

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Charleston County

Honorable Roger M. Young, Circuit Court Judge

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S.C. SUPREME COURT

MICHAEL DAYSE,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2018-001583

APPENDIX

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STATE OF SOUTH CAROLINA COURT OF GENERAL SESSIONS
COUNTY OF CHARLESTON 2016-GS-10-01276

STATE OF SOUTH)
CAROLINA,)
PLAINTIFF,) TRANSCRIPT OF RECORD
VS.)
SEPTEMBER 7, 2017
CHARLESTON, SC
MICHAEL L. DAYES,)
DEFENDANT.)

B E F O R E:

HONORABLE CLIFTON NEWMAN, JUDGE, AND A
JURY.

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

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DANIEL COOPER, ESQUIRE
Attorneys for the State

ROBERT GAILLIARD, ESQUIRE
Attorney for the Defendant

* * * * *

Ruth C. Weese, RDR
Official Court Reporter
Ninth Judicial Circuit

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1 (The following proceedings were held
2 September 7, 2017, Charleston County, South
3 Carolina, @ 9:31 a.m.)

4 THE DEFENDANT: Mr. Gailliard said he
5 should be here between 9:00 and 9:30. He know he
6 wasn't going to make it, by 9:00, so he should be
7 here by 9:30.

8 THE COURT: It's 9:29. Maybe he's
9 outside the door there.

10 (Brief pause.)

11 MS. ASKINS: Your Honor, looks like
12 there is some shutdown of the state court system
13 Monday at noon. As of right now that's the most
14 recent update we have got.

15 THE COURT: All right. What's the
16 status of things?

17 MS. ASKINS: Your Honor, we are ready
18 to proceed.

19 MR. GAILLIARD: Your Honor, you asked
20 for some voir dire yesterday.

21 THE COURT: I think I asked if you had
22 some.

23 MR. GAILLIARD: Okay. Can I hand them
24 up now?

25 THE COURT: Yes, sir. Anything else

1 before the jury comes in?

2 MS. ASKINS: Nothing from the State,
3 Your Honor.

4 MR. GAILLIARD: Nothing from us, Your
5 Honor.

6 THE COURT: Let's bring them in. If we
7 get an indication that the court may close tomorrow
8 if the case isn't over today a mistrial will be
9 declared. I don't intend to be in the middle of a
10 hurricane or hurricane evacuation.

11 MS. ASKINS: Your Honor, I do have a
12 reduced witness list if you would like to have
13 that.

14 THE COURT: All right. Let's bring
15 them on. I would like to have placed on the record
16 what plea offers have been made and the Defendant's
17 awareness of it, the Defendant's awareness of the
18 possible consequences of being found guilty at
19 trial.

20 MS. ASKINS: Your Honor, since this
21 case is in trial mode I went back to Solicitor
22 Wilson and asked her about whether I could make a
23 plea offer. She indicated at this point I could
24 not make a plea offer. She indicated if the
25 Defendant had something in mind she would consider

1 it, but at this point a plea offer has not been
2 made.

3 THE COURT: I am dealing with people
4 who are trying the case. She is not a trial lawyer
5 in the case, is she?

6 MS. ASKINS: No, she's not, Your Honor.

7 THE COURT: You are making a
8 representation for the State?

9 MS. ASKINS: An offer has not been
10 made.

11 THE COURT: In Missouri v. Frye the
12 Defendant contended that he had been denied
13 effective assistance of counsel after a trial
14 because there was no showing that the plea offers
15 had been communicated by defense counsel to the
16 accused. And the Court determined that a colloquy
17 should take place between the Court and the parties
18 involved regarding that to insure what plea offers
19 were made and if they were made, what the
20 Defendant's response, to insure that they were
21 communicated and if they were communicated what the
22 response was. So I take it, Solicitor, that there
23 have been no plea offers in the case.

24 MS. ASKINS: Yes, Your Honor.

25 THE COURT: All right. Is that right,

1 Mr. Gailliard?

2 (Attorney confers with client.)

3 MR. GAILLIARD: They did not offer him
4 a plea, Your Honor.

5 THE COURT: So, Mr. Dayse, you are
6 charged with exploitation of a vulnerable adult
7 which carries up to five years incarceration and
8 also mandatory restitution. Are you interested in
9 discussing a plea or you want a trial?

10 THE DEFENDANT: I want a trial.

11 THE COURT: All right. Very well. As
12 I have indicated we will start the trial, but if it
13 doesn't end and the court is shutting down I'm
14 going to declare a mistrial and we will move at
15 another time.

16 MS. ASKINS: Yes, I understand, Your
17 Honor. I certainly hope that doesn't happen.

18 THE COURT: Getting a late start
19 doesn't help.

20 What are the bond conditions as far as
21 the Defendant?

22 MR. GAILLIARD: Your Honor, my
23 understanding is the Defendant is on a personal
24 recognizance bond and which we would ask the Court
25 to allow him to remain during the pendency of this

1 trial.

2 THE COURT: What's the State's
3 position?

4 MS. ASKINS: My understanding he was
5 under \$25,000 surety bond.

6 THE COURT: There is a difference.

7 MS. ASKINS: But, Your Honor, actually
8 that was for the initial charge which we are not
9 going forward on. So I do believe it is a personal
10 recognizance bond, yes, Your Honor.

11 Your Honor, if I have could have one
12 moment to speak to Ms. Wilson. I am concerned with
13 the mistrial issue and wasting time. If you give
14 me one moment I will go speak to her.

15 (Off-the-record conference.)

16 THE BAILIFF: Ready for the jury?

17 THE COURT: Yes.

18 MR. COOPER: Do you want to wait for
19 Ms. Askins?

20 THE COURT: I am ready for the jury.
21 The fact that she's on the phone doesn't affect
22 them coming in the courtroom, does it?

23 MR. COOPER: No, Your Honor.

24 (Whereupon the jurors entered the
25 courtroom at 9:40 a.m.)

1 MS. ASKINS: Your Honor, may we
2 approach?

3 THE COURT: Yes.

4 (Off-the-record conference.)

5 THE COURT: Good morning, ladies and
6 gentlemen. You may call the case.

7 MS. ASKINS: Your Honor, the State
8 calls State versus Michael Dayse, exploitation of
9 vulnerable adult, 2016-GS-10-01276.

10 THE COURT: Ladies and gentlemen, you
11 have been called back here today for jury selection
12 in the case of the State versus Michael L. Dayse.
13 Mr. Dayse was indicted by the grand jury of this
14 county charging him with the crime of exploitation
15 of a vulnerable adult. He has pled not guilty and
16 is presumed to be not guilty. He's entitled to a
17 trial. We are here for jury service. The case may
18 be a day, may be two days. I certainly understand
19 the circumstances now that we find ourselves in
20 with regard to the weather and we are going to
21 engage in an effort to select a jury. If any of
22 you have any issues or concerns regarding whether
23 or not you should be called upon based on the
24 weather circumstances during the course of this
25 process we will hear you out and we will see what

1 impact that has on our ability to seat a jury.

2 Mr. Dayse, if you will stand and face
3 the jury panel along with counsel. If you will
4 introduce yourself.

5 MR. GAILLIARD: I'm Robert Gailliard.
6 I'm an attorney in private practice with offices at
7 1072 King Street. My client is Mr. Dayse.

8 THE COURT: State is represented
9 through the solicitor's office.

10 MS. ASKINS: My name is Marian Askins.
11 I'm an assistant solicitor and this is my
12 co-counsel, Daniel Cooper.

13 THE COURT: Thank you. You may be
14 seated. If any member of the jury panel knows any
15 of the parties involved, the solicitor or the
16 lawyers, or Mr. Dayse, if so, please stand. Yes,
17 ma'am.

18 THE JUROR: Juror 173, Amy Mathisen. I
19 know Attorney Askins.

20 THE COURT: Would that affect your
21 ability to be a fair and impartial juror?

22 THE JUROR: No.

23 THE COURT: Thank you. Ladies and
24 gentlemen, the indictment in this case alleges Mr.
25 Dayse knowingly and willfully exploited the victim

1 Ethel Frazier a vulnerable adult through cashing of
2 insurance policies and checks and other acts to the
3 financial detriment of Ms. Frazier who allegedly
4 was a vulnerable adult in the year 2012, 2011,
5 2012. If anyone knows or knew Ms. Frazier who is
6 now deceased, if anyone knows or anything about
7 this case or have heard anything about this case,
8 if so, please stand.

9 Any member of the jury panel, if you
10 have ever taken care of an incapacitated relative
11 in the relative's home or in your own home, if so,
12 please stand. Tell us the circumstances and your
13 juror number.

14 THE JUROR: I'm Juror 188, Ryan Miller.
15 My grandmother has Alzheimer's and my mother and I
16 care for her.

17 THE COURT: Thank you.

18 JUROR NO. 196: Amber Morphew. I took
19 care of my father. He had -- his kidneys were
20 giving out from diabetes. He had to have dialysis
21 every day so I was taking care of him until he died
22 last year.

23 THE COURT: Thank you.

24 THE JUROR: Sara Rosen, No. 229. I
25 took care of my mother in my home the last year

1 and-a-half of her life until she passed away.

2 THE COURT: Thank you.

3 THE JUROR: Lawrence Williams, 291. My
4 wife and I took care of my mother-in-law and my
5 father-in-law until they passed away. One was
6 Alzheimer's, one just old age.

7 THE COURT: Okay.

8 THE JUROR: Charla Smyth, Juror 246. I
9 took care of my mother-in-law, had Parkinson's
10 Disease until she died.

11 THE COURT: Yes, ma'am.

12 THE JUROR: 226. We took care of a
13 great grandmother in my house until she passed and
14 I also am a social worker's assistant at Bishop
15 Gadsden. We care for residents there.

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

17 THE JUROR: Maria Gabriele, No. 92.
18 And I took care of my brother. It wasn't in my
19 home, in his home, he had a brain tumor. He passed
20 away last year.

21 THE COURT: Thank you, ma'am.

22 THE JUROR: Daniel Kirkman, 152. Along
23 with my brother and myself took care of my 87
24 year-old mother up until about six months ago, put
25 her into a nursing home.

1 THE COURT: If any of you or any of the
2 jurors would be unable to be a fair and impartial
3 juror in a case involving an allegation for
4 exploitation of a vulnerable adult, if so, please
5 stand.

6 (No response from jurors.)

7 The possible witnesses who may testify
8 include Dr. Weiss from MUSC Institute of
9 Psychiatry, Officer Christopher Braun of the
10 Charleston Police Department, Charles Goldberg, a
11 lawyer, Eva Lyons, Tamryn Kelley from TransAmerica
12 Insurance, Linda Wiggins from Gene's Pawn Shop,
13 Steve Ginsberg, Golden Bear Realty, Donald
14 Daquigan, Charleston Police Department. Any other
15 prospective witnesses?

16 MS. ASKINS: Your Honor, I don't
17 believe we have heard Defendant's witness list.

18 THE COURT: And if you gave me a list I
19 don't have it, Mr. Gailliard.

20 MR. GAILLIARD: Your Honor, I haven't
21 handed it up, but I will at this point.

22 THE COURT: If any member of the jury
23 panel is a friend, relative, associated or
24 acquaintance of any of those prospective witnesses,
25 please stand. Ms. Rosen?

1 THE JUROR: I served on a board once
2 with Dr. Weiss, but I don't know him very well at
3 all.

4 THE COURT: Thank you.

5 THE JUROR: Juror 120, Janice Hazy. I
6 know Dr. Weiss. I work with him or I have worked
7 with him. I don't know him well.

8 THE COURT: Thank you.

9 THE JUROR: Amy Mathisen, 173. I know
10 Attorney Goldberg.

11 THE COURT: All right. Any additional
12 witnesses, Mr. Gailliard?

13 Vernon Drayton, Clair Byrant, and
14 possibly Michael Dayse. Do you know any of them,
15 friend, relative, associate with any of them,
16 Vernon Drayton, Claire Bryant or Michael Dayse? If
17 so, please stand. I mentioned the weather
18 conditions and the fact that the case may be over
19 today, may not be over today. If any of that would
20 affect your availability to serve, please stand.
21 All right. Juror number?

22 JUROR NO. 188: 188.

23 THE COURT: Yes, sir.

24 THE JUROR: James Lynch, 168.

25 THE COURT: 168. Yes, sir.

1 THE JUROR: James Gasparovic, 97.

2 THE COURT: 97. We will not include
3 188, 168 and 87 in the list. Thank you. Anyone
4 else? If you know of any reason whatsoever why you
5 should not be selected to be on the jury, this
6 jury, please stand. Yes?

7 THE JUROR: Juror 1. If the weather
8 gets bad I get three buses to get here.

9 THE COURT: Okay. We will know if you
10 are missing why you are missing. Thank you. Yes,
11 sir.

12 THE JUROR: Juror 261. I'm not sure if
13 it's relevant, but I did serve on a board for ten
14 years for family services. We did guardianship for
15 youth and seniors. I wanted to make sure that's
16 okay.

17 THE COURT: Your juror number is?

18 JUROR NO. 261: 261.

19 THE COURT: Do you believe that would
20 affect your ability to be fair and impartial?

21 THE JUROR: No, sir.

22 THE COURT: Thank you. Anything else
23 from State or the defense?

24 MS. ASKINS: Nothing from the State,
25 Your Honor.

1 THE COURT: All right. You may
2 proceed.

3 (Brief pause.)

4 THE CLERK: When I call your name and
5 juror number please come to the front of the room,
6 stand in front of the podium, face the jurors. I
7 will ask the question what say you for the State,
8 they will then say please present this juror or
9 please excuse this juror. I will go to the
10 Defendant and say what say you for the Defendant.
11 They will say please seat the juror or please
12 excuse this juror.

13 If you are picked for the jury you will
14 have a seat in the jury box. Bring all items up
15 when you walk up. If you're not picked have a seat
16 back in the audience. Strikes 5 and 5, Your
17 Honor?

18 THE COURT: I think so.

19 THE CLERK: Juror No. 233, Jason
20 Schneider, please come forward. What say you for
21 the State?

22 MS. ASKINS: Please present the juror.

23 THE CLERK: What say you for the
24 Defendant?

25 MR. GAILLIARD: Please seat the juror.

1 THE CLERK: You have been selected.

2 Please have a seat in the jury box, sir. Juror
3 No. 230, Ron Sanderson, please come forward. What
4 say you for the State?

5 MS. ASKINS: Please present this juror.

6 THE CLERK: What say you for the
7 Defendant?

8 MR. GAILLIARD: Please seat this juror.

9 THE CLERK: You have been selected for
10 service, sir. Please have a seat in the jury box.
11 Juror No. 11, Joseph Bagwell, please come forward.
12 What say you for the State?

13 MS. ASKINS: Please present the juror.

14 THE CLERK: What say you for the
15 Defendant?

16 MR. GAILLIARD: Please seat this juror.

17 THE CLERK: You have been selected for
18 service. Please have a seat in the jury box, sir.
19 Juror No. 193, Kristen Morella, please come
20 forward.

21 MS. ASKINS: Please present this juror.

22 THE CLERK: What say you for the
23 Defendant?

24 MR. GAILLIARD: Please excuse this
25 juror.

1 THE CLERK: You have been excused from
2 service. Please have a seat back in the audience,
3 ma'am. Juror No. 44, Nathaniel Carter, please come
4 forward.

5 What say you for the State?

6 MS. ASKINS: Please present the juror.

7 THE CLERK: What say you for the
8 Defendant?

9 MR. GAILLIARD: Please seat this juror.

10 THE COURT: You have been selected.
11 Please have a seat in the jury box. Juror No. 119,
12 Kristen Hartley, please come forward. What say you
13 for the State?

14 MS. ASKINS: Please present this juror.

15 THE CLERK: What say you for the
16 Defendant?

17 MR. GAILLIARD: Please seat this juror.

18 THE CLERK: You have been selected for
19 the jury. Please have a seat in the jury box,
20 ma'am. Juror No. 210, Margaret Pilkington, please
21 come forward. What say you for the State?

22 MS. ASKINS: Please present the juror.

23 THE CLERK: What say you for the
24 Defendant?

25 MR. GAILLIARD: Please seat the juror.

1 THE CLERK: You have been selected for
2 service. Please have a seat in the jury box,
3 ma'am. Juror No. 243, Bradley Sleder, please come
4 forward. What say you for the State?

5 MS. ASKINS: Please present the juror.

6 THE CLERK: What say you for the
7 Defendant?

8 MR. GAILLIARD: Please excuse the
9 juror.

10 THE CLERK: You have been excused from
11 service, sir. Please have a seat back in the
12 audience.

13 MR. GAILLIARD: Your Honor, how many
14 strikes do we get on the defense?

15 THE COURT: Five.

16 THE CLERK: Juror No. 240, Dalbir
17 Singh, please come forward. What say you for the
18 State?

19 MS. ASKINS: Please excuse this juror.

20 THE CLERK: You have been excused from
21 service. Have a seat back in the audience. The
22 State has exhausted one strike. Juror No. 127,
23 Marion Hills, please come forward. What say you
24 for the State?

25 MS. ASKINS: Please present this juror.

1 THE CLERK: What say you for the
2 Defendant?

3 MR. GAILLIARD: Please seat this juror.

4 THE CLERK: You have been selected for
5 service, sir. Please have a seat in the jury box.
6 Juror No. 182, Ralph Mclaughlin, please come
7 forward. What say you for the State?

8 MS. ASKINS: Please seat this juror.

9 THE CLERK: What say you for the
10 Defendant?

11 MR. GAILLIARD: Please excuse this
12 juror.

13 THE CLERK: You have been excused from
14 service. Please have a seat back in the audience.
15 Defense has exhausted three strikes, two remaining.
16 Juror No. 205, Troy Palmer, please come forward.
17 What say you for the State?

18 MS. ASKINS: Please present this juror.

19 THE CLERK: What say you for the
20 Defendant?

21 MR. GAILLIARD: Please seat this juror.

22 THE CLERK: You have been selected for
23 service, sir. Please have a seat in the jury box.
24 Juror No. 54, Catherine Collins, please come
25 forward. What say you for the State?

1 MS. ASKINS: Please present this juror.

2 THE CLERK: What say you for the
3 Defendant?

4 MR. GAILLIARD: Please excuse this
5 juror.

6 THE CLERK: You have been excused from
7 service. Please have a seat back in the audience.
8 Defendant has exhausted four strikes, one
9 remaining.

10 Juror No. 224, Rigney Yancy, please
11 come forward. What say you for the State?

12 MS. ASKINS: Please present the juror.

13 THE CLERK: What say you for the
14 Defendant?

15 MR. GAILLIARD: Please seat this juror.

16 THE CLERK: You have been selected for
17 service, sir. Please have a seat in the jury box.
18 Juror No. 14, Bradley Bantias, please come forward.
19 What say you for the State?

20 MS. ASKINS: Please present the juror.

21 THE CLERK: What say you for the
22 Defendant?

23 MR. GAILLIARD: Please excuse the
24 juror.

25 THE CLERK: You have been excused from

1 service. Please have a seat back in the audience.
2 Defendant has exhausted all their strikes, zero
3 remaining. Juror No. 103, David Gladden, please
4 come forward. What say you for the State?

5 MS. ASKINS: Please present this juror.

6 THE CLERK: Any challenges from the
7 Defendant?

8 MR. GAILLIARD: None.

9 THE CLERK: Please have a seat in the
10 jury box, sir. You have been selected for service.
11 Juror No. 139, David Johnson, please come forward.
12 What say you for the State?

13 MS. ASKINS: Please present this juror.

14 THE CLERK: Any challenges from the
15 Defendant?

16 MR. GAILLIARD: None.

17 THE CLERK: Please have a seat in the
18 jury box. You have been selected for service in
19 this trial. Juror No. 196, Amber Morpew, please
20 come forward. What say you for the State?

21 MS. ASKINS: Please excuse this juror.

22 THE CLERK: You have been excused from
23 service. Please have a seat back in the audience.
24 State has exhausted two strikes, three remaining.
25 Juror No. 120, Janice Hazy, please come forward.

1 What say you for the State?

2 MS. ASKINS: Please present this juror.

3 THE CLERK: Any challenges from the
4 Defendant?

5 MR. GAILLIARD: None.

6 THE CLERK: Please have a seat in the
7 jury box, ma'am. You have been selected for
8 service. Your Honor, that's 12. How many
9 alternates?

10 THE COURT: Two.

11 THE CLERK: Two and one strike?

12 THE COURT: As to each juror and two.

13 THE CLERK: John Rieck, Juror No. 223,
14 please come forward. What say you for the State?

15 MS. ASKINS: Please seat this juror.

16 THE CLERK: What say you for the
17 Defendant?

18 MR. GAILLIARD: Please seat this juror.

19 THE CLERK: You have been selected for
20 service. Please have a seat in the jury box, sir.
21 Juror No. 246, Charla Smith, please come forward.
22 What say you for the State?

23 MS. ASKINS: Please seat this juror.

24 THE CLERK: What say you for the
25 Defendant?

1 MR. GAILLIARD: Please seat the juror.

2 THE COURT: You have been selected for
3 service: Have a seat in the jury box. Your Honor,
4 that makes 14.

5 THE COURT: Any matters of law
6 regarding jury selection?

7 MS. ASKINS: Nothing from the State,
8 Your Honor.

9 MR. GAILLIARD: Nothing, Your Honor.

10 THE COURT: Ladies and gentlemen, you
11 all have been selected. Those of you who are not
12 selected we are through with you for as far as jury
13 duty this week. Thank you very much.

14 THE CLERK: They are good to go, Your
15 Honor. They can go home. We will have them
16 checked out as soon as possible.

17 THE COURT: Thank you very much. You
18 are good to go.

19 (Remaining jurors exited the
20 courtroom.)

21 THE COURT: Ladies and gentlemen, you
22 may stand to be sworn.

23 (Jury sworn by clerk.)

24 THE CLERK: Your Honor, let the record
25 reflect the jury has been sworn.

1 THE COURT: Ladies and gentlemen, you
2 have been selected and sworn to be the jury in the
3 trial of this case. This case comes into court as
4 a result of an indictment returned by the grand
5 jury charging the Defendant with exploitation of a
6 vulnerable adult. He has pled not guilty to the
7 charge. He's presumed to be not guilty. He cannot
8 be found guilty unless the State presents evidence
9 which convinces each of you of his guilt beyond a
10 reasonable doubt. That is the purpose of the
11 trial, to determine whether the State can meet that
12 burden of proof.

13 Now, your primary role during the trial
14 will be to determine the facts of this case and to
15 decide whether the Defendant is guilty or not
16 guilty based on the facts as you find them to be
17 and applying the law as I give it to you. It is
18 important that you not discuss the case in any form
19 or fashion until it has been -- the entire case has
20 been presented and you have been given the green
21 light to deliberate. Look forward to working with
22 you in trying to move this case on as quickly as we
23 can. Move into opening statements.

24 MS. ASKINS: May it please the Court.

25 THE COURT: Yes.

1 MS. ASKINS: Good morning, ladies and
2 gentlemen. I know everybody is worried about the
3 storm. I promise you we will attempt to he move
4 this case on as quickly as possible. But it is an
5 important case and we do appreciate your attention
6 today in listening to the witnesses and giving your
7 full consideration to this case to the State and
8 for the Defendant.

9 As the judge indicated, we are here
10 today on a case concerning exploitation of a
11 vulnerable adult. I just want to give you a little
12 background about what that is. Under South
13 Carolina law it is unlawful to exploit a vulnerable
14 adult. And that means it is unlawful to knowingly
15 and willfully exploit a vulnerable adult. A
16 vulnerable adult is someone who has a physical or
17 mental condition which substantially impairs the
18 person from adequately providing for their own
19 care. It includes someone who is impaired and the
20 ability to care for themselves or to protect
21 themselves due to their age, brain damage or
22 disease, advanced age or physical condition, mental
23 condition or emotional dysfunction.

24 What does exploitation mean? It means
25 an improper, unlawful or unauthorized use of funds,

1 assets, property, power of attorney, guardianship
2 or conservatorship of a vulnerable adult by a
3 person for profit or advantage of that person or
4 another person. That's why we are here today,
5 ladies and gentlemen.

6 This case concerns the financial
7 exploitation of Ms. Ethel Frazier. Ms. Frazier had
8 been diagnosed with Alzheimer's. She also had
9 acute delirium at one point. But her underlying
10 condition is Alzheimer's. And this case concerns
11 the Defendant, Michael Dayse, using a power of
12 attorney that Ms. Frazier had given him in 2010 and
13 going to her insurance company, she had a life
14 insurance policy, and using that power of attorney
15 to cash those insurance policies in. And he
16 received around \$7,000, a little over \$7,000. It's
17 the State's contention it is wrong, it is criminal
18 in two areas. No. 1, that power of attorney, that
19 2010 power of attorney had been revoked by Ms.
20 Frazier. And also he never used any of that money
21 for her or for her benefit and never gave her any
22 of that money.

23 That's why we are here today. You will
24 hear from witnesses. I want to give you a little
25 background of this case. This crime happened in

1 November, December 2011, but there was some
2 background. Ms. Ethel Frazier, she was 88 years
3 old. She was originally from Charleston, was born
4 here, family here, including the Defendant who was
5 her nephew. She was twice widowed, had no
6 children, primarily spent most of her adult life in
7 New York. In 2010 she gave Michael Dayse a power
8 of attorney to assist her in her property, settle
9 her property and her financial matters.

10 Now, in 2007 she was visiting
11 Charleston. She had relatives here. She had some
12 sisters here. I believe the sister had passed
13 away. She was in Charleston. She returned to New
14 York. In March she has a mental breakdown.
15 She was taken to MUSC and was committed to MUSC I
16 believe it's March 20th. She checked into the
17 Institute of Psychiatry geriatric unit and was
18 treated by Dr. Weiss. As I said, he diagnosed her
19 with acute delirium and Alzheimer's. You are going
20 to hear from him today. He's going to talk to you
21 about what Alzheimer's is, her ability. He is also
22 going to tell you she's a vulnerable adult.

23 She was treated. She was stabilized.
24 And about April 7th she was released from MUSC into
25 Mr. Dayse's care. He takes her to [REDACTED] Columbus

1 Street. That's a home over there on East Bay right
2 off of East Bay, Columbus Street, kind of behind
3 the cigar factory, near Trident Tech, in that area.
4 Now, that home was an old family home. It was home
5 that Ms. Frazier had purchased and it was her home
6 and he moves her in there.

7 You are going to hear that on April
8 25th, 2011, two other relatives get concerned about
9 Ms. Frazier. Didn't know where Michael was, they
10 were concerned about her. So they went to [REDACTED]
11 Columbus Street to check on her. It is Debra
12 Winston, Michael's sister is one of those people,
13 and Bernita Dayes his then wife, now his ex-wife.
14 They knock on the windows, on the doors, call out
15 to her. They don't get a response. They are so
16 concerned they call the police. Officer Braun from
17 the Charleston Police Department responds. You are
18 going to hear from him today. He is going to tell
19 you that he does the same thing. He knocks on the
20 door, windows, calls out, doesn't get a response,
21 walking around the house. He is there for
22 15 minutes.

23 He is about ready to leave and he hears
24 her inside. Tried to get her to come to the door.
25 She won't come to the door. So they call a

1 locksmith. The locksmith comes and takes the lock
2 off the door and they enter into the house. He is
3 going to tell you about that house. He is going to
4 tell you that they found Ms. Frazier there. She
5 was sitting in the chair facing a wall. She
6 recognized Bernita and Debra. She was happy to see
7 them. She was a little bit in her own mind, but
8 she was doing okay. She was happy to see them.
9 She recognized them. He is going to tell you that
10 Ms. Frazier was basically barricaded in that house.
11 There was a double lock system on that door and
12 they did not find any keys in that house for her to
13 get out. Since she knew Debra Winston, Ethel
14 Frazier was allowed to go home with Ms. Winston and
15 she stayed there until October 2011. Debra cared
16 for her in her home with her mother, Ms. Frazier's
17 sister, until her mother passed away.

18 You are also going to hear from -- also
19 what happened in May 2011, Ethel Frazier executed a
20 second power of attorney. And this power of
21 attorney indicated that Debra Winston could act on
22 her behalf. It also provided a backup power or
23 attorney. That backup power of attorney said in
24 the event Debra Winston cannot act or is unwilling
25 to act, I give power of attorney to Eva Lyons. Eva

1 Lyons is another sister of Michael Dayse. She
2 lived in Tennessee. So Ethel Frazier has now
3 executed a second power of attorney. Both of those
4 documents were filed in the RMC's office which is
5 basically downstairs in the county building and
6 that's where you file documents concerning
7 property.

8 What happens next in August of 2011,
9 Ethel Frazier goes to see Charles Goldberg who is a
10 local attorney now retired. His office is on Broad
11 Street. She went to see him to revoke Michael
12 Dayse's 2010 power of attorney. She went to see
13 Mr. Goldberg with Debra Winston. You are going to
14 hear from Mr. Goldberg. He knew that there were
15 some mental issues, some concerns, so he questioned
16 her. He brought her into his office outside the
17 presence of Debra Winston and questioned her to
18 make sure she had the capacity to enter into this.
19 That she knew what she was doing and that this is
20 what she wanted to do and wasn't under any undue
21 influence. And you are going to hear from him. He
22 is going to tell you about how he questioned her.
23 And he determined yes, she did have the mental
24 capacity, legal capacity to revoke Michael Dayse's
25 power of attorney. He executed that document. She

1 signed that and that was also filed in the RMC's
2 office.

3 Ladies and gentlemen, he knew about
4 those revocations. What happens next or during
5 this period of time Debra Winston gets sick. She
6 has cancer. She's not able to properly care for
7 her aunt. So in October of 2011 Ms. Frazier goes
8 to Tennessee and lives with Eva Lyons. She
9 remained there until her death in I believe in
10 2016. That's kind of the background.

11 What happens next is the criminal part.
12 November 2011 Michael Dayse writes to TransAmerica
13 Insurance Company who had four life insurance
14 policies on Ethel Frazier's life and says I have
15 power of attorney and I am asking you to cash in
16 these policies and surrender these policies. He
17 provides the power of attorney. TransAmerica had
18 no idea the power of attorney had been revoked.
19 And they cashed the checks to the tune of \$7,008.
20 Those checks -- they issued the checks. Those
21 checks were cashed at Gene's Pawn Shop by the
22 Defendant December 19th, 20th. He went there and
23 he cashed those checks. And, ladies and gentlemen,
24 he didn't spend any of that money for the benefit
25 of Ethel Frazier. You are going to hear he had a

1 duty under his power of attorney to act in her best
2 interests. Power of attorney doesn't mean that I
3 give you power of attorney and now you have all my
4 property. It means you have the right to act in my
5 regard and that's what Ethel Frazier did give him,
6 but she revoked it. His action in cashing that and
7 getting those insurance proceeds, cashing those
8 proceeds and not using them for the benefit of
9 Ethel Frazier is why we are here. And that's
10 exploitation of a vulnerable adult. Thank you.

11 THE COURT: By the defense.

12 MR. GAILLIARD: May it please the
13 Court, Your Honor, good morning, ladies and
14 gentlemen of the jury. The judge is going to
15 charge you at the end of the case and he's going to
16 present you with the indictment that has been true
17 billed which just means that the court, the grand
18 jury found sufficient cause to indict my client for
19 this charge.

20 I want you to take a close look at that
21 indictment. It's going to tell you what
22 exploitation of a vulnerable adult is. Now, there
23 are several things that you are to consider. One,
24 whether or not Ms. Frazier was really vulnerable at
25 the time of this transaction and we are talking

1 about October through December of 2011. The
2 important part about the -- and this is financial,
3 and solicitor will concede that and we will tell
4 you up front that, yes, Mr. Dayse did have a power
5 of attorney. As a matter of fact, he had two, one
6 in South Carolina and one in New York so he had the
7 power to go ahead and surrender the checks.

8 The problem that the prosecution is
9 going to have is that they cannot prove and will
10 not be able to prove to you that he profited from
11 the \$7,000. He is going to testify and his
12 witnesses are going to testify as to what happens
13 with the money. They are just saying that oh,
14 well, it wasn't spent on Ms. Frazier. The Court is
15 going to require you and it's a constitutional duty
16 of yours that she proves the prosecution's case
17 beyond a reasonable doubt. In this case they can't
18 do that because they can't come in and tell you
19 what happened to the \$7,000. They come in and
20 speculate well, we don't think he spent it on her.
21 That's not good enough. They have to come in with
22 affirmative proof, affirmative, he took the \$7,000,
23 he put it in his pocket and, you know, went to Las
24 Vegas and had a great time, went down to Miami and
25 took a trip. They come in and say well, we don't

1 think he spent it on her. We are going to have
2 witnesses that are going to come in and tell you
3 what he did with the \$7,000. And their case is
4 going to fail there because it is not exploitation
5 unless according to the statute he profited from
6 whatever transaction took place. Remember, he had
7 the power to do it. We concede that he cashed the
8 checks. But he spent it for her benefit and not
9 for his own. And therefore after you have heard
10 the entire case we are going to ask you to bring
11 back a verdict of not guilty. Thank you for your
12 time.

13 THE COURT: Call your first witness.

14 MS. ASKINS: State calls Dr. Edgar
15 Weiss.

16 EDGAR WEISS, M.D.

17 having been duly sworn, testifies as follows:

18 THE CLERK: Please state your full name
19 and spell your last name for the record.

20 THE WITNESS: Edgar J. Weiss,
21 W-E-I-S-S.

22 DIRECT EXAMINATION

23 BY MS. ASKINS:

24 Q. Good morning, Dr. Weiss. How are you?

25 A. Fine. Good morning.

1 Q. Doctor, what do you do?

2 A. I am currently retired, have a
3 part-time practice, but am a geriatric
4 psychiatrist.

5 Q. Okay. And what are you retired from?

6 A. I was at the Medical University of
7 South Carolina.

8 Q. What area did you practice in?

9 A. I practiced in geriatric psychiatry. I
10 was the attending psychiatrist on the inpatient
11 unit.

12 Q. And what is geriatric psychiatry?

13 A. It is psychiatry that basically treats
14 people over the age of 60.

15 Q. And how long were you an attending at
16 MUSC?

17 A. From 2003 to 2015.

18 Q. And did you practice in a particular
19 area of MUSC?

20 A. I was -- my main practice, half my day
21 was spent at the Institute of Psychiatry. It was a
22 special unit there for geriatric patients.

23 Q. What is the Institute of Psychiatry?

24 A. It's the psychiatric part of the
25 Medical University of South Carolina.

1 Q. Is that inpatient or outpatient?

2 A. That's the inpatient, but there is also
3 an outpatient part. I also participated in that.
4 I had a clinic and I also visited nursing homes.

5 Q. What did you do at nursing homes?

6 A. I was a consultant mainly and I would
7 see patients when people would be -- were having
8 difficulty they would ask me to give an opinion.

9 Q. And while you were at MUSC the
10 Institute of Psychiatry did you frequently see
11 patients with dementia or Alzheimer's?

12 A. Probably 95 percent of the people I saw
13 in the inpatient unit had some form of dementia.

14 Q. What did you do before MUSC?

15 A. Before MUSC I did the very same thing
16 at Greenville Memorial Hospital for six years.

17 Q. What -- do you remember those dates?

18 A. I went there in 1997 and left in 2003
19 to come here to Charleston.

20 Q. When did you begin your practice of
21 medicine?

22 A. I graduated from the Medical School
23 University of Pittsburgh in 1965.

24 Q. And what did you do after that?

25 A. After that I did a year internship at

1 the VA hospital in Dallas, Texas, three years of
2 psychiatric residency at the Institute of Living in
3 Hartford, Connecticut. And then I was a flight
4 surgeon in the United States Air Force for two
5 years and had a private practice from 1971 to 1993.

6 Q. Where was your private practice?

7 A. That was in Maryland, Silver Springs,
8 Maryland.

9 Q. What brought you to Charleston?

10 A. I left Greenville Memorial basically
11 because I was interested in academic practice and
12 being in an academic institution.

13 Q. Did you also teach at MUSC?

14 A. I taught there when I was attending,
15 but I teach now. I teach seminars twice a month in
16 family therapy.

17 Q. Are you board certified?

18 A. I am board certified in general
19 psychiatry and board certified in geriatric
20 psychiatry.

21 Q. Explain to the jury what board
22 certified means?

23 A. Board certified mean you've finished a
24 training program and after you finish that training
25 program you take an examination that verifies that

1 you have a certain body of knowledge for that
2 specialty.

3 Q. And are there a lot of physicians who
4 are certified in geriatric psychiatry?

5 A. Actually there -- I don't know the
6 exact number, but I wish there were more. We are
7 trying to get more people interested.

8 Q. Have you ever given testimony before?

9 A. Yes.

10 Q. How many times?

11 A. I am sorry, I don't remember, but I
12 have given testimony.

13 Q. More than ten?

14 A. Probably in the range of eight to ten I
15 would think.

16 Q. Have you ever been qualified as an
17 expert before?

18 A. Yes.

19 Q. In what areas?

20 A. Mainly geriatric psychiatry most often.

21 MS. ASKINS: Your Honor, at this time I
22 will move to qualify Dr. Weiss as an expert in the
23 area of geriatric psychiatry.

24 THE COURT: Any voir dire questions?

25 MR. GAILLIARD: No, Your Honor. We

1 stipulate to the doctor's qualifications and his
2 expert witness status.

3 THE COURT: Ladies and gentlemen, he is
4 an expert in the field stated by the solicitor. An
5 expert witness can offer opinions in the field area
6 of their expertise where other witnesses cannot.

7 (STATE'S EXH. 22 marked for
8 identification.)

9 BY MS. ASKINS:

10 Q. Showing you what's been marked as
11 State's Exhibit 22. Please review that.

12 A. (Witness complies with request.)

13 Q. Do you recognize that document?

14 A. Yes.

15 Q. What is that document?

16 A. This is a discharge summary. This is
17 prepared when a patient leaves the hospital,
18 summarizes what the reasons were they came to the
19 hospital, what the diagnosis was, treatment was and
20 their condition on discharge.

21 Q. And is that a document from MUSC?

22 A. Yes, it is.

23 Q. Does MUSC keep and maintain those
24 documents?

25 A. Yes.

1 Q. In the ordinary course of business?

2 A. Yes.

3 MS. ASKINS: Your Honor, at this time I
4 would like to move State's 22 into evidence.

5 THE COURT: Any objection?

6 MR. GAILLIARD: No objection, Your
7 Honor.

8 THE COURT: It is admitted without
9 objection.

10 (STATE'S EXH. 22 in evidence.)

11 BY MS. ASKINS:

12 Q. Who does the document concern?

13 A. This concerns Ethel Frazier.

14 Q. And what were the dates that she was a
15 patient at MUSC?

16 A. She was admitted officially to the
17 inpatient unit on March 22nd.

18 Q. An inpatient at the IOP?

19 A. Yes.

20 Q. Do you remember seeing Ms. Frazier?

21 A. I am sorry, I don't.

22 Q. Does this refresh your memory?

23 A. Yes.

24 Q. Did you treat her?

25 A. Yes.

1 Q. When was she released from MUSC?

2 A. She was discharged on April 8th, 2011.

3 Q. Why was she admitted? What brought her
4 to MUSC?

5 A. She was admitted because of severe
6 agitation and she was hallucinating.

7 Q. Was she evaluated?

8 A. She was evaluated in the emergency room
9 first and then because there wasn't a bed at the
10 Institute of Psychiatry she waited there I think
11 two days and then came over to the Institute of
12 Psychiatry.

13 Q. Okay. What did the evaluation reveal?

14 A. Evaluation revealed that she had some
15 self-destructive thoughts, suicidal ideation, she
16 had illogical thinking and she perseverated meaning
17 that she stated the same thing over and over again.
18 And her insight and judgment was significantly
19 impaired. She did not appear to have depression.

20 Q. Okay. What else did the evaluation
21 show?

22 A. She showed signs of delirium which
23 delirium is basically an acute sudden onset of
24 brain dysfunction while dementia is a more chronic
25 long-term problem. So she was evaluated as having

1 both dementia and delirium.

2 Q. And what causes delirium?

3 A. Many things can cause it. Usually
4 people who become delirious either have an
5 overwhelming stress placed on their brain, could be
6 a chemical agent, some kind of medicine or some
7 thing in the environment, can be infection.
8 Somebody can get pneumonia and the brain can get
9 stressed and a person can become delirious. A
10 person who has dementia which is chronic problems
11 with the brain functioning is more liable to get
12 delirious.

13 Q. And chronic dementia, that means long
14 standing?

15 A. Long standing.

16 Q. And is Alzheimer's a part of delirium?

17 A. Yes. Dementia basically says that a
18 person has dysfunction with the brain that's been
19 going on, usually comes on very slowly and goes on
20 and usually has a poor prognosis. And a person who
21 has dementia can have various causes. Alzheimer's
22 is one cause of dementia.

23 Q. Did she have Alzheimer's?

24 A. She was diagnosed as having Alzheimer's
25 dementia.

1 Q. Did she have any physical ailments?

2 A. Yes, she did. She had high blood
3 pressure, and she was postoperative for a
4 mastectomy for breast cancer.

5 Q. And let's go back to delirium. What is
6 acute delirium?

7 A. Delirium is acute by definition so it's
8 a sudden onset of a decline in brain function.

9 Q. And how was she treated?

10 A. She was treated with Tegretol a hundred
11 milligrams daily, that is in the morning, 200
12 milligrams at bedtime. Her hypertension was
13 treated with a diuretic which is usual treatment
14 and an antihypertensive medication. And she was
15 restarted on some of her medicine for glaucoma.

16 Q. And did her delirium subside?

17 A. Her delirium subsided. She became much
18 calmer. Her delusional thinking stopped and her
19 hallucinations were no longer present which is
20 usually what you see happen.

21 Q. And her Alzheimer's?

22 A. The dementia stays the same.

23 Q. Is there a cure for Alzheimer's?

24 A. No, there's no cure for Alzheimer's.

25 Q. Can you treat Alzheimer's?

1 A. Basically what you do is you try to
2 prevent things like delirium from occurring or try
3 to prevent depression or if a person becomes
4 depressed you treat the depression. But you treat
5 the symptoms. You can't treat the illness.
6 There's nothing to treat the illness.

7 Q. So at discharge she still had
8 Alzheimer's?

9 A. Yes, oh, yes.

10 Q. She would have had Alzheimer's to her
11 death?

12 A. Yes. And probably contributed greatly
13 to her death.

14 Q. Based on your experience is there a
15 normal progression with someone with Alzheimer's?
16 Do they follow a similar path?

17 A. Yes. Well, a person who has
18 Alzheimer's disease the path is a usual gradual
19 decline. There may be worsening from time to time
20 because of the delirium, because of the medical
21 problems that can cause a decline. But it is
22 usually a gradual decline.

23 Q. Can there be good days and bad days
24 with Alzheimer's?

25 A. Yes, there can, yes.

1 Q. Can there be days when someone with
2 Alzheimer's has their full faculties and knows what
3 they are doing?

4 A. Well, I wouldn't say that they have
5 their full faculties because by definition when you
6 have a dementia you are not 100 percent, but you
7 can be less symptomatic. So there could be days
8 where your symptoms of dementia may be less obvious
9 because things are calm. You are not at all
10 experiencing any stress. Your blood pressure,
11 heart disease might be stable and you are not
12 stressed. So you could appear to have no problems
13 unless someone sat and talk to you at great length.

14 Q. Can someone with Alzheimer's have the
15 capacity to enter into a power of attorney?

16 A. We see that all the time, yes.

17 Q. Can someone with Alzheimer's have the
18 capacity to revoke a power of attorney?

19 A. Yes.

20 Q. And what does that mean, have the
21 capacity to you?

22 A. The capacity is a medical term which
23 basically says that someone after examining a
24 person says that they have the capacity to carry
25 out a specific task and so we are often asked could

1 you please evaluate this person's capacity to fill
2 out a durable attorney or health care power of
3 attorney to sign a will. So it's a capacity to do
4 a specific task.

5 Q. You have done that?

6 A. Yes, I have, frequently.

7 Q. Have you determined that people with
8 Alzheimer's, some patients with Alzheimer's have
9 had that capacity?

10 A. Absolutely, yes.

11 Q. How do you determine that?

12 A. Mainly by examination, carry out a
13 psychiatric examination.

14 Q. Ask questions?

15 A. Basically that's a matter of asking
16 questions, sometimes we do some psychological
17 testing and that helps us evaluate the person's
18 functioning.

19 Q. When she was discharged did she have
20 any discharge instructions or restrictions?

21 A. I'm sure she did. She was no longer
22 felt to be a danger to herself or suicidal thinking
23 so there was no need to pay special attention to
24 that. She was not thought to be a threat to others
25 because of her education. And I have to look at

1 this. She was discharged to go home. She needed
2 24 supervision and she was told that she could not
3 drive an automobile.

4 Q. Someone who is diagnosed with
5 Alzheimer's, are they a vulnerable adult?

6 A. Yes.

7 Q. They are diminished in their capacity
8 to act or to care for themselves and act for
9 themselves?

10 A. Well, that depends. So that at the
11 very end they certainly cannot take care of
12 themselves, but it's conceivable that someone with
13 Alzheimer's disease might be in the early stages
14 and may be able to care for themselves. But as
15 time goes on that diminishes, that ability.

16 Q. Still a vulnerable adult?

17 A. But they're vulnerable.

18 Q. Need some assistance in their care?

19 A. Yes.

20 Q. She was under 24-hour care?

21 A. It was recommended that she be
22 supervised for 24 hours.

23 Q. Beg the Court's indulgence?

24 (Off-the-record conference.)

25 MS. ASKINS: Nothing further from the

1 State.

2 THE COURT: By the defense.

3 CROSS-EXAMINATION

4 BY MR. GAILLIARD:

5 Q. Good morning, Dr. Weiss.

6 A. Good morning.

7 Q. Now, did I understand your testimony to
8 say that Alzheimer's was a progressive disease; is
9 that correct?

10 A. That's correct.

11 Q. So if you diagnosed in say March of
12 2011 would you expect the person to be better in
13 August or September of the same year?

14 A. Better with respect to Alzheimer's
15 disease?

16 Q. Yes.

17 A. No. Their Alzheimer's disease will not
18 be better.

19 Q. Will not be better. Now, you mentioned
20 that someone with Alzheimer's could have good and
21 bad days; is that correct?

22 A. That's correct.

23 Q. And that they would have the capacity
24 to do a specific task; is that right?

25 A. They may.

1 Q. Now, tell us, Dr. Weiss, who should
2 make that determination whether or not that person
3 has that specific capacity that you described. Can
4 I do it or can the judge or one of the jurors make
5 that determination?

6 A. Depends on who is asking the question.

7 Q. Sorry?

8 A. Depends on who is asking the question
9 does the person have the capacity. So when she
10 left the hospital it was determined that she did
11 not have the capacity to be left alone for 24 hours
12 so that was that decision about the capacity to be
13 alone and care for herself was made in the hospital
14 by the professional team. Person goes home. She
15 was also told not to drive an automobile. We
16 frequently encounter family members who say she
17 could drive an automobile. They make a decision
18 this person can drive an automobile. We didn't
19 make that decision. They made the decision. So
20 anybody can make a decision that one has the
21 ability or capacity to do something. Are they
22 trained to do it? People are making that decision
23 every day for Alzheimer's patients. They may not
24 have the capacity to make that decision.

25 Q. What I am asking is is it appropriate

1 for me for example to decide if someone who has
2 Alzheimer's can do a specific task? I don't have
3 any training.

4 A. I will say to you as if you were a
5 family member. I would say to you have you
6 consulted with the doctor and asked that question.
7 That's what I will say depending on how dangerous
8 or how complicated the task was. So a complicated
9 task like driving an automobile, a complicated task
10 like working on a hot stove, I will say you have to
11 ask the social worker or the doctor or the nurse
12 does the person have the capacity to do that.

13 Q. So you would recommend that whoever is
14 making the decision that needs at least to consult
15 a doctor?

16 A. If it's a complicated task, yes.

17 Q. And would you consider making a power
18 of attorney or revoking one to be a complicated
19 task?

20 A. Oh, yes.

21 Q. And again you would recommend that
22 whoever made that decision consult with a doctor;
23 is that correct?

24 A. If someone had the capacity to complete
25 a power of attorney I would say that should be

1 done.

2 MR. GAILLIARD: No other questions for
3 this witness, Your Honor.

4 THE COURT: Redirect?

5 REDIRECT EXAMINATION

6 BY MS. ASKINS:

7 Q. Can someone's -- even though it is
8 Alzheimer's, can their condition get stabilized or
9 less agitated if they are in a stable environment?

10 A. Yes.

11 Q. And if they have proper medication?

12 A. Yes.

13 Q. Proper care?

14 A. Yes.

15 Q. And that can calm the dementia?

16 A. Their functioning can improve, yes.

17 MS. ASKINS: Nothing further from the
18 State.

19 THE COURT: Anything further?

20 MR. GAILLIARD: Nothing from the
21 defense, Your Honor.

22 THE COURT: Thank you, sir. Ladies and
23 gentlemen, we are going to ask you to go to the
24 jury room. Please don't discuss the case.

25 (Thereupon, the jury exited the

1 courtroom at 10:49 a.m.)

2 THE COURT: We will take five minutes--
3 or so.

4 (A recess transpired.)

5 THE COURT: Bring the jury.

6 (Whereupon the jury entered the
7 courtroom at 11:05 a.m.)

8 THE COURT: Next witness.

9 MR. COOPER: State calls Officer Chris
10 Braun.

11 CHRIS BRAUN

12 having been duly sworn, testifies as follows:

13 THE CLERK: Please state your full name
14 and spell your last name for the record.

15 THE WITNESS: Chris Brown, B-R-A-U-N.

16 DIRECT EXAMINATION

17 BY MR. COOPER:

18 Q. Good morning. How are you this
19 morning?

20 A. Good, sir.

21 Q. Could you tell the jury where are you
22 currently employed?

23 A. City of Charleston Police Department.

24 Q. What is your position there?

25 A. Senior police officer team one.

1 Q. How long have you been there?

2 A. 2008.

3 Q. Can you describe for the jury what your
4 job entails?

5 A. I'm senior police officer of a training
6 officer and also I'm a basic patrol around the
7 clock. I worked until 8:30 this morning going
8 around rotating.

9 Q. Officer, I want to focus your attention
10 back to April of 2011. Did you happen to respond
11 to [REDACTED] Columbus Street?

12 A. Yes, I did.

13 Q. Why did you respond there?

14 A. I was dispatched to that location in
15 reference to a welfare check for an elderly female.

16 Q. Were you advised the nature of that
17 welfare check before you arrived?

18 A. No.

19 Q. Who did you interact with upon arrival?

20 A. Ms. Bernita Dayse and Debra Winston.

21 Q. What did you learn once you arrived on
22 scene?

23 A. They told me that there was an -- I
24 didn't know her name at the time, it was Ms. Ethel
25 Frazier was inside the building. She had been

1 released from the IOP psychiatric ward for serious
2 dementia I think it was. They said that she was in
3 there and that the homeowner that she was staying
4 with wasn't at the location and they couldn't get
5 ahold of him.

6 Q. Now, just so the jury is able to
7 understand the scene, [REDACTED] Columbus Street, where is
8 that located?

9 A. Between America and East Bay, about
10 maybe three or four houses down towards East Bay.

11 Q. If I were to show you a picture of [REDACTED]
12 Columbus Street, would you recognize it?

13 A. Yes.

14 Q. Your Honor, may I approach the witness?

15 THE COURT: Yes.

16 Q. Show you what's been marked for ID
17 purpose only as State's Exhibit 15. Do you
18 recognize that?

19 A. Yes, I do.

20 Q. What is that?

21 A. [REDACTED] Columbus.

22 Q. Is that how it appeared back in 2011
23 when you responded on the scene?

24 A. Yes. It doesn't look like that now.

25 Q. Your Honor, at this time the State

1 would offer State's Exhibit 15 into evidence.

2 MR. GAILLIARD: Objection unless he can
3 identify when the picture was taken. That's
4 crucial to submitting that into evidence. We don't
5 know when this picture was taken, if it was taken
6 yesterday or five years ago.

7 THE COURT: It is admitted over
8 objection.

9 MR. COOPER: Thank you, Your Honor.
10 May I publish to the jury?

11 THE COURT: Yes.

12 (STATE'S EXH. 15 in evidence.)

13 BY MR. COOPER:

14 Q. Is that the house at [REDACTED] Columbus
15 Street?

16 A. Yes.

17 Q. When you responded it was concerning an
18 individual that was inside that house?

19 A. That's correct.

20 Q. Were they able to -- was the two women
21 and two males, were they able to get inside the
22 house to the lady inside?

23 A. No.

24 Q. Why were they unable to get inside?

25 A. The key holder or the resident that had

1 the key was not on scene. They were not there.

2 Q. About what time of day was this?

3 A. Just after 9:00 p.m.

4 Q. Who was the individual that couldn't be
5 located, the key holder as you termed it?

6 A. Mr. Dayse, Michael Dayse.

7 Q. Can you -- before we get into what you
8 did, can you describe for the jury, I know they
9 have the picture there, but the house and the
10 condition it was in as you observed it that night?

11 A. Yes. You walk on the front porch. You
12 can see through the house. Originally wasn't one
13 complete house. As you walk through the corridor
14 you can see straight through the back. The
15 stairwell to the left, you can see a bunch of old
16 furniture stacked up at the top floor. To the
17 right there was a door. So there was a door lock
18 on the front door even though it went to the
19 entryway which would be normally to an apartment,
20 but it was just a house. So everything else was
21 dark and the house, you could see it was pretty old
22 and I couldn't see through any of the windows there
23 so I ended up walking around the outside of the
24 house just to see if I can see anything at all, any
25 lights on. When I got around to the back door I

1 noticed it was barricaded, completely barricaded,
2 bunch of wood in there. You couldn't get in and
3 out of there.

4 So I am looking for a way to get in.
5 All the windows were above the eyesight. I
6 couldn't see through the windows; I couldn't see
7 any lights and everything was boarded up. I
8 couldn't even tell anybody was actually living in
9 the house. For me personally I don't think it was
10 habitable looking at it with everything boarded up.
11 I didn't think anybody was living there at all.

12 Q. You mentioned the concerns that Ms.
13 Dayes and Ms. Winston conveyed to you when you
14 arrived on the scene. Did you try to ascertain
15 whether there was anybody actually in the
16 residence?

17 A. Yes. They told me that she may have
18 been in there since early in the day. They weren't
19 quite sure how long. And they had said they tried
20 to knock on the windows and doors and such.

21 So I started knocking on the windows
22 and doors and checking everything out. I contacted
23 my sergeant. Sergeant Smith. He came to the
24 location and while they were discussing how to --
25 one was the ex-wife, I believe one was a sister,

1 trying to explain to him what was going on with her
2 I went and tried to get inside the house. I
3 checked the outside already like I said. By the
4 time I made it to the front porch it took me about
5 a good ten minutes to go through and see what I
6 could find out. I am standing on the front porch
7 to the right of the door where that no parking sign
8 is --

9 Q. I am going to interrupt you. You can
10 mark on the screen in front of you. You can
11 indicate for the jury.

12 A. Here is the front door here. And here,
13 this window here, we were standing on the porch up
14 here, all four of us at one time, Sergeant Smith,
15 Deborah Winston and Ms. Bernita Dayes and myself.
16 This window here, I couldn't see through any of the
17 windows. They were pitch black. So I put my
18 flashlight to see if I could get anything out. So
19 started tapping on the window and couldn't see
20 anything, couldn't hear nothing. And then after a
21 little while I heard a little tap back. Tap back.
22 So I told everybody quiet down for a second because
23 they were all talking. I tapped again and I got
24 the same sound but on wood. It wasn't the window.
25 It was on the side of the window.

1 Q. Were you able to make verbal contact
2 with the individual inside the house?

3 A. I yelled through the window to see if I
4 could get anything. I didn't get anything back,
5 just a faint muffle of something. I'm not sure
6 exactly what it was. And I tried to tell her turn
7 the light on. The light eventually came on so we
8 knew we had somebody in the house. Took a while.

9 Q. So what did you do after you figured
10 out there was somebody in fact in the house?

11 A. Well, the front door had a lock on it
12 already so we had to contact a locksmith. A1
13 Locksmith was contacted to come out at that point.

14 Q. So you contacted a locksmith to come
15 out. Why did you not break into the residence?

16 A. We didn't have any immediate duress,
17 something that we know is going on it would be a
18 fire or something like that. We knew that somebody
19 was in there. We just didn't make contact with
20 them for that reason.

21 Q. Once the locksmith was on scene were
22 you able to gain entry to the house?

23 A. Yes. You had to go through the front
24 which there was the first door through the front
25 door and just to the right was another door with a

1 lock on it. You had to go and start on that door
2 to get inside there.

3 Q. Was there anything special about the
4 lock to the door inside the house?

5 A. Yes. Once the locksmith got to the
6 location, started getting into that room there he
7 did open the door. He got in. He had to bum key
8 it, take it off. And it turned out to be a double
9 cylinder dead bolt. There was no key. So the only
10 way to get in was by having a key. We would have
11 had to break the door to get in.

12 Q. What does a double cylinder door lock
13 mean?

14 A. One side -- both sides of the door have
15 a key. People use them for security purposes,
16 really want to lock down either inside or outside.

17 Q. So regardless of which side of the door
18 you were on if you don't have a key you can't
19 unlock it?

20 A. No, you can't. You would have to make
21 forced entry. That's why we called a locksmith.

22 Q. What did you observe once you made your
23 way inside the actual residence?

24 A. Once we opened the door the light was
25 on but Ms. Ethel Frazier was sitting facing away

1 from us which I thought was odd. We were there
2 because she had possible dementia so we weren't
3 sure what was going on. Walked into the room, very
4 small area. Very, very small. This is like a
5 studio apartment, very small, very small kitchen.
6 Very small two bedrooms in the back. With all the
7 furniture there wasn't a lot of room to move. She
8 was sitting there facing away from us facing the
9 wall.

10 Q. Did you make contact with her?

11 A. Yes, made contact, myself and Sergeant
12 Smith went inside. Made sure she was okay. We
13 checked and cleared the back rooms to make sure it
14 was safe.

15 Q. What did you observe her condition to
16 be?

17 A. She was jovial. I don't know how to
18 say it. She was happy, but she was in her own
19 mind. She wasn't out of her mind crazy or jumping
20 around. She was in her own mind and just as sweet
21 as could be. I don't know how to explain it. It
22 was very odd to me.

23 Q. Can you describe the conditions inside
24 the home where you found Ms. Frazier?

25 A. There was no AC in there. The room

1 itself had wooden boards, tables and stuff that
2 were up against the windows and that's what made it
3 so dark in there. They were covered. You couldn't
4 get out of there if you had to. That was actually
5 something I noticed right away. I told Sergeant
6 Smith, I said we got a double cylinder dead bolt
7 lock. You can't get out of here, you are not going
8 to get out of those windows. That's why I couldn't
9 see through the windows and that's when I knocked
10 and I got the wooden back because it was her
11 knocking on the wood. So that was locked down. It
12 was about 90 degrees in there. It was hot.

13 Q. Did you have any indication that Ms.
14 Frazier had a key on her or in that house?

15 A. No.

16 Q. Did you find a key?

17 A. No.

18 Q. Once you got in and was able to observe
19 and made contact with Ms. Frazier what happens
20 next?

21 A. We took her out of the house and Ms.
22 Deborah Winston and Bernita Dayse were going to
23 take custody of her for that time.

24 Q. Were you able to determine what
25 relationship Ms. Dayes and Ms. Winston had with Ms.

1 Frazier?

2 A. I think she said it was her aunt, but I
3 wasn't really sure at the time. The sister was --
4 would have been her aunt.

5 Q. Did she appear to recognize Ms.
6 Winston?

7 A. Yes.

8 Q. And then did you secure the house back
9 after Ms. Frazier was taken into the custody of Ms.
10 Dayse and Ms. Winston?

11 A. Right. The locksmith had to change the
12 cylinder and bolts so the key was not going to
13 maintain that lock. So Sergeant Smith had already
14 taken off and we were getting ready to see her move
15 her back, go with the two ladies. So I called
16 Sergeant Smith back and I asked him, I said what do
17 you want me to do with this key and because Mr.
18 Dayse was not at the scene so I was going to take
19 the two of them to a location that he was at. And
20 he said no, give it to the women which basically I
21 had to give the keys. So the locksmith gave it to
22 them.

23 Q. Beg the Court's indulgence a second.
24 Officer Braun, I have no further questions for you.
25 Thank you. Please answer any questions Mr.

1 Gailliard may have for you.

2 CROSS-EXAMINATION

3 BY MR. GAILLIARD:

4 Q. Good morning, Officer Braun. How long
5 have you worked for the City of Charleston Police
6 Department?

7 A. February 4th, 2008.

8 Q. So talking about nine years now?

9 A. Yes, sir.

10 Q. You have got your report in front of
11 you. Can you give us the date of your visit to [REDACTED]
12 Columbus Street?

13 A. Yes. 4-25-2011, 2118 hours.

14 Q. April 25th, 2011; is that right? Now,
15 you mentioned that there was no key. Did you
16 search the entire residence looking for a key?

17 A. No.

18 Q. How could you conclude that there was
19 no key?

20 A. I didn't see one.

21 Q. Well, was that based upon a search of
22 the residence or just how did you make that
23 conclusion?

24 A. I was there for a welfare check. Once
25 the locksmith took that lock apart he had to put it

1 back together. A key would have been obsolete.

2 Q. Well, what I am asking you, you
3 mentioned that you got there, it was double bolted,
4 there was no key. You indicated she could not get
5 out if she wanted to. My question is did you
6 search the residence to determine that there was no
7 key on the inside?

8 A. No.

9 Q. You did not. Okay. Now, can you tell
10 us what mental condition and physical condition of
11 Ms. Frazier was when you saw her?

12 A. Physically she looked fine, looked
13 normal. Mentally she was in her own mind. She
14 would laugh. She would turn around and start
15 talking about things, I don't know, just kind of
16 get carried away, come back and forth.

17 Q. So it did not appear to you that she
18 had Alzheimer's, did it?

19 A. I'm not sure of that condition. It's
20 a --

21 Q. You thought she was all right?

22 A. It starts and ends. I am not sure what
23 the stage is.

24 Q. You thought she was doing all right
25 when you went there?

1 A. Well, she wasn't speaking to me normal
2 level. Physically she was okay.

3 Q. Now, you are not here to testify about
4 any financial exploitation of Ms. Frazier, are you?

5 A. No. I was there for a welfare check.

6 MR. GAILLIARD: No other questions for
7 this witness, Your Honor.

8 THE COURT: Anything further?

9 MR. COOPER: Beg the Court's indulgence
10 just one second.

11 (Off-the-record conference.)

12 REDIRECT EXAMINATION

13 BY MR. COOPER:

14 Q. Just briefly, Officer Braun. Did Ms.
15 Frazier have a key on her that you were able to
16 find or determine?

17 A. I don't recall.

18 Q. She was unable to unlock the residence
19 for you all?

20 A. That is correct.

21 Q. You had to get a locksmith to open the
22 residence to check on her condition?

23 A. Yes. The only thing she did was turn a
24 light on and went and sat back down facing away
25 from the door.

1 MR. COOPER: No further questions, Your
2 Honor.

3 THE COURT: Anything further?

4 MR. GAILLIARD: Nothing more, Your
5 Honor.

6 THE COURT: Thank you. Next witness.

7 MR. COOPER: State calls Mr. Charles
8 Goldberg.

9 CHARLES GOLDBERG

10 having been duly sworn, testifies as follows:

11 THE CLERK: Please state your full name
12 and spell your last name for the record.

13 THE WITNESS: My name is Charles
14 Goldberg, G-O-L-D-B-E-R-G.

15 DIRECT EXAMINATION

16 BY MR. COOPER:

17 Q. Good morning, Mr. Goldberg. How are
18 you?

19 A. Pretty good. Thank you.

20 Q. Can you tell the jury where do you
21 live?

22 A. I live in West Ashley, Charleston.

23 Q. And then what do you do for a living?

24 A. I'm retired now so I do very little.

25 Q. What did you do before you were

1 retired?

2 A. I was a lawyer.

3 Q. What kind of law did you practice, sir?

4 A. Primarily real estate and probate work.

5 Q. Where did you practice?

6 A. Over at 61 Broad with the Steinberg Law
7 Firm.

8 Q. How long were you a practicing
9 attorney?

10 A. Fifty-six years.

11 Q. When did you retire?

12 A. Two years ago.

13 Q. Did your practice involve working with
14 powers of attorney?

15 A. I did powers of attorney.

16 Q. Can you explain to the jury what is
17 meant by power of attorney?

18 A. Well, it's a document where you give
19 somebody a right to act on your behalf so they can
20 -- of course you want that person to be trustworthy
21 and do what's in your best interest, but that's
22 basically what a power of attorney is.

23 Q. When you say act on your behalf, what
24 kind of actions can that person designate power of
25 attorney take?

1 A. Almost anything that's legal.

2 Q. What kind of duties does the person
3 that's designated power of attorney have to the
4 person who gave them that power?

5 A. Well, the duty is basically a fiduciary
6 or trust relationship with that person.

7 Q. Is that basically a duty to act in the
8 person who gave the power, their best interest?

9 A. Of course.

10 Q. Can you revoke a power of attorney?

11 A. Yes.

12 Q. What would that process entail?

13 A. Well, that would be by written
14 instrument revoking it, same as the power of
15 attorney except you're saying you don't want that
16 person to be the power of attorney anymore.

17 Q. Once those instruments, power of
18 attorney or revocation are drafted, what is done
19 with them? Where are those documents taken?

20 A. Well, what I do is record them in the
21 RMC office where you record deeds and mortgages and
22 documents of that type.

23 Q. Why did you record them in the
24 RMC office?

25 A. Well, to give notice that you're

1 revoking the power. We call it legally we give
2 notice to the world. That's the fancy way we talk
3 about it.

4 Q. Did you have -- I want to focus your
5 attention back to 2011. Did you have the occasion
6 to work with Ms. Ethel Frazier?

7 A. Yes.

8 Q. What was the nature of your involvement
9 with Ms. Frazier?

10 A. Well, let me just say that she came in
11 with two other nice ladies, Deborah Winston and
12 Patricia Polite. They came to my office. Ms.
13 Winston did most of the talking as I recall. And I
14 asked what they were here for and they said they
15 wanted to get rid of a particular person who held a
16 power of attorney for Ms. Frazier.

17 Q. What process did you undertake once you
18 learned that she wished to revoke her power of
19 attorney to Mr. Dayse?

20 A. Well, ordinarily I would draw the
21 instrument while they waited and for her to sign.
22 But I had some concerns because Ms. Winston also
23 showed me some legal documents where Mr. Michael
24 Dayse had applied to the court to have what we call
25 a conservator and guardian appointed for Ms.

1 Frazier. And that concerned me before I would let
2 Ms. Frazier sign anything.

3 Q. What were the nature of your concerns?

4 A. Well, he was basically saying that she
5 was mentally incapacitated and those documents
6 which were legal in nature showed that that was the
7 action that he was bringing through his attorney at
8 that time.

9 Q. Once you had those concerns about her
10 legal capacity what did you do?

11 A. Well, I didn't want her to sign
12 anything until I determined in my own opinion
13 whether she was capable of signing a revocation of
14 power of attorney. I wanted to make sure that she
15 was all right, knew what she was doing actually.

16 Q. Was that something that you did
17 commonly in your practice with powers of attorney
18 to determine whether someone had the capacity to
19 sign a document?

20 A. No, not ordinarily.

21 Q. Was that something that you would do to
22 make sure they did have the capacity?

23 A. Yes.

24 Q. Is that something that other lawyers in
25 a similar profession also would do?

1 A. Sure.

2 Q. Did you obtain identification for Ms.
3 Frazier before you got started with that process?

4 A. Yes, I did.

5 Q. Would you recognize a copy of that if I
6 were to show it to you?

7 A. Probably.

8 Q. Your Honor, may I approach the witness?

9 THE COURT: Yes.

10 BY MR. COOPER:

11 Q. Mr. Goldberg, I am going to show you
12 what has been marked as State's Exhibit 11 for
13 identification purposes only. Do you recognize
14 that?

15 A. Yes.

16 Q. What is that?

17 A. That's a New York State driver's
18 license for Ms. Ethel Frazier with a picture of a
19 lady with the name Ethel Frazier signed under her
20 photograph.

21 Q. Does that appear to be in the same or
22 similar condition as it was when you scanned it
23 back in 2011?

24 A. Yes.

25 MR. COOPER: Your Honor, at this time

1 the State would offer State's Exhibit 11 into
2 evidence.

3 THE COURT: Any objection?

4 MR. GAILLIARD: None.

5 THE COURT: It is admitted.

6 (STATE'S EXH. 11 in evidence.)

7 BY MR. COOPER:

8 Q. Mr. Goldberg, is that Ms. Frazier's
9 driver's license you scanned back in 2011?

10 A. Yes.

11 Q. Did you also happen to take notes from
12 your interaction with Ms. Frazier?

13 A. Yes.

14 Q. Would you recognize those notes if I
15 were to show those to you?

16 A. Yes.

17 Q. Showing you what's been marked for
18 identification purposes only as State's Exhibit 12,
19 do you recognize those documents?

20 A. It is hard to read the handwriting, but
21 that's mine.

22 Q. Would that be notes that you took back
23 in 2011 from your meeting with Ms. Frazier?

24 A. Yes.

25 Q. Appear to be in the same or similar

1 condition as they were back when you took them?

2 A. Yes.

3 MR. COOPER: Your Honor, at this time
4 the State would offer State's Exhibit 12 into
5 evidence.

6 THE COURT: Any objection?

7 MR. GAILLIARD: No objection, Your
8 Honor.

9 THE COURT: It is admitted.

10 (STATE'S EXH. 12 in evidence.)

11 MR. COOPER: May I publish to the jury?

12 THE COURT: Yes.

13 BY MR. COOPER:

14 Q. Mr. Goldberg, if you will help me, if
15 we can go through your notes for that meeting and
16 read them to the jury.

17 A. Sure.

18 Q. We have got that screen in front of you
19 if that's also easier for you.

20 A. You want me to read this?

21 Q. Yes, sir. I can move the page down as
22 we get closer.

23 A. Bad handwriting. "Memo to file
24 8-24-11. Ethel Frazier and Deborah Winston re" I
25 can't read that. "Removing Michael Dayse Deborah's

1 brother who had POA for Ethel."

2 Q. Is POA an abbreviation for power of
3 attorney?

4 A. Yes. "Patricia Polite present.
5 Michael appeared to be guardian -- Michael applied
6 to be guardian and conservator claiming Ethel is
7 incapacitated. And I wrote questions and answers
8 for Ethel after Deborah asked to leave the room."

9 Q. Before we move the page and your notes
10 why did you ask Ms. Winston to leave the room?

11 A. I wanted to make sure that she wasn't
12 trying to influence what Ms. Frazier was saying.

13 Q. So once you started with the questions
14 we are about to get to it was just you and Ms.
15 Frazier in that room?

16 A. Yes. Ms. Polite also left the room as
17 I recall.

18 Q. We can pick up with the questions.
19 Would it be easier if I give you the actual
20 physical document?

21 A. Yes, probably.

22 Q. I wear glasses too so I certainly can
23 sympathize.

24 A. And I'm old. I wrote, "Who day is
25 this?" Of course I meant to say what day is this.

1 Her answer was "Wednesday."

2 Q. Was it in fact Wednesday?

3 A. Yes. "What is the date of today?"

4 Answer and I scratched out something. "It's August
5 but I am not sure of the date."

6 Q. It was August?

7 A. Yes. August the 11. "Who is
8 president?" Her answer was, "Obama."

9 Q. Back in 2011 the president of the
10 United States was Barack Obama?

11 A. Yes. Next question. "Do you know
12 Michael Dayse?" Her answer, "Yes, but he is a mean
13 person." "What do you mean?" Her answer was, "He
14 is trying to get my property and my money." I
15 think the next page is a --

16 Q. I think the second page picks up. It's
17 at the bottom.

18 A. "Do you know if he has a POA?" Her
19 answer was, "I hope he doesn't." "Would you like
20 Deb to take care of your business and property?"
21 Her answer was, "Yes, I do."

22 Q. And when you mentioned Deb you're
23 referring to Deborah Winston?

24 A. That's right. "To do that she needs to
25 be your POA." Her answer was, "That's good."

1 And the next page says 8-24-11
2 continued. "She can't do it because Michael claims
3 he is the POA for you do you know?" Her answer
4 was, "I want her and not him." "In that case do
5 you want to sign anything removing Mike." Her
6 answer was, "I do." "Would you sign a document
7 accomplishing that?" "Yes, thank God." "Is Deb
8 forcing you to get rid of Mike? No. So you want
9 this as your free will?" Answer, "Yes."

10 And then I have note revocation
11 prepared and she signed it in my presence and other
12 witness Pat Polite.

13 Q. I think the next page also except the
14 last two lines is the only thing that's new?

15 A. The first question --

16 Q. I think it picks up.

17 A. "Deb Winston also has a POA dated May
18 2011."

19 Q. So Mr. Dayse had a power of attorney
20 from 2010 that was enacted?

21 A. I believe so. I don't recall.

22 Q. Your note indicates that another POA by
23 Ms. Frazier was enacted for Deborah Winston back in
24 May 2011?

25 A. Yes.

1 Q. And this revocation process was in
2 August 2011?

3 A. That's correct.

4 Q. Would you recognize a copy of the
5 revocation that you prepared?

6 A. I believe I would.

7 Q. Showing you State's Exhibit 3 marked
8 for identification purpose only. Do you recognize
9 that document?

10 A. Yes, I do.

11 Q. What is that?

12 A. It's a revocation of power of attorney.

13 Q. Is that the one that you prepared?

14 A. Yes.

15 Q. How do you know that?

16 A. Well, I'm a witness to it and I also
17 recognize the type.

18 MR. COOPER: Your Honor, at this time
19 State would offer Exhibit 3 into evidence.

20 THE COURT: Any objection?

21 MR. GAILLIARD: No objection.

22 THE COURT: It is admitted.

23 MR. COOPER: May I publish?

24 THE COURT: Yes.

25 (STATE'S EXH. 3 in evidence.)

1 BY MR. COOPER:

2 Q. Thank you, Judge. Mr. Goldberg, is
3 that the revocation of power of attorney that you
4 helped Ms. Frazier file in August 2011?

5 A. That's correct.

6 Q. This would have been the document
7 where --

8 A. That's the recording document. We
9 recorded it in the RMC office for Charleston County
10 and I think it's got the book and page number
11 somewhere on there.

12 Q. And then legally that's what gives the
13 world notice of revocation?

14 A. That's correct.

15 Q. At some point after your meeting with
16 Ms. Frazier did you also happen to draft an
17 affidavit regarding your meeting with her?

18 A. Sometime later, yes.

19 Q. Would you recognize it if I were to
20 show it to you?

21 A. Sure.

22 Q. Show you what's been marked as State's
23 Exhibit 13 for ID purposes only. Do you recognize
24 that?

25 A. Yes.

1 Q. What is that?

2 A. It's an affidavit that I signed on
3 April 2nd, 2012.

4 Q. Does it appear to be in the same or
5 similar condition as it was when you signed it?

6 A. Yes.

7 MR. COOPER: The State would offer
8 State's Exhibit 13 into evidence at this time.

9 THE COURT: Any objection?

10 MR. GAILLIARD: No objection.

11 THE COURT: Admitted.

12 (STATE'S EXH. 13 in evidence.)

13 MR. COOPER: May I publish?

14 THE COURT: Yes.

15 BY MR. COOPER:

16 Q. Thank you, Judge. Mr. Goldberg, I am
17 going to ask you if you could read this for the
18 jury. Is that zoomed in sufficiently?

19 A. I think I can handle this. "Personally
20 appeared before me Charles S. Goldberg who first
21 being sworn to deposes and says one, I am an
22 attorney having practiced for over 53 years. Two,
23 on August 24th, 2011, I met with Ethel Frazier,
24 Deborah Winston and Pat Polite my office located at
25 61 Broad Street in downtown Charleston. Three, the

1 purpose of the meeting was to ascertain if a
2 Michael Dayse could be removed as Ms. Frazier's
3 attorney in fact. Four, I first required Ms.
4 Frazier to present a photo identification document
5 and she presented me with one from the State of New
6 York. A copy is attached hereto and made a part of
7 this affidavit. Five, my next concern was whether
8 Ms. Frazier had the mental capacity to remove Mr.
9 Dayse in view of the fact that she signed a
10 document naming him as her attorney in fact. Six,
11 before interviewing Ms. Frazier I required Ms.
12 Winston to wait in our waiting area away from my
13 office to make sure there was no influence being
14 exerted by Ms. Winston. Seven, I am attaching my
15 notes of the questions and answers between myself
16 and Ms. Frazier. Eight, I determined and concluded
17 that Ms. Frazier was in full control of her mental
18 capacity and knew exactly what she wanted, i.e. a
19 revocation of the document which appeared the name
20 Mr. Dayse as her attorney in fact." And I then
21 signed my name.

22 Q. The date of that document?

23 A. April 2nd, 2012, in front of a notary
24 Ashley King.

25 Q. Thank you for that. Then just so the

1 jury is aware, after your questions and interaction
2 was Ms. Frazier did you conclude that she had the
3 legal capacity to sign such a document?

4 A. Yes. At that date and time I did.

5 Q. Beg the Court's indulgence. I thank
6 you for your time. I don't have any further
7 questions for you. If you would answer anything
8 that Mr. Gailliard has for you.

9 THE COURT: Yes, sir.

10 CROSS-EXAMINATION

11 BY MR. GAILLIARD:

12 Q. Good morning, Mr. Goldberg.

13 A. Mr. Gailliard. How are you?

14 Q. Doing good. Always good to see a
15 member of the old gray haired bar. How are you
16 enjoying retirement?

17 A. It's boring sometimes, but I miss the
18 excitement of all of this.

19 Q. Now, Mr. Goldberg, tell us the
20 circumstances of the preparation of this affidavit
21 that you just went through. Why did you prepare
22 this?

23 A. I don't remember.

24 Q. You don't remember?

25 A. I really don't.

1 Q. You don't usually prepare an affidavit
2 after you have done some legal work in your office,
3 do you?

4 A. Possibly.

5 Q. You don't remember?

6 A. I don't remember the circumstances. It
7 might have been court appearance or what.

8 Q. You don't know why you did this?

9 A. I don't.

10 Q. Okay. Now, you mentioned in your
11 direct testimony that there was a question about
12 Michael Dayse being appointed either conservator or
13 guardian for Ethel Frazier; is that correct?

14 A. That's correct.

15 Q. How did that come to your attention?

16 A. Well, they showed it to me.

17 Q. They showed what to you?

18 A. They showed me a document, a petition
19 to probate court signed by Mr. Dayes or his
20 attorney who was Arthur McFarland.

21 Q. That petition has been filed in the
22 probate court?

23 A. Yes.

24 Q. It had been?

25 A. It had been.

1 Q. And you don't have any idea of the
2 adjudication of that petition, do you?

3 A. No, it was pretty recent. It was
4 August, it was August of 2011, the same month that
5 Ms. Frazier was in my office.

6 Q. So you don't know what the outcome of
7 that petition was; is that correct?

8 A. I eventually did, yes.

9 Q. But at the time that she was in your
10 office you didn't know?

11 A. It was just a petition.

12 Q. It hadn't been adjudicated at that
13 point?

14 A. No, it hadn't.

15 Q. Now, Mr. Goldberg, you have practiced
16 law for over 50 years; is that correct?

17 A. Yes.

18 Q. All right. And in interviewing Ms.
19 Frazier you had some questions about her mental
20 capacity; is that right?

21 A. Yes, based on that petition.

22 Q. On that petition. Now, you did not
23 call in any medical doctor or anyone to determine
24 her mental status, did you?

25 A. No, I didn't.

1 Q. And you determined that on your own?

2 A. Yes, I did.

3 MR. GAILLIARD: Your Honor, no other
4 questions for Mr. Goldberg.

5 THE COURT: Any redirect?

6 REDIRECT EXAMINATION

7 BY MR. COOPER:

8 Q. Mr. Goldberg, as an attorney before you
9 draft legal documents for a client or have them
10 sign are you also under a duty to make sure they
11 are competent?

12 A. Of course.

13 Q. So if you would say allow someone who
14 was not competent that could threaten your ability
15 to practice law?

16 A. No question about it.

17 Q. And in this day and time you went
18 through the process and determined that at that
19 moment in time Ms. Frazier was legally competent?

20 A. She was fine. I mean if they hadn't
21 shown me that petition I would have no question
22 that that lady knew exactly what was going on, what
23 she was there for and of course a few days later I
24 also filed a response to that petition for a
25 conservator and guardian and basically denied that

1 she was mentally incapacitated and filed a
2 counterclaim basically saying that we had revoked
3 the power of attorney.

4 MR. COOPER: Mr. Goldberg, I appreciate
5 your time. Thank you and I have nothing further.

6 MR. GAILLIARD: Nothing further.

7 THE COURT: Thank you, Mr. Goldberg.

8 THE WITNESS: Thank you, Judge. Nice
9 seeing you.

10 THE COURT: Retirement is a full-time
11 job.

12 THE WITNESS: It is, Judge. It's
13 really hard sometimes.

14 THE COURT: I can imagine.

15 THE WITNESS: Like I'm going now. I
16 don't know what I am going to do when I get there.

17 THE COURT: Okay. Next witness.

18 MS. ASKINS: State calls Eva
19 Lyons.

20 EVA LYONS

21 having been duly sworn, testifies as follows:

22 THE CLERK: Please state your full name
23 and spell your last name for the record.

24 THE WITNESS: Eva Lyons, L-Y-O-N-S.

25 DIRECT EXAMINATION

1 BY MS. ASKINS:

2 Q. Good morning.

3 A. Good morning.

4 Q. How are you this morning?

5 A. Great.

6 Q. Eva, where do you live?

7 A. Memphis, Tennessee.

8 Q. What do you do?

9 A. I'm retired.

10 Q. What are you retired from?

11 A. I retired from the Department of
12 Defense and the IRS. Department of Defense I had
13 30 years with them. Defense information systems
14 agency. And I had 15 years with the IRS. So I
15 retired with 45 years and six months and I retired
16 from the IRS as a security policy analyst.

17 Q. Could you scoot up just a little bit
18 and speak into the microphone. I just want to make
19 sure the folks can hear you. Bring you some water.

20 A. Okay.

21 Q. Are you married?

22 A. Yes.

23 Q. Who is your husband?

24 A. Bobby.

25 Q. How long have you been married?

- 1 A. Almost 23 years in December.
- 2 Q. Do you have any children?
- 3 A. We have two adult children.
- 4 Q. How long have you lived in Tennessee?
- 5 A. Almost 20 years.
- 6 Q. Where were you born?
- 7 A. Charleston, South Carolina.
- 8 Q. What is the last time you lived there?
- 9 A. August 1994.
- 10 Q. Are you related to the Defendant?
- 11 A. Yes.
- 12 Q. How are you related to him?
- 13 A. I'm his sister.
- 14 Q. Are you related to Ethel Frazier?
- 15 A. Yes.
- 16 Q. What's that relationship?
- 17 A. Aunt, niece.
- 18 Q. She is your aunt?
- 19 A. Yes.
- 20 Q. And are you related to Deb Winston?
- 21 A. Yes.
- 22 Q. Who is that?
- 23 A. My sister.
- 24 Q. And who was Bernita Dayse?
- 25 A. Michael's ex-wife.

1 Q. Tell the jury a little bit about Ethel
2 Frazier and her early years.

3 A. In her early years she was a very
4 meticulous person. Dressed really well and she was
5 married to John Swinton. That was our first Uncle
6 and they got married around 17 years old. And he
7 passed away and then she married again my uncle
8 Frazier and she married him about 27 years old
9 until his death in 1999. Ethel was also a
10 minister, an ordained minister with the Baptist
11 church and they would have Bible study in their
12 home. She dressed very, very well. And it is
13 amazing with her because she was a very, very smart
14 lady as far as character and investment and things
15 of that nature is concerned. She loved her family,
16 especially her sisters that was alive and her
17 nieces and she was just a great person, you know.
18 Very sharp to be around and to talk to. She had a
19 lot of wisdom in her earlier years and she was just
20 a great person. You had to get to know her and who
21 she was and that relationship was established with
22 me.

23 Q. Did she move to New York at some point?

24 A. She moved to New York at -- her first
25 time that she moved to New York she was 13 years

1 old. And she said she stayed there because my aunt
2 took her there. That was the oldest child. She
3 was the oldest child so she took her to New York at
4 13 and she left New York, came back home at 15,
5 16 years old because her mom wanted her back. And
6 then she got married at 17 years old. And after
7 her first husband passed she went back to New York
8 and she was in New York a total of maybe all my
9 lifetime. All my lifetime she was in New York.
10 She was there for maybe 68, 69 years.

11 Q. Would she come to Charleston?

12 A. Oh, yeah. She would come to Charleston
13 all the time. She would come and visit my mother
14 and her sisters. Every time she'd come she would
15 come with her husband, Uncle Frazier and they had
16 servants so the servants would come with them also
17 and she would always bring us clothes and different
18 little things like that.

19 Q. Was she -- was she close to your
20 mother?

21 A. She was very close to my mother. Her
22 and my mother was like two years apart so they were
23 really close.

24 Q. Did she have a favorite niece?

25 A. Yes. She had a favorite niece, but at

1 first I wasn't the favorite niece, but my --

2 Q. Who was?

3 A. My sister Deborah.

4 Q. Okay. Are you aware of at some point
5 Ms. Frazier executing a power of attorney naming
6 Michael Dayse as her attorney in fact?

7 A. Yes.

8 Q. Approach the witness?

9 THE COURT: Yes.

10 BY MS. ASKINS:

11 Q. Showing you what's been marked as
12 State's Exhibit 1 for ID purposes. Can you review
13 that document.

14 A. (Witness complies with request.) Okay.

15 Q. Do you recognize that?

16 A. Yes.

17 Q. What do you recognize that document to
18 be?

19 A. It's a general power of attorney from
20 the State of South Carolina, County of Charleston
21 and it was signed by Ethel Frazier on the 3rd of
22 September 2010 and it was witnessed by Bernita G.
23 Dayes and Deborah Winston.

24 Q. Who does it name?

25 A. It names Michael Dayes of 192 Rutledge

1 Avenue, Charleston, South Carolina.

2 MS. ASKINS: Your Honor, I would move
3 State's Exhibit 1 into evidence.

4 MR. GAILLIARD: No objection.

5 THE COURT: It is admitted.

6 (STATE'S EXH. 1 in evidence.)

7 MS. ASKINS: Publish, Your Honor?

8 THE COURT: Yes.

9 BY MS. ASKINS:

10 Q. This is the power of attorney naming
11 Michael Dayse in 2010; is that correct?

12 A. That's correct.

13 Q. In 2011 -- did Ethel come to Charleston
14 in the early part of 2011?

15 A. Yes, she did. She came to Charleston
16 in March of 2011. Her sister passed and she came
17 here.

18 Q. Were you aware that in March 2011 that
19 she was checked into MUSC hospital for a couple of
20 weeks?

21 A. Yes.

22 Q. And did you ever discuss that hospital
23 incident with the Defendant, Mr. Dayse?

24 A. Yes.

25 Q. Did he ever tell you why she was

1 admitted to MUSC?

2 A. Yes.

3 Q. What did he say about why she was
4 admitted?

5 A. Well, he told me that he had her power
6 of attorney and he also was the guardian ad litem
7 over her. He never showed me any papers. So she
8 told -- he told me that he was telling her -- he
9 was trying to get her to go with him and she
10 refused to go with him. So they got into an
11 altercation and she knocked him in the face and
12 broke his eyeglasses. So he told me that he went
13 ahead and called the cops and paramedics because
14 she had Alzheimer's and dementia so that's why.

15 Q. From that she was in the hospital?

16 A. Yes.

17 Q. Now, were you aware on April 25, 2011,
18 that officers had to respond to [REDACTED] Columbus Street
19 when she was in that house and Bernita and Deborah
20 could not reach her?

21 A. Yes.

22 Q. And who told you that?

23 A. Deborah.

24 Q. After that where did Deborah go to
25 live?

1 A. Deborah?

2 Q. She went to live with Deborah?

3 A. Yes. Well, to my understanding from
4 what Deborah told me.

5 Q. And when she was living with Deborah
6 did she also come to see you in Tennessee at some
7 point?

8 A. Yes.

9 Q. And why was that?

10 A. Deborah -- my mom died in June of 2011
11 and my aunt was staying with Deborah and right
12 after that around July 2011 Deborah found out that
13 she had cancer, same type of cancer that my mother
14 had and she had to go to the hospital. So she
15 asked me if I would come and get my aunt because I
16 asked her what can I do to help you. And so she
17 asked me if I could get my aunt. So I came and got
18 her in July of 2011.

19 Q. And did she come back to Charleston
20 after that?

21 A. Yes.

22 Q. Were you aware that Ethel executed
23 another power of attorney?

24 A. Yes.

25 Q. Showing you what's been marked as

1 State's Exhibit 2 for ID purposes. Do you
2 recognize that document?

3 A. Yes.

4 Q. What do you recognize that document to
5 be?

6 A. It's a power of attorney and Ethel
7 Frazier's signature is there.

8 Q. Okay.

9 A. State of South Carolina.

10 MS. ASKINS: At this point I move
11 State's Exhibit 2 into evidence.

12 THE COURT: Any objection?

13 MR. GAILLIARD: No objection.

14 THE COURT: It is admitted.

15 (STATE'S EXH. 2 in evidence.)

16 MS. ASKINS: May I publish, Your Honor?

17 THE COURT: Yes.

18 BY MS. ASKINS:

19 Q. With this power of attorney who did
20 Ethel name as having power of attorney?

21 A. Deborah Winston.

22 Q. Did she name anyone else to have power
23 of attorney?

24 A. Yes.

25 Q. Who was that?

1 A. It was me, Eva Lyons.

2 Q. In what capacity would you become power
3 of attorney?

4 A. The power of attorney stated that if
5 Deborah couldn't take care of her then I will come
6 in and take care of her.

7 Q. What's the date of this document?

8 A. May 4th, 2011.

9 Q. Were you aware that in August 2011
10 Ethel revoked Michael Dayse's power of attorney?

11 A. Yes.

12 Q. Showing you State's Exhibit 3, is that
13 the revocation?

14 A. Yes.

15 Q. At some point did Ethel come to live
16 with you permanently in Tennessee?

17 A. Yes.

18 Q. And when was that?

19 A. She came to live with me permanently in
20 Tennessee in October of 2011.

21 Q. And why was that?

22 A. Deborah had a relapse. She had cancer
23 and she had a relapse and she had to go to the
24 hospital. So I came down here to see her in the
25 hospital and my aunt didn't have anybody to take

1 care of her. So when I went to the hospital I
2 asked her what can I do to help you at this time.
3 She said I can't take care of her anymore so, you
4 know, would you take her. I said yeah, okay. So I
5 took her and brought her back to Tennessee with me.

6 Q. Did she ever return to Charleston after
7 that?

8 A. No, she didn't return to Charleston
9 after that.

10 Q. Okay. And was Michael Dayse aware that
11 she was with you in Tennessee?

12 A. Yes.

13 THE COURT: We will stand for a moment.

14 (Brief pause.)

15 Q. Showing you what's been marked for ID
16 purposes as State's Exhibit 10. Would you look at
17 that document, please.

18 A. (Witness complies with request.)

19 Q. Do you recognize that?

20 A. Yes.

21 Q. Is that a document that you authored?

22 A. Yes.

23 Q. And what is that document?

24 A. This is a document informing Michael --

25 Q. Don't tell me what it says. A letter?

1 A. To Michael Dayes.

2 Q. And you wrote that document?

3 A. Yes.

4 MS. ASKINS: Your Honor, at this time I
5 would move into evidence State's Exhibit 10.

6 THE COURT: Any objection?

7 MR. GAILLIARD: No objection.

8 THE COURT: It is admitted.

9 (STATE'S EXH. 10 in evidence.)

10 MS. ASKINS: May I publish?

11 THE COURT: Yes.

12 BY MS. ASKINS:

13 Q. What date did you write this document?

14 A. November 4th, 2011.

15 Q. And who did you write this to?

16 A. Michael Dayse.

17 Q. And can you read this letter that you
18 wrote?

19 A. Yes. It says, "Dear Mr. Dayes. I am
20 writing this letter to inform you that Ethel
21 Frazier is no longer living with Deborah Winston in
22 Charleston, South Carolina. She is currently
23 living with Bob and I in Memphis, Tennessee.
24 Because of Deborah's unwillingness to serve at this
25 time as Aunt Ethel's attorney in fact those

responsibilities have been transferred over to me. You may receive a copy of the recorded power of attorney at the RMC office in Charleston, South Carolina recorded August 17th, 2011 on page 883 or you may visit their website. Since the power of attorney that was given to you by Aunt Ethel had been revoked and replaced with the above mentioned recorded power of attorney and Aunt Ethel has never lived in [REDACTED] Columbus Street except during childhood as her attorney in fact I am requesting that you vacate the property on [REDACTED] Columbus Street, Charleston, South Carolina, 29403 by December 4th, 2011. You may mail the keys by way of certified mail no later than December 4th, 2011 8 a.m. Eastern Standard time to me at Post Office Box 7551143 Memphis, Tennessee, 38175. If you have any questions you may contact me at 901-737-1305. Your cooperation is greatly appreciated. Yours truly Eva Lyons."

Q. You mailed this to Mr. Dayse?

A. Yes.

Q. Did you get a response to that letter?

A. No.

Q. At some point did you learn that some insurance -- life insurance policies had been

1 cashed in by Mr. Dayse?

2 A. Yes.

3 Q. Who did you find that out from?

4 A. From my sister Deborah Winston.

5 Q. And what did you do in response?

6 A. Well, when Deborah mailed me the
7 policies that were cashed in by Michael I
8 immediately called the insurance company and I told
9 them that he was not authorized, you know, to cash
10 in those policies. And I had informed my aunt what
11 he had done. So she got upset behind it. And I
12 told them. I wrote them a letter and I sent them
13 the power of attorney and all the necessary
14 documents to prove that he was aware that his power
15 of attorney had been revoked and went on for some
16 time, you know, but after I notified them and it
17 was like a back and forth thing with me and the
18 insurance company until they decided to make a
19 decision on permanently.

20 Q. Sorry?

21 A. A decision, the insurance company did.

22 Q. And what decision did they make?

23 A. Well, they sent me a form to fill out.
24 Forms I would say to fill out and then have my aunt
25 sign it, let her read it and then we went over to

1 the bank and then we had to certify to the bank
2 that it was her signature and after we did all that
3 I sent it back to the insurance company.

4 Q. What did they do after that?

5 A. They went ahead and reimbursed me for
6 the policies.

7 Q. Did you want to have the policies
8 reinstated?

9 A. No.

10 Q. Go ahead.

11 A. Well, the reason why I didn't have the
12 policies reinstated is because I had already
13 discussed with my aunt where she wanted to be her
14 body to be buried. She did not want to stay in
15 Memphis, Tennessee. She wanted to go back where
16 her husband was. She gave me all the information
17 on that. And so when she came I went ahead and --
18 because I didn't know she had insurance policies.
19 So I went ahead and I started paying for her
20 funeral expenses.

21 Q. Prepay?

22 A. Yes.

23 Q. How much were the total value of those
24 insurance policies that Mr. Dayse cashed in?

25 A. Approximately \$7,000.

1 Q. So TransAmerica decided you're right,
2 those checks had been improperly issued?

3 A. Yes.

4 Q. And then gave that money to you?

5 A. Yes.

6 Q. During this period of time November,
7 December, January of 2012 did Mr. Dayse ever tell
8 you he had cashed in the insurance policies?

9 A. No, he never did.

10 Q. Did he ever ask permission?

11 A. No, he never did.

12 Q. Did he ever send you any money during
13 that period of time from these insurance policies?

14 A. No.

15 Q. Never sent Ethel any money?

16 A. No.

17 Q. Let's talk about [REDACTED] Columbus Street.

18 Who owned [REDACTED] Columbus Street?

19 A. My aunt Ethel Frazier owned [REDACTED] Columbus
20 Street.

21 Q. Is that an old family home?

22 A. Yes.

23 Q. Before Michael moved her into [REDACTED]
24 Columbus Street in April 2011 had anybody been
25 living in that house?

1 A. No, not to my knowledge.

2 Q. After Ethel moved to Tennessee what was
3 going on with [REDACTED] Columbus Street after
4 October 2011?

5 A. Well, my aunt wanted him out so what I
6 did was wrote a letter, you know, actually I wrote
7 a letter to him and I told him that my aunt wanted
8 him out. And then I went ahead and got an attorney
9 here in Charleston and started filing papers of
10 eviction to get him out of the house on Columbus
11 Street. And we completed that I think it was like
12 in December -- January or February of 2012.

13 Q. So he was evicted from [REDACTED] Columbus
14 Street?

15 A. Yes. Could I say one other thing?
16 Because there was someone else living in the house.
17 There was this guy had called me and told me that
18 he was a veteran and he had already paid Michael
19 his rent money and he asked me if he can stay a
20 couple of weeks until he could find another place
21 because he didn't get his could money back. I told
22 him yes and then he got out within that period of
23 time.

24 Q. So Michael was renting out [REDACTED]?

25 A. Yes, he was renting it out.

1 Q. Did he ever send Ethel Frazier any of
2 that money?

3 A. No, not at all.

4 Q. Did he send you any of that?

5 A. Not at all.

6 Q. To care for Ethel Frazier?

7 A. No.

8 Q. So he was evicted?

9 A. Yes.

10 Q. And what did you do with the house
11 after that?

12 A. I sold it.

13 Q. Did you have an agent?

14 A. Yes, I had an agent. Before I sold the
15 house I had come down and surveyed the house and I
16 did that and then once I got through surveying the
17 house then I went ahead and contacted an agent in
18 order to sell it.

19 Q. What was that agent's name?

20 A. His name was Steve Ginsberg.

21 Q. When you came down and looked at the
22 house what was the condition of the house?

23 A. It was deplorable. The house was
24 dilapidated. Then it smelled, you know, really
25 bad. You know, and you could tell it was just

1 messed up because there was never any repair work
2 done in the house like on the porch, you know, the
3 porch needed to be replaced and windows needed to
4 be replaced and upstairs was dark and dirty. Then
5 they had a lot of junk in there. It was just
6 filthy.

7 And there was a building that was next
8 door to the main house where my grandmother lived.
9 I went and I opened the door downstairs was just,
10 you know, I couldn't bear the way it smelled so I
11 didn't go in because it was dark in. I wasn't
12 going to take a chance going upstairs so I didn't
13 look at the upstairs. I only looked at the
14 downstairs.

15 Q. Was that [REDACTED] 1/2?

16 A. [REDACTED] 1/2 Columbus Street.

17 Q. Also owned by?

18 A. It was also owned by my aunt. And the
19 big house, it had the floors needed to be repaired
20 and windows and things of that nature. It was just
21 in bad shape, the house was.

22 Q. Showing you Exhibit 15. Is that [REDACTED]
23 Columbus Street?

24 A. Yes.

25 Q. That's what Ms. Frazier owned?

1 A. Yes.

2 Q. So were you ever in Charleston looking
3 at the house in the spring of 2012?

4 A. Yes.

5 Q. Could you detect if there had been any
6 repairs?

7 A. No. There was no repairs made to that
8 house.

9 Q. Let's talk about Ms. Frazier. When she
10 was in your care did her condition improve?

11 A. It improved tremendously.

12 Q. She still had Alzheimer's?

13 A. Yes.

14 Q. Did you get her on a regular schedule
15 taking care of her, fed her the right thing,
16 daycare?

17 A. Okay. I am following you now. Well,
18 when my aunt came to live with me I was still
19 working so what I did is I started researching
20 daycare centers in the area that was close to me.
21 I found one daycare center. This was an immaculate
22 daycare center. Was like three years old.
23 Applegrove they call it. Alzheimer's and dementia
24 center. And they have a daycare center. So I went
25 over there and checked with the director, spoke

1 with them and they gave me a tour of the facility.
2 It was an absolutely gorgeous facility and so I
3 told her that I was going to have my aunt come
4 staying with me and since I was still working that
5 I needed a place for her to stay while I worked.
6 She couldn't stay by herself. So they went ahead
7 and signed her up. I had to get them all kind of
8 paperwork and everything.

9 So when my aunt came that was already
10 in place for her. I had to pick her up so that was
11 already in place for her. And then I went down
12 after I got her placed in the daycare center, I
13 asked the director if she knew of a geriatric
14 doctor physician that could take of her. So she
15 gave me a recommendation and I went over and I
16 talked to the physician, you know, and she said
17 they would take her in.

18 So then I had that set up so I had
19 everything set up for her when she came with me.

20 Q. Did she go to that geriatric --

21 A. Yes, she did.

22 Q. Until you retired?

23 A. Yes. Until I retired.

24 Q. After you retired did you care for her?

25 A. Oh, yeah.

1 Q. When she was living with you --

2 A. Could I say one thing? Well, before I
3 retired I was telling that them at the daycare
4 center that I think I need to take care of her, you
5 know, by myself because I feel that I could take
6 care of her better. They were trying to encourage
7 me to let her stay there. And we were coming one
8 day from the daycare center and she told me, she
9 said I don't want to go back. I said why not. She
10 said I don't want to go back. So I said okay. So
11 I said all right. Then I will just take care of
12 you myself. So I went ahead and I retired and took
13 care of her for the remainder of her life.

14 Q. When did she pass away?

15 A. Passed in January 2016. It was such a
16 shock when she passed. I can't -- I hate thinking
17 about when she passed because (crying) she really
18 got sick so I took her to the doctor. She said to
19 me -- (crying.)

20 Q. Take a breath.

21 A. She said when we got over there -- she
22 would always ride shotgun in the car. And when we
23 got over there to the hospital I said come on,
24 honey, and get out of the car. She couldn't get
25 out of the car. I said you need to get out of the

1 car. I said okay, come on. I will help you. So I
2 helped her get out of the car. I said you are
3 going to have to help me walk over here so I can
4 get you a chair. She said okay.

5 By the time she got in there she
6 couldn't walk at all. So I got a wheelchair for
7 her and then we went up to the doctor's office
8 (crying) and then the receptionist said what is
9 Ethel doing. She can't walk.

10 So she called the doctor and he went
11 and back there and then --

12 Q. I know you are upset.

13 A. Then the --

14 Q. Just stop and just take a breath.

15 A. Okay.

16 Q. Compose yourself for a minute.

17 A. I was so shocked that she --

18 Q. Did she pass away in January 2016?

19 A. Yes.

20 Q. And when she was living with you who
21 paid for her bills?

22 A. I did.

23 Q. Who provided her food?

24 A. I did.

25 Q. Her daily needs?

1 A. I did.
2 Q. Took her to the doctor?
3 A. Yes.
4 Q. Did Michael ever send her any food?
5 A. No.
6 Q. Ever send any items from her house?
7 A. No.
8 Q. Pay for any food or medication?
9 A. No.
10 Q. Telephone bills?
11 A. No.
12 Q. Did he ever send her any money?
13 A. No.
14 Q. Did he ever call her?
15 A. No.
16 Q. Come visit her?
17 A. No.
18 Q. Ever call you and ask about her?
19 A. No.
20 Q. Beg the Court's indulgence. I don't
21 have further questions. Mr. Gailliard may have
22 some for you.

23 CROSS-EXAMINATION

24 BY MR. GAILLIARD:

25 Q. Good morning.

1 A. Good morning.

2 Q. Michael is your brother; is that
3 correct?

4 A. Yes, sir.

5 Q. Older or younger?

6 A. Younger.

7 Q. Robert was your brother also; is that
8 right?

9 A. Yes.

10 Q. Now, you lived in Tennessee during this
11 time period; is that right?

12 A. Yes.

13 Q. And you told us that Ethel Frazier was
14 the owner of [REDACTED] Columbus Street; is that right?

15 A. That's right.

16 Q. And she lived with Michael at that
17 residence for a time period, didn't she?

18 A. She lived -- she stayed in [REDACTED] Columbus
19 Street.

20 Q. When?

21 A. After she got out of the hospital in
22 2011.

23 Q. And wasn't she there in February of
24 2011, March and April of 2011?

25 A. Not to my knowledge.

1 Q. Where was she at that time?

2 A. In March of 2011 and April of 2011 is
3 my understanding that she was actually in the
4 hospital.

5 Q. She was in the hospital for a couple of
6 weeks; is that correct?

7 A. Yes.

8 Q. And she left to go to the hospital from
9 [REDACTED] Columbus Street; is that right?

10 A. Well, no. To my knowledge -- now I can
11 only say what Michael told me that she had
12 Alzheimer's and dementia and he was her power of
13 attorney and he had the guardian ad litem over her
14 and in March of 2011 -- March of 2011 she -- let me
15 get the time straight because my mom passed away
16 June 2011. And then March 2011 she came down to
17 bury her sister. She didn't go back and forth.

18 Q. Hold on a second. You said she came
19 somewhere in March?

20 A. In March 2011 she came to bury her
21 sister.

22 Q. That's when she came to Charleston?

23 A. Yes.

24 Q. Was she here in February?

25 A. Not to my knowledge.

1 Q. Okay. So she came to Charleston in
2 March of 2011?

3 A. Yes.

4 Q. And where did she stay?

5 A. To my knowledge she stayed -- I think
6 she stayed with Deborah.

7 Q. You don't know where she stayed?

8 A. Not in 2011 because Michael like I
9 stated earlier said that she had dementia and he
10 put her in the hospital in March of 2011.

11 Q. So you don't know where she was staying
12 March of 2011?

13 A. To my knowledge she was staying with
14 Deborah.

15 Q. But you don't know that?

16 A. No, I don't know for a fact. I don't
17 know for a fact because I wasn't there.

18 Q. You told us on direct that there was a
19 physical confrontation that was the impetus of her
20 hospitalization in March of 2011. Michael said she
21 struck him because he wanted her to go somewhere;
22 is that right?

23 A. Exactly.

24 Q. And you don't know where she was
25 staying at that time; is that right?

1 A. She to my knowledge was staying with
2 Deborah at that time.

3 Q. Well, let's be clear. You do not know;
4 is that right?

5 A. To my knowledge she was staying with
6 Deborah at that time.

7 Q. If she returned to the place where she
8 was living and that place was [REDACTED] Columbus Street
9 you will concede that's where she was living; is
10 that right?

11 A. No, I wouldn't concede that.

12 Q. You would not?

13 A. No, I would not.

14 Q. If she was staying with Deborah and she
15 got out of the hospital did you expect they would
16 send her to [REDACTED] Columbus Street rather than with
17 Deborah?

18 A. No. I wouldn't expect them to do that.

19 [REDACTED] and [REDACTED] 1/2 Columbus Street was absolutely
20 filthy. The place was dilapidated. She couldn't
21 stay there. She had to have somebody to stay there
22 with her so I can't imagine her expecting to go
23 there. It was just filthy.

24 Q. You were not in Charleston; is that
25 right?

1 A. No, I was not in Charleston.

2 Q. You don't know where she stayed with
3 Michael, do you?

4 A. It is my understanding that she stayed
5 with Deborah. I can't say anything different from
6 that.

7 Q. Okay. Are you aware that she was
8 removed from [REDACTED] Columbus Street by the police?
9 Anybody ever tell you that?

10 A. No, I wasn't aware of that.

11 Q. Nobody ever told you that?

12 A. No, I was not aware of that.

13 Q. Now, you came to Charleston in February
14 of 2012 to swear out a warrant against your brother
15 about some money; isn't that correct?

16 A. In 2012 -- what happened in 2012 was
17 the vacating of the premises on [REDACTED] Columbus Street.
18 Because it started like in December and it ended --
19 actually started in December of 2011 I think and
20 then it ended in February of 2012.

21 Q. My question, Ms. Lyons, is did you in
22 February of 2012 come to Charleston, go to the City
23 of Charleston Police Department to swear out a
24 warrant against your brother about some checks?

25 A. About the checks. Yes, I did.

1 Q. Did you do that?

2 A. Yes, I did.

3 Q. Now, what was your complaint against
4 Michael about the checks?

5 A. Well, he had cashed in my aunt's
6 insurance policy checks.

7 Q. Um-hmm. And your complaint to the
8 police was what?

9 A. That he had cashed -- I can't remember
10 without looking at the document itself. If you
11 have a copy of the document I could look at it and
12 verify it.

13 Q. You know why you went to make a
14 complaint?

15 A. Beg your pardon?

16 Q. You know why you went to the police
17 department to make that complaint?

18 A. Yes.

19 Q. You don't recall what that was at this
20 point?

21 A. Well, it was concerning the checks, the
22 insurance checks.

23 Q. And you would concede at this point
24 that you are the person that did go and make the
25 complaint; is that right?

1 A. Yes, sir.

2 Q. I want to take a look at this. It is
3 called an incident slash investigation report.

4 MS. ASKINS: May I see that document,
5 Your Honor, before he shows the witness?

6 MR. GAILLIARD: Certainly. You gave it
7 to me so I know that you got it.

8 (Handing.)

9 MS. ASKINS: Okay.

10 BY MR. GAILLIARD:

11 Q. Now, if you would just read for us the
12 first line there starting with February 8th, 2012
13 -- 2011, I am sorry.

14 A. February 8th, 2011, the complainant Eva
15 Lyons.

16 Q. That's you; is that correct?

17 A. Yes, sir.

18 Q. So did you go on that date?

19 A. Yes, sir.

20 MS. ASKINS: Objection, Your Honor.
21 She's not the author of that document. He hasn't
22 moved it into evidence.

23 THE COURT: I sustain the objection.

24 MR. GAILLIARD: Your Honor, may I be
25 heard on that?

1 THE COURT: No, sir.

2 BY MR. GAILLIARD:

3 Q. Now, Ms. Lyons, you're the person that
4 went to Mr. Goldberg's office to have the power of
5 attorney revoked?

6 A. We went to -- me and my husband took
7 Deborah there to Mr. Goldberg's office.

8 Q. You didn't go there and participate in
9 that?

10 A. No, I didn't participate in that.

11 Q. And until today you never knew that the
12 police came and removed Ms. Frazier from [REDACTED]
13 Columbus Street; is that correct?

14 A. Well, to my knowledge -- to my
15 knowledge that is correct. And the reason why I am
16 saying to my knowledge is because that came from
17 Deborah so I'm not sure. I can't speak for Deborah
18 what she said. So to my knowledge no, that is
19 correct I didn't know.

20 Q. Okay. Now, did I understand you in
21 your direct testimony to indicate that the \$7,000
22 that you complained about that Michael got from
23 TransAmerica was actually turned over to you at
24 some point after you made a complaint with them?

25 A. Well, I had sent documentation. They

1 sent me a form like I said earlier. Then I had to
2 fill out the form. I let my aunt read it and then
3 she signed it. Once she did that then I sent the
4 form back to them and then they went ahead with the
5 reimbursement of the check.

6 Q. So the 7,000 that you complained about
7 actually was turned over to you after you contacted
8 TransAmerica; is that right?

9 A. Yes. Once they finished conducting
10 their investigation.

11 Q. So Ms. Frazier got the benefit of the
12 \$7,000?

13 A. Absolutely, she did, yes.

14 Q. And now I'm going to refer you to what
15 is marked as State's Exhibit No. 10. This has
16 already been admitted and I'm going to refer you to
17 paragraph 3 starting with this sentence. Would you
18 read that for us?

19 A. "Since the power of attorney that was
20 given to you by Aunt Ethel has been revoked and
21 replaced with the above mentioned recorded power of
22 attorney and Aunt Ethel has never lived in [REDACTED]
23 Columbus Street except during childhood as her
24 attorney in fact I am requesting that you vacate
25 the property on [REDACTED] Columbus Street, Charleston,

1 South Carolina, 29435 by December 4, 2011."

2 Q. You state in that letter from November
3 of 2011 that your aunt has never lived at [REDACTED]
4 Columbus Street except during childhood?

5 A. Yes, that's what's here, yes.

6 Q. You don't know that; is that right?

7 A. Well, that's my knowledge.

8 Q. You don't know whether she was actually
9 living there?

10 A. To my knowledge.

11 Q. What?

12 A. To my knowledge she never lived there
13 except for childhood to my knowledge.

14 Q. Until today you didn't know that this
15 was where she was removed from; is that right?

16 A. To my knowledge.

17 Q. So you only found that out today?

18 A. Well, I mean to my knowledge. I can
19 only speak for what I know.

20 Q. That's what I mean.

21 A. To my knowledge. I can only speak for
22 what I know. From what I know my aunt never lived
23 in [REDACTED] Columbus Street, never lived in [REDACTED] Columbus
24 Street.

25 Q. All right. Now, Ms. Frazier was the

1 owner of [REDACTED] Columbus Street; is that correct?

2 A. Yes, [REDACTED] Columbus and [REDACTED] 1/2.

3 Q. And you sold that property?

4 A. Yes.

5 Q. And when did you sell it?

6 A. I think I sold it in was 2012. I can't
7 remember the exact month.

8 Q. And how much money was paid for that
9 property?

10 A. Well, it was way below what the asking
11 price was because the house was in bad need of
12 repair. So both the properties were in bad need of
13 repair so it was far below the asking price what I
14 was asking for originally and I think I ended up
15 selling it for either -- both pieces of property
16 for about 230 or 205,000, somewhere up in there. I
17 think it was like 230.

18 Q. \$230,000?

19 A. I think so.

20 Q. And Ms. Frazier was staying with you
21 during that time?

22 A. Yes.

23 Q. And so you used that money to take care
24 of her and your care; is that right?

25 A. Yes.

1 Q. Was she receiving any kind of Social
2 Security?

3 A. Yes, she was.

4 Q. How much was she receiving?

5 A. I think it was like 947 or something.

6 Q. Did she have any other income?

7 A. No.

8 Q. So you used the money that she got from
9 Social Security and money from the sale of the
10 house at [REDACTED] Columbus Street to take care of her; is
11 that right?

12 A. And could I elaborate on that?

13 Q. Please.

14 A. Okay. When -- as far as my aunt is
15 concerned, when I got her she had nothing. She was
16 just was in bad shape. She didn't have any clothes
17 or anything, nothing except for on her back and my
18 sister sent her a few pieces of clothing. She only
19 brought pants so once I sold the house and
20 everything then I began to go shopping with her to
21 develop her wardrobe to where she was, you know,
22 when I knew her. So the majority of her money went
23 to buying clothes, going out, we went out, we ate,
24 you know, just things to bring her back. And then
25 plus her medication.

1 So and what happened with the Social
2 Security originally was not nine something dollars.
3 I had to go down to the Social Security and took
4 her with me because the Social Security was
5 incorrect according to my sister because it had
6 stopped coming. So I went down and checked with
7 Social Security. So they had an error they didn't
8 merge with my uncle and she started getting nine
9 something a month. But the monies that I had was
10 basically used on her for her care and that's
11 including the Social Security because Applegrove
12 was kind of expensive for her staying there.

13 Q. That was the adult daycare that you
14 had?

15 A. Yes.

16 Q. And what was the monthly bill there?

17 A. I think the monthly bill -- I can't
18 remember offhand.

19 Q. Roughly. Two, three, five thousand
20 dollars?

21 A. It wasn't 5,000. It wasn't 2000. I
22 think that monthly bill like 900 and something
23 because I always had to put the difference.

24 Q. Now, you also sold some property Ms.
25 Frazier owned in New York; is that correct?

1 A. That's a lie. Absolute lie.

2 Q. You did not sell?

3 A. That's a lie.

4 Q. Okay. You don't know anything about
5 that?

6 A. That is a lie.

7 Q. All right. Did she have any property
8 in New York?

9 A. Yes, she did.

10 Q. Did you do anything with it?

11 A. No, I didn't.

12 Q. What happened to it?

13 A. The property in New York was sold. The
14 thing that happened with the property in New York,
15 and this is my involvement when I got my aunt,
16 Michael went to New York and he had a power of
17 attorney for her in New York and then he began to
18 close out all the bank accounts in New York and
19 then from what my aunt was telling me after I got
20 her he closed everything she had in New York. He
21 used the power of attorney that she gave him and he
22 closed out everything and when she told me that I
23 asked her why would you give him that? She said
24 because that was Sara's son. I said why. She said
25 I trusted him. She said she actually trusted him.

1 I am getting to the thing. Well, in New York
2 Michael caused her real estate in New York to go in
3 default and when she came back to bury her sister
4 she never had an opportunity to go back because my
5 cousin took all her credentials so she had to stay
6 with Deborah to my knowledge.

7 But Michael was in charge of all her
8 monies and everything in New York. He closed out
9 all the bank accounts and they defaulted on the
10 house. So I didn't have no involvement in that.

11 Q. You are you saying that the property in
12 New York defaulted and went back to the mortgager;
13 is that your testimony?

14 A. My testimony is that Michael -- you
15 would have to ask your client that because he was
16 in charge. He had the power of attorney in New
17 York. He had complete authority to do whatever he
18 did in New York and he closed out all of her bank
19 accounts. When he closed out all of her bank
20 accounts the house went into default. She had a
21 brownstone in New York. It was over 5,000 square
22 feet. She was in Harlem. She was around the
23 corner from the theater. So she had -- her husband
24 left her with everything, but he had the power of
25 attorney in New York and I didn't know that

1 until --

2 Q. I need to be clear.

3 A. You asked me if I sold it.

4 Q. No, I am asking you in particular is it
5 your testimony that the brownstone in New York went
6 into default and went back to the mortgager?

7 A. It went into default because of Michael
8 closing out all her bank accounts. That's my
9 testimony and that is the truth.

10 Q. So you don't know what happened to the
11 property after it went into default?

12 A. Well, after the property went into
13 default my sister Deborah had her at that time
14 after that property went into default.

15 Q. So you don't know what happened to
16 the --

17 A. Well, it was sold. It was sold like
18 this was a property that was worth over \$5 million
19 and had to go for -- I don't remember how much
20 Deborah sold that property for, but because it had
21 so much work to be done and he didn't do the work
22 on the property in New York either because that's
23 what he came up there to do according to my aunt,
24 to do the work in New York and that did not happen.
25 Instead he closed out all her bank accounts.

1 Q. Well, you told me two things now. One,
2 it went into default and two, it was sold by
3 Deborah. Which one was it?

4 A. It was both.

5 Q. How much did Deborah get for selling
6 the property?

7 A. I don't know. I would have to look. I
8 don't recall. I think it was like maybe 400,000 or
9 something.

10 Q. How much of that did she send to you?

11 A. She didn't send anything to me.

12 Q. You were taking care of Ms. Frazier; is
13 that right?

14 A. Well, when the house -- when Michael
15 had the power of attorney in New York I was not
16 taking care of her at that time I don't believe. I
17 would have to look at the dates and stuff because I
18 don't think that I was taking care of her at that
19 time.

20 Q. That's not my question. When the New
21 York property was sold, whenever that was, did you
22 get any of the money?

23 A. No.

24 Q. Okay. Now, when you had Ms. Frazier
25 was she suffering from Alzheimer's?

1 A. Yes.

2 Q. You took her to the doctor and you had
3 that diagnosis for her; is that correct?

4 A. Yes. She had -- the doctors diagnoses
5 was that she had Alzheimer's without disturbances.
6 That's the way it was.

7 Q. Now, since you were her attorney in
8 fact you did not have to go through the probate
9 court in Tennessee to be appointed her conservator,
10 did you?

11 A. Yes, I did.

12 Q. You did?

13 A. Yes.

14 Q. And you had to give regular accountings
15 with the court?

16 A. Yes.

17 Q. And when did the probate court in
18 Tennessee appoint you as her conservator?

19 A. Well, Michael had filed to be her
20 conservator here in Charleston, South Carolina and
21 the judge ruled that my aunt did not have
22 significant connection to South Carolina in order
23 for him to be her conservator so he turned it over
24 to Tennessee to Memphis. And then we went to court
25 in Memphis, Tennessee. I think he challenged the

1 judge's order then.

2 Q. What year was that?

3 A. As far as venue as concerned. Let's
4 see. It was probably in -- I am thinking that it
5 was in 2012, or '13, somewhere up in there.

6 Q. You don't recall that?

7 A. I would have to look at the document.

8 Q. All right.

9 A. Because I had to get a lawyer. I had
10 to get a lawyer for the Columbus Street property
11 and I had to get a lawyer for the conservatorship.

12 Q. So you indicated that your aunt passed
13 in 2016. That was last year sometime; is that
14 right?

15 A. Yes. She passed in January 2016.

16 Q. And you had to do a final accounting
17 for the conservator at the end of 2016; is that
18 correct?

19 A. Not according to Tennessee law.

20 Q. You didn't have to do a final
21 accounting?

22 A. No, not according to Tennessee law. It
23 went to probate court.

24 Q. When you went to probate court how much
25 in assets did Ms. Frazier have at the time of her

1 death?

2 A. I don't remember exactly.

3 Q. Give us a round figure.

4 A. I can't give you a round figure because
5 I don't remember.

6 Q. Who was the personnel representative of
7 her estate?

8 A. I was.

9 Q. You were. And you had to file papers
10 with the court?

11 A. I filed papers with the court, yes, my
12 lawyer because I had during the whole time my aunt
13 was with me I had a lot of legal expenses so I had
14 to get a lawyer for [REDACTED] Columbus Street. I had to
15 get the lawyer for the conservatorship and I had a
16 lot of expenses with lawyers.

17 Q. You don't recall what the final amount
18 of money was that she left you?

19 A. No, I'd have to look at the documents.

20 Q. But there was something?

21 A. No, because -- no. It wasn't, no.

22 Q. There was no money left?

23 A. No, not in my aunt's estate. I don't
24 think, no.

25 Q. There was no money left at all?

1 A. Huh-uh.

2 Q. You are quite certain that your sister
3 Deborah gave you none of the money from the sale?

4 A. No, she didn't give me any money from
5 the sale of that property.

6 Q. Did you file any kind of charge against
7 Deborah?

8 A. Why should I?

9 Q. I am just asking you did you file a
10 charge against Deborah?

11 A. What would be the charges?

12 Q. Ms. Lyons, answer. Did you?

13 A. I am not trying to be combative. I'm
14 not understanding your question.

15 Q. Did you file a charge against Deborah?

16 A. No, I didn't.

17 Q. All right.

18 MR. GAILLIARD: Thank you. No other
19 questions.

20 THE COURT: Any redirect?

21 MS. ASKINS: No, Your Honor.

22 THE COURT: Thank you. You may step
23 down. Next witness.

24 MS. ASKINS: Your Honor, the next
25 witness is via Skype. We need some time to set

1 that up.

2 THE COURT: All right. Set it up.
3 Next witness is via Skype so we will have you step
4 out if anyone needs a break.

5 (Thereupon, the jury exited the
6 courtroom at 12:50 p.m.)

7 THE COURT: We have received notice the
8 courthouse is closed tomorrow. So if we are going
9 to finish today or tomorrow, Monday and Tuesday.
10 So we will press on. Bring the jury.

11 (Whereupon the jury entered the
12 courtroom at 1:00 p.m.)

13 THE COURT: I understand there is
14 further questions by the defense. You may proceed.
15 BY MR. GAILLIARD:

16 Q. Now, Ms. Lyons, you had the occasion in
17 2015 to hire the law firm of Ford, Wallace and
18 Thompson?

19 A. Yes.

20 Q. And why did you hire them?

21 A. I hired them for oh -- I know what.
22 Ford, Wallace and Thompson because of the monies
23 that was received from the New York property my
24 sister Deborah got. I didn't get anything from
25 that. And the purpose of the money was for her to

1 buy a house for my aunt to live in and my mother
2 when she was alive to live in. And Deborah
3 purchased a house in Goose Creek for my aunt to
4 live in and after my mother passed -- well, Deborah
5 had that cancer.

6 So what happened the purpose of the
7 lawyer was that I got sick in December. I had some
8 health challenges so I asked Deborah, I told her
9 that I had to go in the hospital and then I was
10 going to bring my aunt down and she can watch her
11 while I come out of the hospital. So she agreed
12 with those facts. So I took her down to South
13 Carolina because my appointment was Monday and I
14 left her with Deborah and so by the time I got back
15 home and the next day Deborah called me and told me
16 that she needed some money for my aunt to have food
17 and all that. So I didn't understand that. So I
18 said okay. So what I did was wrote a check for
19 \$500 and I sent it to her.

20 Basically after I sent her the check
21 then she cashed the check, she brought my aunt
22 directly back to me, you know. And I couldn't
23 understand it, you know, I said well, I have to go
24 in the hospital because she didn't care. So
25 because of that I told her I said well, the purpose

1 of the house was for my aunt, you know, to stay in.
2 That's why you bought the house for. And I said
3 you mean to tell me you wouldn't help her, you
4 know, and help me until I get out of the hospital?
5 And she refused to do it. So that's what the
6 lawsuit came about was because my aunt was the
7 owner of that particular house even though it was
8 in Deborah's name. She didn't own the house and
9 Deborah wouldn't allow her to stay in it while I
10 went in the hospital. It wasn't like she was going
11 back to stay with Deborah. I just needed somebody
12 to watch her until I came out of the hospital and
13 she refused to do it.

14 Q. Now, Ms. Lyons, I'm going to show you
15 what's titled here a verification of complaint and
16 I need you to identify the signatures on that.

17 A. That's my signature.

18 Q. And how is it titled?

19 A. It's Eva Lyons court appointed
20 conservator for Ethel Frazier.

21 Q. The Court appointment that you are
22 talking about is from the State of Tennessee?

23 A. Yes.

24 THE COURT: Any additional questions?

25 Proceed.

1 BY MR. GAILLIARD:

2 Q. Now, you verified a complaint filed by
3 your attorneys back in 2015 entitled Ethel Frazier
4 versus Deborah Winston. Can you tell us why you
5 were suing your sister at that point?

6 A. Well, at that point it was just like I
7 said. I was scheduled to go in the hospital, you
8 know, and Deborah wouldn't keep her until I got out
9 of the hospital so that was the reason for me
10 filing the complaint against her because the
11 property was bought with the New York monies.
12 That's what I am asking. I didn't get anything
13 from New York but all I wanted her to do is just
14 keep her because she had to have somebody to keep
15 her until I got out of the hospital.

16 Q. Let me be clear now. You were suing
17 Deborah because Deborah got --

18 MS. ASKINS: Your Honor, objection to
19 the question.

20 THE COURT: I didn't hear the question.
21 I can't rule unless I hear a question.

22 BY MR. GAILLIARD:

23 Q. Let's be clear. You were suing your
24 sister Deborah because she got the money for the
25 sale of the New York property; is that correct?

1 THE COURT: What's the nature of the
2 objection?

3 MS. ASKINS: Relevancy. We are here
4 concerning Mr. Dayse and checks that were issued
5 from TransAmerica.

6 THE COURT: Response?

7 MR. GAILLIARD: Yes, Your Honor. Ms.
8 Lyons is the person that brought the complaint in
9 2012 regarding the checks that went to Mr. Dayse.
10 This line of questioning goes to her motivation,
11 what caused her to do that and what was being done
12 with the money that was owed to Ms. Frazier.
13 That's the gravamen of this case.

14 THE COURT: The objection is relevance
15 as to the charge against this Defendant.

16 MR. GAILLIARD: It is relevant, Your
17 Honor, because it speaks to her motivation in
18 bringing this action to start off.

19 THE COURT: The State of South Carolina
20 versus Dayes is the case we are here on.

21 MR. GAILLIARD: That's true and she is
22 the complaining witness with the incident report
23 regarding the \$7,000 in checks.

24 THE COURT: All right. Response?

25 MS. ASKINS: Your Honor, this is the

1 State's case. She did make the complaint. But
2 this is the State's case.

3 THE COURT: All right. We are not
4 going to try a New York City case.

5 MR. GAILLIARD: We are not, Your Honor.
6 But her motive --

7 THE COURT: Well, you have explained
8 your motive and reason for the question. You can
9 answer the question, then we will move on.

10 Objection is overruled. You have asked the
11 question. What's the response?

12 MR. GAILLIARD: Would you have the
13 court reporter just read back the question to her?

14 THE COURT: Do you remember the
15 question?

16 THE WITNESS: No, he was asking me
17 about the -- I need the question repeated.

18 THE COURT: Read the question, please.

19 (The Court Reporter read the question
20 as requested.)

21 THE WITNESS: That's not entirely
22 correct, no. I was suing my sister Deborah because
23 the money she received from the New York property
24 was supposed to buy a house for my aunt and my
25 mother prior to her death. Deborah bought a house

1 and then she bought it in her name and once I got
2 sick and needed someone to take care of her while I
3 was in the hospital until I got myself back
4 together Deborah just flat out refused to do it. I
5 took her down. I was scheduled to go in the
6 hospital that Monday and I got back home and I had
7 all these phone calls, told me that surgery had to
8 be cancelled and stuff like that. And Deborah
9 called me and told me that she needed money for her
10 food. So I said okay. So I wrote her a check for
11 \$500. I sent it to her. She cashed the check and
12 once that happened Deborah brought my aunt back to
13 me. So I didn't understand that. So that's why I
14 went ahead and I sued her, but it had nothing to do
15 with Michael.

16 BY MR. GAILLIARD:

17 Q. It had to do with Deborah getting the
18 money from the New York property and not giving it
19 to Ms. Frazier?

20 A. No, it had to do --

21 MS. ASKINS: Objection, Your Honor.

22 THE COURT: Objection is sustained.

23 MR. GAILLIARD: No other questions for
24 this witness, Your Honor.

25 THE COURT: Any further questions?

1 MS. ASKINS: No, Your Honor.

2 THE COURT: Thank you. You may step
3 down.

4 MS. ASKINS: We have one quick witness.
5 State calls Linda Wiggins.

6 LINDA WIGGINS
7 being first duly sworn, testified as follows:

8 THE CLERK: Please state your full name
9 for the record and spell your last name.

10 THE WITNESS: Linda Wiggins,
11 W-I-G-G-I-N-S.

12 DIRECT EXAMINATION

13 BY MS. ASKINS:

14 Q. Ms. Wiggins, where do you work?

15 A. Gene's Jewelry and Pawn.

16 Q. What is your job there?

17 A. I'm the store manager.

18 Q. How long have you been there?

19 A. Seventeen years.

20 Q. What is Gene's Pawn Shop?

21 A. It's a jewelry store and a pawnshop.

22 Q. And at one point did you all cash
23 checks?

24 A. We did.

25 Q. Do you cash checks any more?

1 A. No, not like these.

2 Q. Do you know the Defendant Michael
3 Dayse?

4 A. Not personally.

5 Q. Do you recall ever having any dealings
6 with him?

7 A. No.

8 Q. In response to a document request for
9 information regarding this case were you able to
10 obtain and review documents concerning Mr. Dayse?

11 A. Yes, ma'am.

12 Q. Did you provide those documents to me?

13 A. Yes, I did.

14 Q. And do those documents relate to
15 transactions in December 2011?

16 A. Yes.

17 Q. Showing you what's been marked as
18 State's Exhibit 6 through 9 for identification
19 purposes only. Will you review those.

20 A. (Witness complies with request.)

21 Q. Do you recognize those?

22 A. Yes, ma'am.

23 Q. What are they?

24 A. They are checks that we cashed for
25 Michael.

1 Q. They were cashed at Gene's Pawn Shop?

2 A. Yes, ma'am.

3 Q. Are those checks you kept and
4 maintained in the normal course of business?

5 A. Yes, ma'am.

6 MS. ASKINS: Your Honor, at this time I
7 would like to move State's Exhibit 6 through 9 into
8 evidence..

9 THE COURT: Any objection?

10 MR. GAILLIARD: To the checks we have
11 objections, Your Honor.

12 THE COURT: To the exhibit as being
13 offered into evidence?

14 MR. GAILLIARD: May I look at them? If
15 there is something more than the checks.

16 MS. ASKINS: They are the checks.

17 MR. GAILLIARD: No objection.

18 THE COURT: Admitted without objection.

19 (STATE'S EXH. 6-9 in evidence.)

20 MS. ASKINS: May I publish it, Your
21 Honor?

22 THE COURT: Yes.

23 BY MS. ASKINS:

24 Q. What is this, Ms. Wiggins?

25 A. That is one of the checks that we

1 cashed.

2 Q. Who is it made out to?

3 A. Ms. Ethel Frazier.

4 Q. And what is the amount on the check?

5 A. \$1,910.89.

6 Q. Who presented this check to Gene's Pawn
7 Shop?

8 A. Yes, ma'am. Michael Dayse.

9 Q. Showing you -- that was Exhibit 6.

10 Showing you Exhibit 7. What is this?

11 A. That is another check that we cashed
12 for him.

13 Q. And made out to whom?

14 A. Ms. Ethel Frazier.

15 Q. And in the amount of?

16 A. \$1,618.66.

17 Q. Who cashed that check?

18 A. Michael Dayse.

19 Q. Above this signature, what is that
20 notation?

21 A. That says that he provided us with a
22 POA.

23 Q. Showing you Exhibit 8, what is this?

24 A. This is another check that we cashed
25 for Michael Dayse for Ethel Frazier.

1 Q. And what was the amount of that check?

2 A. \$1,815.62.

3 Q. Who provided you with that check?

4 A. Michael Dayse.

5 Q. Providing a power of attorney?

6 A. Yes, ma'am.

7 Q. Showing you Exhibit 9, what is this
8 document?

9 A. Another check.

10 Q. What's the amount of this check?

11 A. \$1,663.34.

12 Q. And who provided you with this
13 document?

14 A. Michael Dayse.

15 Q. Again under power of attorney?

16 A. Yes, ma'am.

17 Q. Do you recall what day he provided you
18 with those checks?

19 A. Not off the top of my head.

20 Q. Showing you what's been marked for ID
21 purposes as Exhibit 20, do you recognize this
22 document?

23 A. Yes.

24 Q. What is that document?

25 A. That's our deposit slip for the day

1 that we deposited the checks.

2 Q. And is that a document that Gene's Pawn
3 shop keeps and maintains in the normal and ordinary
4 course of business?

5 A. Yes, ma'am.

6 MS. ASKINS: Your Honor, at this time I
7 would like to move in State's Exhibit 20.

8 THE COURT: Any objection?

9 MR. GAILLIARD: No objection.

10 THE COURT: Admitted without objection.

11 (STATE'S EXH. 20 in evidence.)

12 BY MS. ASKINS:

13 Q. I am showing you State's Exhibit 20 and
14 what's this document?

15 A. This is our deposit slip for December
16 the 19th of 2011.

17 Q. And showing you this next page.

18 A. December the 20th, 2011.

19 Q. Is that a deposit slip?

20 A. Yes.

21 Q. And deposit slips reflect the deposit
22 of the checks that we just discussed?

23 A. Yes, ma'am.

24 Q. Three of them on December 19th?

25 A. Yes.

1 Q. One on December 20th?

2 A. Yes.

3 Q. Does that indicate to you that these
4 were presented on December 19th?

5 A. Yes.

6 Q. Maybe one on the 20th?

7 A. Yes.

8 Q. Would you all have required Mr. Dayse
9 to present an ID?

10 A. Absolutely.

11 Q. Showing you what's been marked as
12 State's Exhibit 19. Do you recognize this
13 document?

14 A. Yes, ma'am.

15 Q. Is this a document that Gene's keeps
16 and maintains in the normal and ordinary course of
17 business?

18 A. Yes, ma'am.

19 MS. ASKINS: State's Exhibit 19 for ID
20 purposes. At this time I would like to move
21 State's Exhibit 19 into evidence.

22 THE COURT: Any objection?

23 MR. GAILLIARD: No objection.

24 THE COURT: Admitted without objection.

25 (STATE'S EXH. 19 in evidence.)

1 MS. ASKINS: May I publish, Your Honor.

2 THE COURT: Yes.

3 BY MS. ASKINS:

4 Q. Please look at State's Exhibit 19.

5 What does this document show?

6 A. His ID with the checks put together so
7 we can prove that they were together.

8 Q. What happened after these checks were
9 cashed?

10 A. He went shopping with us.

11 Q. Okay. Showing you State's Exhibit 21
12 for ID purposes. Do you recognize this document?

13 THE COURT: We will be at ease for a
14 moment.

15 (Brief pause.)

16 Q. Do you recognize the document?

17 A. Yes.

18 Q. What is the document?

19 A. This is the sales history for Michael
20 Dayse with us.

21 Q. Is that document kept and maintained in
22 the normal and ordinary course of business?

23 A. Yes, ma'am.

24 MS. ASKINS: Your Honor, at this time I
25 move State's Exhibit 21 into evidence.

1 THE COURT: Any objection?

2 MR. GAILLIARD: No objection.

3 THE COURT: It is admitted.

4 (STATE'S EXH. 21 in evidence.)

5 BY MS. ASKINS:

6 Q. Looking at this document, what did
7 Michael Dayse purchase on December 19th?

8 A. He purchased a cross band, looks like a
9 ring and a Star of David diamond solitaire.

10 Actually that's two different ones. A diamond
11 solitaire is what he purchased on the 19th.

12 Q. And how much was that ring?

13 A. That ring was \$400.

14 Q. Did he have repairs done on the 19th as
15 well?

16 A. Yes.

17 Q. How much was that?

18 A. A hundred.

19 Q. And there were two things above that
20 ring. What are those for \$25?

21 A. One was he looks like he did an
22 exchange for the cross ring for returning the star
23 of David ring and got the cross ring.

24 Q. So these were purchases that Michael
25 Dayse made the day he cashed these checks?

1 A. Um-hmm, yes.

2 Q. And what about a few days after? Did
3 he come back in?

4 A. Um-hmm, yes.

5 Q. And what did he purchase?

6 A. Mens two-carat diamond ring.

7 Q. How was that?

8 A. \$1,100.

9 Q. And a couple of days after on the 28th
10 what did he purchase?

11 A. A half carat ring.

12 Q. How much was that?

13 A. Four hundred fifty.

14 Q. What about on the 30th?

15 A. Another mens fashion ring.

16 Q. How much was that?

17 A. Two-hundred thirty.

18 Q. Did something happen with the money and
19 your account from these checks?

20 A. Yes.

21 Q. What happened?

22 A. The bank withdrew the money out of our
23 account, all 7,000.

24 Q. So the bank initially paid you all
25 \$7,000?

1 A. Yes.

2 Q. And then snatched it out?

3 A. Yes.

4 Q. And did they give you an explanation
5 for that?

6 A. They said that --

7 MR. GAILLIARD: Your Honor, I object on
8 the grounds of hearsay.

9 THE COURT: The objection is sustained
10 as to what they said.

11 MS. ASKINS: Withdraw the question. No
12 further questions, Your Honor.

13 THE COURT: Cross-examination.

14 CROSS-EXAMINATION

15 BY MR. GAILLIARD:

16 Q. Now, you just went through a sales
17 history for Michael Dayse; is that correct?

18 A. Yes, sir.

19 Q. You are not able to tell us today
20 whether he used money out of the \$7,000 or his own
21 money to make those purchases, are you?

22 A. Well, if we put the money in his hand
23 and then he made the purchases that's what he did.

24 Q. Sorry?

25 A. If we put the money in his hand and

1 then he turned around and made those purchases,
2 that's what I would think. We have times on the
3 transactions. We can look at those.

4 Q. You're saying that you absolutely know
5 or do not know whether or not he used the money of
6 the \$7,000 to make these purchases?

7 A. I would answer the same way I just
8 answered it before.

9 MR. GAILLIARD: Okay. No other
10 questions for this witness.

11 THE COURT: Any redirect?

12 MS. ASKINS: No, Your Honor.

13 THE COURT: Thank you. You may step
14 down. Ladies and gentlemen, we are going to take a
15 one half hour for lunch. Your lunch is there.
16 Take a half hour. We will start back in a half
17 hour. Please do not discuss the case.

18 Before you leave figure out who you
19 want to be the foreperson of the group there while
20 you are eating lunch. Anyone out of the first 12
21 is eligible.

22 (Thereupon, the jury exited the
23 courtroom at 1:22 p.m.)

24 (A luncheon recess transpired.)

25 (Whereupon the jury entered the

1 courtroom at 2:02 p.m.)

2 THE COURT: The foreman is Jason
3 Snyder. All right. Mr. Snyder. As the foreperson
4 you will serve as the spokesperson for the jury,
5 preside over the jury deliberations and complete
6 the verdict form representing the unanimous verdict
7 of the jury. Good. Next witness.

8 MR. COOPER: State calls Steve
9 Ginsberg.

10 STEVE GINSBERG

11 having been duly sworn, testifies as follows:

12 THE CLERK: Please state your full name
13 and spell your last name for the record.

14 THE WITNESS: Steven Ginsberg,
15 G-I-N-S-B-E-R-G.

16 DIRECT EXAMINATION

17 BY MR. COOPER:

18 Q. Good afternoon, Mr. Ginsberg.

19 A. Good afternoon.

20 Q. Can you please tell the jury where you
21 live?

22 A. I live in Mt. Pleasant.

23 Q. Where do you work?

24 A. Currently I'm associated with Golden
25 Bear Reality in Mt. Pleasant.

1 Q. What do you do there?

2 A. I am a real estate agent.

3 Q. How long have you been in real estate?

4 A. Approximately ten years.

5 Q. Did you have the occasion back in 2011,
6 2012 to become involved in the sale of [REDACTED] Columbus
7 Street?

8 A. I did, yes.

9 Q. What was the nature of your
10 involvement?

11 A. I was brought on as the listing agent
12 for the property.

13 Q. And who did you communicate with
14 regarding the property?

15 A. Both Eva Lyons and Deborah Winston.

16 Q. Did you ever go visit the property?

17 A. I did, yes.

18 Q. When did you visit the property?

19 A. Dates I can't be sure. I want to say
20 it was -- based on the dates that I have on the
21 agreement I'd say it was probably March of 2012.

22 Q. Okay. Did you take pictures of that
23 residence?

24 A. I did, yes.

25 Q. Showing you what's already been

1 admitted into evidence as State's Exhibit 15, is
2 that the house at [REDACTED] Columbus Street?

3 A. That's one. I guess one was [REDACTED] and one
4 was [REDACTED] 1/2.

5 Q. Okay. Did you or your office take that
6 picture?

7 A. I took that picture.

8 Q. And provide it to my office?

9 A. Yes.

10 Q. May I approach the witness?

11 THE COURT: Yes.

12 BY MR. COOPER:

13 Q. Showing you what's been marked for ID
14 purposes only as State's Exhibit 17, is that the
15 other property you mentioned?

16 A. That is the other property, yes.

17 Q. What would that address have been?

18 A. I believe that was classified as [REDACTED] 1/2
19 Columbus Street.

20 Q. That's also a picture that your office
21 took?

22 A. Yes, I took it.

23 MR. COOPER: At this time the State
24 would offer State's Exhibit 17 into evidence.

25 MR. GAILLIARD: The only objection is

1 unless he can put a date on the picture. We just
2 don't know when we are talking about.

3 MR. COOPER: The witness testified that
4 it was approximately March 2012 when he took the
5 picture.

6 THE COURT: It is admitted.

7 (STATE'S EXH. 17 in evidence.)

8 MR. COOPER: Thank you, Judge.

9 BY MR. COOPER:

10 Q. Show the jury State's Exhibit 17. That
11 was the [REDACTED] 1/2?

12 A. Yes.

13 Q. Did you have the occasion to go inside
14 the residence?

15 A. I did, several times.

16 Q. Could you describe for the jury the
17 condition of [REDACTED] 1/2 and [REDACTED] Columbus Street?

18 A. [REDACTED] 1/2 I really remember vividly. It
19 was an absolute mess. The downstairs unit where
20 the black door is virtually was nothing in there.
21 I suppose there may have been a bathroom. I don't
22 remember. Virtually was no kitchen. The upstairs
23 was about the same. The main building [REDACTED] was maybe
24 in a little bit better shape, but certainly not
25 great shape. I normally would have taken pictures

1 inside. I normally would have taken about 50
2 pictures for a listing, but in this case there was
3 no point to take pictures because there was nothing
4 to show anybody that would entice them to come and
5 want to look at the properties.

6 Q. Okay. Did it appear, especially
7 concerning [REDACTED] Columbus, the main residence, that
8 any major repairs would have been done to the house
9 recently?

10 A. Not at all.

11 Q. What was the price that you initially
12 listed the property for?

13 A. The original listing was we listed it
14 at \$380,000 based on comps in the neighborhood.

15 Q. And then what did it sell for?

16 A. It had sold for \$230,000. That was
17 after negotiating an original offer of \$210,000
18 negotiating it back up to that.

19 Q. So that's about \$150,000 difference.
20 What was the reason for the difference?

21 A. The condition. The condition. There
22 were no air conditioning or heating unit in either
23 building. There was -- definite termite damage.
24 They really had took quite a bit of work to get it
25 in rehab to a condition that it could be used.

1 Q. Beg the Court's indulgence. Mr.
2 Ginsberg, I appreciate your time. I have no
3 further questions for you. Please answer any the
4 defense may have for you.

5 THE COURT: By the defense.

6 CROSS-EXAMINATION

7 BY MR. GAILLIARD:

8 Q. Good afternoon, Mr. Ginsberg.

9 A. Good afternoon.

10 Q. You have your listing agreement with
11 you?

12 A. I do.

13 Q. And what's the date on that agreement?

14 A. It is March 19th, 2012.

15 Q. All right. And the picture that was
16 just into evidence was taken around the time
17 March 19th, 2012?

18 A. Yes.

19 Q. Was that your first involvement with
20 the property?

21 A. With that property, yes.

22 Q. So you can't testify how the property
23 looked in November or December of 2011; is that
24 correct?

25 A. No, I could not.

1 Q. And the property did sell for \$230,000?

2 A. Correct.

3 Q. And who was the listed owner of that
4 property?

5 A. At the time that we sold it?

6 Q. Yes.

7 A. It was Ethel Frazier.

8 MR. GAILLIARD: No other questions for
9 this witness, Your Honor.

10 THE COURT: Redirect?

11 MR. COOPER: Nothing from the State.

12 No further questions, Your Honor.

13 THE COURT: Thank you, sir.

14 MS. ASKINS: State calls Sergeant
15 Daquigan.

16 DONALD DAQUIGAN

17 having been duly sworn, testifies as follows:

18 THE CLERK: Please state your full name
19 and spell your last name for the record.

20 THE WITNESS: Donald Frank Daquigan,
21 D-A-Q-U-I-G-A-N.

22 DIRECT EXAMINATION

23 BY MS. ASKINS:

24 Q. Good afternoon, Sergeant Daquigan.

25 What do you do?

1 A. I work for the Charleston Police
2 Department. I work out of the central detective
3 division under the white collar crime unit.

4 Q. You are a detective?

5 A. Yes, ma'am.

6 Q. How long have you been a police
7 officer?

8 A. Forty-two and-a-half years.

9 Q. How long have you been a detective?

10 A. Twenty-five.

11 Q. And how long have you worked in the
12 white collar unit?

13 A. Twenty-five years.

14 Q. Tell the jury what the white collar
15 unit is?

16 A. The white collar crime unit deals with
17 any type of financial crimes such as forgeries,
18 breach of trust, and includes vulnerable adults
19 when it has to do with finances. Any other type of
20 financial crimes that you could name we
21 investigate.

22 Q. Are you familiar with the case
23 involving Mr. Dayse?

24 A. Yes, ma'am.

25 Q. You have been here all day today?

1 A. Yes, ma'am.

2 Q. You are the case agent?

3 A. Yes, sir.

4 Q. Did the investigation?

5 A. Yes, ma'am.

6 Q. Did you do an incident report regarding
7 that case?

8 A. I didn't do the original incident
9 report. I did what they call supplemental reports
10 which is followup investigation type of incident
11 report.

12 Q. Showing you State's Exhibit 23 for
13 identification purpose, do you recognize this
14 document?

15 A. Yes, ma'am. That's my supplemental
16 report, one of my supplemental reports.

17 Q. When did -- how did the case come
18 about?

19 A. I think it was February 9th, 2012, we
20 received a report from Ms. Lyons in reference to a
21 victim Ms. Frazier. During the course of the
22 investigation during the report was written it
23 stated there was some checks that were cashed and
24 that Ms. Lyons had power of attorney over the
25 victim at the time and that she did not authorize

1 these checks to be cashed. The case came to the
2 white collar crime unit and was assigned to me and
3 I took over the investigation.

4 Q. What did you do in the course of your
5 investigation?

6 A. First thing we normally do is call the
7 complainant or victim. In this case I called and
8 spoke to her and she explained to me what was going
9 on. That at some point that Mr. Dayse had
10 contacted the insurance company and told them that
11 he had power of attorney and that he wanted to cash
12 in some insurance policies. Having that
13 information we then started contacting other
14 people. We contacted the insurance company
15 themselves and spoke to them. And at some point in
16 time we were able to get copies of the checks. And
17 once we got copies of the checks looked at the back
18 of it and tell what kind of -- when it was cashed.

19 Q. What did you determine?

20 A. We determined that after looking at the
21 checks itself said deposit only into Gene's Pawn
22 Shop.

23 Q. And did you talk to Gene's Pawn Shop?

24 A. We did after I issued a search warrant
25 for any records we concerning Mr. Dayse.

1 Q. Did they provide those?

2 A. They provided us those.

3 Q. The records saw earlier today with Ms.
4 Wiggins?

5 A. The records that were presented
6 earlier, yes.

7 Q. The checks that we saw earlier, were
8 those the same checks that you were able to obtain?

9 A. Yes.

10 Q. Did you review a letter from Mr. Dayse
11 seeking to surrender the policies?

12 A. I am sorry?

13 Q. Did you obtain a letter from Mr. Dayse
14 seeking to cash out the policies from TransAmerica?

15 A. No, ma'am.

16 Q. You don't recall that. Did you ever
17 talk to Charles Goldberg?

18 A. Yes, ma'am.

19 Q. In what regard?

20 A. In reference to had to do with the new
21 power of attorney and revoking of the old power of
22 attorney. Again, after speaking to Mr. Goldberg it
23 was learned that Ms. Frazier had came in along with
24 another family member and they wanted to revoke Mr.
25 Dayse's power of attorney. And that's when we were

1 able to obtain the document that was also presented
2 here today.

3 Q. And anything else to further your
4 investigation?

5 A. After he was arrested they had what we
6 call a preliminary hearing and that's to show
7 probable cause there was a reason to commit an
8 arrest. Before the preliminary hearing was begun,
9 Mr. Dayse approached me and said this was all a
10 mistake. That he was trying to get his aunt back
11 to Charleston. That's what he used the money for.
12 I asked him do you have any receipts thinking in
13 this case he could provide me with some receipts or
14 whatever to show that's what he was going to do.
15 He said no, he did not have any receipts at the
16 time. I also asked him why did you use Gene's Pawn
17 Shop. He said he had used the same pawn before to
18 cash checks.

19 Q. Did you ask him if he had any proof?

20 A. Sorry?

21 Q. Did you ask him if he had any proof
22 whatsoever that he used it to her benefit?

23 A. Right. I asked do you have anything.
24 Again he said no, he had nothing.

25 MS. ASKINS: Nothing further, Your

1 Honor.

2 THE COURT: All right.

3 Cross-examination.

4 CROSS-EXAMINATION

5 BY MR. GAILLIARD:

6 Q. Good afternoon. How are you doing
7 today?

8 A. All right, sir.

9 Q. It's been a long time since legal
10 services was on King Street, right?

11 A. Been a long time, sir.

12 Q. All right. Now, you placed Mr. Dayes
13 under arrest; is that correct?

14 A. I did not personally arrest him, no. I
15 also drew up the warrant, put it in the warrant
16 system and I think he was stopped by an officer on
17 the street.

18 Q. Now, you spoke with him at the
19 preliminary hearing; is that correct?

20 A. Yes, sir.

21 Q. And did you review with him his right
22 to not speak with you at that point without the
23 benefit of counsel?

24 A. No, sir. He approached me and started
25 a conversation.

1 Q. He approached you?

2 A. He was representing himself as his own
3 attorney at the time.

4 Q. All right. Can you from your notes
5 tell us when you spoke with Mr. Goldberg?

6 A. Sorry?

7 Q. When did you speak with Mr. Goldberg,
8 Attorney Charles Goldberg?

9 A. It was sometime I think after he was
10 already arrested. I think the investigation was
11 still ongoing. We collected some more information
12 and stuff. But I think it was like -- I think I
13 put down it was in June 2012.

14 Q. And can you tell us about when he was
15 arrested on this charge?

16 A. I'm not sure the exact date of arrest.

17 Q. Approximately?

18 A. Looks like it was April, maybe April
19 the 1st.

20 Q. When?

21 A. April the 1st, 2012 according to the
22 officer report when he made the arrest.

23 Q. Now, when you spoke with Attorney
24 Charles Goldberg did he provide you with a copy of
25 the revocation of the power of attorney?

1 A. Yes, sir.

2 Q. And can you tell us approximately when
3 that conversation took place with Attorney
4 Goldberg?

5 A. Sorry?

6 Q. When did you speak with Attorney
7 Goldberg?

8 A. When did it take place?

9 Q. When did you speak with Attorney
10 Goldberg?

11 A. I'm not sure now. Doesn't say in the
12 report. I'm not sure what the date was.

13 Q. Now, it came to your attention the
14 checks were cashed back at the end of 2011; is that
15 correct?

16 A. Yes.

17 Q. And the initial report was by Eva
18 Lyons; is that correct?

19 A. Eva Lyons filed the report.

20 Q. That was done in February of 2012; is
21 that right?

22 A. Yes.

23 MR. GAILLIARD: No other questions for
24 this witness, Your Honor.

25 THE COURT: Anything further?

1 MS. ASKINS: No, Your Honor.

2 THE COURT: Thank you.

3 MS. ASKINS: May I check on this?

4 THE COURT: Yes.

5 (Brief pause.)

6 MS. ASKINS: Your Honor, our next
7 witness is via Skype.

8 THE COURT: Ladies and gentlemen, this
9 is per agreement of the parties. It's just as if
10 the witness was physically present here.

11 TAMRYN KELLEY

12 having been duly sworn, testifies as follows:

13 THE CLERK: Please state your full name
14 spelling your last name.

15 THE WITNESS: My name is Tamryn Kelley,
16 K-E-L-L-E-Y.

17 DIRECT EXAMINATION

18 BY MS. ASKINS:

19 Q. Ms. Kelley, what do you do?

20 A. I am the front line manager and
21 custodian of documents for the processing
22 department at TransAmerica located in Plano, Texas.

23 Q. Is that where you are today?

24 A. Yes, ma'am.

25 Q. Tell the jury please what TransAmerica

1 is?

2 A. TransAmerica is a life insurance and
3 investments type company. They handle retirements,
4 annuities, life insurance and managing property.

5 Q. How long have you worked for them?

6 A. Thirty years.

7 Q. Are you familiar with checks issued to
8 Ethel Frazier at the request of Michael Dayse back
9 in the end of 2011?

10 A. Yes, ma'am. I am familiar with the
11 checks in question.

12 Q. Okay. How many insurance policies did
13 Ethel Frazier have?

14 A. Four.

15 Q. And what type of insurance was that?

16 A. They were whole life insurance policies
17 meaning that the death benefit would be payable
18 regardless of the type of death.

19 Q. What were the policy numbers on those
20 accounts?

21 A. Yes, ma'am. One of them is
22 72LY3911814. The next one was 72LY397325. The
23 third one is 72L4089114 and policy No. 72L6175914.

24 Q. And were those -- was the owner of
25 those policies able to cash those policies out or

1 surrender those policies?

2 A. Yes. The policy owner does have the
3 option to cash surrender them for their cash value.

4 Q. And in November 2011 did y'all get a
5 request to cash those policies out?

6 A. In November of 2011 we received a
7 letter from a Michael Dayse requesting to cash
8 those policies out as the power of attorney for the
9 insured.

10 Q. And I am showing -- I previously sent
11 you some documents that have been marked as
12 exhibits; is that correct?

13 A. Yes, ma'am.

14 Q. And I am showing you what's marked as
15 State's Exhibit 14 and can you see that document?

16 A. Yes, ma'am.

17 Q. Do you recognize that document?

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

19 Q. And is this a document that
20 TransAmerica keeps and maintains in the normal and
21 ordinary course of business?

22 A. Yes, ma'am, it is.

23 Q. And what is the document?

24 A. That document that you have there is a
25 letter from Michael Dayse asking us to surrender

1 the policies with him the being power of attorney
2 for the insured. I also provided the copy of his
3 power of attorney. It was a couple of different
4 powers of attorney in the same packet along with a
5 letter indicating that the insured was not able to
6 take care of her own affairs.

7 MS. ASKIN: Your Honor, at this time I
8 would like to move State's Exhibit 14 into
9 evidence.

10 THE COURT: What says the defense?

11 MR. GAILLIARD: No objection.

12 THE COURT: They are admitted without
13 objection.

14 (STATE'S EXH. 14 in evidence.)

15 BY MS. ASKINS:

16 Q. Ms. Kelly, can you look at page 2 of
17 Exhibit 14 and read that to the jury?

18 A. Yes, ma'am. One moment while I get
19 that out. I need to access the PDF of the
20 document. One moment. The PDF I have it says --
21 can you still hear me?

22 Q. Yes, I can.

23 A. Okay. "I would like to surrender my
24 policy or its cash value policy

25 No. 72LY31981472R409 -- 4089116177951472HY39735. I

1 appreciate your prompt assistance with this. If
2 you have any questions I can be reached at
3 843-819-8687. I am Michael Dayse, Ethel Frazier
4 attorney in fact. I am sending her medical
5 information along with my power of attorney
6 documents. This request was sent in October. I am
7 sending a copy of your letter with the face value."

8 Q. Okay. And you said he submitted a
9 couple of power of attorneys, couple documents with
10 that? I am showing you State's Exhibit 1. Do you
11 recognize that document?

12 A. Yes, ma'am.

13 Q. Is that a document that he submitted?

14 A. Yes, ma'am.

15 Q. Is that a South Carolina power of
16 attorney?

17 A. Yes, ma'am.

18 Q. And I'm showing you State's Exhibit 4.
19 Can you see that?

20 A. Yes, ma'am, I can.

21 Q. And did he also submit this document?

22 A. Yes, ma'am, he did.

23 Q. Okay. Is that from New York?

24 A. Yes, ma'am, it is.

25 Q. What did TransAmerica do in response?

1 A. They processed the surrender of the
2 policies and sent the cash values for each one of
3 them payable to Ethel Frazier.

4 Q. Okay. And I also sent you State's
5 Exhibit 6 through 9. Do you recognize these?

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

7 Q. Are these the checks that TransAmerica
8 issued in response to Michael Dayse's request?

9 A. Yes, ma'am.

10 Q. Okay.

11 A. Yes, ma'am. Those are.

12 Q. What happened after you all issued
13 these checks?

14 A. We were contacted in January by Eva
15 Lyons who indicated that Michael's power of
16 attorney had been rescinded in August of 2011 and
17 she provided us with a copy of the revocation. She
18 indicated that the surrender of the policy may have
19 been done fraudulently and asked for our assistance
20 in researching and helping her to deal with that.

21 Q. Okay. And what did you all ultimately
22 conclude?

23 A. After several letters back and forth
24 between January and March we sent affidavits of
25 forgery out to Eva Lyons. They were completed and

1 returned to our office on March the 29th. We
2 submitted those for the investigation by our bank.
3 It was determined that the checks had been cashed
4 fraudulently and the money was recovered from Chase
5 Bank. Once the money was recovered from Chase Bank
6 in May we then issued replacement checks in June.
7 Actually we issued one replacement check with the
8 sum total of all surrender values and sent that one
9 to Ethel Frazier. However, the check had the name
10 spelled incorrectly on it so that was returned to
11 us and in July of 2012 we issued a second
12 replacement check with the name spelled correctly.

13 Q. And what was the value of the four
14 checks? How much were the four checks, total
15 amount?

16 A. Four checks total \$7,008.51.

17 Q. Okay. Hold on one second. Ms. Kelley,
18 I have no further questions. Please answer any
19 questions defense counsel might have.

20 THE WITNESS: Yes, ma'am.

21 CROSS-EXAMINATION

22 BY MR. GAILLIARD:

23 Q. Good afternoon, Ms. Kelley. I'm
24 attorney Robert Gailliard. I represent the
25 Defendant in this matter. You stated on direct

1 that you all received a couple of different powers
2 of attorney; is that correct?

3 A. Yes, sir.

4 Q. So you did have the New York power of
5 attorney also along with the South Carolina power
6 of attorney; is that right?

7 A. Yes, sir. They were all combined
8 together in the same packet.

9 Q. Now, you subsequently got a revocation
10 of the South Carolina power of attorney; is that
11 right?

12 A. That's correct.

13 Q. And you also never got a revocation of
14 the New York power of attorney; is that correct?

15 A. I do not recall seeing a revocation
16 from the New York power of attorney.

17 Q. But based upon what you had you decided
18 to issue a fraudulent warrant on the transaction;
19 is that correct?

20 A. We provided the affidavit of forgeries.

21 Q. So based upon her completion of the
22 affidavit swearing that it was fraudulent you took
23 action; is that correct?

24 A. We did take action, yes, sir.

25 Q. And you reissued the checks to Ethel

1 Frazier and sent them to Eva Lyons; is that right?

2 A. We did issue the checks to Ethel
3 Frazier and we sent them to a PO box in South
4 Carolina. I would have to look at the --

5 Q. Please look and see. That's important
6 to us.

7 A. Yes, sir. One moment. It was PO
8 Box 751143, Memphis, Tennessee, 38165.

9 Q. Did you get a power of attorney from
10 Eva Lyons regarding Ethel Frazier?

11 A. Yes, sir.

12 Q. And so the checks were made to Ethel
13 Frazier and sent to Eva Lyons in Memphis,
14 Tennessee; is that correct?

15 A. That is correct, sir.

16 Q. For \$7,008 and some cents; is that
17 right?

18 A. \$7,008.51.

19 MR. GAILLIARD: No further questions.

20 MS. ASKINS: I have nothing further,
21 Your Honor.

22 THE COURT: Thank you.

23 MS. ASKINS: Thank you, Ms. Kelley.

24 THE COURT: Next witness.

25 MS. ASKINS: Your Honor, the State

1 rests.

2 THE COURT: Ladies and gentlemen, that
3 is the State's case. We need to discuss some
4 matters with the lawyers and we will proceed with
5 the defense in a few minutes. If you will go to
6 the jury room, please.

7 (Thereupon, the jury exited the
8 courtroom at 2:36 p.m.)

9 THE COURT: Any matters of law at this
10 time?

11 MR. GAILLIARD: Your Honor, we would
12 move for a dismissal of this case in that under the
13 statute it requires proof that the person who
14 exploited a vulnerable adult profited from the
15 exploitation. There has been absolutely no proof
16 offered on that grounds. Without that, the
17 essential element of this cannot go to the jury.
18 Therefore, we would ask to move for a dismissal.

19 I am referring, Your Honor, to
20 Section 43-35 and apparently this is Section 10,
21 exploitation and the definition Section 3(v).

22 THE COURT: By the State.

23 MS. ASKINS: Your Honor, we submit
24 there is evidence that the Defendant profited from
25 cashing in these checks. He cashed the checks, he

1 spent six or seven hundred dollars that same day at
2 Gene's Pawn Shop using those funds. We also have
3 testimony that none of that money was ever spent
4 for Ms. Frazier or sent to Ms. Frazier. She never
5 saw one penny of that money, Your Honor. We feel
6 like we have met that element of the case.

7 MR. GAILLIARD: Your Honor, if I may be
8 heard.

9 THE COURT: Yes, sir.

10 MR. GAILLIARD: We are talking about
11 \$7,000 here. The State has failed to show where
12 Mr. Dayes profited from \$7,000, money that belonged
13 to Ms. Frazier. The last witness just testified
14 that they sent \$7,008.51 to Ethel Frazier at Ms.
15 Eva Lyons' address so how could he have profited
16 from it and she got the money? That's impossible.
17 If she got the money how did he profit from it?

18 MS. ASKINS: Your Honor, first off I
19 don't think I have to prove \$7,008. Those are the
20 checks he cashed. But I think if I show that he
21 exploited her one dollar, I have met the elements
22 of this case. There is not a dollar amount for
23 jurisdictional purposes for this case. Just says
24 financial exploited.

25 So I would assert that I do not have to

1 prove \$7,000. I think I have done it. But I think
2 I can just prove one dollar. Furthermore, Your
3 Honor, he still profited from the \$7,008. The
4 person that's out the money is Gene's Pawn Shop.
5 He still got the \$7,008. And therefore the ones
6 that are suffering, yes, TransAmerica ultimately
7 sent the money to Ethel Frazier, but he still took
8 it without permission and without authority and he
9 still profited \$7,008 and walked away and Gene's
10 Pawn Shop is the person that got -- they are
11 holding the bag.

12 THE COURT: Well, we are not going to
13 go back and forth. You all are arguing as if I am
14 a jury and I'm not. You can convince the jury on
15 these respective points of view. The statute
16 defines exploitation as an improper, unlawful,
17 unauthorized use of funds as to property, power of
18 attorney, guardianship or conservatorship of a
19 vulnerable adult by a person for the profit or
20 advantage of that person or another person. I
21 think it is a jury issue and the person in a --
22 holding a power of attorney as the lawyer stated is
23 in a position of trust and a fiduciary position
24 according to the testimony, doesn't shift the
25 burden of proof as to guilt or innocence. But it

1 imposes an obligation to provide some reasonable
2 explanation as to the use of funds. The police
3 officer says that he questioned Mr. Dayse about it
4 and he could provide no explanation as what he did
5 with the money. So the jury could well conclude
6 that he is guilty and I deny the motion.

7 MR. GAILLIARD: Your Honor, may I be
8 heard?

9 THE COURT: No, I have ruled. I deny
10 the motion. You can argue to the jury to the
11 extent that you can convince them about it. But it
12 is going to the jury. All right. For the defense
13 how many witnesses do you have?

14 MR. GAILLIARD: Your Honor, I have two
15 witnesses and we were not of course expecting the
16 State to rest at this point. One of the two
17 witnesses won't be here until later. I guess I can
18 put up Mr. Dayse at this time.

19 THE COURT: Later as in when?

20 MR. GAILLIARD: I had actually planned
21 them to be here tomorrow.

22 THE COURT: We are going to finish this
23 today. We are going to finish this as soon as the
24 witnesses get through testifying. We are not going
25 to delay the trial for the hurricane waiting on a

1 witness.

2 (Attorney confers with client.)

3 MR. GAILLIARD: Your Honor, the witness
4 can't get here until 5:00.

5 THE COURT: We might have a verdict by
6 then. Who is the witness and what he is going to
7 say?

8 MR. GAILLIARD: The witness, Your
9 Honor, is the contractor that Mr. Dayse paid 7,000
10 plus dollars to rehab the place. He cut down
11 trees. He went inside and he did work. That
12 testimony is crucial to the defense because he paid
13 him and if he paid --

14 THE COURT: He needs to be here. We
15 can't wait around for a witness in a trial that is
16 right now. Thurgood Marshall had that issue right
17 across the street. He told the judge that his
18 witnesses were flying in from various parts of the
19 country and had to be picked up at the airport in
20 North Charleston and then he had no witnesses. He
21 didn't even have a hurricane coming. The trial is
22 now.

23 MR. GAILLIARD: We call Mr. Michael
24 Dayse to the stand.

25 THE COURT: Do you want me to examine

1 Mr. Dayse about his right to testify or not
2 testify?

3 MR. GAILLIARD: Please do, Your Honor.

4 THE COURT: All right. Mr. Dayse, we
5 will need to swear you.

6 (Defendant sworn.)

7 THE COURT: Mr. Dayse, we have reached
8 the stage of the trial when you have the right to
9 present your defense. Now, I am going to explain
10 to you certain of your rights. You have the right
11 to claim the protections afforded to you by the
12 Constitution, Fifth Amendment to the Constitution
13 of the United States. This amendment states in
14 part that no person can be compelled in any
15 criminal case or any case to be a witness against
16 himself, in a criminal case to be a witness against
17 himself.

18 This means that you cannot be required
19 to testify. You do, however, have the right to
20 testify if you would like to. This is a personal
21 right and no one can waive that right except you.
22 If you decide to testify you would be subject to
23 the same rules that govern other witnesses and you
24 may be examined and cross-examined on any relevant
25 issue in this case.

1 In addition, if you have convictions
2 involving dishonesty or false statements or if the
3 crime is punishable by imprisonment for more than
4 one year and I determine the probative value of
5 admitting this evidence outweighs its prejudicial
6 effect to you, the solicitor then will be able to
7 introduce your record to attack your credibility.

8 If you decide to testify this decision
9 on your part is to be freely, voluntarily and
10 intelligently made with knowledge of the
11 protections given to you by the Fifth Amendment and
12 the consequences of your decision to testify. If
13 you decide not to testify I will instruct the jury
14 they cannot give the fact that you did not testify
15 any consideration whatsoever, that there is to be
16 absolutely no prejudice to you if you do not
17 testify.

18 You can talk with your lawyer, family,
19 friends, anyone else, but in the final analysis it
20 is up to you whether or not you testify. Do you
21 understand what I have explained?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Have you talked to your
24 lawyer about whether you should testify or not?

25 THE DEFENDANT: Yes, we have.

1 THE COURT: Have you made a decision
2 that you want to testify?

3 THE DEFENDANT: Yes.

4 THE COURT: All right. Very good. We
5 will take a few minutes and bring the jury. Do you
6 want to call that witness and where is he coming
7 from?

8 THE DEFENDANT: He's coming from the
9 Isle of Palms. He won't get off until five.

10 THE COURT: He won't get off until
11 5:00. The case is right now. We don't wait for
12 people to get off from work --

13 THE DEFENDANT: I called.

14 THE COURT: -- to proceed with a trial.
15 I am not debating with you. You can explain it all
16 to Mr. Gailliard and he can speak for you. I am
17 actually talking to Mr. Gailliard. He needs to be
18 on his way if he plans to testify in this case
19 unless you plan to be up there until 6:00
20 testifying yourself. We are not going to wait for
21 someone to get off work at Isle of Palms, then
22 drive down here and get here while we sit around
23 and twiddle our thumbs. The case is now. We
24 started out Tuesday and delayed it for a few days.
25 So time to roll.

1 We will take a few minutes and then we
2 will be pressing on in case you all need to call
3 that person and say the judge ain't waiting you,
4 better come, better knock off.

5 (A recess transpired.)

6 THE COURT: Mr. Gailliard, I guess you
7 are waiting for your client.

8 MR. GAILLIARD: I asked Mr. Dayes to
9 call the witness and see if he can come over
10 immediately. I am waiting for him to return to the
11 courtroom.

12 THE COURT: If you have anything you
13 want to say you can put it in a motion for directed
14 verdict.

15 MR. GAILLIARD: The only thing I was
16 going to back, Your Honor, to the statute and it's
17 an essential part of the prosecution that they
18 prove that this Defendant profited from the
19 financial transaction. That's in the statute. You
20 can't assume the profit. That's part of the
21 charge.

22 THE COURT: You have to chase the
23 money?

24 MR. GAILLIARD: It says that
25 exploitation means that he profited from whatever

1 financial transaction and without proof, I don't
2 care whether it's a dollar, \$7,000, \$500, \$600 or
3 what. You have to show he profited from it. They
4 haven't been --

5 THE COURT: They have shown he got the
6 money.

7 MR. GAILLIARD: That's not showing he
8 profited. She got the money back so I mean --

9 THE COURT: She got it.

10 MR. GAILLIARD: She got all of the
11 money back so how can he profit?

12 THE COURT: The pawn shop is still out
13 of the money.

14 MR. GAILLIARD: Your Honor, you and I
15 both know that's a different case.

16 THE COURT: You said he got the money.
17 She got the money. She didn't get it from him.

18 MR. GAILLIARD: He didn't profit from
19 it. How did he profit?

20 THE COURT: I'm not arguing the
21 solicitor's case. You have to argue that to the
22 jury.

23 MR. GAILLIARD: If it's in the statute
24 she has to prove it. She hasn't proved it. If you
25 say she has proven it and then it can go to the

1 jury then that's your ruling.

2 THE COURT: I think the evidence
3 particularly in his encounter with the officer he
4 says it's a mistake and well, show me something
5 what you did with the money. Now, he is coming to
6 offer that he had -- got \$7,000 for repair and his
7 contractor is coming to show that and it's credible
8 then you should be in smooth sailing with this
9 jury. But if that doesn't fly...

10 MR. GAILLIARD: He is going to testify.
11 I don't know whether the contractor is going to
12 make it here or not.

13 THE COURT: That's why it's a jury
14 issue on the credibility of all of it. Do you have
15 any requested charges while we are waiting?

16 MR. GAILLIARD: I would like the
17 statute on criminal intent.

18 THE COURT: Criminal intent.

19 MR. GAILLIARD: Criminal intent.

20 MS. ASKINS: I don't have anything
21 prepared, but fiduciary duty associated with the
22 power of attorney.

23 MR. GAILLIARD: Your Honor, I am
24 objecting to that. You can't make that part of the
25 crime. That's a different case. We are not in a

1 civil case. This is criminal court and breach of
2 fiduciary duty as far as I can tell is not a crime
3 unless you bring in something else.

4 THE COURT: I'm going to agree with you
5 on that.

6 MR. GAILLIARD: Thank you, Your Honor.
7 Your Honor, we are ready to proceed.

8 THE COURT: All right. Let's bring the
9 jury.

10 (Whereupon the jury entered the
11 courtroom at 3:00 p.m.)

12 THE COURT: Mr. Foreman, how is the
13 jury doing?

14 THE FOREMAN: They are wonderful. We
15 are having a great time. We are wondering where
16 the hurricane is right about now.

17 THE COURT: I understand. We have
18 heard the State's case. It is now the defense's
19 turn. You may proceed.

20 MR. GAILLIARD: Your Honor, we call
21 Michael L. Dayes to the stand.

22 MICHAEL DAYES
23 having been duly sworn, testifies as follows:

24 THE CLERK: Please state your full name
25 and spell your last name for the record.

1 THE WITNESS: Michael L. Dayes,
2 D-A-Y-S-E.

3 DIRECT EXAMINATION

4 BY MR. GAILLIARD:

5 Q. Now, Mr. Dayse, you were born and
6 raised here in Charleston County?

7 A. Yes.

8 Q. Where have you lived most of your life,
9 which address?

10 A. 192 Rutledge Avenue.

11 Q. And do you have an aunt by the name of
12 Ethel Frazier; is that right?

13 A. Yes, sir.

14 Q. And was that your father or mother's
15 sister?

16 A. My mother's sister.

17 Q. Okay. Did she live here in Charleston
18 also?

19 A. Yes, sir.

20 Q. Did she at some point move to New York?

21 A. Yes, sir.

22 Q. Tell us about your relationship with
23 your aunt.

24 A. Well, my aunt always was loving and
25 kind and caring. I'm the baby of the family. She

1 always used to shower us with gifts and when we --
2 during the holiday or anything like that she always
3 showered us with gifts, you know, so my heart goes
4 always with her, you know. At the point in time
5 when she asked me to come to New York, you know,
6 the City of New York courts were seeking family
7 members and no one was obligated here like they
8 wanted to be obligated. So I took it upon myself.

9 Q. Mr. Dayse, before you go into that,
10 your aunt was living in New York. She asked you to
11 come visit her there?

12 A. No. She asked me to come and see about
13 her affairs because people wasn't paying her bills
14 who she had trusted to do so.

15 Q. She was actually living in New York at
16 that time?

17 A. Yes, sir.

18 Q. Can you give the jury an approximate
19 date, at least a year when this occurred?

20 A. This occurred back in 2009 when I went
21 up there and I went back and returned in 2010. She
22 decided to make me power of attorney over her
23 affairs.

24 Q. She wanted the assistance in what?

25 A. She wanted assistance because she was

1 being sued by a squatter who was in a three million
2 dollar joint investment and then she was going to
3 foreclosure with Aquan Loan. And I went and fought
4 Aquan for about nine months and asking them why did
5 they give an 80 year-old lady a \$3 million loan on
6 her property at 135. And then 113 --

7 Q. Where was the property located?

8 A. 113 135th Street down in -- down in
9 Brooklyn -- I mean -- Harlem, excuse me.

10 Q. 113th Street?

11 A. Yes, sir, down in Harlem.

12 Q. Now, did your aunt execute a power of
13 attorney in New York for you to handle her affairs?

14 A. Yes, sir.

15 Q. I'm going to show you a document and
16 ask you whether or not this is your signature on
17 this document.

18 A. Yes, sir, that is.

19 Q. And is this the power of attorney that
20 you had executed in New York for you to handle her
21 affairs?

22 A. Yes, that it is.

23 Q. And was it mailed back to you at this
24 address?

25 A. 192 Rutledge Avenue.

1 Q. Your Honor, we will offer this as
2 Defendant 1.

3 THE COURT: Any objection?

4 MS. ASKINS: No, Your Honor.

5 THE COURT: It is admitted.

6 (DFT. EXH. 1, was marked for
7 identification.)

8 (DFT. EXH. 1 in evidence.)

9 BY MR. GAILLIARD:

10 Q. Now, Mr. Dayse, was that New York power
11 of attorney ever revoked?

12 A. No, sir.

13 Q. You sent that to TransAmerica when you
14 cashed surrendered the checks; is that right?

15 A. Yes, sir. They never accepted the
16 South Carolina power of attorney because they wrote
17 me back and told me that it has to be a dual power
18 of attorney and not a general power of attorney.

19 Q. Now, looking at the New York power of
20 attorney now, Mr. Dayse, looking at this New York
21 power of attorney I am referring you to page 2 of
22 8. Does it mention anything about insurance
23 transactions?

24 A. Yes, sir.

25 Q. And that is Ms. Ethel Frazier's

1 initials at the point for insurance transactions
2 indicating that she was giving you the power to
3 handle those?

4 A. Yes, sir, grant authority.

5 Q. It is your testimony today that this
6 power of attorney was never revoked?

7 A. Never revoked.

8 Q. All right. Now, there has been some
9 testimony in here regarding a revocation done at
10 attorney Charles Goldberg's office. Did Mr.
11 Goldberg or anyone else, I am showing you State's
12 Exhibit 3, this is a revocation, would you tell the
13 jury the date on that revocation?

14 A. The revocation is dated --

15 Q. Let me show you.

16 A. Dated -- was on the 24th day of
17 August 2011.

18 Q. Did you get a letter from either
19 attorney Charles Goldberg or your sister notifying
20 you of the revocation of the South Carolina power
21 of attorney?

22 A. No, sir.

23 Q. You are absolutely certain?

24 A. I got a letter from Attorney Goldberg
25 where we went to probate court. That was

1 January 2012 about the revocation.

2 Q. In August of 2011 he never sent you a
3 copy of the revocation?

4 A. No, sir.

5 Q. Never notified you by letter that power
6 of attorney in South Carolina had been revoked?

7 A. No, sir.

8 Q. Did you get such a letter from your
9 sister Eva?

10 A. No, sir.

11 Q. No one ever notified you of the
12 revocation; is that right?

13 A. Well, it was notified back in -- 2012
14 January 2012.

15 Q. That was after the checks were
16 transacted at the end of 2011; is that right?

17 A. Yes, sir.

18 Q. So at the time that you transacted the
19 checks you had no notice of this revocation being
20 on record; is that correct?

21 A. No, sir.

22 Q. Now, Mr. Dayes, did Ms. Ethel Frazier
23 live with you at all at [REDACTED] Columbus Street?

24 A. Yes, sir.

25 Q. Tell the Court and jury when she lived

1 with you there?

2 A. She lived with me back in February,
3 March. I started seeing something wrong with her
4 because she was agitated, always wanting to get
5 back to New York, and I tried to tell her, I said
6 we had a death, take it easy. And she said no, no.
7 So I called -- I took her out to my mother so my
8 mother could talk to her where Deborah Winston was
9 staying at the time, my other sister next to me who
10 signed my power of attorney along with my ex-wife
11 Bernita Dayes. At the time I was explaining to
12 Aunt Ethel that she cannot just jump back on the
13 train and go back to New York because we still have
14 business here to conduct as far as her getting
15 herself established as a South Carolina citizen
16 here.

17 Q. Mr. Dayes, did your aunt have the
18 occasion to physically attack you that caused her
19 hospitalization?

20 A. No, sir.

21 Q. Tell us what happened.

22 A. What happened was she got agitated and
23 she got frustrated and all of a sudden she wanted
24 to jump across the balcony. I told her she is not
25 going to do that. I wouldn't let her because we

1 was on the third floor of Baker Hospital Drive. I
2 pleaded with her, pleaded with her. So I said Aunt
3 Ethel, I don't have nothing else to do but to call
4 the authorities. She said what authority. You
5 can't call no authority on me. I said you are
6 looking at it. I said please come back across the
7 rails. She didn't come back across the rails until
8 she saw the proper authority which was the police
9 when North Charleston pulled up. The EMS pulled up
10 at the same time because I had called 911 and the
11 instance of me approaching her she climbed back
12 across the rail and she start proceeding down the
13 step while I was talking to the officer. And by
14 the time the EMS tech came up to the property she
15 took off running. They couldn't believe that she
16 was 87 years old. She took off running and after
17 that I asked them please take her to the hospital.
18 Try to find out what was going on with her. This
19 was the first time her behavior ever acted like
20 that and then --

21 Q. Was she transported to the hospital by
22 EMS on that day?

23 A. Because at the time, you know, I
24 couldn't figure out --

25 Q. Did they take her to the hospital?

1 A. Yes, sir, MUSC.

2 Q. So she was transported by EMS at that
3 time?

4 A. Yes, sir.

5 Q. North Charleston Police was present at
6 the time?

7 A. Yes.

8 Q. How long did she stay in the hospital?

9 A. She stayed in from March 22nd up until
10 April 8th. She stayed from March 12th to April 8th
11 in between that time.

12 Q. When she was discharged where did she
13 go to live?

14 A. She came to live with me. I was her
15 caretaker at [REDACTED].

16 Q. When she was discharged from the
17 hospital she came back to [REDACTED] Columbus Street?

18 A. Yes, sir.

19 Q. Was she treated by Dr. Weiss in the
20 hospital?

21 A. Yes, sir. I talked to him frequently
22 on occasions. He is the one advised me not to come
23 while they was treating her in the daytime because
24 she give the nurse such a fuss about she got to go
25 back to New York and Dr. Weiss talked to me on

1 telephone calls giving me the condition of her and
2 how she was coming along. He even asked me about
3 changing the meds and we kept in touch that way
4 because he said some of the meds wasn't working as
5 good as the others.

6 Q. After she was discharged you testified
7 that she came back to [REDACTED] Columbus Street?

8 A. Yes, sir.

9 Q. Now, tell us how the police managed to
10 remove her from [REDACTED] Columbus Street?

11 A. Deborah Winston and my ex-wife called
12 911 which Deborah Winston was the talker to this
13 call and she was saying the same thing --

14 MS. ASKINS: Objection, Your Honor,
15 hearsay.

16 THE COURT: Objection is sustained.
17 BY MR. GAILLIARD:

18 Q. Were you at home when the police came
19 to remove Ethel Frazier from [REDACTED] Columbus Street?

20 A. No, sir, I was detained by North
21 Charleston police. They had me detained for a gun
22 charge that I saw a guy that robbed me.

23 Q. So you were not at home?

24 A. No, sir.

25 Q. And you came back to [REDACTED] Columbus

1 Street, your aunt was gone; is that right?

2 A. Yes, sir.

3 Q. Did you inquire as to her whereabouts?

4 A. Yes, sir.

5 Q. What did you find out?

6 A. I found out that Deborah Winston and
7 Bernita Dayes has taken her and they changed the
8 lock on the door. I couldn't get access and I went
9 up there to Baker Hospital Drive to see what was
10 going on. They told me that they had to get her
11 out of the house because they didn't feel that she
12 was safe in there. Which I never leave her alone.
13 They told me that they scare off the caretaker I
14 had there with her. Latoyna Wright is also in the
15 police report that when I called to try to find out
16 what happened why I couldn't get in, so at that
17 time when I went up there they had my sache case
18 with my money --

19 Q. Mr. Dayes, before you get into that,
20 are you testifying today that you left Latoyna
21 Wright as the caretaker for Ms. Frazier?

22 A. Yes, sir.

23 Q. Did you find why she was not in the
24 house when the police came?

25 A. Yes, sir.

1 Q. Why was that?

2 A. Because they said --

3 MS. ASKINS: Objection, hearsay.

4 THE COURT: Objection is sustained as
5 to what she said.

6 BY MR. GAILLIARD:

7 Q. Did you ever talk to Ms. Wright to find
8 out why she wasn't in the house?

9 A. Yes.

10 Q. What did she tell you?

11 MS. ASKINS: Objection.

12 THE COURT: You are asking -- who is
13 referred to someone named Wright?

14 MR. GAILLIARD: Yes. He can certainly
15 testify what Mrs. Wright told him.

16 THE COURT: Is Ms. Wright -- she is not
17 the one whose testified in this case, is she?

18 MR. GAILLIARD: No, he is testifying
19 that she was the caretaker.

20 MS. ASKINS: Objection, Your Honor.

21 THE COURT: I sustain the objection as
22 to hearsay from that individual.

23 BY MR. GAILLIARD:

24 Q. Now, Mr. Dayse, did you have the
25 opportunity to take some pictures of the house at

1 ■ Columbus Street?

2 A. Yes, sir.

3 Q. I'm going to show you a series of
4 pictures. Are these photographs that you took of
5 ■ Columbus Street?

6 A. Yes, sir.

7 Q. And do those photographs accurately
8 portray how the house looked in October of 2011?

9 A. Yes, sir, with trees growing up on the
10 roof.

11 MS. ASKINS: Objection, Your Honor. He
12 hasn't indicated the day of the photographs.

13 MR. GAILLIARD: Your Honor, my question
14 was do those pictures accurately portray the way
15 the house looked in October of 2011. And he
16 answered yes.

17 THE COURT: The objection is overruled.

18 MR. GAILLIARD: Your Honor, we move
19 these in, five or six pictures as Defendant's
20 Exhibit 2.

21 THE COURT: Show them to the State.

22 MS. ASKINS: No, objection, Your Honor.

23 (DFT. EXH. 2, was marked for
24 identification.)

25 (DFT. EXH. 2 in evidence.)

1 BY MR. GAILLIARD:

2 Q. Now, Mr. Dayse, tell us the condition
3 of [REDACTED] Columbus Street? What was the condition of
4 the property?

5 A. The condition of the property that was
6 in [REDACTED] Columbus Street was fair condition. We had
7 vandalism there. That's why we hired Mr. Drayton
8 to do the permanent enclosing the property putting
9 up gates.

10 Q. Who was Mr. Drayton?

11 A. He was the painter, roofing contractor.

12 Q. Did you have a contract with him to do
13 any work on [REDACTED] Columbus Street?

14 A. Yes, sir.

15 Q. What was the work for?

16 A. The work was for the same scope that
17 the South Carolina housing who even they hired to
18 do the estimate, the damage and the roof and the
19 interior of the house was done because of the
20 trees.

21 Q. Did you have a written contract with
22 Mr. Drayton?

23 A. Yes, sir.

24 Q. Do you have it here with you today?

25 A. No, sir. They took the roofing

1 contract.

2 Q. You said they took?

3 A. Deborah Winston and Bernita Dayes when
4 they came to the house to take my aunt they took
5 the sache where I had all the documents and it was
6 testified and the statement and --

7 Q. Did you report this theft of documents,
8 removal of documents to the police?

9 A. Yes, sir.

10 Q. And did you do an incident report on
11 that?

12 A. Yes, sir.

13 Q. And when was that done?

14 A. That was done on the 26th of
15 April 2011.

16 Q. Now, did you pay the contractor any
17 money to make improvements or do anything around [REDACTED]
18 Columbus Street?

19 A. Yes, sir, it was the -- that's why I
20 surrendered the policies. First policy came back
21 was for a thousand some odd dollars. I gave him
22 that as a down on it. Second policy came in a
23 thousand some odd. I gave him that as the down on
24 it because we agreed when he totaled up the work
25 for the estimate it came out to 18,000.

1 Q. How much work did he do on the property
2 if you know?

3 A. He secured the perimeter by putting up
4 the fences. He cut down the trees.

5 Q. Take a look at these pictures and if
6 you can explain to us what work it was I'm going to
7 give you a red pen to mark it. If you would use
8 this pen to mark whatever was done by the
9 contractor.

10 A. (Witness complies with request.)

11 Q. Now, Mr. Dayes, would you tell the jury
12 what you did with the money that you got from cash
13 surrendering the policies?

14 A. The money was spent on the cutting of
15 the trees, putting up a fence to secure the
16 perimeter of the property so one would enter the
17 property like they enter the property to steal the
18 air condition units as was testified by the
19 investigator who investigated the estimate of the
20 home. The money was spent on fixing the roof where
21 the trees done rot out the top of the roof. What
22 he testified that the inside was because of the
23 water damage and also termite damage.

24 So that is what money was spent along
25 with the other. A and B was surrounded by trees.

1 If you look at the pictures you will see that all
2 the trees was clear from around the property at
3 that time. The same out in March. So if you look
4 at those pictures that is in the exhibit you will
5 see that all the trees were cut away from the
6 house. You will see that the fence was installed
7 to keep vagrants from walking on the property.
8 They took the air conditioning from [REDACTED] A and [REDACTED] B and
9 not only that, you will see where the house is
10 boarded because they came in and took the unit, the
11 inside unit itself. So, you know, all of this was
12 documented in the police report at the time that it
13 happened and that's where the money went when I
14 cashed in the policy.

15 MR. GAILLIARD: I don't have any other
16 questions for Mr. Dayes.

17 THE COURT: Cross-examination.

18 CROSS-EXAMINATION

19 BY MS. ASKINS:

20 Q. Ms. Frazier was in her late 80s in
21 2011?

22 A. She was 89. No, 87 at the time.

23 Q. And that was early 2011?

24 A. Hmm?

25 Q. That was early 2011?

1 A. Yes.

2 Q. And checked into MUSC, isn't that
3 right?

4 A. Yes, she went in MUSC.

5 Q. About two weeks she was there?

6 A. About a month, close to a month.

7 Q. March 20th to about April 7th, those
8 about the dates?

9 A. About April.

10 Q. She saw Dr. Weiss; isn't that right?

11 A. She did.

12 Q. He diagnosed her with Alzheimer's?

13 A. Yes.

14 Q. She had Alzheimer's?

15 A. Yes, she did.

16 Q. And you testified that she was
17 delirious basically before she was checked in?

18 A. Yes, she was.

19 Q. She needed to be cared for?

20 A. Well, she had a caretaker. That's
21 why --

22 Q. Talking about in general she had
23 Alzheimer's, she needed to be cared for, she needed
24 some assistance to live?

25 A. Well, she didn't have nobody else to

1 live with. That's why I brought her down here to
2 live with me.

3 Q. Because she needed some assistance.
4 Somebody to live with her and help care of herself
5 because she couldn't take care of herself; is that
6 right?

7 A. Well, that's what we did, yes, she did
8 need someone.

9 Q. And in 2010 she executed power of
10 attorney in South Carolina, Exhibit 3 -- I am
11 sorry -- Exhibit 1, giving you power of attorney?

12 A. Yes, she did.

13 Q. And in May she gave power of attorney
14 to Deborah and Eva; isn't that right?

15 A. Yes, she did.

16 Q. All right. And you knew about that
17 May 2011 power of attorney, didn't you?

18 A. Yes, in February.

19 Q. Your testimony is in February of?

20 A. I knew about the revocation.

21 Q. I am not talking about the revocation.
22 I am talking about --

23 A. Oh, yes, yes.

24 Q. This Deborah's power of attorney?

25 A. Yes, but see I questioned --

1 Q. Hold on just one second. You knew
2 about it around May 2011? You knew about this
3 power of attorney?

4 A. Yes, I did.

5 Q. And in August 2011 she revoked your
6 power of attorney; isn't that right?

7 A. Yes, she did.

8 Q. And you knew about her revocation at
9 least by November 2011, didn't you?

10 A. No, it wasn't February, February 2012.
11 I got a letter from Mr. Goldberg stating that I was
12 revoked and we was going to probate court
13 regarding the conservatorship.

14 Q. Bear with me one moment, Your Honor.
15 Showing you Exhibit 10. Letter from Eva to you
16 November 10th -- November 4th, 2010.

17 A. Yes, it is.

18 Q. That letter says several things. It
19 says Ethel is with me in Tennessee, doesn't it?

20 A. Yes, it do.

21 Q. And it says your power of attorney has
22 been revoked, doesn't it?

23 A. Yes, it did.

24 Q. And it says I'm directing you to vacate
25  Columbus, doesn't it?

1 A. Yes, it did.

2 Q. And that letter was sent to you in
3 November 2011?

4 A. Yes, it was.

5 Q. So you were on notice November 2011
6 that your power of attorney, 2010 South Carolina
7 power of attorney had been revoked, weren't you?

8 A. Not from Attorney Goldberg.

9 Q. I'm talking about from Eva Lyons?

10 A. Eva is not an attorney so, you know, I
11 didn't pay attention to this power of attorney
12 because I had power of attorney in New York so it
13 wasn't no status for me to argue with her.

14 Q. So you don't deny, you admit you got
15 this letter from Eva Lyons?

16 A. Yes.

17 Q. Okay.

18 A. Yes, I did.

19 Q. You were on notice, I understand you
20 might dispute it, but you were on notice that your
21 power of attorney had been revoked? You are
22 notified by this letter?

23 A. That's what it says in this letter, but
24 Eva was not the attorney. Eva was --

25 Q. Eva is not an attorney, I will agree

1 with you.

2 A. It didn't phase me one way or another
3 because she was not an attorney writing me a
4 letter.

5 Q. So you chose to ignore that letter?

6 A. And also statements that my aunt never
7 lived there.

8 Q. Okay. You chose to ignore that letter,
9 didn't you?

10 A. Because --

11 Q. Mr. Dayse --

12 A. Yes, I did.

13 Q. Did you choose to ignore that?

14 A. Yes, I did.

15 Q. Okay.

16 A. As her power of attorney, yes, I had
17 because I was fighting in probate to get her back.

18 Q. And that was November 4th --
19 November 11, 2011, is when you wrote to
20 TransAmerica?

21 A. Yes, I did.

22 Q. I am sorry, the 21st?

23 A. Yes, I did.

24 Q. So less than two weeks after you were
25 on notice you are using your South Carolina power

1 of attorney to cash in insurance proceeds?

2 A. No, I didn't. I sent the power of
3 attorney of South Carolina which was just a general
4 power of attorney which they turned down.

5 Q. You sent it?

6 A. I sent a power of attorney from New
7 York like they requested me to, a general power of
8 attorney that wasn't a power of attorney to deal
9 with their company. So I sent the proper documents
10 which was the dual power of attorney from New York
11 which I had authority to do.

12 Q. But you also sent the South Carolina
13 power of attorney, didn't you?

14 A. Yes, it was witnessed in here saying
15 from TransAmerica.

16 Q. And you got four checks from
17 TransAmerica, didn't you?

18 A. Yes, I did.

19 Q. You went to Gene's Pawn Shop
20 December 19th and cashed those checks?

21 A. Yes, I did. It is not no dispute about
22 that because I had the authority to do so by Ethel
23 Frazier with her New York power of attorney.

24 Q. Mr. Dayes, let's talk about [REDACTED] Columbus
25 Street. You were renting rooms at [REDACTED] Columbus

1 Street, weren't you?

2 A. No, I did not. I wasn't no room.

3 Q. Okay. And so you're saying that after
4 you got this letter from Eva Lyons early part of
5 November telling you your power has been revoked
6 and please vacate the property you went ahead and
7 did work on the property?

8 A. Yes, I did. I am still fighting to
9 this day to confront her in Tennessee about her
10 conservatorship. I am still fighting to this day
11 about last will and testament that Ethel Frazier
12 made. I am still fighting to this day about
13 accounting the money that Eva took and said that
14 she spent on attorneys. I am still fighting to
15 this day to prove that the power of attorney that I
16 had, that the power of attorney that Ethel Frazier
17 gave me in New York was a valid power of attorney.
18 She granted me that. And I came to fix up the
19 property at [REDACTED] Columbus Street because I know the
20 condition, everybody in here heard the condition of
21 the property. So why as my duty as a power of
22 attorney why don't I honor that? And that's what I
23 did. There was no extortion.

24 Q. You took all those actions even though
25 you knew that Ethel Frazier signed the document

1 saying you no longer have any power of attorney in
2 South Carolina?

3 A. Ethel Frazier could not --

4 MR. GAILLIARD: She has asked the
5 questions the third time and he has answered for
6 the third time. I don't know what else she wants
7 to get from him.

8 MS. ASKINS: I will move on, Your
9 Honor.

10 MR. GAILLIARD: Asked and answered.

11 MS. ASKINS: I will move on.

12 BY MS. ASKINS:

13 Q. Now, after your arrest you talked to
14 Sergeant Daquigan, didn't you?

15 A. Yes, I did.

16 Q. And you went up to him and talked to
17 him, didn't you?

18 A. Yes, I did.

19 Q. And you said this is just a mistake?

20 A. I said a number of things. I said that
21 and also I said that he look at that affidavits,
22 that affidavit was a court appointed affidavit.
23 No, it wasn't and I also asked him --

24 Q. I am not asking you that. Answer my
25 question. You told him that you used the money to

1 get Ethel Frazier back, didn't you?

2 A. No, I did not.

3 Q. You are denying that you told him that?

4 A. Why should I say I said it and I did
5 not?

6 Q. And you told him that you didn't have
7 any receipts for anything that you had done for the
8 money, didn't you?

9 A. I said that to him, that I did.

10 Q. And you said you didn't have any proof
11 that you spent the money for Ethel Frazier, didn't
12 you?

13 A. No, I did not because the conversation
14 didn't went that way. The conversation went that
15 when Officer Daquigan approached -- when I
16 approached Officer Daquigan I told him that he was
17 making a mistake by locking me up because I have
18 power of attorney in New York. He didn't listen to
19 that. He said that my power of attorney was
20 revoked. Then me and him had the argument about
21 what you did with the money. I said what I do with
22 the money is not a concern right now. The money
23 was surrendered to me under no false pretense. I
24 said show me the false pretence that you got on
25 these charges before they changed it. He couldn't

1 answer. So the judge told me right there Mr.
2 Dayse, before you blow your case you might as well
3 take it on to the public defender office because
4 you don't have an attorney to represent the proper
5 papers. So I went to the public defender office.
6 That's when I had Ben Lewis and Ben Lewis did a
7 little investigation.

8 MS. ASKINS: Objection, Your Honor.

9 THE COURT: The objection is sustained.

10 MS. ASKINS: Your Honor, I have no
11 further questions.

12 THE COURT: Redirect?

13 MR. GAILLIARD: Yes, Your Honor, just a
14 couple of things.

15 REDIRECT EXAMINATION

16 BY MR. GAILLIARD:

17 Q. Now, Mr. Dayse, you recognize that your
18 sister sent you this letter dated November of 2011;
19 is that correct?

20 A. Yes, sir.

21 Q. She mentions in there that your power
22 of attorney has been revoked. Did she send you any
23 documentation of the revocation?

24 A. No, sir.

25 Q. She did not?

1 A. No, sir.

2 Q. She also says in this letter that Aunt
3 Ethel has never lived in [REDACTED] Columbus Street except
4 during childhood. Was that true?

5 A. No, sir.

6 Q. She was actually staying there with
7 you; is that right?

8 A. Yes.

9 Q. So there are a number things that you
10 got some problems with; is that right?

11 A. Yes, sir.

12 Q. No other questions of this --

13 A. Excuse me. Not only that --

14 MS. ASKINS: Your Honor -- no further
15 questions. I have no further questions.

16 THE COURT: You may step down, sir.

17 MR. GAILLIARD: Your Honor, at this
18 point we did have one other witness, but I don't
19 expect him to get until after 5:00. I will just
20 proffer his testimony that he's the contractor.

21 MS. ASKINS: Your Honor, object.

22 THE COURT: You can't proffer anything,
23 you have to testify. Ladies and gentlemen, that is
24 the defense's case. Reply by the State if any?

25 MS. ASKINS: Your Honor, can we have

1 five minutes?

2 THE COURT: Ladies and gentlemen, the
3 State wants five minutes. We will take a
4 five-minute break. Now, otherwise we have heard
5 all of the testimony and next will be closing
6 arguments. So we might -- if you don't come back
7 in five minutes, you will probably come in about
8 ten for closing arguments. It will be one or the
9 other. Please do not discuss the case.

10 (Thereupon, the jury exited the
11 courtroom at 3:43 p.m.)

12 MS. ASKINS: Your Honor, we are not
13 calling any more witnesses.

14 THE COURT: All right. We will take
15 seven minutes and then press on with closing
16 arguments.

17 MS. ASKINS: Thank you.

18 MR. GAILLIARD: Your Honor, how long
19 will we have to do our closing?

20 THE COURT: How much time did you need?

21 MR. GAILLIARD: I'm going to try to cut
22 down my usual hour and-a-half to 15 minutes.

23 THE COURT: Sounds perfect.

24 (Brief recess.)

25 THE COURT: The law comes from the

1 statute so it is the statute as far as what the
2 particular statute says and which is 43-35. That
3 particular statute and the definition of
4 exploitation and vulnerable adult. Ready for the
5 jury?

6 MS. ASKINS: Yes, Your Honor.

7 THE COURT: Bring them on.

8 (Whereupon the jury entered the
9 courtroom at 4:00 p.m.)

10 THE COURT: Mr. Foreman, ladies and
11 gentlemen, you have heard all the evidence. It is
12 now time for the closing arguments. First from the
13 State.

14 MS. ASKINS: Thank you, Your Honor. I
15 told you I would try to move the case along
16 quickly. I know you have been paying close
17 attention and I certainly do appreciate it. Just
18 bear with us a little longer and the case will be
19 in your hands. Ethel Frazier, that's what the case
20 is about. 88, 87, 88-year old woman, failing
21 health, has dementia, has Alzheimer's. She's a
22 vulnerable adult. You heard a lot today about Eva,
23 about Deborah, bear with me on that. That's just a
24 smoke screen, ladies and gentlemen. This case is
25 about what happened November, December 2011.

1 That's the only thing this case is about. Michael
2 Dayse's actions during that period of time. Not
3 whatever justification he comes up with to excuse
4 his activities. Keep your eye on the ball and what
5 happened November and December 2011.

6 Now, he did have a 2010 power of
7 attorney. There's no doubt about that. Had one
8 from South Carolina and he had one from New York.
9 Ethel Frazier at one point obviously put trust and
10 confidence in him. He was helping her manage her
11 affairs. That power of attorney was not absolute.
12 He couldn't do he wanted with her property. He had
13 to act in her best interest. Fiduciary duty. He
14 couldn't just sell that property and do whatever he
15 wanted. There was a relationship of trust for him
16 to act in her best interest and to do her wishes.

17 Now, you heard about her going to the
18 hospital, her diagnosis, and being released, Dr.
19 Weiss and the restrictions that she needed 24-hour
20 care. She was a vulnerable adult. So she had a
21 mental break in March and that's what ended her up
22 in the hospital. She never went back to New York.
23 She stayed here. The Defendant took care of her.
24 Also again a relationship of trust. He moves her
25 into [REDACTED] Columbus Street. It was her house. You

1 heard the condition of that house, run down, dirty,
2 dark, boarded up. He moved her into [REDACTED] Columbus.
3 Is that a relationship of trust? I don't think so.

4 April 25th Bernita and Deborah, they
5 can't find Michael. He just told you he was in
6 jail. They were worried about her in that house.
7 So they go to try to find her to try to help her.
8 Knock on the door, call out her name. Can't find
9 her. So they call the police. Officer Braun
10 responded. He does the same thing. You heard his
11 description of the house. What it was like, hot,
12 end of April, no air conditioning, and they call
13 out to her, knock on the door, knock on the
14 windows. He says it was 10 or 15 minutes. They
15 are getting ready to leave. They knock on the
16 window and they hear (indicating). They know she's
17 in there. They can't get her to come to the door.
18 So they call a locksmith.

19 Finally get the door open and she is
20 barricaded in that house. There's no one there
21 taking care of her. It is past 9:00 at night. She
22 is all alone and it is dark. She is sitting there
23 in a chair just facing the wall. Don't tell me
24 she's not a vulnerable adult. She had Alzheimer's.
25 You heard Dr. Weiss, an expert in geriatric

1 psychiatry. Worked with Alzheimer's patients for
2 years. He told you she had Alzheimer's and needed
3 care, somebody to assist her. She goes home that
4 night with Deborah. What did Eva tell you? Was
5 her favorite niece. She went and lived with
6 Deborah at Deborah's house. Her mom was there so
7 she was living with her niece and her sister until
8 their mom passed away. She decided she wanted
9 Deborah to have her trust and confidence, to have
10 her back. So she gave Deborah a power of attorney
11 in May 2011. By signing a power of attorney she is
12 saying I don't want Michael Dayse to have my power
13 of attorney. She signed it and gave Eva a backup
14 power in case Deborah is unwilling or unable to
15 serve. So she is putting her trust in her new
16 caregiver Deborah Winston.

17 And then in August of 2011 she goes one
18 step further. And she revokes Michael Dayse's
19 power of attorney. What does that revocation tell
20 you? Says I no longer trust Michael Dayse. I
21 don't want him to work on my behalf in any regard.
22 She did not have any confidence and trust. He does
23 not have my power of attorney. There is no doubt
24 that is her intent and that's what she wanted. No
25 doubt. You heard Charles Goldberg. He was

1 concerned about her. Yes, he was. He was
2 concerned about the fact that there were some
3 mental health issues. He did his job and
4 questioned her, went through the questions with
5 her. Look at his handwritten notes. I think she
6 said Mike was mean, she did not want him to take
7 care of her any more. That's her intent. That's
8 what she wanted. There's no doubt about that.

9 Now, did she not revoke the new power
10 of attorney? None that I can find. She didn't do
11 it. But her intent, what she wanted is still
12 expressed here. Revoking Michael Dayse. So in
13 October when Deborah gets sick and can no longer
14 care for Ethel Frazier she goes to Eva Lyons. She
15 has the power of attorney. She lets Michael know
16 that. Look at this letter. Three things. Ethel
17 is in Tennessee. She lives with me. Your power of
18 attorney has been revoked.

19 Now, defense counsel made a big deal
20 about that she never provided, didn't attach the
21 revocation. Well, she certainly did say here is
22 where it is, go look for it. It's been recorded in
23 the RMC's office, gives the book page and says you
24 can also look on the website. Don't let him fool
25 you that she didn't let Michael Dayse know that the

1 power of attorney had been revoked. And he
2 admitted it. What did he tell you? I just chose
3 to ignore it. I don't care about her wishes. I
4 have got power of attorney from New York and I'm
5 going to act on it. I don't care what Ethel
6 Frazier wants. That's what he told you up there.
7 Chose to ignore it. He admitted I knew about it.

8 What does he do? This was on
9 November 4th. November 21 he was writing
10 TransAmerica Insurance Company cashing in insurance
11 policies. And he did submit the South Carolina
12 power of attorney that had been revoked. You heard
13 the witness from TransAmerica. He submitted two
14 powers of attorney. She never told you that oh, we
15 didn't think that one was valid. She wouldn't have
16 told you because you know what? After they
17 investigated they found out neither one of them
18 were valid. So days later he is using his power of
19 attorney. He knows he doesn't have it. What does
20 he do? December 19th, December 20th cashes them at
21 Gene's Pawn Shop. And you know what he did he with
22 that money. He bought jewelry. December 19th
23 bought a \$500 ring. Star of David ring. Spent
24 \$550 on that day. Look at Gene's Pawn Shop's
25 records. The day he is cashing in the checks he is

1 taking the cash and turns it right back over to
2 Gene's for jewelry.

3 Several days later he bought another
4 ring, \$450. He also bought the 24th something for
5 \$1,100. He is spending all her money at the
6 pawnshop. He is putting it in his pocket. He is
7 profiting from her Alzheimer's and her trust and
8 her power of attorney that he knows has been
9 revoked. Putting that money in his pocket or maybe
10 I should say putting it on his hand and the three
11 rings he bought within two weeks.

12 Let's talk about [REDACTED] Columbus Street.
13 Says he did these repairs. Showed you pictures
14 from October -- he said pictures were October 2011.
15 He had a contract for repairs in April 2011. That
16 was all before he cashed these checks. He didn't
17 spend this money on [REDACTED] Columbus Street. He didn't
18 spend any money on [REDACTED] Columbus Street.

19 You heard from Steve Ginsberg. The
20 place was a wreck. They had to reduce the price of
21 the house over \$150,000. That's how much a dump
22 that place was. So no repairs to that house. He
23 didn't have any reason to come in here and lie to
24 you. He's an independent witness. Does not have a
25 dog in the fight. Neither does Dr. Weiss, neither

1 does Charles Goldberg. Those are the witnesses you
2 should listen to. They have no reason to not get
3 on the stand and tell you what they did and what
4 they believed. Charles Goldberg, you saw him. You
5 saw what kind of man he was -- he is -- excuse me.
6 He would not have executed that power of attorney
7 if he thought she didn't have the capacity to do
8 so. You can tell that by way he testified. He
9 wouldn't have done it. He knew it was an issue.
10 He addressed the issue and he made his decision.

11 Now, even if you think he should have
12 acted on that power of attorney, had authority to
13 act on either one of the policies he took, it still
14 doesn't excuse what he did. Because he still
15 didn't spend that money on Ethel Frazier. He had a
16 fiduciary duty. Money wasn't his. He had to act
17 in her best interest.

18 And you know what he did? He didn't
19 send it to Eva. Eva had been taking care of her
20 for five years or took care of her for five years.
21 At that point she only had her several months. She
22 told you he never sent a dime. Never called.
23 Never visited. He wasn't spending the money for
24 her.

25 And finally, what did he tell the

1 detective after his arrest? He said oh, it was a
2 mistake. Detective Daquigan asked about the power
3 of attorney from New York. He said I used it to
4 get my aunt back. So you got any records? You got
5 any proof? No. You got any evidence you spent it
6 in her regard whatsoever? No. Comes in here today
7 and said oh, over here at the house. If you are
8 being arrested don't you think that would be the
9 first thing you would have done? Pulled out
10 receipts, said I did this, I did that. He said he
11 had no records whatsoever right after. Today he
12 comes in and said completely different. There was
13 no mistake. So it was willful calculation. It's a
14 fraudulent act. His actions are why we are here.
15 He financially exploited Ethel Frazier.

16 Now, one more thing. Even if you find
17 -- you don't have to find that he put the entire
18 \$7,000 in his pocket. If you find that he put one
19 dollar in his pocket, there is no dollar amount.
20 He couldn't use any of her money for his benefit.

21 And Eva. She said that ultimately
22 Ethel did get the money, that the insurance company
23 said oh, my gosh, we made a mistake. We paid out
24 on a revoked power of attorney. So they went to
25 their bank. They said there was fraud so the bank

1 snatched it out of Gene's Pawn Shop account and
2 sent that money to Ethel Frazier. Nobody is here
3 saying that Ethel is still owed \$7,000. It would
4 have been just as easy for Eva to say oh, no harm,
5 no foul, Ethel got her money. But she's here today
6 from Tennessee because right is right and wrong is
7 wrong and what he did was wrong. He's going to get
8 up here and say he didn't profit from it because
9 Ethel got the money back. Gene's Pawn Shop is the
10 entity that got left holding the bag. They're the
11 ones that are owed \$7,000.

12 Ladies and gentlemen, right is right
13 and wrong is wrong. What he did is wrong and what
14 he did is criminal and I ask you to return a
15 verdict of guilty.

16 THE COURT: For the defense.

17 MR. GAILLIARD: May it please the
18 Court, Your Honor, Mr. Foreperson, ladies and
19 gentlemen of the jury, what we have here is a
20 family fight. Plain and simple. Eva and Michael
21 are sisters, Deborah is his sister. I asked her
22 about what happened with the money from the New
23 York house? She went all around, she didn't know
24 this, that and the other. Then when I showed her
25 her signature on a lawsuit against Deborah it was

1 about the exact same money that she claims she
2 knows nothing about.

3 This case and the judge is going to
4 hand back the indictment for you to review about
5 the exploitation of a vulnerable adult. Michael
6 did not exploit his aunt. He had not one but two
7 powers of attorney. He had the authority to
8 surrender policies. You will see it in defense
9 exhibits showing that that's what she gave him the
10 right to do and he exercised that right. I told
11 you in opening that she would not be able to show
12 any exploitation and guess what? She can't.

13 The realtor came in contact with the
14 house in 2012. He didn't see what the house looked
15 like at the end of 2011. But we have before and
16 after pictures. You will see all these trees
17 around the house and you know something about the
18 contracting, that kind of work and you will see the
19 house boarded up. He paid over \$7,000. He had a
20 contract for some \$16,000. He didn't profit. You
21 cannot convict without him having profited. He
22 didn't profit. Guess what? TransAmerica sent the
23 \$7,000 back to Ethel Frazier? Where? To Tennessee
24 to Eva. Eva got the \$7,000. Not only did she get
25 \$7,000, but when the house was sold who got the

1 money? Eva on behalf of Ethel and she told you
2 yeah, I spent it taking care of Ethel.

3 Well, tell me how is it that Michael
4 exploited her? It just did not happen. Plain and
5 simple. Look at before and after pictures. Let's
6 talk about Eva. She comes in and she writes a
7 letter in November. First she says in the letter
8 you know what? Ethel never lived at [REDACTED] Columbus
9 after her childhood. Where did the police pick her
10 up? Where was she returned after she got out of
11 the hospital? This is her aunt. She was returned
12 to [REDACTED] Columbus Street. She was picked up from [REDACTED]
13 Columbus Street and sent to the hospital. So if
14 she never lived there how is that possible?
15 Oh, I'm just taking what Deborah told me. You
16 don't know. You didn't come to Charleston to see
17 where your aunt was living, but yet you write a
18 letter said that she never stayed there. Doesn't
19 make any sense. Absolutely none.

20 Now, they have Ms. Frazier go down and
21 do the revocation. Charles Goldberg has been a
22 practicing attorney for over 50 years. Guess what?
23 Dr. Weiss was on the stand. My question, I said,
24 Doctor, who should make the determination whether
25 someone who has Alzheimer's which he testified was

1 a progressive disease diagnosed in April, here we
2 are in August, vulnerable, not vulnerable, able,
3 not able. Who, doctor, should make the
4 determination. Well, whoever is making the
5 determination should seek a medical opinion.

6 Now, Attorney Goldberg is an esteemed
7 attorney, but guess what? He is not a
8 psychiatrist. Not a medical doctor. Did you call
9 anyone in, Attorney Goldberg, to help you provide a
10 diagnosis? No. You look at his notes. He asked
11 her some questions. Said okay, I pronounce her
12 fit. Dr. Weiss told us that's not good enough.
13 She was not even capable of at that point doing a
14 revocation. Plain and simple. You got from Dr.
15 Weiss that was his testimony.

16 At the end of the day the State cannot
17 prove and did not prove that Michael Dayse
18 exploited his aunt. He did not profit one bit by
19 any exploitation. Yes, he cashed the checks. Yes,
20 he used it to pay the contractor to do whatever
21 needed to be done with the house, fixed the roof,
22 take care of the legal stuff that caused the
23 termite problems. Look at the house. It is
24 boarded up. That's his testimony. You know what
25 it takes in terms of money to take down trees. The

1 realtor said my contract with the property was
2 when? In 2012. He doesn't know what it looked
3 like three or six months earlier. He doesn't know
4 about people going into the place. He didn't know
5 what the condition of the roof was or anything. So
6 when he comes and says oh, it needed a lot of work
7 so nobody could have done anything, guess what? He
8 wouldn't even testify. I asked him when did you
9 come in contact with the property? Guess what?
10 Months after the contract was contacted. There
11 wasn't any trees around there.

12 So at the end of the day as we stated
13 in the opening they can't prove any exploitation.
14 Ethel got the money back. Eva isn't around here.
15 She is forgetful. She doesn't know what happened
16 with the New York property. She did not know that
17 her aunt was actually living at [REDACTED] Columbus. She
18 didn't know that she was suing her sister. You
19 know, what are we to believe? She didn't send the
20 renovation to her brother that she said that was
21 revoked. New York power of attorney was never
22 revoked. He had a right to do it and he did what
23 he was supposed to do. He used the money to fix up
24 the house and guess what? Ethel Frazier got every
25 dime from the sale of the house. So there is no

1 exploitation.

2 I would like for you to review the
3 testimony and use your own judgment to determine
4 who is telling the truth, what you can accept and
5 what you can't accept and after considering all
6 that return a verdict of not guilty. Thank you for
7 your time and attention.

8 MS. ASKINS: Nothing further, Your
9 Honor.

10 THE COURT: Mr. Foreman, members of the
11 jury you have heard the testimony, received the
12 evidence and heard the arguments of the State and
13 the Defendant. I will now explain to you the law
14 that applies to this case.

15 Under the Constitution and laws of
16 South Carolina you are the finders of the fact in
17 this case. I do not have the right to express any
18 opinion that I might have as to them because this
19 is a matter solely for you, the jury, to determine.
20 As jurors it is your duty to determine the effect,
21 the value, the weight and the truth of the evidence
22 presented during this trial.

23 As the trial judge it is my
24 responsibility to preside over the trial and rule
25 upon the admissibility of the evidence offered

1 during the trial. You are to consider only the
2 testimony which has been presented from this
3 witness stand together with any exhibits which have
4 been made a part of the record.

5 I have the additional duty to charge
6 you the law applicable to this case. And as the
7 presiding judge I am the sole judge of the law of
8 this case. You must accept as correct and apply
9 the law as I now state it to you, then deliberate
10 to reach a verdict. Finally, I charge you in this
11 regard that you should not be concerned about what
12 you think the law ought to be, but rather what I
13 charge you that the law is.

14 Now, while the argument of counsel is a
15 beneficial part of the trial, you should remember
16 that the statements made by counsel are not
17 evidence. In presenting arguments counsel often
18 referred to the evidence. However, you should base
19 your verdict on the evidence as you remember it.
20 Therefore, if there are any conflicts between the
21 recollection of counsel about the evidence and your
22 own recollection you should rely on your own
23 understanding of the evidence.

24 You are also the judges, the sole
25 judges of the credibility, that is, the

1 believability of the witnesses who have testified
2 and of the evidence which has been presented during
3 this trial. In evaluating credibility you may take
4 into consideration many things such as the demeanor
5 of manner of testifying, whether the witness has
6 reason to be biased or prejudiced, or whether the
7 testimony of a witness was contradicted on the one
8 hand or supported and corroborated on the other
9 hand. It becomes your duty as jurors to analyze
10 and to evaluate the evidence and determine that
11 evidence which convinces you of its truth.

12 Now, the fact that the Defendant was
13 arrested and charged and indicted is not evidence
14 and cannot be considered by you as evidence of
15 guilt, nor does it create any presumption or
16 inference of guilt. The indictment is simply the
17 written instrument which contains the charge made
18 against the Defendant. Indictments are the formal
19 documents of which cases are brought into court.

20 The Defendant is charged with
21 exploitation of a vulnerable adult. The State must
22 prove beyond a reasonable doubt that the Defendant
23 did knowingly and willfully exploit a vulnerable
24 adult in violation of the code of laws of South
25 Carolina. A vulnerable adult is a person 18 years

1 of age or older who has a physical or mental
2 condition which substantially impairs the person
3 from adequately providing for his or her own care
4 or protection. This includes a person who is
5 impaired and the ability to adequately provide for
6 the person's own care or protection because of the
7 infirmities of aging including but not limited to
8 organic brain damage, advanced age, and physical,
9 mental or emotional dysfunction.

10 Exploitation is an improper, unlawful or
11 unauthorized use of the funds, assets, property,
12 power of attorney, guardianship, or conservatorship
13 of a vulnerable adult by a person for the profit or
14 advantage of that person or another person.

15 Knowingly means with knowledge consciously, not
16 accidentally. Willfully means that it was not done
17 by accident, but was done knowingly and

18 intentionally. The Defendant has pled not
19 guilty to the charge in the indictment and that
20 plea places the burden upon the State to prove the
21 Defendant guilty. A person charged with committing
22 a criminal offense in South Carolina is never
23 required to prove himself innocent. I charge you
24 that it is an important rule of the law that the
25 Defendant in a criminal trial no matter what the

1 seriousness of the charge may be will always be
2 presumed to be not guilty of the crime for which
3 the indictment was issued unless guilt has been
4 proven by evidence satisfying you of that guilt
5 beyond a reasonable doubt.

6 The presumption of innocence does not
7 end when you begin your deliberations, but it
8 accompanies the Defendant throughout the trial
9 until you reach a verdict of guilt based on
10 evidence satisfying you of that guilt beyond a
11 reasonable doubt.

12 The presumption of innocence is like a
13 robe of righteousness placed about the shoulders of
14 the Defendant. It remains with the Defendant until
15 it has been stripped from the Defendant by evidence
16 satisfying you of the Defendant's guilt beyond a
17 reasonable doubt.

18 Now, the presumption of innocence is
19 not mere legal theory. It is not just a legal
20 phrase. It is a substantial right to which every
21 Defendant is entitled unless you, the jury, are
22 satisfied from the evidence of the Defendant's
23 guilt beyond a reasonable doubt. The State must
24 prove the Defendant guilty beyond a reasonable
25 doubt.

1 So what is a reasonable doubt in the
2 law? A reasonable doubt is a doubt which makes an
3 honest, sincere, conscientious juror in search of
4 the truth to hesitate to act. Proof beyond a
5 reasonable doubt must therefore be proof of such a
6 convincing character that a reasonable person would
7 not hesitate to rely and act upon it in the most
8 important of his or her own affairs.

9 Proof beyond a reasonable doubt can
10 also be described as proof that leaves you firmly
11 convinced of the Defendant's guilt. Now, there are
12 very few things in this world that we know with
13 absolute certainty and in criminal cases the law
14 does not require proof that overcomes every
15 possible doubt. If based on your consideration of
16 the evidence you are firmly convinced that the
17 Defendant is guilty then you must find him guilty.
18 If, on the other hand, you think that there is a
19 real possibility that he is not guilty you must
20 then give him the benefit of the doubt and find him
21 not guilty.

22 In order to establish criminal
23 liability criminal intent is required. For
24 example, the mental state required to be proven by
25 the State for a particular crime might be purpose,

1 intent, knowledge, recklessness or criminal
2 negligence. Criminal intent must be proven by the
3 State beyond a reasonable doubt. Criminal intent
4 is always a matter that must be determined by the
5 jury from the circumstances surrounding the
6 situation. There's no way to prove intent to a
7 mathematical certainty. There is no way medical
8 science can dissect a person's brain and determine
9 what a person had in mind. So the law says that
10 criminal intent may be inferred from the
11 circumstances shown to have existed. This is how
12 you make a determination on whether or not the
13 element requiring intent was present.

14 It is not necessary to establish intent
15 by direct and positive evidence. But intent may be
16 established by inference in the same way as any
17 other fact by taking into consideration the act of
18 the parties and all the facts and circumstances of
19 the case. Criminal intent is a mental state, a
20 conscious wrongdoing. It is up to you to determine
21 what the Defendant intended to do based on the
22 circumstances shown to have existed. Criminal
23 intent can arise from action or failure to act. It
24 may arise from negligence, recklessness or
25 indifference to duty or to consequences that is

1 considered by the law to be equivalent of criminal
2 intent.

3 Mr. Foreman, members of the jury, I am
4 required to charge you the law as I have done
5 through these instructions now being given to help
6 guide you to a just and lawful verdict. Whether
7 some of these instructions will apply will depend
8 upon what you find to be the facts. The fact that
9 I have instructed you on various subjects of the
10 case must not be considered as indicating an
11 opinion of this court as to what you should find to
12 be the facts or what your verdict should be.

13 Now, you have been chosen and sworn to
14 give the parties a fair and impartial trial. When
15 you have done so you will have complied with your
16 oath. No one will have a right to criticize your
17 verdict. You must not be influenced by opinions or
18 expressions of opinion you may have heard outside
19 of the courtroom, but rather should base your
20 verdict solely on the testimony of the sworn
21 witnesses who took the stand, the exhibits received
22 into evidence, and the law which I have stated.
23 You should not be swayed by caprice, passion,
24 prejudice or improper sympathy for or against
25 anyone. Remember you have no friends to reward or

1 enemies to punish and all parties are entitled to a
2 fair and impartial trial.

3 It is your duty as jurors to consult
4 with one another and to deliberate in an effort to
5 reach an agreement. Each of you must decide this
6 case for yourself, but only after an impartial
7 consideration of all the evidence with your fellow
8 jurors. In the course of your deliberations do not
9 hesitate to re-examine your own views and change
10 your opinions if you become convinced that it is
11 erroneous. However, do not surrender your honest
12 conviction as to the weight or effect of the
13 evidence solely because of the opinion of fellow
14 jurors or for the mere purpose of returning a
15 verdict.

16 As I stated earlier, you are the judges
17 of the facts. In other words, your verdict must
18 represent the considered judgment of each juror.
19 In other words, the verdict must be unanimous. You
20 may have noticed that I have read these
21 instructions. I do so to give you the law as
22 accurately as possible. I will give you a copy of
23 these instructions to have in the jury room. You
24 may refer to these instructions to assist in your
25 deliberations. You must consider the instructions

1 as a whole and may not follow some and ignore
2 others. And, Mr. Foreman, as indicated it will be
3 your duty to preside over the deliberations of the
4 jury. If during your deliberations you should
5 desire to communicate with the Court, please reduce
6 your message to writing signed by your foreperson
7 and the foreperson only, pass the note to the
8 bailiff who will bring it to my attention. I will
9 then respond as promptly as possible either in
10 writing or by having you return to the courtroom.
11 I caution you, however, that with regard to any
12 message or question you might send that you should
13 never state or specify your numerical division at
14 the time.

15 Now, you have heard the evidence and
16 you have heard the law. Whatever your verdict, Mr.
17 Foreman, you will indicate it on the back of the
18 indictment of the space on the indictment where it
19 says verdict. You will write in there either
20 guilty or not guilty, sign and then date it.
21 Remember that although the foreperson is the only
22 juror who writes the verdict it is not his alone.
23 The verdict has to be unanimous. Mr. Foreman, you
24 are not authorized to write the verdict until all
25 of have you agreed on the verdict.

1 Ladies and gentlemen, we have selected
2 14. We can only use 12. So if out of the first 12
3 people selected if any one or two of you cannot
4 continue with deliberations for whatever reason
5 please let me know at this time as we have two
6 alternates. If any one or two of you cannot
7 proceed with deliberations please let me know at
8 this time.

9 Well, everyone seems to be good to go
10 in good shape which is a great thing which means
11 that when the jurors go back the last two selected
12 will remain with us. So I ask that you now go to
13 the jury room but do not begin to discuss the case
14 until you have received a copy of this jury charge
15 along with the exhibits and that will be your
16 signal to begin your deliberations.

17 Once you begin your deliberations you
18 will deliberate until you have reached a verdict.
19 At which time you will knock on the door, advise
20 the bailiff and we will bring you out to receive
21 your verdict so please go to the jury room.

22 (Thereupon, the jury exited the
23 courtroom at 4:43 p.m.)

24 THE COURT: Additions or exceptions to
25 the charge?

1 MS. ASKINS: Nothing from the State,
2 Your Honor.

3 THE COURT: Anything, Mr. Gailliard?

4 MR. GAILLIARD: No, Your Honor.

5 THE COURT: All right. Well. We have
6 got it to the jury at this point and you all check
7 the exhibits and the jury can start deliberating.

8 (Thereupon, the jury began deliberating
9 at 4:46 p.m.)

10 (The following proceedings were held at
11 5:27 p.m.)

12 THE COURT: The jurors have sent out a
13 note. It says we need to know if the Defendant has
14 or had a job, where he works and if he has a bank
15 account and did the insurance company say both
16 powers of attorney were revoked. Signed by the
17 foreperson.

18 We need to know if the Defendant has or
19 had a job, where he works, and if he has a bank
20 account. Secondly, did the insurance company say
21 both powers of attorney were revoked. What says
22 the State?

23 MS. ASKINS: Well, I don't know how we
24 can provide that information to them. They heard
25 the testimony. I know the insurance representative

1 said they knew that the South Carolina power of
2 attorney had been revoked, but I don't know how we
3 provide that information to them. Other than --

4 THE COURT: What says the defense?

5 MR. GAILLIARD: Your Honor, I agree.
6 We have had the trial. Unless they want us to
7 recall Mr. Dayse to restate that information from
8 him.

9 THE COURT: Put him back on the stand
10 during deliberations?

11 MR. GAILLIARD: That's the only way to
12 get it.

13 MS. ASKINS: I would have a problem
14 with that, Your Honor.

15 THE COURT: Let's bring them out.

16 MS. ASKINS: They could listen to the
17 TransAmerica testimony again if they wanted to. Or
18 read the transcript.

19 MR. GAILLIARD: Your Honor, they did
20 not address the revocation of both powers of
21 attorney. They don't have any information about
22 that so that was not in their testimony.

23 THE COURT: All right.

24 (Whereupon the jury entered the
25 courtroom at 5:32 p.m.)

1 THE COURT: Mr. Foreman, I see you have
2 sent a note saying we need to know if the Defendant
3 has or had a job, where he works and if he has a
4 bank account and also did the insurance company say
5 both powers of attorney were revoked.

6 The primary role of the jurors during
7 the trial is to listen to the testimony and then go
8 back and discuss what you have heard and you have a
9 total of 24 ears listening so that individually or
10 collectively you will be able to recall the
11 testimony to discuss the testimony. And as I said
12 to you during the charge that I cannot give an
13 opinion about the evidence or express any opinion
14 that I have because this is a solely matter for you
15 to determine. So the case has now been given to
16 you.

17 The question, first question sort of
18 invites putting somebody back on the witness stand
19 and taking more testimony which can't happen. You
20 have heard the testimony so we can't reopen it and
21 let more people testify to ask more questions.

22 You have received all of the evidence
23 and all of the questions have been answered. So
24 you have to recall the testimony as you may be able
25 to and to decide the case based on what you have

1 been presented.

2 Regarding the second question did the
3 insurance company say both powers were revoked,
4 again, the testimony of the person who provided
5 testimony by way of Skype is in the record. I
6 cannot comment on the testimony and the lawyers
7 can't make any more arguments and so you have the
8 evidence and you have to decide the case based on
9 the evidence that you have.

10 If you want to hear any testimony, the
11 court reporter takes down the testimony and it's
12 played back, if you want to rehear anything that's
13 in the record. So with that I can ask you that you
14 resume deliberating.

15 (Thereupon, the jury exited the
16 courtroom at 5:37 p.m.)

17 THE COURT: Any additions or
18 exceptions?

19 MS. ASKINS: Nothing from the State.

20 MR. GAILLIARD: Nothing, Your Honor.

21 THE COURT: All right.

22 (Thereupon, the jury continued
23 deliberating.)

24 (Thereupon, the jury reached a verdict
25 at 6:04 p.m.)

1 THE COURT: I understand there's a
2 verdict so you can bring them in.

3 (Whereupon the jury entered the
4 courtroom at 6:12 p.m.)

5 THE COURT: Mr. Foreman, if you will
6 stand for me. Have you reached a verdict?

7 THE FOREMAN: Yes, we have.

8 THE COURT: Is it unanimous?

9 THE JUROR: Yes, it is.

10 THE COURT: All right. If you will
11 pass it up. You may be seated. The Defendant will
12 stand.

13 (Brief pause.)

14 You may publish the verdict.

15 THE CLERK: Case number
16 2016-GS-10-01276, State of South Carolina, County
17 of Charleston versus Michael Dayse. On the charge
18 of exploitation of a vulnerable adult the verdict
19 is guilty, signed by the foreperson, dated 9-7-17.

20 THE COURT: All right. Thank you.
21 Yes, sir. Mr. Foreman, members of the jury, if
22 that is the verdict of each and every one of you
23 please let me know by raising your right hand.

24 (All hands raised.)

25 THE COURT: All hands are up. Any

1 additional or any individual polling requested?

2 MR. GAILLIARD: No, Your Honor.

3 THE COURT: Thank you. Any post-trial
4 motions?

5 MR. GAILLIARD: Your Honor, we would
6 just repeat our motion after the State rested.

7 THE COURT: Any response by the State?

8 MS. ASKINS: Response that I previously
9 gave. I thought the record was adequate.

10 THE COURT: I deny the motion. I think
11 the evidence is abundant in this case and the jury
12 deliberated and made a finding according to the law
13 and according to the evidence. I deny the
14 post-trial motion.

15 Ladies and gentlemen, when you find a
16 person guilty then it becomes my responsibility to
17 impose a sentence. This offense, exploitation of a
18 vulnerable adult, carries a prison sentence of up
19 to from zero to five years and mandates that
20 restitution be paid. You have no role in
21 sentencing and ordinarily I invite the jury to stay
22 here as we do sentencing. But I know it is late.
23 You are all probably worried about the hurricane so
24 I won't hold you at all. We will proceed with
25 sentencing as if there -- unless there is some

1 reason why we should not proceed to sentencing at
2 this time.

3 MS. ASKINS: State is ready, Your
4 Honor.

5 MR. GAILLIARD: Your Honor, I think
6 there is. I understand that the Defendant
7 maintains that he has no prior convictions. The
8 State does not believe that's the case. I would
9 ask that you defer sentencing until we get that
10 matter straightened out.

11 THE COURT: All right. Of course you
12 say he was in jail on a weapons charge when he came
13 and got the lady.

14 MR. GAILLIARD: Your Honor, I don't
15 know. As I said I was hired on Monday. I need to
16 get that straight.

17 THE COURT: Okay.

18 MS. ASKINS: Your Honor, that charge
19 was dismissed. But he does have a prior record.

20 MR. GAILLIARD: There's a contention
21 that he doesn't have a prior record, that he had
22 cases that were found not guilty that's still
23 showing and if that's the case the Court needs to
24 know that before it sentences.

25 THE COURT: We will figure it out right

1 now. That's usually NCIC or whatever data entry
2 that is produced in court is typically accepted as
3 being the person's record and if there is a basis
4 to challenge anything on the record then you can do
5 that. What do you have on there?

6 MS. ASKINS: Your Honor, I have 1977
7 tampering with vehicle, 1977.

8 THE COURT: Is that him, tampering of a
9 vehicle in 1977, what town was that? Or what
10 state?

11 MS. ASKINS: That was in Charleston,
12 Your Honor.

13 THE COURT: Charleston, South Carolina.

14 MR. GAILLIARD: Your Honor, we would
15 need the name and Social Security Number. I
16 understand Mr. Dayse spells his name D-A-Y-S-E and
17 they have gotten it mixed up with D-A-S on
18 occasion, so we would need to deal with that.

19 THE COURT: Well, let me hear what else
20 we have here. Anything that you have a basis to
21 contest I will hear it. I will evaluate whether it
22 sounds like anything that needs to be necessary to
23 delay sentencing.

24 MS. ASKINS: The next one is also a
25 1977 grand larceny of a motor vehicle.

1 THE COURT: He would know if he stole a
2 car or not.

3 MS. ASKINS: 1983 illegal possession of
4 a weapon.

5 THE COURT: His sister might know as
6 well. Were you here in 1977 and 1983?

7 THE WITNESS: Yes.

8 THE COURT: Go ahead.

9 MS. ASKINS: 1983, illegal possession
10 of a weapon.

11 THE COURT: 1983 illegal possession of
12 a weapon.

13 MS. ASKINS: 1987 simple assault. 1993
14 DUS 2nd, 1999 possession of marijuana. There was a
15 conviction for something else in 1993, but I was
16 unable to find that. And I do have two certified
17 convictions, Your Honor. One was for the grand
18 larceny, the other was for the simple possession of
19 marijuana that went downstairs.

20 THE COURT: That was in Charleston too,
21 those things?

22 MS. ASKINS: Yes, because we got them
23 downstairs.

24 THE COURT: Ms. Lyons, are you familiar
25 with your brother having a criminal record?

1 MS. LYONS: Yes, sir.

2 THE COURT: And he was -- says
3 tampering with a vehicle and grand larceny of a
4 vehicle. That was 1977.

5 MS. LYONS: Yes, sir.

6 THE COURT: Was that him?

7 MS. LYONS: Yes, sir.

8 THE COURT: You remember that?

9 MS. LYONS: Yes.

10 THE COURT: You know of any reason why
11 he shouldn't remember it?

12 MS. LYONS: No, he was in the
13 correction institution up there and we would go see
14 him.

15 THE COURT: Where did all go to see
16 him?

17 MS. LYONS: I think it was Columbia.

18 THE COURT: All right. If we delay I
19 have to come back to Charleston to do sentencing
20 and we are shut down tomorrow, Monday, Tuesday. I
21 am on official leave beginning next Thursday. I am
22 assigned to be other places. I am not scheduled to
23 be back in Charleston until December 4th. That's a
24 lot of time to delay sentencing unless I make a
25 special trip here to see Mr. Dayse or we can deal

1 with it right now.

2 MS. ASKINS: Your Honor, we would like
3 to go to sentencing. I have got two certified
4 convictions.

5 THE COURT: The victims have a right to
6 be present. The victim's bill of rights, they will
7 have to come back from Memphis, Tennessee, if they
8 want to come back.

9 MR. GAILLIARD: Your Honor, are you
10 suggesting Ms. Eva is a victim?

11 THE COURT: She has a right to be
12 present, yes.

13 MR. GAILLIARD: You are classifying her
14 as a victim?

15 THE COURT: As a representative of the
16 victim. The victim is deceased.

17 MR. GAILLIARD: I understand that she
18 died over a year ago and the estate is closed. I
19 don't know how you could say that she was a
20 representative of the victim.

21 THE COURT: Well, it's a matter of word
22 choice and my prerogative if I believe she has a
23 right to be present for sentencing.

24 MR. GAILLIARD: I am just asking the
25 Court since this is a serious matter to allow her

1 to get correct information.

2 THE COURT: We will give you an
3 opportunity to get it straight right now.

4 (Attorney confers with client.)

5 THE COURT: I want to caution Mr. Dayse
6 that he is still under oath unless I need to place
7 him under oath again under penalty of perjury.

8 MR. GAILLIARD: Your Honor, I
9 understand that there are two convictions that he
10 admits to and that's the grand larceny of a motor
11 vehicle, receiving stolen goods and the simple
12 possession of marijuana.

13 THE COURT: All right. Those are
14 three. Are they two or three?

15 MR. GAILLIARD: The indictment was for
16 grand larceny, motor vehicle and receiving stolen
17 goods. I count that as one charge. I don't know.

18 THE COURT: All right. We are going to
19 proceed to sentencing now. I will hear from the
20 State. Anything you want me to know?

21 MS. ASKINS: Your Honor, as just
22 published his record. I think this is a case of
23 just refusing to take responsibility for your
24 action. He does have a criminal past. We are
25 seeking restitution for Gene's Pawn Shop in the

1 amount of \$7,008. I think a split sentence is
2 appropriate, some active time and then probation to
3 pay the restitution and I believe Ms. Lyons does
4 not wish to speak, Your Honor.

5 THE COURT: What was the last thing?

6 MS. ASKINS: Ms. Lyons does not wish to
7 speak.

8 THE COURT: Oh.

9 MS. ASKINS: I do have a restitution
10 order with the sentencing sheets. May I approach?

11 THE COURT: Yes. The statute says and
12 may be required by the Court to make restitution.
13 Doesn't say must and may be required to pay
14 restitution. Yes, sir.

15 MR. GAILLIARD: May it please the
16 Court, Your Honor, Mr. Dayse is 59 years old. He
17 is currently on disability. He does some handyman
18 work on the side to supplement his disability. I
19 would ask the Court to consider a probationary
20 sentence for him. Certainly the \$7,000 was paid on
21 behalf of Ms. Frazier and we just ask the Court
22 under the circumstances especially with him having
23 powers of attorney that he certainly did not
24 display any criminal intent. We would ask the
25 Court to give a probationary sentence at this

1 point.

2 THE COURT: Without criminal intent he
3 would be not guilty. Mr. Dayse, if you will stand.
4 Anything you would like to say?

5 THE WITNESS: Saying that, you know, I
6 still plead not guilty because I'm not guilty of
7 that. And I plead the Court to weigh that for
8 sentencing.

9 THE COURT: All right. Anyone want to
10 say anything else on your behalf? I see another
11 man is back there.

12 THE SPECTATOR: No.

13 THE COURT: All right. Response by the
14 State?

15 MS. ASKINS: Nothing further, Your
16 Honor.

17 THE COURT: Mr. Dayse, I think the
18 evidence is overwhelming that you are guilty of
19 this crime. The jury made an appropriate finding
20 that you are guilty. Whatever thoughts you have in
21 your mind I think is misplaced and maybe in your
22 mind, or I don't know, you have a right to have
23 your view of things, but under the law you are
24 guilty of this crime. And it appears that you took
25 the victim's money as your own and you are guilty

1 of that.

2 In addition, you have been involved in
3 criminal activity in the past and that is probably
4 a reflection of you in some way as well. We have
5 had a lot of back and forth with this case over the
6 past several weeks. So I have had an opportunity
7 to get somewhat of a sense of who you are. It is
8 the sentence of the Court that you be committed to
9 the state Department of Corrections for a period of
10 five years. Provided on the service of 18 months
11 the balance is suspended. Probation for three
12 years. I give you credit for any time that you
13 have served. On the issue of restitution, what's
14 the defense's position?

15 MR. GAILLIARD: Your Honor, I don't
16 think under the circumstances with Gene's Pawn Shop
17 supposedly being out some money, if that's the
18 case, they can bring some kind of civil action
19 against Mr. Dayse to recover. They were not a
20 victim per se under the statute as a vulnerable
21 adult. I would ask the Court not impose any
22 restitution at this point.

23 THE COURT: What's the State's
24 position?

25 MS. ASKINS: Your Honor, they are, in

1 fact, the victim. They suffered \$7,008.51 at the
2 hands of this Defendant. I submit that they are
3 entitled to restitution. They accepted his check
4 and the money got snatched back out of their
5 account. It was the Defendant's actions, not by
6 their own accord and I am asking restitution in
7 their favor.

8 THE COURT: The restitution statute is
9 really quite an interesting statute in that
10 restitution is not automatic. The Court is to
11 weigh the ability of the person to pay restitution
12 versus whatever harm it does to a person whose out
13 of the restitution. It also considers the ability
14 of the person to absorb the restitution. There are
15 many factors to be considered for restitution under
16 17-25-322.

17 The statute also requires the Court to
18 have a hearing to determine the amount of
19 restitution. I think without the pawnshop being
20 present it is probably not prudent for me to weigh
21 in on that at this time, particularly not knowing
22 what the financial impact of incarceration will do
23 on the Defendant's ability to pay.

24 I am going to defer restitution and
25 hold it subject to a hearing at the request of the

1 pawnshop when they can be present through counsel
2 or through the State. So I am not going to make an
3 adjudication of restitution today. I'm going to
4 defer it. Anything else?

5 MS. ASKINS: Nothing further from the
6 State.

7 THE COURT: How many days did the
8 Defendant do upon being arrested?

9 MR. GAILLIARD: I understand he spent
10 -- I don't know about this case.

11 THE COURT: In this case.

12 MR. GAILLIARD: I don't know, Your
13 Honor.

14 THE COURT: I will check that. The
15 Department of Corrections will compute the amount
16 of credit that he is entitled to receive. That is
17 the sentence of the Court.

18 Ladies and gentlemen, thank you very
19 much for your services.

20 (These proceedings were concluded at
21 6:32 p.m., September 7, 2017, Charleston County,
22 South Carolina.)
23
24
25

1 CERTIFICATE OF REPORTER

2
3 I, Ruth C. Weese, Registered Diplomate
4 Reporter for the State of South Carolina at Large,
5 do hereby certify that the foregoing transcript is
6 a true, accurate, and complete record.

7 I further certify that I am neither related
8 to nor counsel for any party to the cause pending
9 or interested in the events thereof.

10 Witness my hand, I have hereunto affixed my
11 official seal this 29th day of January, 2018 at
12 Charleston, Charleston County, South Carolina.

13
14 *Ruth C. Weese*

15
16 _____
17 Ruth C. Weese

18 Registered Diplomate

19 Reporter
20
21
22
23
24
25

FORM 5

STATE OF SOUTH CAROLINA

County of

CHARLESTON

IN THE COURT OF COMMON PLEAS

MICHAEL LYRENZER DAVSE SLDC 373841

Full name and prison number (if any) of Applicant

v.

State of South Carolina

APPLICATION FOR
POST-CONVICTION RELIEFFILED
2017 DEC 14 AM 8:15
CLERK OF COURTINSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention ALLENDALE Correctional Institution 1057
Revolutionary Trail P.O. Box 1151 Fairfax, SC 29827
2. Name and location of Court which imposed sentence Court of General Session in Charleston County
3. Name(s) of co-defendant(s) (if any) _____
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
(a) Indictment # 2016-GS-10-0276

- (b) _____
 (c) _____

5. The date upon which sentence was imposed and the terms of the sentence:

- (a) THURSDAY SEPTEMBER 7, 2017
 (b) INCARCERATED SENTENCE - 18 months
 (c) PROBATION SENTENCE - 3 YEARS TOTAL SENTENCE 5 YEARS

6. Check whether a finding of guilty was made:

- (a) after a plea of guilty _____
 (b) after a plea of not guilty B
 (c) after a plea of nolo contendere _____

7. Did you appeal from the judgment of conviction or the imposition of sentence?

OVER TURNING MY CONVICTION Gaddy v. Douglass, 359 S.C. 329;

8. If you answered "yes" to (7), list 597 S.E. 2d 12; (S.C. App. 2004)

(a) the name of each Court to which you appealed:

- i. IN THE COURT OF COMMON PLEAS
 ii. THE SOUTH CAROLINA COURT OF APPEALS CASE # 2011 CP 1006239
 iii. APPELLATE CASE # 2012-208726

(b) the result in each such Court to which you appealed:

- i. Just Filing to this Court
 ii. THE SAME ISSUE OF REVOKE POWER OF ATTORNEY
 iii. _____

(c) the date of each such result:

- i. N/A
 ii. April 22, 2013 Remitted to the Lower Court or Tribunal.
 iii. _____

(d) if known, citations of any written opinion or orders entered pursuant to such results:

- i. N/A
 ii. "NO RESULTS" MOTION AND NOTICE FOR JUDGMENT ON THE PLEADING
 iii. C/A # 2011-CP-10-6239 Filed March 8, 2012 "NO RESULTS" ON JUDGMENT

9. If you answered "no" to (7), state your reasons for not so appealing:

- (a) _____

- (b) _____
- (c) _____

10. State concisely the grounds on which you base your allegation that you are being held in

custody unlawfully:

- (a) EFFECT ASSISTANCE OF COUNSEL FOR DEFENSE RETAINED ATTORNEY (raillard 9-4-17 TRIAL 9-7-17)
- (b) THE DATE THE POWER OF ATTORNEY WAS REVOKED 8-24-11 NY POA FILE 9-30-2010
- (c) Dr. Edgar Weiss testify ATTORNEY NEEDS TO CONSULT A Dr. FOR APPROVAL OF ALZHEIMER DEMENTIA

11. State concisely and in the same order the facts which support each of the grounds set out

in (10): BASED UPON MY CONSTITUTIONAL RIGHTS TO COUNSEL

- (a) TO PREPARE FOR DEFENSE WERE TRAMPLED DENIED CONTINUANCE FILED 9-5-17
- (b) MISC DOCTORS DIAGNOSIS ALZHEIMER DEMENTIA 4-8-11 NY POA NEVER REVOKED
- (c) ATTORNEY CHARLES S. GOLDBERG DID NOT DO TO HIS TESTIFYING

12. Prior to this application have you filed with respect to this conviction:

- (a) any petition in a State Court under South Carolina Law? NO
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? _____
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? _____
- (d) any other petitions, motions or applications in this or any other Court? _____

13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:

- (a) the specific nature thereof:

- i. _____
- ii. _____
- iii. _____
- iv. _____

- (b) the name and location of the Court in which each was filed:

- i. _____
- ii. _____
- iii. _____

iv. _____

(c) the disposition thereof: _____

ii. _____

iii. _____

iv. _____

(d) the date of each such disposition: _____

i. _____

ii. _____

iii. _____

iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition: _____

i. _____

ii. _____

iii. _____

iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

YES

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

- i. EFFECT ASSISTANCE OF COUNSEL FOR DEFENSE RETAINED ON 9/4/17 TRIAL ON 9/7/17
 ii. THE DATE IT WAS REVOKED 8/24/11 NY POA FILE 9/30/2010 NEVER REVOKED
 iii. Dr. Edgar WEISS TESTIFY NY POA ID 2010093000558001
 (b) ALZHEIMER DEMENTIA the proceedings in which each ground was raised:

- i. CONSTITUTIONAL RIGHT FOR DEFENSE DENIED
 ii. NY POA NEVER WAS REVOKED MISL. diagnosis Alzheimer 4-8-2011
 iii. Filing at RMC by Attorney Goldberg did not consult a doctor for Alzheimer Gaddy v. Douglass, 359 S.C. 329, 597 S.E. 2d 12 (S.C. App. 2004)

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

- (a) NOTICE OF REPRESENTATION and Motion For Continuance Filed 9-5-2017
 (b) ATTORNEY Gailliard WAS NOT PREPARED TO TRY THE CASE in 2 days
 (c) THE jury had question about me and WAS MY NY POA WAS REVOKED DENIED

17. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? _____
 (b) your trial, if any? YES Robert Gailliard
 (c) your sentencing? YES Robert Gailliard
 (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? _____
 (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? _____

18. If you answered "yes" to one or more parts of (17), list

- (a) the name and address of each attorney who represented you:

i. Robert Gailliard 1072 King St. Suite E
CHARLESTON, S.C.

ii. _____
 iii. _____

- (b) the proceedings at which each such attorney represented you:

i. In the Court of GENERAL SESSION #2016-GS-10-01276
Exploitation of Vulnerable Adult

ii. _____
 iii. _____

19. State clearly the relief you seek in filing this application:

THIS CASE REVERSED BY LAW GRADY V. DOUGLASS, 359 S.C.
329; 597 S.E. 2d 121st App. 2004) EVA LYONS AND
DEBORAH WINSTON RETURN ALL MONIES OF ETHEL FRASIER
AND PROPERTY AND LAND TO MICHAEL DAYSE

20. Are you now under sentence from any other court that you have not challenged?

NO

Revised 3/2003

STATE OF SOUTH CAROLINA)

County of CHARLESTON)

VERIFICATION

I, MICHAEL DAYSE, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Michael Dayse

SWORN to and subscribed before me this 14
 day of December, 17.

Malcolm

(L.S.)

My Commission Expires: 12/23/2020

~~APPLICATION TO PROCEED WITHOUT PAYMENT~~
~~OF COSTS AND AFFIDAVIT~~
IN SUPPORT THEREOF

I, Michael Daise, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Michael Daise
Applicant

SWORN or affirmed to and subscribed before me this
4 day of December, 2017.

[Signature]
Notary Public

My Commission Expires: 12/23/2020

2017 CF 10-6341

STATE OF SOUTH CAROLINA)
)
 COUNTY OF CHARLESTON)
)
)
 STATE OF SOUTH CAROLINA)
)
 vs.)
)
 MICHAEL LYRENZER DAYSE,)
)
 DEFENDANT,)

IN THE COURT OF GENERAL SESSIONS
 NINTH JUDICIAL CIRCUIT
 EXPLOITATION OF VULNERABLE ADULT
 Indictment #2016-GS-10-01276
 MOTION FOR POST CONVICTION RELIEF

Now comes the defendant moving before this honorable court for post conviction relief overturning his conviction on the following grounds:

- 1) Defendant was convicted on the charge of EXPLOITATION OF VULNERABLE ADULT on September 1, 2017 in the Court of General Sessions in Charleston County The Honorable Clifton Newman, Circuit Judge, presiding.
- 2) Defendant retained Attorney Robert L. Gailliard on September 4, 2017 to represent him on the charge.
- 3) Attorney Gailliard promptly filed his NOTICE of REPRESENTATION AND MOTION FOR CONTINUANCE on September 5, 2017.
- 4) Attorney Gailliard argued his MOTION FOR CONTINUANCE based upon the Defendant's constitutional right to counsel and the effective assistance of counsel.
- 5) Judge Newman denied the MOTION FOR CONTINUANCE and the trial proceed on Thursday, September 7, 2017 without allowing counsel ANY time to prepare for trial.
- ~~6) Attorney Gailliard was not prepared to try the case and my constitutional rights were trampled.~~

Respectfully submitted

Michael L. Dayse
 Charleston County Jail

September 26, 2017
 Charleston, South Carolina

Kirkland Reception and E
 AGI F3-B1 Hampton
 1057 REVOLUTIONARY TRAIL
 P.O. BOX 1151
 FAIRFAX, S.C. 29827

**FINANCIAL CERTIFICATE
FOR THE
DISTRICT OF SOUTH CAROLINA**
(for use in § 1983, Bivens, and non-habeas civil actions filed by prisoners)

↓
Unit # E3-B-D1 Hampton

I request that an authorized officer of the institution in which I am confined, or other person designated to review financial information in relation to inmate trust funds, complete this Certificate. If I have insufficient funds in my account that prohibit me from paying the full filing fee required by 28 U.S.C. § 1914 (currently \$350.00), I will send with my complaint an initial installment payment, required by 28 U.S.C. § 1915, equal to the amount calculated and entered on line four by the authorized officer signing this form.

I recognize that by filing this case, I am required to pay the full filing fee (or the remaining unpaid portion of the filing fee by installments if necessary) under 28 U.S.C. § 1915(b) even though I am requesting to proceed *in forma pauperis*. I authorize and consent to collection of the filing fee in accordance with 28 U.S.C. § 1915 until the filing fee is paid in full.

Michael Dayse
INMATE NAME (PRINTED)

#373841
INMATE (PRISONER) NUMBER

Michael Dayse
INMATE SIGNATURE

Allendale Correctional Institution
PLACE OF CONFINEMENT

- ♦ (1) Average monthly deposits to the inmate's account.....\$ -0-
- ♦ (2) Average monthly balance in the inmate's account calculated for the prior six months period.....\$ -0-
- ♦ (3) Current Balance.....\$ 364
- ♦ (4) Initial Installment Payment (Take 20 percent of the greater of lines 1 or 2).....\$ -0-

I hereby certify that as of this date, the above financial information is accurate for the above named inmate.

Authorized Officer's Signature

Date

Authorized Officer's Name and Title

COURT OF COMMON PLEAS
AND GENERAL SESSIONS
100 BROAD STREET, SUITE 106
CHARLESTON, SC 29401-2258
(843) 958-5000
(843) 958-5020 FAX
clerkofcourt.charlestoncounty.org



FAMILY COURT OF THE
NINTH JUDICIAL CIRCUIT
CHARLESTON COUNTY
100 BROAD STREET, SUITE 143
CHARLESTON, SC 29401-2265
(843) 958-4400
(843) 958-4434 FAX
clerkofcourt.charlestoncounty.org

JULIE J. ARMSTRONG
CLERK OF COURT
CHARLESTON COUNTY

10/16/2017

RE: PCR

TO: MICHAEL DAYSES

This office has received your request.

- ☐ It is unclear what action is sought. Please clarify and resubmit.
- ☐ This office does not provide any type of research services. Public records can be researched and viewed at our office at no charge. Copy and certification fees apply.
- ☒ In order to provide you with the requested copies you must 1) pay the \$5.00 fee or 2) provide us with a statement from the SCDC East Cooper Trust Fund which shows the financial status of your account. If your account reflects no monies have been received you will not be charged the fee.
- ☐ Copies will only be returned if they are submitted with the original filing along with a self-addressed stamped envelope.
- ☐ Warrant/Indictment number is required for request.
- ☐ No record of referenced case in Charleston County Court of General Sessions.
- ☐ Jail time should be requested through your caseworker.
- ☒ You need to contact the court reporter for your transcript.
- ☐ You will need to contact the agency placing the detainer. This office cannot release a detainer.
- ☒ Other: MR. DAYSES, THERE HAS BEEN NO PCR FILED FOR CASE 2016-GS-10-01276.
PLEASE FIND A PCR APPLICATION ENCLOSED. THANK YOU

Please return this letter with your correspondence.

JJA/MKH

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

Michael L. Dayse, #373841
Applicant,

v.

State of South Carolina,
Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

2017-CP-10-6347

RETURN

Respondent, making its Return to the application for post-conviction relief ("PCR") filed on December 14, 2017 by Michael L. Dayse ("Applicant"), would respectfully show this Court:

I.

Applicant was indicted at the March 2016 term of the Charleston County Grand Jury for exploitation of a vulnerable adult. Applicant proceeded to trial before the Honorable Clifton Newman on September 7, 2017. He was found guilty as indicted, and sentenced to a term of five years imprisonment suspended upon the service of eighteen months with the balance suspended with probation for three years. On December 1, 2017, Judge Newman amended Applicant's sentencing sheet to reflect a sentence of five years' time served and five years' probation. Applicant did not appeal his conviction or sentence.

II.

In his pro se application for post-conviction relief, Applicant makes the following allegations:

1. Ineffective assistance of counsel.¹

¹ See attached post-conviction relief application.

Attached and incorporated herein are the records of the Charleston County Clerk of Court, Applicant's record from the South Carolina Department of Corrections, and the application. Respondent reserves the right to amend this Return upon receipt of any relevant information.

III.

Applicant alleges various grounds of ineffective assistance of counsel. Respondent submits Applicant's allegations of ineffective assistance of counsel are without merit. In a post-conviction relief action, the applicant bears the burden of proving the allegations in his or her application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. The applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of trial counsel. Id. at 117, 386 S.E.2d at 625. First, the applicant must prove trial counsel's performance was deficient Id. Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." Id. (citing Strickland, 466 U.S. at 688). Second, trial counsel's deficient performance must have prejudiced the

applicant such that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” Id. at 117-18, 386 S.E.2d at 625.

Respondent submits Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

Additionally, Applicant must specify any claims he intends to raise at the PCR evidentiary hearing. Any claims not specifically laid out in this PCR application or in amendments will be opposed by the State at an evidentiary hearing pursuant to §§ 17-27-10 to -160 of the South Carolina Code of Laws and Rule 71.1 of the South Carolina Rules of Civil Procedure. See also Rules 15(a)-(b), SCRPC. All claims should be made well in advance of the evidentiary hearing. Because Applicant has been appointed an attorney, the attorney, and not Applicant, is the only individual authorized to file amendments to this application. See Rule 11, SCRPC. Pro se filings will not be considered at the PCR hearing. Respondent reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to Respondent. See Rule 15(a), SCRPC.

Pursuant to § 17-27-150 of the South Carolina Code of Laws, Applicant may not invoke formal discovery processes to issue subpoenas or otherwise obtain discovery materials unless granted leave from the Court upon a showing of good cause. Furthermore, Respondent requests all potential exhibits and materials used to produce potential expert witness testimony be sent to Respondent well in advance of the evidentiary hearing. Respondent reserves the right to request a continuance and oppose witness testimony and exhibits that are withheld until the last minute

resulting in undue prejudice to Respondent.

V.

Each and every allegation contained within the application not hereinbefore either expressly admitted, qualified or explained is hereby denied.

VI.

WHEREFORE, the State requests that an evidentiary hearing be held on the claims of ineffective assistance of trial counsel.

Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

RASHIEDA CLEVELAND
Assistant Attorney General

By: *Rashieda Cleveland*
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

March 19th, 2018

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS

2017-CP-10-6347

MICHAEL DAYSE, #373841

Applicant,

vs

AFFIDAVIT OF SERVICE BY MAIL

STATE OF SOUTH CAROLINA,

Respondent,

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Return** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Christopher L. Murphy, Esquire
Murphy Law Offices, LLC
234 Seven Farms Drive, Suite 128
Charleston, SC 29492

DATED this the 20th day of March, 2018.


Jennifer Jennison, Legal Assistant
For Respondent

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

COURT OF COMMON PLEAS
2017-CP-10-06347

MICHAEL DAYSE,

Applicant,

-vs-

STATE OF SOUTH CAROLINA,

Respondent.

)

) TRANSCRIPT OF RECORD

)

) May 24, 2018

)

) Charleston, South Carolina

)

)

)

B E F O R E:

The Honorable Roger M. Young, Sr., Judge.

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

Christopher Murphy, Esquire
Attorney for the Applicant

Kelly Oppenheimer, Esquire
Attorney for the Respondent

Amanda K. Haffenden, RPR, CRR
Circuit Court Reporter

1 (May 24, 2018.)

2 THE COURT: Okay. What's next?

3 MS. OPPENHEIMER: Before we call this next
4 case, if we can have the bailiffs go out in the hall and
5 call the name Michael Dayse three times?

6 THE COURT: All right.

7 THE BAILIFF: No answer, sir.

8 THE COURT: No answer. All right. So that
9 was Michael Dayse, 2017-CP-10-06347.

10 MS. OPPENHEIMER: Yes, Your Honor.

11 THE COURT: You heard anything out of him,
12 Mr. Murphy?

13 MR. MURPHY: I have not, Your Honor.

14 THE COURT: All right. Was he sent notice of
15 this hearing?

16 MR. MURPHY: I don't believe -- I said -- I'm
17 looking through my file now, and I don't have a notice of
18 the hearing. The reason is I don't have any contact
19 information for him. Whenever someone is out, I always
20 have my girls look on the Internet to try to find the
21 person, or I'll call probation to try and get an address
22 that is up-to-date for him and then contact him from
23 there, and I have not had any contact throughout the
24 entire time I've been appointed in this case, so --

25 MS. OPPENHEIMER: And, Your Honor, the State

1 at this time would move to dismiss for failure to
2 prosecute.

3 MR. MURPHY: And being that he is released
4 and out of jail at the time, I would agree with that, and
5 I would be asking him to withdraw his application, had he
6 been here, so --

7 THE COURT: All right. Well, I will dismiss
8 for failure to prosecute.

9 MR. MURPHY: Thank you.

10 - - -

11 (Whereupon, the proceedings were concluded.)

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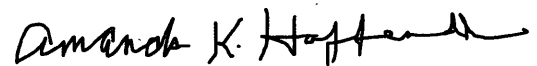
24

25

I, the undersigned, Amanda Kelly Haffenden, RPR, CRR, Circuit Court Reporter for the Ninth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Circuit Court for Charleston County, South Carolina, on the 24th of May 2018.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

November 26, 2018



Circuit Court Reporter

280
STATE OF SOUTH CAROLINA
County of ☒ Charleston ☐ Berkeley
Michael Dayse

Applicant / Petitioner

vs.

State of South Carolina,

Respondent.

COURT OF COMMON PLEAS

Case No. 2017-CP-10-6347

ORDER

This post-conviction relief case came before the court for a hearing. Having now heard this matter, the court orders as indicated herein.

1. The application for post-conviction relief is hereby: _____ denied _____ granted _____ under advisement; a formal order will be filed (see below - No.6)
2. Motion(s) was/were heard in this case and the court orders:
The motion to dismiss and/or for summary judgment is hereby _____ granted _____ denied _____ under advisement, based upon the _____ statute of limitations and/or _____ the successive nature of the application or _____ other reason as follows:

3. A conditional order of dismissal was previously filed in this case. Upon review of the matter, the court finds:

Good cause as to why the case should not be dismissed has been shown in response to the order of dismissal; therefore, a hearing on the merits of the application shall be scheduled.

The court has considered the response to the conditional order of dismissal and finds that good cause has not been shown or _____ no response has been filed to the conditional order of dismissal; therefore, the application is hereby dismissed.
4. The application was freely, voluntarily, and intelligently withdrawn as indicated on the record; therefore, this case is dismissed _____ with prejudice _____ without prejudice.
- ✓ 5. Other: CASE DISMISSED FOR FAILURE TO PROSECUTE

6. The court further orders:

The _____ Attorney General _____ Applicant's counsel is directed to submit to the court a proposed order and to serve the order on opposing counsel within _____ days.

Both sides are directed to submit proposed orders to the court and to serve the orders on each other within _____ days.

The court does not request proposed orders.

IT IS SO ORDERED.

Date: 5, 24, 2018
Charleston, S.C.

Residing Judge

Court Reporter: HAFENDOEN
Attorney for Plaintiff: Christopher L. Murphy
Attorney for Defendant: Kelly Oppenheimer

MLA/0215260/20120402532
WITNESSES

Charleston City Police Department

AGENCY CASE NUMBER
1202212

ARREST WARRANT NUMBER

2016-GS-10-01276

DATE OF ARREST

04/02/2012

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date:

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2016-GS-10-01276

The State of South Carolina
County of Charleston

COURT OF GENERAL SESSIONS

TERM

MARCH TERM 2016

THE STATE

VS.

MICHAEL LYRENZER DAYSE
B/M DOB: [REDACTED]

Indictment for

EXPLOITATION OF VULNERABLE
ADULT

SC Code: § 43-35-0085(D)
CDR Code: 2657

FILED

3/22/2016 2:48:34 PM
JULIE J. ARMSTRONG
CLERK OF COURT

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

INDICTMENT

At a Court of General Sessions, convened March 2016, the Grand Jurors of Charleston County present upon their oath:

EXPLOITATION OF VULNERABLE ADULT

That in Charleston County, South Carolina, on or about October 28, 2011 to December 31, 2011, the Defendant, Michael Lyrenzer Dayse, did knowingly and willfully exploit the victim, Ethel Frasier, a vulnerable adult, in violation of Section 43-35-85(D), Code of Laws of South Carolina, (1976 as amended).

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


MARIAN L. ASKINS
ASSISTANT SOLICITOR
