Kellett,)
f/d/b/a Buddy's Garage)
Defendants.)

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

Case No.: 2014-CP-3197

AMENDED ORDER

This matter came before the Court on November 19, 2015 as a non-jury trial. The Court issued its order on December 11, 2015, awarding the Plaintiff damages of \$10,567.86 under the South Carolina Unfair Trade Practices Act (the "Act").

The Plaintiff has made a timely motion under Rule 52, SCRCP, to amend the Order of December 11, to include separately stated findings of fact and conclusions of law. Rule 52 does provide for separately stated findings and conclusions; and while the Court believes the Order of December 11 to be sufficient, the Plaintiff's motion will be granted.

Plaintiff also seeks reasonable attorney fees and costs under § 39-5-140 of the Unfair Trade Practices Act; and in support of the motion Plaintiff's attorneys represented in their Brief that this case has required more time of the Plaintiff's attorneys than one would ordinarily expect. However, Plaintiff did not request an award for attorney fees in the complaint or at the conclusion of trial. Plaintiff only made such a request in its brief, therefore failing to allow time for the Court or the opposing party to evaluate the validity of the request. The court denies request for \$8,000 in attorney fees and costs.

Finally Plaintiff seeks alternative punitive damages in consequence of the willful

conversion, fraud and misrepresentation which the Court found the Defendants to have committed. Although the Unfair Trade Practices Act provides that the treble damages remedy under the Act is cumulative to all other remedies provided by law, the Court declines to award punitive damages.

Therefore, the Court shall separately state its findings and conclusions, and shall also address the matter of attorney fees under the Unfair Trade Practices Act.

FINDINGS OF FACT

Based upon the evidence, including the demeanor of witnesses and consistency or inconsistency of the testimony of the witnesses, the Court makes the following Findings of Fact:

1. The parties are residents of Greenville County, South Carolina, and the events set out in the pleading took place in that county.
2. At all times relevant to this case, the Defendants ("Mr. and Mrs. Kellett") were the co-owners and operators of an unincorporated business named Buddy's Garage ("Buddy's"), engaged in the mechanical and body repair of automobiles. Their employee, Finchem, was in charge of day to day operations, including determining repairs needed to customer's cars and amounts to be charged for the same, and contacts and communications with customers. It appears that Mr. and Mrs. Kellett were equal owners, equally entitled to control of the business and of its profits, and equally liable for its obligations.
3. On May 7, 2013, Plaintiff took her automobile for the repair of damage sustained in a car accident. Finchem prepared a proposal for repair and replacement of the front and rear bumper assemblies and replacement of the transmission, at charges totaling \$3,967.69 to be paid in advance. Turner accepted the proposal and shortly following delivered \$2,500.00, which she secured through a title loan from a finance company. Subsequently Buddy's requested and

received an additional \$1,815.26 from Plaintiff's collision insurer which was \$447.57 more than the estimate Buddy's had provided. Although Mrs. Kellett testified at trial that the additional payment was for storage of the car, there is no documentation supporting her testimony, and in her deposition Mrs. Kellett had denied knowledge of the basis for the additional payment and instead said that she imagined this was for other work. Neither is there any evidence that Plaintiff was advised of or agreed to such a charge. Therefore, the Court finds Mrs. Kellett's testimony to that effect to be untrue. All these funds were deposited in Buddy's bank account, under the control of Mr. and Mrs. Kellett. Finchem did not have access to that account.

4. Some time before July 15, 2013, Finchem was discharged by the Defendants. On July 15, 2013, Mrs. Kellett advised Plaintiff that the car was ready to be picked up and she represented that all work had been completed except installation of the front bumper assembly, the parts for which could be picked up from the former employee, Finchem. Mrs. Kellett tendered Plaintiff a return of \$130.00 for labor required on the bumper assembly. Defendants' check for that amount was received by Plaintiff, but never cashed.

5. The Court finds that neither the bumper assemblies nor the transmission were replaced, contrary to the Defendants' representations. The Defendants' pleadings and testimony are subject to a number of inconsistencies on this subject. In the Defendants' several answers in the case, they first alleged that the parts had been taken by their employee; later that Plaintiff's advance payments had been converted by their employee; and finally that the parts other than the front bumper had been installed. In her testimony, Mrs. Kellett testified under direct examination that a replacement transmission had been secured from a vehicle owned by and located at Buddy's Garage; but on cross examination, that their employee had bought a transmission in North Carolina. Indeed, the Defendants' Brief of April 18, 2016 states that their

employee "falsely represented that repair work was performed when it was, in fact, not performed." The Court finds the testimony of the independent expert witness, Stansell, that the transmission had not been replaced to be consistent and persuasive.

6. The Plaintiff's payments were received by the Defendants and remained under their exclusive control. With the exception of the small amount tendered for installation of the bumper, the Defendants have refused to return them to the Plaintiff, and instead have converted them to their own use, in knowing and intentional violation of Plaintiff's rights. In the Defendants' second Answer, they alleged that these funds had been taken by their employee with knowledge that they belonged to the Plaintiff. However, Mrs. Kellett admitted that her employee had no access to these funds, and they remained under the Defendants' sole control. By her earlier pleading, she acknowledged that the funds belonged to the Plaintiff until the work was completed.

7. The Plaintiff secured the repair money from a finance company, and encumbered her car for that purpose. When the Defendants failed to make the necessary repairs and refused to return Plaintiff's money to her, the Plaintiff was unable to pay for repairs elsewhere; she was unable to use her car, and therefore delivered it to the finance company, in cancellation of her debt. Based on the testimony of both finance company's manager and the Plaintiff, the car, if properly repaired, would have had a reasonable retail value of \$6,000. The Court, however, declines to award damages based on the car's value; but the Plaintiff's loss of her car is properly considered in determination of the Unfair Trade Practices claim, and also would be appropriate for consideration if punitive damages were being awarded.

8. The Court finds from the pleadings and evidence that the Defendants' retention of the Plaintiff's payments was willful and intentional, and in knowing violation of the Plaintiff's

rights.

9. The Court finds that the Defendants' representations, by both pleadings and testimony, that the transmission and rear bumper had been replaced were false; were known by the Defendants to be false; related to present or past matters of fact; were made with the intention that the Plaintiff act upon them; were ones that Plaintiff had a right to, and in fact, relied upon; were made with the knowledge of their falsity or with a reckless disregard for their truth; that they were made with the intention to deceive the Plaintiff; were ones that Plaintiff was ignorant as to the falsity of; and that the Plaintiff was damaged as a result thereby.

10. The Court finds that the acts of Mrs. Kellett in all dealings with the Plaintiff, including all acts and testimony in the course of this litigation, were in the ordinary course of the partnership business or were with the authority of her co-partner, Mr. Kellett. Mr. Kellett was in the courtroom during the trial of the case, and he did not offer any testimony disclaiming Mrs. Kellett's acts or authority.

11. Plaintiff has sustained actual damages in the amounts of \$447.37 overcharges, \$1,575.25 for uncompleted work to her automobile, and \$1,500.00 for a replacement transmission, for damages of \$3,522.62.

12. The Court finds that the Defendants' conduct constituted unfair and deceptive acts in the automobile repair business, which were capable of repetition. This entitled the Plaintiff to treble damages under the Unfair Trade Practices Act, resulting in damages of \$10,567.86.

13. The Court finds the Plaintiff is not entitled to recover attorney fees of \$8,000.00 to be reasonable under the circumstances of this case; Plaintiff did not request the award of attorney fees in its complaint or at the conclusion of trial. Plaintiff is not entitled to costs otherwise allowed by law.

14. Although an award of additional punitive damages would be allowable under § 39-5-160 of the Unfair Trade Practices Act, the Court declines to make a cumulative award.

CONCLUSIONS OF LAW

1. The intentional retention and refusal to return property to its rightful owner constitutes a tortious conversion entitling the owner to damages.
2. Representations constitute fraud when they are related to present or past matters of fact that are false and material; known by the maker to be false; made with the intention for the injured person to act upon them; as to which he has a right to rely upon and are in fact, relied upon; were made by maker either knowing of their falsity or possessing a reckless disregard for their truth; were made with the intention to deceive the injured person; were ones that the injured person was ignorant as to the falsity thereof; and result in damage.
3. Defendant's representations, by both pleadings and testimony, that the transmission and rear bumper had been replaced constitute misrepresentation in that they were false and material; were ones that the Defendants had a pecuniary interest in making; were ones that the Defendants had a duty of care to see were truthfully made to Plaintiff, but failed to do so; were ones that the Plaintiff justifiably relied upon; and that the Plaintiff was damaged as a result thereby.
4. The Defendants' conduct in this case constituted unfair and deceptive acts in conducting the business, of Buddy's Garage and affected public policy in that they were capable of repetition and offensive to public policy. As a direct result of Defendants' unfair and deceptive acts, Plaintiff sustained a monetary loss, and she is entitled to treble damages, attorney fees, and costs.
5. Under the Uniform Partnership Act, § 33-41-350, "When, by any wrongful act or

omission of any partner acting in the ordinary course of the business of the partnership or with the authority of his copartners, loss or injury is caused to any person..., the partnership is liable therefor to the same extent as the partner so acting or omitting to act.”

6. Further, under § 33-41-360 of that Act, the partnership is liable when a partner receives money or property of a third person and misapplies it.

7. Further, under § 33-41-370 of that Act, all partners of a general partnership are liable jointly and severally for everything chargeable to the partnership. The Court therefore concludes that Mr. Kellett and Mrs. Kellett are liable jointly and severally to the Plaintiff.

8. Under the Unfair Trade Practices Act, § 39-5-10, when the offender knew or should have know that his conduct was a violation of the Act, such violation constitutes a willful violation and thus entitles the injured party to treble damages, and also attorney fees and costs, which remedies are provided to be cumulative and supplementary to all other powers and remedies provided by law. See §§ 39-5-140 and 39-5-160.

9. When attorney fees are awarded, the Court should consider the complexity of the case, the time involved in preparation and trial, the expertise of the attorneys and prevailing fees in the area for like services.

10. By only making a request for attorney's fees in the Plaintiff's brief, neither the court nor the opposing party had the opportunity to evaluate and determine if the request complies with the requirements for an attorney fee award as set forth in South Carolina case law.

IT IS THEREFORE ORDERED:

1. That the Plaintiff have judgment under the Unfair Trade Practices Act against the Defendants jointly and severally for treble damages of \$10,567.86.
2. The requested reward for \$8,000.00 in attorney fees and costs are denied.

3. That the Plaintiff's prayer for punitive damages is denied.

Letitia H. Verdin
Judge, Court of Common Pleas
for the 13th Judicial Circuit

Dated this ____ day of _____, 2016



Greenville Common Pleas

Case Caption: Natasha Turner vs. Carmen Kellett , defendant, et al
Case Number: 2014CP2303197
Type: Order/Judgment Amended

So Ordered

s/Letitia H. Verdin, SC Judge 2162

Electronically signed on 2016-06-07 16:38:06 page 9 of 9

ELECTRONICALLY FILED - 2016 Jun 07 4:53 PM - GREENVILLE - COMMON PLEAS - CASE#2014CP2303197

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM GREENVILLE COUNTY
COURT OF COMMON PLEAS

Letitia H. Verdin, Circuit Court Judge

RECEIVED

JUL 05 2016

SC Court of Appeals

RECEIVED

JUL 06 2016

SC Court of Appeals

Case No.: 2014-CP-23-3197

Natasha Turner.....Respondent

Michael T. Kellett and Carmen Kellett.....Appellant

NOTICE OF APPEAL

Circuit Judge Letitia H. Verdin issued an Order dated December 11, 2015.
Plaintiff filed a Notice and Motion for Amendment of Order.

Circuit Judge Letitia H. Verdin issued an Amended Order signed on June 2,
2016. Appellant received written notice of the entry of the Order on June 7, 2016.

Defendants Carmen Kellett and Michael T. Kellett appeal the Order of Circuit
Judge Letitia H. Verdin signed on December 11, 2015 and the Amended Order
signed June 2, 2016.

July 1, 2016



Clifford F. Gaddy, Jr.
408 N. Church St., Ste. B
Greenville, South Carolina 29601
(864) 250-5155
Attorney for Appellant

Other Counsel of Record:

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707 E. North Street
Greenville, South Carolina, 29601
(864) 240-9119
Attorney for Respondent

R. Frank Plaxco
36 Harvest Lane
Greenville, South Carolina 29601
864-232-9828
Attorney for Respondent

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM GREENVILLE COUNTY
COURT OF COMMON PLEAS

Letitia H. Verdin, Circuit Court Judge

Case No.: 2014-CP-23-3197

Natasha Turner.....Respondent/Appellant

Carmen Kellett and Michael T. Kellett, f/d/b/a Buddy's Garage.....Appellants/Respondents

NOTICE OF APPEAL

On December 11, 2015, Circuit Judge Letitia H. Verdin issued an Order in this case. The Respondent/Appellant, Natasha Turner, filed a Notice and Motion for Amendment of Order.

Circuit Judge Letitia H. Verdin issued an Amended Order signed on June 2, 2016. The Respondent/Appellant, Natasha Turner, received written notice of the Order's entry on June 7, 2016.

On July 1, 2016, Appellants/Respondents Carmen Kellett and Michael T. Kellett, f/d/b/a Buddy's Garage served their Notice of Appeal on Respondent/Appellant Natasha Turner, which was received by said Respondent/Appellant on July 5, 2016.

Respondent/Appellant Natasha Turner hereby appeals the Amended Order of the Circuit Court signed and served by Judge Letitia H. Verdin on June 7, 2016.

July 6, 2016



Joseph M. Plaxco
707 E. North Street
Greenville, South Carolina 29601
(864) 240-9112
*Attorney for Respondent/Appellant
Natasha Turner*

-and-

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Natasha Turner

Other Counsel of Record:

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Attorney for Appellants/Respondents
Carmen Kellett and Michael T. Kellett,
f/d/b/a Buddy's Garage

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM GREENVILLE COUNTY
COURT OF COMMON PLEAS

Letitia H. Verdin, Circuit Court Judge

Case No.: 2014-CP-23-3197

Natasha Turner.....Respondent/Appellant

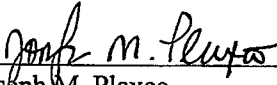
Carmen Kellett and Michael T. Kellett, f/d/b/a Buddy's Garage.....Appellants/Respondents

PROOF OF SERVICE

I hereby certify that on the 7th day of July, 2016 I served a copy of the Notice of Appeal on the Appellants/Respondents, Carmen Kellett and Michael T. Kellett, f/d/b/a Buddy's Garage, by mailing it to their attorney of record, Clifford F. Gaddy, Esquire, by depositing it in the U.S. Mail, in an envelope with sufficient postage affixed, addressed as follows:

Clifford F. Gaddy, Jr.
408 N. Church Street; Suite B
Greenville, South Carolina 29601

July 7, 2016



Joseph M. Plaxco
707 E. North Street
Greenville, South Carolina 29601
(864) 240-9112
Attorney for Respondent/Appellant
Natasha Turner

09/22/2016

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P-1	Bill	20	20
P-2	Check - TitleMax	23	23
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P-4	Photo	30	32
P-4 (A)	Photo	50	50
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<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
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COURT EXHIBITS

(No exhibits offered.)

P R O C E E D I N G S

(WHEREUPON, the proceedings begin on the 19th day of November, 2015 at approximately 9:54 a.m.)

THE COURT: Our next case up is Natasha Turner versus Carmen Kellett and Michael Kellett formerly doing business as Buddy's Garage. Is that right? All right. Are there any matters we need to take up before we get started?

(No response.)

Any matters we need to take up before we get started, Mr. Gaddy?

MR. GADDY: Good morning.

THE COURT: Good morning.

MR. GADDY: Here's a trial brief.

THE COURT: Thank you, sir. All right. If there's nothing before we begin, we can get started. My understanding is y'all anticipate this to take about three-quarters of a day. Is that right?

MR. JOSEPH PLAXCO: Yes, Your Honor.

THE COURT: All right. Very good then. Yes, sir.

MR. JOSEPH PLAXCO: Your Honor, Joseph Plaxco for the plaintiff, Ms. Natasha Turner.

1 **THE COURT:** Hi.

2 **MR. JOSEPH PLAXCO:** Just -- not going to
3 give you a full opening statement. Just to give
4 you kind of a little background of the facts
5 and what we've alleged and what we've pled.

6 **THE COURT:** Okay. And if it's helpful to
7 you, you can tell me what you need to tell me,
8 but I will tell you I've read the file fully in
9 this case.

10 **MR. JOSEPH PLAXCO:** Okay.

11 **THE COURT:** But go ahead.

12 **MR. JOSEPH PLAXCO:** I'll keep it very
13 short.

14 **THE COURT:** That's fine. That's fine.

15 **MR. JOSEPH PLAXCO:** In May of 2013, Ms.
16 Turner took her car to Buddy's Garage in
17 Travelers Rest, which was a solo -- a sole
18 proprietorship owned 50/50 by the defendants,
19 Mr. and Mrs. Kellett. Uh, Mr. and Mrs. Kellett
20 employed a mechanic who was also the overseer,
21 I can say, of the garage. He was the one that
22 dealt on a day-to-day basis with the customers
23 at Buddy's Garage. And that's who Ms. Turner
24 dealt with while her car was at Buddy's Garage
25 for a little over two months. In May, Ms.

1 Turner was in a wreck and took her car to
2 Buddy's Garage to have the transmission
3 replaced as well as have the bumper -- the
4 front bumper assembly replaced, the rear bumper
5 assembly replaced and both bumpers to be
6 painted.

7 Throughout the course of the time that
8 Buddy's Garage was in possession of Ms.
9 Turner's car, a little over \$4300 was paid to
10 Buddy's Garage for parts and labor. \$2500 of
11 that was paid up front. It was paid up front
12 initially and was to be paid for parts. After
13 approximately two months, Ms. Turner realized
14 -- I'm sorry -- got word that her car was ready
15 to be picked up. Upon arriving, she discovered
16 that the bumpers had not been replaced at all,
17 that Mr. Fincham was no longer working for
18 Buddy's Garage. And when she got in her car and
19 started to drive off, she noticed that the
20 transmission did not feel like it was still
21 properly working.

22 She tried to contact Buddy's Garage to no
23 avail. She filed a lawsuit in Magistrate's
24 Court and it worked its way up to Circuit Court
25 and here we are today. We've alleged conversion

1 of funds, fraud, misrepresentation, breach of
2 contract in violation of the Unfair Trade
3 Practices Act. We believe at the end of the
4 close of this case, that we will prove that
5 we've satisfied all the elements of those
6 causes of action.

7 THE COURT: All right. Thank you, sir.

8 MR. JOSEPH PLAXCO: Thank you.

9 THE COURT: Mr. Gaddy, anything you'd like
10 to say?

11 MR. GADDY: Your Honor, Natasha Turner was
12 involved in an accident while she was driving
13 her 2006 Mitsubishi Lancer. That was over in
14 Spartanburg County. She had the car towed over
15 to Buddy's Garage for repairs. A mechanic by
16 the name of Michael Fincham looked at the car
17 and gave a written estimate for the cost of
18 repair. That was the end of that particular,
19 uh, compensation, except that she was told that
20 repairs would not start until she had paid in
21 advance for the repairs.

22 She subsequently brought in a check for
23 \$2500 after a few days, that she had obtained
24 from TitleMax. Later on, she, uh, brought in
25 another check that came from Geico that she had

1 received. That was, I think, about June the
2 6th. So the car sat on the lot there at Buddy's
3 Garage for roughly a month with nothing being
4 done to it while Buddy's Garage waited for the
5 customer there, Ms. Turner, to pay for the
6 repairs.

7 Upon, uh, -- during that time, that month,
8 some parts were ordered. The parts came in.
9 Other parts were ordered and work was started.
10 So the car was sitting around there for at
11 least a month or six weeks before anything was
12 done to it.

13 Then there came an instant where this
14 mechanic named Mike Fincham reported to the
15 Kelletts, who owned the garage, that two cars
16 were missing. The cars that were missing were a
17 Pontiac, which was actually owned by the
18 plaintiff's live-in boyfriend, and there was an
19 Avalon which was owned by another customer. The
20 missing cars were reported to the sheriff's
21 department. The sheriff's department sent an
22 investigator out, his name was Isaac Henderson,
23 and he made whatever he considered to be an
24 appropriate inquiry.

25 In any event, the Pontiac, which was owned

1 by this Michael Smith, who was the boyfriend of
2 Ms. Turner, turned up in the yard of Ms.
3 Turner. This led the Kelletts to view Michael
4 with suspicion that there was a scam going on
5 between this Smith, that was the live-in
6 boyfriend of Ms. Turner, and the mechanic
7 Fincham.

8 About that same time, the Kelletts wanted
9 to close the garage. They called Ms. Turner to
10 come in and get the car. At that time, the
11 front bumper had not been installed. The
12 Kelletts wanted to get the relationship with
13 the plaintiff, Natasha Turner, closed down and
14 out of the way. She had made arrangements with
15 this fellow, Fincham, to install the bumper
16 outside of Buddy's Garage's place. We'll be
17 offering evidence to prove that.

18 The used bumper was put onto the car before
19 she left. There was an inspection made of the
20 repairs of the car. And there were statements
21 made in writing that the repairs were
22 satisfactory except for the front bumper. There
23 was also mention of a rearview mirror that had
24 not been installed. At any rate, the car left.

25 Then there was an estimate obtained for

1 certain repairs from a place called Mike's Body
2 Shop, which Ms. Turner obtained. There was also
3 an estimate for repairs made by an outfit
4 called Poinsett Tire, which Ms. Turner
5 obtained. Our position is that those two repair
6 outfits might have found repairs were needed,
7 but those were not included on the repairs
8 being made by Buddy's Garage, which we will
9 offer evidence to show what those repairs were.
10 In other words, if the car needed further
11 repairs, it was not repairs that had been under
12 the repair order of Buddy's Garage.

13 She then filed suit in Magistrate's Court
14 along the way. And then the case got dismissed
15 or whatever and the suit was filed in Common
16 Pleas court. There is no evidence as far as we
17 are concerned of anything that was deceitful.
18 There's been no misrepresentations. If there's
19 anything, there is a conflict in the facts
20 about breach of contract as to whether or not
21 the automobile was repaired properly pursuant
22 to the estimate given by Buddy's Garage.

23 The problem with the whole thing is that
24 Ms. Turner has given numerous conflicting
25 statements about the condition of the car. We

1 feel like she just lacks credibility, which we
2 are prepared to show.

3 **THE COURT:** All right. Thank you, sir.
4 All right. You ready to proceed?

5 **MR. JOSEPH PLAXCO:** Yes, Your Honor. I'll
6 call my first witness, the plaintiff, Ms.
7 Natasha Turner.

8 **THE COURT:** All right. Ma'am, if you
9 would, come forward and be sworn please. Place
10 your left hand on the Bible and raise your
11 right please.

12 **NATASHA TURNER**

13 having first been duly sworn, testifies as follows:

14 **THE COURT:** All right. Thank you. You may
15 have a seat.

16 **DIRECT EXAMINATION**

17 **BY MR. JOSEPH PLAXCO:**

18 **Q** Can you please state your full name for the
19 record?

20 **A** Natasha Lee Turner.

21 **Q** Okay. And Ms. Turner, around May 7th of
22 2013, did you take your car to Buddy's Garage for
23 certain, uh, repairs that needed to be done?

24 **A** Yes, I did.

25 **MR. FRANK PLAXCO:** Your Honor, excuse me.

1 Would it be appropriate for Mr. Gaddy to be
2 seated while the direct examination takes place?

3 MR. GADDY: Young Mr. Plaxco is standing
4 between me and the witness. I'm simply moving
5 over here so I can observe the witness while
6 she's testifying.

7 THE COURT: I'm -- and I think if you are
8 able to -- are you able -- are you doing that
9 for hearing reasons?

10 MR. GADDY: Yes.

11 THE COURT: All right. I mean, I don't
12 mean to embarrass you, but ---

13 MR. GADDY: Yes.

14 THE COURT: --- I'm just asking outright.

15 MR. FRANK PLAXCO: I didn't realize he had
16 a problem hearing.

17 MR. GADDY: Also I can't see the witness
18 because of Mr. Young Plaxco.

19 THE COURT: Yeah, that's fine for you to
20 stay there.

21 BY MR. JOSEPH PLAXCO:

22 Q Again, I'm sorry. I'll ask the question.
23 Ms. Turner, around May 7th of 2013, did you take your
24 car to Buddy's Garage to have certain and necessary
25 repairs done to it?

1 A Yes.

2 Q Okay. Tell me about your car prior to
3 taking it to Buddy's Garage. Why did you take it to
4 Buddy's Garage?

5 A I took the car to Buddy's Garage because I
6 had an accident as far as where someone ran me off
7 the road.

8 Q And who was found to be at fault in that
9 accident?

10 A It was a non-at-fault accident because it
11 was a hit-and-run.

12 Q Okay. So the other driver of that accident
13 drove off?

14 A Correct.

15 Q Okay. And did you have your car towed to
16 Buddy's Garage from Spartanburg?

17 A Yes.

18 Q Okay. Tell me about the car before the
19 accident. How did it run? What was its condition and
20 its shape?

21 A It was a great car. I had just paid it off
22 not long before that and it ran fine, drove fine,
23 looked fine. It was probably the best car I've ever
24 had.

25 Q Okay. When did you buy that car, Ms.

1 Turner?

2 A Uh, it was in 2011.

3 Q Okay.

4 A '10 or '11.

5 Q And how much did you pay for the car when
6 you bought it?

7 A A little over \$8000.

8 Q Where did you buy that car from, Ms.

9 Turner?

10 A I bought it from Wooten Auto Sale.

11 Q And what features -- did it have any
12 special feature that some cars have that would have
13 made it, you know, a little more of value than the
14 standard addition.

15 A It had power locks, an alarm, sunroof, CD
16 player.

17 Q Okay. Okay. And if you had to estimate what
18 the value of that car was when you took it to Buddy's
19 Garage --

20 MR. GADDY: I object to that question.

21 THE COURT: I'll allow it. I think she's
22 able to give her own opinion.

23 MR. GADDY: She can testify to what she
24 paid for, that's fine. But as for the value of
25 when it went to the garage, it went to the

1 garage as a damaged car. She couldn't possibly
2 know any value of it.

3 **THE COURT:** Okay. I'm going to allow her
4 to testify as to what she believes. I take in
5 consideration her lack of experience.

6 **MR. JOSEPH PLAXCO:** Yes, ma'am.

7 **THE COURT:** All right.

8 **BY MR. JOSEPH PLAXCO:**

9 **Q** What would you -- what would you estimate
10 the value of that car was when you -- undamaged, when
11 you took it to Buddy's Garage, or prior to taking it
12 to Buddy's Garage?

13 **A** About \$6500.

14 **Q** Okay. And how do you -- how did you base --
15 what did you base that value on?

16 **MR. GADDY:** Your Honor, I object to this
17 line of testimony.

18 **THE COURT:** You're objection is noted. I'm
19 going to allow it for her to talk about what she
20 based her, what's she's basing her estimate on.
21 Again, I take into consideration that, at least
22 at this point, she's not been qualified as any
23 expert in in that area. I take that certainly
24 into consideration.

25 **MR. JOSEPH PLAXCO:** Thank you, Your Honor.

1 **THE COURT:** Okay.

2 **THE WITNESS:** Just off of the time that
3 I'd used the car and, I guess, mileage. It was
4 still in good working condition. Everything was
5 still proper on it before the wreck.

6 **BY MR. JOSEPH PLAXCO:**

7 **Q** Okay. When you took your car to Buddy's
8 Garage, who assisted you?

9 **A** Mike Fincham.

10 **Q** Okay. And to your knowledge, what was Mike
11 Fincham's employment or relationship with Buddy's
12 Garage?

13 **A** He was a mechanic.

14 **Q** Okay. Did you deal with him on a daily
15 basis?

16 **A** Yes, I dealt with him with the issues.

17 **Q** With the issues of the car. Okay. At what
18 point did you even know that Mr. and Mrs. Kellett
19 existed?

20 **A** When I received notice to pick up my car.

21 **Q** Okay. Okay. Did you meet Mrs. Kellett
22 prior, to sign the check?

23 **A** She wasn't there to sign the check, but
24 they had said that it had to be.

25 **Q** Okay. And we'll get to that in just a

1 minute. Ms. Turner, I'm going to show you what we'd
2 like to introduce as Plaintiff's Exhibit Number 1,
3 which is a copy of the Buddy's Garage...

4 MR. GADDY: Sure. I think you have several
5 copies.

6 MR. JOSEPH PLAXCO: I do have several
7 copies.

8 MR. GADDY: No objection.

9 THE COURT: All right. So admitted as
10 Plaintiff's Number 1. Oh, you did ask to admit
11 it?

12 MR. JOSEPH PLAXCO: Yes, Your Honor.

13 THE COURT: All right.

14 (WHEREUPON, Plaintiff's Exhibit 1 is marked for
15 identification and admitted into the record.)

16 BY MR. JOSEPH PLAXCO:

17 Q Ms. Turner, do you recognize this form?

18 A Yes.

19 Q What is this form?

20 A This is the estimate that I was shown to
21 repair the car.

22 Q Is this the estimate right up from Buddy's
23 Garage?

24 A It is.

25 Q Okay. In looking at this form, if you'd

1 look at the lefthand column, what work was supposed
2 to be rendered to the automobile?

3 A Repair and replace transmission. Repair and
4 replace front bumper assembly. Repair and replace
5 rear bumper assembly. Paint both bumpers.

6 Q Okay. In looking at the column on the right
7 side, what was the labor to be performed?

8 THE COURT: Mr. Gaddy, I'm sorry. I think
9 that microphone is picking you up, so I'm able
10 to hear.

11 All right. Go ahead.

12 BY MR. JOSEPH PLAXCO:

13 Q If you look at the right side, the column
14 on the right side, can you explain to me and read
15 what parts were to be put on the car?

16 A One transmission -- that's abbreviated --
17 assembly, 22,000 miles; one bumper cover front, rear
18 bumper cover; one bumper restabilizing beam front;
19 one bumper reinforcement beam, rear; one left
20 support; one right support; and one battery.

21 Q Okay. And what was the total amount, the
22 final total that all this work and parts added up to?

23 A \$3867.89.

24 Q Okay. And how did you learn that the
25 transmission needed to be replaced?

1 A I was contacted by the garage, by Mike
2 Fincham.

3 Q Mr. Fincham indicated that it needed to be
4 replaced, is ---

5 A Yes.

6 Q --- that correct? Okay. Did you pay Buddy's
7 Garage up front before any work was done to your car?

8 A Yes.

9 Q Okay. How much did you pay up front?

10 A \$2500.

11 Q Okay. And is that amount indicated on the
12 form that I just showed you?

13 A Yes.

14 Q Okay. So that would be down at the bottom
15 towards the bottom of the lefthand column, pay \$2500,
16 correct?

17 A Yes.

18 Q With Mrs. Kellett's signature above it.
19 Okay. Do you know why you had to pay the money up
20 front?

21 A Yes, I was told that parts needed to be
22 ordered. They didn't stock those parts.

23 Q Okay. And how did you get the funds for the
24 initial payment?

25 A I had to take out a title loan on that car.

1 Q Okay. And how much was that for?

2 A 2500.

3 Q Did that amount, the \$2500, did that
4 constitute the deductible that you had to pay since
5 this was a hit-and-run?

6 A Yes, it did.

7 Q And your insurance picked up? Okay. So
8 TitleMax, just to confirm, TitleMax of Berea issued
9 the check to Buddy's Garage after you took out a
10 title loan?

11 A Yes.

12 MR. JOSEPH PLAXCO: Okay. I'd like to
13 introduce the TitleMax check of 2500 made
14 payable to Buddy's Garage.

15 MR. GADDY: We have no objection.

16 MR. JOSEPH PLAXCO: Okay.

17 MR. FRANK PLAXCO: What are the exhibit
18 numbers? 2?

19 MR. JOSEPH PLAXCO: This would be
20 Plaintiff's Exhibit Number 2. And we're asked
21 that it be admitted into evidence.

22 THE COURT: All right. So admitted without
23 objection.

24 (WHEREUPON, Plaintiff's Exhibit 2 is marked for
25 identification and admitted into the record.)

1 BY MR. JOSEPH PLAXCO:

2 Q Ms. Turner, is this the check that TitleMax
3 issued?

4 A Yes.

5 Q How do you know that TitleMax issued this
6 check? Do you have personal knowledge that TitleMax
7 issued this check?

8 A They showed me the check when I signed the
9 contract.

10 Q Okay. And is it your understanding that at
11 some point after your car had been at Buddy's Garage,
12 someone from Buddy's Garage contacted Geico to
13 indicate that an additional or supplemental amount
14 would be needed for more work on your car?

15 A Yes.

16 MR. JOSEPH PLAXCO: Okay. I'd like to
17 introduce Plaintiff's Exhibit Number 3 which is
18 a copy of the Geico check. We'd ask to admit
19 this into evidence.

20 THE COURT: Any objection, Mr. Gaddy?

21 MR. GADDY: No objection.

22 THE COURT: All right. It is so admitted
23 as Plaintiff's 3.

24 (WHEREUPON, Plaintiff's Exhibit 3 is marked for
25 identification and admitted into the record.)

1 BY MR. JOSEPH PLAXCO:

2 Q Ms. Turner, do you recognize this check?

3 A Yes.

4 Q How much is this check for?

5 A \$1815.26.

6 Q Okay. Was this check made payable to you?

7 A Yes.

8 Q Okay. Why was that?

9 A The insurance agent contacted me and said
10 that they were unable to issue it straight to the
11 garage because there was no tax ID.

12 Q Okay. Okay. Did you endorse it over to
13 Carmen Kellett?

14 A I did.

15 Q Okay. And to your knowledge, did Buddy's
16 Garage receive that check?

17 A Yes.

18 Q Okay. How long was your car at Buddy's
19 Garage?

20 A 60 days.

21 Q Okay. And while the car was there, did you
22 ever call to check on the status of it?

23 A Many times.

24 Q Okay. What were you told?

25 A I was told a number of things, parts

1 weren't in yet, we had to get more parts, the wrong
2 parts were ordered, the paint was the wrong color,
3 the bumper didn't fit.

4 Q Okay.

5 A Just a number of things.

6 Q Okay. And when you made these calls, who
7 did you speak to?

8 A Mike Fincham.

9 Q Okay. Do you recall the approximate date
10 that you picked your car up from Buddy's Garage?

11 A It was July the 15th.

12 Q And what do you think is a reasonable
13 amount to be compensated for not being able to use
14 your car?

15 MR. GADDY: I object to this line of
16 questioning, Your Honor. She's testified that
17 her car was wrecked. She brought it to Buddy's
18 Garage for repairs. What her time is worth and
19 how much she spent dealing with it is completely
20 irrelevant.

21 THE COURT: I think the question was what
22 do you think a reasonable amount that she should
23 be compensated for not --

24 MR. JOSEPH PLAXCO: Not having her car.

25 MR. GADDY: Well, same objection applies.

1 She had chosen the place to go. The car is being
2 repaired. There's no relevance to the testimony.

3 **THE COURT:** All right. Overruled. I'll
4 allow that.

5 **BY MR. JOSEPH PLAXCO:**

6 **Q** Okay. How did you come up with a figure of
7 \$30 a day, Ms. Turner?

8 **A** I've rented cars before. That's just based
9 off of prior knowledge of having to rent cars before.

10 **Q** Okay. Have you lost any work because of
11 this action?

12 **A** Yes.

13 **Q** Okay. Approximately how many days?

14 **A** Four.

15 **Q** Okay. And what would you say the value --

16 **MR. GADDY:** She can't possibly know this.
17 I object to the question. She can not possibly
18 know how long it takes to repair a car.

19 **THE COURT:** I'm going to allow her to
20 testify as to it. Now, whether or not I'll
21 factor that into my ultimate decision, I'll make
22 a determination after trial. Go ahead.

23 **MR. JOSEPH PLAXCO:** Thank you.

24 **BY MR. JOSEPH PLAXCO:**

25 **Q** Ms. Turner, did Mr. Fincham ever indicate

1 how long it would take for the car to be worked on?

2 A No.

3 Q What were you expecting? What were you
4 expecting the car to be in Buddy's Garage for?

5 A Maybe two weeks.

6 Q Two weeks tops?

7 A Yeah.

8 Q Okay. And you just testified that you lost
9 -- because of this action, you lost about four days
10 worth of work. How much did that cost you?

11 A It averages about \$114 a day, about \$450.

12 Q About \$450 total? Okay. Okay. Back to
13 Buddy's Garage, how did you learn that it was time to
14 come pick your car up from Buddy's Garage?

15 A I received a text message from Carmen
16 Kellett to come and pick up the car.

17 Q Okay. And let's talk about the situation
18 with the bumpers. What did you learn about the
19 bumpers at that time?

20 A One needed to be picked up from Mike
21 Fincham and it wasn't on the car.

22 Q Okay. And when you got to Buddy's Garage,
23 what did you observe?

24 A Immediately you could see that the front
25 bumper was not on the car.

1 Q Okay. So the front bumper was simply not
2 there.

3 Q Not there. No bumper was on the front. What
4 about the back bumper?

5 A You couldn't see it immediately, but upon
6 observation, you could tell that it was the original
7 bumper still on the car.

8 Q Okay. Okay. I'm going to show you photos,
9 which I would like to introduce as Plaintiff's
10 Exhibits 4 through -- 4 through 12.

11 MR. GADDY: Plaintiff's attorney has got
12 photocopies of some photographs. I'm not sure of
13 the relevance of them because the car, when
14 taken to Buddy's Garage, had been in an
15 accident, was damaged. The pictures he has there
16 is of a car that is not damaged.

17 MR. JOSEPH PLAXCO: These are pictures of
18 the car when she picked the car up.

19 THE COURT: All right. And I'm going to
20 let you lay some foundation with her ---

21 MR. JOSEPH PLAXCO: Okay.

22 THE COURT: --- about that before you
23 introduce them.

24 MR. GADDY: I have no objection if they
25 are pictures of the car undamaged.

1 **THE COURT:** Right.

2 **MR. JOSEPH PLAXCO:** We'd like to introduce
3 these as Exhibits 4 through 12, Plaintiff's.

4 **THE COURT:** Let's just mark them now.

5 **MR. JOSEPH PLAXCO:** Mark them now.

6 **THE COURT:** And then we'll mark them and
7 we'll let her lay some foundation about it.

8 **MR. JOSEPH PLAXCO:** Yes, Your Honor.

9 **(WHEREUPON, Plaintiff's Exhibit 4 is marked for**
10 **identification purposes.)**

11 **BY MR. JOSEPH PLAXCO:**

12 **Q** Ms. Turner, I'm going to show you some
13 photographs. Ms. Turner, can you look through those
14 photographs for me?

15 **A** Yes.

16 **Q** Do you recognize those photographs?

17 **A** Yes.

18 **Q** Can you look through each one of them?

19 **A** (Reviewing.)

20 Yes, sir.

21 **Q** Okay. Ms. Turner, of all those photographs,
22 are you familiar with the object or scenes that those
23 photographs depict?

24 **A** Yes, I am.

25 **Q** Why are you familiar with that object or

1 with the scenes in those photographs?

2 **A** I took those photos when I arrived to show
3 that nothing had been repaired on my car.

4 **Q** So those were the photographs that you took
5 upon arriving at Buddy's Garage and picking up your
6 car, is that correct?

7 **A** That is correct.

8 **Q** Okay. And you recognize the object or scene
9 that's in all of those photographs?

10 **A** Yes, it is my car.

11 **Q** Okay. And do all those photographs -- are
12 they a fair and true or accurate depiction of the
13 object or scene that's in those photographs at that
14 relevant time?

15 **A** Yes.

16 **MR. JOSEPH PLAXCO:** Your Honor, we would
17 ask to admit plaintiff's photographs
18 collectively.

19 **MR. GADDY:** I'd like to ask two or three
20 more questions.

21 **THE COURT:** All right. Go ahead.

22 **VOIR DIRE BY MR. GADDY:**

23 **Q** Are you telling us that these photographs
24 were taken by you using what kind of camera?

25 **A** My cell phone.

1 **Q** And where were you when you were taking
2 them? I'm talking about the geographic location. Were
3 you at the Buddy's Garage?

4 **A** I was at Buddy's Garage.

5 **Q** Okay. No other questions.

6 **THE COURT:** Any objections then?

7 **MR. GADDY:** No objection.

8 **THE COURT:** All right then. They are so
9 admitted. You said it's what? A group?

10 **MR. JOSEPH PLAXCO:** Collectively as Exhibit
11 4, Your Honor.

12 **THE COURT:** Okay. Plaintiff's Exhibit
13 number 4 is admitted as a group without
14 objection.

15 **(WHEREUPON, Plaintiff's Exhibit 4 is admitted into**
16 **the record.)**

17 **MR. FRANK PLAXCO:** 4, wasn't it, Your
18 Honor?

19 **MR. JOSEPH PLAXCO:** Number 4, yes, sir.

20 **MR. FRANK PLAXCO:** The Geico check was
21 Number 3?

22 **MR. JOSEPH PLAXCO:** Right.

23 **MR. FRANK PLAXCO:** Insurance company check?

24 **MR. JOSEPH PLAXCO:** It's Number 4.

25 **MR. FRANK PLAXCO:** This is 4?

1 **THE COURT:** We're off the record for all
2 that.

3 **(WHEREUPON, the Court goes off the record.)**

4 **THE COURT:** Okay. Go ahead.

5 **BY MR. JOSEPH PLAXCO:**

6 **Q** Ms. Turner, going through each of the --
7 can you go through each of those photos and briefly
8 explain to the Court what each photo represents or
9 what is depicted in those photographs.

10 **A** The first photo that I'm looking at is a
11 picture of the car beside Buddy's Garage without the
12 front bumper on it.

13 **Q** Okay. Okay. And the next picture.

14 **A** The next picture is another picture of just
15 the car on the property without the bumper, front
16 bumper on there.

17 **Q** Okay. Next picture.

18 **A** The next picture is a piece behind the
19 wheel that was still damaged and muddy ---

20 **Q** Okay.

21 **A** --- on the car that's at Buddy's Garage.
22 The next picture is another piece of plastic on the
23 car at Buddy's Garage.

24 **Q** Okay.

25 **A** The next picture is part of the car with

1 fluid leaking onto a panel on the car at Buddy's
2 Garage.

3 Q Okay.

4 A The next picture is the rear bumper still
5 disattached from the car at Buddy's Garage.

6 Q And Ms. Turner, was that the bumper, was
7 that the original bumper?

8 A Yes.

9 Q Keep going.

10 A The next one is a picture of the bumper,
11 rear, original, at Buddy's Garage still not attached.
12 The next picture is scratches that was on the side of
13 my car at Buddy's Garage that had not been on the car
14 previously.

15 Q Okay.

16 A The next one is another picture of
17 scratches that were on the car that were not there
18 previously to Buddy's Garage.

19 Q Okay. Is that all, Ms. Turner?

20 A Yes.

21 Q Now, tell me about the back bumper. You
22 testified that the front bumper was not put on. But
23 what did you learn about the back bumper?

24 A The back bumper, when I arrived and
25 inspected the car, was still originally -- the

1 original bumper was on the car.

2 Q Okay.

3 A It was still pulled away from the car. The
4 damage was still there on the sides of it.

5 Q And replacement of the back bumper was part
6 of the work ---

7 A Yes.

8 Q --- that you contracted Buddy's Garage to
9 perform, correct?

10 A Correct.

11 Q Did anyone at Buddy's Garage ever mention
12 anything about the back bumper or tell you anything
13 about the back bumper?

14 A I was told that the bumper did not need to
15 be replaced, that was overreacting.

16 Q Despite the fact that it was on the
17 estimate for it that we introduced as Plaintiff's
18 Exhibit Number 1?

19 A Yes.

20 Q Who told you that?

21 A Mrs. Kellett.

22 Q Okay. So you were overreacting?

23 A Yes.

24 Q Okay. As far as the front bumper, did Mr.
25 and Mrs. Kellett try to reimburse you in any way for

1 not replacing that bumper?

2 A Yes.

3 Q And how much did they try to reimburse you
4 for?

5 A \$130.

6 Q Do you know how much labor that was to
7 cover?

8 A Two hours.

9 Q Okay. And I think if you look at
10 Plaintiff's Exhibit Number 1, replacement of the
11 front bumper was actually two and a half hours,
12 correct?

13 A Yes.

14 Q But they only wanted to pay you for two
15 hours.

16 MR. JOSEPH PLAXCO: I'd like to introduce
17 Plaintiff's Exhibit Number 5 which is the check
18 from Michael Kellett for \$130.

19 MR. GADDY: We have no objection.

20 MR. JOSEPH PLAXCO: Okay.

21 MR. GADDY: We have no objection.

22 THE COURT: All right. Plaintiff's Exhibit
23 Number 5 is admitted without objection.

24 (WHEREUPON, Plaintiff's Exhibit 5 is marked for
25 identification and admitted into the record.)

1 BY MR. JOSEPH PLAXCO:

2 Q Ms. Turner, I'm going to show you that.
3 Mrs. Kellett, is this the check that you received
4 from Mr. Kellett?

5 A (No response.)

6 Q Is this the check that you received from
7 Mr. Kellett?

8 A Yes, it is.

9 Q And did you accept that check?

10 A I did take the check.

11 Q The original had just been admitted into
12 evidence as Plaintiff's Exhibit. Did you ever sign
13 the back of that check or endorse it?

14 A No.

15 Q Explain to me what led up to the writing of
16 that check.

17 A There was a discussion about refunding me
18 for the rear and front bumper because that is what I
19 observed was not corrected at the time.

20 Q I'm sorry. Just to back up, was this check
21 written when you picked up the car from Buddy's
22 Garage at that -- that night?

23 A Yes.

24 Q Okay. Continue.

25 A The discussion got very heated. I felt very

1 threatened. I was ready to resolve the issue. I just
2 accepted what she was handing me to get out of the
3 middle of the conflict because I had offered to call
4 the police.

5 Q Okay. So when you say resolve the issue,
6 you mean not necessarily resolve --

7 A The issue of the violent --

8 Q The hostile situation?

9 A The hostile situation that was going on.

10 Q Okay. When you took the check, did you have
11 any intention whatsoever of depositing it or truly
12 accepting it for your own use?

13 A No.

14 Q That's why you -- that's why you didn't
15 sign it, correct?

16 A Correct.

17 Q When you took the check, while this whole
18 discussion with the Kelletts were taking place
19 concerning the bumpers, did you have any intention of
20 making an agreement that that payment resolved your
21 dispute with the Kelletts regarding that?

22 MR. GADDY: Your Honor, I object to this
23 testimony of asking her questions about what she
24 intended to do this and she intended to do that.
25 That's improper questioning about what her

1 intent was. She either took the check or she
2 didn't.

3 **THE COURT:** No, objection overruled. Go
4 ahead.

5 **BY MR. JOSEPH PLAXCO:**

6 **Q** Again, did you have any intention of making
7 an agreement with the Kelletts regarding the bumper?

8 **A** No.

9 **Q** So you left the scene, got in your car. And
10 tell me, when you turned the car on and started
11 driving, what did you observe? What did you feel?
12 What did you hear?

13 **A** As I left the property, the car was making
14 noises. The car was pulling -- as I was riding down
15 the road, pulling to the right. There were noises
16 coming from the engine area.

17 **Q** Okay.

18 **A** Just the car, in general, was not driving
19 correctly.

20 **Q** And is that when you discovered that
21 everything that Buddy's Garage had represented to you
22 about the work that was done to the car had not been
23 done?

24 **A** Not at that time.

25 **Q** Tell me what led to that conclusion?

1 A I decided to take the car to be inspected
2 because of the noise. Upon having it inspected, I was
3 able to observe that the transmission had not been
4 repaired. The transmission, in my observation, was
5 dirty. It still had mud caked on it. There were
6 cobwebs under there. It was still pulling as though
7 it needed an alignment as I was driving.

8 Q Where did you make these observations?

9 A At Poinsett Tire.

10 Q Okay. Poinsett Tire, is that the auto
11 mechanic shop that you took your car to immediately
12 after you picked the car up from Buddy's Garage?

13 A It was not immediately, but it was within a
14 time frame of getting it inspected when I could.

15 Q Within a few days, you would say?

16 A Yes.

17 Q Okay. Okay. Okay. Ms. Turner, did you ever
18 take your car to a body shop?

19 A I did.

20 Q When was that?

21 A The same day.

22 Q Okay. And according to -- where did you
23 take your car first?

24 A I took it to Mike's Auto Repair.

25 Q Okay.

1 **A** It was right across the road from the
2 Poinsett Tire.

3 **Q** According to Mike's Auto Repair, how much
4 did they estimate was required to --

5 **MR. GADDY:** Your Honor, I object to this
6 testimony. It's hearsay.

7 **THE COURT:** Okay. What do you have to back
8 that up? You got anything?

9 **MR. JOSEPH PLAXCO:** Your Honor, I would,
10 uh, -- we can move on.

11 **THE COURT:** All right. All right.
12 Sustained.

13 **BY MR. JOSEPH PLAXCO:**

14 **Q** After you found this out, specifically
15 about the transmission, did you try to contact
16 Buddy's Garage to let them know about the problems?

17 **A** Yes, but the phone number that I had was
18 disconnected.

19 **Q** And so you weren't ever able to contact the
20 Kelletts or talk to them about these problems?

21 **A** No.

22 **Q** Okay. What did you do to try and resolve
23 this issue with Buddy's Garage after that?

24 **A** I went to the Magistrate's Court.

25 **Q** And did you file a lawsuit in Magistrate's

1 Court?

2 A Yes, I filed a claim.

3 Q After you filed the lawsuit in Magistrate's
4 Court, did you receive any sort of answer by the
5 defendants?

6 A Yes.

7 Q Do you recall whether they admitted
8 liability?

9 A Yes.

10 Q Do you recall why -- do you recall what
11 they said in their answer?

12 A Yes. They said that they admitted liability
13 but not to the full amount.

14 Q Okay. Do you recall why their pleading
15 stated that?

16 A Yes, they stated that they were taking
17 action against their mechanic for fraud.

18 Q Did the problems with your car, the issues
19 with your car apparently lie within the fraud that
20 they say that the Greenville County Sheriff's Office
21 was investigating?

22 A I'm not sure.

23 Q Okay. That's fine. Explain to me what
24 happened after you received that answer in
25 Magistrate's Court.

1 A I was told that they had retained a lawyer.
2 So I retained a lawyer also.

3 Q Okay. Who did you obtain?

4 A You, Joseph Plaxco.

5 Q And did I file a complaint to your
6 knowledge in Common Pleas for Greenville County?

7 A Yes, you did.

8 Q And you are familiar with the complaint,
9 correct?

10 A Yes.

11 Q And you are familiar with the answer that
12 was filed by Mr. Pringle, who was Mr. and Mrs.
13 Kellett's first attorney, correct?

14 A Yes.

15 Q Do you recall that they admitted liability,
16 specifically they admitted conversion?

17 A Yes.

18 Q Mrs. Kellett, what ultimately happened to
19 your car -- I'm sorry. Ms. Turner, what ultimately
20 happened to your car?

21 A I surrendered my car to --

22 Q When you say surrendered it, where did you
23 surrender it to?

24 A I had to surrender the car back to
25 TitleMax.

1 Q And what was your reason for doing that?

2 A I had to move and the storage was not

3 available anymore to store the car. It was damaged.

4 There was nothing that I could do to the car. I could

5 not sell the car to pay off the loan and TitleMax

6 would not take the car back to try to sell it to get

7 their money because the car was not in working

8 condition.

9 Q Now, you just said that the car was not in

10 working condition, but the car did actually run.

11 A Well, working condition, but there were

12 things that still needed to be fixed on the car.

13 Q Significant problems still with the car.

14 A Right.

15 Q After you got the car back from Buddy's

16 Garage, did you ever, on occasion, find it necessary

17 that you had to drive that car?

18 A Yes.

19 Q Why?

20 A We only had a limited number of cars. I had

21 four children in the home. We have to get places. So

22 the car had to be used at times.

23 Q Okay. This Mitsubishi Lancer, what number

24 car was that for your family?

25 A Two.

1 Q So after that, you only had one car to get
2 around?

3 A Yes. I had one SUV.

4 Q Okay. Ms. Turner, I want to ask you about
5 something that the defendants indicated in their
6 opening statement, that is that they allege that your
7 boyfriend or common law husband was somehow in
8 cahoots or in conspiracy with Mike Fincham in
9 defrauding insurance companies. Do you have any
10 knowledge of what, of this scenario?

11 A Yes, I do.

12 Q Okay.

13 A Matthew -- it's Matthew Smith, took his car
14 up there while mine was being repaired, to have an
15 estimate done.

16 Q Was that early on?

17 A Uh-huh. Very early on. He was having some
18 problems with his tires. He took it up there to have
19 the estimate done. He got the estimate. It was not
20 something that we could afford to do at the time, so
21 he took the car home.

22 Q Okay. Do you have any reason to believe
23 that he was working with Mike Fincham to try to
24 defraud Mr. and Mrs. Kellett?

25 A Not to my knowledge.

1 Q Mrs. Kellett, just one last follow-up
2 question that I have for you. Going back to
3 Plaintiff's Exhibit Number 1, I see at the bottom
4 underneath the first -- underneath the column on the
5 left side, somebody wrote, I see nothing else wrong
6 with car. Do you know who wrote that?

7 A I actually wrote that.

8 Q And is that your signature underneath that?

9 A Yes, it is.

10 Q Okay. When did you write this?

11 A I wrote this when I came to pick up this
12 work order when Mike Fincham was giving me the work
13 order.

14 Q So this was -- this was when you initially
15 took your car to Buddy's Garage?

16 A Yes.

17 Q So you writing I see nothing else wrong
18 with the car and your signature, that was not written
19 when you picked the car up, correct?

20 A No.

21 MR. JOSEPH PLAXCO: Okay. I have no further
22 questions, Your Honor.

23 THE COURT: All right. I'll tell you
24 what, let's take a brief break before we start
25 up. We'll take a 10-minute break.

1 MR. GADDY: I want to -- are we --
2 THE COURT: I'm sorry?
3 MR. GADDY: I want to show my client the
4 photographs.
5 THE COURT: Oh, that's fine.
6 (WHEREUPON, a recess is taken.)
7 THE COURT: All right. We left off at
8 cross-examination. Yes, sir.
9 MR. GADDY: Your Honor, I have two blow-
10 ups. One is Exhibit 1 that's been introduced.
11 It's been shown to opposing counsel. I believe
12 he has no objection.
13 MR. JOSEPH PLAXCO: No objection, Your
14 Honor.
15 THE COURT: All right.
16 MR. GADDY: This will be our Exhibit,
17 Defendant's Exhibit 1.
18 (WHEREUPON, Defendant's Exhibit 1 is marked for
19 identification purposes.)
20 THE COURT: Do you have a small -- just
21 for the end of trial, do you have a small one of
22 those?
23 MR. GADDY: Yes, Your Honor.
24 THE COURT: You do? Okay. Let's use it in
25 here and I will tell you this, the clerk's

1 office ultimately will want you to take that
2 exhibit back and give them the small one for
3 storage purposes.

4 MR. GADDY: Yes, ma'am. It's a blow-up of
5 what was introduced by the plaintiff.

6 THE COURT: Perfect. Perfect.

7 MR. FRANK PLAXCO: What is the exhibit?
8 What do you have there?

9 THE COURT: He wants to see what you've
10 got.

11 MR. FRANK PLAXCO: Can I see it?

12 THE COURT: Sure.

13 MR. FRANK PLAXCO: That's the same as
14 Exhibit 1, Your Honor. I don't think we -- this
15 is just a demonstrative thing that's already in.

16 THE COURT: Okay. And sir, can you tell us
17 your name for the record.

18 MR. FRANK PLAXCO: I'm Frank Plaxco, Your
19 Honor.

20 THE COURT: Okay. I had a sneaking
21 suspicion, but I just wanted to be clear for the
22 record.

23 MR. FRANK PLAXCO: Yes, ma'am.

24 THE COURT: Okay. Thank you.
25 Are you able to see this?

1 **THE WITNESS:** No, ma'am. I have a small
2 copy.

3 **THE COURT:** Okay. Good.

4 **MR. GADDY:** It's not a good way to place
5 it on there, but I assure you it's a blow-up.

6 **THE COURT:** Okay. No, that's great. Mr.
7 Gaddy, not to be a problem, but since it's
8 already in evidence, let's not admit the --
9 let's not admit the larger copy. Let's just use
10 it for demonstrative purposes and that way the
11 clerk's office won't call you about it. Okay?

12 **MR. GADDY:** I'm agreeable with that.

13 **THE COURT:** Okay. Good. Thank you. That
14 helps. That helps. Thank you.

15 **MR. GADDY:** All right.

16 **CROSS-EXAMINATION**

17 **BY MR. GADDY:**

18 **Q** Ms. Turner, your testimony is that these 1,
19 2, 3, 4, 5, 6, 7, 8, 9 photographs were taken by you
20 by using your cell phone when you picked up the car
21 from Buddy's Garage on July 15th?

22 **A** Yes, sir.

23 **Q** One picture, which is showing the front of
24 the car next to a building, that would appear to be
25 the car without the front bumper, you agree?

1 **A** Yes, sir.

2 **MR. GADDY:** Your Honor, I think I better
3 have these photographs broken down so they've
4 got A, B, C, D and therefore I can keep them
5 straight with what we're talking about.

6 **THE COURT:** All right. Give us just a
7 minute to do that.

8 **MR. GADDY:** They were admitted as one
9 exhibit.

10 **THE COURT:** Okay. We're off the record.

11 (WHEREUPON, Plaintiff's Exhibits 4(A) through
12 4(I) are marked for identification purposes.)

13 **THE COURT:** All right. We're back on the
14 record, and these are admitted as Defendant's 4
15 -- is that right?

16 **COURT REPORTER:** Plaintiff's 4(A) through
17 (I).

18 **THE COURT:** Okay. (A) through (I). Yes,
19 sir.

20 (WHEREUPON, Plaintiff's Exhibits 4(A) through
21 4(I) are admitted into the record.)

22 **BY MR. GADDY:**

23 **Q** Ms. Turner, I'm going to show you this
24 photograph which has been labeled Plaintiff's Exhibit
25 4(A) and ask you if that's a picture of your car when

1 you picked it up?

2 A Yes, it is.

3 Q I'm going to show you Plaintiff's Exhibit
4 4(B) and ask you what that represents.

5 A It is part of the front bumper right
6 underneath the front of the car and it's just showing
7 where there's leakage.

8 Q This 4(B) is a picture of the front bumper
9 underneath the car, is that what you said?

10 A Yes, sir. I know you can't see -- document
11 that. But right in here, it's an up close photo of
12 the car.

13 Q So you are saying 4(B) is an up-front photo
14 of the corner of the -- the left corner of the car as
15 we look at it?

16 A As we look at it, yes, sir. The left.

17 Q Okay. You didn't have to remove the hood
18 or lift up the hood to take the picture of the
19 underneath that bumper?

20 A No, sir. You can see it in the first
21 picture of the whole car.

22 Q Okay. Looking at photograph labeled 4(C),
23 what is that?

24 A A plastic piece that's right near the tire
25 near the front bumper.

1 Q Did you have to lift anything to take that
2 picture?

3 A No, sir.

4 Q You took the -- you took this picture while
5 you were picking up the car during the same time you
6 were picking up the car?

7 A Yes, sir.

8 Q Looking at 4(B), what is that?

9 A That is another plastic piece that is
10 ripped and torn on the front of the car.

11 Q Do you know which side it is?

12 A No, I can't tell from the picture which
13 side it is. It is the front.

14 Q Did you take pictures of both sides when
15 you were picking up the car?

16 A Honestly, I'm not sure.

17 Q But you did take pictures?

18 A I did take pictures, yes.

19 Q Okay. 4(E) is another picture of the front
20 of the car, isn't it?

21 A Yes, sir.

22 Q What is photograph labeled 4(F)?

23 A That is a side of the car and that would be
24 the driver's side of the car. It's got a scratch on
25 there that was not there prior to the delivery.

1 Q So the point of the picture is to show a
2 scratch?

3 A Yes, sir.

4 Q I'm showing you a photograph labeled 4(G).
5 What does that represent?

6 A That is another scratch on the side of the
7 car.

8 Q Do you remember -- can you tell which side?

9 A Uh, no, I can not because -- that looks
10 like the door is opened right there, so that would be
11 the driver's side.

12 Q And you're confident you took this picture?

13 A I'm in the picture. Right there.

14 Q You're in the picture?

15 A Right there. That's me.

16 Q I'm showing you a photograph labeled 4(H).
17 Tell us what that is.

18 A That is the rear bumper where it was pulled
19 from the top of the car connected like this. So it
20 was pulled away. That was the original bumper that
21 was on the car when I wrecked it.

22 Q Okay.

23 A And that's me in the photo again.

24 Q And you took this photograph ---

25 A Yes, sir.

1 Q --- at the time you picked up the car on
2 July the 15th?

3 A Yes, sir.

4 Q I'll show you Plaintiff's Exhibit 4(I),
5 which is another photograph. What does it represent?

6 A This is another part of the bumper right
7 behind the tire that was pulled away from the car.

8 Q Yeah.

9 A Then it shows me taking the picture.

10 Q Now, I noticed that there are no dates on
11 the back of these photographs. Can you explain what
12 the no dates on the back of the photographs indicate
13 when you took them?

14 A I --

15 Q Or when they were developed?

16 A No, I can not.

17 Q How did -- how were these -- if you took
18 them -- you took them all with your cell phone, yes?

19 A Yes.

20 Q So how did you go back in the pictures from
21 your cell phone into these photographs that are now
22 in evidence?

23 A Those photos were emailed from my phone to
24 my lawyer. He printed them off.

25 Q Okay. You know about when that was?

1 A When we started -- when I started -- when
2 the pictures were taken or when I gave them to him?

3 Q No, when you had the pictures developed?

4 A I did not have the pictures developed. They
5 stayed on my cell phone. And I took -- when I
6 retained my lawyer, he asked me to email him those
7 photos. I emailed them to him.

8 Q So your lawyer printed them off?

9 A Yes, sir.

10 Q Okay. Ms. Turner, can you see this foam
11 board which is a blow-up of Exhibit 1, which is an
12 estimate from Buddy's Garage?

13 A Yes, sir.

14 Q Okay. Were you present when that was
15 prepared?

16 A When it was prepared? No, sir.

17 Q How did you first see it then?

18 A I was called in by Mike Fincham to come and
19 review the estimate of repairs.

20 Q So the car -- your car arrived at Buddy's
21 Garage, and you were not present when the car arrived
22 at Buddy's Garage, is that correct?

23 A That is correct.

24 Q So you subsequently got a call from Mike
25 Fincham, who is an employee of Buddy's Garage to come

1 there, is that right?

2 A Yes, sir.

3 Q Did you review the estimate with Mike
4 Fincham?

5 A Yes, sir.

6 Q I noticed it's got the date of May the 8th,
7 2013.

8 A Yes, sir.

9 Q Okay. Did he tell you at that time that
10 money had to be paid before any repairs could be
11 started?

12 A Yes, sir.

13 Q And subsequently, you then paid how much
14 money to Buddy's Garage?

15 A 25 --

16 Q I'm sorry?

17 A I'm sorry. \$2500.

18 Q \$2500. And that's represented by a copy of
19 a check that's in evidence?

20 A Yes, sir.

21 Q The check is an Exhibit, I believe, dated
22 May the 11th, is that correct?

23 A Yes, sir.

24 Q And did you deliver that check to Buddy's
25 Garage?

1 A I did not personally deliver this check to
2 Buddy's Garage. The representative from TitleMax of
3 Berea took this check to Buddy's Garage.

4 Q Do you know if he took it the same day or
5 he waited several days?

6 A I do not know.

7 Q All right. There's also in evidence a Geico
8 check here. It's got a date on it of -- I can't read
9 the date except where it was endorsed by the Bank of
10 Travelers Rest. It's endorsed June the 5th, 2013. Do
11 you see that endorsement?

12 A I do see the endorsement.

13 Q Would that indicate that's when it cleared
14 the bank?

15 A Yes, sir.

16 Q All right.

17 A It looks like 6/4/13.

18 Q Can you read the date on the check?

19 A 6/4/13.

20 Q Did you deliver that check to Buddy's
21 Garage?

22 A I did not deliver this check to Buddy's
23 Garage. My Geico representative left it there for me
24 to sign over to the Kelletts because there was no tax
25 ID to write --

1 Q You don't happen to know what day you
2 signed it over, do you?

3 A No, I don't.

4 Q Okay. Now, did -- I believe you testified a
5 few minutes ago that you signed this estimate with
6 Mike Fincham present. Is that correct?

7 A Right.

8 Q And you placed on this estimate, I see
9 nothing else wrong with the car?

10 A Correct.

11 Q And by that, you meant that you felt the
12 list of repairs or the description of repairs on this
13 estimate at Buddy's Garage was correct?

14 A Yes.

15 Q Okay. There's some handwriting on the
16 estimate in addition to your handwriting which says
17 \$275, 10 days storage, refunded two hours labor, \$65
18 per hour, \$130, and it's signed Carmen Kellett.

19 A Yes.

20 Q Were you present when that handwriting was
21 placed on there?

22 A When Mrs. Kellett signed that refund?

23 Q Yes.

24 A Yes, I was. The \$275 was already on the
25 statement.

1 Q And was that on the day that you picked up
2 the car?

3 A Yes, it was.

4 Q Okay. All right. You drove the car away
5 from Buddy's Garage on July the 15th, is that
6 correct?

7 A Yes.

8 Q Okay. On July the -- by the way, where did
9 you drive it to? Did you drive it to your residence?

10 A My residence.

11 Q And that's up at Travelers Rest or is that
12 up Marietta? Where is that?

13 A That was Travelers Rest at the time.

14 Q Is it on the north side of Travelers Rest
15 on Highway 276 or right off of it?

16 A I don't know the highway names up there.
17 I'm sorry. But it's near the high school.

18 Q It's near the high school?

19 **THE COURT:** That's 276.

20 **THE WITNESS:** Okay. Thank you.

21 **BY MR. GADDY:**

22 Q So, any rate, that's where you drove your
23 car after you picked it up?

24 A Yes.

25 Q All right. The next day, did you go to

1 Mike's Body Shop?

2 A No.

3 Q The next day, did you go to Poinsett Tire?

4 A Uh, no.

5 Q No?

6 A Was that --

7 Q Whatever your answer is.

8 A I'm trying to think of what the date would
9 have been, whether it would have been the 15th, 16th,
10 17th. I don't know exactly what the dating was on the
11 day that I went to the estimates.

12 Q Poinsett Tire and Mike's Body Shop are both
13 in Greenville, are they not?

14 A They are at Cherrydale.

15 Q And you drove your car from Travelers Rest
16 on the north side to these business establishments,
17 isn't that right?

18 A Yes, I did.

19 Q And you know how far it was from Travelers
20 Rest to Cherrydale?

21 A In minutes or miles?

22 Q Miles.

23 A No. In minutes, I do. About 10 minutes.

24 Q Okay. If I said it was seven to eight
25 miles, would you agree?

1 **A** That would be fair.

2 **MR. GADDY:** Okay. I would offer these in
3 evidence. They have been furnished to you
4 previously.

5 **MR. JOSEPH PLAXCO:** That's fine.

6 **MR. GADDY:** Okay. Defendant's 1.

7 **BY MR. GADDY:**

8 **Q** Did you ultimately have any repairs
9 performed on your car after you took the car away
10 from Buddy's Garage?

11 **A** I'm sorry.

12 **Q** Did you have any repairs made to your car
13 after you took the car from Buddy's Garage on July
14 the 15th?

15 **A** I had someone put the bumper on, like, just
16 kind of get it on there.

17 **Q** Right. The car was missing the front
18 bumper, wasn't it?

19 **A** Right.

20 **Q** And you made an arrangement with this Mike
21 Fincham fellow to install the bumper away from
22 Buddy's Garage, had you not?

23 **A** No, sir. I had arranged to pick up the
24 bumper and the paint kit from Mike Fincham and take
25 it with me. I no longer wanted to do business with

1 either person.

2 Q Are you quite sure you hadn't made
3 arrangements with Mike Fincham to install the front
4 bumper on your car?

5 A I tried to talk to him a couple of times
6 about the bumper on my car, but he never -- finally,
7 I got the bumper from him to take away. I put it in
8 the car.

9 Q You went to where to pick up the front
10 bumper?

11 A It was somewhere in Taylors. I don't know
12 if that was his residence or someone else's
13 residence.

14 Q Okay. So you got the front bumper from Mike
15 Fincham, yes?

16 A Uh-huh.

17 Q And did you -- what action did you take
18 with respect to installing the front bumper after
19 that?

20 A My daughter has a friend whose dad does
21 mechanic work. He helped get that.

22 Q So your daughter's father's friend
23 installed the front bumper for you, is that right?

24 A He did put it on.

25 Q You didn't cash the \$130 check you

1 received, did you?

2 A No, sir.

3 Q Did you pay this or your daughter's
4 father's friend any money?

5 A No, sir.

6 Q Did not. Okay.

7 A It was not a proper installation.

8 Q It was not a proper installation?

9 A Huh-uh.

10 Q Did you take it to any other source to get
11 a proper installation?

12 A No, sir. I could not afford to.

13 Q Could not afford to, right?

14 A No, sir.

15 Q Okay. Now, did you basically let the car
16 sit at your house after you had the front bumper
17 installed?

18 A It did sit most of the time.

19 Q When you said most of the time, what was
20 the part that was not most of the time?

21 A Sometimes the car had to be driven. I was
22 having some problems with my other car and sometimes
23 we had to use the car in order to get --

24 Q You were what we would call a two-car
25 family, is that correct?

1 A Correct.

2 Q So you were having some problems with the

3 other car, so from time to time, you would drive this

4 Mitsubishi Lancer, is that correct?

5 A That's correct.

6 Q Okay. You actually got arrested for -- in

7 Greer, or given a traffic ticket in Greer, for

8 speeding driving this car, did you not?

9 A You had talked to me about that. It's been

10 a while. If that is -- yes.

11 Q Are you saying yes, you did?

12 A Yes, I believe there was one.

13 Q And so you were driving the Mitsubishi

14 Lancer when you got a ticket for speeding?

15 A Correct.

16 Q Remember any other details about that?

17 A No.

18 Q You know how far Greer is from your

19 residence?

20 A Yes, I do. It's about 35 minutes.

21 Q A 35-minute drive? Okay. Now, as it --

22 would it be correct to say your daughter Caitlyn also

23 drove the Mitsubishi after you brought it home from

24 Buddy's?

25 A Yes, sir. It would be. When she could not

1 use our main car, in order to get herself to school
 2 or the other children to school, yes, sir.

3 Q Okay.

4 A She did have to sometimes.

5 Q Would you agree that you had a wreck in the
 6 Mitsubishi Lancer within two or three months of
 7 getting the car from Buddy's?

8 A No, sir. I did not. Caitlyn did.

9 Q Caitlyn had a wreck in the car?

10 A Yes.

11 Q Do you know when it was?

12 A It was September the 11th. The year escaped
 13 my mind. But I know it was September 11th, just
 14 because it was on that --

15 Q It was on September the 11th?

16 A Yeah, that significant date.

17 Q It was on -- we're talking about the year
 18 2013. This September the 11th wreck was also in 2013,
 19 wasn't it?

20 A Uh, then yes, it was.

21 Q Then yes, it was. And you also testified
 22 earlier that you took the car back to TitleMax, is
 23 that correct?

24 A Yes, I did.

25 Q What was done about making repairs on the

1 car after the wreck in September in which your
2 daughter was involved?

3 A The only damage to that car then was that
4 the bumper came back off because it wasn't properly
5 installed. There was nothing done but just putting it
6 incorrectly back on. Not professionally back on.

7 Q And do you recall about when you took the
8 Mitsubishi Lancer to TitleMax?

9 A It was a while after that. I don't know the
10 specific date. I do know that I was moving. I could
11 not store the car at the new place. We just didn't
12 have the room to put the car there.

13 Q Okay.

14 A And we could not sell it.

15 Q Okay. Did you get any kind of papers from
16 TitleMax when you took the car back?

17 A No, sir. I contacted the manager many times
18 about if he would please take the car as payment so
19 that I could settle up on my bill. He said he could
20 not because it was not properly repaired, the body
21 work on it, there was nothing he could do. The car
22 had to come back in the condition it was bought in.

23 Q But you took the car back after ---

24 A I did.

25 Q --- after September, the September

1 accident, did you not?

2 A It was a while after that.

3 Q Okay. Now, back in July of 2013, were you
4 gainfully employed?

5 A Uh, yes, I was.

6 Q What type of work were you in?

7 A I'm a pharmacy technician. I worked in an
8 outcall center that dealt with -- I guess you would
9 call it a distribution center.

10 Q Did you receive a salary or were you -- did
11 you receive a salary for your employment?

12 A I received an hourly wage, yes, sir.

13 Q And that was what?

14 A I was making \$14.50 at that place.

15 Q You were making \$14.50 an hour, is that
16 correct?

17 A Yes. Or \$14 an hour. It's been a few years
18 since I've worked there. I don't work there
19 currently.

20 Q A few years like 2013?

21 A 2013. Uh-huh.

22 Q Okay. Do you recall your deposition being
23 taken on March the 17th, 2015 by an attorney named
24 Ivan Toney?

25 A Yes.

1 Q That was over at the office of Mr. Joseph
2 Plaxco, your attorney, correct?

3 A Yes.

4 Q Okay. When the term "deposition" is used,
5 you are familiar with that term, aren't you?

6 A Yes.

7 THE COURT: Oh, I'm sorry. I'm looking at
8 your designations. I apologize. Okay. I don't
9 think he's entering any portion of it. I think
10 he's just questioning her about her deposition.

11 BY MR. GADDY:

12 Q Do you recall Mr. Toney asking you --
13 here's his question, when you signed here that said I
14 see nothing else wrong with the car, was that an
15 accurate statement? Do you recall saying, your
16 answer, I did not see -- I did not see anything wrong
17 because I am not a mechanic. That is not my
18 specialty. He then said, but you didn't see anything
19 or notice anything wrong with the car when you left?
20 The bumper, and that was explained, and the front and
21 the back bumper. Yes, sir. The only problem is you
22 notice this vehicle was the left and front and back
23 bumper. And your answer was yes at that time and no
24 rearview mirror. Did you remember testifying to that?

25 A Yes.

1 **Q** Okay. You also remember on that particular
2 day, March the 17th, Mr. Toney asking you the
3 question... (Pause.)

4 I believe it was page 20. Somehow, it's not
5 in there. (Pause.)

6 The question presented to you by Mr. Toney
7 was, question, did these people, the Kelletts, intend
8 to deceive you? Your answer was, I do not know. Do
9 you have any proof they intended to deceive you? Your
10 answer, I don't know what their intentions were. Do
11 you recall those questions and answers?

12 **A** Yes.

13 **Q** Directing your attention over to the
14 situation when the car was over at Buddy's Garage,
15 and shortly before you picked it up on the 15th day
16 of July, do you recall a discussion with your
17 boyfriend about his Pontiac being missing?

18 **A** His Pontiac was not missing.

19 **Q** I beg your pardon?

20 **A** His Pontiac was --

21 **MR. FRANK PLAXCO:** Your Honor, we don't
22 know what the relevance of this --

23 **THE COURT:** Okay. Hold on just one second,
24 Mr. Plaxco. I'm going to have to ask the other
25 Mr. Plaxco to be the one that states the

1 objection.

2 MR. JOSEPH PLAXCO: Objection. Relevance.
3 We don't see what the relevance of any so-called
4 alleged conspiracy --

5 THE COURT: Where is that going?

6 MR. GADDY: Yeah, the point of the
7 questions -- we will present other information
8 through Mrs. Kellett. The point of the questions
9 is the car of Mr. Smith, who is the live-in
10 boyfriend of Ms. Turner, was at the lot of the
11 -- Buddy's Garage. It was reported missing with
12 another car. The missing car was reported to the
13 sheriff of Greenville County and it turned out
14 that that Pontiac owned by Mr. Smith after it
15 was missing eventually turned up at the yard of
16 Ms. Turner.

17 We believe that -- it's our contention that
18 this was known to Ms. Turner and that she had
19 knowledge of if she didn't participate in a scam
20 that was taking place, which we will go into
21 further with respect to parts being -- to back
22 up further, we're going to show that parts for
23 the repair of the Smith car were purchased and
24 Mr. Smith got the parts and there was no payment
25 made of them. These circumstances give rise that

1 we feel there's a scam going on. The Kelletts
2 wanted the car that got away.

3 **THE COURT:** And you intend to offer some
4 evidence of this during your case?

5 **MR. GADDY:** I have a deputy sheriff to be
6 here for the incident report and I have the
7 testimony of Mrs. Kellett that will be presented
8 about the parts being ordered and disappearing.

9 **THE COURT:** Okay. Okay. I'm going to allow
10 it at this time. This being a nonjury trial, I'm
11 going to allow it at this time. It may be that
12 once I've heard all this testimony, I determine
13 it's irrelevant.

14 **MR. GADDY:** Okay.

15 **THE COURT:** But go ahead. I'm going to
16 allow it.

17 **MR. GADDY:** All right.

18 **THE COURT:** Anything else?

19 **BY MR. GADDY:**

20 **Q** This is Exhibit 6 from the deposition,
21 which you know about. Ms. Turner, I'm going to show
22 you a written statement, which actually is Exhibit 6
23 from the deposition of Carmen Kellett. I have had
24 that blown up. I'm going to present the handwritten
25 statement in evidence. Your signature is on there,

1 correct?

2 **A** That is correct.

3 **Q** Okay. I'm going to present that in
4 evidence. I'm also going to present the enlargement.
5 I would like to have the understanding that we have
6 with respect to the other enlargement, that it is for
7 demonstrative purposes. Our actual exhibit will be
8 what the Court Reporter marks.

9 **THE COURT:** All right. And that's marked
10 as Defense Exhibit Number 2.

11 **MR. GADDY:** 2.

12 **THE COURT:** Any objection to that Exhibit?

13 **MR. JOSEPH PLAXCO:** No objection.

14 **THE COURT:** All right. It's admitted
15 without objection.

16 **(WHEREUPON, Defendant's Exhibit 2 is marked for**
17 **identification and admitted into the record.)**

18 **BY MR. GADDY:**

19 **Q** I'll just hold it temporarily. I'll sit it
20 down on the floor in a minute. Reading Exhibit 2, do
21 you agree that it says July the 15th, 2013, Buddy's
22 Garage, Mike Fincham is in possession of the front
23 bumper and paint kit. He has been informed by text
24 that it needs to be released to Natasha Turner on
25 July the 15th, 2013. Bumper, \$283; paint, \$250 --

1 excuse me, paint kit, \$250. That's signed by you and
2 also signed by Carmen Kellett?

3 A Yes, sir.

4 Q Okay. That completes our cross-examination.

5 THE COURT: All right. Any redirect?

6 MR. JOSEPH PLAXCO: Your Honor, I just had
7 a few follow-up questions.

8 THE COURT: Okay.

9 REDIRECT EXAMINATION

10 BY MR. JOSEPH PLAXCO:

11 Q Ms. Turner, the defendant's attorney has
12 iterated numerous times that Matthew Smith was your
13 live-in boyfriend. Is that correct?

14 A That is correct. We had been together or
15 were common law. Or were common law at the time. We
16 are not anymore.

17 Q Okay. Y'all are no longer together.

18 A Correct.

19 Q I just wanted to clarify that. Earlier you
20 testified that you felt threatened when you accepted
21 or took the \$130 check. Can you explain to me the
22 manner of Mrs. Kellett? Was Mr. Kellett there? What
23 transpired that evening?

24 A We were having a conversation and I was
25 asking Mrs. Kellett what about the refund on the rear

1 bumper because it had not been -- you know, I needed
2 refunds on the part, the things that were not fixed
3 in order to get them fixed again.

4 **THE COURT:** Uh, Mr. Gaddy --

5 Hold on one second.

6 Mr. Gaddy, I apologize. The microphone, I
7 think, is picking you up. And we're all able to
8 hear what you're saying at the table. I just
9 want to let you know that.

10 All right. Go ahead.

11 And the Court Reporter's having a hard time
12 taking down everything. Go ahead.

13 **THE WITNESS:** Okay. We were having a
14 conversation about it. Mrs. Kellett starts
15 getting very irate, using cuss words at me,
16 telling me that she is not going to pay me back
17 anything, that's not her problem anymore. A lot
18 of ugly words were exchanged. I did offer to
19 call the police. But then she said she would
20 write the check and that was all she was going
21 to write it for.

22 Mr. Kellett was present, but he was not in
23 the discussion. The only thing that he did was
24 write the check and he told her just write the
25 check, be done with it. She still was very

1 irate. I told her that I would take it to court,
2 if necessary. And she told me that that was not
3 her first rodeo.

4 **BY MR. JOSEPH PLAXCO:**

5 **Q** Okay. And again, what did she -- the back
6 bumper was not replaced. What did Mrs. Kellett tell
7 you about the back bumper and the fact that it was
8 not replaced?

9 **A** She said that the back bumper did not need
10 to be replaced, I was making too big a deal of it.
11 That was just cosmetic. I did not need to worry about
12 that.

13 **Q** Okay. And it was just introduced into
14 evidence this handwritten July 15th note that you
15 signed and Mrs. Kellett signed. Did Mrs. Kellett or
16 Mr. Kellett ever offer to go pick up the bumper from
17 Mr. Fincham?

18 **A** No.

19 **Q** Okay. When you took your car, did you
20 expect or intend that work or the parts would be
21 taken off the premises of Buddy's Garage?

22 **A** No.

23 **Q** You took the car to Buddy's Garage. You
24 assumed that all the work would be done at Buddy's
25 Garage, correct?

1 A I was made aware by Mr. Fincham he was
2 going to take that bumper and paint it at home. He
3 did make me aware of that.

4 Q But when you initially took your car to
5 Buddy's Garage, you understood that ---

6 A Right.

7 Q --- all work would be done on site?

8 A Correct.

9 Q Okay. And that you wouldn't have to drive
10 out to Taylors to pick it up from somebody's
11 residence?

12 A I actually drove to a couple of different
13 places trying to track him down.

14 Q Okay. When you picked the car up on July
15 15th, did Mrs. Kellett tell you that the transmission
16 had been replaced?

17 A No.

18 Q Did you assume that it had been replaced?

19 A Yes, that's what I paid for.

20 Q Did Mrs. Kellett imply in any way that the
21 transmission had not been replaced?

22 A No.

23 Q Did she imply that it was replaced?

24 A She didn't really imply anything about --
25 we never talked about the transmission that day. I

1 could see that. I could see the cosmetic damage that
2 was not repaired.

3 MR. JOSEPH PLAXCO: Okay. I have no further
4 questions, Your Honor.

5 MR. GADDY: I've got about three
6 questions.

7 THE COURT: Sure.

8 RECROSS EXAMINATION

9 BY MR. GADDY:

10 Q Uh, this fellow, Michael Smith, is actually
11 the father of your youngest child, is he not?

12 A His name is Matthew Smith.

13 Q Matthew Smith?

14 A Yes, sir.

15 Q He is the father of your youngest child?

16 A Two of my children, yes, sir.

17 Q Is that correct?

18 A Yes, sir.

19 Q Okay. Looking at the blow-up here from
20 Buddy's Garage and focusing your attention on the
21 item which says T-R-A-N-S-A-S-S, in parenthesis by
22 that has got the figure 22,000 miles.

23 A Yes, sir.

24 Q You see that?

25 A Yes, sir.

1 Q And the amount of money is \$1000.

2 A Yes, sir.

3 Q Now, you were -- are you aware that a new

4 transmission would cost much more than \$1000?

5 A No, sir. I'm not aware of that.

6 Q You are not aware of that. Are you wanting

7 to say that the transmission that was being sold to

8 you or being installed according to the estimate

9 there had 22,000 miles on it?

10 A I'm not sure what the 22,000 -- I never

11 asked what the 22,000 miles meant.

12 Q Well, if it was represented that 22,000 is

13 the number of miles on that transmission, would you

14 disagree with me?

15 A I'm not sure I understand that question.

16 Q I'm suggesting the 22,000 is the number of

17 miles that was on the used transmission which they

18 were agreeing to install on your car at the cost of

19 \$1000. I'm asking if you were told that information,

20 would you think that was correct?

21 A If you told me that 22,000 miles meant it

22 was a used transmission based off of you knowing

23 that, if it was you putting the transmission in, yes,

24 I would accept that.

25 Q Okay. That's all.

1 **THE COURT:** All right. Anything else?
2 **MR. JOSEPH PLAXCO:** No, Your Honor.
3 **THE COURT:** Ma'am, you can step down.
4 **THE WITNESS:** Thank you. Do I --
5 **THE COURT:** Leave those there.
6 (WHEREUPON, there is discussion off the record.)
7 **THE COURT:** All right.
8 **MR. GADDY:** The defendant is ready to
9 proceed, Your Honor.
10 **THE COURT:** Okay. I think -- do y'all have
11 another witness?
12 **MR. JOSEPH PLAXCO:** We do, Your Honor.
13 **THE COURT:** Okay. All right.
14 **MR. JOSEPH PLAXCO:** Your Honor, at this
15 time, I'd like to call Chip Stanstell.
16 **ROY STANSTEL**
17 having first been duly sworn, testifies as follows:
18 **DIRECT EXAMINATION**
19 **BY MR. JOSEPH PLAXCO:**
20 **Q** Good afternoon, sir.
21 **A** Hello.
22 **Q** Can you please state your full name for the
23 Court?
24 **A** My full name is Roy E. Stanstell, Jr. I go
25 by Chip.

1 Q And Mr. Stanstell, what do you do for a
2 living?

3 A I am a retired automotive technician and I
4 currently manage an automotive repair shop.

5 Q Okay. How long have you been in the
6 automotive repair industry?

7 A Since 1985.

8 Q Okay. Can you tell me about your education
9 background?

10 A Well, I studied at Greenville Tech. I've
11 studied at my vocational school when I was in high
12 school, automotive courses. A lot of hands-on
13 knowledge.

14 Q Okay.

15 A Most of my education came from Greenville
16 Tech.

17 Q Greenville Tech. Okay. And that was all
18 related to automotive repair?

19 A Yes, sir.

20 Q And your periodic, uh, not Greenville Tech,
21 but classes that you take every once in a while every
22 year so --

23 A Oh, yes. Updating courses.

24 Q Updating courses.

25 A Uh-huh. Uh-huh.

1 Q Those are also related to car repair,
2 correct?

3 A Oh, yes. Uh-huh.

4 THE COURT: Can we take a brief break?
5 Will the attorneys approach just for a minute?
6 Mr. Gaddy?

7 (WHEREUPON, a bench conference is held off the
8 record.)

9 BY MR. JOSEPH PLAXCO:

10 Q Okay. Mr. Stanstell, can you explain to me
11 your employment history. I know that you said you've
12 been doing this since '85. So bear with me on making
13 -- getting dates. Can you tell me who you've been
14 employed by, the approximate dates of that employment
15 and what your duties and responsibilities consist of.

16 A Okay. I can start by in my -- when I first
17 started. I worked for my cousin. We were diesel
18 mechanics.

19 Q Okay.

20 A I worked on small engine diesels and large
21 truck diesels. After that, I was employed by Goodyear
22 Tire. I was a technician there. I was there for a
23 year. I was offered employment through a full-service
24 service station here in Greenville. I took that
25 employment, was there 15 years. Built a substantial

1 business. After that, I went into the field -- that
2 was in 2006. From '91 to 2006, I was at the station.
3 After that, I took care of a fleet of more than 60
4 trucks for my father-in-law as a contract manager for
5 DHL. Then after that, I've been an employee as a shop
6 manager for North Hills Tire -- excuse me -- for
7 North Hills Automotive and Poinsett Tire.

8 Q Okay. Okay.

9 MR. JOSEPH PLAXCO: Your Honor, I would now
10 ask that Mr. Stanstell be qualified to give his
11 expert testimony regarding the repair of
12 automobiles.

13 THE COURT: All right. Any further voir
14 dire?

15 MR. GADDY: He certainly is qualified to
16 testify concerning the repair of automobiles.

17 THE COURT: All right. He'll be so
18 qualified. I'll use his opinion as I see fit.

19 MR. JOSEPH PLAXCO: Okay.

20 THE COURT: All right.

21 BY MR. JOSEPH PLAXCO:

22 Q Mr. Stanstell, do you recall that in 2013,
23 the plaintiff here, Ms. Turner, brought her car to
24 your former employer, Poinsett Tire and Auto?

25 A Yes.

1 Q Okay. Do you recall that she asked you to
2 inspect that car after she had concerns that Buddy's
3 Garage may not have replaced the transmission?

4 A Yes, I do.

5 Q Okay. During that inspection, did you take
6 pictures of the transmission and engine compartment?

7 A We did take pictures of the transmission,
8 both sides underneath.

9 Q When you say "we", you are referring to?

10 A I'm sorry. Ms. Turner was there. She was
11 present when I was taking the pictures.

12 Q But you were actually --

13 A Yes, I was actually -- I was the one
14 actually taking the pictures.

15 Q Great. Okay.

16 MR. JOSEPH PLAXCO: Mr. Gaddy, I've already
17 given you all the photos. These are the photos
18 I'm going to introduce of the transmission that
19 he took.

20 MR. GADDY: Is he going to testify he took
21 the pictures?

22 MR. JOSEPH PLAXCO: Yes.

23 MR. GADDY: Well, if he testifies to that,
24 I don't have any premise for objection.

25 BY MR. JOSEPH PLAXCO:

1 Q Mr. Stanstell, I'm going to show you some
2 photographs. This will be Plaintiff's Exhibit 5. If
3 we could, well, let me first lay the foundation.

4 MR. GADDY: Your Honor, I don't have any
5 objection to this witness' testimony. But we
6 have brought out that it was a used transmission
7 that's been installed. All these pictures, I
8 guess, substantially is a used transmission. I
9 think his testimony is repetitive about
10 something about which there's no disagreement.

11 MR. JOSEPH PLAXCO: Your Honor, these
12 photographs, whether it was a new or used
13 transmission, I believe that Mr. Stanstell is
14 going to testify that whether it was used or
15 new, he could tell from the pictures whether
16 anything at all was replaced.

17 THE COURT: Okay. I'm going to allow the
18 photos.

19 BY MR. JOSEPH PLAXCO:

20 Q Mr. Stanstell, can you take just a few
21 seconds to look through each of those photographs.

22 A (Reviewing.)

23 Q I'm sorry, Mr. Stanstell.

24 A I'm just making sure I'm getting them to
25 where I need to look at them. Okay.

1 Q Okay. Are you familiar with the object or
2 scenes that are depicted in all of those photographs?

3 A Yes, sir.

4 Q And explain to me the basis for your
5 familiarity with those scenes or objects.

6 A With having replaced numerous transmissions
7 on front-wheel drive vehicles.

8 Q Okay.

9 A It's very typical.

10 Q And you did, in fact, take those
11 photographs, is that correct?

12 A Yes, I did.

13 Q And do you recognize the object or scene in
14 those photos?

15 A Yes, I do.

16 Q And would you say that those photographs
17 depict a fair and true or accurate depiction of the
18 object or scene at the relevant time?

19 A Yes.

20 MR. JOSEPH PLAXCO: Okay. I now ask that
21 these be admitted into evidence as --

22 MR. GADDY: I don't have any objection.

23 THE COURT: All right.

24 MR. JOSEPH PLAXCO: We'd like to mark them
25 Plaintiff's Exhibit Number 5 A, B, C and so

1 forth for purposes of --

2 **THE COURT:** All right. Let's give the
3 Court Reporter just a minute to get that marked.

4 **MR. JOSEPH PLAXCO:** Okay.

5 (WHEREUPON, Plaintiff's Exhibits 5(A) through
6 5(I) are marked for identification and admitted into
7 the record.)

8 **BY MR. JOSEPH PLAXCO:**

9 **Q** Okay. Mr. Stanstell, would you agree that
10 you took these photographs of the transmission area
11 and the engine compartment of Ms. Turner's car?

12 **A** Yes.

13 **Q** Okay. And going through each of those
14 photographs, can you explain to the court what is
15 depicted in those photographs? You can start with the
16 first one and just go through each one.

17 **A** The first picture that I'm looking at is a
18 picture of the transmission itself. The side pan,
19 which is an inspection pan.

20 **Q** Okay.

21 **A** The second picture I'm actually looking at
22 is a picture of the outer tie rods on, I believe that
23 would be the left front. The picture that I'm looking
24 at now is a picture of the strut and spindle and
25 outer CV axle of the right front, the base of the

1 transmission and crossmember of this picture, and the
2 left CV axle.

3 This picture is of the crossmember and the
4 engine mounts and transmission mounts on the front of
5 the car. The picture I'm looking at now is of the
6 lower control arm and the -- I'm sorry. That is the
7 rear transmission mount of the transmission. This
8 picture is of the right side CV axle and spindle.
9 This picture is of the front engine mount at the
10 exhaust. All those -- all those pictures depict
11 nothing had been touched.

12 Q Okay. You just testified that all those
13 pictures depict that nothing had been touched. How
14 can you, in your professional opinion and based on
15 your expertise in auto repair, how can you tell then
16 from those pictures that nothing had been touched?

17 A There's two ways of removing the
18 transmission from that car.

19 Q Okay.

20 A One is to drop the complete engine and
21 cradle out from under the car and separate it. The
22 other one is to drop just the left side where the
23 transmission is at. In order to do that, you would
24 have to take the struts, the CV axles and all the
25 mounts loose.

1 Q Okay.

2 A None of that had been done.

3 Q When you say none of that/had been done,
4 what do you see in those pictures that tells you that
5 none of that had been done?

6 A There was grease on the bolts that had not
7 been disturbed. They were in the same position that
8 they were when they were put in from the factory.

9 Q Okay.

10 A Even down -- there is actual -- on this
11 picture, I'll show you, there is actually a coating
12 on the bolt that if that bolt is removed, it removes
13 that coating. It had not been removed.

14 Q So the coating on this picture was still in
15 tact?

16 A Yes, that is the transmission mount, bolt.

17 Q And if the transmission, any transmission,
18 new or used, had ever been put in that car, put in
19 that car just days earlier, this coating would not be
20 intact.

21 A Exactly.

22 Q Is that your testimony?

23 A That is right.

24 Q And that would be -- that's what's been
25 marked as Plaintiff's Exhibit 5(G). Okay. Mr.

1 Stanstell, going back to the first picture which is
2 -- actually, it's marked as 5(H), that has the
3 transmission pan.

4 A Transmission pan.

5 Q What do you notice about that picture? Is
6 there -- was anything replaced according to that
7 picture?

8 A The cover -- I do remember -- I do remember
9 specifically when the car was brought in, the cover
10 was very clean. But that was the only thing.

11 Q Is that cover, is that that black piece?

12 A Yes.

13 Q Okay.

14 A That is the inspection cover.

15 Q The inspection cover?

16 A Uh-huh.

17 Q Do you believe that perhaps that was the
18 only piece that was replaced?

19 A It is possible.

20 Q Generally, how much does a part like that
21 cost?

22 A Just to replace or just to service, to
23 remove that, less than \$200.

24 Q Okay.

25 A If you had to replace the actual pan, the

1 inspection pan, you would still be less as far as
2 part-wise. The part would still be less than \$200.

3 Q Okay. Looking at Plaintiff's Exhibit 5(D),
4 looking at that, can you decipher from that picture
5 whether or not the transmission had been replaced?

6 A Yes, the CV axles had not been removed from
7 the out -- from the spindle.

8 Q Okay.

9 A They have to be removed in order to get the
10 transmission out.

11 Q Okay. Looking at 5(C).

12 A 5(C). That's the -- okay.

13 Q Looking at that picture, can you -- does
14 that depict or provide evidence that the transmission
15 was not replaced?

16 A Yes, it does.

17 Q How so?

18 A That is the inboard axle, would be on the
19 right side, which would be the passenger side. It is
20 clean. There's no oil or lubricant in any way. If you
21 were taking the transmission out or even putting it
22 in, your hands would be greasy. You would be dirty.
23 That picture shows there's no greasy fingerprints on
24 it.

25 Q Okay.

1 A And there's no transmission fluid from the
2 bottom of it.

3 Q Okay. We'll be finished here shortly.
4 Looking at 5(A), what does 5(A) show you, Mr.
5 Stanstell?

6 A That shows me the rear, excuse me, the
7 front transmission mount.

8 Q Okay.

9 A The front transmission mount is still
10 intact, still with the coating on it.

11 Q Again, I was going to ask if that depicts
12 that red coating that you said would have been
13 stripped had the transmission been replaced.

14 A Exactly. And you can actually see the
15 transmission lines, the cooler lines that are
16 clamped. They have not been -- they have not been
17 removed.

18 Q Okay. So looking at all these pictures
19 again collectively and based on your opinion, you've
20 serviced several cars, you've worked on several
21 transmissions, you testified that you've removed
22 transmissions, all those pictures show the Court that
23 no transmission, new, used, whatever, no transmission
24 was ever put in that car.

25 A No, sir.

1 **MR. JOSEPH PLAXCO:** No further questions,
2 Your Honor.

3 **THE COURT:** All right. Mr. Gaddy.

4 **CROSS-EXAMINATION**

5 **BY MR. GADDY:**

6 **Q** Are you telling us there's just one way to
7 install a transmission and that's the way that you've
8 outlined here today?

9 **A** There's actually two ways to install that
10 transmission in that car and they are the ways that I
11 outlined today, yes, sir.

12 **Q** Okay. Now, looking at the pictures that
13 you've taken, you are telling us that these pictures
14 show a used transmission, are you not?

15 **A** No, it is not showing a used transmission,
16 that is the original transmission that came in the
17 car.

18 **Q** Well, it -- do these pictures not show an
19 absence of grime and dirt and grease from the area
20 where the transmission is located?

21 **A** Uh, yes, in points because there were no
22 leaks.

23 **Q** There were no leaks. This car, did you
24 check on how many miles this car had been driven when
25 you were looking at it?

1 A No, sir. I did not.

2 Q Will you -- you were aware that a used
3 transmission was what was being represented as what
4 was being installed, were you not?

5 A I was asked when the car was brought to me
6 to check for a replacement, if it had been replaced.
7 There was issues with the transmission. I inspected
8 the car myself and with my technician. Both of us.
9 And it had not be replaced.

10 Q Did you drive the car?

11 A No, sir. I did not drive the car. Myself, I
12 did not drive the car.

13 Q Okay. Are you aware of what -- is this a
14 fair price for a used transmission? \$1000?

15 A Depending on where it came from.

16 Q Depending on where it came from.

17 A Uh-huh. My opinion, that's a little bit
18 low.

19 Q That's a little bit low?

20 A With a transmission with only 22,000 miles
21 as stated earlier. That's a little bit low, yes, sir.

22 Q Well, the estimate of Buddy's Garage showed
23 that it was 158,905 miles on that car.

24 A Okay. I did not see the mileage on the car.

25 Q Well, the point I'm making, leading up to

1 is if it's 158,000 miles plus on the car, these
2 pictures show a clean area where the transmission is.

3 A It shows a clear area because there were no
4 leaks on the transmission.

5 Q There were no leaks on the transmission. In
6 addition to that, there was no accumulation of grime
7 and other contaminants that go on the bottom of cars
8 with 158,000 miles.

9 A There was elements of dirt and grime that
10 are on the bottom of the car.

11 Q But your pictures don't show them, do they?

12 A These pictures show dirt and grime all over
13 the CV axle, over the boot, on the axle itself right
14 there. It shows dirt and grime. These parts are
15 black. You can see actually where I wiped my fingers
16 right here. This is the only -- this is my hand
17 shining the light, taking the picture as I was
18 shining the light, taking the picture. This shows
19 that same, the same mount with dirt and grime there.
20 Normal wear.

21 This is the opposite axle. You can see the
22 dirt and grime, the dirt on the boot, the rust that's
23 in there. This is the outer tie rod end that shows
24 dirt and grime and everything that's there. This is
25 the other mount, the reverse mount at the lower pan

1 with dirt and grime on it also.

2 Q Well, I guess my commentary is I don't
3 share your thoughts about the dirt and grime. But any
4 rate, you're telling us there's no way to install a
5 transmission without taking all the CV axles and this
6 other apparatus apart?

7 A That is correct. You can not remove that
8 transmission out of that car without removing the CV
9 axles because they slide into the transmission --

10 Q But the essence of your testimony is that
11 there was a used transmission that you were looking
12 at?

13 A No, I was not looking at a used
14 transmission. I was looking at the original factory
15 transmission.

16 Q But the transmission that you were seeing,
17 you are saying it was the transmission installed by
18 the factory?

19 A Yes, sir.

20 Q Okay.

21 A That was the original transmission that
22 came in the car.

23 Q Okay. No other questions.

24 THE COURT: Anything else?

25 MR. JOSEPH PLAXCO: Just one quick follow-

1 up.

2 **REDIRECT EXAMINATION**

3 **BY MR. JOSEPH PLAXCO:**

4 Q I believe that the defendants just showed
5 you a write-up that you filled out, was that correct?

6 A Oh, no.

7 Q They did not show you that?

8 A I do not have that.

9 Q Do you recall whether or not you found that
10 an alignment needed to be done on the car?

11 A According to the technician that drove the
12 car, yes.

13 MR. JOSEPH PLAXCO: No further questions.

14 THE COURT: All right.

15 MR. GADDY: No questions.

16 THE COURT: Anything else?

17 All right, sir. You can step down. Thank
18 you.

19 MR. JOSEPH PLAXCO: And Your Honor, may he
20 excused as a witness?

21 THE COURT: Any objection to his being
22 excused?

23 MR. GADDY: No, he can be excused.

24 THE COURT: Oh, thank you so much for
25 being here.

1 And Mr. Plaxco, without your resting at
2 this point and our going into any motions
3 whatsoever, if you don't mind, per our
4 conference at the bench, I'm going to let Mr.
5 Gaddy pick up with his two officers who are
6 here.

7 **MR. JOSEPH PLAXCO:** Absolutely.

8 **THE COURT:** Thank you.

9 Raise your right hand.

10 **RANDALL BALLENGER**

11 having first been duly sworn, testifies as follows:

12 **DIRECT EXAMINATION**

13 **BY MR. GADDY:**

14 **Q** Will you give us your name for the record?

15 **A** Sergeant Randall Ballenger, Greer Traffic.

16 **Q** And who is your employer?

17 **A** Greer Police Department, City of Greer.

18 **Q** And you have in your hands a certified copy
19 of a uniform traffic ticket issued to one Natasha L.
20 Turner?

21 **A** Yes, sir, I do.

22 **MR. FRANK PLAXCO:** Your Honor, --

23 **MR. GADDY:** Does that ticket --

24 **THE COURT:** Overruled at this time. I
25 think I know where he's going with this. But

1 we'll see.

2 Go ahead.

3 **MR. GADDY:** Okay. We'll offer this ticket
4 into evidence. I'm going to have it marked.

5 (WHEREUPON, Defendant's Exhibit 3 is marked for
6 identification purposes.)

7 **THE COURT:** And they are offering -- what
8 is that? Defendant's Exhibit...

9 **MR. GADDY:** Defendant's Exhibit 3.

10 **THE COURT:** 3.

11 **MR. JOSEPH PLAXCO:** No objection, Your
12 Honor .

13 **THE COURT:** All right. All right. And
14 again, we can just have one attorney on each
15 side objecting. Who's going to do the cross?

16 **MR. JOSEPH PLAXCO:** If there's cross.

17 **THE COURT:** Okay. All right. Okay. Good.

18 **MR. FRANK PLAXCO:** If there is any.

19 **THE COURT:** All right.

20 (WHEREUPON, Defendant's Exhibit 3 is admitted
21 into the record.)

22 **BY MR. GADDY:**

23 **Q** Mr. Ballenger, what does the ticket show?

24 **A** It's a uniform traffic citation from the
25 State of South Carolina that was issued by the City

1 of Greer for speeding.

2 Q And who is it issued to?

3 A Natasha Turner.

4 Q And does it show the type of car she was
5 driving at the time?

6 A Yes, sir. It says a Mitsubishi 2006 model
7 bearing South Carolina registration G --

8 Q She was driving a Mitsubishi?

9 A Yes, sir. 2006 model.

10 Q And, uh, you gave her a ticket for
11 speeding. And what was the speed that you saw?

12 A The speed was clocked with a speed
13 measuring device, a laser at 65 miles an hour in a
14 45. It was reduced to a 54 in a 45.

15 Q And that was over in the city of Greer?

16 A Yes, sir. Highway 29 and John Street. That
17 was just over the Spartanburg --

18 Q I have no other questions.

19 THE COURT: Anything for this witness, Mr.
20 Plaxco?

21 MR. FRANK PLAXCO: We have no questions,
22 Your Honor.

23 THE COURT: All right. Thank you.

24 MR. GADDY: We'd like to excuse the
25 witness.

1 **THE COURT:** Any objection to that? No?

2 Thanks for being here.

3 Raise your right hand please.

4 **ISAAC HENDERSON**

5 having first been duly sworn, testifies as follows:

6 **DIRECT EXAMINATION**

7 **BY MR. GADDY:**

8 **Q** Are you Mr. Isaac Henderson?

9 **A** I am.

10 **Q** And who are you employed by?

11 **A** Greenville County Sheriff's Office.

12 **Q** How long have you been with the sheriff's
13 office?

14 **A** Nine years.

15 **Q** I have presented to you on your way to the
16 witness stand an incident report. Did you complete
17 this incident report?

18 **A** (Reviewing.)

19 **Q** It has your name at the bottom, for
20 whatever that's worth.

21 **A** The original report, yes.

22 **Q** Okay. What is the subject of the report?

23 **A** It's going to be for a burglary, entering
24 an enclosed area and grand larceny. Items stolen were
25 two vehicles, it appears like.

1 Q Does it involve a 2005 Pontiac Grand Am?

2 A It does.

3 Q And --

4 MR. FRANK PLAXCO: Your Honor, for the
5 record, we'd just state that --

6 MR. GADDY: Where you --

7 THE COURT: Hold on just one second, Mr.
8 Gaddy.

9 MR. FRANK PLAXCO: There's no relevance to
10 any of this and we object.

11 THE COURT: All right.

12 MR. FRANK PLAXCO: And may I be excused
13 from continuing to object question by question?

14 THE COURT: You certainly may. I
15 appreciate you doing that. And your objection is
16 noted. I'm going to allow this testimony at this
17 time.

18 MR. FRANK PLAXCO: Yes, ma'am.

19 THE COURT: Yes, go ahead.

20 BY MR. GADDY:

21 Q Were you investigating a complaint about
22 two motor vehicles missing from Buddy's Garage out on
23 Tigerville Road?

24 A 380 Tigerville Road. Yes, that's correct.

25 Q And what did you learn?

1 **A** The complainant was, uh, -- one of the
2 victims was Buddy's Garage itself for the burglary
3 that was being claimed happened. I'm sorry. I'm going
4 to have to look at my report. The complainant was a
5 Michael Fincham, I believe. The victim was Natasha
6 Turner. I was advised that two vehicles were taken,
7 the gold 2005 Pontiac Grand Am and a white Toyota
8 Avalon. The complainant wasn't able to give me -- at
9 that time, I don't believe he was able to give me any
10 of the specifics on either of those vehicles as far
11 as VIN or plate numbers. It was reported to have
12 happened on the 9th -- 7/9 of '13 between 16:00 and
13 22:00. That's 4:00 and 10:00 p.m.

14 **Q** The investigation of this incident was
15 continued by other members of the sheriff's office,
16 is that right?

17 **A** I believe it was.

18 **Q** Let me withdraw the question. You did not
19 complete the investigation. It was turned over to
20 other personnel. Would that be a fair statement?

21 **A** That's correct. Investigator Mayshack
22 appears to be the person that --

23 **MR. GADDY:** That's all the questions that
24 I have.

25 **THE COURT:** Any questions for this

1 witness?

2 MR. FRANK PLAXCO: Ma'am?

3 THE COURT: Any questions for this
4 witness?

5 MR. FRANK PLAXCO: Yes, ma'am.

6 THE COURT: All right.

7 MR. GADDY: Oh, we offer his incident
8 report into evidence.

9 THE COURT: All right. Any objection to
10 the incident report other than your prior
11 objection?

12 MR. FRANK PLAXCO: Well, of course, it's
13 99.9 percent hearsay.

14 THE COURT: Yes, sir.

15 Let me take a look at the copy. You've got
16 that there? Is this your original?

17 THE WITNESS: No, ma'am.

18 MR. GADDY: I'm only offering it to show
19 that there was a report made. This officer was
20 sent out to investigate. The rest of it is
21 immaterial.

22 THE COURT: All right. Well, that's so
23 noted and part of the record. It's part of my
24 notes, too, so I'll sustain your objection. All
25 right.

1 **MR. FRANK PLAXCO:** The objection is
2 sustained?

3 **THE COURT:** Yes, sir.

4 **MR. FRANK PLAXCO:** So this witness'
5 testimony is stricken?

6 **THE COURT:** No. I'm sorry. To be clear,
7 the incident report is not going to be admitted.

8 **MR. FRANK PLAXCO:** I see. Okay.

9 **THE COURT:** Sorry. Go ahead.

10 **MR. FRANK PLAXCO:** Okay.

11 **CROSS EXAMINATION**

12 **BY MR. FRANK PLAXCO:**

13 **Q** Sir, you received a report from Mrs.
14 Kellett, or a complaint from Mrs. Kellett, of some
15 alleged activity at Buddy's Garage, is that right?

16 **A** According to my report, Michael Fincham was
17 the complainant regarding a burglary and the theft of
18 two vehicles, one of being a Natasha Turner, subject.

19 **Q** Say that again. I'm sorry.

20 **A** That's okay. I took an original police
21 report for a burglary and a theft of two automobiles
22 from Buddy's Garage.

23 **Q** Yeah. Who gave you that information?

24 **A** Michael Fincham.

25 **Q** Michael Fincham said there were some cars

1 that had been stolen?

2 A That's correct.

3 Q I see. And you went out and you
4 investigated?

5 A That's correct.

6 Q And the end result of your investigation is
7 that you found that there was no basis for a charge
8 to be made against anybody?

9 A I left the report active for further
10 investigation. And that was assigned to Investigator,
11 uh, -- I got to look at it real quick again. I'm not
12 good with names -- Mayshack, I believe it was.
13 Investigator Mayshack did the follow up investigation
14 on that. I just took the original report, which was
15 the claim that the two vehicles had been taken.

16 Q Somebody else investigated further. Are you
17 -- is it your understanding that after the
18 investigation, Mrs. Kellett was advised that any case
19 or claim would be unfounded?

20 A The case was closed as unfounded.

21 Q Yes, sir.

22 MR. FRANK PLAXCO: Nothing further, Your
23 Honor.

24 THE COURT: Anything else, Mr. Gaddy, for
25 this witness?

1 **MR. GADDY:** No, we'd like to excuse the
2 witness.

3 **THE COURT:** All right. Any objection to
4 that?

5 **MR. JOSEPH PLAXCO:** No, Your Honor.

6 **MR. GADDY:** And we'd like to make sure
7 that his report is in evidence.

8 **THE COURT:** I'm not going to admit it into
9 evidence since the facts that you are admitting
10 it for are just already in the record.

11 **MR. GADDY:** Okay. All right.

12 **THE COURT:** We've already got that.

13 **MR. GADDY:** We have one more short
14 witness, about five minutes.

15 **THE COURT:** Okay. That's fine. Well, I'll
16 tell you what, are you going to offer anything
17 else or are you prepared to rest, Mr. Plaxco?

18 **MR. JOSEPH PLAXCO:** We're prepared to rest,
19 Your Honor.

20 **THE COURT:** All right. So you are prepared
21 to rest. Uh, you had made some designations?

22 **MR. JOSEPH PLAXCO:** Yes, Your Honor. Oh,
23 I'm sorry. I have just a few things I'd like to
24 publish.

25 **MR. GADDY:** May we proceed?

1 **THE COURT:** Hold on just one second. I'm
2 going to let him finish up his case, Mr. Plaxco.

3 **MR. GADDY:** Oh.

4 **THE COURT:** He just has a couple of things
5 I think he wants to publish or something.

6 **MR. GADDY:** Sure.

7 **THE COURT:** Then we'll come right back and
8 pick right back up.

9 **MR. GADDY:** Sure.

10 **MR. JOSEPH PLAXCO:** Your Honor, just to
11 finalize and finish up our case, we would like
12 to introduce into evidence the deposition
13 excerpts that were submitted to Mr. Gaddy as
14 well as you on Friday afternoon.

15 **THE COURT:** All right. Any objection, Mr.
16 Gaddy, to the deposition excerpts of -- Carmen
17 Kellett's deposition being introduced?

18 **MR. GADDY:** No, we don't have any
19 objection.

20 **THE COURT:** Okay. Then they'll be so
21 admitted.

22 **MR. JOSEPH PLAXCO:** Okay. We would also
23 like to publish, for the record, the answer that
24 was filed in magistrate court by Mr. Craig
25 Pringle.

1 **THE COURT:** All right. On behalf -- okay.

2 **MR. JOSEPH PLAXCO:** On behalf of Mr. and
3 Mrs. Kellett.

4 **THE COURT:** All right.

5 **MR. JOSEPH PLAXCO:** Any objection?

6 **THE COURT:** It's the answer that was
7 filed.

8 **MR. GADDY:** No objection to this. If he's
9 going to present questions and answers, fine.
10 But what he wants to present is an answer in
11 Magistrate's Court which is all hearsay. So I
12 object to it.

13 **MR. JOSEPH PLAXCO:** I would say it's an
14 admission of the party.

15 **THE COURT:** Well, it's a -- yeah, it's a
16 pleading on behalf of the party. Let me take a
17 look at it.

18 **MR. JOSEPH PLAXCO:** Okay. And Your Honor,
19 I also have some case law, if you'd like, that
20 pleadings from prior actions are admissible in
21 subsequent actions.

22 **MR. GADDY:** The action was dismissed or
23 withdrawn.

24 **MR. JOSEPH PLAXCO:** And it's a statement
25 against interest too.

1 **THE COURT:** I'm going to allow this to --
2 I am going to allow this to be admitted since I
3 do think case law does allow pleadings in prior
4 actions to be admitted and we've already heard
5 some testimony about it. I will allow this
6 document, for what it's worth.

7 **MR. JOSEPH PLAXCO:** Okay.

8 **THE COURT:** And that's what?

9 **MR. JOSEPH PLAXCO:** That would be
10 Plaintiff's Exhibit Number 6, I believe.

11 **THE COURT:** All right.

12 (WHEREUPON, Plaintiff's Exhibit 6 is marked for
13 identification and admitted into the record.)

14 **MR. JOSEPH PLAXCO:** And Your Honor, I don't
15 think there's any need to publish this or admit
16 this into evidence because it's in your file.
17 But we would also take note of, again, Mr. Craig
18 Pringle's answer and counterclaim wherein he
19 admitted liability on the basis of conversion.

20 **THE COURT:** Okay. All right. I'll take
21 notice of those things in the file and review
22 them to see what exactly they are. So that's the
23 plaintiff's case?

24 **MR. JOSEPH PLAXCO:** We rest our case, Your
25 Honor.

1 **THE COURT:** All right. You ready to
2 proceed, Mr. Gaddy?

3 **MR. GADDY:** Yes.

4 **THE COURT:** Yes.

5 **ROBERT ANGUILM**

6 having first been duly sworn, testifies as follows:

7 **DIRECT EXAMINATION**

8 **BY MR. GADDY:**

9 **Q** Would you give us your name for the record
10 please.

11 **A** Robert Steven Anguilm.

12 **Q** And would you spell your last name?

13 **A** It's A-N-G-U-I-L-M.

14 **Q** Okay. Are you employed?

15 **A** Yes, sir.

16 **Q** By who?

17 **A** With TitleMax.

18 **Q** Is that TitleMax of Berea?

19 **A** Yes, sir.

20 **Q** What position do you hold with them?

21 **A** I'm the General Manager.

22 **Q** You're the General Manager. Do you know
23 Natasha Turner?

24 **A** Uh, yes.

25 **Q** Did TitleMax of Greer make a loan to her

1 and take as collateral for the loan, a 2006

2 Mitsubishi Lancer?

3 A Yes.

4 Q Did TitleMax obtain a security interest in
5 that car when it made the loan?

6 A Yes, sir.

7 Q Can you tell us about when the loan was
8 made?

9 A Yes, sir. We wrote a check for the loan on
10 May 14th, 2013.

11 Q Okay. Was that check for \$2500?

12 A Uh, yes, sir. One of them was, yes.

13 Q Were several payments made on the loan by
14 Natasha Turner?

15 A Yes, sir. Three to be exact.

16 Q Three payments were made?

17 A Yes, sir.

18 Q Okay. So the loan went into arrears and
19 default, is that correct?

20 A Yes, sir.

21 Q Okay. Did, uh, TitleMax repossess this
22 vehicle?

23 A No, sir.

24 Q Did not?

25 A No, sir.

1 Q Was the vehicle ever returned to TitleMax?

2 A I've never seen it and I never took
3 possession of it, no, sir.

4 Q You've never had possession of it?

5 A Right.

6 Q Okay. The lien has remained open, is that
7 right?

8 A Yes, sir.

9 Q Did you take a picture of the car at any
10 time?

11 A Yes. TitleMax took pictures before, uh,
12 before we wrote the check when it was at Buddy's
13 Garage. Then we took pictures afterwards at Ms.
14 Turner's residence after the accident.

15 Q Okay. Would you present us with those two
16 pictures please.

17 A Okay. Here are the three pictures of when
18 it was at the garage. Here are two --

19 MR. FRANK PLAXCO: Your Honor, none of
20 these were identified before trial. We've never
21 seen them. We do object to just this coming in
22 when we haven't been given notice of it.

23 THE COURT: Mr. Gaddy, they are saying
24 they've not gotten -- they've never seen these
25 before.

1 **MR. GADDY:** I'll tell you, so many
2 photographs have been transferred back and
3 forth. He's listed as a witness. I can't be sure
4 either way.

5 **THE COURT:** Is there anything particularly
6 objectionable about these other than they were
7 not produced prior to trial?

8 **MR. FRANK PLAXCO:** I don't know what the
9 relevance. We'll withdraw our objection.

10 **THE COURT:** Well --

11 **MR. FRANK PLAXCO:** We don't want to take
12 the Court's time.

13 **THE COURT:** I appreciate -- well, I
14 appreciate that. We'll admit these.

15 **MR. GADDY:** I'm going to offer these
16 pictures in evidence, Judge. Then we'll go into
17 details about them. He said that TitleMax took
18 them.

19 **THE COURT:** You're going to mark them
20 separately?

21 **MR. GADDY:** All three of them. I'll make
22 them A, B and C.

23 **THE COURT:** Yeah, okay. Just do it like
24 that.

25 **THE WITNESS:** Those three are before the

1 loan and then these two were --

2 **THE COURT:** Hold on just one second. We've
3 got to take a break for her to get these marked.

4 **MR. FRANK PLAXCO:** What number are these,
5 Your Honor?

6 **THE COURT:** What will these be, 3?

7 **COURT REPORTER:** 4.

8 **THE COURT:** They will be 4(A), (B) and
9 (C).

10 (WHEREUPON, Defendant's Exhibit 4(A) through 4(C)
11 are marked for identification purposes.)

12 **BY MR. GADDY:**

13 **Q** Okay. Ron, showing you pictures of, uh,
14 what has been labeled as Defendant's Exhibit A, B and
15 C. Just tell us what the pictures show.

16 **A** Those are just the pictures that a TitleMax
17 employee took, I would assume, at Buddy's Garage.

18 **Q** Okay.

19 **A** We have to take front and back pictures of
20 every vehicle before we do a loan to make sure
21 there's no damage to the vehicle.

22 **Q** Okay. You have any other photographs?

23 **A** Yes, sir. These two were the pictures that
24 were taken at Ms. Tasha's -- I mean, Ms. Turner's
25 residence after the accident.

1 Q You said -- they've got a date on the
2 pictures.

3 A Yes.

4 Q 09/12 --

5 A It's September 24th, 2013.

6 Q Okay. And what are those pictures supposed
7 to represent?

8 A This is supposed to represent the vehicle
9 after the accident.

10 Q And that is an accident that occurred when?

11 A I have a -- the police report that we
12 received from Ms. Turner was September the 11th,
13 2013.

14 MR. GADDY: Okay. We'll present these
15 pictures into evidence. I think these pictures
16 were exhibits to the deposition.

17 MR. FRANK PLAXCO: I don't know that they
18 are, but we don't object, Your Honor.

19 THE COURT: All right then. They are so
20 admitted.

21 MR. GADDY: All right. We present them to the
22 Court.

23 THE COURT: Thank you, sir.

24 (WHEREUPON, Defendant's Exhibits 4(A) through
25 4(C) are admitted into the record.)

1 (WHEREUPON, Defendant's Exhibits 5(A) and 5(B)
2 are marked and admitted into the record.)

3 **BY MR. GADDY:**

4 **Q** Did TitleMax make any other loans to
5 Natasha Turner and take back security interest in any
6 motor vehicles?

7 **A** Yes, there was one more vehicle.

8 **Q** Can you tell us the loan history on that
9 loan?

10 **A** As far as I remember, I don't have the
11 paperwork in front of me, but I believe that one was
12 either two or three payments as well. And then the
13 vehicle she told us it was impaired, I believe that
14 vehicle she told us to pick up, which we did pick up
15 at a garage.

16 **Q** You remember what kind of vehicle it was?

17 **A** Offhand, I do not know.

18 **MR. GADDY:** That's all the questions I
19 have.

20 **THE COURT:** Okay. Mr. Plaxco.

21 **CROSS EXAMINATION**

22 **BY MR. FRANK PLAXCO:**

23 **Q** I'm sorry. My hearing is not as good as it
24 used to be.

25 **A** No problem.

1 Q Tell me your name again.

2 A It's Rob, Robert.

3 Q Robert?

4 A Yes, sir.

5 Q Okay. And were you working for TitleMax in
6 May of 19 -- in 2013?

7 A Yes, sir. But not at that location.

8 Q Okay. So the photographs that you referred
9 to were taken by somebody else?

10 A Yes, sir.

11 Q And you had never seen the car?

12 A I'm not sure if she'd ever drove the car to
13 make a payment.

14 Q You don't remember ---

15 A I do not remember.

16 Q --- seeing it?

17 A No, sir.

18 Q So you are not able to say what these
19 photographs really are. You simply have been told by
20 somebody they were taken at a certain time?

21 A The only picture that I know of are the two
22 after the accident.

23 Q Well, the accident was about May of 2013,
24 wasn't it?

25 A No, the accident was -- that we took the

1 picture -- the accident was on September the 11th. We
2 -- I sent my store manager to the residence to take
3 the pictures on September the --

4 Q That was the later accident.

5 A That's the only one that I know of.

6 Q Okay. You don't know anything about the
7 accident that led to Natasha taking her car to Mrs.
8 Kellett?

9 A No, the only thing I have in the file that
10 I reviewed was that it was supposed to be -- we wrote
11 a check for \$2500 for the transmission to be fixed.

12 Q Okay. Now, let me ask you this. You all are
13 not in the habit of making loans for more than the
14 value of cars, are you?

15 A We actually do less than the value.

16 Q Sir?

17 A We do less than the value. We go by the
18 wholesale value, which is known as the black book
19 value.

20 Q Right. So somebody at TitleMax would have
21 concluded that this car had some value and a \$2500
22 loan was made?

23 A Yes, sir.

24 Q Do you know what that number was?

25 A No, uh, I could look in my file.

1 Q Well, it really would be hearsay in any
2 event, wouldn't it? I mean, you don't know yourself.

3 A We just have an appraisal form that we go
4 by.

5 Q Yeah.

6 A And the appraisal form at that time,
7 TitleMax was stating the actual cash value was at
8 \$3200, which we loan 80 percent of that. So the most
9 she could have gotten was 2560.

10 Q So in its average condition, it's worth
11 3200.

12 A At that time, because we were under the
13 impression the check was for a brand new transmission
14 or putting in a used transmission.

15 Q Right. Now, some payments were made on the
16 loan, right?

17 A Yes, sir.

18 Q And the time come when you simply stopped
19 accruing payments?

20 A Her last payment was on August 21st, 2013.

21 Q And can you tell me how much you have on
22 your books as being owed by her?

23 A It's at \$3366.61.

24 Q That's the last number that you've got?

25 A Yes, sir. That's the final number. There

1 won't be any more interest. Once it hits 61 days of
2 being late, the interest stops.

3 Q The interest stops?

4 A Yes, sir.

5 Q So that's how much she owes to you all?

6 A She owes to TitleMax, yes, sir.

7 MR. FRANK PLAXCO: I don't have anything
8 further, Your Honor.

9 THE COURT: All right. Thank you.

10 MR. GADDY: We'd like to excuse the
11 witness, if we may.

12 THE COURT: All right. Any objection to
13 that?

14 MR. JOSEPH PLAXCO: No objection, Your
15 Honor.

16 THE COURT: All right. Thank you, sir.

17 MR. GADDY: Thank you for coming.

18 Your Honor, we can continue or take a
19 break.

20 THE COURT: It might be time to take a
21 break. I'll tell you what. Let's -- 12:30, 1:30
22 -- let's start back at 1:45. All right. So 1:45,
23 we'll start back.

24 MR. GADDY: All right.

25 (WHEREUPON, a lunch recess is taken.)

1 **THE COURT:** All right.

2 **MR. GADDY:** Your Honor, I'd like to make a
3 motion to dismiss the complaint.

4 **THE COURT:** All right.

5 **MR. GADDY:** The complaint has alleged four
6 cause of action.

7 **THE COURT:** Yes, sir.

8 **MR. GADDY:** The first one alleged is
9 conversion. My perception is that the conversion
10 was supposed to have occurred because the
11 defendants required payment of the repairs
12 before the repairs were made. That certainly is
13 an acceptable way of doing business. They
14 certainly have every right to do that. I don't
15 know what other evidence that shows that any
16 conversion occurred except on the issue of the
17 money.

18 The time that it took to repair the car is
19 very -- there's no evidence -- no credible
20 evidence shown that the car was kept longer than
21 it should have been kept. You have to bear in
22 mind that the repairs didn't start until after
23 the money was received for the payment, which
24 took about a month, and additional time to order
25 the parts.

1 With respect to the second cause of action,
2 which is an allegation of fraud, the court is
3 aware that there are nine elements of fraud and
4 two of them are to show an attempt to deceive
5 and that the defendants made false
6 representations. The evidence would show there's
7 nothing about deception that has occurred on the
8 part of the defendants and they haven't made any
9 false statements to the plaintiff.

10 The third cause of action alleges
11 misrepresentation, which requires most, not all
12 nine, elements. But the relevant evidence is
13 that there was no intent to deceive and that
14 there was no false representations made. We
15 don't think there's any evidence to support that
16 cause of action.

17 With respect to the Unfair Trade Practice
18 Act, that must be shown that the acts claimed
19 are offensive to public policy. There's no
20 evidence to show that. It must -- there's no
21 evidence to show any defective acts, unfair
22 acts, which have an impact upon the public as a
23 whole. There's no evidence on that.

24 Also moving further, the plaintiffs have
25 not shown what the damages are that they are

1 claiming. They've had the plaintiff testify that
2 she considered the car to be worth \$6500 before
3 her accident. She's brought no information with
4 her or testified to no information that she was
5 qualified to know or have any reliable opinion
6 about the value of her car. But assuming that it
7 has the value of \$6500, it's not relevant
8 because the car that the defendants received was
9 a wrecked car, not a car --

10 **THE COURT:** He said it was a wrecked car.

11 **MR. GADDY:** That's right.

12 **THE COURT:** Which was --

13 **MR. FRANK PLAXCO:** After the wreck.

14 **THE COURT:** After the wreck.

15 **MR. FRANK PLAXCO:** It was worthless,
16 obviously.

17 **THE COURT:** Right. Right. Yes, sir.

18 **MR. GADDY:** The defendant's got a wrecked
19 car. So the information about it being \$6500 is
20 really not relevant to determine the value of
21 the wrecked car, which is what the defendants
22 received. So going on from that, the, uh, --
23 certainly the plaintiff can't testify as to what
24 the actual cost to repair should have been if
25 they were not -- if they are going to contend

1 they differ from the estimate of Buddy's Garage.
2 They didn't bring any information about that.
3 What we've got here is applying a measure of
4 damages as to what was the bargain. The bargain
5 was for the plaintiff to get a car that was
6 repaired pursuant to the estimate which outlines
7 the various repairs that would be made to the
8 car versus what she actually received. Now, I'm
9 assuming, looking at the evidence most favorable
10 to the plaintiff, that she received some sort of
11 repair that was not pursuant to the estimate.

12 There's been no testimony produced which
13 shows what the value of the product was that she
14 got back. She did not repair it. She went around
15 complaining about it, driving the car all the
16 time, getting arrested for speeding and driving
17 it this place and that place and her daughter
18 driving it this place and that place while still
19 contending that the car was defective and hadn't
20 been properly repaired. So they put no value on
21 it. So I am maintaining to the Court that the
22 damages that they claim is not sufficient
23 evidence. They have to show a preponderance of
24 evidence concerning the damages that they are
25 claiming.

1 **THE COURT:** All right.

2 **MR. GADDY:** So I would ask for the whole
3 thing to be thrown out.

4 **THE COURT:** All right. Thank you.
5 Yes, sir.

6 **MR. FRANK PLAXCO:** Your Honor, with respect
7 to damages, the testimony of the plaintiff is
8 the car was worth \$6500. That is remarkably
9 corroborated by the witness that Mr. Gaddy
10 called from TitleMax who said that the wholesale
11 value of the car in the condition it was in when
12 they made their loan was \$3200. If you add the
13 \$4000 that was supposed to be spent on repairs,
14 you're right back up to the \$6700, the same
15 number that Natasha testified to. There's no
16 question that there is sufficient evidence to go
17 to the court as to the value of the car. There's
18 no question that the sufficient evidence as a
19 result of the tort and breach of contract
20 committed by Mr. Gaddy's client, this woman lost
21 her car. She lost \$6500 or \$6700 worth of car.

22 She lost the use of it during a period of
23 time. She was led to believe that it would take
24 a couple of weeks to repair it. They had the car
25 for 67 days and it was never repaired.

1 As far as conversion is concerned, Your
2 Honor, one of the most interesting aspects of
3 that is an answer filed by Mrs. Kellett. At that
4 time, Mr. Pringle was her lawyer. This appears
5 in paragraph 26 of that answer. Listen to this.
6 The defendant, Fincham, acting as agent for the
7 defendants and as a part of this ongoing scheme
8 of fraud, theft and deception, perpetrated on
9 the defendants as well as a number of customers
10 of Buddy's Garage, willfully and intentionally
11 retained the funds deposited by the plaintiff
12 knowing they rightfully belonged to the
13 plaintiff until the agreed work was done. That's
14 what she said, Your Honor, in her pleading in
15 this case.

16 **THE COURT:** All right.

17 **MR. FRANK PLAXCO:** Now, the flaw in the
18 allegation in that answer is that the funds came
19 into the hands of Mrs. Kellett, not Mr. Fincham.
20 She had control of them. Her deposition, in the
21 part that we've marked, establishes that she had
22 control of the bank account, that she received
23 all those funds, that she controlled the bank
24 account, that Fincham had no check writing
25 authority, therefore, she is the one who

1 received the money, she is the one who refused
2 to return it to her and still refuses although
3 this car was not repaired. It's as clear and
4 flagrant a case of conversion as I know of.
5 Thank you.

6 **THE COURT:** Thank you. Well, taking the
7 evidence in the light most favorable to the non-
8 moving party, at this juncture, I do find that
9 there is at least some evidence upon which a
10 verdict can be based. Therefore, I'm
11 respectfully denying your motions at this time.

12 **MR. FRANK PLAXCO:** I might say, Your Honor,
13 that I think the relevance on Unfair Trade
14 Practices is probably pretty weak because we
15 can't show a repetitive pattern other than the
16 testimony of Mrs. Kellett herself who says that
17 Fincham was ripping off insurance companies in
18 other cases.

19 **THE COURT:** Well, not to disagree with you
20 about what the standard is on that, but I think
21 it is capable of being repeated is the standard.

22 **MR. FRANK PLAXCO:** Certainly was.

23 **THE COURT:** I think that is the standard.
24 And at this time, I'm going to allow the -- I'm
25 going to allow it to -- I appreciate your

1 candor, but I'm going to allow the cause of
2 action to move forward at this time. Once again,
3 since I'm in the unusual situation of being the
4 finder of fact and the finder of the law at the
5 same time, we can always revisit this at any
6 juncture. All right.

7 All right. You ready to proceed to call
8 your witness?

9 MR. GADDY: Mrs. Kellett, come around this
10 way.

11 THE COURT: While she's coming to the
12 witness stand, these -- your designations, Mr.
13 Plaxco, your deposition designations ---

14 MR. JOSEPH PLAXCO: Yes, Your Honor.

15 THE COURT: --- I'm going to mark that as
16 an exhibit.

17 MR. JOSEPH PLAXCO: Okay.

18 THE COURT: So whatever the next
19 Plaintiff's Exhibit is.

20 MR. JOSEPH PLAXCO: I believe it's 7.

21 (WHEREUPON, Plaintiff's Exhibit 7 is marked for
22 identification purposes.)

23 THE COURT: And Mr. Gaddy, I was just
24 telling him I'm going to mark those deposition
25 designations as Plaintiff's Exhibit Number 7.

1 **MR. GADDY:** That's correct.
2 **THE COURT:** Just to keep the record clear.
3 That's all.
4 **MR. GADDY:** That will be fine.
5 **THE COURT:** That's it. Okay.
6 Raise your right hand please.
7 **CARMEN KELLETT**
8 having first been duly sworn, testifies as follows:
9 **THE COURT:** Thank you. You can have a
10 seat.
11 **DIRECT EXAMINATION**
12 **BY MR. GADDY:**
13 **Q** Would you tell us your name please?
14 **A** Carmen Kellett.
15 **Q** And are you resident of Greenville County?
16 **A** I am.
17 **Q** What is your connection with Buddy's
18 Garage?
19 **A** I was 50 percent owner.
20 **Q** Who was the other 50 percent owner?
21 **A** My husband.
22 **Q** And his name is?
23 **A** Travis Kellett.
24 **Q** Travis Kellett. And so that garage was
25 located over on Tigerville Road outside of Travelers

1 Rest, is that right?

2 A I think it was within Travelers Rest area,
3 but yes.

4 Q Okay.

5 A I'm not familiar with that area. I'm not
6 originally from here.

7 Q Okay. All right. Now, did you have an
8 employee named Mike Fincham?

9 A I did.

10 Q What was his responsibility?

11 A He ran the day-to-day operations of Buddy's
12 Garage and he was also our mechanic.

13 Q He ran the day-to-day operations?

14 A Yes.

15 Q And what else was his responsibility
16 besides the day-to-day operations? Be more explicit.

17 A Sure. He would, uh, evaluate cars, write
18 estimates or the parts. We had open accounts at
19 several, multiple-part companies. He had the
20 authorization to order those parts.

21 Q Okay. Did -- do you know if he prepared the
22 estimate of repair for Natasha Turner who brought her
23 car in or had her car hauled in about the 8th day of
24 May, 2013?

25 A He did.

1 Q Okay. You are familiar with this estimate
2 that Fincham made back in May of 2013, aren't you?

3 A Yes.

4 Q That is, I believe, defendant's -- well,
5 that's going to be Plaintiff's Exhibit Number 1. Also
6 it's the subject of a blow-up which is over here on
7 the easel. Right?

8 A Right.

9 Q Okay. Now, the goal of the exhibit, which
10 is the estimate for Buddy's Garage, it called for a
11 transmission to be installed.

12 A Yes.

13 Q Correct?

14 A Correct.

15 Q Was the transmission to be new or used?

16 A Used.

17 Q And how can you tell?

18 A Indicative of the 22,000 miles in
19 parenthesis beside it.

20 Q The transmission was \$1000?

21 A \$1000. New transmission would be about 21
22 to \$2500.

23 Q All right. Take a look at this line on the
24 top right where it's got above that, part number and
25 description. Do you see that parenthesis where it's

1 22,000, parenthesis closed? Do you see that?

2 A Yes, sir.

3 Q What does that 22,000 represent?

4 A The mileage on the transmission.

5 Q How do you know how much mileage is on the
6 transmission?

7 A I honestly wouldn't know that part. I would
8 imagine it would come from the car that he had gotten
9 it from. It came from a junk yard.

10 Q It came from the car from which the
11 transmission was removed?

12 A Yes, sir.

13 Q All right.

14 MR. FRANK PLAXCO: Does she know this or is
15 it speculation?

16 THE WITNESS: No, I know this.

17 THE COURT: All right. Okay.

18 THE WITNESS: I know this for a fact.

19 THE COURT: And, uh, -- All right. That's
20 fine. If you don't mind, if you've got anything
21 to add --

22 MR. FRANK PLAXCO: I'm sorry. I apologize.

23 THE COURT: If you don't mind, just object
24 and then if you do --

25 MR. FRANK PLAXCO: Yes, ma'am.

1 **THE COURT:** Okay. Go ahead.

2 **BY MR. GADDY:**

3 **Q** The transmission was acquired from where?

4 **A** I don't remember specifically the junk yard
5 because we dealt with several of them. It came from a
6 junk yard in North Carolina. We had tried locally to
7 find it. We could not.

8 **Q** It was a transmission removed from a car at
9 a junk yard, is that right?

10 **A** Yes, sir.

11 **Q** Okay. All right. Now, uh, do you -- I don't
12 know if you can read it or not. Is this too far away
13 for you to read it or can you read it?

14 **A** I've got a copy right here.

15 **Q** You've got one there?

16 **A** Uh-huh.

17 **Q** What are some of the other things that were
18 to be done by way of repairs?

19 **A** It's got bumper cover front, bumper cover
20 rear, bumper -- I'm sorry -- bumper -- I don't know
21 what that next, the third one is. I can't really read
22 it that well.

23 **Q** Well, if you can't, I can't.

24 **A** Bumper -- I think it's a copy. This copy is
25 not that well. It's got bumper, I think, rear

1 support, bumper front support. Something. I think
2 that's what it says. I don't know. Then it's got
3 left support, right support and battery.

4 Q Okay. How much was the cost for repairs?

5 A \$3867.89.

6 Q How much was paid for the cost for repairs?

7 A Uh, --

8 Q Don't you have a memorandum where you've
9 written that down?

10 A Yes.

11 Q How can we get it?

12 A It's -- Mr. Kellett has it. My husband's
13 got it.

14 Q Is it a memorandum that would refresh your
15 memory?

16 A Yes.

17 Q Is this it?

18 A Yes, sir.

19 MR. GADDY: If it's alright with the
20 court, I'll show her the memorandum.

21 THE COURT: All right.

22 BY MR. GADDY:

23 Q Tell the Court what the cost for repairs
24 was and how it was computed.

25 MR. FRANK PLAXCO: May we see the document

1 he's referring to, Your Honor.

2 THE COURT: Do you mind showing him, at
3 this point, the document?

4 MR. GADDY: Sure.

5 THE COURT: I think he just wants to use
6 it to refresh.

7 Mr. Gaddy if I understand correctly, you're
8 just using that document to refresh her
9 recollection. You're not entering it?

10 MR. GADDY: That's correct. No, I'm not.

11 THE COURT: Okay. He's just using it to
12 refresh.

13 MR. FRANK PLAXCO: Can we just have this
14 marked for identification, Your Honor.

15 THE COURT: Certainly. That would be --
16 that would be Defendant's...

17 COURT REPORTER: 6.

18 THE COURT: 6.

19 (WHEREUPON, Defendant's Exhibit 6 is marked for
20 identification and admitted into the record.)

21 THE COURT: All right.

22 BY MR. GADDY:

23 Q Okay. It's been marked Defendant's Exhibit
24 6. Okay. My question to you was how much was paid by
25 the plaintiff for the repairs and how were they

1 charged?

2 **A** The total estimate was \$3867.89.

3 **Q** Okay. And how much --

4 **A** And we received two payments. One of 2500
5 and one of 1815.

6 **Q** Okay. How much did the payments total?

7 **A** I haven't figured it out. I'm sorry. I
8 thought I had it figured out. Apparently, I didn't. I
9 think it was right at \$4000. I'm sorry. If I could
10 have a calculator, I'd be more than happy to do it.

11 **Q** Do we have a calculator back at my desk?

12 **THE COURT:** If you give me the -- I've got
13 one right here on my computer. You want me to do
14 it?

15 **THE WITNESS:** 2500 and 1815.36.

16 **THE COURT:** Plus 1815 --

17 **MR. GADDY:** You can read the figures off
18 of 6 there.

19 **MR. FRANK PLAXCO:** Your Honor, we will
20 stipulate that the amount that was paid was
21 \$4315 and a little bit of change.

22 **THE COURT:** Total of estimate. We're
23 looking at just the payments, which is 2500 and
24 1815.36.

25 **MR. GADDY:** Correct.

1 **THE COURT:** Which is, in fact, 4315.36.

2 **MR. GADDY:** Right.

3 **BY MR. GADDY:**

4 **Q** Did the amount of money paid cover any
5 other items that are not listed on the estimate from
6 Buddy's Garage?

7 **A** The paint kit and also the 275 that that we
8 held the car for 10 days.

9 **Q** That was a storage fee?

10 **A** Yes, sir.

11 **Q** Okay. Now, uh, did you, uh, ever become
12 aware that a man named Matthew Smith had brought his
13 car up to Buddy's Garage?

14 **A** Not until after it was reported stolen.

15 **MR. FRANK PLAXCO:** We understand that our
16 objection goes to all this line of testimony
17 involving Mr. Smith.

18 **THE COURT:** Yes, sir. And your objection
19 is noted and ongoing for this line of
20 questioning.

21 Yes, sir.

22 **BY MR. GADDY:**

23 **Q** My question to you was did you ever become
24 aware that a car owned by Matthew Smith was ever
25 brought to Buddy's Garage?

1 A After it was reported stolen.

2 Q That's when you found out about it?

3 A Yes, sir.

4 Q Okay. And can you go into the circumstances
5 surrounding the car of Matthew Smith that was stolen,
6 that was reported stolen?

7 A From what I -- we got a phone call around
8 10:45 one night.

9 Q From who?

10 A From Mike Fincham claiming that two cars
11 had been stolen. So we had asked him if he had
12 notified Greenville County. He said that he had. My
13 husband called Greenville County. I was sitting in
14 the car with him on our way up there. They had not
15 received a report or a call about any stolen vehicles
16 up at Travelers Rest at Buddy's Garage. So we
17 proceeded to report it on our way up there. We were
18 met by Forensics and also by Greenville County Law
19 Enforcement.

20 It was stated that those two cars were not
21 worked on, that they were stolen and I had no work
22 order, nothing to go by. They had asked for the VIN
23 number.

24 Q You keep talking about two cars were
25 stolen. What cars were they?

1 A One was a Toyota Avalon and the other one
2 was the Pontiac -- I guess it was a Grand Am. I can't
3 remember. It's been almost three years ago.

4 Q All right. It was a Pontiac and a Toyota
5 Avalon?

6 A Yes, sir.

7 Q And the Pontiac was owned by who?

8 A The Pontiac was owned by Matthew Smith.

9 Q And what connection is Matthew Smith with
10 Natasha Turner?

11 A At the time, we were told that that was her
12 live-in boyfriend.

13 Q Okay. So did you learn that the cars were
14 subsequently found?

15 A Yes.

16 Q And where was the Matthew Smith automobile
17 when it was found?

18 A It was indicated to me by Natasha Turner
19 that it was sitting in their driveway.

20 Q All right. Were any parts ordered for the
21 repair of the Pontiac?

22 A Yes, sir.

23 Q Can you give any details about what the
24 parts were?

25 A I honestly can't remember what all it would

1 entail. There were some engine parts. I really can't
2 remember all the details because I didn't have a
3 written statement of all of what was done. All I know
4 is that this was included in part of the bills of the
5 part shops. That actually was part of an identity
6 theft case.

7 Q Well, how do you know any parts had been
8 ordered to repair the Smith vehicle?

9 A When you get an invoice -- and I would get
10 it written -- and it would usually run around 30 days
11 after the part has been written, it would indicate
12 what type of vehicle, what year and what the exact
13 part was. Unfortunately, my office was flooded. So
14 all those papers kind of got jelled together.

15 Q Well, the question -- what I'm trying to
16 get from you is were any parts offered for the --
17 ordered for the Pontiac?

18 A Yes, sir. There was.

19 Q And you paid for them?

20 A Yes, sir.

21 Q And the car disappeared?

22 A The car disappeared.

23 Q Now, did you ever talk to Natasha Turner
24 about this Pontiac that disappeared?

25 A Yes, sir.

1 Q What was her response?

2 A Her response was that there was a deal done
3 between her boyfriend and Mike Fincham over the car
4 and that that was up to them. She had no part of it
5 and to take it up with her boyfriend or Mike Fincham.

6 Q Okay. Now, did there come a time when you
7 called or texted, give a text message, to Natasha
8 Turner to come pick up her Mitsubishi Lancer?

9 A Yes.

10 Q And did she come?

11 A Yes, after she got off work.

12 Q After she got off work.

13 A Uh-huh.

14 Q Did she come on July the 15th, 2013?

15 A Yes.

16 Q And tell us the circumstances of that
17 occasion.

18 A From what I was indicated by Natasha
19 verbally, and then later it was backed up by text,
20 was that Mike had the bumper and that they had made
21 arrangements that Mike was going to install the
22 bumper. The bumper was not in Taylors or Greer like
23 her deposition states. It was in Pelzer because Mike
24 was living in our rental house. That's where he
25 resided and did more work.

1 Q Mike lived in Pelzer, is that correct?

2 A Yes, sir.

3 Q All right. I'm asking you, though, to
4 direct your attention to the occasion when Natasha
5 Turner came to Buddy's Garage.

6 A Okay.

7 Q I'm asking you to tell us what transpired.

8 A What transpired was the reason why that
9 note was prompted that I read about -- wrote about
10 Mike Fincham having the bumper and possession of the
11 paint kit was because Natasha Turner had produced
12 texts indicating that they had made a deal because
13 Mike was fired on the 13th.

14 MR. FRANK PLAXCO: Your Honor --

15 MR. GADDY: You're not --

16 THE COURT: Hold on just one moment.

17 MR. GADDY: You're not answering the
18 question.

19 THE COURT: Hold on one second.

20 Objection?

21 MR. FRANK PLAXCO: Objection. If there is a
22 text setting out the conversation that she is
23 claiming, the text is the best evidence. We
24 would like to see the texts..

25 MR. GADDY: She's going into her

1 conversation with Natasha but my question to her
2 is to tell us what happened when Natasha came.
3 Then she goes off into something about and
4 understanding with this fellow Fincham. I want
5 her to start at the beginning when Ms. Turner
6 came to your place and tell us what transpired
7 is my question to you.

8 **THE WITNESS:** Okay.

9 **THE COURT:** I'm not going to allow her to
10 testify to any texts she received from anybody,
11 you know, unless she's got those texts.

12 **MR. GADDY:** We have them, Your Honor.

13 **THE COURT:** All right. So if we're going
14 to talk about those, then --

15 **BY MR. GADDY:**

16 **Q** I want you to testify about when Natasha
17 came to Buddy's.

18 **A** Natasha showed up at Buddy's to pick up her
19 car. Her mother was with her. We went over. She
20 wanted to take pictures. I also took pictures of the
21 car. I basically said that we are closing down and
22 that her car needed to be picked up. Pretty much, I
23 mean, I don't know what she's talking about that I
24 got belligerent or got angry. It was cut and dry. We
25 talked about the bumper. I wrote a \$130 check to her

1 **THE COURT:** Mr. Gaddy, do you have -- does
2 she have these texts that she just testified
3 about?

4 **MR. GADDY:** Well, I'll show them to the
5 court first if you'd like.

6 **THE COURT:** Oh, okay.

7 **MR. GADDY:** They are contained in the
8 deposition.

9 **THE COURT:** Oh, they're in the deposition.

10 **MR. GADDY:** Which is in evidence.

11 **THE COURT:** I've got you. Thank you.

12 Mr. Gaddy, is it just this one text that
13 you're talking about?

14 **SPEAKER:** I think there's several there,
15 Judge.

16 **THE COURT:** Okay. I'm going to need your
17 name. Tell me your name.

18 **SPEAKER:** Melissa.

19 **THE COURT:** Melissa what?

20 **SPEAKER:** Gilstrap.

21 **THE COURT:** For the record, it's Melissa
22 Gilstrap.

23 **MR. FRANK PLAXCO:** It's Exhibit 5.

24 **THE COURT:** What's that?

25 **MR. FRANK PLAXCO:** It's Exhibit 5 of Mrs.

1 Kellett's deposition.

2 THE COURT: Okay. All right. Got it. It's
3 just this one page?

4 MR. GADDY: I think it may be more than
5 one page, but whatever is in the deposition is
6 what we're presenting.

7 THE COURT: All right.

8 BY MR. GADDY:

9 Q Now, I'm directing your attention to your
10 deposition taken on March the 17th, 2015. You
11 remember that?

12 A Yes.

13 Q That was taken by Mr. Plaxco?

14 A Yes.

15 Q All right. Looking over at Exhibit 5, what
16 are you looking at there?

17 A These are text messages that I exchanged
18 with Natasha Turner in regards to her bumper.

19 Q All right. What do they say?

20 A That, uh, -- just basically saying that
21 this is Carmen Kellett.

22 Q Read it out word-for-word.

23 A Natasha, this is Carmen Kellett. I have
24 forwarded this to Mike. You will need to get a
25 refund from him since you spent \$250 for a paint kit

1 for the Lancer. Natasha, uh, will not have a refund
2 of any type to her. I'm informing her of this also.
3 He has the paint kit for your car. We do not. Then
4 she indicates okay, what about labor.

5 Q Okay. And is there more than one page?

6 A Yes, sir. She says is the paint kit still
7 good. I'm confused. I state you must get it from
8 Mike. Here is his number. Do you want me to call out
9 the number?

10 Q Read the thing, please.

11 A Okay. Since we don't have the supplies or
12 parts, then either Mike can do the work or he can
13 reimburse you for the labor. The bumper is with Mike
14 along with the paint kit.

15 Q Okay. You finished?

16 A Then she responds I paid your shop for
17 labor. I want someone else to do it. I was picking up
18 the bumper because it took so long.

19 Q Okay. Go ahead.

20 A Then she says -- I guess it's her texting.
21 I will speak to you in person this evening.

22 Q Okay. So those text messages occurred
23 before she came to your shop on July the 15th?

24 A Yes.

25 Q Okay. Did it -- can you point to

1 specifically to any mention in there that she had an
2 understanding with Trencham about -- or Fincham is
3 his name, about making those repairs?

4 **A** I could not in these texts. But the only
5 other thing I can say is that I've indicated that
6 Mike has the parts and he also has the paint kit,
7 which is what her concerns were at the time.

8 **Q** And she didn't -- okay. So she -- do these
9 texts show that there was an understanding between
10 Natasha Turner and Mike Fincham that he would do this
11 installation of the bumper away from Buddy's Garage?

12 **THE COURT:** Yes, sir. You've got an
13 objection?

14 **MR. FRANK PLAXCO:** I still object, Your
15 Honor. She said that was conveyed in a text.
16 It's not contained in a text.

17 **THE COURT:** All right. I --

18 **MR. FRANK PLAXCO:** It's inconsistent with
19 the text that she's put in.

20 **THE COURT:** I'm going to strike your last
21 question. This -- I think the texts speak for
22 what they are.

23 **MR. GADDY:** That's fine.

24 **THE COURT:** So we'll do that.

25 **MR. GADDY:** That's fine.

1 **THE COURT:** All right.

2 **BY MR. GADDY:**

3 **Q** I'm going to show you this blow-up of
4 handwritten texts which is in evidence as -- that's
5 it. That's it -- as Defendant's Exhibit 2. All right.
6 Defendant's Exhibit 2 and the blow-up are identical.
7 You see that?

8 **A** Yes.

9 **Q** All right. What does Defendant's Exhibit 2
10 say?

11 **A** July 15th, 2013, Buddy's Garage. Mike
12 Fincham is in possession of front bumper and paint
13 kit. He has been informed via text that it needs to
14 be released to Natasha Turner on July the 15th, 2013.
15 Bumper, \$283; paint kit, \$250. Carmen Kellett and
16 then her signature, Natasha Turner.

17 **Q** Okay. Did you and Natasha make an
18 inspection of her car before she drove away with it?

19 **A** We did.

20 **Q** Did you take pictures while -- during the
21 course of the inspection taking place?

22 **A** Yes.

23 **Q** Take a look at these photographs and tell
24 us if those are the photographs that you took out
25 there with ---

1 **A** They are.

2 **Q** --- Natasha Turner. They are?

3 **A** They are.

4 **THE COURT:** Okay. We're off the record
5 right now.

6 **(WHEREUPON, the Court went off the record.)**

7 **(WHEREUPON, Defendant's Exhibit 7(A) through 7(G)**
8 **are marked and admitted into the record.)**

9 **THE COURT:** All right. We're going to go
10 back on the record. While on break, we had a
11 discussion off the record about the fact that
12 the photographs that are now marked as
13 Defendant's Number 7A-G have not been previously
14 produced to the plaintiffs. However, at this
15 time, we're going to get the witness to talk
16 about these photographs and say what they are.

17 **MR. GADDY:** Yes.

18 **THE COURT:** All right. Go ahead.

19 **BY MR. GADDY:**

20 **Q** Looking at this photograph, which has been
21 labeled Defendant's 7(A), what does that show?

22 **A** It is showing the rear -- and I'm thinking
23 it's the left, the rear end of the car.

24 **Q** Okay. Does it show any defects on there?

25 **A** I don't see any.

1 in reimbursement for what we thought two hours of
2 labor, two and a half hours of labor. We charged \$65
3 an hour at that time.

4 Q What did she tell you about -- the car was
5 -- are you telling us the car was ready except for
6 the bumper?

7 A Yes, sir.

8 Q Okay. What did she tell you about
9 installation of the front bumper?

10 A That her and Mike had an agreement that he
11 was going to install that front bumper.

12 Q Can you substantiate this in any way by
13 text messages?

14 A Only that I saw them on her phone verifying
15 it. That's why I wrote this note stating --

16 Q Don't you have copies of them?

17 A I have copies of some of the texts
18 indicating that she acknowledged Mike had the bumper
19 and the paint kit.

20 MR. FRANK PLAXCO: Unless she produces the
21 document.

22 THE COURT: All right. And he says they
23 have the texts. We're going to see.

24 BY MR. GADDY:

25 Q Now, your deposition is --

1 Q There is a -- there is a, uh, -- it doesn't
2 show any scratches, or any kind of marks of any kind?

3 A I don't see any scratches or any marks on
4 there at all. That's my feet there with some sandals.

5 Q That's your feet in the reflection?

6 A With some sandals, yes, sir.

7 Q Looking at what's been marked Exhibit 7(B),
8 what does that show?

9 A It's a rear bumper.

10 Q Are there any defects in that bumper?

11 A I don't see any. That, again, is my shadow
12 right there, a reflection. That's where the
13 discoloration is. I was wearing, like, a hot pink
14 shirt that day.

15 Q All right. And is this the bumper that --

16 A That's the rear bumper.

17 Q That Natasha claim is defective?

18 A Yes, sir.

19 Q And this is how the condition of the bumper
20 was when it left Buddy's Garage?

21 A Yes, sir. It was.

22 Q I show you Defendant's Exhibit 7(C) and ask
23 you what that is.

24 A That's the same picture. I'm sorry. It's a
25 duplicate of the rear bumper.

1 Q It's a duplicate?

2 A Yes, sir.

3 Q I'm showing you a photograph that's been
4 labeled Defendant's Exhibit 7(D) and ask you what
5 does that show.

6 A That is probably the right side of the rear
7 of the car.

8 Q All right.

9 A Again, that's my reflection.

10 Q Does it show any defects?

11 A Not that I can see.

12 Q Does it show your reflection in the scene?

13 A Yes, it does.

14 Q I'll show you a photograph labeled
15 Defendant's Exhibit 7(E) and ask you what does that
16 show.

17 A I believe this is the front side on the
18 lefthand side of where the bumper has not yet been
19 replaced.

20 Q Is that going to show the front right or
21 front left?

22 A It's the passenger side, the left.

23 Q It's the passenger side, so that would be
24 the right?

25 A It would be the lefthand side, the

1 passenger side. Wait, no, the right. I don't know.
2 Depending on my right and left. Yes, I'm sorry. It's
3 the right.

4 Q All right. It's the right side?

5 A I believe.

6 Q Up at the front. But the bumper has not
7 been installed. Is that correct?

8 A Yes, sir.

9 Q Okay. I'll show you a photograph labeled
10 Defendant's Exhibit 7(F) and ask you what does that
11 show.

12 A I believe that's the rear, the right rear.

13 Q Right rear. Does it show any defects?

14 A No.

15 Q Okay. I'll show you a photograph labeled
16 7(G) and ask you what does that show.

17 A That is the front of the car with the
18 bumper missing.

19 Q Okay. We've got photographs here which have
20 been introduced earlier. Have you had occasion to
21 review the photographs which have been introduced as
22 Plaintiff's Exhibit 4(A) through (I)?

23 A I have not.

24 Q You have not?

25 A No, sir.

1 Q Well, will you review them now?

2 A Yes. (Reviewing.)

3 Q All right. Do they appear to be duplicates
4 of photographs that you have in your possession which
5 are up here? Can you tell?

6 A Maybe that. Maybe 4(C).

7 Q All right. I don't like you to say maybe.

8 A I'm not sure.

9 Q Forget it.

10 A Okay. I'm not sure. As far as the majority
11 of them, no, they are different.

12 Q I'm showing you a bunch of photographs here
13 which are 1, 2, 3, 4, 5, 6, 7. What's the source of
14 those photographs? Take off the yellow tag.

15 A These are photographs that were taken by
16 Natasha. I have no --

17 Q Wait a minute. Let's don't stop there.
18 Taken by Natasha when?

19 A I have no idea when.

20 Q You don't have any idea when?

21 A No, sir.

22 Q All right. But you know they were taken by
23 Natasha?

24 A Yes.

25 Q How do you know that?

1 A She submitted them to us at the deposition
2 stating that that was what she had taken and also
3 that's herself in the reflection.

4 Q All right. Go ahead.

5 A I have no idea when these were taken. The
6 reason being is I do photography as a --

7 Q Wait a minute. Wait a minute. Wait a
8 minute. One of those pictures -- you say they were in
9 Natasha's deposition, is that what you said?

10 A She claimed that she had pictures of the
11 car in her deposition. That was the first time I
12 heard of them. And she brought them out during the
13 deposition.

14 Q All right. Okay.

15 A And that was the second deposition.

16 Q The second deposition?

17 A Yes, sir.

18 Q And were the pictures taken on July the
19 15th when she picked up her car?

20 A I knew there were some pictures taken, but
21 none like this.

22 Q All right. What do the pictures show in
23 general before we go into each one?

24 A The pictures show a wrecked car, a wrecked
25 car and a dirty car. The reason why I indicate a

1 dirty car is because we always wash the cars before
2 we release them back to the owner.

3 Q So you are telling us these were not
4 pictures that were taken, at least some of them --
5 can you identify which ones weren't taken on the
6 15th?

7 A To be honest with you, I can't. None of
8 these. I was just looking back through them. I don't
9 know of any -- I don't have any recollections of
10 these pictures being taken while we were there.

11 MR. FRANK PLAXCO: What exhibit are we
12 looking at?

13 THE COURT: What exhibit are you talking
14 about?

15 MR. GADDY: Well, the point is --

16 THE COURT: No, no. What's the number on
17 it?

18 MR. GADDY: It's not numbered.

19 THE COURT: They are not numbered?

20 MR. GADDY: No, it's pictures that came in
21 her possession which she got from --

22 MR. FRANK PLAXCO: I object to ---

23 THE WITNESS: During the deposition.

24 MR. FRANK PLAXCO: --- the examination on
25 an unnumbered thing that I don't know, I've

1 never seen.

2 THE COURT: All right. I'm sorry. One
3 second. Let's go off the record.

4 (WHEREUPON, the Court goes off the record.)

5 (WHEREUPON, Defendant's Exhibit 8(A) through 8(J)
6 are marked and admitted into the record.)

7 BY MR. GADDY:

8 Q Now, I'm going to show you some photographs
9 which have been labeled Defendant's Exhibit 8(A)
10 through (J). They've been marked for identification
11 so we can talk about them. What is the source of
12 those photographs?

13 A You mean who took them?

14 Q I want to know how you got them.

15 A They were handed over by Natasha Turner in
16 a deposition.

17 Q All right. It's your understanding that she
18 took them?

19 A Yes.

20 Q All right. I want you to take a look at
21 Defendant's Exhibit 8 by way of identification and
22 tell us if that, those pictures show the condition of
23 her car when she took it away from Buddy's Garage on
24 July the 15th?

25 A No.

1 Q Okay. Now, tell us why it doesn't.
2 MR. FRANK PLAXCO: We're looking at what?
3 8(A)?
4 THE WITNESS: Primarily --
5 MR. FRANK PLAXCO: What are we looking at
6 Cliff?
7 THE COURT: What are --
8 MR. GADDY: Keep going.
9 THE COURT: Picture are you looking at?
10 THE WITNESS: I'm looking at 8(D).
11 THE COURT: Okay. So from here on out, if
12 you see a difference in response to his
13 question, if you see a difference, will you say
14 on 8(A) or whatever, here is what I see? Then,
15 that way, we'll know exactly which one we're
16 talking about.
17 THE WITNESS: Okay. 8(D), there are
18 scratch marks on there. I was not aware of them.
19 In my pictures, they don't indicate scratch
20 marks.
21 BY MR. GADDY:
22 Q How about doing something better? You were
23 there at the time?
24 A Yes.
25 Q Were there scratches on the car when it

1 left?

2 A No, sir.

3 Q So those photographs were taken another
4 time?

5 A That's my belief.

6 Q How about telling the Court that?

7 A That's my belief that these photos were
8 taken a different time.

9 Q All right. Keep going.

10 A This is the front end that was smashed in
11 over above the bumper. The bumper appears on this
12 picture.

13 Q What's the number of the picture?

14 A I'm sorry, 8(C).

15 Q Okay. Go ahead.

16 A This here, I guess, is the rear, somewhere
17 in the rear. Again, this is 8(B). The car was
18 extremely dirty and so was the tire. Like I said, we
19 wash the cars before we release them. So this is a
20 picture. I don't recognize the car looking like that
21 when it left the lot.

22 Q Was that a picture of the car when it left
23 Buddy's on July the 15th?

24 A No, not that I'm aware of, no, sir. And
25 then this one, I have no idea. I guess these -- I

1 don't know when these were taken.

2 Q Identify it for the Court.

3 A 8(A), 8(J), 8(I), 8(H), 8(G), 8(F) and
4 8(E), I have no idea.

5 Q Any dates on the pictures?

6 A There's no dates on the pictures
7 whatsoever.

8 Q So you don't know when they were taken?

9 A Exactly. Don't know when they were taken.

10 Q All right. Now, directing your attention
11 over to this estimate from Buddy's Garage, which is
12 Defendant's Exhibit 1 blown up and also otherwise.
13 It's got this phrase down there, I see nothing else
14 wrong with it. And it's got a signature which appears
15 to be Natasha Turner. Were you present when that line
16 was written onto the exhibit?

17 A Yes.

18 Q And when was it?

19 A The day that she picked up the car.

20 Q Now, you are telling us that Natasha Turner
21 wrote I see nothing else wrong with it on the day she
22 picked up the car?

23 A Yes, sir.

24 Q And you heard her testimony and it was done
25 in the presence of Mike Fincham at another time?

1 A Yes, sir. I heard that. But that's not
2 correct.

3 Q Okay. After you learned that Fincham was
4 ordering parts, which you had to pay for but were not
5 charged to customers, what action did you take, if
6 any?

7 A I fired him.

8 Q Okay. Now, let's go over to this
9 transmission that is listed up here on the estimate
10 for Buddy's Garage. It's got \$1000 for cost. It looks
11 like it's \$552.50 for labor. You aware of that?

12 A Yes.

13 Q You can see it?

14 A Yes.

15 Q Yes? What information can you give the
16 court about that transmission?

17 A I saw the transmission. It was brought in.
18 Mike Fincham actually went and picked it up in his
19 pick-up truck. It came in on a wooden pallet. It was
20 sitting outside the bay of where her car, Natasha
21 Turner's car was located. And he had indicated that
22 he finally found the transmission. It was up in North
23 Carolina.

24 Q Okay. So you've heard the testimony by Mr.
25 Stanstell?

1 **A** Yes.

2 **Q** Okay. Could this be -- we don't know for
3 certain. Could this be an example of a part that was
4 charged for but not installed?

5 **A** I wasn't there when he was actually
6 installing the part. I saw the part with my own eyes.
7 I walked over and looked at it.

8 **MR. GADDY:** Okay. Just a minute, Judge.

9 **THE COURT:** Yes, sir.

10 **BY MR. GADDY:**

11 **Q** You have any reason to believe that the
12 information that Natasha has testified to today about
13 going to a place in Greer to get the bumper is
14 correct or incorrect?

15 **A** It's incorrect.

16 **Q** Why do you think so?

17 **A** Mike Fincham was in possession of the
18 bumper and he lived in our rental house in Pelzer.

19 **MR. GADDY:** Okay. That's all the questions
20 I have.

21 **THE COURT:** All right. Yes, sir.

22 **MR. FRANK PLAXCO:** Thank you, Your Honor.
23 Still reserving our objections.

24 **THE COURT:** Certainly.

25 **CROSS EXAMINATION**

1 BY MR. FRANK PLAXCO:

2 Q Mrs. Kellett, if a customer came into
3 Buddy's Garage, who would he deal with in 19 -- in
4 2013, July?

5 A Mike Kellett. I'm sorry. Michael Fincham.

6 Q Michael Fincham?

7 A Uh-huh.

8 Q You were not there?

9 A I was there -- not all the time, no. I
10 would go in and out.

11 Q You almost never had any contact with
12 customers. That's what you testified to and that's
13 the truth.

14 A Right.

15 Q Isn't it?

16 A Well, for the most part. There was some
17 contact with customers, yes, sir.

18 Q Very little. Did you ever have any contact
19 with Natasha Turner before --

20 A Not until the end.

21 Q -- before you called and said your car is
22 ready to be picked up?

23 A Not until the end.

24 Q Never met her until then?

25 A No, sir.

1 Q All right. Now, assuming that what she says
2 is correct, I'm not asking you to accept it, but
3 assuming that she received the car with no replaced
4 transmission, she received the car with no replaced
5 rear bumper, she received the car that was not
6 repaired as it was supposed to be, just assuming that
7 for purposes of this question. What should Natasha
8 Turner have done when she brought the car in for
9 repair that she didn't do? Or what should she have
10 done during the 67 days before you called and said
11 it's ready to be picked up? What could she have done
12 to --

13 MR. GADDY: Your Honor, I object to the
14 form of the question.

15 MR. FRANK PLAXCO: Can you think of
16 anything that she --

17 THE COURT: Mr. Plaxco, hold on just one
18 second. He's objecting.

19 Yes, sir.

20 MR. GADDY: Your Honor, I object to the
21 form of that question for two reasons.

22 THE COURT: All right.

23 MR. GADDY: One is it imposes all these
24 assumptions, which are conjectural. Secondly,
25 the, uh, question is the form of a narrative

1 instead of a question. So I object to it on two
2 reasons.

3 **THE COURT:** All right. I'm going -- I'm
4 going to allow her just to answer what she
5 should have done if --

6 **THE WITNESS:** I have no idea. I didn't
7 know what her financial circumstances were. I
8 didn't know what other car availability she had.
9 We kept her informed as Mike would call me and
10 say, couldn't find a transmission and this.

11 **BY MR. FRANK PLAXCO:**

12 **Q** Who kept her informed?

13 **A** Michael Fincham.

14 **Q** Okay. And you are saying that because you
15 had not you heard him inform her, but because he told
16 you he kept her informed, right?

17 **A** Yes.

18 **Q** Okay. So it's not your testimony that he
19 kept her informed. It's your testimony that he told
20 you he kept her informed, right?

21 **A** And I had no reason to believe anything
22 different.

23 **Q** Now, when the car was first brought in and
24 the work order or estimate was prepared, it said that
25 it was to remove and replace the transmission and to

1 remove and replace the front and rear bumper
2 assemblies, didn't it?

3 A Yes.

4 Q Okay. Did it say anything about the damage
5 to the sides, to the body of the car?

6 A Nothing.

7 Q So you assume there was no damage, is that
8 a fair statement?

9 A And my pictures are indicative of that.

10 Q Okay. Now, at some point in time, it had
11 scratches on the side, didn't it?

12 A Yes, it did. But not when it left my shop.

13 Q And I'm showing you Exhibit 4(G). You see
14 that?

15 A Yes.

16 Q It shows a scratch doesn't it?

17 A Yes. But what it doesn't show, on the back
18 of the picture, is there is stamp dated. A digital
19 picture will have a footprint of when that picture
20 was taken. It does not indicate on the back of this
21 picture when that picture was taken.

22 Q Now, are you an expert on --

23 A Yes, sir. I do -- I do photography on the
24 side.

25 Q Okay. Where are your photographs that you

1 had made in this case?

2 **THE COURT:** There are some photographs
3 here.

4 **BY MR. FRANK PLAXCO:**

5 **Q** These are the ones that you made?

6 **A** Yes, sir.

7 **Q** Okay. And when was that photograph made?

8 **A** 7/15/2013.

9 **Q** Where is that on there? Okay. Is that when
10 it was made or when it was printed?

11 **A** That's when they were actually taken.

12 **Q** Was it taken with a digital camera?

13 **A** Yes, sir.

14 **Q** Okay. Does a cell phone do that also?

15 **A** Yes, sir.

16 **Q** You know that?

17 **A** Yes.

18 **Q** Okay. So you know then that this was not
19 taken with either a cell phone or a digital camera.

20 It was --

21 **A** That was taken with a cell phone. But you
22 have to, when you develop pictures, opt out to have
23 the pictures printed the stamped date on the back of
24 the pictures.

25 **Q** Why don't these have it on it?

1 A Because she apparently opted out not to
2 have the stamp dates on them.

3 Q I see. I see. Well, will you agree that
4 this picture was taken at your place of business?

5 A That one, yes.

6 Q Yes.

7 A It shows another picture of where it's got
8 Buddy's Garage on the side.

9 Q Have any date on the back of it?

10 A Not on that one, no.

11 Q This picture was taken at Buddy's Garage,
12 wasn't it?

13 A That's the one I was indicating earlier.

14 Q Have any date on it? I'm showing you
15 Exhibit 4(A).

16 A No, but it has Buddy's Garage right there.

17 Q That's right. So we know that was taken at
18 Buddy's Garage, don't we?

19 A Right. But my point is those pictures could
20 have been taken at different times because there's no
21 stamped date to verify when those pictures were
22 taken.

23 Q Right. But if there's reliable testimony as
24 to when they were taken, then that's something for
25 the court to consider, isn't it?

1 **A** Not when you can't verify with the date.

2 **Q** All right. So that's your judgement. Now,
3 assuming for purposes of argument that when the car
4 came in, it had no damage on the sides, and assuming
5 for purpose of argument that when she went to pick it
6 up, it had the scratches on the side that that are
7 shown in this photograph, it's photograph 4(G), you
8 see that?

9 **A** I can't agree with --

10 **MR. GADDY:** Your Honor --

11 **MR. FRANK PLAXCO:** I'm not asking you to
12 agree.

13 **THE COURT:** Hold on.

14 **MR. FRANK PLAXCO:** I'm asking you just to
15 assume that.

16 **THE COURT:** Hold on just one second.
17 What's --

18 **MR. GADDY:** I object to Mr. Plaxco's
19 questions when he puts in these assumptions this
20 and assumptions that which are not proper
21 question form.

22 **THE COURT:** Can I just hear what your
23 question is again?

24 **MR. FRANK PLAXCO:** I'm wanting her to
25 assume that the car had no damage on the side

1 when it came in and when she went to pick it up,
2 it had damage on the side. Just for purposes of
3 my next question, I want her to just assume
4 that.

5 **THE COURT:** In this setting, I will allow
6 that question. All right. Go ahead.

7 **BY MR. FRANK PLAXCO:**

8 **Q** Now, if that's true, then it would
9 naturally follow that that damage must have been
10 something that occurred during the 67 days that car -
11 --

12 **A** No, sir.

13 **Q** --- at your place.

14 **A** Because I do not agree when this picture
15 was taken.

16 **Q** All right. So you refuse to assume it?

17 **A** Yes, sir.

18 **Q** And you therefore refuse to answer the
19 question, basically?

20 **A** I'm not refusing to answer the question but
21 I can't assume anything. Number one, I wasn't there.
22 Number two, those pictures are not stamp dated to
23 verify when they were taken. So who's to say where
24 they were taken?

25 **Q** Who is Buddy, Mrs. Kellett?

1 A Buddy was a man who had died of cancer that
2 owned that garage.

3 Q And was he the operator of the garage when
4 y'all bought it?

5 A We never bought the garage. We just rented
6 the building.

7 Q Was he the operator of the business when
8 you bought the business?

9 A We didn't buy his business, but he was
10 operating a business, yes.

11 Q Okay. And so you just continued his name?

12 A No. It was called, uh, Fagan's Garage.

13 Q It wasn't called Buddy's Garage?

14 A No, sir.

15 Q When Natasha brought the car in, it wasn't
16 called Buddy's Garage?

17 A When Natasha brought in the car, yes. It
18 was Buddy's Garage. But we didn't -- when we took
19 over and created a lease with him, we renamed it as
20 Buddy's Garage in his honor.

21 Q Okay. So you chose the name Buddy?

22 A Yes.

23 Q How did you pick that name?

24 A That was his nickname.

25 Q Whose nickname?

1 A Uh, Mr. Fagan's nickname. His name was,
2 like, Horace Fagan.

3 Q The guy you bought the business from?

4 A Well, we leased the garage from him.

5 Q Okay. And somebody walking in the public,
6 like Natasha, she wouldn't know this was Kellett's
7 garage, would she?

8 A Not by Buddy's Garage, no.

9 Q There was nothing on there that said this
10 garage is owned by Mrs. Kellett and Mr. Kellett?

11 A No. But I did have references on the walls
12 as far as charge of labor and storage fees. I would
13 have -- signed the name to them as the manager.

14 Q Yeah, we'll get to storage fees in just a
15 moment. Now, in an answer that you filed in this case
16 prepared by Mr. Pringle, I presume after he concurred
17 with you, you stated the defendant, Fincham, that was
18 your employee, right?

19 A Mike Fincham, yes.

20 Q Acting as agent for you, the defendants,
21 and as part of this ongoing scheme of fraud, theft
22 and deception perpetrated on the defendants, as well
23 as a number of customers, willfully and intentionally
24 retained funds deposited by the plaintiff knowing
25 they rightfully belonged to the plaintiff until the

1 agreed work was done.

2 A I think I was misquoted on that. I would
3 never -- I would --

4 Q Read paragraph 26.

5 A You read it.

6 Q Read it aloud for us please.

7 A Okay. Defendant Fincham acting as agent of
8 the defense as part of his ongoing scheme of fraud,
9 theft and deception perpetrated on the defendants, as
10 well as a number of customers of Buddy's Garage,
11 willfully and intentionally retained the funds
12 deposited by the plaintiff knowing they rightfully
13 belonged to the plaintiff until the agreed work was
14 done. Acting outside the scope of his employment
15 without the knowledge or consent of the defendants,
16 Fincham did not perform the work as agreed and yet
17 maintained said funds for himself.

18 Q Okay.

19 A So --

20 Q Now, was that a true statement?

21 A Not entirely, no.

22 Q Well, it wasn't a true statement, was it,
23 he didn't get the funds, did he?

24 A Yes, sir. He did.

25 Q He did?

1 A Yes, he did because what would happen is --
2 Q Well, let's wait a minute now.
3 A Okay.
4 Q Take it one step at a time.
5 A Sure.
6 Q A check was issued by TitleMax?
7 A Yes.
8 Q And it was made payable to Buddy's Garage?
9 A Yes.
10 Q And you received the check and you put it
11 in Buddy's Garage's account at the bank, didn't you?
12 A Yes,
13 Q And Fincham didn't have check writing
14 authority on that account, did he?
15 A He did not have check writing authority.
16 Q So that money was put in your account under
17 your control and not under Fincham's control, right?
18 A Right.
19 Q Then you received, uh, \$1800 from Geico
20 insurance, didn't you?
21 A Yes.
22 Q And Mr. Fincham had your authority to deal
23 with Geico in requesting that payment, didn't he?
24 A Because he knew what was wrong with the
25 car. I'm not a mechanic.

1. Q So your answer is yes?

2. A Yes.

3. Q And that money also was delivered to
4. Buddy's Garage, wasn't it?

5. A Yes.

6. Q And it went in Buddy's Garage's account?

7. A Yes.

8. Q And it was under your control?

9. A Yes.

10. Q Who got the money?

11. A I got the money but I, in turn, gave him
12. cash for the parts.

13. Q You just answer the question that's asked

14. ---

15. A Yes, okay.

16. Q --- and we'll get along a lot faster. You
17. got the money, right?

18. A Yes.

19. Q When you got the money, did you have some
20. sort of account that you set up a customer ledger or
21. anything which would identify on your financial
22. records that this was Natasha Turner's money or that
23. this was for this particular car?

24. A I would basically go by -- I would go by
25. my deposits and break down who was the customer

1 involved with that deposit and what parts.

2 Q Did you keep a record of the money coming
3 in for a particular job?

4 A Yes.

5 Q You did? A written record?

6 A A written record, no. What I did was I
7 would take the deposit and whatever my printout of
8 the money deposit was, I would put the name down of
9 whose cars we were working on, what type of car and
10 what parts were ordered so, therefore, I could
11 account for the profitability.

12 Q You would put that down on what kind of
13 record?

14 A It would be a printout from the bank and
15 then I would divide it down into each deposit.

16 Q You got bank records that show that this
17 money was identified as Natasha's money for this car.

18 A Natasha's payment.

19 Q You have not produced those records yet in
20 this case.

21 A Right.

22 Q Do you have them in court?

23 A No, I do not.

24 Q Why not?

25 A It just wasn't something I was thinking

1 about. I didn't.

2 Q We asked you for them and you said you
3 didn't have them.

4 A I don't remember that question.

5 Q You don't remember our asking for all
6 documents in this case?

7 A I sure don't.

8 Q And you didn't bring them to court today?

9 A No, I didn't.

10 Q They would be the best evidence of the
11 money that you had in your account, wouldn't they?

12 A I didn't even think about that. Sorry. I
13 guess I was ignorant on that.

14 Q You are a pretty sophisticated business
15 woman, aren't you?

16 A I would hope so.

17 Q You opened a bail bonds business?

18 A Yes.

19 Q Got a college education?

20 MR. GADDY: Your Honor, this line of
21 questioning is getting out of hand. Our
22 documents turned out to be bank records of this
23 -- of this person that deals with her checking
24 account.

25 THE COURT: All right. Well, I think we've

1 established that she doesn't have them here
2 today. One thing I would say is y'all are
3 starting to talk over one another and the Court
4 Reporter can't take down two people talking. So
5 we've established the fact that she doesn't have
6 the bank records with her here today. So let's
7 just move on from that.

8 **BY MR. FRANK PLAXCO:**

9 Q Now, the payments were made when a part was
10 bought. You had accounts with various suppliers.

11 A Yes.

12 Q So I supposed Fincham would say I bought a
13 transmission from the ABC Company.

14 A We didn't have any accounts with the
15 junkyards. The junkyards wanted to be paid up front
16 for any parts.

17 Q Okay. And how did -- who would pay them?

18 A Mike Fincham would.

19 Q And where would he get the money to pay
20 them?

21 A From me.

22 Q And what record do you have of giving him
23 any money to pay for this transmission?

24 A Just the withdrawals from the bank.

25 Q We asked for records ---

1 **A** Well ---

2 **Q** --- showing ---

3 **A** --- you just asked me where did I get them
4 from. I'm telling you withdrawals from the bank.

5 **Q** And you said you didn't have any records.
6 That was your answer. But now you say you do have --

7 **MR. GADDY:** Not all documents pertaining
8 to the case don't refer to bank records.

9 **MR. FRANK PLAXCO:** This has everything to
10 do with the case, Your Honor.

11 **THE COURT:** I'm going to allow him to
12 question her about this. I mean, we're kind of
13 getting caught up in an argument here. But I'm
14 going to allow her answer to question, you know,
15 why she didn't produce these particular records
16 where it showed she made payments to this
17 mechanic. Go ahead.

18 **BY MR. FRANK PLAXCO:**

19 **Q** Do you have any records at all that show
20 the purchase of a transmission?

21 **A** I don't.

22 **Q** Do you have any records at all that show
23 money being given to Mike Fincham to get a
24 transmission?

25 **A** Not here, no, I don't.

1 Q We do know that you didn't have a
2 transmission on hand, don't we?

3 A No, sir. We had one on hand because I saw
4 it with my own two eyes.

5 Q But you said he had to go to North Carolina
6 to get the transmission.

7 A Right. And he came back with it. It sat in
8 the shop until he came back from North Carolina with
9 it.

10 Q But you didn't have one on hand when the
11 car came in?

12 A No, we wouldn't keep --

13 Q Something was going to have to be bought---

14 A We wouldn't keep stuff like that.

15 Q --- for this job, right?

16 A Uh-huh. Right.

17 Q But you don't have any record about it?

18 A My office was flooded back about a year and
19 a half ago. All that paperwork was in a cardboard
20 box. When I told you it was flooded, my ceiling caved
21 in. All the paperwork was jelled together.

22 Q So your answer is no, I don't have any --

23 A Wouldn't be able to supply it to you even
24 now.

25 Q Now, the amount that you received from

1 Natasha, both through her insurance and from the
2 finance company on the loan that she made totaled
3 \$3867.89, didn't it?

4 A Well, that's the estimate. That's not the
5 total amount.

6 Q That's the estimate. I'm sorry. The amount
7 which you received was \$4315.

8 A Yes.

9 Q Wasn't it?

10 A Uh-huh.

11 Q And that's a difference of about \$447,
12 isn't it?

13 A Right.

14 Q So you received \$447 more than the
15 estimate, didn't you?

16 A No. That did not calculate the 10 days of
17 storage, which is indicated here, and did not
18 calculate the paint kit.

19 Q When -- why -- when did you put on a
20 storage charge?

21 A When did I put on the storage charge? When
22 we started getting the parts in, we weren't able to
23 do anything with the car, so it just sat there. And
24 we had indicated to Natasha Turner there was a 2750--

25 Q So if a customer took his car to Buddy's

1 and said I would like some work done, right?

2 A Uh-huh.

3 Q And you said we'll have to get the parts,
4 it will be a few days and he said okay, you charged
5 his storage?

6 A We gave him a few days grace period. It was
7 like a three-day grace period. Then there would start
8 a storage fee. Because one of the problems was she
9 could not get financing. She had to go to TitleMax
10 but she had to wait to get approved. She didn't have
11 the money --

12 Q It took two days, didn't it, between the
13 estimate and the --

14 A I don't know. She didn't come with the
15 money until about two weeks later after the car got
16 there. Yes, sir. I don't know what she did in between
17 that time. I can't account for it.

18 Q Okay. Did you tell her you were going to
19 charge her 250 bucks for storage?

20 A 275.

21 Q Huh?

22 A Yes, I did.

23 Q You told her?

24 A Yes, sir.

25 Q Does that appear any place on this form?

1 A Right here. That is a normal practice in a
2 garage in a shop for storage fees, especially if the
3 car is sitting there and we can't do anything with
4 it.

5 Q Okay. Show me where the 250 is.

6 A It's 275.

7 Q Oh, 275.

8 A Uh-huh.

9 Q And that is not written as one of the line
10 items that's written in the same place as this thing
11 that says refunded and so forth, is it?

12 A Yes.

13 Q That's written in your handwriting, isn't
14 it?

15 A Yes, it is.

16 Q So Mike Fincham didn't write down that
17 there was going to be a storage charge, did he?

18 A Nope, I did.

19 Q After the fact, you wrote it down?

20 A No, sir.

21 Q When did you write it down?

22 A When he was working on that car and we were
23 calculating how many days he was not able to work on
24 it.

25 Q When did you give a copy of this to

1 Natasha?

2 A I know Natasha signed it after I wrote it.

3 Q You think she did?

4 A Yes -- no, I know she did.

5 Q All right.

6 A I know she did because she signed it in

7 front of me.

8 Q Let me ask you this. Okay. It was 275 and

9 you still had the difference between 275 and 447 over

10 and above the estimate, didn't you?

11 A It was the paint kit.

12 Q The paint kit wasn't included?

13 A The paint kit --

14 Q Paint, both bumpers, 260.

15 A Right. That was the labor. That's under

16 labor. That wasn't the paint kit included in that

17 price. If anything, we actually wound up losing a

18 little bit of money.

19 Q So he didn't include the paint kit in the

20 original estimate?

21 A Apparently not.

22 Q But you charged him for it anyway?

23 A Yes, she was made aware of that before she

24 signed that.

25 Q Now, you said that you gave her back two

1 hours of labor?

2 A About two, two and a half hours of labor.

3 It was \$130.

4 Q Okay. And the labor bill was \$65 an hour,

5 wasn't it?

6 A Uh-huh. Yes, sir.

7 Q So how do you -- how many hours is in \$130?

8 A It's two and a half hours, yes.

9 Q Two and a half times 65 is 130?

10 A Yes.

11 Q Try two times 65.

12 A Two times 65. That's two hours.

13 Q Two hours.

14 A Okay. Two hours.

15 Q Okay.

16 A Excuse me.

17 Q Okay. Now, the charge was two and a half

18 hours for putting the bumper on, wasn't it?

19 A I don't know. Let me look.

20 Q Well, look at the bill.

21 A Two hours labor, \$65 per hour, so I was --

22 Q How many hours?

23 A It was two hours that we considered was

24 sufficient to replace one bumper, the front. It was

25 \$65 per hour.

1 Q How much did you charge her for putting the
2 bumper on? Two and a half hours?

3 A Yes.

4 Q But you gave her back two hours. Why did
5 you keep a half hour?

6 A I don't know. I guess it was an error on my
7 part.

8 Q So in the final analysis, I think
9 apparently you feel that Natasha must have had
10 something to do with this dishonest scheme that your
11 employee was engaged in.

12 A Absolutely. Absolutely. Yes, sir.

13 Q Because of that, you're entitled to keep
14 her money. Is that a fair statement?

15 A Nope, I'm not saying that. We did the work.
16 We did the work. We're keeping the mo --

17 Q Why bring in the business about --

18 A Why? Because I wanted to show you how
19 deceitful she can be.

20 Q I see. Now, what part did she have in that?

21 A What part did I have in that?

22 Q Did she have.

23 A Did she have in that? Acknowledging that
24 her boyfriend picked up the car, exchanged money with
25 Mike and that was the deal struck between them two.

1 That's what she said to me --

2 Q She made all those admissions to you?

3 A Yes, sir. She sure did.

4 Q I see.

5 A Absolutely.

6 Q I see. So she admitted that she knew that
7 Mr. Smith was in cahoots with Mr. Fincham?

8 A Yes, because she was angry and she wasn't
9 thinking about what she was saying.

10 Q I see. So you got that figured out too.

11 A Well, that's what I assumed because she did
12 tell me that.

13 Q Now, you said that Natasha had made
14 arrangements with Fincham to put the front bumper on?

15 A Yes.

16 Q And that you know that because she texted
17 that to you, right?

18 A She showed me texts on her phone, which the
19 Judge already said was not admissible, about her and
20 Mike making arrangements. Therefore, that prompted
21 this letter to be written that he had the bumper and
22 the paint kit.

23 Q Well, you testified originally that it was
24 in a text, didn't you?

25 A Right. It was in a text that she had showed

1 me. Those texts that had come in that are in the
2 deposition is acknowledgment.

3 Q Oh, it wasn't in the texts that you were
4 involved in?

5 A It was texts that she had showed me,
6 therefore, prompting this letter.

7 Q I see. I see. Well, let's look at the text
8 communications between the two of your for a minute.
9 I'm referring to Deposition Exhibit 5. This is a
10 communication from you to Natasha, isn't it?

11 A Yes.

12 Q And it says you will need to get a refund
13 from him. Since you spent 250 for a paint kit,
14 Natasha would not have a refund of any type to her.
15 I'm informing her of this also.

16 A That was indicate -- this was a message
17 forwarded to Natasha explaining that Mike had bought
18 the paint kit without my acknowledgment as far as him
19 having it. I still thought it was in the shop. He had
20 the paint kit and he had the bumper. So therefore, my
21 conclusion was, after I'd seen the texts that she had
22 shown me, that they had made prior arrangements for
23 him to install that bumper because he was no longer
24 at the shop as of July 13th.

25 Q There's nothing in that text that would

1 suggest that she had made any kind of deal with Mike
2 to do this work --

3 A Not this text, no, sir.

4 Q And then you said, you told her how to get
5 in touch with Mike?

6 A Yes.

7 Q You told her he had the parts?

8 A Yes.

9 Q If you told her he had the parts, she must
10 not have known that until you told her.

11 A She indicated to me via text that she had
12 been in touch with Michael or Mike Fincham about the
13 parts.

14 Q But you don't have that text?

15 A I don't have the text because I didn't have
16 the phone. My phone was stolen.

17 Q Okay. But you got these texts here, haven't
18 you?

19 A I didn't provide those texts.

20 Q Okay.

21 A Natasha did.

22 Q Okay. And then you said to her we don't
23 have the supplies or parts. Either Mike can do the
24 work or he can reimburse you for the labor. That
25 doesn't suggest that she made a deal with him, does

1 it?

2 A Yes, it does. Yes, it does. She indicated
3 that Mike was going to do it but he was living in
4 Pelzer at that time. She didn't know if she wanted to
5 drive all the way down to Pelzer to get the work
6 done.

7 Q Natasha answered you and said I paid your
8 shop for the labor.

9 A Which we reimbursed.

10 Q You reimbursed for the labor?

11 A Minus the .5 hours.

12 Q I want someone else to -- I want someone
13 else to do it. I was picking up the bumper because it
14 took so long. I paid your shop for labor. I want
15 someone else to do it. I was picking up the bumper
16 because it took so long to get it. But you already
17 charged me labor for work you never did. That's what
18 she wrote to you, wasn't it?

19 A Right. But it goes back to the part of
20 where her and Mike had a deal where he was going to
21 install that bumper. She didn't want to drive down to
22 the Pelzer to get that bumper installed. I said that
23 was between him and her about getting the parts and
24 getting the paint kit or getting the money because he
25 had it in his possession.

1 **Q** Mrs. Kellett, if you would, try to listen
2 to the question.

3 **A** Okay.

4 **Q** And just answer ---

5 **A** I will try to answer it.

6 **Q** --- the question instead of explaining your
7 drift on things, we'll get along a lot faster.

8 **MR. GADDY:** I object to his question. He's
9 harassing the witness. She's --

10 **MR. FRANK PLAXCO:** That wasn't my question.

11 **THE WITNESS:** I feel like I'm being
12 badgered.

13 **THE COURT:** Hold on. We presently have
14 three people talking. We've got to stop. Let's
15 all just calm down for a moment here.

16 Ma'am, if you will, answer the questions
17 yes or no and then you can explain. Absolutely.
18 But if you'll answer the question that he asks--

19 **THE WITNESS:** But if it's something that I
20 don't agree with.

21 **THE COURT:** Then you can -- if it's
22 something you don't agree with, then you can
23 answer no.

24 **THE WITNESS:** Okay.

25 **THE COURT:** And I will definitely give you

1 an opportunity to explain your answer.

2 THE WITNESS: Okay.

3 THE COURT: Okay. All right. Yes, sir.

4 BY MR. FRANK PLAXCO:

5 Q Now, Mrs. Kellett, you do not, in fact,
6 know that the transmission was replaced, do you?

7 A I do not.

8 Q All you know is that Mike Fincham told you
9 it was replaced. That's all you know, right?

10 A All I know is that I saw the transmission
11 for that --

12 Q You saw a transmission at your shop?

13 A I saw the transmission for the Lancer
14 because that was the only car, at that time, that
15 needed a new transmission.

16 Q You saw a transmission there?

17 A Yes, sir.

18 Q And you heard something from Mike Fincham,
19 which was hearsay.

20 A He told me that was for the Lancer.

21 Q Whatever he told you, he's not here in
22 court.

23 A Yes, sir.

24 Q Did you call him as a witness today?

25 A No, I did not.

1 Q And when Natasha brought up the point about
2 the rear bumper, you said you're getting
3 oversensitive here, didn't you? You remember that?

4 A I don't remember that conversation at all.

5 Q You don't remember that at all?

6 A No, sir.

7 Q Okay. I don't think I have anything
8 further. Thank you.

9 THE COURT: Thank you.

10 Mr. Gaddy, anything else?

11 **REDIRECT EXAMINATION**

12 BY MR. GADDY:

13 Q Mr. Plaxco brought out that Mr. Fincham was
14 not called as a witness. Can you explain that?

15 A Can't locate him.

16 Q Can't locate him?

17 A No, sir.

18 Q Okay. Now, directing your attention over to
19 the pictures that were taken by the witness whose
20 name is Chip Stanstell, we've got between six and
21 eight photographs and copies of photographs which
22 show the underside of the car in the area of the
23 transmission. You agree?

24 A I guess. I would imagine it's under --

25 Q Well, my question to you is do those

1 pictures show a cleaned off area free of grime and
2 dirt?

3 A No, that doesn't, to me.

4 Q I can't tell what your answer is.

5 A I don't know -- I'm not exactly sure. I
6 don't know how to interpret these pictures. I'm not a
7 mechanic.

8 Q Your answer is you don't know?

9 A Yes, I don't know.

10 Q All right. We'll go to something else. If
11 your employee had ordered parts which are charged to
12 Buddy's Garage and he disposed of them other than
13 putting them on cars which were being repaired, was
14 that conduct you approved of?

15 A No, sir.

16 Q If this transmission that you saw that
17 Trencham had gotten from a junkyard in North Carolina
18 that you said you saw, if that did not go into the
19 Turner car, would that have been within the scope of
20 his employment?

21 A No, sir.

22 Q You're not condoning that in any way?

23 A No, sir.

24 Q Okay. That's all the questions I have.

25 MR. FRANK PLAXCO: Just a follow-up ---

1 THE COURT: Certainly.

2 MR. FRANK PLAXCO: --- on one point, Your
3 Honor.

4 THE COURT: Yes, sir.

5 RECROSS EXAMINATION

6 BY MR. FRANK PLAXCO:

7 Q In other cases, you have become aware that
8 Mike Fincham was getting parts and not putting them
9 in cars?

10 A Not to the very end when I got a bill, my
11 final bill from the auto parts stores.

12 Q At that point, you found that out?

13 A Yes, sir.

14 Q And you don't know how long it had been
15 going on?

16 A It couldn't have been going on long because
17 we were billed every 30 days.

18 Q Ma'am?

19 A It couldn't have gone on long because we
20 were billed every 30 days.

21 Q When was it that, uh, there was this
22 Pontiac and this other car that you reported to the
23 sheriff's office?

24 A I'm not exactly sure of the date.

25 Q Give me your best guess.

1 A I don't know. I couldn't give you a date
2 for that.

3 Q Does the incident report show the date?

4 A (Reviewing.)

5 Q July 9.

6 A Which we wouldn't have gotten a bill at the
7 time for that yet.

8 Q Okay. So you reported this thing on July 9.
9 When was it that Natasha picked up her car?

10 A July 15th.

11 Q July 15th. How do you know that this
12 transmission that you saw in the shop, which you
13 assumed was bought for Natasha's car, wasn't taken by
14 Mike to some other place as a part of his rip-off?
15 How do you know that?

16 A I have no way of knowing that.

17 Q You don't know that?

18 A I didn't question him until the end with
19 the theft of the cars. That's when things started
20 adding up.

21 Q So if Mr. Sanford that testified this
22 morning, Rick Sanford, that that car still had the
23 original transmission in it.

24 A Stanstell.

25 Q If he was knowledgeable in this area and he

1 was testifying truthfully, then somebody must have
2 done something ---

3 MR. GADDY: I object to this question.

4 MR. FRANK PLAXCO: --- with this
5 transmission ---

6 MR. GADDY: He's putting facts in evidence
7 --

8 MR. FRANK PLAXCO: --- would have been --

9 THE COURT: Hold on. Wait one second. Uh,
10 if your question -- let me hear your question.

11 MR. FRANK PLAXCO: If Mr. Sanford's
12 testimony is to be believed that the
13 transmission in this car when he looked at it
14 was the original transmission and not a
15 replacement one, if that's to be believed, then
16 something else must have been done with that
17 transmission you saw in the shop, right?

18 THE COURT: I'll allow her to answer that
19 question if she knows.

20 THE WITNESS: I have no idea. I have no
21 idea. I know I was told that there was a
22 transmission ordered for her car and --

23 BY MR. FRANK PLAXCO:

24 Q I'm not asking ---

25 A Okay. But I have no idea.

1 Q --- what he told you.

2 A I have no idea.

3 Q I'm asking what you know.

4 A I have no idea.

5 Q You have no idea? You don't know?

6 MR. GADDY: I object to those questions.

7 THE COURT: All right. And I understand. I

8 think it's time to move on from that. All right.

9 MR. FRANK PLAXCO: Thank you, ma'am.

10 Nothing further.

11 THE COURT: Anything else?

12 MR. FRANK PLAXCO: Nothing further.

13 THE COURT: All right. Ma'am, you can step

14 down.

15 MR. GADDY: The defense rests.

16 THE COURT: All right then. Anything else?

17 MR. GADDY: Not from the defendant.

18 THE COURT: All right.

19 MR. GADDY: I do want to make a motion.

20 THE COURT: All right. And your motions

21 are noted for the record. Is there anything

22 additional you needed to add to your arguments?

23 MR. GADDY: About one minute worth.

24 THE COURT: Certainly.

25 MR. GADDY: This thing, we call it Black

1 Letter Law, on the principle concerning damages,
2 if an owner retains goods, the measure of -- and
3 the issue is whether or not -- what is the
4 damage for defective goods or defective
5 vehicles. If the goods are retained, the measure
6 of actual damages is the difference between the
7 value the purchaser would have received if the
8 facts were as represented and the value the
9 purchaser actually received. My contention is
10 that the evidence does not show that this
11 plaintiff received anything else, even if she --
12 even if the court finds that the transmission
13 was not replaced, they've produced no evidence
14 to show what their loss was. In other words,
15 they've not shown what the value is if the --
16 the value the purchaser actually received.
17 That's my point.

18 **THE COURT:** All right. Yes, sir.

19 **MR. FRANK PLAXCO:** The value presumably
20 would be the value of the car in its right
21 condition plus the cost to repair. Now, it's
22 interesting that when you add those two numbers
23 and you take the testimony of the TitleMax man
24 who said the wholesale value on the car and the
25 condition when they made the loan was 3200 and

1 you add \$4000 in repairs, then you are at 7200.
2 Wholesale.

3 The testimony of Natasha is that it was
4 worth 6500. The testimony is quite clear on
5 those points, Your Honor, and quite convincing.
6 It can not be denied that as a result of the
7 fact that the car was in a condition that it was
8 not capable of any sort of continuous driving
9 and could not be used by Natasha and she had
10 been in debt by this finance company and she
11 lost the car. I think that's the actual measure
12 of damages. You can add some fringe things which
13 are available in a tort case like the loss of
14 use for a period of time and like four days of
15 pay that she missed while she worked on all
16 this, which I consider to be sort of soft
17 damages, off the record. But I think that 7000
18 or 6500 is a hard figure. I would respectfully
19 submit that that really is just the beginning of
20 the damages that should be awarded in this case.

21 In 60 years of practice, I have seen only
22 one case more deserving of punitive damages than
23 this one.

24 **THE COURT:** All right.

25 **MR. FRANK PLAXCO:** And these should be

1 substantial. And people who do the kinds of
2 things that were done here should be held up as
3 an example of what you should not do when you
4 run an automobile business.

5 **THE COURT:** All right.

6 **MR. GADDY:** Your Honor, there's not one
7 iota of evidence before you that shows what it
8 would cost to repair that car in Natasha's
9 hands. Also, the evidence is clear that she
10 drove it. Her daughter drove it constantly. She
11 was arrested for speeding two days after she got
12 it from the garage.

13 **MR. FRANK PLAXCO:** Your Honor, in fact,
14 there is evidence on that. There is Mike's
15 estimate, which was offered by Mr. Gaddy
16 himself, which showed that the car needed \$1500
17 in additional body work. There's the testimony
18 of Mr. Sanford that the car needed a
19 transmission. You add those two things together
20 and you've got at least \$2500 that was not ever
21 done. These people should not be allowed to do
22 this to customers.

23 **THE COURT:** All right. Well, I will say
24 this, for purposes of the standard of a nonsuit,
25 just any evidence, it certainly meets that. Now,

1 does it meet preponderance of the evidence, I
2 need to -- that's going to be the ultimate
3 decision of the case. I'm going to take that
4 under consideration. Anything either -- either
5 of the attorneys want to say to some things? You
6 don't have to.

7 **MR. GADDY:** Nothing from the defendant.

8 **MR. JOSEPH PLAXCO:** Nothing from the
9 plaintiff, Your Honor.

10 **THE COURT:** All right. Well, I appreciate
11 -- I appreciate, uh, you all, uh, being so
12 thorough with trying this case. And I am going
13 to take this matter under advisement. I want to
14 look at the things that you've given me. I want
15 to look at the evidence that's been presented. I
16 want to do a little legal research as well. I do
17 not have very many matters under advisement. I
18 tell you that to say I would anticipate issuing
19 a decision in this case within the next couple
20 of weeks. I say that -- I'm not necessarily
21 saying that to the attorneys. I'm saying that to
22 the clients, because don't call your attorney
23 before Thanksgiving about whether or not he's
24 heard from me because he had not, probably.

25 **MR. FRANK PLAXCO:** There used to be a

1 judge, he was from McClellan Field and I tried a
2 nonjury case down in Georgetown and he took it
3 under -- it was a pretty important case. He took
4 it under advisement after about three months.
5 He finally called and said, has the judge told
6 you to draw an order. I said no. He said what
7 are they going to do. Waited another month.
8 Finally called the judge. He said, yeah, I'm
9 going to get it out. About six weeks later, we
10 got the order. What he did was declare a
11 mistrial.

12 THE COURT: Oh, no. Well, I --

13 MR. GADDY: Your Honor?

14 THE COURT: Yes, sir.

15 MR. GADDY: I want to say in front of this
16 courtroom that you're gracious at all times and
17 create goodwill among everybody.

18 THE COURT: Well, thank you. I appreciate
19 your saying that. I have enjoyed being with you
20 all today. Again, I, uh, -- I really do
21 anticipate that I'll issue a decision, you know,
22 fairly shortly but I just didn't want you -- I
23 know from when I practiced law, one of the worst
24 feelings in the world was when my client would
25 call me a lot to ask me if the judge had made a

1 decision yet.

2 You've got outstanding attorneys. They are
3 going to let you know as soon as they are able
4 to about it. All right.

5 Thank y'all and I hope you all have a good
6 Thanksgiving.

7 **MR. FRANK PLAXCO:** Thank you.

8 **THE COURT:** Thank you.

9

10 **(WHEREUPON, the proceedings conclude at**
11 **approximately 3:38 p.m.)**

12

CERTIFICATE

205

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

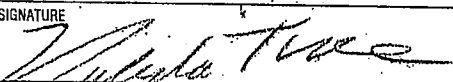
I, the undersigned, Teresa B. Johnson, Official Court Reporter for the Thirteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of all the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of Common Pleas for Greenville, South Carolina, on this 15th day of September, 2016.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

Teresa B. Johnson

Official Court Reporter

NAME Natasha Turner	BUS. PHONE 582-1216	EXT. 1243	HOME PHONE 607-1115	DATE IN 5-8-13	AM. P.M.	DATE PROMISED 5-8-13	AM. P.M.	LICENSE NO. GVH 686	1222
ADDRESS 108 Hodgins DR.			SERIAL NO./V.I.N. J43A326E46U06828	MILEAGE 15805		YEAR, MAKE AND MODEL 06 Mits Lancer Sc		CUSTOMER'S ORDER NO.	
CITY TR	STATE SC	ZIP 29690	CALL WITH EST. ☒ YES ☐ NO	CALL WHEN READY ☒ YES ☐ NO	ORDER WRITTEN BY Mike		COLOR GRAY		

SERVICES REQUESTED/DESCRIPTION OF WORK	AMOUNT	QTY	PART NO. AND DESCRIPTION (All parts new unless otherwise specified)	AMOUNT
R&R Trans	8.5	552.50	1 Trans Ass. (22,000 mtrs)	1000.00
R&R Front bumper Assembly	2.5	162.50	1 Bumper Cover (Front)	283.10
R&R Rear bumper Assembly	2.5	162.50	1 (Rear) Bumper Cover	195.50
Paint both bumpers		260.00	1 Bumper Rein. Socc. beam (Front)	395.00
			1 bumper Rein. Socc. beam (Rear)	305.20
			1 LF Support	20.10
			1 R+ Support	20.10
			1 battery	124.50
TOTAL LABOR		1137.50		
We recommend the following services:				
C.R. I see nothing else wrong with				
Tow				
ESTIMATED COSTS		PAID BY		TOTAL PARTS
PARTS \$	LABOR \$	TOTAL \$	☐ CASH ☐ CHECK ☐ CREDIT CARD MC VISA ☒ AMEX	2511.49
REVISED ESTIMATE			CC NUMBER	TOTAL LABOR
PARTS \$	LABOR \$	TOTAL \$	EXP.	1137.50
AUTHORIZED BY			ACCOUNT	GAS, OIL AND GREASE
DATE/TIME			TERMS	42.00
☐ IN PERSON ☐ BY PHONE			EPA / WASTE DISPOSAL	
 BUDDYS GARAGE 380 Tigerville Rd. Travelers Rest, SC 29690 864-834-9111 834-4420			I hereby authorize the above repair work to be done along with the necessary materials. You and your employees may operate vehicle for purposes of testing, inspection, or delivery at my risk. An express mechanics lien is acknowledged on above vehicle to secure the amount of repairs thereto. It is understood that you will not be held responsible for loss or damage to vehicle or articles left in vehicle in case of fire, theft or any other cause beyond your control.	
1222			TAX	
SIGNATURE			TAX	
			218.50	
SAVE OLD PARTS			TOTAL	
☐ YES ☐ NO			3867.89	

TITLEMAX OF BEREA, SC #1 Loan Account 1607205566 2 FARM ROAD GREENVILLE, SC 29611 (864) 503-1999		5/14/2013
PAY TO THE ORDER OF BUDDY'S GARAGE		\$ **2,500.00
Two Thousand Five Hundred and 00/100 ***** DOLLARS		
MEMO: CHECK FOR ACCT #24760212 VIN:JA3AJ26E46068284		

1607205566 106111341500051464286454

TITLEMAX OF BEREA, SC #1 Date 5/14/2013 Account	Memo CHECK FOR ACCT #24760212 VIN:JA3AJ26E46068284 Payee BUDDY'S GARAGE	1607205566 Payment \$2,500.00
--	--	-------------------------------------

TITLEMAX OF BEREA, SC #1 Date 5/14/2013 Account	Memo CHECK FOR ACCT #24760212 VIN:JA3AJ26E46068284 Payee BUDDY'S GARAGE	1607205566 Payment \$2,500.00
--	--	-------------------------------------

157014-165130 Kikindva

060646Z141357500000 111700 Davis

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[illegible][illegible]

EXHIBIT C

MICHAEL KELLETT
P.O. BOX 5511
GREENVILLE, SC 29606

2627
67-7927/2532

7-15-13

Pay to the order of NATASHA TURNER \$ 150.00

ONE HUNDRED FIFTY DOLLARS NO/100

 **S.C. TELCO**
FEDERAL CREDIT UNION
Greenville, SC 29601

Ref: Refund on car repairs for Kellett

⑆253279277⑆ ⑆000000052726⑆ 2627

STATE OF SOUTH CAROLINA)

2013CV2310901360

COUNTY OF GREENVILLE)

CIVIL CASE NUMBER

IN THE MAGISTRATE'S COURT

ANSWER

Nataria Turner
 108 Hodgson Drive
 Travelers Rest, SC 29690
 (864) 907-1115

** Jury Trial Requested*

PLAINTIFF(S)

Vs

Buddis
 Garape/Carmen and
 Michael Kellert
 380 Tigerville Road
 Travelers Rest, SC
 29690

DEFENDANT(S)

On _____ I was served with a Complaint requiring me to answer within thirty days from the date of service. My Answer, which is hereby filed with the **Greenville County Summary Court**, is as follows:

CHECK ONE:

A. ☐ I contest the jurisdiction of the court based on the following: (use additional pages if necessary)

B. ☐ I admit everything in the complaint and do not want a trial.

C. ☒ I admit that I am responsible, but not for the total amount claimed by the Plaintiff(s) because: (use additional pages if necessary) *An employee of Defendant perpetrated fraud case theft against Plaintiff/customer's claim is within the scope. GCSO is currently investigating him for charges.*

D. ☐ I deny that I am responsible at all because: (use additional pages if necessary)

YOU MUST FILE THIS DOCUMENT WITH THE COURT WITHIN THIRTY DAYS

THE DEFENDANT/PLAINTIFF STATES THAT THE INFORMATION CONTAINED IN THIS ANSWER IS TRUE AND CORRECT TO THE BEST OF HIS/HER KNOWLEDGE.

DATE: 10/3/13

SIGNATURE OF DEFENDANT(S) (OR ATTORNEY)

Kerry A. Pringle, Attorney at Law

114 White H St
 Greenville SC 29601

IF MORE THAN ONE DEFENDANT, ALL MUST FILE ANSWER

PLEASE RETURN TO:

Bates Township Summary Court
 114 North Poinsett Hwy,
 Travelers Rest, SC 29690

MV2

Carmen Kellett
March 17, 2015

Page 4

1 (EXHIBIT NUMBERS 1-6 MARKED; ATTACHED)

2 CARMEN KELLETT, having first been duly sworn to
3 tell the truth, testified as follows:

4 EXAMINATION

5 BY MR. PLAXCO:

6 Q. Hi, Ms. Kellett. My name is Joseph Plaxco. I
7 represent Natasha Turner, who is not here right
8 now, but will be later. She's having her
9 deposition taken. I've got a series of questions
10 that I'd like to ask you today.

11 A. Uh-huh.

12 Q. And just before we get started, just a quick
13 introduction. The court reporter here will be
14 taking everything down, and writing everything down
15 that you state. For that purpose, as I said, I'll
16 be asking you a series of questions. And it's
17 important to remember that you must give a verbal
18 yes or no or full sentence answer. She cannot
19 accept or record nods of the head or huh-uhs, uh-
20 huhs, that sort of thing. If you have any
21 questions whatsoever from me, if you don't
22 understand a question, please let me know and I'll
23 do my best to rephrase it so that it's something
24 that you understand and can answer.

25 A. Okay.

Natasha Turner v. Carmen Kellett and Michael T. Kellett

- 1 Q. Something I ask everybody before I take a
2 deposition, nothing personal, I just want to make
3 sure that -- are you on any medications or any
4 alcohol that would impair your ability to answer
5 the questions that I'm going to ask?
- 6 A. None.
- 7 Q. You just stated for the court reporter that your
8 name is Carmen Kellett. Ms. Kellett, can you give
9 me your date of birth, please?
- 10 A. 12/14 of '66.
- 11 Q. And where were you born?
- 12 A. Yonkers, New York.
- 13 Q. What is your educational history? I guess what is
14 the farthest that you went in --
- 15 A. Second year of college.
- 16 Q. And what is your current employment?
- 17 A. I'm a bail bondsman.
- 18 Q. And do you own your own company?
- 19 A. Yes.
- 20 Q. What is the name of that company?
- 21 A. All Around Bail Bonds.
- 22 Q. And how long have you owned All Around Bail Bonds?
- 23 A. A little bit over a year.
- 24 Q. Do you have any other current employers right now?
- 25 A. I just run a sobriety living house.

- 1 Q. I know that you said that the bail bondsman
2 business has been going on for about a year. What
3 are your other places of employment within the past
4 five years before that?
- 5 A. I owned Buddy's Garage. I ran Buddy's Garage, and
6 I ran, with my husband, Bail Out Bonding.
- 7 Q. And I was going to ask this later, but you've
8 already touched on it. From when to when did you
9 own Buddy's Garage, approximately?
- 10 A. It was three years. So it was -- I know it started
11 in May. Let me think. I don't remember. I'm
12 sorry; I really don't remember. It was three
13 years.
- 14 Q. Do you by any chance remember maybe the year? Or
15 it might help you out -- when did you close?
- 16 A. It was July of 20 -- let me see, what -- 2013, so
17 probably 2010.
- 18 Q. So you owned it for approximately three years?
- 19 A. Uh-huh. Yes.
- 20 Q. And again, this is another question that I always
21 ask, nothing personal, again. But do you have any
22 criminal history or --
- 23 A. None.
- 24 Q. -- any kind of record or report? And All-Around
25 Bail Bonds, is that the only bond business that

1 you've owned other than the one that you said that
2 you operated with your husband prior?
3 A. That's it.
4 Q. Any other businesses that we haven't talked about
5 that you have owned or had an interest in in the
6 past five years?
7 A. None.
8 Q. Ms. Kelley, what --
9 A. It's Kellett.
10 Q. Ms. Kellett, I apologize.
11 A. Uh-huh.
12 Q. What was your interest, or affiliation with Buddy's
13 Garage?
14 A. I was just owner, part owner with my husband.
15 That's --
16 Q. And what was your ownership interest?
17 A. Fifty percent.
18 Q. And what did your duties entail as far as Buddy's
19 Garage was concerned?
20 A. Sometimes I would collect money. Sometimes -- I
21 mean, it was shared. Sometimes I'd collect money.
22 Sometimes -- I wasn't there for day-to-day
23 operations. I was -- I would do more of the
24 collecting of the money, paying the employee. We
25 relied basically on our mechanic to do the day-to-

- 1 day operations.
- 2 Q. We're going to talk about the mechanic in a minute.
- 3 But if you don't mind telling me, where exactly is
- 4 or was Buddy's Garage located?
- 5 A. It was up in Travelers Rest right off of Highway
- 6 25. I can't think of the road. It's been a couple
- 7 years. I don't know. It's been a couple years
- 8 ago. I can't remember the main road. It was right
- 9 next to the Spinx gas station on 25.
- 10 Q. But up in Travelers Rest?
- 11 A. Uh-huh.
- 12 Q. And you just said that you paid employees and that
- 13 sort of thing. While you owned it, what people of
- 14 Buddy's did you all employ?
- 15 A. Mike Fincham; Scott -- I think his last name is
- 16 Robinson, because it was a while back; Ray Babb;
- 17 Kevin Hall.
- 18 Q. We're going to talk about Mike Fincham for just a
- 19 few minutes. To your knowledge, is Mr. Fincham
- 20 still working for Buddy's Garage?
- 21 A. No. I fired him in July.
- 22 Q. And is Buddy's Garage still in existence?
- 23 A. No.
- 24 Q. So when you closed it, you closed it for good?
- 25 A. Done. Uh-huh.

1 somewhere between the end of September, beginning
2 of October of 2013.

3 Q. Back to Mr. Fincham and his employment with Buddy's
4 Garage. How was Mr. Fincham compensated for his
5 work at Buddy's?

6 A. A check.

7 Q. A paycheck?

8 A. Yes, sir. And he got -- just to clarify, he
9 wasn't salaried. He got 40 percent of the business
10 once expenses were taken out.

11 Q. And did you make that paycheck to him?

12 A. Yes.

13 Q. Did Buddy's Garage withhold any income taxes for
14 Mr. Fincham?

15 A. No. He was only with us for a very short time.
16 And then I tried to find him to I-9 him because I
17 was considering him a contract employee. And I
18 could not locate him.

19 Q. You indicated earlier that you didn't deal with the
20 everyday ongoing operations of Buddy's Garage, that
21 that was what you had a mechanic hired for. Would
22 you agree that that is what Mr. Fincham was hired
23 for, was to handle the everyday --

24 A. The day-to-day operations, yes, sir.

25 Q. And as such, did he write up service quotes and

- 1 reports and talk with customers?
- 2 A. Yes, sir.
- 3 Q. Did he wear a uniform or a badge of any sort that
- 4 indicated he worked for Buddy's Garage?
- 5 A. No.
- 6 Q. No; okay. It's clear that he worked in the shop.
- 7 And I'm going to ask it again. I think you've
- 8 answered this. But he also performed mechanical
- 9 work on the automobiles; is that correct?
- 10 A. On all automobiles, yes.
- 11 Q. Any other types of work that he would have done?
- 12 A. Yes. He worked on small engines also, lawn mowers,
- 13 weed eaters, things like that.
- 14 Q. Did he also work in the office at all?
- 15 A. Yes. I mean, his office -- he sat at the desk.
- 16 That's where he would write the quotes. That's
- 17 where he would accept the payment. He also had a
- 18 square card that he would accept credit card
- 19 payments.
- 20 Q. So he was responsible for, you know, the accounts
- 21 receivables? Money that was coming in to Buddy's
- 22 Garage, he was responsible for taking that money
- 23 and then I'm guessing get it to you --
- 24 A. Right.
- 25 Q. -- so that it could be put in the bank?

- 1 A. Right?
- 2 Q. Is that correct?
- 3 A. Yes, sir.
- 4 Q. Did he have any kind of signatory privileges with
- 5 regard to any of the checks? Could he sign checks
- 6 for Buddy's Garage?
- 7 A. No.
- 8 Q. And he was the one who regularly met with and
- 9 communicated with customers of Buddy's Garage?
- 10 A. Yes. I've never -- hardly ever met any customer.
- 11 Q. And I may have asked this, and I apologize if I
- 12 have.
- 13 A. Uh-huh.
- 14 Q. How long was Mr. Fincham employed by Buddy's
- 15 Garage?
- 16 A. If I had to guess, approximately six months. I
- 17 would say somewhere between maybe February to -- I
- 18 remember his fire date. I remember that. Like it
- 19 was July 13, 2013.
- 20 Q. So he would have been there from -- at that point,
- 21 go back about six months or so?
- 22 A. Approximately, yes.
- 23 Q. Fair to say that?
- 24 A. Yes.
- 25 Q. Now I'm going to ask some questions regarding this

1 specific lawsuit. Are you aware that on May 7th,
2 or about that date, 2013, my client, Natasha
3 Turner, took her 2006 Mitsubishi to Buddy's for
4 certain repairs?
5 A. I was aware after the fact, yes.
6 Q. Ms. Kellett, I'm going to have you what has been
7 pre-marked as Exhibit 1.
8 MR. PLAXCO: Here you go, Ivan.
9 MR. TONEY: Thanks. I have a copy of that.
10 MR. PLAXCO: You've got it; okay..
11 EXAMINATION RESUMED BY MR. PLAXCO:
12 Q. Just take a look at that for a second and kind of
13 familiarize yourself with it. This is what I'm
14 going to call Buddy's service write-up form,
15 Plaintiff's Exhibit Number 1. Does this form look
16 familiar to you?
17 A. Yes.
18 Q. And what was the purpose of this form?
19 A. I guess it was a work order and eventually turned
20 into a bill for the work.
21 Q. So this form was generated as soon as the customer
22 brought the car to Buddy's. And it stayed with
23 Buddy's until the completion of the work, in which
24 case it was used as a bill? Is that correct to
25 say?

Natasha Turner v. Carmen Kellett and Michael T. Kellett

- 1 A. Yes.
- 2 Q. Looking at this form, it appears that this is the
3 form that was written for Natasha Turner. Would
4 you agree with that?
- 5 A. Yes.
- 6 Q. And whose handwriting mostly is this -- I'm sorry.
7 Whose handwriting is this mostly in this form?
- 8 A. Mike Fincham.
- 9 Q. I see we have two columns over here.
- 10 A. Uh-huh.
- 11 Q. One that says, Services Requested/Description of
12 Work, Services Requested, I see "R&R transmission,
13 R&R front bumper assembly, and R&R rear bumper
14 assembly," and then, "Paint both bumpers." Would
15 you agree that this is the labor that would have
16 been involved for the work that Ms. Turner was
17 having done at Buddy's Garage?
- 18 A. At that time, yes. Don't know if anything else was
19 added on later, but at that time, yes.
- 20 Q. And do you know what R&R means?
- 21 A. I have no idea.
- 22 Q. I'm not 100 percent. I think it means replace and
23 remove. And then on the second column, we have
24 another column that starts with, Quantity and it
25 says, "Part No. and Description" along with the

1 amounts; is that correct?

2 A. Yes.

3 Q. Would you agree that these are the parts that were

4 necessary for the work that was being done to Ms.

5 Turner's automobile?

6 A. I'm not a mechanic, so I really can't answer that.

7 I don't know. I trusted Mike Fincham and his

8 mechanical knowledge to list the parts.

9 Q. To list the parts. But in comparing the services

10 requested, as well as the part number and

11 description, you know, with the exception of a

12 battery and maybe this right support and left

13 support for \$20 each, would you agree that the

14 services requested match up with the parts that

15 were also on the invoice?

16 A. Like I said, I'm not a mechanic. So what I'm

17 reading here --

18 Q. Would you agree that this says, "R&R trans" over on

19 the left-hand column?

20 A. Yes.

21 Q. And then would you agree that a part was indicated?

22 It says, "T-R-A-N-S A-S-S." I'm assume that's

23 transmission assembly for \$1,000. Would you agree

24 with that?

25 A. Yes.

1 Q. And then on the second column, you have, "R&R front
2 bumper assembly, R&R rear bumper assembly." And
3 wouldn't you agree that that would be related to
4 most likely the bumper cover on the front, the rear
5 bumper cover, and these bumper reinforcement parts
6 that are listed?

7 A. I would imagine so. I don't know if that's a full
8 description of everything that was needed for that
9 repair. Like I said, I'm not a mechanic, so I
10 would imagine so. I don't know.

11 Q. Fair enough. Are you aware that Natasha Turner was
12 required to pay \$2,500 up front to Buddy's Garage
13 to get the work started?

14 A. Yes. That was to purchase the parts. Now let me
15 clarify that. That was told to me once this bill
16 was done and once Mike had spoke to Natasha, and
17 Natasha agreed to that.

18 Q. I'm going to show you what is pre-marked as
19 Plaintiff's Exhibit Number 2.

20 MR. PLAXCO: Do you have a copy of that, Ivan?

21 MR. TONEY: Yes, I do.

22 EXAMINATION RESUMED BY MR. PLAXCO:

23 Q. This is a check in the amount of \$2,500 from Title
24 Max of Berea, South Carolina. Would you agree that
25 this check is payable to Buddy's Garage?

- 1 A. Yes.
- 2 Q. And to your knowledge, was this check deposited
3 into Buddy's Garage's account?
- 4 A. Yes.
- 5 Q. One more quick question. I don't think I've asked
6 this with regard to the Buddy's Garage account.
7 What bank did Buddy's Garage use for its checking
8 account?
- 9 A. Bank of Travelers Rest.
- 10 Q. So any checks from customers would have gone into a
11 Bank of Travelers Rest account?
- 12 A. Yes.
- 13 Q. Are you aware that someone from Buddy's Garage, I
14 don't know if it was you or your husband or perhaps
15 Mr. Fincham, contacted GEICO, who was Ms. Turner's
16 automobile insurance company, and advised that an
17 additional, or supplemental \$1,815.26 would be
18 needed to complete the repairs?
- 19 A. That was Mike Fincham.
- 20 Q. So you would agree that Mike Fincham contacted
21 GEICO --
- 22 A. Uh-huh. Yes.
- 23 Q. -- and requested supplemental money?
- 24 A. At the time, I didn't know. He just said that there
25 was some other problems that arose in the car. I

1 had no clue as to how much was being requested at
2 the time. And he said that he would handle it. He
3 would get in touch with GEICO and he would take
4 care of it. And as him being the mechanic,
5 supposedly his expertise, I left that up to him,
6 his sole discretion, to contact GEICO.

7 Q. Ms. Kellett, I'm going to show you now what's been
8 pre-marked as Plaintiff's Exhibit Number 3. It's a
9 little bit blurry. I apologize. I'm trying to get
10 a clearer copy of it. And this is the check
11 written from GEICO. Okay? And can you tell me,
12 who is that check made payable to, actually?

13 A. Natasha Turner.

14 Q. And I just stated this. But who is the payor of
15 that check? Who made that check out?

16 A. GEICO.

17 Q. Was this check deposited into Buddy's account?

18 A. Apparently it was.

19 Q. I see two signatures on there.

20 A. Uh-huh.

21 Q. With regard to the bottom signature, whose
22 signature is that?

23 A. That's mine.

24 Q. And I know you said that you believe it was. I'm
25 going to -- if you'll go back to Exhibit Number 1

1 GEICO check?

2 A. Yes.

3 Q. So based on looking at that, as well as the check,

4 would you agree that this check was deposited in

5 the Buddy's Garage account?

6 A. Yes.

7 Q. Once Buddy's Garage was apparently finished

8 completing all of its repairs on Natasha's car, who

9 contacted Natasha to tell her that it was ready to

10 be picked up?

11 A. Originally Michael Fincham.

12 Q. At any time after Michael Fincham made that call,

13 did you ever have any contact with Ms. Turner?

14 A. I did when I decided to close the garage and I saw

15 the car still sitting there. And let me clarify.

16 Michael Fincham had told me that he had gotten in

17 touch with Natasha Turner, and this may come out

18 further in your -- but they -- apparently, the

19 bumper was not added on to the car. So they had

20 made a little side deal as far as getting the

21 bumper put on, and Mike was going to do that. He

22 had bought, again, using my account with my --

23 without my permission, the paint kit, the sander,

24 whatever you have to do to repair a bumper. And

25 he had all that in his possession and they had

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1 A. Purpose of that note was to let all parties know
2 that I was not in possession of the paint kit. I
3 was not in possession of the bumper, she had the
4 bumper, and that she had agreed to go to Mike
5 Fincham to finish out the work because he had the
6 paint kit. And they had made an agreement. She
7 showed me via text that he was going to take care
8 of the rest of the work to make the car whole.

9 Q. Did she at any time request that Buddy's -- insist
10 that Buddy's Garage --

11 A. No.

12 Q. -- finish the work?

13 A. No, she did not.

14 Q. And was that the last time that you spoke with
15 Natasha Turner?

16 A. Yes, until I was served. Well, actually I never
17 spoke to her. Then I was served a couple of months
18 later.

19 MR. PLAXCO: Give me just a second. (Reviewing
20 notes.)

21 EXAMINATION RESUMED BY MR. PLAXCO:

22 Q. One thing I'd like to go over real quick. Looking
23 at this form, Plaintiff's Exhibit Number 1, as well
24 as Plaintiff's Exhibit Number 3, which is the GEICO
25 check, the amount of the GEICO check that was

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1 deposited into Buddy's Garage's account is -- the
2 amount was \$1,815 and I believe 26 cents; is that
3 correct?

4 A. That's what the check says.

5 Q. The total balance of Ms. Turner's bill at the very
6 bottom, what is the total when you include parts,
7 labor, gas, oil and grease? And then I guess
8 that's your subtotal before tax. And then with
9 tax, what is that total at the very bottom of the
10 page?

11 A. Says here \$3,867.89 I think.

12 Q. You agreed earlier that Ms. Turner first deposited
13 with Buddy's Garage or paid Buddy's Garage an
14 initial payment of \$2,500?

15 A. Yes.

16 Q. There was also a check made payable by GEICO for
17 \$1,815.26. I don't know if you want to add this up
18 right now, but when you add \$2,500 to \$1,816.26,
19 you get a total of \$4,315.26.

20 A. Well, like I said earlier, Mike Fincham was
21 notorious for taking money and not giving me
22 receipts. And Mike, during the process of this
23 time, kept on telling me, "I need \$300 for this.
24 The transmission is actually going to cost this
25 amount," so by the time everything was said and

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1 done, pretty much these checks were totally drained
2 and I was expecting to see another -- if you want
3 to call it bill of sale, work order. But when we
4 went through our books, we were missing quite a few
5 of them and things did not jive. But Mike always
6 made sure to get the money back out.

7 Q. And I think, before I even asked it, you could tell
8 where I was going.

9 A. Uh-huh. Yes, sir.

10 Q. The total of this bill is \$3,867, and the total
11 that was actually receive, like I said, is \$4,315
12 and a little bit of change. So that leaves a
13 balance of roughly \$450, \$447.57.

14 A. I imagine he did some other kind of work or stated
15 to her or stated to GEICO that other work needed to
16 be done in that amount.

17 Q. And are you --

18 A. And I did not see the work order.

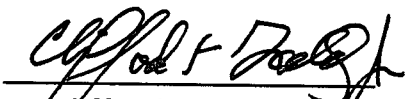
19 Q. Do you have knowledge where that \$447 is?

20 A. At this point, I don't remember. At this point, I
21 don't remember. I can tell you that in the process
22 of going through our books, there was missing
23 money. There was missing receipts. There were
24 cars that were up there being worked on that were
25 not accounted for.

CERTIFICATE OF COUNSEL

I hereby certify that the Designation of Matter to be included in the Record on Appeal contains no matter which is irrelevant to the appeal.

January 11, 2016


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