

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
The Honorable Tanya A. Gee., Circuit Court Judge

Appellate Case No. 2015-001845

RECEIVED
JAN 19 2018
SC Court of Appeals

John M. McIntyre and Silver Oak Land Management, LLC,

Appellant,

v.

Securities Commissioner of South Carolina,

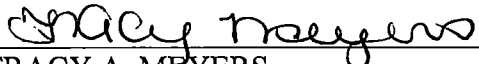
Respondent.

**RESPONDENT'S MOTION TO TAKE JUDICIAL NOTICE OF ADJUDICATIVE
FACTS**

Pursuant to Rule 240, SCACR, and Rule 201(d), SCRE, Respondent moves that this Court take judicial notice of the documents from the Beaufort County Court of General Sessions attached hereto as Exhibits A, B, and C. Exhibit A is indictment 2015-GS-07-1901 and the corresponding sentence sheet. Exhibit B is indictment 2016-GS-07-2254 and the corresponding sentence sheet. Exhibit C is the corresponding plea agreement for the indictments in Exhibits A and B. These documents directly relate to the issues on appeal but were the result of judicial decisions that were made after the matter was decided below. Therefore, because these documents are court decisions and directly relevant to the present appeal, this Court should take judicial notice of them.

Respectfully Submitted,

ALAN WILSON
Securities Commissioner

By: 
TRACY A. MEYERS
Deputy Securities Commissioner
S.C. Bar No. 064317

IAN P. WESCHLER
Assistant Attorney General
S.C. Bar No. 101422

Office of the Attorney General
State of South Carolina
Securities Division
Post Office Box 11549
Columbia, SC 29211

ATTORNEYS FOR RESPONDENT

January 10, 2018.

Respondent's Exhibit A

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF BEAUFORT
STATE

INDICTMENT/CASE#: 2015 -GS- 07 - 1901

JOHN M. MCINTYRE

A/W#:
Date of Offense: 6/23/2007
S.C. Code §: 16-13-230(B)(3)
CDR Code #: 3424

AKA:
Race: W Sex: M Age: 62
DOB: SS#:
Address:
City, State, Zip: Port Orange, FL 32128

SENTENCE SHEET

DL# SID# SC 02233230
*CDL Yes No CMV Yes No Hazmat Yes No

In disposition of the said indictment comes now the Defendant who was CONVICTED OF or PLEADS

TO: Breach of Trust with Fraudulent Intent, \$10K or more
In violation of § 16-13-230(B)(3) of the S.C. Code of Laws, bearing CDR Code # 3424
NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS \$17-25-45

The charge is: As indicted, Lesser Included Offense, Defendant Waives Presentation to Grand Jury, (def.'s initials)
The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST: Ivory Narvese 76959 Asst. Atty. General SC Bar # Defendant
Car. Henig 6999 Attorney for Defendant SC Bar #

WHEREFORE, the Defendant is committed to the State Department of Corrections County Detention Center,
for a determinate term of 10 days/months/years or under the Youthful Offender Act not to exceed years
and/or to pay a fine of \$ provided that upon the service of days/months/years and or payment
of \$ plus costs and assessments as applicable*; the balance is suspended with probation for 5
months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are
incorporated by reference.

CONCURRENT or CONSECUTIVE to sentence on: 12-14-16
The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State
Department of Corrections.
The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic
Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:
RESTITUTION: Deferred Def. Waives Hearing Ordered PTUP

Total: \$ plus 20% fee: \$ days/hours Public Service Employment

Payment Terms:

Set by SCDPPPS

Recipient: Silver Oak Managers LLC Escrow Account

*Fine:
\$14-1-206 (Assessments 107.5%)
\$14-1-211 (A)(1)(Conv. Surcharge) \$100
\$14-1-211 (A)(2)(DUI Surcharge) \$100
\$56-5-2995 (DUI Assessment) \$12
\$56-1-286 (DUI Breath Test) \$25
Proviso 61.6 (Public Def/Probation) \$500
\$14-1-212 (Law Enforce. Funding) \$25
\$14-1-213 (Drug Court Surcharge) \$150
\$50-21-114 (BUI Breath Test Fee) \$50
\$56-5-2942(J) (Vehicle Assessment) \$40/ea
3% to County (if paid in installments) \$

TOTAL

\$ 128.75

Clerk of Court/Deputy Clerk
Court Reporter:
SCCA/217 (07/2016)

Obtain GED

Attend Voc. Rehab. Or Job Corp.

May serve W/E beginning
Substance Abuse Counseling
Random Drug/Alcohol Testing
Fine may be pd. in equal consecutive weekly/monthly
pmts. of \$ Beginning
Paid to Public Defender Fund

Other:

Appointed PD or appointed other counsel,
Proviso 61.6 requires \$500 be paid to Clerk
during probation and shall be collected before
any other fees.

Presiding Judge
Judge Code:
Sentence Date 12-14-16

Vertical stamp: A True Copy
Jerrilyn Rosebeau - Clerk of Court
Beaufort County, SC - Jerrilyn Rosebeau

WITNESSES
Lt. Lanning "Pete" Logan, SLED

ARREST WARRANT NUMBER
Direct Presentment

ACTION OF GRAND JURY
True Bill

ELG
Foreperson of Grand Jury
Date: NOV 19 2015

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2015-GS-07- 1901

The State of South Carolina
County of Beaufort

COURT OF GENERAL SESSIONS
November 2016 TERM

THE STATE

v.

JOHN M. MCINTYRE

Indictment for
BREACH OF TRUST

SC Code: § 16-13-230(3)
CDR Code: 3424
Class E Felony

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

Defendant

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

Defendant

Witness:

C.C.C. PLS. AND G.S.

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

INDICTMENT

At a Court of General Sessions, convened on November 19, 2015, the
Grand Jurors of Beaufort County present upon their oath:

BREACH OF TRUST

That on or about June 30, 2011, in Beaufort County, John M. McIntyre did
commit an act of Breach of Trust with fraudulent intent. To wit: John M.
McIntyre converted more than \$10,000 from Silver Oak Land Trust's bank
account to pay his personal property taxes. This was done in violation of
Section 16-13-230, *THE CODE OF LAWS OF SOUTH CAROLINA*, (1976), as
amended.

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


ALAN WILSON (scw)
ATTORNEY GENERAL

Respondent's Exhibit B

STATE C - SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF BEAUFORT
STATE

INDICTMENT/CASE#: 2016 -GS- 07 -02254

VS.
JOHN M. MCINTYRE

A/W#: _____
Date of Offense: 7/2007 - 12/2012
S.C. Code §: 16-13-230(B)(3)
CDR Code #: 3424

AKA: _____
Race: W Sex: M Age: 62
DOB: _____ SS#: _____

Address: _____
City, State, Zip: Port Orange, FL 32128

SENTENCE SHEET

DL# _____ SID# SC 02233230
*CDL Yes No CMV Yes No Hazmat Yes No

In disposition of the said indictment comes now the Defendant who was CONVICTED OF or PLEADS

TO: Breach of Trust with Fraudulent Intent, \$10K or more
In violation of § 16-13-230(B)(3) of the S.C. Code of Laws, bearing CDR Code # 3424
 NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS \$17-25-45
(CSC w/minor 1st or Lewd Act)

The charge is: As indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury. (Def.'s initials)
The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST: *Lory Narcissa* 76959 SC Bar # _____ Defendant
Cory Fleming 6999 SC Bar # _____ Attorney for Defendant

WHEREFORE, the Defendant is committed to the State Department of Corrections County Detention Center,
for a determinate term of 10 days/months/years or under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for 5
months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are
incorporated by reference.

CONCURRENT or CONSECUTIVE to sentence on: 12-14-16
 The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State
Department of Corrections.
 The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic
Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered PTUP

Total: \$ 110,193⁰⁰ plus 20% fee: \$ _____
Payment Terms: *Divest all ownership w/ agreement dated 12-3-16*
 Set by SCDPPPS *Release by McIntyre consistent w/ agreement dated 12-3-16*
350 days/hours Public Service Employment
Paralyzed Veterans of America
Obtain GED *of America*
Attend Voc. Rehab. Or Job Corp.

Recipient: Silver Oak Managers LLC Escrow Account	
*Fine:	\$
§14-1-206 (Assessments 107.5%)	\$
§14-1-211 (A)(1)(Conv. Surcharge)	\$100
§14-1-211 (A)(2)(DUI Surcharge)	\$100
§56-5-2995 (DUI Assessment)	\$12
§56-1-286 (DUI Breath Test)	\$25
Proviso 61.6 (Public Def/Probation)	\$500
§14-1-212 (Law Enforce. Funding)	\$25
§14-1-213 (Drug Court Surcharge)	\$150
§50-21-114 (BUI Breath Test Fee)	\$50
§56-5-2942(J) (Vehicle Assessment)	\$40/ea
3% to County (if paid in installments)	\$
	\$ 3.75

May serve W/E beginning
Substance Abuse Counseling
Random Drug/Alcohol Testing
Fine may be pd. in equal consecutive weekly/monthly
pmts. of \$ _____ Beginning
\$ _____ Paid to Public Defender Fund

Other: *terminate upon compliance*

Appointed PD or appointed other counsel,
Proviso 61.6 requires \$500 be paid to Clerk
during probation and shall be collected before
any other fees.

TOTAL \$ 128.75

Clerk of Court/Deputy Clerk
Court Reporter:
SCCA/217 (07/2016)

Wanda Rowe
Jenni Ann Robeneau - Clerk of Court
Beaufort County, SC - Jennifer Petrot

Presiding Judge *Michael Miller*
Judge Code: 2140
Sentence Date 12-14-16

WITNESSES

ARREST WARRANT NUMBER

ACTION OF GRAND JURY

Foreperson of Grand Jury
Date:

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2016-GS-07-02254

The State of South Carolina
County of Beaufort

COURT OF GENERAL SESSIONS

DECEMBER 2016 TERM

THE STATE

v.

JOHN M. MCINTYRE

Indictment for
BREACH OF TRUST WITH
FRAUDULENT INTENT

SC Code: § 16-13-230(B)(3)
CDR Code: 3424
Class E Felony

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


Defendant

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

Defendant

Witness:

C.C.C. PLS. AND G.S.

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

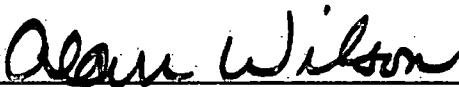
INDICTMENT

At a Court of General Sessions, convened on _____, 2016, the
Grand Jurors of Beaufort County present upon their oath:

BREACH OF TRUST WITH FRAUDULENT INTENT (\$10,000 OR MORE)

That on or about July 2007 through December 2012, in Beaufort County,
John M. McIntyre did commit an act of Breach of Trust with Fraudulent Intent.
To wit: John M. McIntyre converted \$10,000 or more from Silver Oak Land
Trust entities and Silver Oak Energy for his personal use and benefit. This was
done in violation of Section 16-13-230, *THE CODE OF LAWS OF SOUTH
CAROLINA*, (1976), as amended.

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



ALAN WILSON (IN)
ATTORNEY GENERAL

Respondent's Exhibit C



ALAN WILSON
ATTORNEY GENERAL

PLEA AGREEMENT

Date: December 13, 2016
Defendant: John M. McIntyre
Prosecuting AG: Ivory Narcisse
Defense Attorney: Cory H. Fleming

Charges:

- 2015-GS-07-1899: Violation of Securities Act (\$20K or more)
- 2015-GS-07-1900: Breach of Trust with Fraudulent Intent (\$2K – \$10K)
- 2015-GS-07-1901: Breach of Trust with Fraudulent Intent (\$10K or more)
- 2016-GS-07-2254 Breach of Trust with Fraudulent Intent (\$10K or more)

Terms:

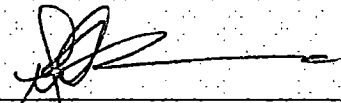
- Plead guilty to two counts of Breach of Trust with Fraudulent Intent (\$10K or more)
- Pay restitution to Silver Oak Managers LLC Escrow Account
 - Render a certified check of at least \$57,025 on the day of the plea hearing
 - Agree to restitution order of \$53,168 or less, depending on amount rendered at the plea hearing
 - Defendant will relinquish his and Silver Oak Land Management's (SOLM) ownership interests in Silver Oak Land Trust (SOLT) entities and Silver Oak Energy (SOE) for the purpose of distributing it to the members of the entities from which money was misappropriated. Distribution shall be at the discretion of Silver Oak Managers LLC.
 - Release by McIntyre on behalf of himself and SOLM with respect to any and all decisions made and actions taken by Silver Oak Managers LLC and all

Certified - A True Copy
Jeri Ann Rosebeau, Clerk of Court
Beaufort County, SC - Jennifer Penton

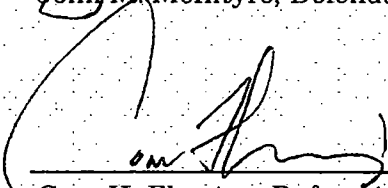
others in the performance of their duties as Managers of the various SOLT and SOE entities, including, but not limited to the sale of any properties or assets held by the entities, the distribution of proceeds from such sales and the withholding of such distributions otherwise payable to Defendant and/or SOLM as an offset to monies misappropriated by him for his own benefit or the benefit of SOLM.

- Sentencing will be at Court's discretion.

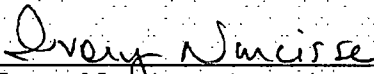
12-14-16
Date


John M. McIntyre, Defendant

12-14-16
Date


Cory H. Fleming, Defense Counsel

12-14-16
Date


Ivory Narcisse, Asst. Atty. General

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Honorable G. Thomas Cooper, Jr., Circuit Court Judge

Appellate Case No. 2015-001845

John M. McIntyre and Silver Oak Land Management, LLC,

Appellant,

v.

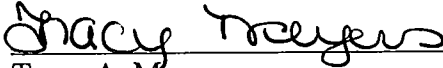
Securities Commissioner of South Carolina,

Respondent.

CERTIFICATE OF SERVICE

I certify that I have served a copy of the enclosed Motion, by hand delivering a copy to the Appellant's counsel of record Cory E. Manning, Esq., Nelson Mullins Riley & Scarborough LLP, 1320 Main Street, 17th Floor, Columbia, South Carolina 29201 and by depositing a copy of it in the United States Mail, postage prepaid, on January 19, 2018, addressed to the Appellant's counsel of record, Robert V. Matheson, Jr., Esq., Mathison & Mathison, Post Office Box 5271, Hilton Head Island, South Carolina 29938.

January 19th, 2018


Tracy A. Meyers
Deputy Securities Commissioner
1000 Assembly Street
Columbia, SC 29201
(803) 734-9916

RECEIVED
JAN 19 2018
SC Court of Appeals



ALAN WILSON
SECURITIES COMMISSIONER

January 19, 2018

RECEIVED
JAN 19 2018
SC Court of Appeals

VIA HAND-DELIVERY

The Honorable Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
1015 Sumter Street
Columbia, South Carolina 29201

Re: John M. McIntyre and Silver Oak Management, LLC v. Securities Commissioner of South Carolina, Appellate No. 2015-001845

Dear Ms. Kitchings:

Please find enclosed, for filing with your office, the original and six (6) copies of the Respondent's Motion to Take Judicial Notice of Adjudicative Facts in the above-referenced matter.

If I can be of any further assistance, please contact me at (803) 734-4403.

Sincerely yours,

Tracy A. Meyers
Deputy Securities Commissioner

TAM/ipw

cc: Cory E. Manning, Esq. (via hand-delivery)
Robert V. Mathison, Jr., Esq. (via First-Class mail)



POST OFFICE BOX 11549
COLUMBIA, SOUTH CAROLINA 29211-1549

ATTN: SECURITIES

RECEIVED

JAN 19 2018

SC Court of Appeals

The Honorable Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
1015 Sumter Street
Columbia, SC 29201