

THE STATE OF SOUTH CAROLINA
In The Supreme Court

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APPEAL FROM LAURENS COUNTY
Court of General Sessions

S.C. SUPREME COURT

Frank Addy, Circuit Court Judge

Appellate Case Number 2015-002435

STATE OF SOUTH CAROLINA, ... Respondent,

v.

GREGORY FIELDER, ... Petitioner.

APPENDIX

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STATE OF SOUTH CAROLINA,

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v.

GREGORY FIELDER,

Appellant.

FINAL BRIEF OF APPELLANT

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STATEMENT OF THE ISSUES ON APPEAL

- (1) Did the trial court abuse its discretion in failing to conduct an examination to determine if Appellant was fit to stand trial?
- (2) Did the trial court err in admitting impermissible hearsay, and statements for which the probative value is substantially outweighed by the danger of unfair prejudice?
- (3) Did the trial court abuse its discretion in refusing to sequester James Bryan?
- (4) Did the trial court abuse its discretion in refusing to sequester Raymond Johnson?
- (5) Did the trial court err in unreasonably restricting Appellant's ability to testify?
- (6) Did the trial court abuse its discretion by improperly limiting the scope of Appellant's cross-examination of Bryan?
- (7) Did the trial court err in permitting Bryan to testify regarding matters to which he lacked personal knowledge?

STATEMENT OF THE CASE

This is an appeal from Laurens County General Sessions cases 2012-GS-30-1430, and 2012-GS-30-1431, wherein Gregory Fielder (hereinafter, "Appellant") was charged with Exploitation of a Vulnerable Adult, and Breach of Trust (Greater than \$10,000.00), respectively. The victim in this matter is Virginia Montgomery (hereinafter, "Montgomery").

On February 1, 2011, Montgomery signed a durable power of attorney (hereinafter, "Power of Attorney"), naming Appellant as her attorney-in-fact. (R. pp. 255-258). The Power of Attorney was recorded with the Laurens County Register of Deeds on February 2, 2011. (R. p. 255). The Power of Attorney permits the attorney-in-fact to make conveyances to himself. (R. pp. 255-258).

Subsequent to the execution of the Power of Attorney, certain monies and property of Montgomery were transferred to Appellant. Montgomery died on or about December 20, 2011. Raymond Johnson (hereinafter, "Johnson"), Montgomery's nephew, was appointed as the personal representative for Montgomery's estate. Johnson hired Attorney James Bryan (hereinafter, "Bryan") for representation in the probate of Montgomery's estate, and also for a civil action against Appellant regarding the monies and property that were transferred to Appellant.

In May of 2012, Bryan filed a police report against Appellant with Officer Leann Riggot (hereinafter, "Riggot"). (R. p. 50, lines 11-14). Riggot arrested Appellant on charges of Exploitation of a Vulnerable Adult, and Breach of Trust (Greater than \$10,000.00). (R. p. 54, lines 23-25; R. p. 55, line 1).

A trial was held for this matter from November 2, 2015 through November 5, 2015. The Honorable Eugene C. Griffith, Jr. presided over the case during pre-trial matters. Due to a conflict, Judge Frank Addy subsequently took over as presiding judge for the jury trial. At the conclusion of the trial, the jury returned a verdict finding Appellant guilty on both charges. On November 13, 2016, Appellant, through counsel, served a Notice of Appeal on all parties.

ARGUMENT

I. THE TRIAL COURT ABUSED ITS DISCRETION BY NOT ORDERING AN EXAMINATION TO DETERMINE IF APPELLANT WAS FIT TO STAND TRIAL.

The trial court's decision not to order an examination to determine if Appellant was fit to stand trial was an abuse of discretion. "Due process of law prohibits the conviction of a person who is mentally incompetent." *Jeter v. State*, 308 S.C. 230, 232, 417 S.E.2d 594, 595 (1992); *State v. Singleton*, 322 S.C. 480, 482, 472 S.E.2d 640, 641 (Ct.App. 1996). "Whenever a judge ... has reason to believe that a person on trial before him, charged with the commission of a

criminal offense or civil contempt, is not fit to stand trial because the person lacks the capacity to understand the proceedings against him or to assist in his own defense as a result of a lack of mental capacity, the judge shall: (1) Order examination of such person by two examiners designated by the Department of Mental Health or the Mental Retardation Department or both..." State v. Burgess, 356 S.C. 572, 590 S.E.2d 42 (Ct.App.2003). This court has identified three factors to be considered in determining whether further inquiry into a defendants' fitness to stand trial was warranted. Id. at 575. These factors are: (1) evidence of irrational behavior; (2) demeanor at trial; and (3) prior medical opinion regarding ability to stand trial. In some instances, the presence of just one of the factors may justify further inquiry requiring a mental evaluation." In Alkebulanyahh v. Byars, the United States District Court of South Carolina provided further insight into the factors that are to be considered when determining whether investigation into a defendant's competence is necessary:

The issue over the Petitioner's competency claim "concerns the inferences that were to be drawn from the undisputed evidence and whether, in light of what was then known, the failure to make further inquiry into petitioner's competence to stand trial, denied him a fair trial." Drope v. Missouri, 420 U.S. 162, 174-75 (1975). To prevail on this type of procedural competency claim, Petitioner "must establish that the state trial court ignored facts raising a 'bona fide doubt' regarding the petitioner's competency to stand trial." Burket v. Angelone, 208 F.3d 172, 192 (4th Cir. 2000) (citing Pate v. Robinson, 383 U.S. 375, 384-86 (1966)). In analyzing this claim, "evidence of a defendant's irrational behavior, his demeanor at trial, and any prior medical opinion on competence to stand trial are all relevant." Drope, 420 U.S. at 180.

Alkebulanyahh v. Byars, No. 6:13-cv-00918-TLW, at *12 (D.S.C., 2015) (fastcase).

Immediately after the call of the case, Judge Griffith noticed that Appellant appeared to not be alert. Judge Griffith asked Appellant, "[y]ou seem to be kind of drowsy, what is going on?" (R. p. 8, lines 14-15). Appellant informed Judge Griffith that Appellant was under medical

care. (See R. p. 9, lines 12-14). Due to a conflict, Judge Griffith was not able to preside over the entire trial, and Judge Addy took over after pre-trial motions. Throughout the initial conversation between Judge Griffith and Appellant, Appellant frequently indicated that he did not understand what was taking place. (See R. p. 10, lines 17-21; R. p. 12, line 14; R. p. 19, lines 19-20.) Judge Griffith informed Appellant that he believed Appellant was “fanning” his condition, and Judge Addy would evaluate Appellant. (R. p. 14, lines 17-18).

After Judge Addy began presiding over the case, Appellant provided Judge Addy a physician’s note from Fountain Inn Family Practice, indicating that Appellant was to be evaluated and referring Appellant to a neurosurgeon for radiating back pain from injuries that he sustained after he fell from his porch. (R. p. 29, lines 21-25). Appellant also provided Judge Addy with a prescription bottle, dated October 19, 2015, for Alprazolam, for Appellant’s anxiety. (R. p. 29, line 25; R. p. 30, lines 1-5).

Appellant’s indications that he did not comprehend what was taking place are evidence of irrational behavior. Furthermore, when Judge Griffith first observed Appellant on the first day of trial he stated that Appellant seemed “drowsy.” Judge Griffith made this observation before Appellant had the opportunity to indicate that was feeling the effects of any medication. This indicates that Appellant’s demeanor was abnormal. While there was no prior medical opinion regarding ability to stand trial, Appellant did provide a doctor’s note indicating that Appellant was to be seen for back injuries. Appellant also provided the trial court with a prescription for Alprazolam. Common side effects for Alprazolam may include: drowsiness, feeling tired, slurred speech, lack of balance or coordination, memory problems, and feeling anxious early in the morning. <http://www.drugs.com/alprazolam.html>. Appellant’s drowsiness and memory problems displayed at trial indicate that he may have been suffering from side effects of the

medication. Therefore, the trial court had reason to believe that Appellant was not fit to stand trial, and, under the *Burgess* test, the trial court should have ordered an examination to determine whether or not Appellant possessed the necessary capacity to stand trial. Judge Addy did not ask Appellant if he had been taking his medication as prescribed. Judge Addy did not ask Appellant if he had taken his medication earlier this morning. Also, Judge Addy did not ask whether or not Appellant was under the effects of his medication. In light of what was known at trial, the trial court's refusal to delve into Appellant's mental competency deprived Appellant of a fair trial. On November 2, 2015, during a pre-trial conference, the counsel for the State of South Carolina placed on the record a plea offer, whereby "[t]he State would allow Mr. Fielder to plead guilty of one count of breach of trust over \$10,000.00. The State would in return dismiss the charge of exploitation of a vulnerable adult. The State would recommend probation and restitution to be determined by the Court." (R. p. 33, lines 1-13). Appellant did not accept the offer, and the case proceeded to trial. If Appellant was not fit to stand trial, then it is likely that Appellant was not fit to make an informed decision regarding the State's plea offer. By refusing to order a mental capacity evaluation, Appellant was prejudiced by being deprived of one of the most fundamental rights guaranteed by the Constitution. The trial court's refusal to order an examination to determine if Appellant was fit to stand trial is reversible error.

II. THE TRIAL COURT ERRED IN ADMITTING IMPERMISSIBLE HEARSAY, AND STATEMENTS FOR WHICH THE PROBATIVE VALUE IS SUBSTANTIALLY OUTWEIGHED BY THE DANGER OF UNFAIR PREJUDICE.

The trial court abused its discretion by allowing impermissible hearsay, and statements that violate Rule 403 of the South Carolina Rules of Evidence. "Hearsay is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." Rule 801, SCRE. Among other protections, the Sixth

Amendment assures: "[i]n all criminal prosecutions, the accused shall enjoy the right ... to be confronted with the witnesses against him. This procedural protection applies in both federal and state prosecutions by virtue of the Fourteenth Amendment." State v. Brockmeyer, 406 S.C. 324, 751 S.E.2d 645 (S.C., 2013). "The right of confrontation is essential to a fair trial in that it promotes reliability in criminal trials and insures that convictions will not result from testimony of individuals who cannot be challenged at trial." California v. Green, 399 U.S. 149, 90 S.Ct. 1930, 26 L.Ed.2d 489 (1970). The primary interest secured by the Confrontation Clause is the right to cross-examination. State v. Shuler, 344 S.C. 604, 545 S.E.2d 805 (2001); see also State v. Graham, 314 S.C. 383, 444 S.E.2d 525 (1994) (observing that specifically included in defendant's Sixth Amendment right to confront a witness is the right to meaningfully cross-examine an adverse witness). "Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence." Rule 403, SCRE. "Unfair prejudice means an undue tendency to suggest [a] decision on an improper basis." State v. Gilchrist, 329 S.C. 621, 627, 496 S.E.2d 424, 427 (Ct.App.1998).

Johnson is a nephew of the deceased victim, and he was one of the State's witnesses at the jury trial. Johnson made several hearsay statements regarding the victim's alleged wishes for her estate. When Appellant asked Johnson on cross examination whether or not Montgomery gave Johnson her house, Johnson replied "[s]he was going to." (R p. 144, line 6). When Appellant asked how was she going to do that "[b]y her word she gave them to me. She gave them to me verbally." (R. p. 144, lines 8-9). Johnson later testified regarding the victim's alleged wishes, "[s]he gave me all of her possessions verbally." (R. p. 144, line 11). Johnson

further testified, “[s]he said...Raymond, when I die, you can have everything, the car, the house, the money, everything. That’s what she said.” (R. p. 144, lines 13-15). These statements are hearsay, as they are offered in evidence to prove the truth of the matter asserted. They were offered to prove that Montgomery wanted Johnson to receive her entire estate. Not only are these statements impermissible hearsay, but they also violate Rule 403 of the South Carolina Rules of Evidence, as their probative value is substantially outweighed by the danger of unfair prejudice. Appellant had no opportunity to cross-examine Montgomery, and statements such as these run afoul of the interests of justice, because there is a strong likelihood that these statements unfairly influenced the jury.

The trial judge also allowed impermissible hearsay during the State’s direct examination of Riggot. When asked by the State’s counsel if she spoke with the attorney who prepared the Power of Attorney, Riggot replied, “...I was advised that they did do the power of attorney and that Mr. Fielder had contacted them about doing the power of attorney. I was also advised that when they met that the victim did not want her house deeded to the subject.” (R. p. 55, lines 20-23). Again, this is impermissible hearsay, because the statements were offered to prove the truth of the matter asserted. These statements were exceedingly prejudicial, due to the potential impact that it had on the jury. Any probative value is greatly outweighed by the prejudicial effect, because Appellant had no opportunity to cross-examine the declarant. Furthermore, Riggot’s statements make the actual identity of the declarant unclear. This could have easily led the jury to speculate regarding the source of the statements. Riggot would further testify that she believed transfer of Montgomery’s house to Appellant was against Montgomery’s interest, and that Montgomery explained to people that she did not want the conveyance to happen. (See R. p. 89, lines 16-24). Lastly, during Appellant’s recross-examination of Riggot, Riggot testified that

the paralegal for the attorney who prepared the Power of Attorney told her that Montgomery did not want the interest her house to be conveyed to Appellant. (R. p. 90, lines 13-25; R. p. 91, lines 1-3 and 18-22). Similar to Riggot's previous statements, these statements are impermissible hearsay, because the statements were offered to prove the truth of the matter asserted, and the probative value is outweighed by the prejudicial effect. As a pro se defendant, Appellant is not well-versed in the rules of evidence. Appellant did not object to these statements. However, in the interests of justice, the trial court should not have allowed these impermissible statements. Appellant was prejudiced by these statements, due the extremely high probability that said statements had a tremendous influence on the jury. Therefore, the trial court abused its discretion by allowing impermissible hearsay, and statements that violate Rule 403 of the South Carolina Rules of Evidence.

III. THE TRIAL COURT ABUSED ITS DISCRETION BY REFUSING TO SEQUESTER JAMES BRYAN.

The trial court abused its discretion by refusing to sequester James Bryan. At the request of a party the court may order witnesses excluded so that they cannot hear the testimony of other witnesses, and it may make the order of its own motion. Rule 615, SCRE. "The purpose of the exclusion rule is, of course, to prevent the possibility of one witness shaping his testimony to match that given by other witnesses at the trial..." State v. Huckabee, 388 S.C. 232, 694 S.E.2d 781 (S.C. App., 2010). "The trial court's ruling on a motion to sequester a witness will not be disturbed on appeal absent an abuse of discretion and prejudice to an appellant." State v. Carmack, 388 S.C. 190, 694 S.E.2d 224 (S.C. App., 2010). Over Appellant's objection, the trial court decided not to sequester James Bryan (hereinafter, "Bryan"). (R. p. 48, lines 4-5). Bryan was the attorney for Johnson, the personal representative of Montgomery's estate. Unlike in Carmack, the trial court in this matter abused its discretion by refusing to sequester Bryan, and

Appellant was improperly prejudiced as a result. Since Bryan was never sequestered, he was privy to testimony from all previous witnesses, including testimony relating to the Montgomery's mental competency. Bryan used the testimony from previous witness to form his own opinion of the victim's competency. Furthermore, Bryan improperly gave testimony that was gathered from testimony from previous witnesses. When questioned regarding Montgomery's competency Bryan testified, "[a]ccording to the hospice lady she was confused in February of 2011 when they started it." (R. p. 187, lines 16-17). The "hospice lady" that Bryan had referred to is Cindy McCarty (hereinafter, "McCarty"), a nurse who testified prior to Bryan. During her testimony, McCarty testified that Montgomery was confused at times. (See R. p. 97, lines 7-8). When Appellant questioned Bryan regarding whether he was judging the victim's competency, Bryan stated: "[y]es, based on testimony given in this case and people that I have talked to, not on my independent knowledge." (R. p. 186, lines 9-10). Furthermore, Bryan testified, "I have no expertise myself to make a determination, and I explained to you it was from discussion hearing the hospice person, hearing Dr. Brownlee talk, I have discussed this with Dr. Brownlee prior to this hearing too." (R. p. 188, lines 8-12. See R. p. 190, lines 9-23). Bryan's testimony regarding the victim's mental competency was prejudicial to Appellant, as he based his entire understanding of the victim's mental competency on the testimony of and conversations with other witnesses. Bryan took advantage of his opportunity to draw from other witnesses' testimony to bolster his own. As Bryan clearly indicated, he was in no position to give expert opinions regarding the victim's mental competency. However, that did not stop Bryan from bolstering his own testimony with testimony from previous witnesses. Therefore, the trial court abused its discretion by refusing to sequester Bryan.

IV. THE TRIAL COURT ABUSED ITS DISCRETION IN REFUSING TO SEQUESTER RAYMOND JOHNSON.

The trial court abused its discretion by refusing to sequester Raymond Johnson. "At the request of a party the court may order witnesses excluded so that they cannot hear the testimony of other witnesses, and it may make the order of its own motion." Rule 615, SCRE. Witness sequestration is "designed to discourage and expose fabrication, inaccuracy, and collusion." Opus 3 Ltd. v. Heritage Park, Inc., 91 F.3d 625, 628 (4th Cir. 1996). "The purpose of the exclusion rule is... to prevent the possibility of one witness shaping his testimony to match that given by other witnesses at the trial...." United States v. Leggett, 326 F.2d 613, 613 (4th Cir. 1964).

Johnson was privy to testimony from several witnesses that testified about, among other things, the bank records, the victim's mental competency, and the police investigation against Appellant. Appellant was prejudiced by Johnson not being sequestered, because hearing the testimony of other witnesses afforded Johnson an opportunity for comparison and influence. In the interests of justice, the trial court should have sequestered Johnson. In failing to sequester Johnson, the trial court abused its discretion.

V. THE TRIAL COURT ERRED IN UNREASONABLY RESTRICTING APPELLANT'S RIGHT TO TESTIFY ON HIS BEHALF.

The trial court erred in unreasonably restricting Appellant's right to testify on his own behalf. The right of a criminally accused to testify or not to testify is fundamental. Rock v. Arkansas, 483 U.S. 44, 52 (1987) ("[F]undamental to a personal defense . . . is an accused's right to present his own version of the events *in his own words*." (emphasis added)). The right of an accused to testify at a criminal trial is rooted in the Fifth, Sixth and Fourteenth Amendments of the United States Constitution. Id. at 49-53. Restrictions of a

defendant's right to testify may not be arbitrary or disproportionate to the purposes they are designed to serve. Id. at 55-56. "In applying its evidentiary rules a State must evaluate whether the interests served by a rule justify the limitation imposed on the defendant's constitutional right to testify." Id. at 56. Here, the Appellant indicated to the trial court that he wanted to testify on his behalf, but that he needed some time to organize his documents. (R. p. 241, lines 11-15). The trial court gave Appellant only five minutes to prepare himself. (R. p. 241, lines 20-22). Subsequently, the jury excused for a brief break. Upon the return, Judge Addy confirmed with Appellant that he wanted to testify. Appellant was willing to testify, but was still getting his documentation in order. (R. p. 243, line 3). Judge Addy then informed Appellant that he only had five more seconds to get prepared. (R. p. 243, lines 17-20). Thereafter, Appellant asked to speak with Judge Addy, and a bench conference was held. (R. p. 243, lines 21-25; R. p. 244, line 1). After the bench conference, Judge Addy informed the jury that there would be no further testimony in the case. (R. p. 244, line 2-7). By making this decision, the trial judge erroneously gave greater weight to expedience in the brief delay that would result than he gave defendant's constitutional right to testify. The trial court's unreasonable restriction on Appellant's right to testify resulted in the deprivation of the fundamental rights guaranteed by the Fifth, Sixth, and Fourteen Amendments. The imposed restriction was grossly disproportionate to the ends of justice, as it prevented Appellant from presenting the jury with his side of the story. The right of a criminal defendant to testify on his own behalf should be given greater weight than the judge's desire to move the trial along. The Appellant did not waive his right to testify; it was stripped from him by the trial court's unreasonable restriction. This prejudiced Appellant by depriving him of, perhaps, the most

fundamental right of a defendant in a criminal trial. Thus, the trial court committed reversible error by unreasonably restricting Appellant's right to testify on his own behalf.

VI. THE TRIAL COURT ABUSED ITS DISCRETION BY IMPROPERLY LIMITING APPELLANT'S CROSS-EXAMINATION OF BRYAN.

The trial court abused its discretion by improperly limiting Appellant's cross-examination of Bryan. "The primary interest secured by the Confrontation Clause of the Sixth Amendment is the right to cross-examination." State v. Shuler, 344 S.C. 604, 545 S.E.2d 805 (2001). "On cross-examination, any fact may be elicited which tends to show interest, bias, or partiality of the witness." State v. Mizzell, 349 S.C. 326, 563 S.E.2d 315 (2002). "The appropriate question under a Confrontation Clause analysis is whether there has been any interference with the defendant's opportunity for effective cross-examination at trial." Kentucky v. Stincer, 482 U.S. 730, 107 S.Ct. 2658, 96 L.Ed.2d 631 (1987). As previously stated, Appellant was pro se at trial. While Appellant was cross-examining Bryan, the trial judge informed Appellant that the next time opposing counsel's asked-and-answered objection is sustained Appellant's cross-examination would be over. (R. p. 203, lines 16-25; R. p. 204, line 1). Shortly thereafter, counsel for the State objected to one of Appellant's questions. Consequently, Appellant's cross-examination of Bryan was terminated before he could finish. (R. p. 205, lines 8-12). Bryan is an attorney who represents Johnson in a civil suit against Appellant. Before Appellant's cross-examination was terminated, Appellant was attempting to show bias on the part of Bryan. (See R. p. 202, lines 11-13). The termination of Appellant cross-examination prejudiced Appellant by preventing Appellant from conducting a comprehensive line of questioning. Furthermore, Bryan was the State's last witness, and Appellant would have no further opportunities to exercise his fundamental right to cross-examine witnesses against him. Therefore, the trial court abused its discretion by improperly limiting Appellant's cross-examination.

VII. THE TRIAL COURT ERRED BY PERMITTING BRYAN TO TESTIFY REGARDING MATTERS OUTSIDE OF HIS PERSONAL KNOWLEDGE.

The trial court erred by permitting Bryan to testify regarding matters outside of his personal knowledge. "A witness may not testify to a matter unless evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter." Rule 602, SCRE. "If the witness is not testifying as an expert, the witness'[s] testimony in the form of opinions or inferences is limited to those opinions or inferences which (a) are rationally based on the perception of the witness, (b) are helpful to a clear understanding of the witness'[s] testimony or the determination of a fact in issue, and (c) do not require special knowledge, skill, experience or training." See Rule 702, SCRE; Fowler v. Nationwide Mut. Fire Ins. Co., 410 S.C. 403, 764 S.E.2d 249 (S.C. App., 2014). In Watson v. Ford Motor Co., the South Carolina Supreme Court reviewed the differences between expert testimony and lay testimony:

Expert testimony differs from lay testimony in that an expert is permitted to state an opinion based on facts not within his firsthand knowledge or may base his opinion on information made available before the hearing so long as it is the type of information that is reasonably relied upon in the field to make opinions. On the other hand, a lay witness may only testify as to matters within his personal knowledge and may not offer opinion testimony which requires special knowledge, skill, experience, or training.

Watson v. Ford Motor Co., 389 S.C. 434, 699 S.E.2d 169 (S.C., 2010).

Since Bryan was never qualified as an expert witness regarding mental competency, or the effects of breast cancer on a person's mental competency, Bryan testified as a lay witness. As a lay witness, Bryan was explicitly prohibited from giving testimony regarding any matters of which he lacked personal knowledge. As previously stated, Bryan used the testimony from previous witnesses to bolster his own testimony. He simply restated for the jury testimony that

he gleaned from individuals who examined Montgomery. When testifying regarding Montgomery's competency, Bryan stated, in pertinent part, "I question whether or not she was competent at the time." (R. p. 184, lines 17-18). When asked whether Bryan had any independent knowledge about Montgomery's competency, Bryan replied "I have talked to some people concerning a competency and I was here when the testimony of the hospice people and Dr. Brownlee was given about her competency in February of 2011." (R. p. 184, lines 22-25). The "Dr. Brownlee" that Bryan had referred to is Dr. Joanne Brownlee (hereinafter, "Brownlee"). Brownlee testified that Montgomery had a very low hemoglobin level, and low hemoglobin can affect cognitive and mental ability. (See R. p. 148, lines 2, 6-15; See R. p. 149, lines 1-4). Bryan would later testify "[s]he had very serious low hemoglobin which can cause confusion and had hemoglobin problems at the phrase, you are asking what Dr. Brownlee said. One thing Dr. Brownlee said was she was surprised she could even walk into the officer, her hemoglobin was so low." (R. p. 189, lines 2-4). Lastly, Bryan testified "[a]nd the competency would be the mind, the part they talked about the...low hemoglobin making a person confused and everything, that...would be the mental capacity there." (R. p. 199, lines 14-17). No evidence was introduced to support a finding that Bryan had personal knowledge of Montgomery's mental competency. To the contrary, Bryan's own testimony confirmed that his testimony regarding Montgomery's mental competency was not derived from his own personal knowledge. (See R. p. 186, lines 9-11). In the interests of justice, the trial court should have refrained Bryan from restating expert testimony, and testifying regarding matters of which Bryan had no personal knowledge. Appellant was prejudiced by Bryan's testimony, because it amounted to improper expert testimony from an unqualified witness. Furthermore, there is a high probability that hearing such testimony from a lay witness caused confusion amongst the

jury. Therefore, the trial judge erred in not refraining Bryan from testifying regarding matters for which he lacked personal knowledge.

CONCLUSION

For the aforementioned reasons, Appellant requests that this matter be reversed and remanded to the lower court.

Respectfully submitted,



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December 30, 2016

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LAURENS COUNTY
Court of General Sessions

Frank Addy, Circuit Court Judge

Case No. 2015-002435

STATE OF SOUTH CAROLINA,

Respondent,

v.

GREGORY FIELDER,

Appellant.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Final Brief of Appellant complies with Rule
211(b), SCACR.



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The Honorable Frank R. Addy, Jr., Circuit Court Judge

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State of South Carolina, ...Respondent,

v.

Gregory Fielder, ...Appellant.

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STATEMENT OF ISSUES ON APPEAL

1. The issue of whether the trial judge abused his discretion in failing to conduct an examination to determine if Appellant was fit to stand trial is not preserved for appellate review.
2. The issue of whether the trial judge erred in admitting hearsay is not preserved for appellate review.
3. The trial judge did not abuse his discretion in declining to sequester James Bryan.
4. The issue of whether the trial judge abused his discretion in refusing to sequester Raymond Johnson is not preserved for appellate review.
5. The issue of whether the trial judge restricted Appellant's ability to testify is not preserved for appellate review.
6. The trial judge did not abuse his discretion and improperly limit the scope of Appellant's cross-examination.
7. The issue of whether the trial judge erred in permitting Bryan to testify regarding matters to which he lacked personal knowledge is not preserved for appellate review.

STATEMENT OF THE CASE

Appellant was indicted at the August 2012 term of the Laurens County Grand Jury for exploitation of a vulnerable adult (2012-GS-30-1430) and breach of trust (2012-GS-30-1431). (R. pp. 248-51). Assistant Attorneys General David Fernandez and Johanna Valenzuela represented the State and Appellant proceeded pro se.

After the State called the case to trial, Appellant was found guilty of the charges as indicted. On November 5, 2015, the Honorable Frank R. Addy, Jr. sentenced Appellant to concurrent terms of two (2) years for exploitation of a vulnerable adult and ten (10) years suspended with five (5) years probation for breach of trust with fraudulent intent (\$10,000 or more). (R. pp. 246-47; 252-53).

STATEMENT OF FACTS

Pre-Trial Hearing

The Honorable Eugene C. Griffith, Jr. addressed several matters prior to jury selection. Appellant stated he wanted a "continuance for medical reasons" and Judge Griffith replied the case had already been continued once for this reason. (R. pp. 9-14). Appellant stated he had an appointment with a neurosurgeon that afternoon but admitted he had not notified anyone about the appointment until that morning. (R. pp. 14-19). Judge Griffith stated Appellant should address this matter (as well as any pre-trial motions) with the trial judge that afternoon. (R. pp. 24-25).

Trial

The Honorable Frank R. Addy, Jr. presided over Appellant's trial. Appellant requested a continuance for medical reasons. (R. pp. 28-29). The trial judge found there was no doctor's note excusing Appellant from trial and noted he had reviewed prior transcripts, which indicated Appellant had been given adequate notice of the trial date. (R. pp. 29-31). The trial judge concluded Appellant was capable of proceeding to trial. (R. pp. 31-32; p. 37). The trial judge denied Appellant's numerous pre-trial motions. (R. pp. 36-42).

State's case

On February 1, 2011, Virginia Montgomery (hereinafter "Victim") signed a power of attorney designating Appellant. (R. p. 58; p. 77). On February 8, 2011, Appellant's name was on a withdrawal slip that withdrew \$87,379.72 from one of Victim's bank accounts – leaving a zero balance. (R. pp. 56-58). On February 14, 2011, both Appellant's and Victim's names were

on a withdrawal slip that withdrew \$50,000 from another of Victim's bank accounts – leaving a negative \$147 balance. (R. pp. 60-62). On November 2, 2011, the title of Victim's car was transferred to Appellant. (R. p. 54). On December 16, 2011, the deed to Victim's house was transferred to Appellant (and his signature was the only one authorizing the transfer). (R. p. 58; pp. 164-65). On December 20, 2011, Victim died of breast cancer at the age of 86. (R. p. 53).

Raymond Johnson – who is both Victim's nephew and Appellant's cousin – would have inherited from her estate and is the estate's personal representative. (R. pp. 121-22; p. 125; p. 126; p. 143). Johnson testified Appellant assisted Victim because "[s]he needed help" and Appellant offered to do so. (R. pp. 123-24; p. 126; p. 127). Johnson testified he left Victim's medical decisions to Appellant and noted Appellant did not offer to help Victim in exchange for money. (R. p. 126; pp. 141-42). Johnson communicated with Appellant about Victim on the telephone but was unaware they had executed a power of attorney. (R. p. 125; pp. 127-28). Johnson had told Appellant "do not bother the money, the money was already taken [sic] care of because the money was already in [the victim]'s name, my mother's name, and my name." (R. p. 128). Johnson explained one of Victim's bank accounts had been opened in 1989 and listed himself, his mother, and Victim as the account holders. (R. pp. 128-29). Johnson's understanding was Victim's possessions and funds would pass to his mother and him upon her death. (R. p. 130; p. 144). Johnson testified he had intended to give Appellant both Victim's house and car because he had looked after her. (R. pp. 139-40). When Johnson came to South Carolina after Victim died, Appellant told him that he had moved Victim's money. (R. pp. 130-31). Appellant said he would return \$30,000 he used for bond money for his son but did not do

so. (R. pp. 132-33). Appellant eventually gave Johnson (1) \$6000 in cash, (2) a cashier's check for \$6000, (3) a cashier's check for \$9000, and (4) a personal check for \$2000. (R. pp. 134-35; p. 136). When Johnson tried to talk to Appellant about other financial issues, Johnson said "he was talking crazy," so he hired attorney James Bryan. (R. pp. 137-38).

Leann Riggot, a former investigator for the Laurens Police Department, was involved in this case. (R. pp. 49-50). Riggot was contacted by an attorney for Victim's family (Bryan) after they discovered her home and vehicle were in Appellant's name and "a large som [sic] of money [was] missing out of the bank." (R. p. 50). After reviewing bank records and deeds and speaking to Victim's doctor, Riggot "established that there had been some fraud and exploitation" and arrested Appellant for breach of trust and exploitation of a vulnerable adult. (R. pp. 50-51; pp. 54-55). Riggot determined Appellant had contacted an attorney's office about a power of attorney, a power of attorney had been executed, and Victim had indicated at that time that she did not want her house deeded to Appellant. (R. p. 55). Riggot determined total amount of fraud – including various bank accounts and the appraised value of Victim's home and vehicle – to be approximately \$212,000. (R. p. 59).

Attorney James Bryan first met with Johnson about this matter in early 2012. (R. pp. 155-58). Bryan represents Victim's estate (with Johnson as personal representative) both in probate court and in a civil action filed against Appellant. (R. p. 159). Bryan noted Victim died intestate, so Johnson, his sister, and their cousin Carol would inherit her estate. (R. pp. 162-63). Bryan corroborated Johnson's testimony – by looking at bank records – that funds from Victim's accounts were used to pay (1) a \$30,000 check to bond court and (2) cashier's checks to Johnson.

(R. pp. 160-61). Appellant told Bryan in the summer of 2012 that he would give an itemized accounting of the funds and would return the house's deed and car's title to the estate. Bryan never received the accounting, did not receive the signed deed to Victim's house until spring 2015, and noted the estate has had possession of (but not title or keys to) Victim's car since spring 2015. (R. pp. 166-67; p. 171; pp. 174-77). Bryan noted Appellant had been deposed on January 13, 2014 as part of the civil case related to Victim's estate. (R. p. 168). In this deposition, Appellant admitted the following: (1) that he had deeded Victim's house to himself (R. p. 169), (2) that he was holding the house in trust for the family and that the rightful owner of the house is Victim's family (R. pp. 169-70; p. 172), (3) that he would return the car to Victim's family if they asked him to do so (R. p. 173), and (4) that he used \$12,000 of Victim's money to pay his son's bond. (R. pp. 179-80; p. 181). Bryan noted Appellant had not paid any money to Victim's estate between the January 2014 and the trial date. (R. p. 178). In sum, Bryan stated Appellant took \$137,000 from Victim's bank accounts (and paid \$23,000 to Johnson and \$14,000 for Victim's funeral). (R. pp. 182-83).

Dr. Joanne Brownlee first saw Victim on March 23, 2009 – Victim had breast cancer and refused both treatment and hospice. (R. p. 146). Dr. Brownlee saw Victim again February 15, 2011 and sent her to the emergency room for a blood transfusion because she had extremely low hemoglobin. (R. pp. 147-49). Dr. Brownlee stated such a hemoglobin count could affect cognitive and mental ability. (R. p. 149). Dr. Brownlee saw Victim again April 25, 2011 and her hemoglobin was still extremely low. (R. p. 150). Dr. Brownlee noted Victim was under hospice care when she saw her on August 8, 2011 and September 28, 2011. (R. p. 150).

Chad Bowen, a hospice chaplain, interacted with Victim twice per month for 10 months. (R. pp. 117-18). Bowen would pre-arrange visits with Appellant, who he described as "her caregiver." (R. p. 118; p. 120). Bowen stated Victim's confusion increased in the last 4-6 weeks of her life. (R. p.119).

Cindy McCarty, a former hospice nurse, treated Victim 1-3 times per week for 10 months. (R. pp. 92-94). McCarty noted Victim was often "very confused" during this time and had some memory loss. (R. pp. 97-98). McCarty stated severely low hemoglobin "can cause confusion, forgetfulness." (R. pp. 99-100). McCarty said Appellant requested she call him before she went to visit Victim. (R. pp. 100-01). McCarty called Appellant the day before Victim died because she did not answer the door (and he had a key). Appellant met McCarty at Victim's house and they found her on the floor. (R. pp. 101-02).

Appellant's case

Pam Pulley is Appellant's sister and Victim was her first cousin. (R. pp. 205-06). Pulley stated Victim was strong-willed and did not want to have chemotherapy or surgery when she became sick. (R. p. 207; pp. 213-14). Pulley stated Appellant became Victim's caregiver and that they were very close. (R. p. 208; p. 209; p.210; p.212). Pulley stated Appellant is not a thief. (R. p. 211).

Katherine Fielder is Appellant's mother and married Victim's uncle. (R. pp. 215-17; p.218). Fielder stated Appellant cared for Victim from 1999-2011. (R. pp. 219-20). Fielder stated Victim had a good relationship with Appellant, that she was a priority in his life, and that she wanted Appellant to take care of her. (R. pp. 221-22; pp. 223-24).

Allie Massey is Appellant's sister and cousin to Victim and Johnson. (R. pp. 225-29). Massey stated Appellant and Victim had a relationship "[l]ike a mother and a son." (R. p. 228). Massey stated Victim would only let Appellant assist her and trusted him with her health and wealth. (R. pp. 229-30; pp. 231-32; pp. 233-34). Massey stated Victim did not want to go to a nursing home. (R. p. 235). Massey stated Victim was not vulnerable or mistreated. (R. p. 236).

Michael Taylor was Victim's neighbor and spoke to her every day. (R. p. 237). When asked Victim if he could do anything for her, "she always said now [Appellant] will do it, [Appellant] will do it." (R. p. 238). Taylor stated Appellant checked on Victim "just about every day." (R. p. 239).

Appellant initially stated he would testify. (R. p. 240). After a bench conference, however, the trial judge announced there would be no more testimony in the case and excused the jury for the charge conference. (R. p. 243). The trial judge noted for the record that there had been multiple bench conferences and Appellant had said he needed additional time to organize a large box of materials. The trial judge noted Appellant had three years to do so and that Appellant had made frequent attempts to delay the trial. The trial judge found Appellant could testify but must do so at that point. Appellant had stated he needed more time to organize his materials and the trial judge returned him to his seat. The trial judge noted "throughout the course of these proceedings, [Appellant] has attempted to delay, to push things back and has come up with every excuse in the world to drag this matter out and the Court is not having any more of it." (R. pp. 243-45).

ARGUMENT

I. The issue of whether the trial judge abused his discretion in failing to conduct an examination to determine if Appellant was fit to stand trial is not preserved for appellate review.

Appellant argues “[t]he trial court’s decision not to order an examination to determine if Appellant was fit to stand trial was an abuse of discretion.” (Brief of Appellant, p.2). This argument is not preserved for appellate review.

“Issue preservation rules are designed to give the trial court a fair opportunity to rule on the issues, and thus provide us with a platform for meaningful appellate review.” Herron v. Century BMW, 395 S.C. 461, 465, 719 S.E.2d 640, 642 (2011) (quoting Queen’s Grant II Horizontal Prop. Regime v. Greenwood Dev. Corp., 368 S.C. 342, 373, 628 S.E.2d 902, 919 (Ct. App. 2006)). “It is well-settled that an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial court to be preserved for appellate review.” Staubes v. City of Folly Beach, 339 S.C. 406, 412, 529 S.E.2d 543, 546 (2000) (citation omitted). While Appellant argues the trial court erred in not ordering that he undergo a competency evaluation, no such evaluation was requested at trial. As the issue of whether an evaluation should be ordered was neither raised to the trial judge nor ruled upon, it is not preserved for review by this Court. Though Appellant argues his constitutional rights were violated because the trial judge did not order a competency evaluation, this Court has held “[c]onstitutional arguments are no exception to the preservation rules, and if not raised to the trial court, the issues are deemed waived on appeal.” Herron at 465, 719 S.E.2d at 642 (citations omitted).

Regardless, this issue is without merit. “A South Carolina criminal defendant has the

constitutional right to represent himself under both the federal and state constitutions.” State v. Barnes, 407 S.C. 27, 35, 753 S.E.2d 545, 550 (2014) (citing State v. Starnes, 388 S.C. 590, 600, 698 S.E.2d 604, 610 (2010)). “The test for competency to stand trial or continue trial is whether the defendant has the sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding and whether he has a rational, as well as factual, understanding of the proceedings against him.” McLaughlin v. State, 352 S.C. 476, 481, 575 S.E.2d 841, 843 (2003). In determining whether further inquiry into a defendant's fitness to stand trial is warranted, the trial court should consider factors such as “evidence of his or her irrational behavior, his or her demeanor at trial, and any prior medical opinion on his or her competence to stand trial.” State v. Burgess, 356 S.C. 572, 575, 590 S.E.2d 42, 44 (Ct. App. 2003). A trial judge’s decision on a request for a competency evaluation is within the judge’s discretion and will not be overturned absent a clear showing of an abuse of that discretion. State v. Locklair, 341 S.C. 352, 364, 535 S.E.2d 420, 426 (2000).

Appellant failed to demonstrate the trial judge should have ordered a competency evaluation in this case. Appellant represented himself at trial and – as is obvious after a review of the record – was extremely familiar with the facts and evidence. While Appellant often disagreed with the trial judge’s rulings on issues regarding rules and procedures, the record is devoid of any indication Appellant did not understand the proceedings against him. Appellant’s argument that a competency evaluation should have been ordered based on his pre-trial interactions with Judge Griffith is unpersuasive. While Judge Griffith commented Appellant looked “drowsy” and Appellant stated he was receiving medical care, there is no evidence in the

record that Appellant was impaired in any way. (R. pp. 8-9). Further, though Appellant mentioned three times that he did not understand what was going on, he engaged with Judge Griffith about his concerns and it appears he simply did not understand why the case was proceeding even though he claimed to have a doctor's appointment that day. (R. p. 10; p.12; p.19). Appellant's argument that an evaluation should have been ordered based on his interactions with the trial judge is similarly unpersuasive. Appellant presented a doctor's note and prescription bottle to the trial judge but did not indicate either that he was suffering any psychiatric issues or that his purported medical ailments prevented him from understanding the proceedings. (R. pp. 29-30). The trial judge, in his interactions with Appellant prior to the commencement of trial, clearly believed Appellant's alleged medical issues (as well as the thirty-three motions filed by Appellant) were merely a delay tactic – and said so at the time. (R. p. 40). The trial judge noted Appellant was capable of proceeding to trial and “seem[ed] totally lucid.” (R. p. 31). The record is devoid of any evidence Appellant did not understand the proceedings against him, was behaving irrationally, or exhibited a troubling demeanor at trial. See McLaughlin, 352 S.C. at 481, 575 S.E.2d at 843; Burgess, 356 S.C. at 575, 590 S.E.2d at 44. Appellant failed to show the trial judge abused his discretion in failing to sua sponte order a competency evaluation. See Locklair, 341 S.C. at 364, 535 S.E.2d at 426.

II. The issue of whether the trial judge erred in admitting hearsay is not preserved for appellate review.

Appellant argues “[t]he trial court abused its discretion by allowing impermissible hearsay, and statements that violate Rule 403 of the South Carolina Rules of Evidence.” (Brief of Appellant, p.5). This argument is not preserved for appellate review.

Though Appellant argues State witnesses Riggot and Johnson provided hearsay and prejudicial testimony, Appellant did not object and make this argument at trial. As Appellant did not make objections to purported hearsay or prejudicial testimony and the trial judge was not afforded the opportunity to rule upon such objections, this issue is not preserved for review by this Court. See Staubes, 339 S.C. at 412, 529 S.E.2d at 546.

Regardless, this issue is without merit. Hearsay is “a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.” Rule 801(c), SCRE. “It is well settled that evidence is not hearsay unless offered to prove the truth of the matter asserted.” State v. Vick, 384 S.C. 189, 199, 682 S.E.2d 275, 280 (Ct. App. 2009) (citations omitted). “Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.” Rule 403, SCRE. Appellant alleges five separate instances of purported hearsay testimony from State witnesses Riggot or Johnson in the trial transcript. Each is noted infra.

A.

Riggot stated the following during direct examination: “I was advised that they did do the power of attorney and that [Appellant] had contacted them about doing the power of attorney. I was also advised that when they met that [Victim] did not want her house deeded to the subject.” (R. p. 55).

B.

Riggot had the following exchange with the prosecutor on re-direct examination:

- Q: And would it have been in your, during the course of your investigation against the interests of the now deceased [victim]?
- A: Yes, I believe it was in it, not within her best interest, yes.
- Q: And against her actual wishes that she had described?
- A: Yes, sir.
- Q: And that she actually explained to people?
- A: Yes, sir.

(R. p. 89).

C.

Riggot had the following exchange with Appellant on re-cross examination:

- Q: Who did she tell the wishes to?
- A: A paralegal that works at Robert Whitesides office.
- Q: She told her wishes to him -
- A: To her.
- Q: - or her?
- A: That's what she told me, yes.
- Q: And after she told her her wishes, what all did she wish for?
- A: The only thing I can say is she told the paralegal at Whitesides office she did not wish the house to be deeded to [Appellant].
- Q: And she worked at Attorney Whitesides office?
- A: Yes, sir.

(R. pp. 90-91).

D.

Riggot had this further exchange with Appellant on re-cross examination:

- Q: So you took somebody's declaration of wishes to be truth?
- A: Yes.
- Q: Based on what?
- A: She told me.

(R. p. 91).

E.

Johnson had the following exchange with Appellant on cross-examination:

Q: Okay. Did she give you her house?

A: She was going to.

Q: How was she going to do that?

A: By her word she gave them to me. She gave them to me verbally.

Q: Okay. Did she give you her car?

A: She gave me all of her possessions verbally.

Q: How did she say that?

A: She said, she said, Raymond, when I die, you can have everything, the car, the house, the money, everything. That's what she said.

(R. p. 144).

F.

Appellant cannot demonstrate any of the foregoing testimony should have been excluded because "its probative value [was] substantially outweighed by the danger of unfair prejudice." Rule 403, SCRE. Even assuming arguendo that some of this testimony included hearsay, its admission would amount to harmless error. See State v. Mitchell, 286 S.C. 572, 573, 336 S.E.2d 150, 151 (1985) (finding improper admission of hearsay testimony to be harmless error where there was abundant evidence in the record from which the jury could have found the defendant guilty, notwithstanding the hearsay testimony); State v. Weston, 367 S.C. 279, 288, 625 S.E.2d 641, 646 (2006) ("The improper admission of hearsay is reversible error only when the admission causes prejudice."). The State presented overwhelming evidence that Appellant was guilty of the charges as indicted. In the last year of her life, Victim was elderly, in very poor health, and often confused. During this time period, Victim executed a power of attorney (in favor of Appellant) and Appellant withdrew more than \$137,000 from Victim's accounts within

two weeks of the execution of that document. Appellant deeded Victim's car and house to himself within two months of her death. Appellant admitted in a deposition that he was holding Victim's house in trust and Victim's family were the rightful owners of this property. As the State presented abundant evidence Appellant was guilty of the exploitation of a vulnerable adult and breach of trust, any error that may have been present in alleged admission of hearsay statements was harmless. Accordingly, Appellant failed to demonstrate the trial judge erred in admitting inadmissible hearsay.

III. The trial judge did not abuse his discretion in declining to sequester James Bryan.

Appellant argues "[t]he trial court abused its discretion by refusing to sequester James Bryan" during trial. (Brief of Appellant, p.8). This argument is without merit.

On the second day of trial, the State moved "to sequester the witnesses for this case as we are now getting into substantive witnesses." (R. p. 44). The State argued, however, that Raymond Johnson and James Bryan should be allowed to remain because they were the victim and representative of the estate, respectively. (R. pp. 44-45). The trial judge explained to Appellant that he generally grants motions for sequestration. (R. pp. 45-46). Appellant objected to James Bryan being allowed to remain in the courtroom because he would be a testifying witness. (R. p. 46). The trial judge noted Appellant's objection but allowed Bryan to remain in the courtroom. (R. pp. 47-48).

Rule 615 of the South Carolina Rules of Evidence allows the trial judge to sequester witnesses. "[T]he decision to sequester witnesses is left to the sound discretion of the trial judge." State v. Singleton, 395 S.C. 6, 15, 716 S.E.2d 332, 337 (Ct. App. 2011) (quoting State v.

Fulton, 333 S.C. 359, 375, 509 S.E.2d 819, 827 (Ct. App. 1998)). “Whether a witness should be exempted from a sequestration order is within the trial court’s discretion.” Id. (citation omitted).

The trial judge did not abuse his discretion in declining to sequester Bryan. The trial judge explained his rationale for allowing Bryan to remain in the courtroom:

He’s an attorney and a witness, but he’s appearing in the representative capacity on behalf of the Decedent’s estate. And in my view of it, that gives him essentially, as a representative of the alleged victim, that gives him the same right to stay as if we had an actual living victim present.

(R. p. 47). As Bryan was the attorney representing the estate of the deceased – whom Appellant was on trial for having exploited and defrauded – it was within the trial judge’s discretion to exempt him from the sequestration order. Appellant’s main contention appears to be that Bryan’s testimony incorporated elements from previous witnesses’ testimony. This Court has held, however, that “[t]he mere opportunity for the State’s witnesses to compare testimony is insufficient to compel sequestration.” State v. Carmack, 388 S.C. 190, 197, 694 S.E.2d 224, 227 (Ct. App. 2010) (citation omitted). Though Bryan would also testify as a State witness, Appellant was able to thoroughly cross-examine Bryan if he perceived Bryan’s testimony parroted testimony of another State witnesses. See id. at 198, 694 S.E.2d at 227-28 (holding “the threat that exposure to other testimony would taint subsequent testimony was alleviated by affording [the defendant] the opportunity to impeach any witnesses who altered their accounts”). As such, he cannot demonstrate he was prejudiced because the trial judge exempted Bryan from the sequestration order. Accordingly, Appellant has failed to demonstrate the trial judge abused his discretion in this matter.

IV. The issue of whether the trial judge abused his discretion in refusing to sequester Raymond Johnson is not preserved for appellate review.

Appellant argues “[t]he trial court abused its discretion by refusing to sequester Raymond Johnson.” (Brief of Appellant, p.10). This argument is not preserved for appellate review.

As noted supra, the State moved to sequester the witnesses – excepting Johnson and Bryan. (R. pp. 44-45). While Appellant objected to Bryan’s sequestration, he did not object to Johnson being sequestered during trial. (R. p. 46). As such, the trial judge was not afforded the opportunity to rule upon the issue and this argument is not preserved for review by this Court. See Staubes, 339 S.C. at 412, 529 S.E.2d at 546.

Regardless, this issue is without merit. As discussed supra, the decision to sequester witnesses (or exempt them from sequestration) is in the discretion of the trial judge. See Singleton, 395 S.C. at 15, 716 S.E.2d at 337. Appellant has failed to demonstrate the trial judge abused his discretion in exempting Johnson from sequestration. Appellant was on trial for exploiting the deceased victim in this case (who was vulnerable, suffering from advanced breast cancer, and elderly) and fraudulently transferring property to himself for his own use. Johnson was one of three beneficiaries of the deceased victim’s estate. As such, Johnson was clearly a victim in this case and there was no abuse of discretion in exempting him from the sequestration order – even if he was also to be a testifying witness. Appellant cannot demonstrate he was prejudiced by the trial judge’s decision, as he was able to thoroughly cross-examine Johnson about any perceived similarities to testimony from prior witnesses. See Carmack, 388 S.C. at 198, 694 S.E.2d at 227-28. Accordingly, Appellant has failed to demonstrate the trial judge abused his discretion in this matter.

V. The issue of whether the trial judge unreasonably restricted Appellant's right to testify is not preserved for appellate review.

Appellant argues "[t]he trial court erred in unreasonably restricting Appellant's right to testify on his own behalf." (Brief of Appellant, p.10). This argument is not preserved for appellate review.

Though Appellant argues the trial judge committed error because he restricted Appellant's right to testify, Appellant did not object and make this argument at trial. As Appellant did not make an objection, the trial judge was not afforded the opportunity to rule upon it, and this issue is not preserved for review by this Court. See Staubes, 339 S.C. at 412, 529 S.E.2d at 546.

Regardless, this issue is without merit. At the close of the defense case, the trial judge noted Appellant had said in a bench conference that he wanted to testify. (R. p. 240). Appellant stated he needed five minutes to get ready and there was a recess. (R. pp. 240-41). When court reconvened, Appellant said he was "a little bit disorganized" and the trial judge directed him to take the witness stand. (R. p. 242). Appellant asked to speak to the trial judge and there was a bench conference. (R. pp. 242-43). At the conclusion of the bench conference, the trial judge told the jury that "we've received all the testimony that we're going to have in this particular case" and excused them so the parties could have a charge conference. (R. p. 243). The trial judge then noted the substance of the bench conference for the record. The trial judge stated Appellant had brought a large box of materials to the witness stand and said he needed additional time to organize these materials. (R. p. 243). The trial judge stated he advised Appellant that he had "at least three years to get it organized" and asked if Appellant would testify. (R. p. 243).

The trial judge noted Appellant had consistently sought to delay this case and he believed this request for additional time was “nothing more than an excuse for delay.” (R. pp. 243-44). The trial judge stated he told Appellant

that if he wanted to testify he was free to do that, but he had to do it now. I was not going to afford him another break to organize his materials and I was not going to further countenance any further delay. I explained to him at the stand that if he did not take the witness stand as he expressly stated he wanted to do at some point 15 minutes ago, I explained that the Court would consider him having rested. He said he could not take the stand, because his materials were not organized at which point, I dismissed him, asked him to return to his seat, gather his materials.

(R. p. 244). The trial judge noted “throughout the course of these proceedings, [Appellant] has attempted to delay, to push things back and has come up with every excuse in the world to drag this matter out and the Court is not having any more of it.” (R. pp. 244-45).

“Every criminal defendant is privileged to testify in his own defense, or to refuse to do so.” State v. Rivera, 402 S.C. 225, 241, 741 S.E.2d 694, 702 (2013) (quoting Rock v. Arkansas, 483 U.S. 44, 53, 107 S. Ct. 2704, 2410 (1987)). “However, the right to present testimony is not without limitation.” Id. at 242, 741 S.E.2d at 703. “The right may, in appropriate cases, bow to accommodate other legitimate interests in the criminal trial process.” Id. (citation omitted). The trial judge did not err in this case because he did not restrict Appellant’s right to testify on his own behalf. Appellant was afforded the right to testify and simply chose not to exercise it. Having one’s materials organized in a specific manner is not a prerequisite to taking the witness stand. The trial judge informed Appellant he could testify at that time but that he could not delay the trial any further. Appellant was not prevented from taking the witness stand in his own defense. The trial judge clearly articulated a legitimate interest in the criminal trial process and

did not deny or restrict Appellant's ability to testify in his own defense at trial. See id.

VI. The trial judge did not abuse his discretion and improperly limit the scope of Appellant's cross-examination of Bryan.

Appellant argues "[t]he trial court abused its discretion by improperly limiting Appellant's cross-examination of [James] Bryan." (Brief of Appellant, p.12). This argument is without merit.

During Bryan's cross-examination, the State made numerous objections that questions had already been asked and answered. These objections were sustained. (R. p. 191; p. 192 p. 193; pp. 194-95; pp. 196-97; p. 198; p. 200; p. 201). After another sustained objection to a question that had been asked and answered, the trial judge gave Appellant the following warning:

All right. Now, here's the thing, we have been down this road so many times and the Court is trying to be extremely patient with you, [Appellant]. You have one last opportunity to ask a question which would address a matter that has been so far unexplored. The next asked and answered objection that is getting sustained your cross is over with with [sic] this witness. So fair warning from the Court. The next question that you ask and they make an objection asked and answer, the cross-examination is over. This cannot go on indefinitely, sir. Ask your next question, please.

(R. pp. 202-03). Appellant asked a few more questions, the State made an objection to a question having been asked and answered, the trial judge sustained the objection and said "[a]sked and answered. Thank you very much, [Appellant]. Have a seat, please, sir. Mr. Bryan, you may step down, sir." (R. p. 204). Appellant stated his "cross-examination was terminated before I completed it" and the trial judge replied the "cross-examination was exhaustive and I think you've covered every potential base that you could possibly think of and then some." (R. p. 204).

“The trial judge retains discretion to impose reasonable limits on the scope of cross-examination.” State v. Mizzell, 349 S.C. 326, 331, 563 S.E.2d 315, 317 (2002) (citations omitted). “[A] trial judge may impose reasonable limits on cross-examination based upon concerns about, among other things, harassment, prejudice, confusion of the issues, witness safety, or interrogation that is repetitive or only marginally relevant.” State v. Johnson, 338 S.C. 114, 124, 525 S.E.2d 519, 524 (2000) (citing State v. Jenkins, 322 S.C. 360, 474 S.E.2d 812 (Ct. App. 1996)).

Appellant failed to demonstrate the trial judge improperly limited his cross-examination of Bryan at trial. Upon reviewing the record, it is clear the trial judge did not abuse his discretion in imposing limits upon Appellant’s cross-examination. Appellant was pro se at trial and the trial judge clearly afforded him some consideration in how he examined and cross-examined witnesses. In Appellant’s cross-examination of Bryan, however, the trial judge sustained numerous objections to questions that had been asked and answered. (R. p. 191; p. 192; p. 193; pp. 194-95; pp. 196-97; p. 198; p. 200; p. 201). It was well within the trial judge’s discretion to – after warning Appellant to refrain from addressing matters that had already been explored – limit his repetitive questioning of Bryan. See Johnson, 338 S.C. at 124, 525 S.E.2d at 524. The trial judge did not prohibit Appellant from cross-examining Bryan. Rather, the trial judge imposed a reasonable limit on the scope of Appellant’s cross-examination of this particular witness. See Mizzell, 349 S.C. at 331, 563 S.E.2d at 317. Accordingly, Appellant has failed to demonstrate the trial judge abused his discretion in this matter.

VII. The issue of whether the trial judge erred in permitting Bryan to testify regarding matters to which he lacked personal knowledge is not preserved for appellate review.

Appellant argues “[t]he trial court erred by permitting Bryan to testify regarding matters outside of his personal knowledge.” (Brief of Appellant, p.13). This argument is not preserved for appellate review.

Though Appellant argues the trial judge erred in allowing Bryan to testify about matters of which he lacked personal knowledge, Appellant did not object and make this argument at trial. As Appellant did not make an objection, the trial judge was not afforded the opportunity to rule upon it, and this issue is not preserved for review by this Court. See Staubes, 339 S.C. at 412, 529 S.E.2d at 546.

Regardless, this issue is without merit. While Appellant argues Bryan testified to matters outside of his personal knowledge, Appellant has mischaracterized this testimony. Bryan stated he questioned the victim’s competency at the time she signed the power of attorney but noted he had “talked to some people concerning a [sic] competency.” (R. p. 184). Bryan stated he was making judgments about the victim’s competency “based upon testimony given in this case and people that I have talked to” but these comments were in response to Appellant’s question about whether the victim was competent. (R. pp. 185-86). Bryan stated the victim had low hemoglobin levels (which can cause confusion) but this statement was made in response to Appellant’s question “[w]hat specifically did Dr. Brownlee say that caused you to judge she was incompetent?” (R. pp. 188-89). Bryan again stated low hemoglobin could make a person confused but this was in response to Appellant’s question “in your judgment of competency,

other than physical characteristics, is there anything else to be considered?" (R. p. 199). Bryan repeatedly stated whether he was testifying based upon personal knowledge or not. Bryan was merely attempting to respond to Appellant's questions. "A party cannot complain of an error which his own conduct created." State v. Curtis, 356 S.C. 622, 632, 591 S.E.2d 600, 605 (2004) (citation omitted); see also State v. Page, 378 S.C. 476, 482, 663 S.E.2d 357, 360 (Ct. App. 2008) ("It is firmly established that otherwise inadmissible evidence may be properly admitted when opposing counsel opens the door to that evidence."). While Appellant challenges the admissibility of these particular portions of Bryan's testimony, the testimony Appellant complains of was given in response to particular questions he asked. Appellant cannot complain about the substance of Bryan's answers when his questions elicited those very answers. Accordingly, Appellant has failed to demonstrate Bryan's testimony was improper.

CONCLUSION

For all the foregoing reasons, it is respectfully submitted that the judgment and conviction of the lower court be affirmed.

Respectfully submitted,

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December 30, 2016

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM LAURENS COUNTY
Court of General Sessions
The Honorable Frank R. Addy, Jr., Circuit Court Judge

Appellate Case No. 2015-002435

THE STATE,

Respondent,

v.

Gregory Fielder,

Appellant.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR, and the April 15, 2014, order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

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SC Court of Appeals

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22959

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LAURENS COUNTY
Court of General Sessions

Frank Addy, Circuit Court Judge

Case Nos. 2015-002435

STATE OF SOUTH CAROLINA,

Respondent,

v.

GREGORY FIELDER,

Appellant.

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State of South Carolina)
) Court of General Sessions
 County of Laurens) 2012-GS-30-1430, 1431

State of South Carolina)
) vs.) Transcript of Record
)
 Gregory Fielder)
) DEFENDANT) VOLUME I.

November 2, 2015
 Laurens, South Carolina

B E F O R E:

Honorable Eugene C. Griffith, Jr., Judge (11/2/2015)
 Honorable Frank Addy, Judge, (11/2/2015-11/5/2015)

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 Attorneys for the State

Gregory Fielder, Pro Se
 Pro se

Joy E. Holston
 Official Court Reporter

I N D E X O F W I T N E S S E S

(IC) - Denotes In Camera
 (DW) - Denotes Defense Witness
 (SW) - Denotes State's Witness

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(SW) Leann Riggot

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1	<u>E X H I B I T S</u>				
2	<u>State's</u>				
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E X H I B I T S

Defendant's

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>	<u>PAGE#</u>
1	Obituary		X	546
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1	Letter-Gregory Fielder	X		93
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1 THE COURT: All right, Mr. Fernandez, I want to take
2 up anything pretrial that I can deal with this morning
3 before the jury comes back at 2:00 o'clock so that Judge
4 Addy can go ahead and do the jury selection. So, are you
5 prepared to go forward?

6 MR. FERNANDEZ: Yes, Your Honor.

7 THE COURT: Give me that case number on the record
8 again. I don't have the caption.

9 MR. FERNANDEZ: Sure, this is State v. Gregory
10 Fielder. Let me get you the indictment number, here we
11 go, it is indictment 2012-GS-30-1430 and 1431.

12 THE COURT: All right, Mr. Fielder, good morning.
13 Mr. Attorney General is prepared to call the case, the
14 jury selection is going to commence at 2:00 p.m. You seem
15 to be kind of drowsy, what is going on?

16 MR. FIELDER: I gave you the information on October
17 5th.

18 THE COURT: Stand up please so I can hear you better.
19 I remember October 5th you had some kind of mishap on your
20 porch.

21 MR. FIELDER: I gave you the statement.

22 THE COURT: I remember it because we continued the
23 trial from then to now, a month later in hopes that you
24 would get your examination done in Greenville or
25 Spartanburg or where ever the, I can't remember if it was

1 a CAT scan or an MRI, or some sort of imaging done at a
2 facility in Spartanburg and you were visiting a doctor in
3 Fountain Inn and a very nice man. I know exactly who he
4 is, he had a longtime connection with Laurens County.

5 MR. FIELDER: Okay.

6 THE COURT: That issue should be done with.

7 MR. FIELDER: No, it is not.

8 THE COURT: I gave you an opportunity at that time to
9 speak with a lawyer of your choosing and told you that if
10 you had one that would be fine and if you didn't that you
11 would be prepared to represent yourself.

12 MR. FIELDER: What I am talking about that doesn't
13 have anything to do with this. I would need a continuance
14 for medical reasons.

15 THE COURT: That was October, I gave you the
16 continuance in October. You don't get a permanent
17 continuance. I remember what I said, as a matter of fact
18 I have got the transcript of the hearing. Ms. Holston was
19 here and she prepared it. I told you to be prepared to
20 come to court.

21 MR. FIELDER: Can I take a look at it.

22 THE COURT: Sure, go back in there and get it,
23 please. It is sitting on my desk.

24 (Whereupon, Law Clerk retrieves transcript from
25 in-chambers and given to Mr. Fielder.)

1 THE COURT: Okay, Mr. Fielder, have you read this, it
2 is only three pages.

3 MR. FIELDER: I have.

4 THE COURT: Look at the top of page two, the actual
5 first page of the partial transcript. These are my words.
6 I want to reschedule as promptly as possible. Do you
7 understand.

8 Your answer, yes. And I am on medication and I am
9 not going to make a conscious decision under the
10 circumstances at this time.

11 The Court. Let's prepare a notice that this will be
12 the first case called during the November 2nd term of
13 court and everybody can make plans with that.

14 Here we are, November 2nd. Tell me why that is not
15 notice for you to be in court because obviously you are
16 here. Here is what we are going to do. The jury is
17 coming back at 2:00 o'clock. You need to be ready to
18 defend yourself against these two charges from which Mr.
19 Fernandez has just called the two indictments. Do you
20 understand?

21 MR. FIELDER: No.

22 THE COURT: Since you went to see the doctor after
23 falling off that porch, did you go to your imaging
24 appointment after that?

25 MR. FIELDER: I did.

1 THE COURT: Have you been back to see, what is the
2 Doctor's name, Ms. Lancaster?

3 MS. LANCASTER: Dr. Mahon.

4 THE COURT: Have you been back to see Dr. Mahon since
5 that time?

6 MR. FIELDER: Yes.

7 THE COURT: When.

8 MR. FIELDER: Last week.

9 THE COURT: Last week, you can't remember which day?

10 MR. FIELDER: Yes, I remember.

11 THE COURT: What did he tell you last week?

12 MR. FIELDER: I have to go see a neurosurgeon.

13 THE COURT: For what reason?

14 MR. FIELDER: For medical reasons.

15 THE COURT: How did you get here today?

16 MR. FIELDER: Got someone to bring me.

17 THE COURT: Who?

18 MR. FIELDER: West.

19 THE COURT: Mr. or Ms. West, which one?

20 MR. FIELDER: Mr. West.

21 THE COURT: Okay, Mr. West. You understand my
22 concern, Mr. Fielder.

23 MR. FIELDER: Yes.

24 THE COURT: I took great care in addressing your
25 issues in October and putting this case off for a month.

1 MR. FIELDER: I feel that this is about my health.

2 THE COURT: My other concern is getting cases moved
3 that are getting age on them and they are properly
4 scheduled, not called at the eleventh hour like called you
5 yesterday afternoon saying we are ready to come to trial
6 tomorrow. That is not fair but you were told to be in
7 trial ready to go in October, deferred to November 2nd.
8 To me that is very reasonable, a month's notice. How many
9 witnesses are you going to have in this case. The State
10 said some eight or ten last time.

11 MR. FERNANDEZ: Nine, Your Honor.

12 THE COURT: How many do you intend to call, Mr.
13 Fielder?

14 MR. FIELDER: I don't understand what is going on.

15 THE COURT: What kind of medication have you taken
16 today?

17 MR. FERNANDEZ: I don't.

18 THE COURT: You keep doing that to me. You don't
19 know when you went to the doctor.

20 MR. FIELDER: Yes, I do. I went last week.

21 THE COURT: And I had to ask you twice. You don't
22 know what kind of medication you are on.

23 MR. FIELDER: I can't read those words. I seem like
24 I am being abused here.

25 THE COURT: You know, I was kind of suspecting you to

1 say that.

2 MR. FIELDER: I am because it is 9:00 o'clock and I
3 let you know what was going on.

4 THE COURT: I don't know, understand why you think
5 you are being abused.

6 MR. FIELDER: I am being abused, I gave you paper
7 last month just like you said you gave me advanced notice,
8 I gave you advance notice that I am under medical care.

9 THE COURT: Here is the thing, Mr. Fielder. You
10 can't just give me notice in October, the first Monday in
11 October and say I am under medical care and that will just
12 carry you on for an indefinite period of time. That is
13 what you want and that is not fair to the court system or
14 the people that are victims of this, of any crime. You
15 can't just indefinitely delay. You have asked for several
16 continuances, called for several continuances by getting
17 rid of your lawyer which I was a party to in the civil
18 case and in this case. You called a lawyer this past
19 Friday who contacted the Attorney General, did you not?

20 MR. FIELDER: No.

21 THE COURT: Well, why would a lawyer from Greenville
22 call the Attorney General. The Attorney General doesn't
23 know who to call in Greenville.

24 MR. FIELDER: Who is the attorney?

25 THE COURT: Well, I can't remember.

1 MR. FIELDER: I don't either.

2 THE COURT: You know, two can play that game and I
3 think you are playing a game with me.

4 MR. FIELDER: No.

5 THE COURT: Well, since nobody gets a vote, it is
6 just me. I am going to make you be back here at 2:00
7 o'clock and I am going to have another set of eyes put on
8 you. Judge Addy is going to evaluate you too. I think
9 you are putting on. That is exactly what I think. But
10 since I am not going to try the case I am not going to
11 make the decision.

12 MR. FIELDER: You are falsely accusing me.

13 THE COURT: No, sir. I am not accusing you at all.

14 MR. FIELDER: Yes you are because that is what you
15 just said.

16 THE COURT: You said falsely, I think I am accusing
17 you rightfully. I think you are fanning your condition is
18 what I think. That is just my opinion so here is what we
19 are going to do. I have got several other matters I need
20 to take up before I leave for Greenwood. Judge Addy will
21 be here, and he will address this case going forward at
22 2:00 o'clock. Do you understand.

23 MR. FIELDER: I have to go to Greenwood to see a
24 neurosurgeon today.

25 THE COURT: You can ask Judge Addy whether you can go

1 or not.

2 MR. FIELDER: Pardon me?

3 THE COURT: You are under bond appearing in court.

4 You were here in October, you are here again. And I am
5 very respectful of that.

6 MR. FIELDER: So you are going to deny me the right
7 for medical attention?

8 THE COURT: Now see, you just brought that up.

9 MR. FIELDER: I told you earlier I had to go see a
10 neurosurgeon.

11 THE COURT: You didn't say this afternoon.

12 MR. FIELDER: Check the record. I said it earlier.

13 THE COURT: Ms. Holston, go back and see if he said
14 this afternoon.

15 (Whereupon, Court Reporter looks at the record.)

16 COURT REPORTER: He said he had to go to Greenwood
17 this afternoon and then he said he had to go to Greenwood
18 today.

19 MR. FIELDER: That is what I said.

20 THE COURT: All right. Tell me this. When did this
21 appointment in Greenwood get made? When did you make that
22 appointment?

23 MR. FIELDER: I don't know the date.

24 THE COURT: Since October 5th?

25 MR. FIELDER: Yes.

1 THE COURT: Okay. October 5th, I told you to be
2 here, be prepared to come to court and start this trial.
3 Why would you make an appointment on the day that I told
4 you to be ready to come into court if you weren't doing
5 exactly what I am saying and setting up the dominoes to
6 avoid going to trial. Why is that?

7 MR. FIELDER: The reason is because I told you on
8 October the 5th that I was under doctor care. I told you
9 I went to see the doctor and also I went to get an MRI.

10 THE COURT: Down in Spartanburg or Greenville. It
11 wasn't around Laurens County.

12 MR. FIELDER: It is Spartanburg County. And they
13 scheduled it for me.

14 THE COURT: But you had notice from me that you were
15 going to be busy on November 2nd.

16 MR. FIELDER: I am telling you the doctors told me
17 that was when I need to go.

18 THE COURT: The doctors as you, is that appointment
19 going to convenient for you. They do that, don't they?

20 MR. FIELDER: The doctor told me that he, that is
21 when he wanted me to go.

22 THE COURT: Which doctor?

23 MR. FIELDER: The MRI, they set it up.

24 THE COURT: Let me ask you this. You knew of that
25 appointment at least before this morning. Have you

1 communicated that to Ms. Lancaster, Mr. Fernandez, the
2 other Assistant Attorney General, my secretary, my law
3 clerk or anyone involved in this case other than yourself.
4 Have you communicated that request?

5 MR. FIELDER: I told Mr. Fernandez when I saw him.

6 THE COURT: When did you see him?

7 MR. FIELDER: I don't know the time.

8 THE COURT: This morning?

9 MR. FIELDER: Yes, when I saw him.

10 THE COURT: Did you tell anybody about this impending
11 appointment this afternoon before this morning when you
12 got here?

13 MR. FIELDER: You mean did I go down and get with
14 him?

15 THE COURT: Yes.

16 MR. FIELDER: I don't know how to get with him. I
17 don't know where he is.

18 THE COURT: Oh, no, no, no. We exchanged phone
19 numbers back at the hearing in October. You don't
20 remember that?

21 MR. FIELDER: You told me to give him my phone
22 number. And I gave him my phone number.

23 THE COURT: Ms. Lancaster, I will start with her.
24 She is the Clerk of Court. You said you knew her.

25 MR. FIELDER: I know she is the Clerk of Court.

1 THE COURT: Did you notice her.

2 MR. FIELDER: I know she is the Clerk of Court.

3 THE COURT: Did you tell her before this morning that
4 you had something to do this afternoon?

5 MR. FIELDER: My understanding is that if I tell her
6 I am suppose to show her I told him.

7 THE COURT: No. That is not the case.

8 MR. FIELDER: It doesn't work like that?

9 THE COURT: No. You can talk to her, she is a public
10 officer, she is the record keeper for Laurens County. So
11 if you want to file something publicly you give it to her
12 and she holds onto it. So if she was the only one, you
13 couldn't find her, my number is a public number also. I
14 have a medical appointment on Monday, the first day of
15 court. Who would you think to call. Maybe the Clerk of
16 Court, and you didn't call her.

17 MR. FIELDER: I will tell you my information to her,
18 when I say something to the Clerk, I am suppose to tell
19 him also.

20 THE COURT: That is part of my point. If you had of
21 told her she would have requested or notified him. She
22 would have done something along those lines. I am certain
23 she would have called me. Judge, I know you are first
24 case up on this schedule. Mr. Fielder, he has got an
25 issue. How would you like us to address it.

1 MR. FIELDER: I am saying I am not aware of things.
2 In the past I was not told to do it.

3 THE COURT: You could have called my office.

4 MR. FIELDER: Called your house.

5 THE COURT: Not house, office.

6 MR. FIELDER: What is your number.

7 THE COURT: I actually have one in this Court House.

8 MR. FIELDER: And I am suppose to know that. I don't
9 know it.

10 THE COURT: I am just making some reasonable
11 suggestions and you could have called the Clerk and said,
12 Madam Clerk, I communicate to you for Mr. Fernandez
13 because I may not be able to start on that Monday. So, it
14 is not inconvenient all the hundred jurors that Laurens
15 County paid to come in today, I may not be able, can go
16 forward with my trial. That is the position you put me
17 in. You seem to be getting a little more alert since I am
18 talking with you.

19 MR. FIELDER: I am not aware, I am listening to what
20 you are saying.

21 THE COURT: All right. Do you have anything you like
22 to hear pretrial before the jury comes back at 2:00?

23 MR. FIELDER: Yes. I do.

24 THE COURT: I have already asked the State, they
25 don't have anything pretrial, they are ready to go forward

1 with jury selection.

2 MR. FIELDER: You want me to read it?

3 THE COURT: Sure, just hand it up, it doesn't matter
4 to me.

5 MR. FIELDER: Okay. I will read it. This is a
6 notice for public record. Verified affidavit in truth.
7 Whereas an affidavit notice for the Clerk of Record is the
8 highest form of evidence. I am hereby creating public
9 record by declaration of the following verified affidavit
10 of the truth by seasonal and public notice.

11 THE COURT: Has that been filed?

12 MR. FIELDER: Establishing evidence and establishing
13 estoppel for protecting my rights and my private property.
14 I hereby and herein declare that I am competent and of age
15 for testifying. I have personal knowledge of the facts
16 stated herein. The facts stated herein and stated under
17 penalty of perjury of the walls of the creator and by the
18 walls of the United States of American be perpetual
19 reunion of sovereign states combined within a union of
20 states. I have verified the facts stated herein as being
21 true, direct, complete, certain and not misleading. By
22 signing the seal of my affidavit before a public notary as
23 I. The following facts are here duly notice of public
24 record concerning a man called Gregory Fielder. I hereby
25 and herein declare and proclaim my good faith with and at

1 arms length the following. On February the 2nd of 2011
2 Gregory Fielder was desired by a woman named Virginia
3 Montgomery, to have all of her possessions by establishing
4 a contractual agreement to perform.

5 THE COURT: All right, hang on, Mr. Fielder. Hold on
6 one second. I want you to be very careful. Here is why.
7 In a criminal case the State, the Attorney General in this
8 case, has the burden of proving your guilt beyond a
9 reasonable doubt. They are required to call witnesses and
10 present evidence for a jurys consideration. You don't
11 have to prove anything nor disprove anything. Until you
12 started reading facts, you were reading a recitation about
13 these facts are true and undisputed and provide under oath
14 and that sort of thing is fine. But anything you say,
15 particuarly in open court which you were about to say,
16 they can use it against you if possible to their
17 advantage. So you putting something on the record ahead
18 of time can be used against you and you don't have to do
19 that. I mean, it is their case to prove, your rights to
20 remain silent. I would not waive that right until you
21 have thoroughly thought it through. And there is
22 certainly no reason to waive that right in pretrial
23 hearings. So my question to you, do you have anything you
24 want the Court to consider in pretrial. I don't think
25 this is the correct time to present facts you want to, you

1 don't have to present a defense yet. Okay. So I am
2 trying to help you there.

3 MR. FIELDER: I appreciate it but since you are, it
4 seems like, you start asking me all kinds of questions.
5 So, I want you to know that I don't have a problem with
6 answering your questions.

7 THE COURT: I don't think you were answering my
8 question. My question was, do you have anything, a
9 pretrial motion of some type that you want the Court to
10 consider and you started reading a affidavit. I just
11 don't think that is an appropriate answer to my question.
12 You were going into your defenses I believe to the charges
13 that the Attorney General represents the State on.

14 MR. FIELDER: Well, this is just something that I put
15 on the record anyway that I have a different contract.
16 And I do understand that contracts--

17 THE COURT: And that is your defense.

18 MR. FIELDER: I don't have a defense.

19 THE COURT: That is a defense, that is your defense
20 to the accusations they are making.

21 MR. FIELDER: That is not a defense. That is not a
22 defense at all.

23 THE COURT: Okay.

24 MR. FIELDER: That is just a fact.

25 THE COURT: Well, juries answer questions of fact and

1 the question of fact may be, did y'all have a contract.
2 Maybe you have proof of it there. But that is a jury
3 question. Jurys resolve questions of fact whether a
4 contract existed or what were the terms.

5 MR. FIELDER: What are you asking me?

6 THE COURT: I asked, do you have any motions you
7 would like for me to consider pretrial?

8 MR. FIELDER: Yes.

9 THE COURT: And what motion would that be?

10 MR. FIELDER: Well, you had told me that, somebody
11 else is coming.

12 THE COURT: Judge Addy, that is why I would like for
13 him to, since he is going to try the case, let him hear
14 the pretrial motions. You have got any objections to
15 that?

16 MR. FIELDER: No, he can hear the motions.

17 THE COURT: Okay. Very well. He will be here about
18 1:45. And he will hear before the jury is selected. Now,
19 do you remember the voir dire questions we went through
20 last time?

21 MR. FIELDER: What is voir dire.

22 THE COURT: Voir dire was the questions that the
23 State proposed to me about asking, do you know any of the
24 witnesses, do you know any of the subject-matter of the
25 case and the accusations contained herein. Do you know

1 any of the attorneys. Do you remember those questions we
2 asked at the other trial? I know so and so, he is a
3 member of our church or I know one of the police officers,
4 brother-in-law or my cousin or something. Those are voir
5 dire questions which mean preliminary questions to try to
6 find out whether the juror will have any conflicts or not
7 in deciding the case. One good one for you would be, any
8 member of the jury panel ever been represented by any of
9 the attorneys on the other side. Things like that. That
10 is a standard question Judge Addy will ask. He will ask
11 it.

12 MR. FIELDER: But all I know is that I am here as a
13 man under the common laws and all the other stuff I don't
14 even know what y'all are talking about.

15 THE COURT: Okay. Now, we will stand at ease on this
16 trial until 2:00 and if Judge Addy is here a little bit
17 early perhaps he will want to take up those motions at
18 1:45. So, Mr. Fielder, you need to be back in the
19 courtroom at 1:45.

20 MR. FIELDER: I have one other question for you.

21 THE COURT: Yes, sir.

22 MR. FIELDER: Are you going to prevent me from
23 getting the medical attention?

24 THE COURT: I don't know because you have not told me
25 anything or shown me anything about an appointment.

1 MR. FIELDER: I can show it to you.

2 THE COURT: Well, I am going to let you address that
3 with Judge Addy.

4 MR. FIELDER: That will be fine.

5 THE COURT: Okay.. The pretrial conference is over.
6 Any pretrial motions which the State may have, you said
7 you had none. And what Mr. Fielder may have he will take
8 up at 2:00.

9 MR. FERNANDEZ: Thank you, Your Honor. In the same
10 courtroom?

11 THE COURT: In the same courtroom. We are not
12 transferring, just one Judge here. All right.

13 (Whereupon, a short break was taken.)

14 THE COURT: What is your name.

15 DEPUTY SHEPPARD: Deputy Timothy Brad Sheppard from
16 the Laurens County Sheriffs Office.

17 THE COURT: All right, Deputy, I directed you to
18 follow Mr. Fielder through the courtroom and out the hall
19 and just observe his demeanor and his appearance and his
20 behavior. I am going to ask you again before 2:00
21 o'clock, keep an eye on Mr. Fielder should Judge Addy need
22 for you to testify for what you observed. I just want you
23 to be attuned to him. Okay.

24 DEPUTY SHEPPARD: Yes, sir.

25 THE COURT: All right.

1 (Whereupon, the trial will resume at 2:00 p.m. with
2 Judge Addy presiding over the case.)

3 THE COURT: All right, we are going back on the
4 record, I do not know what Judge Griffith put on the
5 record earlier but I know that he had proceeded with jury
6 qualification in this case. My understanding is that you
7 have not proceeded with actual selection of a jury, is
8 that correct?

9 MR. FERNANDEZ: That is correct, Your Honor.

10 THE COURT: What is the name of the case that we are
11 going to be trying, please.

12 MR. FERNANDEZ: Your Honor, this is State v. Gregory
13 Fielder. Indictment numbers, two charges, indictment
14 numbers are 2012-GS-30-1430 and then 1431. The charges
15 are exploitation of a vulnerable adult and breach of trust
16 greater than \$10,000.00 dollars.

17 THE COURT: All right. And, Mr. Fielder is present,
18 you are Mr. Fielder, is that correct, sir?

19 MR. FIELDER: No.

20 THE COURT: What is your name, sir?

21 (Whereupon, Mr. Fielder handed a form to the Court.)

22 THE COURT: You prefer to be called Greg Iam Aman?

23 MR. FIELDER: It is Greg Iam Aman.

24 THE COURT: Iam Aman. All right. Aman is how you
25 would prefer to be referred to during these proceedings,

1 sir?

2 MR. FIELDER: That is correct.

3 THE COURT: All right. Again, the record should
4 reflect that Judge Griffith and I had to switch at the
5 last minute today because the case that I was selecting a
6 jury on, my wife, they didn't realize it until this
7 weekend but the attorneys informed me that my wife was a
8 potential reply witness because of her job at the
9 hospital. And so after discussing the matter with Judge
10 Griffith the decision was made that he would take the case
11 that I was trying over in Greenwood and I would resume
12 responsibility for this one. Is there anything pretrial
13 that we need to take up before we begin with jury
14 selection?

15 MR. FERNANDEZ: Your Honor, I know the defendant has
16 some motions that Judge Griffith did not end up ruling on,
17 essentially a motion to continue and I will let him
18 explain why when it has to do with medical reasons. The
19 State wouldn't have, the only thing that the State has,
20 the defendant referenced having about nine to ten
21 witnesses that he would intend to call. I would just like
22 their names before the jury is brought in and we have a
23 witness list for Your Honor too at that point.

24 THE COURT: Mr. Aman, you want to, you are moving for
25 a continuance, is that correct?

1 MR. FIELDER: That's correct.

2 THE COURT: All right. I am happy to hear your
3 motion. Judge Griffith and I did speak. He was trying to
4 bring me up to speed on this case. I was trying to bring
5 him up to speed on the other case. So he did indicate to
6 me that there was a motion made by you to continue the
7 matter. But I am happy to hear from you, sir.

8 MR. FIELDER: Thank you. And I am not a defendant, I
9 am a man. What is happened is, I have given the other
10 man, what is his name, Eugene Griffith?

11 THE COURT: Yes, sir.

12 MR. FIELDER: I gave him information on October the
13 5th and it was stated a need for a continuance for 90
14 days. And upon his leaving earlier he gave me an order to
15 bring him proof of my medication. So, I went and I
16 brought the medication and I am prepared to show it to the
17 Court even though I believe it to be in violation of my
18 papers and my personal items for me to have to do all of
19 that. I have given to Your Honor, to the doctor's
20 information, so he has enough information for that.
21 However, I don't mind showing it to the Court.

22 THE COURT: All right. Well, Mr. Aman, while you
23 were speaking I did review the transcript from, when Judge
24 Griffith was here on October the 8th. And it indicates
25 clearly in that transcript that he advised you that this

1 case would be tried this week and he did afford you some
2 additional time because of your representations that you
3 were under a physicians care. It was also explained to me
4 in the ride over here, Mr. Aman, that essentially you were
5 making the same claims that you are under a doctor's care,
6 you have a physician's excuse at this point and time?

7 MR. FIELDER: Yes.

8 THE COURT: You have a doctor's excuse?

9 MR. FIELDER: I do.

10 THE COURT: May I see it?

11 MR. FIELDER: Sure. And I do want to put on the
12 record that if I am forced to go forward, I will go
13 forward but I will do it under duress, under terrorism,
14 under threat and under coercion.

15 THE COURT: Do you have the physician's excuse, a
16 note from your doctor saying you are not capable of moving
17 forward today?

18 MR. FIELDER: Well, it doesn't have any words on it,
19 it just has the time I am suppose to be out, it doesn't
20 specify.

21 THE COURT: May I see the note, please. I have a
22 physician's note from Fountain Inn Family Practice that
23 basically says that, please evaluate Mr. Fielder. It is
24 referring, Mr. Fielder, to a neurosurgeon to evaluate him
25 for his back radiating pain. And it says, my findings are

1 attached of Dr. James Mahon, M-A-H-O-N. Received a pill
2 bottle, prescription on the bottle says Gregory Fielder,
3 on October the 19th and it is for alprazolam,
4 A-L-P-R-A-Z-O-L-A-M being prescribed for anxiety
5 apparently. I don't see a doctor's note, I don't see a
6 doctor's excuse. I will hand those back, ask that you
7 return those to Mr. Aman. Mr. Aman, Judge Griffith also
8 indicated to me, quite honestly, this morning and let's
9 just cut through the chase here, sir. It was represented
10 to him by you that apparently a Mr. West or somebody by
11 the name of Mr. West drove you to the Court House today.
12 Judge Griffith essentially asked the deputies to follow
13 you into the parking lot to see if Mr. West just happens
14 to be the one driving you to pick you up. They saw you
15 get into a white car, they saw you get into the driver's
16 side of a white Acura with license plate, [REDACTED] and drive
17 off. And, Mr. Aman, after lunch they stayed in the
18 parking lot, a couple of deputies stayed in the parking
19 lot and it was reported to me that you drive right back,
20 parked your car, walked into the place, didn't have any
21 problems, didn't have any issues with mobility. So, I
22 find it very curious that you would tell Judge Griffith
23 that you arrived with Mr. West, whoever that might be, and
24 all of a sudden you were seen driving off and driving
25 back. Apparently, based on what was told to me by Judge

1 Griffith, basically it was represented to him by you that
2 you were too completely doped up to even operate a car
3 much less stand trial. My Court Reporter who is normally
4 with me has also provided a transcript to me that I have
5 just opened up on my computer, it is from a hearing held
6 here in Laurens on March the 2nd, 2015 in which we went
7 over the current situation regarding your attorney, et
8 cetera, et cetera. Mr. Aman, basically here is where we
9 are, sir. The Court doesn't believe for a moment that you
10 are incapable of having any sort of physical problem. I
11 don't think that you are incapable of proceeding to trial,
12 quite the contrary. You seem totally lucid to me. You
13 seem like you are to go forward. And what I would
14 terribly call a misrepresentation to the Court this
15 morning when you said you weren't driving and in fact you
16 are driving. That misrepresentation, having been proven
17 inaccurate, we will be going forward, sir.

18 MR. FIELDER: Okay.

19 THE COURT: Any other motions?

20 MR. FIELDER: Yes. This is not for physical reasons.
21 Now, in terms of driving away, that is correct, in terms
22 of me going home to take care of my medical concerns.
23 That is correct. Now, there is a person, of me having a
24 mental frame in terms of the anxiety medicine that has
25 been prescribed. I will repeat, this forces me to go

1 forward, I will do it, but under duress, under terrorism,
2 under threats, under coercion.

3 THE COURT: All right, I appreciate your position,
4 Mr. Fielder, the Court is not coercing you, the Court is
5 not threatening you and the Court obviously is not engaged
6 in terrorism. The Court has made a decision that this
7 case will be moving forward. And that is where we are.
8 You have had since the hearing with Judge Griffith last
9 October, you have had that amount of time to obtain
10 physician's excuse and you have failed to do so. If you
11 had a physician's excuse indicating that you were
12 incapable of going forward with this trial and perhaps
13 that would be a different matter entirely. But as things
14 stand now, the only thing that you have given me is a
15 bottle of pills for anxiety and a note from a doctor that
16 you need to see a neurosurgeon because of your back pain.
17 And I don't see anywhere, any indication that you, in
18 fact, are suffering from any kind of problem and based
19 upon the conservations that we have had in these last
20 fifteen minutes. The Court specifically finds that you
21 are perfectly one-hundred percent A-okay to move forward
22 with this case. So, we will be doing that. The jury, I
23 believe, is in the other courtroom. Any other motions
24 that we need to address before I have them start coming
25 in?

1 MR. FERNANDEZ: The only thing that I would like to
2 do, no motions from the State, Your Honor. The only thing
3 that I would like to do and put on the record a plea
4 offer. I have yet to receive an answer one way or another
5 from Mr. Fielder about whether he accepts it. He keeps
6 telling me he is too intoxicated to make a decision. I
7 want to put on the record that the plea offer was made and
8 hopefully he can accept it or decline it. The State would
9 allow Mr. Fielder to plead guilty to one count of breach
10 of trust over \$10,000.00. The State would in return
11 dismiss the charge of exploitation of a vulnerable adult.
12 The State would recommend a probation and restitution to
13 be determined by the Court.

14 THE COURT: Mr. Fielder, or Mr. Aman, is it your
15 desire to move forward with a jury trial or do you want to
16 accept the State's offer?

17 MR. FIELDER: It is not my desire to move forward.

18 THE COURT: Let me rephrase that. Do you want a jury
19 trial or do you want to accept the State's offer?

20 MR. FIELDER: I don't know what the offer is.

21 THE COURT: He just put it on the record. That you
22 plead guilty, he just placed it on the record.

23 MR. FIELDER: I need to see it.

24 MR. FERNANDEZ: This was handed to him in writing in
25 October, Your Honor.

1 THE COURT: Apparently you have already seen the
2 offer, sir.

3 MR. FIELDER: I haven't seen it.

4 THE COURT: You have a copy, Mr. Aman. Let the
5 record reflect that Attorney General Fernandez has
6 provided a copy of the exact offer that was just placed on
7 the record a moment ago to Mr. Aman.

8 MR. FERNANDEZ: That offer has an expiration date on
9 it, we will ignore the expiration date on that document I
10 just handed him.

11 THE COURT: Thank you, sir. You are free to accept
12 that offer right now if you choose to do so, the offer
13 that is printed on that paper. If you do not accept it we
14 will bring a jury in and proceeding with the trial.

15 MR. FIELDER: Okay. Can I have the opportunity to
16 discuss it with someone?

17 THE COURT: I am sorry?

18 MR. FIELDER: Can I have the opportunity to discuss
19 it with someone?

20 THE COURT: With whom do you wish to discuss it?

21 MR. FIELDER: Some of my relatives.

22 THE COURT: I will give you five minutes to have that
23 conversation, are they present in the courtroom?

24 MR. FIELDER: No.

25 THE COURT: Where are they?

1 MR. FIELDER: At home.

2 THE COURT: Okay. You can call them and try to reach
3 them at home and speak with them about it. What we will
4 do, is we will be at ease for five minutes. I will let
5 you step outside, you may use your cell phone to do that.
6 I will take this plea and then once I finished with that
7 plea and I will ask you be back in the courtroom. If you
8 don't show back up, understand this case will go on in
9 your absence.

10 MR. FIELDER: I understand all of that. And I have
11 some other motions too.

12 THE COURT: What are your other motions.

13 MR. FIELDER: There are several of them.

14 THE COURT: Let's go ahead and address them, please.

15 MR. FIELDER: I will make this call.

16 THE COURT: I would rather hear your motions at this
17 point and time and then I will give you five minutes to
18 make the call.

19 MR. FIELDER: I don't have them with me, they are in
20 the car.

21 THE COURT: All right. Mr. Aman, I will let you step
22 outside, you have got five minutes to retrieve those and
23 make a phone call and get back in here. I will take
24 another plea with the Attorney Generals office and then
25 when I am done with that you will have to be in a position

1 to proceed.

2 MR. FIELDER: Very good.

3 THE COURT: Very good.

4 (Whereupon, a short break was taken.)

5 THE COURT: We are back on the record of the State
6 versus Gregory Fielder. Mr. Fielder, do you want to
7 accept the State's offer, yes or no.

8 MR. FIELDER: No.

9 THE COURT: In that case we will be moving forward
10 with the jury trial. The Court finds that he has rejected
11 that offer. He was clearly made aware of it and he has a
12 lot of time to consider it. So, the Court will accept his
13 failure to make a decision as simply rejection and we will
14 move forward with the jury trial. Bring the jury in.

15 MR. FIELDER: I have motions.

16 THE COURT: That's right. What other motions did you
17 have, sir.

18 MR. FIELDER: First motion, wanted to be on the
19 record that I am being forced to move forward under
20 duress, terrorism, threat and coercion.

21 THE COURT: Appreciate your position, I have already
22 addressed that. What is your next motion.

23 MR. FIELDER: The next motion is that I reject the
24 fact that Your Honor has made a medical determination that
25 I do not and cannot have anxiety. I want to make the next

1 motion is that, you will please take notice that I will
2 move before the Eighth Judicial Circuit at Laurens County
3 Court House, Laurens, South Carolina for an order and
4 demand the use of common law.

5 THE COURT: Your next motion.

6 MR. FIELDER: Have you ruled on it.

7 THE COURT: I will do them one at a time. As far as
8 the Court making a medical determination that you do not
9 have anxiety. I am not making any such determination, I
10 am simply stating that whatever medical or mental
11 condition you suffer from is not so acute or severe as to
12 warrant the delay of these proceedings or to affect your
13 ability to present your case. Concerning the order and
14 demand that we use common law, to the extent that common
15 law applies, the Court will apply common law to the extent
16 statutory law applies.

17 MR. FIELDER: I want to make a motion that I am very
18 well aware that the Constitution only allows for two types
19 of criminal jurisdiction of which one is a, under common
20 law jurisdiction. And the other is a military tribunal,
21 it is under article I, section 8, clause 17. And that I
22 do not wish to go forward under statutory law.

23 THE COURT: Your motion is noted. This is the court
24 of general jurisdiction. The Court will move forward.

25 MR. FIELDER: I make a motion that I have a problem

1 with statutory law because there is no where in the
2 Constitution that provides for it. And if the Court is
3 going to use statutory law that they give me the published
4 rules of it and that I have time enough to review them.

5 THE COURT: All right. Mr. Aman, you have had
6 sufficient time and anyone who is within the territorial
7 jurisdiction of this State is basically charged with
8 understanding what the law is. You have had plenty of
9 time to research it yourself, sir. So, I appreciate your
10 position but that motion is denied.

11 MR. FIELDER: I want to make a motion that Your Honor
12 recuses himself because it was Your Honor that I presented
13 that to and he made a judicial determination that common
14 law would be what we will be using.

15 THE COURT: The motion to recuse is denied. The
16 Court does not, simply because you are, the Court rules
17 against one party, the Court is not requiring to recuse or
18 a Judge is not required to recuse himself simply because a
19 ruling is made adverse to a party in a proceeding. And I
20 am objective, the jury will get the findings of fact, I
21 will preside over the trial of this case. And I don't
22 know you folks from Adam's House Cat so I don't see any
23 reason to recuse myself. Any additional motions?

24 MR. FIELDER: That's fine. Yes, sir. I make a
25 motion that Your Honor places his oath of office on the

1 record.

2 THE COURT: I would love to be able to do that,
3 unfortunately that is sitting behind a frame back at the
4 Court House in Greenwood. The Court will take judicial
5 notice that I was sworn in to this job sometime in April
6 of 2000, I believe, and my oath of office is on file, I
7 believe, with the Secretary of State's Office in Columbia,
8 South Carolina. They would have a copy that anyone could
9 acquire at their leisure. So the Court will take judicial
10 notice of when I took the oath and the fact that oath is
11 somewhere in the archives department. I am not sure it
12 can easily be accessed.

13 MR. FIELDER: I want to make a motion that this case
14 be discharged because any time an oath of office is
15 demanded it must be proof.

16 THE COURT: Motion denied.

17 MR. FIELDER: I make a motion that Your Honor proves
18 that he has jurisdiction over Aman.

19 THE COURT: The Court has general jurisdiction over
20 any criminal proceeding brought by the State of South
21 Carolina against an individual who is within the
22 territorial confines of this State. And clearly, sir,
23 whether you go by the name of Aman or Mr. Fielder, either
24 way, the Court has jurisdiction over you.

25 MR. FIELDER: I make a motion that the Court proves

1 that it has jurisdiction over me.

2 THE COURT: When the Court determines at a later
3 point and time whether you intend to or whether you would
4 be allowed to stay out on bond or whether you will be
5 confined to the detention center this evening, that might
6 be the appropriate time to address that matter. But we
7 will wait and see how things progress in this trial.

8 MR. FIELDER: I make a motion--

9 THE COURT: This is your last one so make it a good
10 one, okay, I have got a jury waiting so I have to bring
11 them in.

12 MR. FIELDER: You are going to deny me making a
13 motion.

14 THE COURT: So far the motions that you have made,
15 sir, only seem intended to delay these proceedings. I
16 haven't heard anything that approached anything
17 substantive, meritorious, what have you. What you are
18 basically telling me has no basis in legal procedure
19 whatsoever. I am not going to play this game
20 indefinitely. So you have got one more motion to make, if
21 you want to make a good one I suggest you make a good one
22 otherwise I will allow you to submit written motions
23 tomorrow when we reconvene. The Court will take those
24 under advisement. I will look at them and I will give you
25 a ruling on the record at that particular point and time.

1 But if you have any motions to make, they are germane to
2 these proceedings prior to selection of the jury. You
3 have got one more to make, sir.

4 MR. FIELDER: What is the number that I have made.

5 THE COURT: You can make good ones, you haven't made
6 one so far that is cognizable really in the law or that
7 makes any sense to me. If you have them written down you
8 can hand them to me, if you have got them written down. I
9 see you are referring to papers in front of you.

10 MR. FIELDER: I don't want to release them. Give
11 them to you and you are going to give them back?

12 THE COURT: Yes, sir.

13 MR. FIELDER: I want you to rule on each one of them.

14 THE COURT: I will but I am not going to delay these
15 proceedings any further.

16 MR. FIELDER: So, do you intend to give me remedy?

17 THE COURT: We are moving forward with the jury
18 trial.

19 MR. FIELDER: You don't intend to give me remedy on
20 recourse?

21 THE COURT: I will give you remedy and recourse, I
22 will allow you to submit your motions in written form to
23 me. I will rule upon them. If you want to make a xerox
24 copy of what you have got in front of you that is
25 perfectly fine. Hand them to the Clerk of Court, she will

1 make two copies, one for the Attorney General and one for
2 me and I will take a look at them, at some point this
3 evening after we select the jury and move forward with
4 this case. While the Clerk is making those go ahead and
5 bring the jury in.

6 (Whereupon, the jury came into open court at
7 approximately 3:30 p.m.)

8 THE COURT: Ladies and gentlemen of the jury panel,
9 let me introduce myself to you. My name is Frank Addy and
10 I am a Circuit Judge from Greenwood. I am a resident
11 Judge here in the Eighth Judicial Circuit. And I know
12 that you have already made the acquaintance of Judge
13 Griffith that was here and qualified you this morning. I
14 asked the Court Reporter before I come out whether Judge
15 Griffith explained to you the situation that took place
16 this morning. He is over there trying a case that I
17 selected a jury on, as it turns out my wife, unbeknownst
18 to anyone until this morning is a potential reply witness.
19 And she is a nurse at the hospital. And it turns out that
20 some of her notations were in the chart and nobody
21 realized it. So we kind of got creative and decided we
22 would simply switch terms. At this point and time I want
23 to let you know I haven't been keeping you waiting just
24 because I have been here twiddling my thumbs. We have
25 been addressing some matters on the first case up for

1 trial and I did have to take a few pleas before we resumed
2 with jury selection. So at this point and time, Attorney
3 General, if you would, call the next case up for trial,
4 please.

5 MR. FERNANDEZ: Yes, Your Honor, this is the State
6 versus Gregory Fielder, indictment number 12-GS-30-1430.
7 That charge is exploitation of a vulnerable adult under
8 statute 43-35-0085. The State alleges that Gregory
9 Fielder did in Laurens County, state aforesaid between the
10 1st of February of 2011 and 20th of December of 2011,
11 knowingly, willfully, and unlawfully exploit a vulnerable
12 adult, one Virginia Montgomery. To wit: That the said
13 defendant did improperly use the victim's checking
14 accounts and property causing said Virginia Montgomery to
15 be exploited in violation of provisions of section
16 44-35-85 of the South Carolina Code of Laws, 1976 as
17 amended.

18 Indictment number 12-GS-30-1431, breach of trust,
19 section 16-13-230. That Gregory Fielder did in Laurens
20 County, state aforesaid between the 1st day of February of
21 2011 and 20th day of December of 2011, willfully and
22 unlawfully commit a breach of trust with a fraudulent
23 intention, to wit, that the defendant then and there being
24 entrusted by Virginia Montgomery with the care and/or
25 keeping in her possession of goods and/or monies to wit,

1 morning so he could at least follow along.

2 THE COURT: All right. Well, he seems to have a
3 full, well, he seems to have a lot more documents today
4 than he did yesterday and is it your intention to call Mr.
5 Bryan to testify here in the case-in-chief?

6 MR. FERNANDEZ: Correct, Your Honor.

7 THE COURT: Okay. Well, we can address that at that
8 point in time, because I do note there was apparently a
9 civil lawsuit filed and I think that in my colloquy with
10 Mr. Fielder and in March, he did indicate that he
11 represented himself in that case. So the next matter?

12 MR. FERNANDEZ: Yes, Your Honor, the State would move
13 to sequester the witnesses for this case as we are now
14 getting into substantive witnesses. Yesterday was only
15 custodians. We will move to sequester. I know that
16 defendant has indicated he intends to call a number of
17 people. State will obviously have some people that and
18 should Your Honor grant sequester, I will note for the
19 Court that Mr. Johnson here would be the victim in the
20 case. So I think he has a, he does have a right to stay.
21 Mr. Bryan is a representative of the family estate. That
22 includes victims who are not present in court and that
23 would be Mr. Johnson's family who couldn't make a trip
24 down. So I think he would have also a right to stay, as
25 well, being the personal representative for the family

1 estate. However, Your Honor, should know that he is also
2 going to testify as a fact witness so just letting Your
3 Honor know that.

4 THE COURT: Right. All right. In terms of moving
5 forward, you indicated to me yesterday that you anticipate
6 having your case done by sometime this afternoon, is that
7 correct?

8 MR. FERNANDEZ: Yes, Your Honor.

9 THE COURT: All right. And, Mr. Fielder, you'll need
10 to make sure that any witnesses that you want to call are
11 available this afternoon, starting this afternoon and if
12 you have any witnesses that are in the courtroom, unless
13 you have a reason that you want them to stay, I'll need
14 them just to exit the courtroom and be comfortable
15 somewhere else until we're ready for them to be called.
16 You can probably let them go until sometime this afternoon
17 if you wanted to. But if they're going to be called as a
18 witness in this case, if you do intend to present a case,
19 Mr. Fielder, they'll need to leave the courtroom, okay? I
20 don't know that the gentleman is seated next to you or if
21 the gentleman behind you is going to be a witness, too,
22 but if they're going to be witnesses, they may need to
23 leave, unless you have some objection or something's wrong
24 with that?

25 MR. FIELDER: I would prefer he stay.

1 THE COURT: All right. The individuals, who are
2 they?

3 MR. FIELDER: This is my best-friend, and he's not
4 going to testify.

5 THE COURT: All right. If they're not going to
6 testify, is the gentleman seated to your right going to
7 testify?

8 MR. FIELDER: No.

9 THE COURT: If they're not going to testify, that's
10 fine. They can stick around. It's an open court. Anyone
11 is perfectly free to come, but usually I will grant the
12 motion for sequestration when it's made by the other party
13 so.

14 MR. FIELDER: Okay. And I want to object to Mr.
15 Bryan being present.

16 THE COURT: I appreciate your position.

17 MR. FIELDER: He, he--

18 THE COURT: Yes, sir.

19 MR. FIELDER: My reason is because he is representing
20 some other members and if they were here, they would, and
21 should be excused. So there's no need for him to be privy
22 to testimony because he's going to be testifying. So,
23 therefore, that would be prejudicial for him to remain.

24 THE COURT: May I ask you at what point do you intend
25 to call Mr. Bryan?

1 MR. FERNANDEZ: As of right now, Your Honor, I intend
2 to call Ms. Riggot first. There is a nurse also present.
3 I'm going to call her so I can get her back to work, and
4 then we would probably call Mr. Raymond Johnson and Mr.
5 Bryan immediately after that.

6 THE COURT: All right. Because Mr. Bryan is a
7 representative of the estate, he's also obviously an
8 attorney, and I do find that it would be appropriate for
9 him to remain here. Your objection is noted.

10 MR. FIELDER: Yeah. Well, one more objection, Your
11 Honor.

12 THE COURT: Yes, sir.

13 MR. FIELDER: Is he staying as an attorney or as a
14 man.

15 THE COURT: Well, he's both so. He's an attorney and
16 a witness, but he's appearing in the representative
17 capacity on behalf of the Decedent's estate. And in my
18 view of it, that gives him essentially, as a
19 representative of the alleged victim, that gives him the
20 same right to stay as if we had an actual living victim
21 present.

22 MR. FIELDER: Right. And he is going to be
23 testifying, he's going to be privy to everybody else's
24 testimony?

25 THE COURT: At least the first couple of individuals;

1 yes, sir. But under the Victim's Rights Act he does have,
2 in my opinion, a right to be present and this is a
3 discretionary matter for the Court.

4 MR. FIELDER: Well, I want to note for the record
5 that I object.

6 THE COURT: Very good, sir. It is noted.

7 MR. FERNANDEZ: The last matter I have, Your Honor,
8 is the power of attorney. Just seeing if the defendant
9 would like to stipulate to its authenticity to save some
10 time on once we get started. This is the contract that he
11 has referenced in his opening, so I don't imagine he would
12 have any issue with it. Because his defense is based on
13 it, but this is a true and accurate certified copy from
14 the Clerk's Office. Okay. If he's nodding yes then--

15 MR. FIELDER: Oh, I'm sorry. Oh, yeah, I'll
16 stipulate to that.

17 MR. FERNANDEZ: Okay.

18 THE COURT: Very good. That's marked as State's?

19 MR. FERNANDEZ: This is marked as State's 5, Your
20 Honor.

21 THE COURT: Very good.

22 MR. FERNANDEZ: And I'll just note that it's been
23 stipulated as to its authenticity and admissibility.

24 THE COURT: Okay.
25

DIRECT EXAMINATION

BY MR. FERNANDEZ:

Q Please state your name for the record?

A Leann Riggot.

Q And, Ms. Riggot, if you would please tell us your law enforcement background, how long you have worked with Laurens Police Department?

A I have 16 years with the Laurens Police Department.

Q And you are no longer employed with the Laurens Police Department, is that correct?

A That's correct.

Q And what do you currently do?

A I work for Quality Logistics.

Q Now, I want to direct your attention back to February 1st of 2011. At that point were you employed with the Laurens Police Department?

A Yes sir, I was.

Q And what was the nature of your employment, what was your job description?

A I was an investigator with the police department.

Q What kind of crimes did you typically investigate?

A Murder, fraud, anything of that nature.

Q And typically concerning February of 2011 do you remember investigating Gregory Fielder?

A Yes sir, I did.

1 Q And is Mr. Fielder here present in the court today?

2 A Yes, he is.

3 Q Could you identify him for us?

4 A He is sitting there with the pink shirt.

5 THE COURT: The record will reflect that the witness
6 has been identified, Mr. Fielder.

7 Q During the course of your investigation, if you would
8 just walk us through this particular investigation and
9 your ultimate, and what you did to advance the
10 investigation.

11 A Back in February, in May of 2012 I was contacted by
12 Mr. Jim Bryan who was an attorney for the deceased, Ms.
13 Montgomery's family. He advised me that an individual
14 came down for the funeral. They had noticed that her home
15 had been deeded to Mr. Fielder, her vehicle and a large
16 sum of money missing out of the bank, their names were
17 attached. He stated Ms. Montgomery was in bad health, she
18 had suffered from breast cancer.

19 MR. FIELDER: Your Honor.

20 THE COURT: Yes, sir.

21 MR. FIELDER: Hearsay.

22 Q Without telling us what, we will hear from them later
23 so you don't need to tell us exactly what they told. If
24 you just tell us a little bit about, after learning about
25 the discrepancies what did you do, what did you do as far

1 as your investigation, documents and people you spoke
2 with.

3 A Subpoenaed the bank records from Palmetto Bank and
4 SunTrust. I viewed those account statements, the returned
5 checks, the signatures on the checks. A deed to the
6 house, the deed to the car, also where the money had been.
7 used to post a bond in Greenville County. After doing
8 that and also speaking with the victim's doctor, I then
9 established that there had been some fraud and
10 exploitation.

11 Q Okay. Now, specifically concerning, let me walk
12 through a couple things. I'm going to hand you a document
13 which is, which has been marked as State's Exhibit 3. If
14 you could tell me, this is one of the documents that you
15 ended up reviewing during the course of your
16 investigation?

17 A Yes, sir; it is.

18 Q Okay. And you familiar with what that document is a
19 certified copy of?

20 A Yes, sir. Yes, sir.

21 Q Can you tell us what it is?

22 A It's a Title to Real Estate for [REDACTED].

23 Q Okay. [REDACTED], why would that be,
24 what would that, what is that location?

25 A That was Ms. Virginia Montgomery's address.

1 Q Okay. And is that within Laurens County?

2 A Yes, sir. It's in the City of Laurens.

3 Q Okay. Now, what does that document say? What does
4 that document indicate the owner of the house is?

5 A Gregory Fielder.

6 Q Okay.

7 MR. FERNANDEZ: We move to place this into evidence,
8 Your Honor. It's a true, certified copy from the Clerk's
9 Office. I believe it's already been authenticated.

10 THE COURT: All right. Without objection?

11 MR. FIELDER: No objection.

12 THE COURT: All right. State's 3 is in evidence.

13 (Whereupon, States exhibit 3 was admitted into
14 evidence.)

15 Q And if you would tell me what date that deed was
16 filed? I believe it says it in the top corner.

17 A On December the 16th, 2011 at 1:56 p.m.

18 Q Okay. That would have been when this deed was
19 changed over to Gregory Fielder's name?

20 A Yes, sir.

21 Q I'm also handing you a copy here. This is actually
22 an original, but could you please tell us what that is, if
23 you're familiar with that document?

24 A Certificate of Death for Ms. Virginia Montgomery.

25 Q Okay. And are you also familiar with that having,

1 did you also pull that information as part of your
2 investigation?

3 A Yes, sir; I did.

4 Q Okay. And what does it say the date of that was and
5 what does it say the cause of death was?

6 A Well, I don't have my glasses on, so give me just a
7 second.

8 Q Sure.

9 A Date of death is 12/20/2011--

10 Q Okay.

11 A --at 9:00 a.m.

12 Q Okay. And the cause of death?

13 A Breast cancer.

14 Q Thank you.

15 MR. FERNANDEZ: We move to place this into evidence.
16 It's already been marked as State Exhibit's 6. It is a
17 true, it's an original death certificate from DHEC and I
18 don't believe the defendant has any objection.

19 THE COURT: No objection, sir?

20 MR. FIELDER: No objection.

21 THE COURT: State's 6 is in evidence.

22 (Whereupon, State's Exhibit 6 was admitted into
23 evidence.)

24 Q Ms. Riggot, I'm also handing you another document
25 which is a original. Are you familiar what that is?

1 A Yes, sir.

2 Q And would you tell us what that is? I'm sorry. Let
3 me first give it to the defendant. I'm sorry. I
4 apologize. I'm handing it back to you. Are you familiar
5 with what this document would be?

6 A Yes, sir. It's a Certificate of Title for a vehicle.

7 Q Okay. And what's the vehicle, make and model?

8 A A '91 Buick Regal.

9 Q Okay. And who does it say the owner of the vehicle
10 is?

11 A Gregory Fielder.

12 Q Okay. And what does it say the date of transfer
13 would have been?

14 A 11/2/2011.

15 MR. FERNANDEZ: Okay. This is a true Certificate of
16 Title. It's the original. We move to place this in
17 evidence. Already marked as State's Exhibit 4.

18 THE COURT: Any objection.

19 MR. FERNANDEZ: No objection.

20 THE COURT: Without objection.

21 (Whereupon, State's Exhibit 4 was admitted into
22 evidence.)

23 Q All right. Detective Riggot, as part of, what
24 charges did you end up arresting Mr. Fielder for?

25 A Breach of trust and exploitation of a vulnerable

1 adult.

2 Q As part of your investigation when conducting, when
3 charging for exploitation of a vulnerable adult, how did
4 you come to the decision or how did you conclude that
5 Virginia Montgomery was, in fact, a vulnerable adult?

6 A Based on her, several different things. Her age, her
7 medical condition, and also her memory, her mental
8 condition.

9 Q Okay. And how did you establish her memory issues
10 and ailment issues as part of your investigation?

11 A Through Dr. Brownlee's office.

12 Q Okay.

13 A Obtained her medical records.

14 Q Did you have an opportunity to speak with Robert
15 Whitesides office as part of your investigation?

16 A Yes, sir; I did.

17 Q Tell me about what you learned from them?

18 A I made a phone call to Mr. Whitesides office, and I
19 spoke with a female at the office. Hang on just a second.
20 I was advised that they did do the power of attorney and
21 that Mr. Fielder had contacted them about doing the power
22 of attorney. I was also advised that when they met that
23 the victim did not want her house deeded to the subject.

24 Q I'm handing you two documents that are in evidence,
25 first I'll hand you three documents that are in evidence.

1 These are State's Exhibits 1A, 1B and 1C. State's Exhibit
2 1A, and I know you don't have your reading glasses, so
3 please take a look at that. Are those some of the
4 things--

5 MR. FIELDER: Excuse me, may I see them, please?

6 Q All right. So State's Exhibit 1A, 1B and 1C, are
7 those a part, a portion of the bank records that you ended
8 up obtaining pursuant to your investigation?

9 A Yes, sir; they are.

10 Q Okay. And I assume you've already familiarized
11 yourself with them but referring to 1A, could you read the
12 bank account number for us into the record and the holders
13 of that bank account?

14 A The account number is [REDACTED] 5118; the name of Virginia
15 Montgomery or Lougenia Johnson or Raymond Johnson.

16 Q Okay. And what is the account balance as of that
17 date on that account?

18 A February the 2nd, 2011. It was \$87,379.72.

19 Q Okay. And flipping to State's Exhibit 1B, the same
20 account, if you could read me the date of that end balance
21 on this Exhibit 1B?

22 A The date is March the 2nd, 2011; the ending balance
23 is zero.

24 Q And State's Exhibit 1C, could you tell us what that
25 is?

1 A It's a debit memo for account number [REDACTED] 5118;
2 Virginia Montgomery and Gregory Fielder in the amount of
3 \$87,379.72.
4 Q Okay. And that would have been the withdrawal slip?
5 A Yes, sir.
6 Q Okay. Thank you. Again, I'm going to refer you to
7 State's Exhibit, one second, I'm going to put this on the
8 board.
9 MR. FERNANDEZ: Permission to publish for the jury,
10 Your Honor.
11 THE COURT: You may.
12 Q Is this the document 1B showing the end balance as
13 zero?
14 A Yes, sir; it is.
15 Q And a negative \$87,379.72?
16 A Yes, sir.
17 Q Okay. And are these a copy of the withdrawal slip
18 with Gregory Fielder's name on it?
19 A Yes, sir; it is.
20 Q Withdrawing \$87,379.72?
21 A Yes, sir.
22 Q Did you also obtain a copy of the power of attorney
23 for your investigation?
24 A Yes, sir; I did.
25 Q All right. Those have already been stipulated to,

1 but I'm going to give you a, I'm going to hand it to you.

2 If you would, please, tell me what day this power of

3 attorney was signed and who were the signers on it?

4 A It was signed on February the 1st of 2011, and it was
5 signed by Virginia Montgomery, Robert Whitesides.

6 Q And who does it designate as the power of attorney,
7 if you could?

8 A Gregory Fielder.

9 Q And, again, this was signed, it's correct this was
10 signed on February 1st, 2011?

11 A Yes, sir.

12 Q And the date that the bank account was emptied was
13 what date?

14 A I believe it was March 2nd, 2011.

15 Q The date of withdrawal, that was the ending balance.
16 I'm sorry.

17 A Oh.

18 Q Date of withdrawal?

19 A Oh, I'm sorry. The date of the withdrawal was on
20 February the 8th of 2011.

21 Q I'm handing you State's Exhibit 3 and 6. The date
22 that the house was transferred and the date that Ms.
23 Virginia Montgomery passed away?

24 A The house was transferred on 12/16/2011. Ms.
25 Montgomery passed away on 12/20/2011.

1 Q Thank you.

2 MR. FERNANDEZ: I beg the Court's indulgence.

3 THE COURT: Yes, sir.

4 Q Pursuant to your investigation in the notes you took,
5 how much was the value of the total fraud committed by Mr.
6 Fielder, money and property?

7 A Approximately \$212,000.00 dollars.

8 Q And how did you come up with those numbers?

9 A With the amounts that were drawn from the bank
10 accounts--

11 Q Okay.

12 A --and the appraisal, the estimated house value and
13 the value of the vehicle.

14 Q What was the estimated house value?

15 A I don't have it exactly broken down on my sheet but
16 with the house and the vehicle, it was \$45, approximately
17 \$45,000.00.

18 Q Okay. And now, Ms. Riggot, I'm handing you State's
19 Exhibit 1D and 1E. These would have also been financial
20 bank records from, that you would have subpoenaed from
21 Palmetto Bank. It involved a separate account and I'm
22 going to ask you to do the same thing we did on the
23 previous account. If you would, take a look at these and
24 tell me the account number which is on the top right and
25 also the account holders. And then if you would, the

1 balance there and the date and time for the first page?

2 A This one is account number [REDACTED] 5878 in the name of
3 Virginia Montgomery or Lougenia Johnson or Raymond
4 Johnson. The balance on February 3, 2011, excuse me, the
5 beginning balance was on 1/6/2011 of \$50,343.86; ending
6 balance on February 3, 2011 was \$49,294.71.

7 Q Okay. And the following page, that would be State's
8 Exhibit 1E.

9 A Account number [REDACTED] 5878 which is the same account
10 number in the name of Virginia Montgomery or Lougenia
11 Johnson or Raymond Johnson. The beginning balance on
12 February 3, 2011 was \$49,294.71. The ending balance on
13 March 3rd, 2011 was \$147.30.

14 Q Okay. And let me see it. May I have that one in a
15 second? Now, actually if it says \$147, is there a
16 negative sign there?

17 A Excuse me. Negative. I'm sorry.

18 Q So is it, in fact, overdrawn?

19 A Yes, sir. It is.

20 Q Okay. And the date of withdrawal, is that evident to
21 you on the account there?

22 A February the 14th, amount of \$50,000.00 dollars.

23 Q Okay. Thank you.

24 MR. FERNANDEZ: Permission to publish these for the
25 jury, Your Honor.

1 THE COURT: You may proceed.

2 Q Ms. Riggot, is this what I just showed you?

3 A Yes, sir; it is.

4 Q Okay. And were you able to confirm who Virginia
5 Montgomery is?

6 A That's the deceased.

7 Q Okay. Were you able to determine who Lougenia
8 Johnson is?

9 A I believe that was her sister.

10 Q Okay. And were you able to determine who Raymond
11 Johnson is?

12 A Her nephew.

13 Q Okay. And, again, is this the number that you were
14 referencing when you said this is the account balance of
15 this date?

16 A Yes, sir.

17 Q Okay. And that'd be \$49,294.00 dollars?

18 A Yes, sir.

19 Q Okay. And I'm putting up Exhibit 1E, the same
20 account, the same information and when you said there was
21 negative \$147, is that what you were referencing?

22 A Yes, sir.

23 Q Okay. And this is the withdrawal amount right there,
24 is that correct?

25 A Yes, sir.

1 Q Okay. And withdrawal date would have been right
2 there, is that correct?

3 A To the right.

4 Q I'm sorry.

5 A February the 14th.

6 Q Correct. Is that the correct day we referenced,
7 February 14th?

8 A Yes, sir.

9 Q Okay. I'm handing you what's marked or what's been
10 entered as State's Exhibit 1F. I'm going to draw your
11 attention to the check and I apologize, they are small, a
12 copy of a check that was written. I want to direct your
13 attention to the one on the top left part. Could you tell
14 us what that check is and what it indicates occurred on
15 this account?

16 A It's account number [REDACTED] 5878. It was paid to the
17 order of Virginia Montgomery for \$50,000.00 dollars on
18 February the 11th, 14th, excuse me, of 2011 and the
19 signing on the check is Virginia Montgomery and Gregory
20 Fielder.

21 Q Okay. Thank you.

22 MR. FERNANDEZ: And permission to publish this for
23 the jury, 1F?

24 THE COURT: Please.

25 Q And when I said the check on the top left, was I

1 referring to this check, is this the one you referenced?

2 A Yes, sir.

3 Q And that indicates a dollar amount of \$50,000.00
4 dollars, is that correct?

5 A Yes, sir.

6 Q Okay. And the signers are Virginia Montgomery and
7 Gregory Fielder, is that correct?

8 A Yes, sir.

9 Q Ms. Riggot, I'm handed you what's been labeled as
10 State's Exhibit 1I. Are you familiar with that and did
11 you pull that record as part of your investigation?

12 A Yes, sir; I did.

13 Q Okay. And what does that indicate to you; what is
14 that a copy of?

15 A It's a copy of official check made out to Greenville
16 County Bond Court in the amount of \$30,000.00 dollars.
17 Purchaser was Gregory Fielder.

18 Q Okay. And did you determine what this was for?

19 A Yes, sir.

20 Q What was it for?

21 A To bond, I believe it was to son out on charges of
22 Greenville County Detention Center.

23 Q Okay.

24 MR. FERNANDEZ: Permission to publish for the jury,
25 Your Honor?

1 THE COURT: You may.

2 Q And again, Ms. Riggot, this would be a check in the
3 amount of \$30,000.00 dollars paid for by Gregory Fielder,
4 is that correct?

5 A Yes, sir.

6 Q And drawn on that Palmetto Bank account, is that
7 correct?

8 A Yes, sir; it was.

9 Q And for an amount of how much again?

10 A \$30,000.00 dollars.

11 Q Thank you.

12 MR. FERNANDEZ: I don't think I have any further
13 questions, Your Honor. Just give me just one second. I
14 have no further questions, Your Honor. Thank you, Ms.
15 Riggot. Please answer any questions the defendant might
16 have.

17 THE COURT: Mr. Fielder, any questions?

18 CROSS-EXAMINATION

19 BY MR. FIELDER:

20 Q Ms. Riggot, where do you work?

21 A I work for Quality Logistics.

22 Q How long have you worked there?

23 A Since March of 2015.

24 Q Where were you working when you started your
25 investigation against me?

1 A Laurens City Police Department.

2 Q And how long had you worked there?

3 A I had 16 years in with the police department.

4 Q And did you retire from there?

5 A No, sir.

6 Q Did you like working there?

7 A Yes, sir; I did.

8 Q Okay. When did you first come to know me?

9 A I can't remember exact date, but I knew of you before.

10 this investigation started. I knew who you were.

11 Q How did you know who I was?

12 A Through the community. Your name. I can't recall

13 how many times I may have spoke with you throughout the

14 years, but I knew who you were.

15 Q And when you encountered my name, was it of a good

16 report or a bad report? Well, was it a good name? Was

17 there any unlawful acts that I had committed as to how you

18 came to know me?

19 A Prior to this?

20 Q Yes.

21 A Not to my knowledge. Not that I knew of.

22 Q Okay. How did you, what type of information did you

23 hear about me?

24 A I can't really recall everything. I just knew who

25 you were in the community and answering calls, I believe,

1 on some areas in the community that you may have known and
2 different things of that nature.

3 Q So you knew I was a property owner?

4 A Yes, sir; I did.

5 Q Okay. Did you know I used to work with the
6 Solicitor's Office?

7 A No, sir; I did not.

8 Q If I tried to remind you that I was hearing cases for
9 juveniles and you had to come as a witness, do you recall
10 that at the Laurens County Library?

11 A I don't really recall.

12 Q That's fine. Did you know I was a businessman?

13 A I don't, didn't know what you did for your personal
14 income or whatever.

15 Q That's fine. And you left the City after 16 years?

16 A Yes, sir; I did.

17 Q Okay. How many years do you have to put in to retire
18 at the City?

19 A 25.

20 Q Okay. When you investigated me, what caused you to
21 contact me?

22 A This report that was filed by Mr. James Bryan.

23 Q What evidence did you possess at the time that you
24 called me?

25 A I believe I had some bank records. I'm not sure. I

1 can't exactly remember everything I had in the case file
 2 at the time, but I knew I had some bank records. I had
 3 spoke with Mr. Bryan and had also spoke with Mr. Johnson.
 4 Q Okay.
 5 A I do not have the timeline in front of me when I
 6 obtained everything and when I contacted you.
 7 Q But you surmised that you had enough evidence to
 8 interrogate me?
 9 A Yes, sir; I did.
 10 Q Okay. Did I ever refuse to talk with you?
 11 A Yes, sir; you did.
 12 Q I did?
 13 A Yes, sir.
 14 Q When?
 15 A When you came to my office you refused to give a
 16 statement.
 17 Q Okay. Was that unlawful?
 18 A No, sir.
 19 Q Okay. And I was under no obligation to give you a
 20 statement, was I?
 21 A No, sir; you were not.
 22 Q Okay. So that's not a bad thing?
 23 A No, sir.
 24 Q Okay. Did you continue to interrogate me after I
 25 told you I wanted to have counsel?

1 A No, sir; I did not.

2 Q Did you have an opportunity to read me my rights?

3 A Yes, sir; I did.

4 Q What did you say to me?

5 A That was five years ago. I don't remember the exact
6 conversation.

7 Q So you've been an officer for 16 years?

8 A Yes, sir.

9 Q And you don't remember how to give the Miranda?

10 A Yes, sir; I do.

11 Q How do you give that?

12 A We have an Advisement of Rights form that we read and
13 have the individual, if they're willing to talk with the
14 officer at that time, give a statement and we have them
15 sign it. And you requested, stated that you wanted
16 counsel so we did not even engage in a conversation.

17 Q Yeah. But are you able to recite the Miranda
18 warning?

19 A If I had the form in front of me, I would read it;
20 yes, sir.

21 Q Okay. So you must have the form, you don't know it
22 by memory?

23 A I read it off the form.

24 Q Okay. Did you know I was guilty at the time when you
25 read me my rights?

1 A Guilty? That's not up to me to determine at that
2 time.

3 Q Did you think you had enough evidence to prove me to
4 be guilty?

5 A I had enough evidence to request to speak with you.

6 Q Was anybody else present when you read me my rights?

7 A I do not recall. We make it a common practice to
8 have a witness in the room. I cannot recall that far
9 back. I would have to see the form.

10 Q Do you have a faulty memory?

11 A No, sir; I do not.

12 Q Okay. At the time when you read me my rights, did
13 you think I was guilty?

14 A That's wasn't for me to determine at that time.

15 Q Yeah, but you have your own opinion.

16 A I had enough evidence for suspicion that you were
17 guilty; that you may have done the alleged crimes.

18 Q Okay. Where were we when you read me my rights?

19 A We were at the Laurens City Police Department.

20 Q Did you call me and ask me to meet you there?

21 A Yes, sir; I did.

22 Q What time did you ask me to meet you there?

23 A I do not recall. That was four or five years ago,
24 and I'm not sure exactly what time of day.

25 Q Okay.

1 A It would be documented.

2 Q That's fine. Now, when you called and asked me to
3 meet you there, did I meet you there or get there before
4 you?

5 A I don't understand.

6 Q It's simple. Did I get there before you did?

7 A I do not recall. I worked out of that office and I
8 was in and out all day long. I cannot recall if you were
9 waiting on me or if I was waiting on you.

10 Q If I told you I was waiting on you would that help
11 your memory?

12 A Possibly.

13 Q Okay.

14 A I was a busy person. I was in and out all day long.

15 Q So was your workload too heavy for you?

16 A No, sir. It was not. I managed it quite fine.

17 Q But were you able to make your meetings on time?

18 A Yes, sir; I was. Most of the time. Depends on if I
19 was out on a call or not.

20 Q But as it relates to me, did you set an appointment
21 for me to meet you?

22 A Yes, I believe we did schedule a time. Like I said,
23 I do not recall the exact time.

24 Q Okay. Did you know that whether this was a civil
25 matter or a criminal matter?

1 A I was conducting a criminal investigation.

2 Q And then at that time was there a civil investigation
3 going on as well?

4 A I do not conduct civil investigations. I conduct
5 criminal investigations.

6 Q Do you remember telling me that the reason you called
7 me in was because Mr. Bryan wanted you to call me in?

8 A Mr. Bryan did not tell me to call you in. I was
9 conducting a criminal investigation. Whatever kind of
10 case Mr. Bryan had at his office, that was between Mr.
11 Bryan and his client.

12 Q Okay. Are you familiar with the alleged victim?

13 A I know the victim's name. I do not know her
14 personally or did not know her personally.

15 Q Okay. Were you already familiar with where she
16 lived?

17 A I was familiar from the report of the address at [REDACTED]

18 [REDACTED].

19 Q Okay. So minus the report, you had no other
20 knowledge about the alleged victim?

21 A Not that I recall ever meeting her, no I do not.

22 Q Okay. Did you know if I was living with her?

23 A No, sir. You had a different address at this time I
24 was conducting this investigation.

25 Q Okay. My question is did you know whether or not I

1 was living with her?

2 A No, sir; I did not.

3 Q Okay. So if I tell you that I was, you would have no
4 way of knowing?

5 A No, sir. I would not.

6 Q Okay. You said you did a walk through. What does
7 that mean?

8 A I don't understand your question.

9 Q Did you do a walk through the evidence of the, as an
10 investigator, did you use some type of walk through
11 information that you received?

12 A I thoroughly looked through all the information that
13 I obtained, all the documents and information that was
14 passed on to me.

15 Q Okay. So you reviewed every account?

16 A Yes, sir; I did.

17 Q Okay. And you visited the victim, the alleged
18 victim's doctor?

19 A Excuse me?

20 Q Did you visit the alleged victim's doctor?

21 A Oh, yes, I did. I spoke with the doctor. I thought
22 you said daughter. Excuse me.

23 Q No, no, no. And what did you gather from that visit?

24 A I obtained the medical records on Ms. Montgomery and
25 when speaking with her physician, she stated the

1 condition, her condition with her having breast cancer and
2 that her mental capacity was not quite there. She had
3 some memory issues with her, with her mind.

4 Q Do you have any memory issues?

5 A No, sir; I do not.

6 Q Okay. You said that her doctor indicated that she
7 had some memory issues, is that correct?

8 A Yes, sir.

9 Q Did her doctor indicate when those memory issues
10 began?

11 A I do not recall it being in her medical file.

12 Q Did the doctor indicate to you when her memory issues
13 began?

14 A I do not recall.

15 Q Okay. Okay. So you had no way of knowing whether or
16 not the alleged victim's address was the same as mine?

17 A I don't understand your question.

18 Q Do you have any way of knowing that I was using her
19 address as my address at the same time?

20 A No, sir; I do not.

21 Q Okay. You received the title to her car?

22 A Yes, sir.

23 Q Okay. Whose name was on it?

24 A Yours, Gregory Fielder.

25 Q Did you determine anything was illegal about my name

1 being on the title?

2 A What do you mean illegal? If it was obtained illegal
3 or forged, what are you talking about?

4 Q I'll ask you. When you looked at the title of the
5 car and it indicated my name, was anything unlawful about
6 that?

7 A I still, I'm not sure what you're getting at. You
8 could have obtained it illegally.

9 Q I understand.

10 A And just the face value of the document, I could not
11 determine if it was illegal at that time.

12 Q That's, thank you. So I had every right to have my
13 name on that title--

14 A That I do not know.

15 Q --as far as you knew at that time when you viewed it?

16 A Possibly.

17 Q Okay. And you, after gathering all of your
18 information, you made a determination that there was a
19 breach of trust, is that correct?

20 A Yes, sir.

21 Q What does breach of trust mean?

22 A You're entrusted with something, then you took that
23 which was not yours for your own personal gain.

24 Q Okay. Do you have any way of knowing what, well,
25 first of all, who is entrusted to whom as far as your

1 information that you gathered?

2 A You going to have to clarify that question.

3 Q Okay. If there is a breach of trust, someone had to
4 have been trusted with something?

5 A You were entrusted by Ms. Montgomery to take care of
6 her and her personal assets.

7 Q Okay. How do you know that?

8 A From the power of attorney.

9 Q Okay. What is a power of attorney?

10 A It's a document, it's a legal document you can have
11 drawn up, if you have, say, mental issues or physical
12 issues or you need somebody to oversee your daily finances
13 or what not, because you're incapable of doing it on your
14 own.

15 Q So if someone is perfectly capable of handling their
16 own affairs, can they issue a power of attorney?

17 A If somebody is capable of conducting their own
18 affairs, they would not need a power of attorney.

19 Q Are you positive about that?

20 A Not one-hundred percent positive, but there may be
21 other reasons somebody has a power of attorney--

22 Q So you're not sure?

23 A --but in most cases, if somebody is not able to take
24 care of their own situation, that's why they have a power
25 of attorney.

1 Q Okay. I understand that some cases.

2 A I can't answer for all.

3 Q Okay. So there is possibility that someone can be
4 perfectly sane and not--

5 MR. FERNANDEZ: Your Honor, I'm going to object. I
6 think she's given her opinion on it. We're getting into a
7 lot of legal back and forth right now.

8 MR. FIELDER: Okay. I'll move on. I'll move on.

9 THE COURT: Would it be sufficient if the Court
10 simply takes not, judicial notice of the fact that there
11 are many reasons why someone might obtain a power of
12 attorney? It could be for convenience. It could be
13 because they see themselves declining in mental capacity
14 and there are probably many reasons.

15 MR. FIELDER: Okay. Thank you.

16 THE COURT: Is that acceptable for everybody?

17 MR. FERNANDEZ: Thank you, Your Honor.

18 THE COURT: Go ahead.

19 Q Now, are there different types of power of attorneys?

20 A I'm not sure, because I do not draw up power of
21 attorneys. I'm not a lawyer.

22 Q Okay. But have you seen more than one kind of power
23 of attorney?

24 A I've seen a few, but I don't know how many different
25 kinds there are.

1 Q Do you understand that one person can give power of
2 attorney to many people if they choose to?

3 A I can't answer that. I'm not an attorney.

4 Q Okay. All right. So when you looked at the power of
5 attorney, who had signed it?

6 A Signed what part? Can you hand me the document?

7 Q It's the same, okay.

8 A I'd like to see it, please.

9 Q It's the same one that you answered earlier, and the
10 same power of attorney.

11 THE COURT: Will the State stipulate that the alleged
12 victim in this case did, in fact, execute the power of
13 attorney?

14 MR. FERNANDEZ: Yeah, we can do that.

15 THE COURT: All right. Very good.

16 Q Okay. And I need to know if the power of attorney
17 was signed, who signed it?

18 A Virginia Montgomery and Robert Whitesides.

19 Q Okay. And did you find it to be a lawful document?

20 A To me it looked legit. The face value of it looked
21 legitimate. It was notarized.

22 Q Okay. So it was, was my name on it anywhere?

23 A Your signature was not on it, but your name was in
24 the narrative.

25 Q Okay. So it was from Virginia Montgomery, well, who

1 was it from and who was it to? The power of attorney was
2 initiated by who, by whom?

3 A Virginia Montgomery signed the power of attorney
4 giving you power of attorney if that's what you're asking.

5 Q Yeah, that's what I'm asking.

6 THE COURT: Forgive me. One of the jurors passed me
7 a note and needed a bathroom break. I've been neglectful
8 of not looking over there. So we're going to take a brief
9 break at this point in time and go ahead and use the
10 facilities. Don't discuss the case and stepping out,
11 don't talk to your, talk to anyone about your testimony,
12 okay? We will be at ease for a few moments.

13 (Whereupon, the jury is excused from open court for a
14 break.)

15 (Whereupon, a short break was taken.)

16 THE COURT: Let's go ahead and have the jury back,
17 please.

18 (Whereupon, the jury came into open court at
19 approximately 11:12 a.m.)

20 THE COURT: All right. Let the record reflect that
21 the jury is back and seated. At this point in time, Mr.
22 Fielder, you may continue with your examination of this
23 witness.

24 MR. FIELDER: I thank you, Your Honor.

25 CONTINUE CROSS-EXAMINATION

1 Q Okay. Ms. Riggot, we were speaking about powers of
2 attorney. Have you ever been involved in settling an
3 estate?

4 A Excuse me?

5 Q Have you ever been involved in settling an estate?

6 A In what way? Clarify your question, please?

7 Q In a personal way or assisting someone else, in your
8 duties as a police officer?

9 A Yes, I have.

10 Q Was this your first time conducting an investigation
11 of a power of attorney?

12 A It may have been. I've had to deal with power of
13 attorneys before, but this is the first of this kind I
14 have, yes.

15 Q Have you ever had training on how to deal with a
16 power of attorney?

17 A I've had training in how to investigate criminal
18 cases.

19 Q Are you aware that there is more than one way to
20 settle an estate?

21 A I did not work for Probate Court. I do not know how
22 to settle estates.

23 Q And during your course of your investigative duties,
24 have you ever encountered having to participate or
25 investigate someone who has settled an estate?

1 A I investigate criminal cases. I do not know what
2 you're getting at.

3 Q I'm just asking have you ever--

4 A I have dealt with all different types of cases.

5 Q Well, you said this was your first time doing a power
6 of attorney, though?

7 A This is the first time I've had to charge somebody
8 with something like this.

9 Q Yeah. Would it be true to say that you have not
10 dealt with every possibility of criminal cases?

11 A Not, I have not dealt with every type of criminal
12 case, no.

13 Q Okay.

14 A That's impossible.

15 Q Right. That's what I was saying. I thought you said
16 you had dealt with every kind of investigation. But my
17 question to you is when did your investigation of me
18 begin; what date?

19 A On May 5th, 2012..

20 Q And when did your investigation of me end?

21 A On whatever day you were arrested on. I believe it
22 was on, this says May 14, 2012, if that's correct. I'm
23 not sure if that's correct. I'm not sure. I can't recall
24 when you were charged.

25 Q That's fine. Okay. My next question is during your

1 investigation, how extensive was it as it relates to me?
2 What all did you look for?

3 A I did thorough investigation. I always do a thorough
4 investigation.

5 Q Okay. And during your thorough investigation, did
6 you discover that I had a criminal background?

7 A A criminal--

8 MR. FERNANDEZ: Your Honor, irrelevant.

9 THE COURT: Sustained.

10 Q Was there anything in my background that caused you
11 to have to work longer on your investigation or cause you
12 to be able to shorten your investigation of me?

13 A Somebody's criminal background has nothing to do with
14 how I conduct my investigation. I spend as much time as I
15 need to on an investigation.

16 Q So there is no consideration given if they have a
17 background where they have done this in the past, the same
18 thing?

19 A No, I investigate a crime. I do not look at
20 somebody's criminal background as to how long I spend on
21 an investigation.

22 Q Okay. Did you know anything about my character?

23 A No, sir; I did not.

24 Q Okay. All right. So you said that you discovered
25 that there was a total of funds that you came up with that

1 I was accused of breaching the trust of?

2 A Yes, sir.

3 Q Okay. Was there anything that I did that was
4 unlawful as it relates to the power of attorney?

5 A I cannot answer that. That's for the jury to decide.
6 I made the charges on probable cause that I had at that
7 time.

8 Q Did you get an opportunity to read the power of
9 attorney?

10 A Yes, sir; I did.

11 Q And did I, was I involved with misusing any property
12 that was not listed in the power of attorney? For
13 example, the money, was it listed that I had the authority
14 to do that by the power of attorney?

15 A Explain, you're confusing me.

16 Q The power of attorney gives me certain rights, is
17 that correct?

18 A It does.

19 Q Did I have a right to title her car into my name
20 according to the power of attorney?

21 A You going to have to elaborate. The power of
22 attorney does not give you the right to steal. It gives
23 you a right to handle somebody's financial situation and
24 help them.

25 MR. FIELDER: Your Honor, do we need to strike that

1 or what? That wasn't my question.

2 THE COURT: To the extent you're moving to strike, I
3 will not order that struck from the record.

4 MR. FIELDER: Okay.

5 Q Are you accusing me of stealing?

6 A I am not accusing you of anything. I had probable
7 cause to charge you. It's up to the jury to decide if you
8 are guilty or not.

9 Q If you read the power of attorney, my question is,
10 was I authorized to sign deeds, titles and things of that
11 nature according to the power of attorney. That's what
12 I'm trying to ask you.

13 A The power of attorney gives you certain, I would
14 actually have to look at that right now to answer that
15 question.

16 Q Okay. We need to look at it then.

17 A Because I cannot recall what it said verbatim.

18 Q Okay. Well, we need to look at the document.

19 THE COURT: And if she wants to do that, that's
20 perfectly fine. And may I suggest, Mr. Fielder, that we
21 will be having a witness testify later on who is licensed
22 to practice law and perhaps these questions might be more
23 appropriately directed at someone who does powers of
24 attorney, drafts those, because you're kind of getting
25 into an area that's involving specific legal expertise.

1 And maybe this witness is simply not the right one to be
2 asking the question of.

3 MR. FIELDER: Okay. I was just pursuing her level of
4 investigation.

5 THE COURT: And I'm not telling you how to try your
6 case by any means.

7 MR. FIELDER: Okay.

8 THE COURT: Proceed how you wish.

9 MR. FERNANDEZ: Your Honor, I was going to wait for a
10 specific question, but the defendant asked for her opinion
11 on what a clause means in the power of attorney, I would
12 object it's, I think it's beyond the scope of her
13 knowledge base.

14 THE COURT: All right. You can ask her about the
15 power of attorney if she reviewed it and what her
16 understanding of it is insofar as that related to her
17 decision to charge the defendant with these crimes. That
18 is a valid line of questioning but as far as the legal
19 effect of any clause in the power of attorney, you need to
20 ask that of an attorney.

21 MR. FIELDER: All right.

22 THE COURT: Okay, and we happen to have one who will
23 be testifying shortly.

24 MR. FIELDER: Okay.

25 THE COURT: Go ahead. And if you want to point to

1 her or read something to her and ask her what she thinks
2 that means, that's one way to do it or show it to her or
3 whatever the case may be, all right?

4 Q Myself. This is a short version, I need one moment.
5 Okay. I'm going to read from the power of attorney. It's
6 a four-page and I'm going to read from page one. It
7 starts by, well, I'll read. Known all men by these
8 presents, that I, Virginia Montgomery, hereinafter at
9 times referred to as principal--

10 MR. FERNANDEZ: Your Honor, I don't know, how is that
11 asking a question?

12 THE COURT: All right.

13 MR. FIELDER: Okay.

14 THE COURT: -do this. What specific section of that
15 document are you referencing, sir.

16 MR. FIELDER: Okay.

17 THE COURT: Don't read the whole document.

18 MR. FIELDER: I won't.

19 THE COURT: Ask her about a small portion of that and
20 let's move along, please.

21 MR. FIELDER: Okay. I apologize.

22 Q I'm on the next to the last line where it says that
23 the power of attorney acknowledges deeds, leases,
24 mortgages, right-of-ways, easements, bonds for title,
25 contracts of sale and mortgages, bill of sales. Having

1 read that, does this power of attorney in your
2 investigation give me authority to transfer titles?

3 A It does.

4 Q Okay. Thank you. So now that we have an
5 understanding of that. Did I have a lawful right to
6 transfer the title of her car to my name?

7 A I'm not answering that.

8 MR. FERNANDEZ: Objection to the fact that it just
9 calls for a legal conclusion.

10 THE COURT: Sustained.

11 Q Okay. All right. Okay. And you said you didn't do
12 a background check on me?

13 A No, I did not say that.

14 Q Well, I'm asking you did you do a background check on
15 me?

16 A Yes, a background check was done on you.

17 Q Okay. And what did you find in my background?

18 A I do not, I would have to look at that. I can't
19 recall what was in it. Like I said, that was five years
20 ago.

21 Q Okay. Can you remember if it was a lot? Was there
22 anything that was glaring that came out about me? You can
23 answer me.

24 A I do not recall.

25 Q And how, and you said you did a background from May

1 5th to May 14th, is that correct?

2 A It's somewhere in that timeframe; yes, sir.

3 Q Okay. Did you have an occasion to go onto my
4 property, because someone had trespassed on my property on
5 South Parker Street Extension?

6 A I was, we were investigating some things that took
7 place. I don't understand what that has to do with this.

8 Q My question is, did you--

9 A Yes, I have investigated people trespassing on your
10 property in the past. Yes, sir; I have.

11 Q Okay.

12 A I believe that was after this.

13 Q Well, how long a period after this?

14 A I do not recall. That was several years ago. I do
15 not recall the exact date. I do not have it in front of
16 me.

17 Q Okay. Did you have to go out to my property on
18 several occasions?

19 A Maybe two or three.

20 Q Okay. Okay. So is there anything else that you know
21 about my character that is negative?

22 A Sir, I do not know you. I only know you from my
23 investigation. I do not know you personally.

24 Q Okay.

25 A No, I do not.

1 Q Okay. So we will take that as that she doesn't know
2 anything negative about me.

3 A No, sir. That is not what I said. I said I do not
4 know you.

5 THE COURT: All right. You've asked this question
6 several times, several different ways and you've gotten
7 essentially the same answer.

8 MR. FIELDER: Okay.

9 THE COURT: Do you have any other line of questioning
10 for this witness, anything else that you want to ask her?
11 The State has been very patient in not objecting asked and
12 answered, but they're invited to start making those
13 objections.

14 MR. FIELDER: Okay.

15 THE COURT: Any new material that you want to go over
16 with this witness, please do it now, sir.

17 MR. FIELDER: I will stop that line of questioning
18 right now.

19 THE COURT: All right. Go ahead.

20 MR. FIELDER: All right. That's okay. She can be
21 dismissed.

22 THE COURT: All right.

23 MS. RIGGOT: Thank you.

24 THE COURT: Any redirect?

25 REDIRECT EXAMINATION

1 BY MR. FERNANDEZ:

2 Q Detective Riggot, you were asked about specifically
3 our attorney about transferring of deeds and titles, is
4 that correct?

5 A Yes, sir.

6 Q You did have reason to believe, however, during your
7 course of the investigation that the transfer of at least
8 the house deed was inappropriate, is that correct?

9 A Yes, sir; I did.

10 Q Okay. And did you, when you took arrest warrants
11 specifically concerning breach of trust and exploitation
12 of a vulnerable adult, did you rely in part at least on
13 that information and evidence you had to suggest that that
14 house deed transfer was improper?

15 A Yes, sir; I did.

16 Q And would it have been in your, during the course of
17 your investigation against the interests of the now
18 deceased Virginia Montgomery?

19 A Yes, I believe it was in it, not within her interest,
20 yes.

21 Q And against her actual wishes that she had described?

22 A Yes, sir.

23 Q And that she actually explained to people?

24 A Yes, sir.

25 MR. FERNANDEZ: No further questions, Your Honor.

1 MR. FIELDER: Recross.

2 THE COURT: Please.

3 RECROSS-EXAMINATION

4 BY MR. FIELDER:

5 Q In referencing the deed to her house, what did you
6 find to be unlawful about that?

7 A What do you mean unlawful?

8 Q Counsel asked you if--

9 A I believe that it was against her wishes for the
10 deed, the house to be deeded to you.

11 Q Okay. Now, you never met her?

12 A No, sir. She was deceased.

13 Q Okay. How did you determine what her wishes were?

14 A By what I was told by an individual that she had told
15 her wishes to.

16 Q Who did she tell the wishes to?

17 A A paralegal that works at Robert Whitesides office.

18 Q She told her wishes to him--

19 A To her.

20 Q --or her?

21 A That's what she told me, yes.

22 Q And after she told her her wishes, what all did she
23 wish for?

24 A The only thing I can say is she told the paralegal at
25 Whitesides office she did not wish the house to be deeded

1 to Gregory Fielder.

2 Q And she worked at Attorney Whitesides office?

3 A Yes, sir.

4 Q And who is it that did the power of attorney?

5 A Whitesides did the power of attorney, not the deed.

6 Q And did she, whoever she is, well, who said that?

7 A I cannot recall her name at this time. It was the
8 lady that worked for Robert Whitesides.

9 Q Do you know whether or not she had a relationship
10 with Ms. Montgomery?

11 A I do not know what kind of relationship they had, no.

12 Q Do you know if I had a relationship with Ms.
13 Montgomery?

14 A I do not know what kind of relationship you had with
15 Ms. Montgomery.

16 Q Do you know if Ms. Montgomery told me her wishes?

17 A I do not know.

18 Q So you took somebody's declaration of wishes to be
19 truth?

20 A Yes.

21 Q Based on what?

22 A She told me.

23 MR. FIELDER: I have no further questions.

24 THE COURT: And thank you, you can step down and
25 you're free to go.

1 MS. RIGGOT: Thank you. Okay.

2 THE COURT: Call your next witness.

3 MR. FERNANDEZ: Your Honor, the State would call
4 Cindy McCarty.

5 CINDY MCCARTY, being
6 first duly sworn, testified as follows:

7 DIRECT EXAMINATION

8 BY MS. VALENZUELA:

9 Q Can you introduce yourself to the jury and state your
10 name.

11 A Cindy McCarty.

12 Q Okay. Thank you, Ms. McCarty. Ms. McCarty, where do
13 you currently work?

14 A St. Francis Eastside NICU and Greenwood Endoscopy
15 Center.

16 Q And what do you do there?

17 A In the NICU, I take care of premature and sick
18 patients and at the endoscopy center, I assist the
19 physicians in conscious sedation.

20 Q Are you a nurse?

21 A Yes, ma'am.

22 Q Okay. And where did you work before St. Francis NICU
23 and then, and the endoscopy center?

24 A I worked for Self Regional NICU.

25 Q And what did you do there?

1 A I did the same thing. I took care of sick and
2 premature babies.

3 Q And prior to Self Regional, where did you work?

4 A Hospice Care South Carolina.

5 Q And how long did you work at the Hospice Care of
6 South Carolina?

7 A About a year-and-a-half.

8 Q And were you at Hospice Care of South Carolina in the
9 year of 2011?

10 A Yes, ma'am.

11 Q And what did you do for Hospice Care?

12 A I was the nurse that went to patients homes and took
13 care of them at the end-of-life stages.

14 Q Can you tell the jury a little bit more about your
15 day-to-day activities would have been while you worked at
16 Hospice Care as a nurse?

17 A We would have them set up on how many days a week the
18 nurse would need to go out and check on them. I would go
19 to their home. I would perform assessment. I would
20 assess any needs that might have. Consult with the
21 physician on any symptoms that they might be having that
22 needed to be taken care of.

23 Q And in 2011, did you work with Virginia Montgomery,
24 the victim in this case?

25 A Yes, ma'am.

- 1 Q And how long did you treat Ms. Montgomery?
- 2 A I believe about 10 months.
- 3 Q And do you remember the first month that you would
- 4 have started seeing her?
- 5 A Yes, ma'am.
- 6 Q And what month was that?
- 7 A February.
- 8 Q And that would have been February of 2011?
- 9 A Yes, ma'am.
- 10 Q And then if I'm doing my math right, would that have
- 11 been you finished caring for Ms. Montgomery in December of
- 12 2011?
- 13 A Yes, ma'am.
- 14 Q And how often would you see Ms. Montgomery during
- 15 those 10 months?
- 16 A One to three times a week just depending on her need.
- 17 Q And about how long were your visits when you would
- 18 visit with her about one to three times a week?
- 19 A Anywhere from 15 minutes until an hour-and-a-half.
- 20 Q And did that 15 minutes to an hour-and-a-half, one to
- 21 three times a week frequency continue for the entire 10
- 22 months or was there a point during that 10 months where
- 23 the frequency of seeing Ms. Montgomery increased?
- 24 A At the end of her life it increased.
- 25 Q And how often were you seeing Ms. Montgomery at the

1 end of her life?

2 A I believe at the very end of her life she had 24-hour
3 hospice care.

4 Q Now, Ms. McCarty, you told us about your general
5 practice as a nurse. I'd like to move onto more
6 specifically how you interacted with Ms. Montgomery. Can
7 you tell the jury what your visits with Ms. Montgomery
8 would include?

9 A I would go to her home and I would start my
10 assessment from the time I knocked on the door from the
11 time, the amount of time it took her to get to the door
12 and she was very slow coming to the, answering the door.
13 I would just watch her from the minute she opened the
14 door. She would, she had a very unsteady gait. She was
15 real slow in her movements. She would often hold onto
16 furniture needing help just to take a few steps. I would
17 assess her mental status. I would assess her pain levels.
18 Her, she had a wound to her breast. I would change
19 dressings to that.

20 Q And did your duties include giving her medication?

21 A She had prescribed medication she was supposed to
22 take and I would often ask her if she had taken it and she
23 would tell me yes and I'd count the pills in the bottom
24 and it was obvious she hadn't been taking any. And if I
25 offered her one, she would take it for me but that would

1 be about the only time she'd take her medicine when
2 somebody handed it to her.

3 Q What was your understanding of Ms. Montgomery's
4 physical illness when you treated her?

5 A When she first became my patient, I understood that
6 she had breast cancer. She wasn't one that ever went to
7 the doctor much or took medicine. I remember that she was
8 offered blood, because her hemoglobin was very low and it
9 seems like she actually went to the hospital, but then
10 refused it.

11 Q Did she have any visible indications of the breast
12 cancer?

13 A Yes. Her breast, it was irregular-shaped, it was
14 hard to touch, it was very painful, it constantly leaked
15 blood.

16 Q About how old was Ms. Montgomery during this time?

17 A She was in her eighties, late eighties.

18 Q Late eighties. Now, earlier you were telling us that
19 when you interacted with Ms. Montgomery, you would assess
20 her physically, you would change the dressing on her wound
21 on her breast and you also mentioned that you would take
22 note of her mental status. So turning to that, what did
23 you observe about Ms. Montgomery's mental status in the 10
24 months that you worked with her?

25 A She was often confused. She was forgetful. It seems

1 like she could always remember her name but not
2 necessarily what year it was. She was very slow to answer
3 questions. She would say that she had taken medicine when
4 she hadn't taken medicine, but she wanted to drive and we
5 would encourage her not to drive, because she had several
6 incidences where she was endangered when she was driving
7 or endangered others. And she was definitely confused
8 while I was taking care of her.

9 Q And was her confusion apparent to you from the time
10 you began treating her in February 2011 through December
11 of 2011?

12 A Yes, ma'am.

13 Q And did you observe memory loss during this time?

14 A Yes, ma'am.

15 Q And, again, I want to take those one at a time. When
16 you describe her as being confused, are you discussing a
17 significant level of confusion or if I were to ask you a
18 clarifying question about my, you know, your answer, are
19 those two level, two different levels of confusion using
20 the word confusion?

21 A I just remember she was very confused.

22 Q And I think I asked you a question that left all of
23 us confused, so I apologize. Let's turn to memory loss.
24 If you forgot something from five years, is that the type
25 of memory loss that you're attributing to Ms. Montgomery

1 in the 10 months that you treated her or was she suffering
2 from a more significant memory loss than forgetting a few
3 details from a few years ago?

4 A She was, she just had an overall confusion. It
5 wasn't necessarily stuff from the past, but it was more
6 recent stuff such as taking medicine and that kind of
7 stuff.

8 Q Was this confusion that you observed consistent with
9 her physical situation?

10 A Yes, ma'am.

11 Q And can you describe how it was consistent with her
12 physical situation?

13 A She had a really low hemoglobin. A normal hemoglobin
14 can be 12 to 15 and--

15 Q I'm going to stop you real quick--

16 A Okay.

17 Q --just so that, you know, for those of us who are not
18 medical/science people, can you tell me what hemoglobin
19 is?

20 A Hemoglobin is red blood cells that carries oxygen to
21 vital organs in your body. It's like the transporter to
22 carry oxygen.

23 Q Is it fair to say that hemoglobin then tells us just
24 the oxygen level that your brain might be getting?

25 A It affects the, it affects your oxygen level.

1 Q And you were saying that a range of 12 of 15 on a
2 hemoglobin is considered normal?

3 A Normal for a woman, yes.

4 Q Okay. And I think I stopped you there. What was Ms.
5 Montgomery's hemoglobin?

6 A From my memory it is between four and six at times.

7 Q So half of what a normal hemoglobin range would be
8 for a woman?

9 A It would be considered severe anemic.

10 Q And did you observe this low hemoglobin level
11 throughout the 10 months that you treated Ms. Montgomery?

12 A Yes.

13 Q And can you tell me what about the physical situation
14 of anything would have contributed to her having a low
15 hemoglobin level?

16 A Cancer can make you have a low hemoglobin. Cancer
17 causes the cells not to reproduce at a normal rate, a
18 slower rate. She had the wound to her breast that was
19 constantly leaking blood.

20 Q And so her physical situation contributed to the
21 hemoglobin and so her low rate matched up with what you
22 were seeing physically with her?

23 A Yes, ma'am.

24 Q Can you tell us a little bit about what that severe
25 anemia, that severely low hemoglobin, how that affects a

1 person mentally?

2 A It can cause confusion, forgetfulness. Her balance
3 was off. It just affected her overall.

4 Q And you observed this the entire, from February 2011
5 throughout December of 2011?

6 A Yes, ma'am.

7 Q Did you ever discuss with the defendant how your
8 visits with the victim, with Ms. Montgomery should go?

9 A Yes.

10 Q Okay. And what discussion, what came out of that
11 discussion with the defendant?

12 A When we started hospice with this family, he wanted
13 to be called before each visit, and so I would do that. I
14 would say I'm on my way to Ms. Montgomery's house. I'm 15
15 minutes away and he would either be there when I got there
16 or he would be there shortly after.

17 Q And was this pre-notification or heads-up before you
18 or any hospice care staff arrived at the patient's home
19 normal among the hospice patients that you treated?

20 A Most of my hospice patients didn't live by
21 themselves, so it was a little odd to me, but it was his
22 family. So I didn't think much about it and we were
23 strangers and I just took that he wanted to be there when
24 we were in the house. And the longer I took care of her,
25 there were times that he would say go on in, you know, I'm

1 not going to be able to come today and so and I would just
2 go in by myself.

3 Q So traditionally with your hospice care patients,
4 they had someone living in the home with them?

5 A Yes, ma'am.

6 Q And did the defendant live with Ms. Montgomery while
7 you were treating her from February 2011 to December of
8 2011?

9 A No.

10 Q Did you see Ms. Montgomery on December 19, 2011?

11 A Yes, ma'am.

12 Q Can you explain to us the condition you found Ms..
13 Montgomery when you arrived on December 19, 2011?

14 A In addition to nurses checking on the patient, there
15 were also nurses aides that check on them. And that day
16 the nurse's aide, she called me and said that she could
17 see Ms. Montgomery in the floor and she could hear her
18 crying, but she wasn't able to get to the door. And so I
19 immediately went to the house and I called Mr. Fielder and
20 he came over there and met us, because he had a key to get
21 into the house.

22 Q And where was Ms. Montgomery when y'all entered the
23 house?

24 A She was in the floor.

25 Q And can you explain to us the physical condition or

1 anything that you observed about Ms. Montgomery once you
2 were able to reach her?

3 A I just remember the house being cold. She was on the
4 floor. She was in pain, so we took her and put her in bed
5 and warmed her up and I believe she was given some
6 morphine at that time to help with the pain.

7 Q And this day when you observed her laying on the
8 floor and the house being cold was December 19, 2011?

9 A Yes, ma'am.

10 Q And how much of Ms. Montgomery's estate do you
11 believe that you have a claim to for taking care of her?

12 A None.

13 Q And have you ever made a claim to any of Ms.
14 Montgomery's estate for taking care of her during those 10
15 months?

16 A Absolutely not..

17 Q Are there any sort of policies either personal or
18 part of the businesses that you've worked with that guide
19 what the policy is in accepting gifts from terminally ill
20 patients?

21 A I don't know about specific policies, but I'm just a
22 nurse to take care of the patient and I don't expect
23 anything in return. I'm just there to do my job.

24 MS. VALENZUELA: Your Honor, can we just take a
25 moment. Thank you. Ms. McCarty, please answer any

1 questions that the defendant has for you.

2 MS. MCCARTY: Okay.

3 THE COURT: Mr. Fielder?

4 CROSS-EXAMINATION

5 BY MR. FIELDER:

6 Q Okay. Cindy, did you know Ms. Montgomery?

7 A Yes.

8 Q Okay. How did you come to know her?

9 A She was a patient of mine through hospice.

10 Q How did she become a patient of yours through
11 hospice?

12 A Someone must have contacted our services and we went
13 out and evaluated in, she met the hospice criteria and she
14 became one of our patients.

15 Q Did you find out that it was me that called hospice
16 to give assistance to her?

17 A I'm not sure who contacted hospice.

18 Q Okay. Did you find that when you did come to visit
19 her that I was present?

20 A Yes.

21 Q Did you know her very well?

22 A I knew her on a patient/nurse relationship.

23 Q Okay. Well, did you know her personally?

24 A No.

25 Q Okay. And you did say it was me who first contacted

1 your office?

2 MS. VALENZUELA: Objection, Your Honor. He's
3 restating the witness' testimony incorrectly and asked and
4 answered.

5 THE COURT: All right. Sustained.

6 MR. FIELDER: Okay.

7 THE COURT: She said that she does not know who
8 contacted hospice, sir.

9 MR. FIELDER: Okay. Thank you.

10 THE COURT: That's her answer.

11 MR. FIELDER: Okay. Thank you.

12 Q Who gave the instructions as to what to do in her
13 home?

14 A We met with the family and it was as a group that we
15 decided what would take place in her home. You were
16 present and Ms. Montgomery was present.

17 Q Okay. You said you met with the family, who was the
18 family that you met with?

19 A You and Ms. Montgomery.

20 Q Okay. And I was the caregiver?

21 A Yes.

22 Q And what was your job description to her?

23 A I was her primary nurse.

24 Q Okay. Did you ever have an opportunity to ask her
25 when she was born?

1 A We had general conversations. I am not sure if that
2 was one of the questions I asked her.

3 Q Okay.

4 A I was intrigued by her because she was a
5 schoolteacher. She was a very pleasant lady.

6 Q Yeah. And what was the first date that you came to
7 visit her?

8 A February some time.

9 Q Okay. And when you came and you asked her what she
10 had been doing earlier, did you ask her what she had been
11 doing before you arrived?

12 A I don't remember.

13 Q Okay. Do you remember an occasion when you came and
14 she told you that she had been up on the rooftop?

15 A Yes.

16 Q Okay. Okay. And for her age would you say that she
17 was in fairly good condition?

18 A No.

19 Q Okay. Do you know how many siblings that she had?

20 A No.

21 Q Okay. Do you know whether or not she ever had a
22 husband?

23 A Yes.

24 Q Okay. Did she ever have a husband?

25 A She told me she did not.

1 Q Okay. Do you know if she ever had children?

2 A I don't think she did.

3 Q Okay. Did you ever speak with any of her relatives
4 besides me?

5 A Yes.

6 Q Okay. And those relatives that you spoke with
7 besides me, would one of them had been my mother?

8 A Yes.

9 Q Did you ever get an opportunity to speak to her
10 nephew?

11 A Which one?

12 Q Mr. Johnson.

13 A I know there's a Raymond.

14 Q Raymond; did you ever get an opportunity to speak
15 with Raymond?

16 A I believe I spoke to him on the phone.

17 Q And why were you able to speak with him on the phone?
18 Who called who?

19 A I don't remember.

20 Q Would it be safe to say that I called him to update
21 him about her?

22 A It would be safe to say I don't remember.

23 Q Okay. That's safe. Thank you. Do you ever remember
24 him calling to the house?

25 A Not while I was present.

1 Q Okay. Did you ever, scratch that. Okay. Did she
2 have any disabilities that you knew of?

3 A What type of disability, I mean?

4 Q Such as the breast cancer.

5 A She had breast cancer, and she showed signs of
6 decline during my care.

7 Q Okay. And she was approximately what, 86 years of
8 age?

9 A Yes.

10 Q Okay. So is that expected naturally from an
11 86-year-old person to, for their health to begin to
12 decline?

13 A It just depends on the person.

14 Q Okay. Who was the most qualified person in her
15 presence to make medical decisions?

16 MR. FERNANDEZ: Objection, calls for an opinion she
17 had no basis on.

18 MR. FIELDER: Okay.

19 THE COURT: You want to rephrase the question, sir?

20 MR. FIELDER: Okay. Thank you.

21 Q Was I given, to your knowledge, was I given authority
22 to make decisions about her health conditions?

23 MR. FERNANDEZ: I think it goes beyond the scope
24 also, and I don't know that she would have any knowledge,
25 but I don't know.

1 THE COURT: If she is able to answer that based upon
2 any knowledge of a healthcare power of attorney or
3 conversations by the family members, she may answer that;
4 otherwise, she can simply say I don't know.

5 A I don't know.

6 Q Okay. During your treatment of her, did you
7 recognize that she was burned on parts of her body?

8 A Yes.

9 Q Did you ever inquire as to how she got those burns?

10 A I do remember us talking about it, but I don't
11 remember now what happened. It seems like it was
12 something when she was a child.

13 Q So was it your job to diagnose her physical concerns?

14 A I'm a nurse. I don't diagnose.

15 Q Okay. Well, if you would please tell me what your
16 job description is?

17 A I would go in and assess the patient. I would take
18 care of needs that she might have. We had a Chaplain. I
19 would, if she had spiritual needs, I would contact the
20 right people with that. If she had medical needs, we had
21 a medical director. I would contact them for those needs.
22 If I had safety concerns, I would address those.

23 Q Okay. In terms of her medical conditions, who had
24 authority to make a final decision?

25 MR. FERNANDEZ: I think this is asked and answered

1 again. Judge, he's talking about the same questions
2 before about who was in charge of her medical.

3 THE COURT: All right. You can ask her who she
4 looked to to make medical decisions; because clearly she's
5 testified that Ms. Montgomery was having cognitive
6 impairment. So if you want to ask it that way, sir,
7 that's perfectly fine. From her perspective who she
8 looked to--

9 MR. FIELDER: Right.

10 THE COURT: --to make medical decisions.

11 MR. FIELDER: Okay.

12 Q I want to really follow up on her cancer condition
13 and do you know what brought that condition on? Do you
14 know how it began?

15 A The breast cancer?

16 Q Yes.

17 A I just know that she went to the doctor and they
18 diagnosed her with breast cancer and she refused
19 treatments.

20 Q Do you have any idea of what initiated that
21 condition?

22 A No.

23 Q Okay. And when you were going to make visits to her
24 home, is it true that I asked you to call me first?

25 A Yes.

1 Q Did I explain to you why I wanted you to call me
2 first?

3 A I don't remember.

4 Q Do you remember I told you that I wanted to make
5 certain that she was presentable before any guests come to
6 her home?

7 A I don't remember that.

8 Q Okay. And you are aware that I had the key to her
9 house?

10 A Yes.

11 Q And you remember she had some difficulty driving?

12 A Yes.

13 Q Do you remember if she was reluctant to give up her
14 keys?

15 A Yes.

16 Q And do you remember that I told you when she gave me
17 her keys?

18 A I remember, I don't remember her giving you the keys.
19 I remember we disabled the battery so she could keep her
20 keys so she would feel like it wasn't taken away from her.

21 Q Right. But you remember we had a discussion about
22 her keys?

23 A I remember a discussion about keys.

24 Q Right. And do you remember her stating that, let me
25 drive for as long as I can?

1 A I don't remember as her exactly saying that.

2 Q Okay. All right. Do you remember that I will take
3 her to get groceries?

4 A Yes.

5 Q Do you know who prepared her meals for her?

6 A I know in the morning time she would a lot of times
7 have cereal, so I assumed she fixed it herself.

8 Q Okay. Do you remember when we would speak about
9 going to get groceries that she would make out her grocery
10 list?

11 A Yes.

12 Q Okay. And do you remember us discussing whether or
13 not we would get her Meals-on-Wheels or some, having some
14 food brought in?

15 A I don't remember that.

16 Q Okay. But you do know that we never did that?

17 A I don't think that occurred, no.

18 Q Okay. And she was able to prepare her meals by
19 herself?

20 A Yes.

21 Q Okay. Do you remember questioning her in a way to
22 determine her ability to remember?

23 A Yes.

24 Q Do you remember asking her who the President of the
25 United States was?

1 A Not specifically.

2 Q Do you remember her ever talking about President
3 Barack Obama?

4 A No.

5 Q Okay. Do you remember when you, well, first of all,
6 did you order a particular box to be brought to her home?

7 A I asked the doctor to order it.

8 Q Right. Okay. And do you know whether or not they
9 sent it to her home?

10 A They did.

11 Q And do you know who was responsible for the care of
12 that box?

13 A You were.

14 Q Do you remember when you first asked me to give you
15 that box?

16 A It might have been when she fell that December.

17 Q Okay. Well, do you remember where that box was
18 supposed to have been kept?

19 A It was supposed to be in the refrigerator.

20 Q Okay. Do you know if it was kept in the
21 refrigerator?

22 A The few times I checked on it, it was in the
23 refrigerator.

24 Q It was?

25 A It was.

1 Q Do you remember me removing it from the refrigerator?

2 A Not specifically.

3 Q Do you remember me telling you that I had removed it
4 from the refrigerator, because she had a concern about it
5 and had moved it to another room in--

6 A Yes.

7 Q --the cabinet?

8 A Yes.

9 Q Do you remember? Okay. And do you remember when you
10 asked me to get that box after she had fallen, what my
11 response was?

12 A No.

13 Q Okay. Do you remember when you asked for that box, I
14 asked you please don't use that box?

15 A No.

16 Q Do you remember instead of having that box you gave
17 her some Extra Strength Tylenol, Excedrin?

18 A No.

19 Q Okay. Do you remember me crying on your shoulder
20 when you told me we'd have to get that box?

21 A Not specifically.

22 Q Okay. Do you remember when you took a vacation of
23 that year?

24 A No.

25 Q Do you remember telling me that I should take a

1 vacation?

2 A No.

3 MR. FERNANDEZ: Your Honor, there's a lot of
4 questions, do you remember this and that. I don't think
5 she remembers much about these specifics. I don't know
6 what to say other than I think there's a point--

7 MR. FIELDER: There, there--

8 THE COURT: Yes, sir?

9 MR. FIELDER: There is a point to it. The point is
10 that she asked me to take some time off, because I had
11 been there--

12 THE COURT: All right.

13 MR. FIELDER: Okay. Okay.

14 THE COURT: I'm going to overrule the objection, but
15 if we could do our best to move along. Clearly this
16 witness is familiar with the treatment that she gave to
17 Ms. Montgomery. She is familiar to an extent with your
18 being involved.

19 MR. FIELDER: Okay.

20 THE COURT: Let's keep our eye on what the issues
21 are, if we may? Go ahead, please.

22 MR. FIELDER: Yes, sir. Thank you.

23 Q Okay. And do you remember Ms. Montgomery telling you
24 that there were certain things in her house that was
25 off-limits to everybody except me?

1 A No.

2 Q Such as a particular seat, a particular, anything?

3 You don't remember anything specific?

4 A No.

5 Q Okay. That's fine. And again when was it when you
6 came and she had fallen on the floor, what was that date?

7 A It was in December.

8 Q 2011. Okay. Do you remember or were you there when
9 she expired?

10 A I know I was in and out of the house when she was
11 very sick. I can't remember if I was there when she
12 actually took her last breath. I want to say I was, but I
13 can't be one-hundred percent sure.

14 Q Okay. So you're not certain about that?

15 A I've taken care of a lot of patients between then.

16 Q Yeah, I understand.

17 A I'm not a one-hundred percent sure.

18 Q Okay. So do you recall if there was anything that
19 happened to her that was unlawful?

20 A Not while I was taking care of her and had eyes on
21 her.

22 Q Right. And you are considered what a, mandatory
23 reporter?

24 A Yes.

25 Q And so if anything had been done that was necessary

1 to report, you would have reported it?

2 A Yes.

3 Q For her condition, would you say that she was given
4 the best medical care?

5 A Yes.

6 Q Thank you.

7 THE COURT: Thank you. Anything on redirect?

8 MS. VALENZUELA: The State's finished with this
9 witness, Your Honor, and we'd ask that she be excused for
10 the rest of the day.

11 THE COURT: Ma'am, thank you very much for coming.
12 You are free to go. The next witness is who and how long
13 do you anticipate them taking?

14 MS. VALENZUELA: Chaplain Bowen and I expect it to be
15 shorter than my direct with this witness.

16 THE COURT: Okay. Very good. Call your next
17 witness, please. Do y'all need a quick break? Anybody
18 need a quick break. We will go ahead.

19 MS. VALENZUELA: We call Chad Bowen to the stand.

20 CHAD BOWEN, being
21 first duly sworn, testified as follows:

22 DIRECT EXAMINATION

23 BY MS. VALENZUELA:

24 Q Good afternoon, Mr. Bowen. Can you state your full
25 name for the record, please?

1 A Chad Douglas Bowen.

2 Q And where do you work, Mr. Bowen?

3 A Hospice Care of South Carolina.

4 Q And how long have you worked at Hospice Care of South
5 Carolina?

6 A Seven years.

7 Q And what do you do at Hospice Care?

8 A I'm a chaplain.

9 Q Have you been a chaplain for the entire seven years
10 that you've been with Hospice Care?

11 A Yes.

12 Q And so you would have been working at Hospice Care of
13 South Carolina in 2011, correct?

14 A Yes.

15 Q And can you tell the jury, excuse me, a little bit
16 about what a chaplain does?

17 A We basically go in and provide spiritual support to a
18 patient at the end of life. A lot of times the patient
19 will have a pastor, so we're not going in to serve as
20 their pastor. We're going in to just provide additional
21 spiritual support, identify any needs that they have to
22 spirituality as far as what their belief system is, if
23 they have any fears about death itself, counseling them
24 through those types of things, putting them in touch with
25 any community resources that could benefit them

1 spiritually, but things along those lines.

2 Q And in 2011 and serving as a chaplain with those
3 services, did you work with a Virginia Montgomery, the
4 victim in this case?

5 A Yes.

6 Q And how often would you interact with Ms. Montgomery
7 as a chaplain?

8 A About twice-a-month.

9 Q And did you work with Ms. Montgomery for the 10
10 months, February 2011 through December 2011?

11 A Yes.

12 Q And can you tell us a little bit about what your
13 visits, your twice-monthly visits with Ms. Montgomery
14 would go like? What were the things that you did and a
15 little bit about, you know, who Ms. Montgomery was and how
16 she was with you?

17 A Right. As I remember, Ms. Montgomery was a very
18 quiet lady. She did not talk a lot. Usually during our
19 visits, I would knock on the door. I would usually have a
20 prearranged the visit through the defendant, who was her
21 caregiver. And sometimes he was there and sometimes he
22 wasn't, but I would usually knock on the door if he was
23 not available and it would usually take a few minutes for
24 Ms. Montgomery to get to the door. She was very frail and
25 hinder help and, usually, she would sit on the couch and I

1 would sit on a chair in front of her and ask her
2 questions. She was a woman who had a strong faith in the
3 Lord. But, like I said, she was not real talkative.
4 Mostly, she would just answer my questions with yes or no
5 or, you know, a very short sentence and then, usually, I
6 would, you know, read some scripture with her and pray
7 with her and she was always appreciative of that.

8 Q And what was your understanding of Ms. Montgomery's
9 physical illness when you interacted with her?

10 A It was my understanding that she had breast cancer
11 that had metastasized, that she was declining over the
12 months with a steep decline there in the last couple of
13 months. She was able to do more probably than a lot of
14 other patients in her condition. She still lived alone.
15 She was still able to take care of some of her basic
16 needs, along with hospice coming in and helping meet some
17 of those needs also.

18 Q And tell us what you observed about Ms. Montgomery's
19 mental state when you visited and interacted with her?

20 A She was confused and I think as time went on
21 especially in the last month to month-and-a-half, that
22 increased. You know, she seemed to have trouble
23 comprehending or answering questions, even simple
24 questions that normally before she had been able to
25 answer. I could certainly see a decline there.

1 Q And you mentioned earlier that you would have
2 coordinated your visit before coming to Ms. Montgomery's
3 home. Who requested that you contact the defendant and
4 give him notice before he visited Ms. Montgomery?

5 A Well, he requested our organization, you know
6 everyone in our organization do that. I'm not sure who
7 exactly on our, from our organization told me that, but
8 someone within our organization asked me to do that.

9 Q And so, Mr. Bowen, you saw Ms. Montgomery about twice
10 a month for 10 months speaking to her about her faith and
11 reassuring her as to her condition as she got close to her
12 death. So how much did you claim from her estate that you
13 deserved due to your service?

14 A Oh, excuse me?

15 Q How much money did you claim that you deserved from
16 serving her?

17 A None.

18 Q And have you ever accepted gifts from the terminally
19 ill patients that you serve in the past seven years that
20 you've worked as a chaplain for Hospice Care?

21 A No.

22 MS. VALENZUELA: Mr. Bowen, please answer, Chaplain
23 Bowen, please answer any questions that the defendant has
24 for you.

25 CHAPLAIN BOWEN: Okay.

1 (Whereupon, a short break was taken.)

2 THE COURT: Bring the jury in, please.

3 (Whereupon, the jury came into open court at
4 approximately 12:34 p.m.)

5 THE COURT: All right. The record should reflect
6 that the jury is back. Mr. Fernandez, call your next
7 witness, please.

8 MR. FERNANDEZ: Thank you, Your Honor. The State
9 would call Raymond Johnson.

10 RAYMOND JOHNSON, being
11 first duly sworn, testified as follows:

12 BY MR. FERNANDEZ:

13 Q Mr. Johnson, I'm going to ask you to speak up if you
14 can and/or speak into the microphone.

15 A Okay.

16 Q I'm going to pull that microphone closer to you just
17 so we can make sure it picks you up. All right. Mr.
18 Johnson, can you state your name for the record, please?

19 A Raymond Johnson.

20 Q Okay. And, Raymond, where do you live?

21 A Dearborn, Michigan.

22 Q And how long have you lived in Michigan?

23 A All my life.

24 Q Okay. And what do you do for a living?

25 A Retired pipefitter.

1 Q And what did you do when you, before you retired,
2 you're a pipefitter?

3 A Yeah.

4 Q What'd you do before then?

5 A Oh, yeah, I was a pipefitter. That's correct.

6 Q And what does that involve and tell us a little bit
7 about that?

8 A It deals with heating, heating and cooling on a large
9 scale, commercial.

10 Q Okay. And what is your relationship to Virginia
11 Montgomery?

12 A Nephew.

13 Q And who would be her, would that mean your mom would
14 be her sister?

15 A That's correct.

16 Q Okay. And tell us a little bit about your mother;
17 who was your mother?

18 A Lougenia Johnson.

19 Q Okay. And you're familiar, you've been in court
20 throughout this trial, is that correct?

21 A That's correct.

22 Q And you're obviously very familiar with the facts
23 surrounding this case, would that be correct?

24 A That's correct.

25 Q Okay. You were familiar then, you were around, you

1 familiar when Virginia Montgomery passed away, is that
2 right?

3 A That's correct.

4 Q Do you remember what date that would be?

5 A That was December 20, 2011.

6 Q Okay. I'm handing you what's referred to as State's
7 Exhibit 6, what's been in evidence as State's Exhibit 6.
8 That's a death certificate. Did you actually obtain death
9 certificates on your own also for your records?

10 A What happened I was relying on Mr. Fielder to give me
11 the death certificates and he never did--

12 Q Okay.

13 A --so I had to obtain them on my own.

14 Q Okay. We'll get back to Mr. Fielder and why he did
15 or didn't do certain things and your relation with him.
16 Around the time, February 2011, or even before then, tell
17 us a little bit about the situation of Virginia Montgomery
18 and what led Mr. Fielder to, you know, taking care of her?

19 A What led Mr. Fielder to take care of her? I don't
20 really understand that question.

21 Q Why would Mr. Fielder be involved with Virginia
22 Montgomery? What was happening around that time whenever
23 he first started?

24 A She needed help.

25 Q Okay. And were you in communication with Virginia

1 Montgomery?

2 A Yes.

3 Q Okay. And being in Michigan, her being in Laurens
4 County, how did you typically communicate with her?

5 A I will call her.

6 Q Okay. And you became aware of her physical
7 situation, is that correct, her illness?

8 A Yes.

9 Q Okay. And what was your understanding that her
10 illness was?

11 A At first I didn't really know. They said that she
12 was bleeding, and then I later found out that she was, she
13 had cancer.

14 Q Okay. And were you able to come take care of Ms.
15 Montgomery yourself?

16 A No.

17 Q Okay. And why were you not able to?

18 A Because of my mother.

19 Q Okay. And what, how old was your mother at this time
20 in 2011?

21 A She was, well, when she passed she was 89. She
22 passed seven months after Virginia.

23 Q Okay. And your mother had her own health issues, is
24 that correct?

25 A That's correct.

- 1 A Through Virginia.
- 2 Q Okay. And is Mr. Fielder here today?
- 3 A Yes.
- 4 Q Okay. Would you tell me which one, he is at defense
- 5 counsel table?
- 6 A The guy with the bow-tie.
- 7 Q Okay. How often would you say you've met Mr. Fielder
- 8 in person or through phone conversations? How often have
- 9 you had conversations with him?
- 10 A When I will come to visit my Aunt Virginia and when
- 11 she got sick, I was communicating back and forth with him.
- 12 Q Okay. And do you have an understanding of what Mr.
- 13 Fielder's relationship to you or to Ms. Montgomery was or
- 14 is?
- 15 A My cousin, but I didn't know he was such a distant
- 16 cousin. You know, I thought he was closer than he was.
- 17 Q Okay.. So it turns out he's not a close relation to
- 18 you or to Ms. Montgomery?
- 19 A That's correct.
- 20 Q Okay. Do you even know exactly what his relation is?
- 21 A Yes.
- 22 Q Okay. Could you explain what it is?
- 23 A Well, my great, great, great grandmother, she was
- 24 married twice and when she got remarried, she married a
- 25 Fielder.

1 Q Okay. Okay. And what was the nature of, why would
2 Mr. Fielder be taking care of Virginia Montgomery? What
3 brought you to ask him or to permit him to take care of
4 her?

5 A Well, she needed help and I couldn't do it, you know,
6 and he was already here in Laurens.

7 Q Okay. Did he offer his services or did you ask him,
8 do you remember that conversation?

9 A He did it on his own.

10 Q Okay. And did he tell you that he was only going to
11 do it in exchange for a significant amount of money, house
12 and car titles when he talked to you about that?

13 A No.

14 Q Did he ever tell you that he deserved that money
15 because of the services he provided?

16 A No.

17 Q Okay. Now, who was set to inherit from Ms. Virginia
18 Montgomery? Do you know who would have inherited her
19 estate?

20 A It would have been me.

21 Q Okay. Are you the last surviving relative of Ms.
22 Virginia Montgomery? Are you the closest--

23 A Me and my sister.

24 Q --surviving relative?

25 A Me and my sister. Well, then I, later I found out

1 about my cousin, other cousin, because I really didn't
2 know about my cousin, Carol. And then when I really found
3 out that she was not able to, you know, she had somebody
4 taking care of her. And I didn't even know of where she
5 lived or anything, and I didn't know that she was being
6 taken care of someone else. I only seen her and I guess I
7 never really even knew, I knew of her, but I never really
8 seen her and I saw her at the funeral.

9 Q And this would be Ms. Carol Colbert?

10 A Yes.

11 Q Is that right?

12 A Yes.

13 Q Now, did Ms. Montgomery ever marry?

14 A No.

15 Q And did she ever have any children of her own?

16 A No.

17 Q And you were her nephew, is that correct?

18 A That's correct.

19 Q Okay. Now, I'm going to call your attention, well,
20 what was, first, what was your understanding of the
21 relationship between Mr. Fielder and Ms. Montgomery; what
22 was he supposed to have been doing?

23 A Helping her.

24 Q Okay. Did you ever have any idea that Mr. Fielder
25 filled out a power of attorney?

1 A No.

2 Q Did he ever tell you that?

3 A No.

4 Q Did you ever have any discussions with him about
5 finances, about Ms. Montgomery's finances?

6 A Yes.

7 Q Okay. What was your instructions to Mr. Fielder on
8 finances; what would you have told him?

9 A I told him do not bother the money, the money was
10 already taken care of because the money was already in
11 Virginia's name, my mother's name and my name.

12 Q Okay. And speaking of that, I'm going to hand you
13 what's been marked as State's Exhibit 1. It's already in
14 evidence. I'll hand it to the defendant first. This is a
15 bank record from the Palmetto Bank I'm going to hand you.
16 If you would, please, Mr. Johnson, read me the bank
17 account number and the date of creation of that bank
18 account right below it.

19 A Account number first?

20 Q Correct, please.

21 A Palmetto Bank account number [REDACTED] 5118; date 11/3/89.

22 Q So November 3, 1989 is when that account was created,
23 is that correct?

24 A That's correct.

25 Q And who was the account holders on that bank account

1 that was created back in 1989?

2 A Virginia Montgomery, Lougenia or Raymond Johnson.

3 Q And we know who Virginia Montgomery is. Would you
4 tell us who Lougenia Johnson is?

5 A My mother.

6 Q And who, and that would be Ms. Montgomery's sister?

7 A That's correct.

8 Q And, then who is Raymond Johnson?

9 A That's me.

10 Q Okay.

11 MR. FERNANDEZ: Permission to publish for the jury,
12 Your Honor?

13 THE COURT: You may.

14 MR. FERNANDEZ: Thank you.

15 Q Mr. Johnson, this is the document you just read and
16 when I, and when you read off the date, account number and
17 dates, would that be the two document, there's a date
18 right here and the account number above, would that be
19 accurate?

20 A Correct.

21 Q Thank you. And when this account was created, can
22 you tell me how much money was put into it?

23 A \$79.00 dollars.

24 Q Thank you. So is it safe to say that you have been
25 in close contact with your aunt throughout your life? I

1 when Ms. Montgomery was extremely ill at that timeframe?

2 A You said 2011?

3 Q Correct.

4 A To?

5 Q To December 2011?

6 A I believe so.

7 Q Okay. And what was your understanding of her

8 possessions, her bank account, the funds in her bank

9 account, the joint account with yourself and your mother,

10 her house and then her, the deed to her car? What would

11 your understanding be about her possessions and her funds?

12 A You mean the value?

13 Q What would eventually happen to them?

14 A It would have come to my mother and me.

15 Q Okay. I'm going to hand you a document labeled

16 State's Exhibit 1G. Mr. Johnson, walk us through what

17 happened when you first discovered what had happened to

18 her funds and her house and her car? How did you first

19 find out what happened?

20 A After she passed, after she passed, and then Greg

21 called me and I came down.

22 Q What did he tell you?

23 A I'm trying to remember what happened, you know.

24 Let's see, after we, I came down. We went to the funeral

25 home, he was making preparations.

1 Q And were you the personal representative of her
2 estate?

3 A No, I wasn't. Now, on that part, I was going to let,
4 my intention was to let him handle everything, because I
5 was busy with my mother and my wife.

6 Q All right. So when you figuring how things are going
7 to be handled, what did you discover he had already done?

8 A Me and Mr. Fielder went into the bank and I went
9 inside the bank, and then I discovered that all the money
10 was gone.

11 Q Okay. That would be the same account that we just
12 talked about that was created in 1989, the Palmetto Bank
13 account?

14 A Yeah, it was two accounts. It was two separate
15 accounts and both of them was, were gone.

16 Q Okay.

17 A So, and then I questioned him about it. And I said,
18 well, what happened to the money. He said, you know, he
19 moved it. And I said, well, why? And he said Palmetto
20 Bank was going under so he moved it. That's what he told
21 me then.

22 Q So that's the justification he gave for why he took
23 all that money, the \$87,000.00 dollars and \$50,000.00
24 dollars, that's what he told you--

25 A Yes.

1 Q --was the reason he moved that money? Did he claim
2 the money for himself? Did he tell you it was his?

3 A No, he didn't tell me it was his. I asked him what
4 happened to it and he wouldn't never give me a direct
5 answer.

6 Q Did he tell you she gave it to him?

7 A No, he did not.

8 Q Did he ever assert any control over it or what did he
9 tell you? Did he tell you he'd pay you back the money?

10 A No, he didn't tell me he'll pay me back.

11 Q Okay. So what did he tell you he was going to do
12 with that money if he moved it?

13 A He didn't tell me what he, you know, I tried to ask
14 him and, you know. And then he said, well, I got this
15 amount of money. You know, I'll give you this amount.

16 Q Okay.

17 A One day, I'll give you this amount. And then he had
18 promised me the \$30,000.00 and so I asked for a copy of
19 it. He told, you know, he said when he get the bond money
20 back, he was going to give me that \$30,000.00.

21 Q All right. Well, let's talk about the bond money.
22 What did he say he did with that \$30,000.00 dollars in
23 bond money?

24 A Well, you know, he showed me the bail money, the
25 check stub. He showed that to me and he promised me that,

1 but I didn't trust him.

2 Q Okay.

3 A So I said, well, give me a copy.

4 Q Why didn't you trust him?

5 A Because he already had took all of the money already
6 and he, he should have never, you know, took that money,
7 should have never moved it.

8 Q Okay. All right. So he showed you the bond money
9 and what did he say about that, he said he would give you
10 that money back?

11 A He said he was going to give me the whole \$30,000.00
12 dollars and I didn't believe him. So I said, well, give
13 me a copy and he gave me a copy.

14 Q Did you ever receive that \$30,000.00 dollars in bond
15 money?

16 A No, I didn't.

17 Q Okay. But he told you he was going to give it to
18 you?

19 A He told me he was going to give it to me.

20 Q Okay. How much money did he pay you overall, do you
21 remember?

22 A I have to look in my notes, because I took a lot of
23 notes, because the way he was doing things and trying to
24 make everything confusing to me. I thought that he was
25 trying to intimidate me when he went, we left the bank and

1 got in the car and he start acting irrational like he
2 wanted to upset me. And I said to myself, no, Raymond.

3 Q Well, explain him acting irrational? What kind of
4 things was he doing or saying?

5 A He started talking about guns and I didn't want to
6 get in a fight with him or nothing. And I said, you know,
7 Raymond, you know, just get what you can and go and get,
8 and go on back home because this, it looked like it's
9 going to get nasty.

10 Q Okay.

11 A And he wouldn't, you know, he wouldn't cooperate. He
12 wouldn't tell me what was going on, where the money went.
13 And I said, man, what, you got almost \$100,000.00 dollars.
14 Where is it?

15 Q Okay.

16 A So he started giving me, let's see.

17 Q And why would he have paid you any money, did he?

18 A I guess he was trying to give me what he had, you
19 know, I don't know.

20 Q Okay.

21 A Trying to show where the money went. So he gave me,
22 here it is right here. He gave me \$6,000.00 dollars in
23 cash money in Virginia's house and was counting it out in
24 small bills and I think it was some \$100's. It was
25 \$6,000.00 and it was, we miscounted and then he took that,

1 I think it was miscounted by \$20 and he put that in his
2 pocket. And then he gave me a cashier's check for
3 \$9,000.00 dollars, cashier's check for \$6,000.00 dollars.
4 He gave me a personal check for \$2,000.00 dollars and that
5 was it. And then I had, when I had went to the bank, I
6 went back to the bank and talked to the lady at Palmetto
7 Bank and the lady, you know, I told her the situation, the
8 problem. And I told her about the \$6,000.00 dollars and I
9 started to give it to her. You know, she recommended I
10 didn't need to carry that kind of money on me. So I
11 started to count it out, but I decided to keep the money.

12 Q Mr. Johnson, I'm handing you what's been marked as
13 State's Exhibit, collectively as State's Exhibit 1H and
14 there is a photocopy of three, I guess, well, I have a
15 better word, checks, and there are three originals
16 attached to it, stapled. Are you familiar with those
17 checks?

18 A Yes.

19 Q All right. Tell us what they are, if you would?

20 A Well, this top one here is \$14,914.34, because this
21 is the money that he had cleaned out that one account and
22 Virginia had built it back up to \$14,914.00 dollars.

23 Q And that would be the account with First Bank,
24 correct, I mean with Palmetto Bank?

25 A Yes.

1 Q Okay. Referring back to the two checks that Mr.
2 Fielder provided you, could you tell me the dates of those
3 two checks, if you would?

4 A December 28th, 2011, \$6,000.00 dollars; SunTrust
5 Bank.

6 Q Yeah, what date is that, sir, December. You said?

7 A December 28th, 2011.

8 Q Okay. All right. And what's the other date on the
9 other check?

10 A December 23rd, 2011.

11 Q Thank you.

12 A \$9,000.00.

13 Q Thank you. Mr. Johnson, I'm handing you documents
14 that are in evidence as State's Exhibit 2P, 2Q, 2R, 2S and
15 2T, and I'm going to direct your attention to the bottom
16 of that document. Well, first of all, tell us what
17 account that this one relates to? What's the bank and
18 what's the account number?

19 A It's a different account. It's SunTrust Bank and the
20 account number is, okay, there it is. I believe it is
21 [REDACTED] 2433.

22 Q All right. At the bottom of that account, is there
23 something called a Certificate of Deposit listed down
24 there or otherwise known as a CD?

25 A Yes.

1 in October 2012, is that correct?

2 A Yes.

3 Q And the bank account was in Ms. Montgomery's name?

4 A And Greg Fielder's.

5 Q And she had since passed at that time?

6 A Yes.

7 Q What other conversations might you have had with Ms.
8 Fielder as this progressed? So he paid you that money
9 that we've already established. What happened afterwards
10 when you started trying to do an accounting of Ms.
11 Montgomery's assets? What had occurred after that?

12 A A lot of confusion, you know, and he was talking
13 crazy, doing stuff that didn't make no sense.

14 Q Okay.

15 A So I, you know, I tried to talk with him. You know,
16 we had a meeting at the little restaurant and he brought
17 in a tape recorder and I had a list of questions that I
18 wanted to ask him. And he was using that tape recorder
19 and I, you know, I didn't feel comfortable. And I said,
20 you know, this is crazy.

21 Q Okay.

22 A So I ended it and I said I'm going to seek some legal
23 advice.

24 Q Okay. And you did end up hiring an attorney, is that
25 correct?

1 A That's correct.

2 Q Okay. And who'd you end up hiring?

3 A Mr.--

4 Q Mr. Bryan?

5 A --Jim Bryan.

6 Q Okay. And is he present here today?

7 A Yes, he is.

8 Q Okay. And I'm not going to get into the rest of the

9 legal issues, but you did decide that it was time to seek

10 outside help--

11 A Correct.

12 Q --with your attorney, and then eventually the

13 authorities were contacted, is that right?

14 A Yes.

15 Q Okay. And did you cooperate with the police

16 investigation?

17 A Yes.

18 Q Okay. And do you recall meeting with Ms. Riggot who

19 was present here earlier today?

20 A Over the phone.

21 Q Okay. And you had since gone, is that because you

22 had since gone back to Michigan?

23 A That's correct.

24 Q And would that be due to take, having to take care of

25 your own wife and mother?

1 A That's correct.

2 Q Okay. Did you have any conversations with Mr.

3 Fielder after this process began?

4 A No.

5 Q Okay. Has he offered to pay you back any additional
6 money since then?

7 A No.

8 Q Okay. Has he made any other claims for the money
9 that you've been aware? Has he relayed to you any money
10 that he believes either is due to him or anything like
11 that?

12 A No.

13 Q Before you left, tell us a little bit about the house
14 and the way it was deeded and how you discovered that.
15 Well, first of all, what was your intentions to do with
16 the house in the first place?

17 A I was going to give Greg the house and the car.

18 Q And why would you have done that? Why would you have
19 given him a house?

20 A Because he did look after Virginia.

21 Q And was that because you were just feeling generous?

22 A Yes.

23 Q Okay. And in your generosity when you went to offer
24 the house to Mr. Fielder, what did you discover?

25 A I discovered all the money was gone.

1 Q And what about the house?

2 A After Virginia passed and he wanted me to come with
3 him to the lawyer's office. So then I, we went there
4 about two or three times, and then I found out that he had
5 deeded the house to his self. And I asked for a copy and
6 I had to, so the secretary there, she made a copy and I
7 had the same original like he did. Because the first
8 lawyer I went to, I went to another lawyer first because I
9 went online and I got the information. And then later I
10 didn't go with that lawyer, I went with Mr. Jim Bryan
11 instead.

12 Q Okay. So you, when you actually went to tell him
13 that as a token of your generosity and being the rightful
14 inheritor of the estate of Virginia Montgomery, that you
15 were actually going to transfer the deed of the house to
16 Mr. Fielder's possession, and then you found he'd already
17 done that, is that accurate?

18 A Yes, and the car. Yeah. You know, I found out
19 later, because we was, we had came here to this civic area
20 and we was going to, I was going to let him be the
21 representative and take care of all the matters here. But
22 then when I found out that he had did that, and then he
23 still tried to get me to, and my mother was living at that
24 time, to sign everything over. But see, I never knew
25 about Carol. I never knew about her. I never knew about

1 Q Did you have any objection to me caring for Virginia
2 Montgomery?

3 A No, I wanted you, I was hoping that you were looking
4 out for her and doing the right thing for Virginia.

5 Q Did you ever make any medical decisions for her?

6 A We were making, when, you know, when I came down here
7 and you was, you was acting as a lawyer. You had all
8 these papers drawn out. Do you think I believe that
9 Virginia made those power of attorney? That was you. You
10 made the power of attorney. You put all the writing in
11 there. That was your doing. Virginia had nothing to do
12 with that. I don't know how you got her signature on it,
13 but that was all you, Greg, and you know this.

14 Q Okay.

15 A Now, you supposed to had got paperwork for just
16 medical and you got power of attorney and moved the money.

17 Q Okay.

18 A And I'm glad I didn't lose my cool and do something
19 to you.

20 Q Do something to me like what?

21 A Because you sure tried to provoke me.

22 Q Do something to me like what?

23 A Get in a fight with you.

24 Q Okay. Back to my initial question, did you ever make
25 any medical decisions for Virginia Montgomery?

1 A No, I did not. I left it up to you.

2 Q Okay.

3 A Because I wasn't in the position. I'm in Michigan.
4 You were here.

5 Q Okay. How many times did you visit Laurens before
6 her death?

7 A I don't know exact amount or time, but I visited her
8 when I could when I was in the area. I was always
9 thinking of her, but I couldn't be. I had my own life. I
10 had my own problems.

11 Q Can you give me approximate, the Court approximate
12 number how many times you visited her before she passed?

13 A Approximately oh, you know, over my lifetime, is that
14 what you saying?

15 Q Yes, please.

16 A Over my lifetime? I don't, seven or eight times. I
17 don't know.

18 Q Seven or eight times?

19 A Yeah.

20 Q Was there ever an occasion when you came to visit her
21 and you had to sleep in your vehicle?

22 A Yes.

23 Q Okay.

24 A I got a good memory, especially when I think in that
25 area.

1 A Yes.

2 Q And how did I keep her hidden from you?

3 A You, because you knew about her and I didn't. You
4 knew her location. You knew where she was and you knew
5 her, what problems she had. You knew somebody was taking
6 care of her. You knew she couldn't take care of herself.
7 You knew all this and you never told me. I had to find
8 out on my own.

9 Q Okay. You are now the personal representative?

10 A I am the personal representative of Virginia
11 Montgomery's estate.

12 Q Okay. Do you know everything that she possessed in
13 that as a personal representative?

14 A Everything she possessed. I only know of things that
15 I know of. Other than that, there's a lot of things I
16 didn't know of. I know she had a lot of bank accounts.

17 Q Okay.

18 MR. FIELDER: And, Your Honor, if you don't mind it's
19 kind of a hard, I want to apologize if I yelled at you and
20 to the Court.

21 THE COURT: Very good.

22 Q So what possessions did she give you?

23 A What possessions did she give me?

24 Q Yes.

25 A Like I said earlier, she gave me those silver

1 dollars.

2 Q Okay.

3 A Okay. When she was living and she did a lot of
4 things for me while she was living.

5 Q Okay. Did she give you her house?

6 A She was going to.

7 Q How was she going to do that?

8 A By her word she gave them to me. She gave them to me
9 verbally.

10 Q Okay. Did she give you her car?

11 A She gave me all of her possessions verbally.

12 Q How did she say that?

13 A She said, she said, Raymond, when I die, you can have
14 everything, the car, the house, the money, everything.
15 That's what she said.

16 Q And she only specified the house, the car and the
17 money?

18 A And everything.

19 Q Did she say and everything or you adding and
20 everything?

21 A I know she said the car and the house and the money.
22 Yeah, and, you know what, she did say everything. Now that
23 I think about it, she did.

24 Q Okay. Do you know what contents are in that house
25 now?

1 approximately 3:59 p.m.)

2 MR. FERNANDEZ: Your Honor, she is already in here.

3 THE COURT: And very good.

4 THE COURT: Very good. The record should reflect
5 that the jury is back and seated and we, of course, are
6 still in the State's case. At this point, Attorney
7 General, please call your next witness.

8 MR. FERNANDEZ: Thank you, Your Honor. The State
9 calls Dr. Brownlee.

10 JOANNE BROWNLEE, being
11 first duly sworn, testified as follows:

12 DIRECT EXAMINATION

13 BY MR. FERNANDEZ:

14 Q All right. Dr. Brownlee, your name please for the
15 record?

16 A Katherine Joanne Brownlee.

17 Q Okay. And if you could give us a, please tell us
18 about your educational background?

19 A Sure. I had a chemistry degree at Presbyterian
20 College, four years medical school at MUSC. I got a
21 Doctor of Medicine degree, a year of surgical internship
22 and three years of family medicine training.

23 Q Thank you. And you currently practice medicine in
24 Laurens County, is that correct?

25 A I do.

1 Q Okay. Dr. Brownlee, I'm going to direct your
2 attention to a woman named Virginia Montgomery?

3 A Okay.

4 Q Do you have an independent recollection of that lady?

5 A I have some records in front of me.

6 Q Okay. Could you tell us the first time you saw Ms.
7 Montgomery?

8 A March 23, 2009.

9 Q Okay. And tell us what happened on that patient
10 visit, what was the reason for the visit and what did you
11 determine?

12 A Patient clearly had breast cancer. There was no
13 doubt about it, because it was apparent that it had eroded
14 through the skin.

15 Q Okay. And back in 2009, how severe would you, would
16 you describe her, the cancer on her breast?

17 A Severe.

18 Q Did you refer her to any further, for any further
19 medical examinations?

20 A I attempted to and patient refused treatment.

21 Q Okay. And was that the conclusion of that visit?

22 A It was other than I also encouraged hospice
23 intervention and she was sent some hospice info, because
24 she refused hospice at the time.

25 Q And back in 2009, would the cancer have been beyond

1 the treatment stage?

2 A It would have. You could have gotten palliative care
3 probably which is usually radiation, maybe some chemo.

4 Q And that as far as you're concerned, you didn't see
5 her again until what date?

6 A February the 15th, 2011.

7 Q Okay. So in February of 2011, you saw her again and
8 you did not see her in any, anytime in the interim?

9 A That's correct.

10 Q And I guess you would no, would have no knowledge of
11 what treatment she did or didn't do for her cancer --

12 A Right.

13 Q -- in the meantime?

14 A Right.

15 Q Okay. And when you examined her in February of 2011,
16 would you describe how the cancer was doing and her
17 physical composition?

18 A Bloody discharge. It looked infected. It looked
19 larger and I was amazed, obviously, that she was still
20 alive after--

21 Q Okay.

22 A --after two years.

23 Q Okay. And did you run some medical or some blood
24 work on Ms. Montgomery at that time?

25 A I did.

1 Q And what did you determine from the blood work?

2 A Her hemoglobin was 2.6.

3 Q Okay. And we've heard a little bit about hemoglobin,
4 but if you would, please tell us what hemoglobin is and
5 what the significance of that number is?

6 A Hemoglobin is the oxygen carrying capacity molecule
7 in the body that allows us to think, walk, breathe, any
8 living function that we do.

9 Q And what would be the normal hemoglobin range for an
10 adult female?

11 A 12 to 15 usually.

12 Q And what would, how would you categorize a 2.5 or 2.6
13 hemoglobin in an adult female?

14 A It's amazing that someone can still stand up at all.
15 That they can perform any kind of activity.

16 Q Okay. And in coming to your conclusions in your
17 research, do you rely on certain publications in the
18 medical field?

19 A I do. In addition to what we're taught, you always
20 review the literature. The American Family Physician is a
21 journal that's put out monthly and they also state what
22 normal hemoglobin levels are and Harrison's Internal
23 Medicine, Principals of Internal Medicine.

24 Q And are those relied, in the medical field?

25 A They are.

1 Q And in addition to physical ailment, physical issues
2 that one might have with such a hemoglobin count, would
3 that also affect your cognitive and mental ability?

4 A It can.

5 Q And would you, how would you categorize a 2.5 as far
6 a severity?

7 A Oh, extremely severe.

8 Q And what was the result of that visit, did you, was
9 there any follow-up visits scheduled? Did you refer her
10 to the emergency room?

11 A I did. I sent her to the emergency room. Patient,
12 even though she had refused treatment, she was willing at
13 this time to be transfused.

14 Q Okay.

15 A So we sent her to the Laurens Emergency Room and they
16 were willing to transfuse and they transfused her blood.

17 Q And would you have considered a transfusion
18 absolutely necessary given her current state--

19 A Definitely.

20 Q --in February of 2011?

21 A Definitely.

22 Q Okay. And about as life or death as it can get in
23 her situation?

24 A It is. We usually transfuse when you're less than
25 eight. Now, she was 2.6.

1 Q Okay. And did you have another visit after that
2 February visit?

3 A She came for a lab test April the 25th and her
4 hemoglobin at, and this was at the office at that time was
5 5.6.

6 Q And would you still categorize a 5.6 as extremely
7 low?

8 A Definitely.

9 Q And concerning?

10 A Definitely.

11 Q Did you see her any time after that?

12 A She came August the 8th and September the 28th.

13 Q Okay. And did you do blood work on her at those
14 point, at that point?

15 A Not at that time. She was under hospice care.

16 Q How would you, did you have any independent
17 recollection of her ability to comprehend at that point?

18 A She was still alert, conversant and able to carry on
19 conversations.

20 Q Okay. Defendant here, Mr. Gregory Fielder, did he
21 accompany her ever to her medical visits with you?

22 A He did. I can't recall which one, but I remember he
23 did come to a visit.

24 Q Okay.

25 MR. FERNANDEZ: Beg the Court's indulgence.

1 THE COURT: Yes.

2 MR. FERNANDEZ: No further questions, Your Honor.

3 Dr. Brownlee, please answer any questions the defendant
4 may have.

5 DR. BROWNLEE: Sure.

6 MR. FIELDER: Thank you.

7 CROSS-EXAMINATION

8 BY MR. FIELDER:

9 Q Dr. Brownlee, do you know Virginia Montgomery?

10 A Yes, I do.

11 Q When did you first come to know her?

12 A March the 23rd, 2009 is the first office visit that I
13 had with Ms. Montgomery.

14 Q Okay. And what was the purpose of her visit?

15 A She was brought in. She wanted an opinion on her
16 condition.

17 Q Okay. And who brought her in?

18 A She was brought in at that time by Allie Massey.

19 Q Okay. And do you know how Allie Massey is related to
20 her?

21 A I was told that she is her cousin.

22 Q Okay. And do you know me?

23 A I do, because you brought her in some, too.

24 Q Okay. Do you know how or if Allie is related to me?

25 A She is your sister, I believe.

1 Q You are correct. And when she brought her in, when
2 Allie brought Virginia in, did she tell you that she was
3 doing it by the authority that I gave her?

4 A No.

5 Q Okay. Did you know that I was her caregiver?

6 A I knew in February that you were more involved in her
7 care and that was February of 2011.

8 Q Okay. And did you have any objections to me being
9 her caregiver?

10 A No, I did not.

11 Q Okay. And do you remember me bringing her to your
12 office?

13 A I do.

14 Q Okay. And did I ever assist you in making medical
15 decisions for her?

16 A I don't know how to answer that.

17 Q Okay. Was there ever an occasion when she needed
18 blood?

19 A You were willing to help get her to the emergency
20 room when we requested that she go to the ER for the
21 transfusion.

22 Q You say transfusion?

23 A Right.

24 Q Was it a transfusion or an infusion?

25 A Well, it depends on your definition, but her

1 hemoglobin was so low she needed red blood cells.

2 Q Okay.

3 A And infusions can be IVs. So, but it's a
4 transfusion, because she need, her hemoglobin was so low.

5 Q Okay. Thank you. And have I, as far as your
6 understanding is concerned as it relates to her care,
7 would you say that I assisted in making certain that she
8 got the best of care?

9 A To my knowledge, yes. Hospice was involved with most
10 of her care the last year.

11 Q And are you aware that hospice got involved at my
12 request?

13 A Well, I know that we requested hospice, too, so I
14 didn't feel like there was any objection from the family's
15 request.

16 Q Okay.

17 A There were no objections, but we usually make the
18 referral and try to get the patient seen.

19 Q But is that something that you and I worked on
20 together?

21 A I don't remember working on it together, I just
22 remember the staff communicating, we'll get hospice
23 involved, is she receptive to this at this time and the
24 communication was yes.

25 Q Well, did she make the decision or did I make the

1 decision?

2 A I can't recall that.

3 Q Okay. Are you aware that after 2011 that I was her
4 official authorized caregiver; were you aware of that?

5 A No.

6 Q Okay. Okay. But as far as you're concerned, I was
7 helpful in carrying out what--

8 A Yes.

9 Q Okay. That's good. Thank you.

10 A Sure.

11 MR. FERNANDEZ: Nothing further, Your Honor.

12 THE COURT: Well, I have just one question, ma'am.
13 Do you know what Ms. Montgomery's age was when last you
14 saw her, what was her age?

15 DR. BROWNLEE: Sure. Let's see.

16 THE COURT: Or her date-of-birth.

17 DR. BROWNLEE: Her date-of-birth is [REDACTED]/25 and so
18 when I saw her--

19 THE COURT: Perhaps 86?

20 DR. BROWNLEE: --she was 85, because it looks like
21 the, right before her last birthday, so I saw her when she
22 was 85.

23 THE COURT: Thank you.

24 DR. BROWNLEE: Sure.

25 THE COURT: Mr. Fernandez, Mr. Fielder, do you have

1 any followup concerning my question?

2 MR. FERNANDEZ: No, Your Honor.

3 THE COURT: Okay. Thank you for that.

4 DR. BROWNLEE: Sure.

5 THE COURT: Thank you very much for coming. Call
6 your next witness, please, Attorney General.

7 MS. VALENZUELA: Your Honor, the State calls James
8 Bryan to the stand.

9 JAMES BRYAN, being
10 first duly sworn, testified as follows:

11 DIRECT EXAMINATION

12 BY MS. VALENZUELA:

13 Q Okay. Mr. Bryan, can you state your full name for
14 the jury?

15 A James Edward Bryan, Jr.

16 Q We have no problem with your voice.

17 A You want me to push it back?

18 Q No, no, this is great, and I'm going to keep my voice
19 up as well. Okay. Mr. Bryan, are you currently employed?

20 A I am currently a practicing attorney in Laurens.

21 Q And where do you practice law?

22 A Laurens, South Carolina; 205 Church Street.

23 Q And to be more specific, do you have your own law
24 firm?

25 A Yes, I do.

1 Q And how long have you worked as an attorney?

2 A 40 years this month.

3 Q 40 years, congratulations. And what area of law do
4 you practice in?

5 A It's a general practice. I've done criminal
6 practice. I've done a lot of civil work. Probate; I was
7 Associate Probate Judge for seven years, some years ago,
8 and I do some probate, do real estate. In a small town
9 you do a general practice.

10 Q Can you, I want to focus on the probate part of your
11 experience. You said that you practice in probate and
12 that you were an Associate Probate Judge for seven years.
13 Can you explain to the jury what exactly probate, the area
14 of probate law is that they'd be familiar with?

15 A Probate is the processing of a person's estate when
16 they pass away. If they have a will, you probate their
17 will and the instructions of the will are carried out by a
18 personal representative who's appointed by the Court. If
19 a person does not have a will, then their assets go to
20 their heirs at law, and the, a person is appointed
21 personal representative by the court to see that that
22 happens.

23 Q And so this area of law is one of your practice areas
24 and, additionally, the area of law that you were an
25 Associate Judge in for seven years?

1 A That's correct.

2 Q Okay. Thank you. Now, aside from practicing law in
3 40 years and having your own practice and then serving as
4 an Associate Probate Judge, have you held any other
5 positions in the last 40 years of your career?

6 A I was a State Senator from Laurens County for 16
7 years.

8 Q For 16 years. And did you know the victim, Ms.
9 Virginia Montgomery?

10 A I don't recall ever meeting Ms. Montgomery. I have
11 met so many people, but I don't recall having met her.
12 I'm surprised that having, being a retired school teacher,
13 I am surprised I haven't met her and may have met her,
14 because I have spoken to retired teachers and things over
15 the years on a number of occasions. So I could have met
16 her, but I don't recall it.

17 Q But are you aware that Ms. Montgomery passed away?

18 A Yes, I am. Her nephew, Raymond Johnson, came to me
19 sometime in the spring or early part of 2012 for legal
20 assistance on this.

21 Q And so being aware of her death, are you aware of the
22 date of her death?

23 A December the 20th, 2011, is my recollection. I
24 believe that was it.

25 Q So one day after December 19th of 2011 is when she

1 passed away?

2 A That's correct.

3 Q Okay. Actually, how do you know Mr. Fielder, the
4 defendant?

5 A I have just, he's just an acquaintance. I have been
6 acquainted with him, but I don't really. I guess I have
7 never had any real long-term association with him, but
8 I've known who he was for, I don't know, 25 years, I
9 guess.

10 Q And when you say that Mr. Raymond Johnson came into
11 your office and was it early 2012?

12 A Sometime the early part of 2012.

13 Q Did your association or your representation of Mr.
14 Johnson cause you to be in contact with the defendant?

15 A I didn't get in contact with the defendant at that
16 time. I have been in contact with him over the years
17 because of that association. What happened originally,
18 Mr. Johnson came to me and showed me some bank records and
19 told me the situation with the aunt. And I told him that
20 I could help him with the estate, probate the estate and
21 have him appointed personal representative by the Probate
22 Court, which we did. And I could deal with a civil case
23 against Mr. Fielder concerning the money. I told him that
24 this sounded like some criminal activity and he would need
25 to talk to the police about that. I think I called the

1 police department and gave them his number and asked them
2 to call him and they called him. At some time after that,
3 Ms. Riggot, who testified earlier, called me and said she
4 had talked to Mr. Johnson and was looking into this and he
5 had given me some, a few bank records which I think she
6 subpoenaed on. But she asked to come by and get a copy of
7 what I had and I gave her a copy of what I had when she
8 came by. But I, that was the criminal, this case, the
9 criminal case. I am representing the estate, Mr. Johnson
10 as personal representative in the Probate Court, and we
11 have filed a civil action against Mr. Fielder for the
12 return of the car, the house and the money that he took
13 from her account also. And that's what I represent the
14 estate in.

15 Q Thank you, Mr. Bryan. And in that representation,
16 you mentioned bank records. Are you familiar with all the
17 bank records in this case?

18 A I have reviewed, I assume, all of them. I hope I
19 have all of them, but they're records from Palmetto Bank
20 and SunTrust. I subpoenaed them and got copies of the
21 ones from Palmetto Bank also.

22 Q And that involves two different accounts from
23 Palmetto Bank?

24 A That's correct.

25 Q And two different accounts, one being the CD from

1 that's visible there and then this is the \$14,000.00
2 dollars check that closed out the account?

3 A Yes, that was provided to me by Raymond Johnson.

4 Q And dated January 23rd, 2012 and for context is that
5 after the, Ms. Montgomery passed away?

6 A Yes, she passed away December of 2011.

7 Q And it tells you that it's for the closed account of
8 5878 in the purchaser line?

9 A That's correct.

10 Q And then these were the SunTrust checks that were
11 discussed earlier, \$6,000.00 and \$9,000.00 that were paid
12 by the defendant to Mr. Johnson when they were having a
13 discussion about money right around the time that Ms.
14 Montgomery passed away?

15 A Yes, this was just around the time of her funeral. I
16 don't know exactly why, but Mr. Fielder having gave him
17 some checks on different days, one is the 23rd and one's
18 the 28th. And he also gave him some cash money according
19 to what Mr. Johnson told me.

20 Q And then the last Palmetto Bank and this is Exhibit
21 1I for the State. And this is, can you tell us what this
22 is?

23 A This is the official receipt check after, for the
24 bond court. Mr. Fielder put \$30,000.00 dollar bond up for
25 his son who had some kind of criminal charges.

1 Q And so we see the date here, is September 16th, 2011
2 in the amount of \$30,000.00 dollars and the purchaser
3 being the defendant made out to the Greenville County Bond
4 Court?

5 A Yes.

6 Q And you and I are going to circle back to this
7 exhibit. I wanted us to be able to just, for the jury to
8 be able to know what they were looking at for each of
9 these documents. So we discussed the account numbers 5118
10 and 5878 at Palmetto Bank that had all three, the victim,
11 her sister and her nephew, Mr. Raymond Johnson on those
12 accounts. And we discussed how both of those accounts had
13 about \$50,000.00 dollars in one and about \$80,000.00
14 dollars in the other.

15 A \$87 and some, over \$87,000.00 dollars and one had
16 \$50,000.00 in it.

17 Q And both of those accounts were depleted either with
18 a withdrawal slip or with a check?

19 A One was withdrawal slip, one was a check.

20 Q Okay. And so that brings us to the SunTrust
21 accounts, okay. And so we're going to turn to Exhibit 2,
22 State's Exhibit 2 and looking here is a SunTrust
23 statement?

24 A Yes.

25 Q And who do we see as a, the account holders on here?

1 Q If Ms. Montgomery had wanted to assign gifts, what
2 are the different methods that she could have done that so
3 that gifts on her property could have been given to
4 different people?

5 A Typically a person has a will where they give their
6 property to someone at their death. That would be the
7 typical way of doing it. In this particular case Ms.
8 Montgomery did not have a will. If you had a will it says
9 who gets what, the property. If there is not a will then
10 a person who dies, they die intestate, means without a
11 will. Testate is died with a will, intestate without a
12 will. I am not aware of no will has been found for Ms.
13 Montgomery. I am not aware of one existing. When you die
14 without a will at your death your property goes to what is
15 called your heirs at law, there is a statute that says who
16 gets your property. It is basically goes to a spouse or
17 children or something to that nature. But there is a list
18 of priorities. In her case her heirs at law would have
19 been her sister, Lougenia Johnson, Raymond Johnson's
20 mother would have inherited half. And Carol Colbert,
21 Carol Montgomery Colbert is another niece from her
22 brother. She would have gotten her father's share, they
23 would have been the heirs at law. Ms. Lougenia Johnson
24 died about seven months after Virginia Montgomery did and
25 her heirs at law from the probate documents that I have

1 seen from Michigan are Raymond Johnson and Ms. Robinson,
2 her son and daughter would now inherit Ms. Johnson's
3 portion.

4 Q And so backing up a little bit, there is two ways
5 that this could have been handled, Ms. Montgomery's
6 property could have been handled. She could have either
7 had a will and that would have outlined the people and the
8 property and which person would have gotten what property
9 or she could choose, as not drafted a will. And in that
10 case her property would have gone, her statute to her
11 living heirs. And in this situation it would have been
12 her sister, Mr. Raymond Johnson's mother who is still
13 alive at the time or her niece who is a daughter of her
14 brother who had already died?

15 A Yes. Ms. Johnson and her niece.

16 Q So it would have been split among three of them?

17 A Yes.

18 Q And so if she had wanted her property to go to
19 someone other than those two, would an attorney been able
20 to help her draft a will?

21 A Yes, normally an attorney would draft a will.

22 Q And the power of attorney, was that drafted through
23 an attorney?

24 A To my understanding it was, yes.

25 Q And the deed, let the record show I showed Mr.

1 Fielder State's exhibit 3 and I am handing State's exhibit
2 3 up to the witness.

3 MR. FIELDER: May I see that.

4 MS. VALENZUELA: Sure.

5 Q And what is State's exhibit 3?

6 A It is a deed for real estate. It comes through
7 Virginia Montgomery by and through her duly appointed
8 attorney, in fact, Gregory Fielder. And it deeds it to
9 Gregory Fielder, it deeds it from himself as power of
10 attorney and he retains a life estate in Virginia
11 Montgomery which means at Ms. Montgomery's death Mr.
12 Fielder would own her house. And it is signed by Mr.
13 Fielder for Ms. Montgomery.

14 Q And we showed that exhibit yesterday. And at the top
15 right-hand corner does that exhibit state Mr. Hocker who
16 served as the attorney and you also saw a check payment
17 made to Mr. Hocker?

18 A Yes. An attorney drew the deed up.

19 Q So there are at least two different attorneys in that
20 2011 period that were at least available to draft a will
21 if that had been Ms. Montgomery's desire?

22 A Yes. Ms. Montgomery did not sign or it doesn't show
23 any of her personal participation in the deed though.

24 Q And the deed in the exhibit that you were just
25 referring that Mr. Fielder signed transferring her house

1 to his name?

2 A That was done totally by Mr. Fielder.

3 Q We talked about if she passed away without a will
4 what her property would go to. would that have included
5 and I know it is confusing because there is so many bank
6 accounts. But speaking of the Palmetto Bank accounts, the
7 two different accounts that had as holders the victim, Ms.
8 Montgomery, Raymond Johnson, her nephew; and Lougenia, the
9 nephew's mother; the victim's sister, those two accounts
10 that have account holders, would those accounts have gone
11 through probate or the will process.

12 A The accounts from Palmetto Bank, the one that the
13 \$50,000.00 dollars was taken out of and the one that the
14 \$87,000.00 dollars was taken out, from the records shown
15 yesterday with the name of Virginia Montgomery, Lougenia
16 Montgomery, her sister and her nephew, Raymond, excuse me
17 Lougenia Johnson and her nephew, Raymond Johnson. And it
18 was Orr accounts and her death it would have gone to Ms.
19 Lougenia Johnson and Raymond Johnson and would not have
20 gone through the probate matter. And that was the
21 accounts she had established as far back as 1989. And had
22 their name on her account for many years.

23 Q So we talked about three different areas of property,
24 the car, the house and money. And you just explained the
25 money. And earlier you discussed the house and how it

1 leave the money and using his power of attorney paid
2 electrical bills or water bills or any sort of bills on
3 behalf of the victim?

4 A That's correct. He could have left the money in the
5 accounts where they had been for more than 20 years and
6 when she had a power bill he could have signed as her name
7 and him as power of attorney and paid her power bill, paid
8 her telephone bill, could have paid insurance bill or a
9 doctor bill. He could have done any of that out of that
10 account with a power of attorney, assuming the power of
11 attorney is valid.

12 Q Have you ever spoken to the defendant outside of this
13 courtroom about your, about Ms. Montgomery's estate?

14 A Yes, on one occasion there was a proceeding
15 concerning this criminal case which Mr. Johnson was in
16 Dearburn, Michigan. And he asked me to just go and sit in
17 on. I did and after the fact, out behind the local police
18 station where the hearing was held and just talked to Mr.
19 Fielder and his attorney. He had an attorney, Albert
20 Smith at that time from Spartanburg. And we had a
21 discussion there about the case and Mr. Fielder indicated
22 he would give an itemized statement of what he did with
23 all of her money. That would have been in sometime either
24 June or July of 2012. To this day I have never received
25 any kind of itemized statement from him. He also

1 indicated at that time he was going to deed the house back
2 to the estate and transfer the car to the estate. That
3 did not happen until earlier this year, I received a deed
4 from his attorney. He had a second attorney for the civil
5 matter, Donna Jackson from Clinton. and I received a
6 signed deed in early part of this year, I believe it was.
7 So he was going to send it in June or July of 2012.
8 Finally did get it in early part of this year. This
9 deposition was taken in January of 2014--

10 Q Mr. Bryan, I am just going to go a little bit more
11 step by step on that and so focusing on that June to July
12 conversation in 2012, you had the opportunity to speak to
13 the defendant, he told you he was going to give you an
14 itemized list and he was going to transfer the deed to the
15 house to you. And then that wasn't done at that time?

16 A That's correct. And one of his attorney's was
17 present with him when during that conversation.

18 Q And so with his attorney he had that conversation
19 with you informally outside of a court house?

20 A That's correct.

21 Q And then that would have been, so June or July of
22 2012, it would have been about six or seven months after
23 the victim passed away?

24 A That's correct.

25 Q And did you have the opportunity to question or speak

1 to the defendant again after that June or July, 2012
2 conversation?

3 A My next chance to talk to him would have been January
4 of 2014 when this deposition was taken. I will look to
5 see the, January the 13th of 2014, the deposition was
6 taken. At that time he had his other attorney, Donna
7 Jackson present with him and I took this deposition in
8 front of a court reporter.

9 Q And we are going to go through a little bit. We know
10 that the Court explained a little bit about the deposition
11 but tell us, just informal language what exactly a
12 deposition is for those who haven't participated in one in
13 the past.

14 A In a civil case you are allowed to take sworn
15 statements from the other parties and witnesses. In this
16 case Mr. Gregory being the defendant in the civil case in
17 Ms. Montgomery's estate and Mr. Johnson is personal
18 representative, being the plaintiff. We set up a
19 deposition and they came to my office, my conference room,
20 his lawyer and him and then an independent court
21 stenographer in this case, Sandra K. Brown, who is a
22 licensed stenographer, she swore him in and then he
23 answers questions under oath that I ask him concerning the
24 case. And his attorney is there present with him.

25 Q Okay. And so when you say a sworn statement, is that

1 transferring the deed of the victim's home into his name?

2 A On line 16, page 25, my question was, You as power of
3 attorney for Ms. Montgomery deeded Ms. Montgomery's home
4 and property to yourself. Isn't that correct? He said,
5 yes. And I believe the date of this is December the 15th
6 of 2011. Is that correct? It originally was no response.
7 And then I said on the second page, he said, yes. And I
8 also asked him at the top of the first page, it was
9 recorded on the date of December the 19th of 2011. Is
10 that correct. He said, yes. I don't think that was
11 correct, I think it was December the 16th, it can speak
12 for itself. It was actually recorded on December the
13 16th.

14 MR. FIELDER: What page?

15 A Page 26.

16 Q And then after discussing with him the home I am
17 going to direct you to page 34. And you are still
18 discussing the home at this page. Can you tell us what
19 the defendant had to say about his position on whether
20 this home was a home, the deed was something that he
21 acknowledged that was not property that belonged to him?

22 A On line 18, I said, Why would you be the one to get
23 Ms. Montgomery's home. I was preserving it for the
24 family. And when are you going to deed it over to the
25 family. Whenever we have a family meeting. I asked the

1 question, is it your position then that the home you are
2 holding the home for the family, is that your position.
3 That is my position. So it is your position that the
4 rightful owner is Ms. Montgomery's family. That is
5 correct. That goes over to page 35.

6 Q So you were reading from pages 34 and 35 out of the
7 deposition?

8 A Yes.

9 Q And speaking of the family home, do you know what the
10 address of Ms. Montgomery's home was?

11 A It was Cemetery Street, I want to say [REDACTED].

12 Q And is [REDACTED] within the Laurens County
13 jurisdiction?

14 A Yes, it is in Laurens County, yes.

15 Q And looking on page 35 through 36, did you have an
16 opportunity to discuss with the defendant the conversation
17 that he had had with you about a year and a half prior
18 outside of the Court House.

19 A I did if you can direct me, line 23, page 35?

20 Q Yes, sir.

21 A I said, do you recall somewhere in June or July of
22 2012 a preliminary hearing across the street at the police
23 department and your attorney, Albert Smith, was there. He
24 said, pardon me. I said again, do you recall going to a
25 court proceeding across the street from my office at the

1 statement on behalf of Ms. Colbert. Ms. Robertson sent me
2 a letter and Mr. Johnson sent me a letter and we sent to
3 his attorney shortly after this deposition.

4 Q How shortly after the deposition did you send the
5 letters?

6 A It was probably within 30 days because they lived in
7 Michigan, she lived in Charlotte and I had to correspond
8 back and forth. But I would say within 30 days, I don't
9 know the exact date, it was very shortly afterwards.

10 Q So, about February of 2014?

11 A That would be my belief at this point, yes.

12 Q And then when did Mr., when did the defendant deed
13 the house back over?

14 A I actually got the deed earlier part of this year
15 before Ms. Jackson got out of the case. From my
16 recollection, Ms. Jackson got out somewhere around March.
17 So I would have gotten it in January or February of this
18 year, earlier part of this year. And I did get a signed
19 deed from her at that time.

20 Q And Ms. Jackson is the defendant's attorney?

21 A She was the attorney up until the earlier part of
22 this year in the civil case.

23 Q And so received the deed from the defendant or
24 representative of his a year after you sent the letters to
25 him explaining that this is the family's desire?

1 A Approximately a year..

2 Q And approximately three years after the victim, Ms.
3 Montgomery, had passed away?

4 A Yes.

5 Q So continuing to page 41, and give us the context if
6 you are still discussing Ms. Montgomery's house, starting
7 at line 23.

8 A My question to Mr. Fielder. But to make it clear,
9 you don't claim the house, you are just waiting for the
10 heirs to tell you to deed it to them. Mr. Fielder's
11 answer, yes.

12 Q And that is continued onto page 42.

13 MR. FIELDER: What line.

14 A Started on line 23, page 41 and went to line 1 on
15 page 42.

16 Q And then moving to page 44, line 15. Did the
17 defendant reaffirm his position that he acknowledged that
18 the house was not his?

19 A That's correct. In line 13, I said, and you hold
20 title to it. Line 14, he says, yes. My question, you
21 said you were holding it and you were going to deed it
22 back. Do you consider yourself in holding it in trust for
23 the family. Mr. Fielder's answer, yes, yes. My question,
24 so you are holding it like a trustee. Yes.

25 Q And did you have an opportunity continuing through

1 driving it? I said, yes. I have been driving it. My
2 question was, when did you take it back to her house on
3 [REDACTED]. I only drove it right after, until I
4 think the tag expired.

5 Q Let me ask you, were you reading from pages 117
6 through 119.

7 A That's correct.

8 Q And then so staying on page 119 and moving down to
9 line 20. What did the defendant have to say when you
10 asked him about whether he had a right to keep possession
11 of the car?

12 A My question was, well, if the family says we want the
13 car back. His answer was, if the family says they want
14 the car back then they can have the car. My question, so
15 if you get a letter from Ms. Houser who is the power of
16 attorney for Ms. Colbert, and you get a letter from Mr.
17 Johnson and his sister, Ms. Robertson telling you to
18 transfer it back to the estate you will do that. His
19 answer was, I think that would be the proper thing to do.
20 But will you and you would do that. The answer was, I
21 mean I would, yes.

22 Q And then on 120, moving down to line 15, what was
23 your question there?

24 A My question was, so you don't claim to own the car
25 personally. His answer was, no, I took possession of it

1 for the family because Virginia asked me to.

2 Q 18 and 19?

3 A 18, my question was, the same way you did the house?

4 His answer, that is correct. And you hold it in trust for
5 the family. His answer was, that is correct.

6 Q And so, Mr. Bryan, prior to, in between your
7 conversations with the defendant in the summer of 2012 to
8 this deposition in January of 2014 did the family receive
9 the vehicle back from the defendant?

10 A No, they did not.

11 Q And then after this deposition did your letter, did
12 the letters on behalf of the family that were sent to the
13 defendant was within a month from the deposition reference
14 the vehicle and desire for the vehicle?

15 A Yes, it did.

16 Q And when did the defendant finally return the
17 vehicle?

18 A The defendant never returned the vehicle. The, when
19 I received the deed I received the title which was titled
20 in Mr. Fielder's name of the automobile. It has been
21 signed in an incorrect place, he had signed it. When they
22 had the hearing where his attorney asked to withdraw from
23 the case, Ms. Jackson, of course being part of that
24 action, was given notice of the hearing. And I brought
25 the title to that hearing which was, I had just received

1 it a few weeks or a month before that. And Mr. Fielder
2 was here and I asked the Court if Mr. Fielder could sign
3 it in the correct place because he had signed the wrong
4 blank.

5 Q And let's take that one at a time. Let the record
6 show that I showed the defendant exhibit 4 and that is
7 what I am handing the witness. And can you take a look at
8 the front and back of exhibit 4?

9 A That is the title that I got. It is the 1991 Buick,
10 33,945 miles on it. And it is in the name of Gregory
11 Fielder. And he signed it at the end where a dealer would
12 sign it instead of a person selling it would sign it. And
13 when I brought this into the courtroom and ask that he
14 sign it in the correct place, Judge Griffith was presiding
15 and he refused to sign it, he said he would not sign
16 anything. That was at a court hearing when Donna Jackson
17 was withdrawing as an attorney for Mr. Fielder in the
18 civil case.

19 Q May the witness step down, I am going to be pointing
20 out some things to the jury. It is up to you. It is not
21 possible to do it that way. And so this is exhibit 4, the
22 title. So, flipping to the back of that, can you show
23 what you mean in terms of importance of signing a title in
24 the right place in order to do anything with it.

25 A When I received it it was signed here by Gregory

1 Fielder. Assignment of dealer, wholesale auction. This
2 is the place where the seller should sign it to transfer
3 title. What I asking, would he sign it in the correct
4 place in this courtroom and he refused to sign it. And I
5 will clarify something on the car.

6 Q Here is where the defendant signed it and you asked
7 him to sign it in the top section which would have been
8 the appropriate section and he refused to do it at that
9 time.

10 A That's correct.

11 Q Has he since offered to sign it or made any efforts
12 to sign it?

13 A No, he has not signed it since then. According to
14 the deposition, what I just read, he said he drove it
15 until the tag expired which I am not sure, I think it was
16 somewhere in 2012. But the car was then left in Ms.
17 Montgomery's yard and in the last, sometime this year Mr.
18 Johnson got someone to tow it and put it in a safe place
19 because it was just sitting there going bad, tires rotting
20 and everything else, sitting in the yard. And he didn't
21 want someone to try to drive it off, it won't run but he
22 was worried about someone stealing something off of it or
23 something like that. So he has put it in a safe place
24 since that time.

25 Q Since this deposition in January of 2014 the family

1 finally came back in possession of the vehicle, in this
2 year of 2015. But does, still does not have the title to
3 the vehicle that, during this deposition that the
4 defendant said he was going to make sure and give to the
5 family once he received the letter.

6 A Sometime earlier this year in 2015 Mr. Johnson had it
7 towed to a place where it would be safe and Mr. Fielder
8 still has the title and has not signed the title. And Mr.
9 Fielder has the keys and has always refused to give us the
10 keys.

11 Q So title and keys?

12 A Yes.

13 Q And during the deposition did you have an opportunity
14 to question the defendant about his possession of the
15 money that belonged to the victim?

16 A Yes, I did.

17 Q Turning to page 67, starting with line 15?

18 A He had gone off to talk to his attorney. Ms. Jackson
19 has had a chance to advise her client concerning questions
20 at the deposition. Going to back to plaintiff's exhibit
21 number 8. Number 8 will be one of the depositions we did
22 in the, concerning bank accounts.

23 Q Actually, I will reference you back to page 3. Does
24 page 3 of the deposition list all of the exhibits and the
25 exhibit numbers?

1 says that at least \$12,000.00 dollars of this money that
2 was written in September of 2011, months before the victim
3 succumbed to breast cancer was not his and was actually
4 money that belonged to the estate.

5 A He said he owed \$12,000.00 dollars of that to the
6 estate.

7 Q And after this deposition did the defendant pay to
8 the estate \$12,000.00 dollars?

9 A No.

10 Q Has he paid any money from this deposition in January
11 of 2014 to today's date, any money to the estate?

12 A No.

13 Q And continuing on page 135 at line 22.

14 A My question, go ahead and clarify it any way you want
15 to. His answer was, okay. What I want to clarify is, I
16 was asked where did the \$30,000.00 dollar bond come from
17 for my son, Gregory Fielder, Jr. And I stated that it was
18 from my personal monies and that personal money is now
19 being obtained or kept by the Clerk of Court and I
20 acknowledge that out of the \$30,000.00 of my personal
21 money that \$12,000.00 is to settle what I believe to be
22 this probate for the family and the other \$18,000.00
23 belongs to me.

24 Q Continue reading.

25 A At another time I asked you if you had any money that

1 belonged to Ms. Montgomery and you stated under oath that
2 you had \$18,000.00 dollars. And I ask you where it was
3 and you said you had it in cash. Earlier in this
4 deposition he stated that he had \$18,000.00 cash for her.
5 Going to line 12, his answer was, still my question now,
6 do you want to clarify that in any way or change your
7 testimony in any way. His answer, what I want to say
8 concerning that is that the money that was put up for my
9 son was put up in cash. And it should come back to me in
10 cash. So that is the same money that you are speaking of.
11 But you acknowledge that you transferred the title to Ms.
12 Montgomery's automobile and her house to you but you say
13 you don't intend to keep it. You are holding it in trust
14 for the family, the heirs. Is that correct. I
15 acknowledged that I transferred the house and car with the
16 expressive intention in holding it for the family.

17 Q Mr. Bryan, move to page 164. And read lines 22
18 through 25. Are we still discussing the \$30,000.00 bond
19 check amount?

20 A Yes. Question, how much of the \$30,000.00 dollars
21 belongs to Virginia Montgomery's estate? Answer, I think
22 \$12,000.00 dollars.

23 Q And this money, the \$12,000.00 dollars that he admits
24 was not his own money but belonged to Virginia Fielder,
25 (sic), that he spent on a bond check for his son, under a

1 power of attorney, can an attorney-in-fact use fines that
2 belongs to the person he is representing for his own
3 purposes like this?

4 A No, a fiduciary position, a position of trust, part
5 of that, you do not use it for you own benefit or
6 purposes. And he is acknowledging. In fact he says, when
7 I asked him then if he would consent to pay it over to the
8 estate he said certainly, \$12,000.00 dollars. But he
9 never did. But, yes, if he used, he has said he used
10 \$12,000.00 dollars of her money for this \$30,000.00 dollar
11 bond. He has used part of her money to post bond for his
12 son.

13 Q So that is at least \$12,000.00 dollars. He
14 references an \$18,000.00 dollar amount. Can you turn to
15 page 109. And line 14.

16 A Page 109, line 14. My question, do you have any of
17 Ms. Montgomery's money now in that account or in your
18 personal possession in cash or what. His answer was, yes,
19 I do. How much is it. Mr. Fielder's answer is, it is
20 \$18,000.00 dollars. My question, where is it located.
21 Answer, was on, at my, in my possession. My question to
22 him, is it in cash or is in a checking account. Mr.
23 Fielder's answer is, it is in cash. Question, is
24 \$18,000.00 dollars and why are you retaining that money.

25 Q And now turning to page 110, is where you are

1 And I have asked, I had asked for a return of all of her
2 property, house, car and monies and everything. And I
3 have never gotten it.

4 Q And since January you have asked for money, and have
5 money been paid by the defendant to the family since
6 January of 2014?

7 A No.

8 Q Did you have an opportunity to talk to the defendant
9 during this deposition about his own property and
10 specifically if had used any of the victim's money to
11 purchase property for himself?

12 A I did.

13 Q Okay. And so turning to page 138, line 13.

14 A You live in a mobile home on Anderson Drive. Is that
15 correct. Mr. Fielder's answer, yes. When did you
16 purchase that mobile home. I don't know. Question, did
17 you purchase it after February the 1st of 2011. Answer, I
18 don't know. I can look and see. Question, did you borrow
19 money on that mobile home. Answer, I would have to look
20 at it. Question, you don't know whether you paid cash for
21 it or whether you borrowed money on it. Answer, no. Do
22 you have a title to the mobile home. Yes. Question,
23 okay, so it is paid for. Answer, yes. Who did you buy it
24 from. Her name, from a lady I am trying to think of her
25 last name, Gurley I think was her last name, was Gurley.

1 A I am asking Mr. Fielder that question. And Mr.
2 Fielder's response was, yeah, I know that makes sense.

3 Q So Mr. Fielder expressed an understanding of the
4 limits to a power of attorney in self dealing or acting in
5 your own behalf when actually serving as an
6 attorney-in-fact for someone else?

7 A On page 114 of the deposition he said that, yes.

8 Q Mr. Bryan, we have been talking about a lot of money
9 but and so just to put in summary form could you tell us
10 through your calculations of looking at the records that
11 are entering as exhibits 1 through all the subparts and
12 exhibits 2 and all of the subparts, those would be the
13 Palmetto Bank records and the SunTrust records, how much
14 money that the defendant took out of the victim's bank
15 accounts?

16 A Yes. Out of the two bank accounts at Palmetto Bank,
17 Mr. Fielder took \$50,000.00 dollars and Mr. Fielder took
18 \$87,000.00 and some hundred dollars. \$137,000.00 dollars.

19 Q \$137,000.00 dollars.

20 A Plus, a little bit more. And I can find it in the
21 deposition if I need to, Mr. Fielder in the deposition
22 acknowledged that he signed the withdrawal slip to take
23 part of the money out of one account. And he signed the
24 check to take the money out of the other account in his
25 deposition. And I can take you to that point if I need

1 to. Out of that \$137,000.00 dollars, after Ms. Montgomery
2 died to giving between cash and a couple of checks for
3 whatever reason, I don't know, he gave Mr. Johnson
4 \$23,000.00 dollars.

5 Q When you say the \$23,000.00, that year combining
6 the--

7 A \$2,000.00, \$9,000.00, \$6,000.00 dollars in checks and
8 then the \$6,000.00 dollars in cash money.

9 Q And so that \$23,000.00 dollar payment to the family
10 is acknowledged here?

11 A Yes, he go that. We also acknowledge out of this
12 money that he had in the SunTrust account, he paid
13 approximately \$14,000.00 and some odd dollars for Ms.
14 Montgomery's funeral. So, \$23 plus \$14, I think it was
15 almost \$15, that is right at \$37,000.00.

16 Q Let's look at, I am showing exhibit 2K which has
17 previously been entered into evidence. I am publishing to
18 the jury exhibit 2K and Mr. Bryan, can you see from there
19 the SunTrust?

20 A Let me step down. SunTrust account, Gregory Fielder,
21 Virginia Montgomery.

22 Q What is the date of this statement?

23 A January 25th of 2012.

24 Q So it is within the month following the victim's
25 death?

1 attorney has some elements of a contract but what a power
2 of attorney is doing is giving, authorizing a person to
3 act on that other's person behalf. And you obviously, if
4 the power of attorney was valid then you would have had
5 authority to act in her behalf but not on your own behalf
6 and in your interest in her interest.

7 Q Are you questioning the validity of this power of
8 attorney?

9 A Yes, I have questions, I have questions about it,
10 yes.

11 Q Okay, good.

12 A And I will be glad to explain if you want me to.

13 Q I will ask the questions. First, are you aware of
14 who signed this document?

15 A Apparently Virginia Montgomery signed it.

16 Q Do you question that signature?

17 A I question whether or not she was competent at the
18 time. She signed it based on some of the things that has
19 been put in this court.

20 Q And did you pursue any independent knowledge about
21 her competency?

22 A I have talked to some people concerning a competency
23 and I was here when the testimony of the hospice people
24 and Dr. Brownlee was given about her competency in
25 February of 2011.

1 Q And my question to you, do you have an independent
2 recollection of her competency?

3 A I was not there when it was signed, that why I say I
4 have questions about it. I was not there when she signed
5 it and of course she has to be competent at the time she
6 signs it.

7 Q Okay. So, are you competent?

8 A Well, I wouldn't be a good judge of that, I think I
9 am.

10 Q Okay. And so, but what you are doing is questioning
11 the competency of another attorney?

12 A No, I am not.

13 Q Are you aware that this document was done by an
14 attorney?

15 A Yes.

16 Q So, are you questioning his competency?

17 A No, I am not.

18 Q Okay. So, what constitutes a legal power of
19 attorney?

20 A If the person was competent when they signed it it
21 would be a legal power of attorney. But if it is a legal
22 power of attorney the person who is given the power of
23 attorney, you call them the attorney-in-fact, in this case
24 you, does not have the right to act against the interest
25 of the person who gave the power of attorney. So there

1 is, you are apparently asking me two questions here. I
2 don't think she was competent from my, just not firsthand
3 knowledge. You asked me. I don't think it is valid
4 because I don't think she was competent at the time she
5 signed it. The lawyers are not doctors, they don't know,
6 lawyers don't judge competency.

7 Q Trust me, I know. But you are judging someones
8 competency, aren't you?

9 A Yes, based on testimony given in this case and people
10 that I have talked to, not on my independent knowledge. I
11 was not there when she signed it.

12 Q So you were not an eyewitness?

13 A No.

14 Q So it is speculation?

15 A Yes, it is just a judgment based on listening to
16 other people's evidence.

17 Q And who made you judge?

18 MR. FERNANDEZ: Judge, objection.

19 THE COURT: Sustained. Ask another question.

20 Q How did you derive at your determination that this
21 attorney was not competent?

22 A I never arrived at that determination, Mr. Fielder, I
23 have told you that.

24 Q Okay. I guess I am going to have to read this
25 document because there is some misunderstanding here. I

1 am trying, are you, let me ask you one more question. Are
2 you saying that this document is void?

3 A No. The form of the document, I don't have any
4 dispute with. My, a power of attorney would not be valid
5 if the person was not competent at the time they signed
6 it. And based on the testimony that has been, I have
7 heard in here in this courtroom, based on talking to
8 people outside of the courtroom I have suspicion and doubt
9 that Ms. Montgomery was competent when she signed it. I
10 wasn't there and according to your testimony you weren't
11 there. So, I don't have any firsthand knowledge of her
12 when she signed it. You asked me if I thought it was
13 valid and I said, no, I didn't.

14 Q According to your investigation when did she lose
15 competency?

16 A According to the hospice lady she was confused in
17 February of 2011 when they started it.

18 Q Right now, am I incompetent?

19 A I wouldn't know.

20 Q Well, how do you determine whether or not she was
21 competent, based on your judgment.

22 MR. FERNANDEZ: Your Honor, I think this has been
23 asked and answered based on testimony on the record.

24 THE COURT: I will let him ask it one more time.

25 Q You may answer the question.

1 A Please ask it again, please.

2 Q What are you using to determine the competency of
3 someone realizing that you too are not a physician, a
4 practitioner, except in law, when I asked you your
5 occupation you described it as being in law. So, what
6 expertise do you have to make a determination about
7 somebody's competency?

8 A I have no expertise myself to make a determination
9 and I explained to you it was from discussion hearing the
10 hospice person, hearing Dr. Brownlee talk, I have
11 discussed this with Dr. Brownlee prior to this hearing
12 too. And I have serious questions about Ms. Montgomery
13 being competent when she signed, understand what she
14 signed when she signed it. Lawyers are not doctors, like
15 you said, a lawyer is not the person that terms the
16 competency. There are certain things that raise red flags
17 to lawyers though. And when a person asked me to come to
18 someone's home or to their home to sign a document of any
19 kind the first impression a lawyer is going to have there
20 is some physical or mental problem because that person
21 cannot come to the office. But my, I am not using my
22 judgment of her competency because I was not there. I am
23 basing it on what I have heard from these witnesses, in
24 previous discussion with Dr. Brownlee.

25 Q What specifically did Dr. Brownlee say that caused

1 you to judge she was incompetent?

2 A She had very serious low hemoglobin which can cause
3 confusion and had hemoglobin problems and the phrase, you
4 are asking what Dr. Brownlee said. One thing Dr. Brownlee
5 said was she was surprised she could even walk into the
6 office, her hemoglobin was so low.

7 Q Okay. And do you have an understanding of God?

8 A Well, as best I can.

9 MR. FERNANDEZ: Your Honor, I would object to
10 relevance.

11 THE COURT: Under the rules of evidence the nature of
12 religious beliefs have been bearing are not material, I
13 will sustain.

14 MR. FIELDER: Okay. Well, we spoke about her, her
15 belief was spoken about on yesterday.

16 THE COURT: Well, you are asking this witness about a
17 belief in God, you want to question him about any
18 knowledge he has about the, Ms. Montgomery's religious
19 beliefs to the extent they may be relevant in this case.
20 That is fine. But I think that this witness never
21 actually, he said he never actually recall meeting Ms.
22 Montgomery. So, I don't know that he is going to have any
23 direct knowledge about her beliefs.

24 MR. FIELDER: But my question, is she entitled to her
25 belief?

1 form of the document. Was Ms. Montgomery competent when
2 she signed it.

3 Q And what constitutes competency?

4 A A understanding of what you are signing and the
5 repercussions of what you are doing and the document you
6 are signing, understanding what happens and what the
7 consequences of it and the repercussions of it and what it
8 says.

9 Q So, what you are doing is basically speculating as to
10 whether or not she was or was not competent?

11 A No, I am not speculating. As I told you before I am
12 basing on what the doctor said and the hospice people said
13 in this room and conversations that I had with the doctor
14 prior to this.

15 MR. FERNANDEZ: Your Honor, this has been asked and
16 answered.

17 Q Did the doctor say that she was not competent?

18 A The doctor said she had a low hemoglobin that could
19 cause confusion and hospice person said she was confused
20 in February when they went there. And by the doctor
21 explained about the extraordinarily low hemoglobin and how
22 she, surprised she could even walk into the office. And
23 that is what I referred to.

24 Q Did counsel have an opportunity to ask the doctor if
25 Ms. Montgomery was competent?

1 attorney, you still contend that it was, that Ms.
2 Montgomery was incompetent?

3 A It appears to me from the testimony I've heard and--

4 MR. FERNANDEZ: Asked and answered, Your Honor.

5 THE COURT: Sustained.

6 Q Okay. So on that document you are saying that Robert
7 Whitesides is a liar?

8 A No.

9 MR. FIELDER: Objection, Your Honor.

10 A I never said anything like that.

11 THE COURT: Sustained.

12 MR. FIELDER: I can't hear both of y'all. What you
13 saying?

14 THE COURT: Sustained, the objection is sustained.
15 Ask another question, please.

16 MR. FIELDER: Okay.

17 Q Okay. Are you saying that Robert Whitesides was in
18 error?

19 A In error, I've told you I don't have a problem with
20 the document itself. Mr. Whitesides is an attorney and
21 I'm sure Mr. Whitesides would not put his opinion over a
22 nurse that was there with hospice or a doctor. He would
23 not try to say that he is competent to say something like
24 that. And so I'm not saying Mr. Whitesides did anything
25 wrong or is in error or anything. He's a lawyer like me.

1 A I don't know whether they asked that or not.

2 THE COURT: Sustained, asked and answered. Ask
3 another question, please.

4 Q Do you know Attorney Robert Whitesides?

5 A Yes.

6 Q How long have you known him?

7 A Forty years. Well, more like close to 45 years.

8 Q Okay. Have you known him to be deceptive in his
9 work?

10 A No.

11 MR. FERNANDEZ: Objection, Your Honor. It's still
12 irrelevant. What are we talking about here?

13 THE COURT: Overruled.

14 A My answer is no.

15 Q Okay. Thank you. How long has he been an attorney,
16 if you know?

17 A He probably, he is retired. He probably practiced
18 about 45 years before he, he might do a little part-time
19 now. But I would say he's been an attorney for 45, 46
20 years.

21 Q Would you consider him to be a competent attorney?

22 A A competent attorney?

23 Q Yes.

24 A Yes.

25 Q Okay. And on this document, the power of attorney,

1 appraise it, had a hearing in front of a Judge and the
2 Judge ordered that it be sold and the money be deposited
3 in the estate account and it's in the estate account.

4 Q Okay. So what's the total of the estate right now?

5 A I couldn't tell you, because you have the vast
6 majority of everything, the vast majority of what Ms.
7 Montgomery had. And until some of that is returned, we
8 won't know what the total is. All we have now is the
9 \$23,000.00 dollars plus \$25,000.00, roughly \$25,000.00 we
10 got for the house. And we have a lot in Charlotte, North
11 Carolina. You've got the car. You've got close to
12 \$100,000.00 dollars. So when I get all that back, I'll
13 know what her estate is. But right now, there is no way
14 to give a final determination at this point.

15 Q Okay. So your math is a little worse now than it was
16 earlier. You were able to add it up pretty fair earlier.
17 Can you not add up what is the total of the estate?

18 MR. FERNANDEZ: Your Honor, objection. I think he
19 answered.

20 THE COURT: Sustained.

21 MR. FIELDER: I didn't get a total.

22 THE COURT: He does not know definitively for the
23 reasons he has stated. Move onto another line of
24 questioning, please.

25 MR. FIELDER: I need to know the amount that as

1 what it's worth. . Probably not more than a \$1,500.00
2 dollars. And then there is \$97,000.00 dollars in cash
3 money that you still have unaccounted for of her money.
4 All of that together adds up to what her estate would be
5 worth.

6 Q So you're not going to answer my question?

7 A I just answered your question, Mr. Fielder. It may
8 not be what you want but that is as specific detailed as
9 you can get at this time of what it's worth. You can't
10 add it up until I get money from you and get the car back
11 from you, and then we can give you a total.

12 Q Okay. Well, can you give me a total of what you have
13 and what you claim--

14 MR. FERNANDEZ: Your Honor, I think we've established
15 what the--

16 MR. FIELDER: I need to know numbers.

17 THE COURT: Sustained. He has given you numbers.
18 Ask another question.

19 MR. FIELDER: Okay. I'm going to have, I'm going to
20 request time to sit down and add it up. I need to add
21 those numbers.

22 THE COURT: All right. He has given you the
23 information, Mr. Fielder. I don't know if you weren't
24 paying attention, but he's saying that he cannot give a
25 definitive exact value. He has given you the numbers.

1 Ask another question.

2 MR. FIELDER: I need to add those numbers. I mean, I
3 can add them up, but let him give them to me slowly. I
4 need to know the numbers.

5 THE COURT: You ask another question right now, sir.

6 MR. FIELDER: Your Honor, I'm asking for leave of the
7 Court.

8 THE COURT: Excuse me?

9 MR. FIELDER: I want to ask for, I require leave of
10 the Court.

11 THE COURT: Approach, please.

12 (Whereupon, a bench conference was held in the
13 presence of the jury but out of the hearing of the
14 jury.)

15 THE COURT: The Court's indulgence, granted. You may
16 proceed.

17 Q Mr. Bryan, you referred to some assets. Can you tell
18 me where I can find them in your document?

19 A What assets you talking about and what document are
20 you talking about?

21 Q We're talking about the transcript.

22 A The deposition?

23 Q Yes.

24 A All right. What assets do you want me to find in
25 here?

1 Nobody's made any claim of any other heirs. The heirs
2 have all been notified. The heirs have always, already
3 been identified in the probate court and there is no claim
4 of anyone else being an heir at law to Ms. Montgomery.
5 And what I know about your family is what you've told me
6 right here.

7 Q Are you finished?

8 A Yes, sir.

9 Q Okay. And what you discovered is that, well, based
10 on your expertise, you keep saying that by blood
11 relationship and my question to you was, if someone adopts
12 a child, would they be considered blood relationship?

13 A As far as the law goes, if it were a legal adoption,
14 it would be.

15 MR. FERNANDEZ: And, I guess, I'm just going to ask
16 where this--

17 THE COURT: We have plowed this ground. At this
18 point, Solicitor, if he asks the same question again, I
19 cannot rule unless there is an objection. But we have
20 gone over this several times, so please ask your next
21 question, sir.

22 MR. FIELDER: Okay..

23 Q I don't know if you have it before you but from the
24 power of attorney do you--

25 A I don't have it. It's somewhere over there. It's in

1 one of the documents.

2 Q Which one?

3 A It'd be one of those on the table there. All right.
4 It's Exhibit, State's Exhibit 5.

5 Q Okay. From State's Exhibit 5, we've already
6 established that according to the power of attorney that
7 Ms. Virginia Montgomery desired for Gregory Fielder to be
8 her power of attorney, is that correct?

9 A We have established that that's what this document
10 says.

11 Q I said according to--

12 A I have not agreed with you that she understood what
13 she was signing when she signed it, but this is a power of
14 attorney that says that.

15 MR. FERNANDEZ: Your Honor, objection, asked and
16 answered. We've gone over the power of attorney.

17 THE COURT: Sustained.

18 MR. FIELDER: I'm reading from a particular area.

19 THE COURT: Sustained. Read from that area, and then
20 ask if he, if he agrees with that.

21 MR. FIELDER: Okay.

22 THE COURT: If you read the same area that you've
23 already read and he objects, I'm going to sustain it.

24 Fair warning.

25 MR. FIELDER: Okay.

1 what your question is. What is your question about?

2 Q You certainly haven't asked, answered it.

3 A What is the question?

4 Q It was a very simple question.

5 A Okay.

6 Q I asked you what are lineal descendants?

7 A And lineal descendants I told you were Mr. Johnson,
8 Ms. Robertson and Ms. Colbert.

9 Q Okay.

10 A They are people that go, and linear, would be through
11 your children and if not would be out to sisters, brothers
12 and sisters.

13 Q So if one were to go to the dictionary to define
14 lineal descendants, they will find Raymond, that's what
15 you're saying?

16 MR. FERNANDEZ: Your Honor, I object to the form of
17 the question.

18 THE COURT: Sustained.

19 MR. FIELDER: He still, he hasn't answered my
20 question.

21 THE COURT: He has answered your question, sir. Ask
22 another question.

23 Q What does linear mean?

24 MR. FERNANDEZ: Objection, asked and answered.

25 THE COURT: Sustained.

1 through a power of attorney for and that's what that says.

2 That's part of what is standardly put in these documents.

3 Q Okay. Now, in your judgment of competency, other
4 than physical characteristics, is there anything else to
5 be considered?

6 A Well, competency is mental capacity. Is does the
7 person have the mental capacity to understand what is
8 going on or are they confused and, you know, do they
9 really understand the document, you know, and what they're
10 signing and what the consequences are. It's competency.
11 It's not, you could be in a, bedridden and still be
12 mentally competent.

13 Q Okay.

14 A And the competency would be the mind, the part they
15 talked about the hemoglobin making a person, low
16 hemoglobin making a person confused and everything, that
17 is the, that would be the mental capacity there.

18 Q Okay. And so that would be what you call, is that
19 what you would call a state of mind?

20 A No, that's not a state of mind. The state of mind
21 could be different things.

22 Q Such as, well?

23 A Well, a person could have a state of mind about--

24 MR. FERNANDEZ: Your Honor, I object to the relevancy
25 of what a state of mind means.

1 THE COURT: Sustained.

2 Q Well, was her state of mind considered when she did
3 the power of attorney.

4 MR. FERNANDEZ: Your Honor, objection. He doesn't
5 have any firsthand knowledge of that.

6 THE COURT: Sustained.

7 MR. FIELDER: Okay.

8 Q Okay. Let's go back a little bit to relationships.
9 Do you know how long Ms. Montgomery and I had an
10 established relationship?

11 MR. FERNANDEZ: Your Honor, objection. He's already
12 said he'd never met Ms. Montgomery.

13 THE COURT: Sustained.

14 MR. FIELDER: Okay.

15 Q But according to the record, do you know what Ms.
16 Montgomery's livelihood was?

17 A I couldn't hear you.

18 Q What Ms. Montgomery's livelihood was?

19 MR. FERNANDEZ: Objection, Your Honor. He's already
20 said he didn't know her, didn't know her when she was
21 alive.

22 THE COURT: Overruled, and I think it's been
23 established that she was a teacher.

24 A She was a schoolteacher, a fifth grade schoolteacher.

25 THE COURT: Now, may we move onto some other areas.

1 MR. FIELDER: Yes.

2 Q Okay. Mr. Bryan, did, have you had the opportunity
3 to speak with all of the witnesses in the case?

4 A That have testified here? Not all of them, no.

5 Q Okay. You had a opportunity to speak with the
6 doctor?

7 A I have talked to Dr. Brownlee and I've talked to Mr.
8 Johnson and when all of this started several years ago
9 when Ms. Riggot started her investigation for the police
10 department, I talked to her on one occasion. Then I
11 talked to her at the preliminary hearing when you went
12 before the Judge when you were arrested.

13 Q Okay. And during that time, where was Ms. Riggot
14 working?

15 A What was Ms. Riggot's what?

16 Q Where was she working?

17 A She worked for the Laurens City Police Department.

18 Q Okay. And you know that she was dismissed--

19 MR. FERNANDEZ: And, Your Honor, objection.

20 THE COURT: Sustained.

21 Q Is she--

22 THE COURT: No, we've already covered this. We have
23 already covered it.

24 MR. FIELDER: Okay.

25 THE COURT: This is a re-trial. Approach, sir.

1 A No. I said you claim, in your case against me, you
2 allege racial discrimination by me against you. And I'm
3 merely the lawyer for people who are African-Americans who
4 have hired me to bring the suit against you for the return
5 of their money.

6 MR. FERNANDEZ: Your Honor, may we approach?

7 THE COURT: Come on up.

8 (Whereupon, a bench conference was held in the
9 presence of the jury but out of the hearing of the
10 jury.)

11 Q Okay. I want to continue with that line of
12 questioning. So you are here as a representative of the
13 estate and are you doing it under some type of bias?

14 A No, sir. I was hired by Mr. Raymond Johnson to
15 represent the estate and he was appointed personal
16 representative. He represents Ms. Montgomery's estate and
17 he and his sister and Ms. Colbert are the heirs. So, I
18 guess, theoretically, I represent all of the heirs, but I
19 was hired as a lawyer, because they believed that you
20 stole Ms. Montgomery's money and everything she had. And
21 they are the heirs, the rightful people by law that it
22 should go to and they wanted me to file a civil suit
23 against you and to recover her money. And then I did that
24 and that's what I did. I work for Mr. Johnson and, I
25 guess, Ms. Robertson and Ms. Colbert too. I am

1 hold this car in trust for the family and you said you
2 would transfer the title back. You just won't do it and
3 the car has deteriorated and probably is worth well under
4 half of what it was when Ms. Montgomery died. Had you
5 turned it over to the family, they could have sold it and
6 had some, gotten some money for it and it is not your car
7 and it's not going to be returned to you.

8 Q Okay. Now, will you answer the question?

9 THE COURT: He just did.

10 Q Who is the owner--

11 MR. FIELDER: He didn't--

12 A I said the owner, I said the title is in the name of
13 Gregory Fielder.

14 THE COURT: It's sustained. It's sustained.

15 MR. FIELDER: Okay.

16 THE COURT: All right. Now, here's the thing, we
17 have been down this road so many times and the Court is
18 trying to be extremely patient with you, Mr. Fielder. You
19 have one last opportunity to ask a question which would
20 address a matter that has been so far unexplored. The
21 next asked and answered objection that is getting
22 sustained your cross is over with with this witness. So
23 fair warning from the Court. The next question that you
24 ask and they make an objection asked and answer, the
25 cross-examination is over. This cannot go on

1 indefinitely, sir. Ask your next question, please.

2 MR. FIELDER: Well, I was trying to do a foundation
3 for the question I was going to ask.

4 THE COURT: Ask your next question.

5 Q My question would be, was it in the power of attorney
6 that I have authority to do that?

7 MR. BRYAN: Is that the question, Your Honor?

8 THE COURT: Yes, that's the question.

9 MR. BRYAN: Okay. All right.

10 A It would be in the power of attorney for you to
11 transfer that car for the benefit of Ms. Montgomery. You
12 transferred it to yourself and you have retained it in
13 your name and despite what you said about holding it in
14 trust and you would transfer it back, you have refused to
15 transfer the car back and it is not your car. It belongs
16 to the estate of Virginia Montgomery and that is part of
17 what the civil lawsuit is about. The civil lawsuit, one
18 of the things asked in the civil lawsuit is for, require
19 you to deed the house back which you did three years
20 after, later, the earlier part of this year. And it also
21 asked that you return her car to the estate. You have not
22 done that and that's part of what, hopefully, is decided
23 in the civil lawsuit. And also in the civil lawsuit we're
24 asking that you be required to pay back the money that you
25 took from her.

1 Q Okay. So can you identify in a deposition where I
2 said that I would give that--

3 A Car back?

4 Q Yes.

5 A Yes, I can. They probably can help me get there
6 quicker, but let me see.

7 MR. FERNANDEZ: I do think we've gone over this.

8 THE COURT: Asked and answered. Thank you very much,
9 Mr. Fielder. Have a seat, please, sir. Mr. Bryan, you
10 may step down, sir.

11 MR. FIELDER: I would like to note to the Court that
12 my cross-examination was terminated before I completed it.

13 THE COURT: Your cross-examination was exhaustive and
14 I think you've covered every potential base that you could
15 possibly think of and then some. All right. Attorney
16 General, is that your case?

17 MR. FERNANDEZ: The State will rest, Your Honor. The
18 only additional thing that we need to do is put on the
19 record the page number that needs to be added to State's
20 Exhibit 7.

21 THE COURT: Very good. All right. Ladies and
22 gentlemen of the jury, this is quite gratuitous. I need
23 to take up a few issues of law with the parties involved
24 in this and it doesn't involve you, so you get to have a
25 restroom break, a smoke break and a caffeine break, and

1 approximately 4:07 p.m.)

2 THE COURT: The record should reflect that the jury
3 is back and seated. Ladies and gentlemen of the jury, we
4 heard the State's case. At this point in time, Mr.
5 Fielder, if you'll call your first witness, sir.

6 MR. FIELDER: Thank you, Your Honor. I'll call Pam
7 Pulley.

8 THE COURT: And please have a seat and state your
9 name, please, for the record.

10 MS. PULLEY: I'm Pamela Fielder Pulley.

11 PAM PULLEY, being
12 first duly sworn, testified as follows:

13 THE COURT: You may proceed. All right. Thank you,
14 Your Honor.

15 DIRECT EXAMINATION

16 BY MR. FIELDER:

17 Q Okay. Where are you from?

18 A I'm from Laurens County.

19 Q Okay. And where do you work?

20 A I work with South Carolina Department of Social
21 Services here in Laurens County.

22 Q Okay. And we are discussing about Ms. Virginia
23 Montgomery. Do you know her?

24 A Yes, I do.

25 Q And how did you come to know her?

- 1 A She is my father's niece and she's been a part of my
2 life ever since her death.
- 3 Q Okay. So you knew her as a young girl or did you?
4 Did you know her as a young girl, when you were young?
- 5 A Yes.
- 6 Q Okay. Do you know what type of occupation she had?
- 7 A She was a retired schoolteacher.
- 8 Q Okay. And would you consider her to be someone who
9 was close to your family?
- 10 A Yes.
- 11 Q And what relationship are you to me?
- 12 A I'm your sister.
- 13 Q And what relationship are you to Ms. Montgomery?
- 14 A I was her first cousin.
- 15 Q Okay. And in the home that you grew up in, did she
16 ever visit you?
- 17 A Yes.
- 18 Q Okay. And so when you say that she is, was close to
19 your entire family?
- 20 A Yes..
- 21 Q Did we ever have occasions to have family gatherings
22 or family reunions?
- 23 A Yes.
- 24 Q Do you know approximately when they began or if I
25 tell you 1981, would that be close to your remembrance?

1 you knew her, she was a nice person. But she, like I
2 said, she was firm and stood on her word and wouldn't let
3 anyone sway her opinion about anything that she believed
4 in.

5 Q Okay. And in terms of character, judgment and
6 assessments, do you have any type of background in that
7 area?

8 A Well, specifically, when she became sick, she did not
9 want to have chemo. She did not want to have surgery.
10 She and pretty much it probably prolonged her life. So
11 she said what she wanted and how she wanted to do and what
12 she wasn't going to do and she stood firm on that until
13 she died.

14 Q Okay. I want to know did she ever visit, did you
15 ever visit her home?

16 A Yes.

17 Q Over the years, how often, how many times?

18 A Numerous of times. I don't know how many.

19 Q Okay. Did she ever visit your home as a youngster
20 and, if so, how often?

21 A Yes, she, I'll say sometimes weekly, sometimes it
22 just depends.

23 Q Okay. And was she in your opinion a pretty
24 self-sufficient woman?

25 A Very self-sufficient.

1 Q Was she an educated woman?

2 A Yes.

3 Q Do you know what schools she attended?

4 A I know she attended South Carolina State University,
5 and I think she attended another one. But I'm not sure
6 what school that was, because all of that had occurred
7 when my, before I got old enough to realize.

8 Q Okay. We're going to move on through the years and
9 get to a part of her illness. Do you have any
10 understanding of knowledge about when she became ill?

11 A I don't remember when she first got ill, but I do
12 remember when she was diagnosed with breast cancer and she
13 was bleeding.

14 Q Okay. Now, I want to talk about her relationship
15 with me. Do you know if she had a relationship with me?

16 A Yes. You are part of my family and she was a part of
17 my family, and she was a schoolteacher, one of your
18 teachers. And also you guys linked together pretty much
19 closer than me and her, not saying we wasn't closer, but
20 you did things together more so than I did. As a matter
21 of fact, I know you went to Detroit with her to help her
22 drive and you was her caregiver when she was sick. When
23 we would visit her home, she would say that's Gregory's
24 stuff. Now, I don't bother that.

25 MR. FERNANDEZ: Your Honor, that's hearsay.

1 MR. FIELDER: Okay. Good. Thank you.

2 Q Okay. As far as you know, were Virginia and I very
3 close?

4 A Yes.

5 Q Are you aware that when I was in the fifth grade, she
6 was my fifth grade teacher?

7 A Yes.

8 Q And are you aware that we used to have family
9 reunions on a regular, every two years?

10 A Yes.

11 Q And you're aware that I started the family reunions?

12 A Yes.

13 Q And up until this very day we continue to have them
14 every two years?

15 A Yes.

16 Q Are you aware that, well, how many siblings do you
17 have?

18 A Five.

19 MS. VALENZUELA: Objection, Your Honor. Asked and
20 answered. We've discussed this.

21 MR. FIELDER: I didn't say five. I never asked that
22 question.

23 THE COURT: Overruled. Keep going, please.

24 Q Okay. And the reason I asked that question was to
25 identify that my mother and father had six children?

1 groceries?

2 A I don't know.

3 Q Okay. Are you aware of the relationship we had or in
4 terms of caring from one another, do you have any
5 understanding about that?

6 A I know that you took care of Virginia Montgomery. I
7 know that you looked out for her wellbeing. I know that
8 you took her to doctors appointments. I know that you
9 stayed over specifically to make sure that Virginia was
10 all right, because Virginia wanted to stay where she was
11 and you made that possible.

12 Q Do you ever know of a time when Virginia asked me to
13 see about her, that I did not do it?

14 A No.

15 Q Is there anything else that you can speak about in
16 terms of your knowledge about Virginia and my
17 relationship?

18 A I do know that I worked with, I am the program
19 coordinator at the Department of Social Services where I
20 worked with Child Protective Services--

21 MR. FERNANDEZ: Your Honor,--

22 A --as well as Adult Protective Services and not one
23 time did our agency receive a report that she was uncared
24 for, not one time.

25 Q Okay. And do you know who was responsible for asking

1 business for many years?

2 A Yes.

3 Q And as far as your knowledge is concerned, was there
4 a need, a financial need for me to go and attend to
5 Virginia Montgomery?

6 A I don't believe so.

7 Q Are you aware that I've owned land since around the
8 1980's?

9 A Yes, I believe. I believe it was around that time.

10 Q Okay. And are you aware that I may or may not be
11 able to, are you aware that I own several parcels of land?

12 A Yes.

13 Q And from your belief, do you believe that I went to
14 start caring for Virginia Montgomery for financial gain?

15 MR. FERNANDEZ: Objection, Your Honor. He's asking
16 an opinion as to what she thinks.

17 THE COURT: Sustained. I don't know that she can
18 testify as to your motives.

19 MR. FIELDER: Okay. Thank you.

20 Q In your opinion, do you believe that, do you believe
21 that I had a need for her finances?

22 A I believe that you are not a thief. I believe that
23 you will not take anything. If someone gives it to you, I
24 believe you will certainly accept it. But you're not a
25 thief.

1 Q Okay. And do you know whether or not from your
2 understanding that I had love for Virginia?

3 A Yes.

4 Q Do you know from your understanding that Virginia had
5 love for me?

6 A Yes.

7 MR. FERNANDEZ: Objection, Your Honor.

8 MR. FIELDER: Okay. Okay..

9 THE COURT: Based upon your, based upon your
10 observation of the defendant and Ms. Montgomery's
11 interactions, would you characterize their relationship as
12 being one of deep affection, ma'am?

13 A Yes.

14 THE COURT: Did you see the affection of one for the
15 other?

16 A Yes.

17 THE COURT: Very good. Continue.

18 MR. FIELDER: Yes, sir. Thank you.

19 Q Do you remember when Virginia died?

20 A Yes.

21 Q The date?

22 A No.

23 Q That's okay.

24 A She died in 2011.

25 Q Part of my reason for that is do you know who was

1 Q When you know about the defendant, Mr. Fielder's
2 finances, do you personally know about his finances or is
3 that just because you, he's told you?

4 A I don't personally know about his finances.

5 Q Okay. And about the properties he owned, do you
6 actually know any of the property he owns or is it simply
7 because Mr. Fielder has told you about the property he
8 owns?

9 A No. I know of some but I don't know all of them.

10 Q Okay. And I think you already testified that you
11 didn't know all of the cars that he may or may not have
12 owned?

13 A Well, when he asked me that I wasn't thinking, but I
14 do recall he had a car and a truck.

15 Q Okay. Do you ever recall Mr. Fielder driving around
16 a 1991 Buick?

17 A Yes.

18 Q Okay. I'm going to ask you a few questions about Ms.
19 Montgomery, if you would.

20 A Yes.

21 Q You described her and I know from your testimony that
22 you, y'all had a pretty close relationship?

23 A Yes.

24 Q And would it be fair to say that, I think you kind of
25 said it, would it be fair to say that Ms. Montgomery was

1 relatively perhaps stubborn? Not in a bad way, just a
2 strong-willed woman?

3 A She was a strong-willed woman.

4 Q Okay. And would it be fair to say that if Ms.
5 Montgomery would have relayed her intentions to somebody
6 either saying to do something or not to do something, if
7 she had relayed those intentions to somebody, would you
8 believe that she meant what she said; was she typically
9 someone who meant what she said?

10 A Are you speaking of certain, clarify your question.

11 Q Just in general. If she would have relayed her, any
12 intentions to somebody, would you believe that she, in
13 fact, intended that to be the case?

14 A If her mind was made up, yes.

15 Q Did Mr. Fielder, your brother, did he ever live with
16 Virginia Montgomery?

17 A He stayed there with her toward the end of her
18 illness.

19 Q Did he live with her or did he stay occasionally?

20 A He stayed there with her toward the end of her
21 illness.

22 Q And when the decisions were made to involve doctors
23 and hospice workers, were you present during those
24 decisions or were you counseled on those decisions?

25 A No, but I received some phone calls about Dr.

1 before he was kicked out. Just saying that he was, I
2 don't know if he was originally on the witness list,
3 because I don't have a copy of the list.

4 MR. FIELDER: I don't understand what he's saying.

5 THE COURT: You don't need to concern yourself with
6 anything at this point.

7 MR. FIELDER: Okay.

8 THE COURT: Please get your next witness.

9 MR. FERNANDEZ: And I don't know if the next witness
10 is on the witness list either.

11 THE COURT: We will find out.

12 MR. FERNANDEZ: Thank you.

13 (Whereupon, the jury came into open court at
14 approximately 5:14 p.m.)

15 THE COURT: Mr. Fielder, call your next witness
16 please, sir.

17 MR. FIELDER: I call Ms. Katherine Fielder.

18 THE COURT: Very good.

19 KATHERINE FIELDER, being
20 first duly sworn, testified as follows:

21 DIRECT EXAMINATION

22 BY MR. FIELDER:

23 Q Okay. Mama, can you hear all right?

24 A I'm hearing right now. I don't know how long it is
25 going to last. I don't know, I mean, however they speak.

1 Sometimes I can't hear when it ain't loud enough.

2 Q Okay. Just wanted to let you know if it's all right
3 if I just call you Mama. I'm not going to call you, Ms.
4 Katherine. I'll just call you Mama.

5 A Okay. That's good. I am your mama.

6 Q Okay. And is it okay if I refer to Virginia
7 Montgomery as just Virginia like we called her?

8 A Yeah, just Virginia.

9 Q Okay. And for starters, what I want to do just to
10 show you, I want to show you a picture of a lady and see
11 if you can identify her?

12 A Virginia Montgomery.

13 Q Okay. I'll take that for right now.

14 A I was going to tell you who she was.

15 Q That's okay. I'll get to that. I just wanted you to
16 know we been talking about Virginia for this case and just
17 wanted to ask you if it was all right to just show her
18 picture. What is your name?

19 A My name?

20 Q Yes, ma'am.

21 A Katherine A. Fielder, with a K, and a lot of folks
22 don't use that name. But I was, that A was my name when I
23 was named. But I'm a Fielder because I married a Fielder.
24 That's how I got the Fielder name.

25 Q Okay. And do you mind if I make you my star witness?

1 MR. FERNANDEZ: Objection, Your Honor.

2 THE COURT: I hate to ask, Mr. Fielder. Can we try
3 and move this along, okay? Ask her questions.

4 MR. FIELDER: Okay. All right. Okay.

5 THE COURT: You spent five minutes here just with
6 introductions and that's fine.

7 MR. FIELDER: Okay. Correct.

8 THE COURT: Let's move this along, please.

9 MR. FIELDER: Okay. Very good. Thank you.

10 Q Have you known me for a long time?

11 A Yes, I know you because you my son.

12 Q Okay. So where were you born?

13 A When or where?

14 Q Let's start with when? When was your, when is your
15 birthday?

16 A [REDACTED]. I was born in [REDACTED].

17 Q [REDACTED], 1925. Where were you born?

18 A Where?

19 Q Yes, ma'am.

20 A Waterloo, South Carolina.

21 Q And do you remember your mother's name?

22 A Yes, I do.

23 Q What was her name?

24 A Pamela Foggi Adams.

25 Q Okay. And do you remember your father's name?

1 A Yes. Yes, this, yeah, this is the obituary made for
2 Virginia, but I see an error on her, because Ms. Katherine
3 A. Fielder is a cousin, but I married her uncle, and I was
4 recognized by her as a aunt.

5 Q Okay.

6 A They got this mistake on there.

7 Q Okay. Thank you.

8 THE COURT: That is defendant's 1. It is in evidence.
9 and the other one will be defendant's 2.

10 (Whereupon, defendant's Exhibit number 2 was admitted
11 into evidence.)

12 MR. FIELDER: May I go over there?

13 THE COURT: Leave both exhibits up there.

14 MR. FIELDER: I want to refer to this one, Your
15 Honor.

16 THE COURT: Okay. That's fine. Go ahead. Go ahead.

17 Q Referring to Exhibit 1, that is Virginia Montgomery's
18 obituary. So you said you lived in the house, you and
19 your husband, where did y'all live? Who did y'all live
20 with?

21 A We lived with her granddaddy and her grandmother.

22 Q Okay. And did Virginia live in the house with you?

23 A Yes. When I got married, I stayed in the house with
24 all of them, Virginia, Lougenia, her sister, Sue; and
25 father, David; and his mama, Geena. I stayed in the house

1 the hospital, is that it in a nutshell?

2 MR. FIELDER: That's correct.

3 THE COURT: The reason that you get into this? All
4 right. Objection is overruled. It is
5 self-authenticating, defendant's 3.

6 (Whereupon, defendant's Exhibit 3 was admitted into
7 evidence.)

8 THE COURT: Continue.

9 Q I just wanted to show you that this was where I told
10 you that or you can see if that's when Virginia had to go
11 to the hospital.

12 A Yes.

13 Q Okay. This document that I showed you, did you see
14 that my signature was on this?

15 A Yes, I saw your signature.

16 Q And you see that this is when Virginia Montgomery had
17 to go to the hospital and the condition was cellulitis, an
18 infection.

19 MR. FIELDER: I want it entered into evidence.

20 THE COURT: It's into evidence, sir, already.

21 MR. FIELDER: Okay.

22 Q So from the time that I took Virginia to the hospital
23 for cellulitis in her breast until 2011, are you aware
24 that I was caring for her?

25 A Yes, I was.

1 Q Okay. And by calculation that's a period of,
2 wouldn't you agree that that's a period of 12 years from
3 1999 until 2011? No, it's a period of 2011, I mean, it's
4 a period of 12 years from 1999 until 2011. I just wanted
5 to put that on the record. Okay. Now, and in between
6 that time do you know, well, do you know when I went into
7 the military? Do you remember when I went into the
8 military?

9 A Yes, I remember.

10 Q Do you remember when I came back that I used to work
11 for the Postal Service?

12 A Yes.

13 Q Do you remember that I have several businesses?

14 A Beg your pardon?

15 Q I've had several businesses?

16 A Yes, yes, yes.

17 Q Okay. Do you remember any of them?

18 A Yes.

19 Q Will you name some of the businesses that I've had,
20 please?

21 A You had a barber college and you had some
22 restaurants. You had two restaurants. I can't think of
23 the name of them, but I know you had them.

24 Q Okay.

25 A Tasty Grill was one of them, I think.

1 always talked about something worthwhile talking about.

2 Q Okay. So was she able to communicate back and forth
3 with you?

4 A Yes. She come over to the house one day. She wasn't
5 able to come and I had to get somebody to take her back.

6 Q Okay. So y'all had a very close relationship?

7 A Correct.

8 Q All the way up until the end?

9 A Till the end.

10 Q And how about her relationship with me, what type of
11 relationship did you observe that she had with me?

12 A She had a good relationship. Didn't you hear me say
13 she didn't want me to bother something that you had been
14 seeing about for her?

15 MR. FERNANDEZ: Your Honor, again, it's hearsay.

16 THE COURT: You can answer that question, ma'am.

17 Proceed.

18 Q You can continue to answer that.

19 A Yes, she had a good relationship with you. Is that
20 what you asked?

21 Q Yes, ma'am.

22 A Yes, she had a good relationship with you.

23 Q And do you know if in her house she had areas that
24 was reserved especially for me?

25 A That's what I, that's what I just said.

1 Q Okay. Do you know whether or not I had a key to her
2 house?

3 A Yes.

4 Q Do you know if I ever had to take her to the hospital
5 to receive blood?

6 A Yes.

7 Q Do you know if I ever take, have taken her to doctors
8 visits?

9 A Yes.

10 Q Do you know whether or not I ever took her to get
11 groceries?

12 A Yes.

13 Q Was there ever any occasions where you had asked me
14 to come and do something for you and I said I can do it,
15 but I have to go see about Virginia first and I'll be
16 right there?

17 A That's what you said.

18 Q So was Virginia a priority in my life?

19 A Yes.

20 Q Do you remember when I asked hospice to come in and
21 be with her?

22 A Yes.

23 Q Do you know why I asked hospice to come in to be with
24 her?

25 A She said she didn't want to go--

1 Q You remember that there were some people that would
2 not do it, because they just couldn't stand to be around
3 blood? Do you remember Pam saying that she love her but
4 she just can't be around blood?

5 A Yes.

6 Q And do you remember there were several people that we
7 talked about maybe helping to care for her?

8 A Well, she didn't, nobody didn't help but you. But I
9 couldn't really do what I need, wanted to do. Due to my
10 circumstances, I couldn't do what I wanted to do.

11 Q So your reason for not taking care because, is it
12 because you was kind of old like she was?

13 A That's correct.

14 Q And were there, it seemed was it that, it seemed like
15 everybody had an excuse as to why or a reason, it wasn't
16 excuse, but reasons why they just couldn't do it?

17 A Yeah.

18 Q And did you encourage me and appoint me to be the
19 person to just go and take care of Virginia?

20 A Yeah, and she wanted you to not let her, she wanted
21 you to keep her at her home and not go no, put her nowhere
22 else and you did just what she asked you to do.

23 Q Okay. Do you remember me going over and we had,
24 Virginia and I had a conversation and she said that she
25 wanted me to take care of her?

1 A Yes, I do.

2 Q And do you remember that one of her conditions for me
3 taking care of her is that I would not put her out of her
4 house?

5 A That's right.

6 Q And do you remember where she was when she died?

7 A Yes, I remember. She was at home in her bed and I
8 was right there with her, that's how I remember when she
9 passed.

10 Q So do you believe that I fulfilled her wish?

11 A Yes, I do.

12 Q And do you remember when she died who made the
13 funeral arrangements?

14 A You and I also helped you and my other, one of my
15 other daughters, we helped you do that.

16 Q Okay. And do you remember part of the reason is
17 because or do you remember that it was a lot of things
18 that needed to be done?

19 A Yes, it was, because they needed some stockings and I
20 got up the last minute and went and got her some
21 stockings.

22 Q Do you remember Raymond Johnson being there when she
23 died?

24 A No, I don't recall him being there.

25 Q And do you remember who made the final decisions

1 MR. FIELDER: The witness is here.

2 THE COURT: What is her name by the way?

3 MR. FIELDER: Allie Mae Massey.

4 THE COURT: Very good. She can just have a seat
5 right out there and when the jury is here, we'll let you
6 call her.

7 MR. FERNANDEZ: May I ask if she was on the witness
8 list?

9 THE COURT: She was. Let the record reflect that the
10 jury is back. Ladies and gentlemen of the jury, welcome
11 back and we're still on the defendant's case at this point
12 in time. If you'll call your next witness, please?

13 MR. FIELDER: Allie Mae Massey.

14 THE COURT: Okay. If you'll come forward, please.

15 ALLIE MAE MASSEY, being
16 first duly sworn, testified as follows:

17 DIRECT EXAMINATION

18 BY MR. FIELDER:

19 Q Good morning.

20 A Good morning.

21 Q So, again, for the record, your name, please?

22 A Allie Mae Fielder Massey.

23 Q Okay. Thank you. And where do you live?

24 A Enoree, South Carolina.

25 Q Okay. And you're aware that we're here today for the

1 State vs. Gregory Fielder?

2 A I am.

3 Q Okay. Where do you work?

4 A I am retired.

5 Q Okay.

6 A I worked at Whitten Center.

7 Q Okay.

8 A Clinton, South Carolina.

9 Q All right. And do you know me?

10 A I do.

11 Q Okay.

12 A You're my brother, Greg.

13 Q Okay. And you know our mother?

14 A Yes.

15 Q How many siblings, I mean, how many children did she

16 have?

17 A Six.

18 Q Okay. And what number are you in that?

19 A Number two.

20 Q So you will be the second born?

21 A Second.

22 Q Okay. Do you know Virginia Montgomery?

23 A I did. That's my cousin.

24 Q Okay. And do you know Raymond Johnson?

25 A I do; a cousin also.

1 Q Okay. And so have we held ourselves out for cousins
2 as far as for how long?

3 A Many years, ever since we've known each other.

4 Q And as it relates to Virginia Montgomery, do you know
5 when you first came to know her?

6 A Yes, we were small. We grew up basically in a house
7 together when we were very young with our grandparents,
8 parents as well as grandparents.

9 Q Okay. And I asked you about the mother. How about
10 your father, what's your father's name?

11 A Cardell Fielder.

12 Q Okay. So when you first remembered your parents,
13 Cardell and Katherine Fielder, where were y'all living?

14 A At Ora, South Carolina; Laurens County.

15 Q And who were y'all living with?

16 A Grandpa Lane and his family, plus Virginia was there,
17 her other sister.

18 Q Lougenia?

19 A Yes. Lougenia Johnson.

20 Q Yeah.

21 A Well, she wasn't a Johnson at that time.

22 Q Right. Okay. Okay. And what was your grandmother's
23 name? Grandfather and his wife's name?

24 A Grandma Geena.

25 Q Okay. And do you know if she had been married before

1 Q So did we establish that you are part of the Fielder
2 family?

3 A I am.

4 Q You established that you knew Virginia Montgomery?

5 A Yes.

6 Q Did you have an opportunity to visit her?

7 A I did, often visit Virginia, she often visited me and
8 my family.

9 Q So, in terms of relationship with Virginia, what type
10 of relationship did y'all have?

11 A Very good, she always saw that me and my family were
12 fine, visited to make sure we were okay.

13 Q Okay. And do you know whether or not Virginia had a
14 relationship with me?

15 A I do, she did.

16 Q What type of relationship would you say it was?

17 A Like a mother and a son, she had no kids. When she
18 got sick she wanted you to do whatever her needs were
19 except personal needs on her behalf.

20 Q Do you recall me telling you that I was trying to
21 provide all types--

22 MR. FIELDER: Objection, Your Honor.

23 THE COURT: Sustained.

24 Q Were you aware that I was trying to take care of her?

25 A I was because I wanted her to go to the doctor, when

1 time with Greg to Dr. Brownlee and I am sure Dr. Brownlee
2 testified to that. And, like I say, when she needed the
3 blood Greg was there because I had other family members
4 that I needed to take care of and I had gone to Charlotte.
5 But Greg was here and saw to her getting this blood
6 transfusion that she needed.

7 Q And based on your visual account of her would you say
8 that that helped to extend her life?

9 A It did.

10 Q Okay. And did Virginia trust me enough to accept my
11 advice on all of her medical concerns, as far as you know?

12 A As far as I know she did because when we went there
13 everything that you had tried to get hospice to come in to
14 see about her, when we asked her about certain things she
15 said, well, that's Greg's stuff. I don't have anything to
16 do with that, that was--

17 MS. VALENZUELA: Objection, Your Honor, that is
18 hearsay.

19 A No, that is not a hearsay.

20 THE COURT: Ma'am, it actually is so I will sustain
21 that.

22 A I was there.

23 THE COURT: I understand that, objection sustained.

24 Q Did Virginia allow me to take care of her financial
25 concerns?

1 A She did.

2 Q And at a certain time do you know if she just said
3 that she wanted to turn all of her financial concerns over
4 to me.

5 MS. VALENZUELA: Objection, Your Honor, hearsay.

6 THE COURT: Sustained.

7 Q Did you, do you have any knowledge that Virginia
8 committed to writing a power of attorney?

9 A I do, I have a copy of it. I don't have it with me
10 but I have a copy of it.

11 Q If you would, please, see if that looks like the
12 power of attorney, from what you saw?

13 A It does.

14 Q And if you would, please, just read down to who the
15 power of attorney was from and who it was going to?

16 A You want me to read this.

17 Q Yes, I have to,--

18 THE COURT: Is that the document where Ms. Montgomery
19 granted power of attorney to Mr. Fielder?

20 A It is. Would you like for me to read it?

21 THE COURT: No, ma'am.

22 Q Just wanted to acknowledge it, thank you.

23 A That is what I have a copy of.

24 Q Thank you. Can you talk about her relationship with
25 Raymond, as far as you know?

1 and then she went back home, they had to take her back
2 home. She would always pay her money for the family
3 reunion and she always said, just get me a t-shirt. And
4 whatever the gifts were and that was all she wanted. But
5 she always paid her monies.

6 Q Do you know if she attended church?

7 A She did, Poplar Springs, one of them and then was it,
8 St. Paul, it was another one, that we also attended with
9 her. We went to church with her when we were visiting
10 her.

11 Q So, you would say that we were close family?

12 A I am.

13 Q And would you say that if any of our family needed
14 advice of monies for anything that she was open and free
15 to assist us?

16 A She was.

17 Q And likewise would you say that if she needed
18 anything in terms of someone having to do for her, would
19 you say that we would be willing to assist her?

20 A We were.

21 Q Now, do you remember after Virginia had gotten a
22 blood transfusion, her and my relationship in terms of
23 just meetings of, getting together?

24 A You all got closer because she wouldn't let anybody
25 do anything for her but you. I could go to the grocery

1 store and get the things that she needed but otherwise she
2 depending on you to be her caregiver.

3 Q And if there ever came a point where there was some
4 doubt about what she should do in terms of making
5 decisions are you aware that if she would call me?

6 A She would. And she shouldn't let us do anything, she
7 would say Greg is going to take care of that.

8 Q Okay. And would you say that I have her best
9 interest at heart.

10 MS. VALENZUELA: Objection, calls for speculation.

11 THE COURT: Sustained.

12 Q Do you know anything that I did that was not for her
13 benefit?

14 A I don't.

15 Q Now, her house, was it fairly new house or fairly old
16 house?

17 A Very old. She and her aunt started out together
18 buying that house. What happened afterwards I don't know.
19 Her aunt moved to Charlotte so she was there by herself in
20 that house.

21 Q Okay. So, even though it was old and delapidated did
22 she want to continue to stay there?

23 A She did. She said that she did not want to go to a
24 nursing home--

25 MS. VALENZUELA: Objection.

1 would I try to let you and other family know?

2 A Yes. We also, when it first got started, the first
3 thing we did was call Raymond and his family to let them
4 know that her health was deteriorating.

5 Q Do you know if Raymond ever came?

6 A No. He said that he was up there and we were down
7 here and it was okay for us to do what we needed to do for
8 Virginia and her health.

9 Q Okay. So, as far as you know, will you give me his
10 opinion that--

11 MS. VALENZUELA: Objection. Your Honor.

12 THE COURT: Sustained.

13 Q Okay. But you did say that Raymond never came?

14 A No, he said he couldn't come for us as family down
15 here which basically most of the family is down here in
16 this area, Laurens County to do whatever needed to be done
17 for Virginia's wellbeing, health wise and otherwise.

18 Q Okay. So, as far as you know, did Virginia trust me
19 with her health?

20 A Yes.

21 Q As far as you know did Virginia trust me with her
22 wealth.

23 MS. VALENZUELA: Objection, calls for speculation,
24 Your Honor.

25 THE COURT: It is a cumulative question but we did

1 have a power of attorney involved in this case. You may
2 answer that question, ma'am.

3 A She did.

4 Q And did she respect me as one who had her best
5 interest at heart?

6 MS. VALENZUELA: Objection, Your Honor, calls for
7 speculation.

8 THE COURT: That is sustained.

9 Q As far as you know through our conversations did I
10 have her best interest in heart?

11 A You did.

12 Q Okay. Do you know, ever remember me having any
13 businesses?

14 A I do.

15 Q Do you remember me having a barber college?

16 A I do.

17 Q Do you remember me producing students and having
18 graduations of students every year?

19 A I do.

20 Q And do you remember at a certain point when I started
21 to shut my business down?

22 A I do.

23 Q Do you know the reason why I shut my business down?

24 A If they allow me, I understood that you wanted to
25 take care of Virginia and give her whatever care that you

1 could and that she needed.

2 Q And why would I do that as far as you know?

3 MS. VALENZUELA: Objection, Your Honor, calls for
4 speculation.

5 Q Was there anybody else that was taking care of
6 Virginia?

7 A No. Virginia wouldn't let nobody else take care of
8 her really.

9 Q And did she trust my--

10 MS. VALENZUELA: Objection, Your Honor, the objection
11 is based on asked and answered.

12 THE COURT: That is sustained, we have plowed this
13 field.

14 Q You said it was Virginia's wish not to go to the
15 nursing home?

16 A Yes, she made it very clear she did not want to go to
17 the nursing home. We said as long as we lived that we
18 would make sure that we took care of her as best we could
19 to keep that from happening.

20 Q And did she ever go to a nursing home?

21 A She did not, she slept in a hospice bed one night and
22 then the next morning she expired.

23 Q And do you know who was there when she expired?

24 A Gregory Fielder and Katherine Fielder. The reason I
25 wasn't there, I was in Charlotte.

1 against me?

2 A I am.

3 Q So, you are aware that one of the accusations,
4 exploitation of a vulnerable adult?

5 A Yes. I don't understand it but, yes, I am aware of
6 it.

7 Q Is there anything that relates to Virginia, in your
8 opinion, that indicated she was vulnerable?

9 A No.

10 Q You said that you were not aware of anything that she
11 was vulnerable. Was she ever neglected as far as you
12 know?

13 A No.

14 Q Do you know if there was ever an occasion where
15 somebody had a reason to report that she was being
16 mistreated?

17 A No.

18 Q Would you say that based on her condition she was
19 given the best care, she was taken very good care of?

20 A I can say that and I can say that you did what needed
21 to be done to take care of her needs.

22 Q Would you say that I really put my life on hold to
23 take care of her?

24 A I can.

25 Q Do you know if I, first of all I need to know, if you

1 at this point. Mr. Fielder, call your next witness,
2 please.

3 MR. FIELDER: Okay. I call Michael Taylor.

4 THE COURT: If you'll come forward, please, sir.

5 MICHAEL TAYLOR, being
6 first duly sworn, testified as follows:

7 DIRECT EXAMINATION

8 BY MR. FIELDER:

9 Q All right. Will you state your name for the record?

10 A Michael Taylor.

11 Q Okay. Michael, where do you live?

12 A At [REDACTED].

13 Q How long have you lived there?

14 A Thirty-something-odd years.

15 Q And while living there did you ever have an occasion
16 to know of a woman named Virginia Montgomery?

17 A Yes, I did. She was my neighbor.

18 Q And where do you live in relation to her?

19 A I live directly across the street from her.

20 Q Okay. And did you ever have occasion to speak with
21 her?

22 A Yes, frequently. I spoke to her at least about every
23 day.

24 Q Okay. And do you know me?

25 A Yes, I do.

1 Q Okay. How did you come to know Virginia?

2 A I met her when I first moved down here from New York.
3 Me and my mother, we got a house right across the street
4 from her, and I would always see her in her yard and I
5 would ask her did she want me to do anything for her. And
6 she always said now Greg will do it, Greg will do it.
7 That's all she ever said.

8 MR. FERNANDEZ: Your Honor, I object to hearsay.

9 THE COURT: Sustained as to hearsay.

10 MR. FIELDER: Yeah.

11 Q And whenever you spoke with her was it in a friendly
12 way?

13 A Yes, most time it was friendly.

14 Q Okay. What type of lady was she as far as you know?

15 A She was a elderly lady. She kept to herself. When
16 she come outside she speak to us, the neighbors across the
17 street. That's about it.

18 Q And do you know if she lived alone?

19 A As far as recollect she lived by herself.

20 Q Did she ever have any visitors that you know of?

21 A Very seldom. Very seldom, because she stayed to
22 herself most of the time.

23 Q Okay. Do you know if she stayed home most of the
24 time or?

25 A Well, she was occasionally in and out. She would

1 drive herself to the store or to the church, then she come
2 back home. That where she be at, at the house.

3 Q Okay. And have you ever seen me in her house?

4 A Yes, I have.

5 Q And how regular would you see me at her house?

6 A Very often. Every, just about every day you come by
7 there and check on her..

8 Q Okay. Did she have any disposable trash can outside
9 of her house?

10 A She had one sitting out in the driveway and I used to
11 ask her did she want me to put her trash out there for
12 her. But, again, she said that Greg would do it.

13 MR. FERNANDEZ: Your Honor, we object to hearsay.

14 THE COURT: Sustained.

15 Q You can't say what she said.

16 A Okay.

17 Q Yeah. But that disposable trash container, did you
18 ever note of me to come and empty it?

19 A Yes, I have. I've seen you do it.

20 Q And do you know if she was ill in any kind of way or
21 was she, did you ever know of her to be will?

22 A At the present time when I used to see her she didn't
23 seem like she was ill, because she be out there driving
24 where she need to go.

25 Q Okay. So if she had a physical illness did you know

1 THE COURT: Ladies and gentlemen of the jury, the law
2 requires me to have a very brief charge conference with
3 the parties on the law that I am going to instruct you on.
4 I've already provided them last night, copies were being
5 worked up.

6 MR. FIELDER: Excuse me, Your Honor.

7 THE COURT: Approach.

8 (Whereupon, a bench conference was held in the
9 presence of the jury but out of the hearing of the
10 jury.)

11 THE COURT: All right. Mr. Fielder, if you'll come
12 up and be sworn, please. You indicated to me at the bench
13 that you wanted to testify, is that correct?

14 MR. FIELDER: I need a moment, but yes. I need a
15 moment to get my things in order.

16 THE COURT: All right, typically, you testify
17 without, are there additional documents you anticipate
18 introducing during your testimony?

19 MR. FIELDER: Yes.

20 THE COURT: Very good. We'll give it about five
21 minutes to let him get his materials together and we'll
22 take a five-minute break.

23 MR. FIELDER: It's going to take five minutes.

24 THE COURT: That's all I was saying. We'll be at
25 ease for a few moments. Don't talk about the case and

1 have a cigarette and we'll be back on the record. Thank
2 you.

3 (Whereupon, the jury was excused from open court for
4 a break.)

5 MR. FERNANDEZ: Your Honor, I have not seen any, just
6 for the record, I've not seen any of the documents Counsel
7 has in his possession. I have no idea what he intends to,
8 if he intends to put any into evidence. Subject to I
9 haven't seen any of them, so I can't say whether I need to
10 consent to them or not.

11 THE COURT: And I sort of anticipated that coming up,
12 which is why I asked the jury to go ahead and leave
13 because when he indicated to me it was going to be a
14 number of documents, I figured the State should have an
15 opportunity to at least take a look at what he proposes to
16 introduce and interpose any objection. I'm assuming your
17 rule is a reciprocal Rule 5 that was filed in this case?
18 I'll give you a chance to take a look at what he's got.

19 (Whereupon, a short break was taken.)

20 THE COURT: Let's bring the jury in, please.

21 (Whereupon, the jury came into open court at
22 approximately 11:18 a.m.)

23 THE COURT: Ladies and gentlemen of the jury, welcome
24 back. The record should reflect that the jury is seated.
25 Mr. Fielder, you indicated to me at the bench that you do

1 want to testify at this point in time, is that correct,
2 sir?

3 MR. FIELDER: I'm a little bit disorganized, Your
4 Honor.

5 THE COURT: Well, get as organized as you can in the
6 next five seconds, come on up and place your left hand on
7 the Bible and raise your right hand.

8 MR. FIELDER: Do you have a table I could use?

9 THE COURT: You can place those items up here on the
10 witness stand, sir.

11 MR. FERNANDEZ: And, for the record, Your Honor, I
12 have not seen those documents.

13 THE COURT: I understand. We'll see and you'll have
14 an opportunity to review them if he moves them into
15 evidence. All right. Mr. Fielder, come on up, sir.

16 MR. FIELDER: Oh, okay.

17 THE COURT: Come on up. Bring everything here if you
18 need it, but come on up. I said five seconds, now move,
19 please, sir. You've got to be sworn. Place your left
20 hand on the Bible and raise your right hand.

21 MR. FIELDER: Okay. I need to, I need to speak with
22 you once more.

23 THE COURT: Approach, please.

24 (Whereupon, a bench conference was held in the
25 presence of the jury but out of the hearing of the

1 jury.)

2 THE COURT: Ladies and gentlemen of the jury, we've
3 received all the testimony that we're going to have in
4 this particular case. Again, I hate to ask you to leave.
5 I am required by law to have a charge conference with the
6 attorneys after the defense has rested. There is no reply
7 testimony, correct?

8 MR. FERNANDEZ: No, Your Honor.

9 THE COURT: Great. Adjourn for a moment to the back.
10 Appreciate your patience. I will have you back out here
11 in about five minutes and we will proceed in closing.
12 Thanks.

13 (Whereupon, the jury was excused from open court.)

14 THE COURT: All right. While the jury is out I
15 desperately need to place something on the record and I
16 don't know that it is on the record. We have had multiple
17 bench conferences with the defendant and the State.
18 During the most recent exchange. Mr. Fielder brought with
19 him up to the witness stand a large box of material. The
20 box is approximately one foot-by-one foot square. It's
21 stuff with materials. He asked for additional time to
22 organize his materials. I explained to him at the bench
23 that he has had at least three years to get it organized.
24 I asked that he had, he had to make a decision at that
25 point in time whether he was going to testify. Mr.

1 Fielder, throughout the course of this trial, sir, and I'm
2 going to put this as politely as I possibly can, but your
3 efforts at delay over and over and over again in October,
4 Monday morning, throughout the course of examining
5 witnesses, throughout the course of presenting your case,
6 throughout all these proceedings, the defendant has done
7 nothing, in my opinion, but make an effort at delay. The
8 excuse that he offered at the bench was totally
9 incredible. The excuse that he needed additional time to
10 organize the vast materials which he was taking up to the
11 witness stand is nothing more than an excuse for delay.
12 And I admonished him at the stand that if he wanted to
13 testify he was free to do that, but he had to do it now.
14 I was not going to afford him another break to organize
15 his materials and I was not going to further countenance
16 any further delay. I explained to him at the stand that
17 if he did not take the witness stand as he expressly
18 stated he wanted to do at some point 15 minutes ago, I
19 explained that the Court would consider him having rested.
20 He said he could not take the stand, because his materials
21 were not organized at which point, I dismissed him, asked
22 him to return to his seat, gather his materials and
23 dismissed the jury so that we could have a charge
24 conference. Again, throughout the course of these
25 proceedings, Mr. Fielder has attempted to delay, to push

1 things back and has come up with every excuse in the world
2 to drag this matter out and the Court is not having any
3 more of it. So we are now discussing jury charges. The
4 defendant will go first with his closing. The State will
5 follow. The Court will not be charging ignorance of the
6 law. Obviously, that's something that you can re-request,
7 Attorney General, if Mr. Fielder makes that argument in
8 his closing and I will reconsider it. But at this stage
9 of the game, the Court is not intending to give a charge
10 on ignorance of the law. Otherwise, any additional
11 requests for instruction to the jury from the State?

12 MR. FERNANDEZ: Yes, Your Honor. As we discussed
13 earlier, I would ask for and this is just the Black's Law
14 Dictionary definition of both fiduciary duty and of
15 fiduciary.

16 THE COURT: All right.

17 MR. FERNANDEZ: I can read it into the record or I
18 can give Your Honor the, I tabbed it.

19 THE COURT: If you would hand it to me, my clerk and
20 I will take a look at it and see where we stand on that.

21 MR. FERNANDEZ: There's also a tab for a power of
22 attorney, but I don't know that we need it.

23 THE COURT: Attorney General, what we have is the
24 attorney-in-fact has a fiduciary relationship with the
25 principal and is accountable and responsible as a

1 means children, that means the old and the infirm, that
2 means anyone who is incapacitated even by virtue of mental
3 defect or because of a problem. And I have no doubt, Mr.
4 Fielder, that you provided good care for your aunt, I
5 don't doubt that you helped her, that you assisted her and
6 that you helped your family. But when it comes right down
7 to it, Mr. Fielder, and the jury has agreed with this,
8 there is no escaping the fact that you stole money and
9 you, sir, are a thief. And I appreciate your eleventh
10 hour offer to repay the money back but you have had three
11 to four years to do that, sir. And quite honestly that
12 offer strikes me as certainly being a day late and a
13 dollar short. I don't mean anything funny by that. What
14 I have done, Mr. Fielder, is I have taken into account
15 your age, you are 61 years of age, I am taking into
16 account your service to our Country, I have taken into
17 account your service to your family and to your aunt. I
18 have taken into account the lack of any prior criminal
19 history. I have also, in my mind, properly taken into
20 account the egregious act that you did while you had this
21 power of attorney. And because there has to be some
22 example set for the community, because there has to be
23 some repercussion for criminal activity. What I have done
24 is on indictment 1430 and that is the exploitation charge.
25 I have sentenced you to two years in the Department of

1 Corrections. So you have two years to serve on that
2 charge. On the breach of trust charge, Mr. Fielder, I am
3 sentencing you to ten years but I have suspended that and
4 placed you on probation for five years. I am ordering
5 restitution be repaid in the amount of \$67,739.72.
6 Probation will be tolled while you are in the Department
7 of Corrections during that two year sentence on the
8 exploitation charge. I am also ordering random drug
9 testing. I have noted that upon paying the restitution
10 back the case can terminate. With regard to the
11 \$30,000.00 dollars and the car title, Attorney General
12 forwarded me an order directing that those funds be placed
13 or to be transferred to Mr. Bryan for his deposit in the
14 estate account and also for purposes of the car I will
15 issue an order that it is to be transferred to, either
16 back into the estate if the Highway Department will allow
17 that to happen or to, whoever it is that you find to buy
18 that car. Mr. Fielder, it has not been lost on this Court
19 your activity in trying to delay these proceedings, it is
20 not lost upon this Court the fact that, quite honestly
21 your behavior this week has not been the best and that
22 plays into the Court's decision to send you to prison'
23 whereas I otherwise ordinarily probably wouldn't put you
24 on probation. But the main thing that is driving this,
25 sir, and you need to feel lucky you are not getting

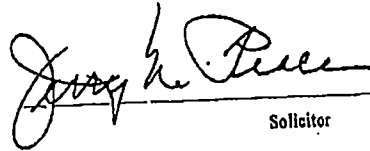
THE STATE OF SOUTH CAROLINA
COUNTY OF LAURENS

INDICTMENT FOR
EXPLOITATION OF A VULNERABLE ADULT
43-35-0085

At a Court of General Sessions, convened on the 3rd day of August, 2012 the Grand Jurors of
Laurens County present upon their oath:

That Gregory Fielder, did in Laurens County, state aforesaid, between the 1st day of February, 2011 and the 20th day of December, 2011 knowingly, willfully and unlawfully exploit a vulnerable adult, one Virginia Montgomery, to wit: that the said defendant did improperly use the victims checking accounts and property causing said Virginia Montgomery to be exploited, in violation of the provisions of Section 43-35-85 of the South Carolina Code of Laws, 1976, as amended.

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


Solicitor

WITNESSES

Leann Riggott
Laurens Police Department

WARRANT NUMBER

M885495

True Bill

[Signature]

Foreman of the Grand Jury

Date: 8-3-12

VERDICT

Guilt.

[Signature]

Foreman

11-5-15

THE STATE OF SOUTH CAROLINA

COUNTY OF LAURENS

COURT OF GENERAL SESSIONS

August Term, 2012

Indictment # 12GS30-1430

THE STATE

vs.

Gregory Fielder

INDICTMENT FOR

EXPLOITATION OF A VULNERABLE ADULT
43-35-0085

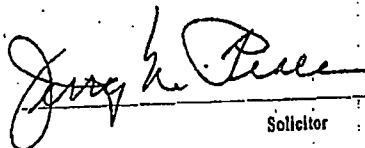
THE STATE OF SOUTH CAROLINA
COUNTY OF LAURENS

INDICTMENT FOR
BREACH OF TRUST
16-13-0230

At a Court of General Sessions, convened on the 3rd day of August, 2012 the Grand Jurors of Laurens County present upon their oath:

That Gregory Fielder, did in Laurens County, state aforesaid, between the 1st day of February, 2011 and the 20th day of December, 2011 willfully and unlawfully commit a breach of trust with a fraudulent intention, to wit: that the said defendant then and there being entrusted by Virginia Montgomery, with the care, and/or keeping, and/or possession of goods and/or monies, to wit: property and bank accounts of the value of more than ten thousand and NO/100 (\$10,000.00) dollars; willfully, unlawfully and feloniously take and appropriate the said goods and/or monies to his/her own use and purposes with the intention of cheating and defrauding the said Virginia Montgomery of the said goods and/or monies, in violation of Section 16-13-230 of the South Carolina Code of Laws, 1976, as amended.

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


Solicitor

WITNESSES

Leann Riggott
Laurens Police Department

WARRANT NUMBER

M885496

True Bill

[Signature]
Foreman of the Grand Jury

Date: *8-3-12*

VERDICT

Guilty

Charles S. [Signature]
Foreman *11-5-15*

THE STATE OF SOUTH CAROLINA

COUNTY OF LAURENS

COURT OF GENERAL SESSIONS

August Term, 2012

Indictment # 12GS30- *1431*

THE STATE

vs.

Gregory Fielder

INDICTMENT FOR

BREACH OF TRUST
16-13-0230

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF

Laurens

STATE

VS.

Gregory Fielder

AKA:

Race:

Black

Sex:

Male

Age:

61

DOB:

SS#:

Address:

City, State, Zip:

DL#

SID#

*CDL Yes ☐ No ☒ CMV Yes ☐ No ☒ Hazmat Yes ☐ No ☒

In disposition of the said indictment comes now the Defendant who was

INDICTMENT/CASE#: 2012-GS-30 - 1430

AW#: M-885495

Date of Offense: Feb. through Dec., 2011

S.C. Code §: 43-35-0086(D)

CDR Code #: 2857

SENTENCE SHEET

TO: Exploitation of a Vulnerable Adult

In violation of § 43-35-0086(D) of the S.C. Code of Laws, bearing CDR Code # 2857

☒ 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:

76698

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center, for a determinate term of 20 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 _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

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

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

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

PTUP

Total: \$ _____ plus 20% fee: \$ _____

_____ days/hours Public Service Employment

Payment Terms: _____

Obtain GED ☐☐ Set by SCDPPPS

Attend Voc. Rehab. Or Job Corp. _____

Recipient: _____

May serve W/E beginning Substance Abuse Counseling ☐

*Fine:
 §14-1-208 (Assessments 107.5%) \$ _____
 §14-1-211 (A)(1)(Conv. Surcharge) \$100 \$ 100.00
 §14-1-211 (A)(2)(DUI Surcharge) \$100 \$ _____
 §56-5-2995 (DUI Assessment) \$12 \$ _____
 §56-1-286 (DUI Breath Test) \$25 \$ _____
 Proviso 47.9 (Public Def/Prob) \$500 \$ _____
 §14-1-212 (Law Enforce. Funding) \$25 \$ 25.00
 §14-1-213 (Drug Court Surcharge) \$150 \$ _____
 §50-21-114 (BUI Breath Test Fee) \$50 \$ _____
 §56-5-2942(J) (Vehicle Assessment) \$40/ea \$ _____
 Proviso 90.5 (SCJA Surcharge) \$5 \$ _____
 3% to County (if paid in installments) \$ _____
 TOTAL \$ 182.90

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,
 §47.12 requires \$500 be paid to Clerk
 during probation.

Clerk of Court/Deputy Clerk _____
 Court Reporter: _____

Presiding Judge _____
 Judge Code: 2107
 Sentence Date 11/5/12

SCCA/217 (03/2011)

STATE OF SOUTH CAROLINA

COUNTY OF

Laurens

STATE

VS.

Gregory Fielder

AKA:

Race:

Black

Sex:

Male

Age:

61

DOB:

SS#:

Address:

City, State, Zip:

DL#

SID#

*CDL Yes ☐ No ☒ CMV Yes ☐ No ☒ Hazmat Yes ☐ No ☒

In disposition of the said indictment comes now the Defendant who was

TO: Breach of Trust with fraudulent intent, value \$10,000 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)

(def.'s initials)

The charge is: ☐ As Indicted, ☐ Lesser Included Offense,☐ Defendant Waives Presentment to Grand Jury.The plea is: ☐ Without Negotiations or Recommendation,☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

76698

Child A. Farnsworth, Jr., Attorney General

SC Bar #

Defendant

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:☒ 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 16-25-85 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☒ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☒ Ordered

Total: \$ 67,739.73 plus 20% fee: \$ 13,547.94 \$ 81,287.64

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§14-1-206 (Assessments 107.5%)	\$	
§14-1-211 (A)(1)(Conv. Surcharge)	\$100	\$ 100.00
§14-1-211 (A)(2)(DUI Surcharge)	\$100	
§56-5-2895 (DUI Assessment)	\$12	
§56-1-286 (DUI Breath Test)	\$25	
Proviso 47.9 (Public Def/Prob)	\$500	
§14-1-212 (Law Enforce. Funding)	\$25	\$ 85.00
§14-1-213 (Drug Court Surcharge)	\$150	
§50-21-114 (BUI Breath Test Fee)	\$50	
§56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$ 5.00
Proviso 90.5 (SCCJA Surcharge)	\$5	
3% to County (if paid in installments)		\$ 2.90
TOTAL		\$ 142.00

Clerk of Court/Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2012-GS-30 -1431

AW#: M-885498

Date of Offense: Feb. through Dec., 2011

S.C. Code §: 16-13-230(B)(3)

CDR Code #: 3424

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADSPTUP upon pay restitution
days/hours Public Service EmploymentObtain 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, \$47.12 requires \$500 be paid to Clerk during probation.

Presiding Judge:

Judge Code:

Sentence Date: 11/3/16

2011000884
 POWER OF ATTORNEY
 RECORDING FEES \$15.00
 PRESENTED & RECORDED:
 02-02-2011 08:50 AM



STATE OF SOUTH CAROLINA)
)
 COUNTY OF LAURENS)

GENERAL DURABLE POWER OF ATTORNEY



LYNN W. LANCASTER
 CLERK OF COURT
 LAURENS COUNTY, SC
 BY: ROSLYN JOHNSON CLERK
 BK: D 1006
 PG: 311 - 314

KNOW ALL MEN BY THESE PRESENTS, that I, Virginia Montgomery, (hereinafter at times referred to as the "Principal") domiciled and residing in the County of Laurens, State of South Carolina, being desirous of appointing an Attorney-in-Fact to act for me in all matters in which I may have an interest, do hereby nominate, constitute, and appoint my cousin and friend, Gregory Fielder, of Laurens County, South Carolina as my true and lawful Attorney-in-Fact and he is empowered to act for me in my name, place and stead, with full power to sell, grant, give, lease, mortgage, transfer, exchange, or otherwise dispose of any of my property, real, personal, or mixed (including without limitation, stocks, bonds or other security) and to execute and deliver good and sufficient deeds, rights-of-ways, easements, leases, mortgages, bills of sale, assignments, endorsements, or other instruments for the conveyance, lease, mortgage or transfer of the same; to purchase in my name, or for my account real estate, stocks, bonds, or other securities, or property whether or not the same shall be legal investments for fiduciaries, and to enter into contracts for the purchase of any such property; to cash in or change the beneficiary or beneficiaries on any and all annuities, IRA or employee benefit plan I may own; to contract with any bank or institution for the maintenance of a safe-deposit box in my name and to have access to all safe-deposit boxes in my name; to cash in or change the beneficiary or beneficiaries on any and all annuities, IRA or employee benefit plan I may own; to contract with any bank or institution for the maintenance of a safe-deposit box in my name and to have access to all safe-deposit boxes in my name; to continue any business of mine; to collect, sue upon, compromise, or otherwise dispose of any claim or debt in which I now, or hereafter may, have an interest; to pay, compromise, or otherwise discharge, and secure releases from, any obligations of mine or claims against me; to deposit in my name and for my account with any credit union, savings and loan association, bank, or trust company, all monies to which I am entitled or which may come into his hands as Attorney-in-Fact, and all bills of exchange, drafts, checks, promissory notes, and other securities for money payable or belonging to me, and for that purpose to sign my name and endorse each and every such instrument for deposit or collection; and from time to time, or at any time, to withdraw any and all monies deposited to my credit at any bank or trust company or any building or savings and loan association or any other banking or similar institution having monies belonging to me, and in connection therewith, to draw checks or to make withdrawals in my name; to make, do, execute, acknowledge, and deliver, for and upon my behalf and in my name, all such checks, notes, contracts, agreements, endorsements, consents, waivers, proxies, releases, undertakings, receipts, acknowledgements, deeds, leases, mortgages, rights of ways, easements, bonds for title, contracts of sale, mortgage satisfactions, partial mortgage releases, bills of sale, motor vehicle titles, boat titles, mobile

A TRUE COPY OF ORIGINAL

Lynn W. Lancaster
 Lynn W. Lancaster
 Laurens County CCCP & GS

home titles, and all other documents or instruments in writing of every kind and nature which, in his judgement, may be appropriate or desirable in the conduct of my affairs or the management of my property.

FURTHER, I do authorize my said Attorney-in-Fact to perform all acts appropriate or incident to the execution of the aforesaid powers and authorizations, and generally to do any and all acts and things on my behalf and in my name in connection with any matter or thing pertaining to or belonging to me, with the same validity and effect and as fully as they could be effected or done by me if I were personally present.

FURTHER, I do authorize and empower my Attorney-in-Fact to employ, compensate, and discharge such domestic, medical, and professional personnel, including lawyers, accountants, doctors, nurses, brokers, financial consultants, advisors, consultants, servants, and employees as my Attorney-in-Fact shall deem appropriate for my benefit.

The signature or act of my Attorney in my behalf may be accepted by third persons as fully authorized by me, and with the same force and effect as if done under my hand and seal, and as if I were present in person and acting in my own behalf.

My Attorney-in-Fact is specifically authorized and empowered to make any and all health care decisions for me in the event I am unable to act in my own behalf. This specifically includes that my Attorney-in-Fact is fully and completely authorized and empowered to:

- (A) To consent, refuse, or withdraw consent to any and all types of medical care, treatment, surgical procedures, diagnostic procedures, medication, and the use of mechanical or other procedures that affect any bodily function, including, but not limited to, artificial respiration, nutritional support and hydration, and cardiopulmonary resuscitation.
- (B) To authorize, or refuse to authorize, any medication or procedure intended to relieve pain, even though such use may lead to physical damage, addiction, or hasten the moment of, but not intentionally cause my death.
- (C) To authorize my admission to or discharge, even against medical advice, from any hospital, nursing care facility, or similar facility or service.
- (D) To take any other action necessary to making, documenting, and assuring implementation of decisions concerning my health care, including, but not limited to, granting any waiver or release from liability required by any hospital, physician, nursing-care provider, or other health care provider; signing any documents relating to refusals of treatment or the leaving of a facility against medical advice, and pursuing any legal action in my name, and at the expense of my estate to force compliance with my wishes as determined by my agent; or to seek actual or punitive damages for the failure to comply.

My Attorney-in-Fact is specifically authorized and empowered to give, transfer, assign and convey any or all of my assets, real, personal and mixed to my spouse, children and lineal descendants (specifically including my said Attorney-in-Fact) by gift, or to any trust that I have established or I might hereafter create, or that my said Attorney-in-Fact might establish on my behalf. My Attorney-in-Fact is further specifically authorized and empowered to continue to distribute to my spouse, children, lineal descendants, and others, including my Attorney-in-Fact, such gifts as established by any pattern of giving I may have established for my spouse, children, lineal descendants, and others.

AND I do hereby ratify and confirm each and every act and thing, which my Attorney-in-Fact shall and may do by virtue hereof.

I herewith nominate, constitute, and appoint my Attorney-in-Fact to serve as my Guardian, Conservator, and/or in any similar representative capacity, and request that any Court of competent jurisdiction which may receive and be asked to act upon a petition by any person to appoint a Guardian, Conservator, and/or similar representative for me, give the greatest possible weight to this request.

This Power-of-Attorney shall remain in full force and effect until the earlier of the following events: (1) Attorney has resigned as provided herein; (2) I have revoked this Power-of-Attorney by written instrument recorded in the public records of the County aforesaid, or (3) A Conservator shall have been appointed for me by a Court of competent jurisdiction.

In the event that Attorney shall become unable or unwilling to serve or continue to serve, that Attorney may resign by delivering to me in writing a copy of his resignation and recording the original in the public records of the County aforesaid. Upon such resignation and recording, Attorney shall thereupon be divested of all authority under this Power-of-Attorney.

This instrument is to be construed and interpreted as a general power of attorney without limitation or reservation. The enumeration of specific items, rights, acts, or powers herein is not intended to, nor does it limit or restrict, and is not to be construed or interpreted as limiting or restricting the general powers herein granted to my said attorney.

No person who may act in reliance upon the representations of my attorney-in-fact for the scope of authority granted to the attorney-in-fact shall incur any liability as to me or to my estate as a result of permitting the attorney-in-fact to exercise this authority, nor is any such person who deals with my attorney-in-fact responsible to determine or ensure the proper application of funds or property.

This Power-of-Attorney shall not be affected by physical disability or mental incompetence of the Principal, which renders the Principal incapable of managing her own estate.

This Power-of-Attorney has been executed by me pursuant to the provisions of Section 62-5-501 of the Code of Laws of South Carolina (1976), as amended.

I revoke any and all prior Power-of-Attorneys.

IN WITNESS WHEREOF, I have hereunto set my Hand and Seal this 1st day of February 2011.

Virginia Montgomery
Virginia Montgomery

Signed, sealed, published and declared by the above named Principal, Virginia Montgomery, as and for her Power-of-Attorney, consisting of four (4) pages, in the sight and presence of us, who at her request, in her presence, and in the sight and presence of each other, have hereunto signed our names as attesting witnesses this 1st day of February 2011.

Robert W. Whitesides, Jr. residing in Laurens County, South Carolina

Robert W. Whitesides residing in Laurens County, South Carolina
Robert W. Whitesides

PERSONALLY appeared before me the undersigned witness, and made oath that (s)he saw Virginia Montgomery sign, seal, and as her act and deed deliver the foregoing General Durable Power-of-Attorney and that (s)he with the other witness subscribed above, witnessed the execution thereof in the sight and presence of her, and in the sight and presence of each other.

[Signature]
Witness

SWORN to before me this 1st day of February 2011.

Robert W. Whitesides (SEAL)
Notary Public for South Carolina
My Commission Expires: 8-15-2018

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for the Appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

Respectfully submitted,



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- Willie J. Peters (S.C. Bar No.: 100974)
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Attorneys for Appellant

Greenville, South Carolina
December 27, 2016

RECEIVED

JAN 05 2017

SC Court of Appeals

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State, Respondent,

v.

Gregory Fielder, Appellant.

Appellate Case No. 2015-002435

Appeal From Laurens County
Frank R. Addy, Jr., Circuit Court Judge

Unpublished Opinion No. 2018-UP-007
Submitted November 1, 2017 – Filed January 10, 2018

AFFIRMED

Darren S. Haley and Willie James Peters, III, both of The
Haley Law Firm, LLC, of Greenville, for Appellant.

Attorney General Alan McCrory Wilson and Senior
Assistant Deputy Attorney General John Benjamin Aplin,
both of Columbia, for Respondent.

PER CURIAM: Gregory Fielder appeals his convictions for exploitation of a vulnerable adult and breach of trust over \$10,000, arguing the trial court erred by (1) failing to order an examination to determine if Fielder was competent to stand trial, (2) admitting hearsay and unduly prejudicial statements, (3) failing to

sequester Raymond Johnson, (4) unreasonably restricting Fielder's ability to testify, (5) permitting James Bryan to testify regarding matters about which he lacked personal knowledge, (6) failing to sequester Bryan, and (7) improperly limiting the scope of Fielder's cross-examination of Bryan. We affirm¹ pursuant to Rule 220(b), SCACR, and the following authorities:

1. As to issues one through five: *State v. Policao*, 402 S.C. 547, 556, 741 S.E.2d 774, 778 (Ct. App. 2013) (stating arguments raised for the first time on appeal are not preserved for appellate review); *State v. Dunbar*, 356 S.C. 138, 142, 587 S.E.2d 691, 693-94 (2003) ("In order for an issue to be preserved for appellate review, it must have been raised to and ruled upon by the trial [court]. Issues not raised and ruled upon in the trial court will not be considered on appeal."); *In re Care & Treatment of Corley*, 365 S.C. 252, 258, 616 S.E.2d 441, 444 (Ct. App. 2005) ("Constitutional issues, like most others, must be raised to and ruled upon by the trial court to be preserved for appeal.").

2. As to issue six: *State v. Carmack*, 388 S.C. 190, 197, 694 S.E.2d 224, 227 (Ct. App. 2010) ("The trial court's ruling on a motion to sequester a witness will not be disturbed on appeal absent an abuse of discretion and prejudice to an appellant."); *State v. Tisdale*, 338 S.C. 607, 616, 527 S.E.2d 389, 394 (Ct. App. 2000) ("Whether a witness should be exempted from a sequestration order is within the trial court's discretion." (quoting *Gattison v. S.C. State College*, 318 S.C. 148, 151, 456 S.E.2d 414, 415 (Ct. App. 1995))); *Carmack*, 388 S.C. at 197, 694 S.E.2d at 227 ("The mere opportunity for the State's witnesses to compare testimony is insufficient to compel sequestration." (quoting *State v. Sullivan*, 277 S.C. 35, 46, 282 S.E.2d 838, 844 (1981))); *id.* at 198, 694 S.E.2d at 227-28 ("[T]he threat that exposure to other testimony would taint subsequent testimony [is] alleviated by affording [the defendant] the opportunity to impeach any witnesses who altered their accounts . . ."); *State v. Curtis*, 356 S.C. 622, 632, 591 S.E.2d 600, 605 (2004) ("A party cannot complain of an error which his own conduct created.").

3. As to issue seven: *State v. Johnson*, 338 S.C. 114, 124-25, 525 S.E.2d 519, 524 (2000) ("An appellate court will not disturb a trial court's ruling concerning the scope of cross-examination of a witness to test his or her credibility, or to show possible bias or self-interest in testifying, absent a manifest abuse of discretion."); *State v. Aleksey*, 343 S.C. 20, 34, 538 S.E.2d 248, 255 (2000) ("[T]rial [courts] retain wide latitude insofar as the Confrontation Clause is concerned to impose reasonable limits on such cross-examination based on concerns about, among other

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.

things, harassment, prejudice, confusion of the issues, witness' safety, or interrogation that is repetitive or only marginally relevant." (quoting *Delaware v. Van Arsdall*, 475 U.S. 673, 679 (1986))); *State v. Brown*, 303 S.C. 169, 171, 399 S.E.2d 593, 594 (1991) ("The limitation of cross-examination is reversible error if the defendant establishes he was unfairly prejudiced.").

AFFIRMED.

SHORT, KONDUROS, and GEATHERS, JJ., concur.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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JAN 25 2018

APPEAL FROM LAURENS COUNTY
Court of General Sessions

SC Court of Appeals

Frank Addy, Circuit Court Judge

Case No. 2015-002435

STATE OF SOUTH CAROLINA,

Respondent,

v.

GREGORY FIELDER,

Appellant.

PETITION FOR REHEARING

Appellant, Gregory Fielder (hereinafter, "Mr. Fielder" or "Appellant"), through counsel, respectfully seeks rehearing pursuant to Rule 221(a), SCACR, and submits the herein Petition for Rehearing.

ARGUMENT

The Court of Appeals overlooked or misapprehended that the issue of whether the Trial Judge abused its discretion by failing to order an examination to determine if Mr. Fielder was competent to stand trial has been preserved for appellate review.

"In order for an issue to be preserved for appellate review, it must have been raised to and ruled upon by the trial [court]." State v. Dunbar, 356 S.C. 138, 142, 587 S.E.2d 691 (2003). Shortly after the call of the case, the Judge Griffith noticed that the Appellant did not appear to

be well. (R. p. 8, lines 14-15). Mr. Fielder confirmed that he was not well, and advised Judge Griffith that he was under medical care. (See R. p. 9, lines 12-14). After Judge Addy began presiding over the case, Mr. Fielder provided Judge Addy a physician's note from Fountain Inn Family Practice, indicating that Mr. Fielder was to be evaluated and referring Mr. Fielder to a neurosurgeon for radiating back pain from injuries that he sustained after he fell from his porch. (R. p. 29, lines 21-25). Mr. Fielder also provided Judge Addy with a prescription bottle, dated October 19, 2015, for Alprazolam, for Appellant's anxiety. (R. p. 29, line 25; R. p. 30, lines 1-5).

As indicated in the *Final Brief of Appellant*, common side effects for Alprazolam may include: drowsiness, feeling tired, slurred speech, lack of balance or coordination, memory problems, and feeling anxious early in the morning. Mr. Fielder made several statements indicating that he did not understand what was happening during the proceedings. (See R. p. 10, lines 17-21; R. p. 12, line 14; R. p. 19, lines 19-20). Furthermore, Mr. Fielder made the following statements to the Court in response to the Trial Judge's indication that Mr. Fielder was fit to stand trial, and that the trial would proceed:

"I do want to put on the record that if I am forced to go forward, I will go forward but I will do it under duress, under terrorism, under threat, and under coercion." (R. p. 29, lines 11-14); "I will repeat, this forces me to go forward, I will do it, but under duress, under terrorism, under threats, under coercion." (R. p. 31, line 25; R. p. 32, lines 1-2).

Thereafter, the Trial Judge indicated that he believed Mr. Fielder was lucid and fit to stand trial. Subsequently, Mr. Fielder, again, stated to the Court that he was being forced to proceed, and the following exchange took place between Mr. Fielder and the Trial Judge:

Mr. Fielder: "First motion, wanted to be on the record that I am being forced to move forward under duress, terrorism, threat of coercion."

The Court: Appreciate your position, I have already addressed that. What is your next motion.

Mr. Fielder: The next motion is that I reject the fact that Your Honor has made a medical determination that I do not and cannot have anxiety...

The Court: Your next motion.

Mr. Fielder: Have you ruled on it[?]

The Court: I will do them one at a time. As far as the Court making a medical determination that you do not have medical anxiety. I am not making any such determination, I am simply stating that whatever medical or mental conditions you suffer from is not so acute or severe as to warrant the delay of these proceedings or to affect your ability to present your case.” (R. p. 36, line 18 – R. p. 37, line 13).

The above-referenced statements show that the issue of whether the Trial Court abused its discretion by failing to order an examination to determine if Mr. Fielder was competent to stand trial, has been raised and ruled upon by the Trial Court. Despite Mr. Fielder’s arguments that he was not fit to stand trial (along with the physician’s note, doctor’s prescription, and Mr. Fielder’s poor physical appearance), the Trial Judge ruled that Mr. Fielder was fit to stand trial without ordering an examination. Therefore, this issue has been preserved for appellate review.

The Court of Appeals overlooked or misapprehended that the issue of whether the Trial Judge unreasonably restricted Mr. Fielder’s ability to testify was preserved for appeal.

“In order for an issue to be preserved for appellate review, it must have been raised to and ruled upon by the trial [court].” State v. Dunbar, 356 S.C. 138, 142, 587 S.E.2d 691 (2003). In

this case, Mr. Fielder clearly desired to testify on his own behalf. Mr. Fielder advised the Court, on more than one occasion that he wished to testify. As stated in the *Final Brief of Appellant*, Mr. Fielder advised the Trial Court that he wanted to testify on his behalf, but that he needed some time to organize his documents. (R. p. 241, lines 11-15). The Trial Court gave Appellant only five minutes to prepare himself. (R. p. 241, lines 20-22). After a brief recess, a bench conference took place. In the Trial Judge's summary of the bench conference, the Trial Judge stated that Mr. Fielder advised the Court that he could not testify, because he needed additional time to organize his materials. Consequently, the Trial Judge prohibited Mr. Fielder from testifying. At no time did Mr. Fielder waive his right to testify on his behalf. To the contrary, Mr. Fielder consistently maintained that he wished to testify, but that he needed some time to prepare his materials. Therefore, the issue of whether the Trial Judge unreasonably restricted Mr. Fielder's ability to testify was raised and ruled upon by the Trial Court, and, thus, was preserved for appellate review.

The Court of Appeals overlooked or misapprehended that the Trial Court abused its discretion by refusing to sequester James Bryan.

"The purpose of the exclusion rule is, of course, to prevent the possibility of one witness shaping his testimony to match that given by other witnesses at the trial..." State v. Huckabee, 388 S.C. 232, 694 S.E.2d 781 (S.C. App., 2010). James Bryan (hereinafter, "Mr. Bryan") clearly had no personal knowledge of Ms. Montgomery's mental competency, and he based it entirely on the testimony of previous witnesses. Nonetheless, Mr. Bryan used testimony from the witnesses who testified before him to shape and bolster his own testimony. At trial, Mr. Bryan made several improper and unfairly prejudicial statements, which were highlighted in the *Final Brief of Appellant*, that were entirely gleaned from previous witnesses' testimony. As an

attorney, Mr. Bryan's testimony was likely given greater weight than the average lay witness. Mr. Bryan's testimony was improper, unfairly prejudicial, and it likely led the jury to believe that he had special knowledge regarding Ms. Montgomery's mental competency. The Trial Court's decision to not sequester Mr. Bryan went against the purpose of the exclusion rule, because Mr. Bryan's testimony was shaped by the State's witnesses who testified before him. Therefore, the Trial Court abused its discretion by failing to sequester Mr. Bryan.

CONCLUSION

For the aforementioned reasons, Appellant requests a rehearing pursuant to Rule 221(a), SCACR.

Respectfully submitted,



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Greenville, South Carolina
January 25, 2018

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LAURENS COUNTY
Court of General Sessions

Honorable Frank R. Addy, Jr., Circuit Court Judge

Case No. 2015-002435

RECEIVED

JAN 25 2018

SC Court of Appeals

The State of South Carolina,

Respondent,

v.

Gregory Fielder,

Appellant.

PROOF OF SERVICE

I certify that I have served a copy of the *Petition for Rehearing* on the Respondent by depositing a copy of it in the United States Mail, postage prepaid, on January 25, 2018, addressed to J. Benjamin Aplin, Esq., P.O. Box 11549, Columbia, SC 29211-1549, Alan McCrory Wilson, Esq., P.O. Box 11549, Columbia, SC 29211-1549, Karen C. Ratigan, Esq. P.O. Box 11549, Columbia, SC 29211-1549, and David A. Fernandez, Esq., P.O. Box 11549, Columbia, SC 29211-1549.


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Greenville, South Carolina
January 25, 2018

The South Carolina Court of Appeals

The State, Respondent,

v.

Gregory Fielder, Appellant.

Appellate Case No. 2015-002435

ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

Paul E. Short, Jr.

J.

U. Ke

J.

John D. Beetham

J.

Columbia, South Carolina

cc:

Darren S. Haley, Esquire

Willie James Peters, III, Esquire

John Benjamin Aplin, Esquire

Alan McCrory Wilson, Esquire

FILED

February 23, 2018