

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Greenville County

Honorable Edward W. Miller, Circuit Court Judge

CARL STANLEY AIKEN,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2020-000712

APPENDIX

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State of South Carolina
County of Greenville

Court of General Sessions

State of South Carolina	)	
	)	
	)	Transcript of Record
v.	)	2015-GS-23-3451
	)	2016-GS-23-6460(A)
Carl Stanley Aiken,	)	
	)	
<u>Defendant.</u>	)	

April 3, 2017
Greenville, South Carolina

B E F O R E:

The Honorable R. Lawton McIntosh, Judge; and a
jury.

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

Jonathan Gregory, Assistant Solicitor
Attorney for the State

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Attorney for the State

Dorothy Manigault, Esquire
Attorney for the Defendant

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Circuit Court Reporter

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<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EVD.</u>
1-13	Copies of checks		X
18	Power of Attorney		X
19	Nine photographs		X

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P R O C E E D I N G S

* * * * *

THE COURT: Good morning, ladies and gentlemen.
My name is Lawton McIntosh, and I'm from Anderson
County. This is the General Sessions side of court.
I think Judge Hayes might've qualified y'all, but
General Sessions is the criminal side of court.

In just a minute, we'll be going through some
questions and answers in order to pick a jury in the
first trial this week.

Mr. Solicitor and Mr. Hendricks [sic], would
you call your first case please, sir?

MR. GREGORY: Yes, Your Honor. Your Honor,
this is the *State v. Carl Aiken*. He's being charged
with exploitation of a vulnerable adult and
obtaining goods under false pretenses.

THE COURT: Okay. Would you pass forward those
indictments, please, sir?

MR. GREGORY: (Complying.)

THE COURT: All right. Thank you, sir.

All right. Ladies and gentlemen, the first
case of the week is the *State of South Carolina v.*
Carl Stanley Aiken. He's been charged with
exploitation of a vulnerable adult and also
obtaining goods under false pretenses.

1 Let me tell you before we get started, these
2 two documents are called indictments. And the fact
3 that this gentleman has been arrested and charged
4 and indicted is not evidence of his guilt. Doesn't
5 raise an inference or presumption of his guilt.
6 It's simply the charging mechanism by which the
7 State brings a person before the Court for a trial
8 and a determination of their guilt or innocence.

9 Before we begin the selection, I have certain
10 questions I need to ask of you. If the question
11 belongs to you, obtains to you, if you would stand
12 up and give me your jury number if you can, if you
13 have it with you, and your response.

14 Unlike what Judge Hayes did with you, instead
15 of going up and having a confidential ability to
16 speak to me, I'm going to ask that you just speak up
17 in open court, unless you have an absolute need to
18 bring the information up to me, and then we'll do
19 so. Can everybody hear me okay?

20 PROSPECTIVE JURORS: (Affirmative responses.)

21 THE COURT: Very good. All right. Let me
22 remind you that you are still under oath from when
23 you were sworn in this morning for jury
24 qualification, but the first question I have for
25 you: Has -- has anyone ever been related by blood

1 or marriage to either Raymond Poore or Carl Stanley
2 Aiken?

3 Ms. Manigault, would you let Mr. Aiken stand
4 up, please?

5 THE DEFENDANT: (Standing.)

6 THE COURT: Okay. Thank you, ma'am.

7 Has anyone ever been related by blood or
8 marriage to Mr. Poore or Mr. Aiken? If so, would
9 you please stand.

10 PROSPECTIVE JURORS: (No responses.)

11 THE COURT: The next question: Has anyone ever
12 had a close personal or a social relationship with
13 either Raymond Poore or Carl Stanley Aiken? If so,
14 would you please stand.

15 PROSPECTIVE JURORS: (No response.)

16 THE COURT: Very good. All right. Ladies and
17 gentlemen, I'm going to read you a list of
18 approximately nine names that may come before you
19 and testify in this trial. I'm going to go through
20 the entire list. If you don't get a name, raise
21 your hand, let me know. And then I'll ask questions
22 following the recitation of the list.

23 The possible witnesses who may appear in this
24 case would be Investigator Jonathan Howard of the
25 Greenville County Sheriff's Office, Dr. Kent

1 Kistler, Terry Ford, Roger Lusk, Cindy Jones,
2 Marilee Johnson, Jerry Brown, Dennis Larson, and
3 Elizabeth Eudy.

4 Did anyone not get those -- any of those names?
5 If so, would you raise your hand.

6 PROSPECTIVE JURORS: (No responses.)

7 THE COURT: Very good. All right. Ladies and
8 gentlemen, has anyone ever been related by blood or
9 marriage to any of the potential witnesses I've just
10 given to you? If so, would you please stand.

11 PROSPECTIVE JURORS: (No responses.)

12 THE COURT: Thank you. Has anyone in the jury
13 panel ever had a close personal or social
14 relationship with any of the potential witnesses
15 I've just read to you? If so, would you please
16 stand.

17 PROSPECTIVE JUROR: (Standing.)

18 THE COURT: Yes, sir. What's your jury number?

19 PROSPECTIVE JUROR: 203.

20 THE COURT: 203. Just one second please, sir.
21 You're Mr. Traynham?

22 PROSPECTIVE JUROR: Yes, sir.

23 THE COURT: Okay, sir.

24 PROSPECTIVE JUROR: You mentioned the name of
25 Roger Lusk.

1 THE COURT: I did.

2 PROSPECTIVE JUROR: L-u-s-k?

3 THE COURT: L-u-s-k, Roger Lusk.

4 PROSPECTIVE JUROR: I have a relationship with
5 him, a personal friendship with Roger Lusk.

6 THE COURT: You don't know if it's the Roger
7 Lusk?

8 PROSPECTIVE JUROR: I don't know if it's
9 the one.

10 THE COURT: Who is Roger Lusk and where is he
11 from?

12 MR. GREGORY: Your Honor, he's from Greenville
13 County. He is a -- I'll tell you where he lives,
14 Your Honor.

15 THE COURT: Don't give the exact address. Do
16 you know where -- do you know what his address is?

17 PROSPECTIVE JUROR: Yes, sir.

18 THE COURT: What street does he live on?

19 MR. GREGORY: Buford. It's Buford Street in
20 Greenville.

21 THE COURT: Is that him?

22 PROSPECTIVE JUROR: Yes.

23 THE COURT: Okay. Well, Mr. Traynham, the fact
24 that you know Mr. Lusk, would that impair your
25 ability to be fair and impartial to both the State

1 and to this defendant in this case?

2 PROSPECTIVE JUROR: No.

3 THE COURT: Can you listen to the testimony and
4 the evidence as long as I give it to you and make
5 your decision based upon that testimony and evidence
6 according to the law?

7 PROSPECTIVE JUROR: Absolutely.

8 THE COURT: If Mr. Lusk does testify, would the
9 fact that you had this relationship with him cause
10 you to believe his testimony over anyone else's
11 testimony just because of that relationship?

12 PROSPECTIVE JUROR: Absolutely not.

13 THE COURT: Very good. Any additional voir
14 dire from the State?

15 MR. GREGORY: Not from the State, Your Honor.

16 THE COURT: And defense?

17 MS. MANIGAULT: None, Your Honor.

18 THE COURT: Thank you, sir. Anyone else?

19 PROSPECTIVE JURORS: (No responses.)

20 THE COURT: All right. Ms. Manigault, would
21 you stand up and introduce yourself, please?

22 MS. MANIGAULT: I'm Dorothy Manigault. I'm an
23 attorney in Greenville County.

24 THE COURT: All right. Mr. Hendricks.

25 MR. GREGORY: Good morning, ladies and

1 gentlemen. My name is Jon Gregory with the
2 Greenville County Solicitor's Office. Seated with
3 me is Jena Hendricks. She's also with the
4 Greenville County Solicitor's Office.

5 THE COURT: All right. Ladies and gentlemen,
6 has any member of the jury panel ever been
7 represented by any of these attorneys in the
8 courtroom, any member of the Greenville County or
9 13th Circuit Public Defender's Office or Solicitor's
10 Office? If so, would you please stand.

11 PROSPECTIVE JURORS: (No responses.)

12 THE COURT: Has any member of the jury panel
13 ever been related by blood or marriage or have you
14 ever had a close personal or social relationship
15 with any of these attorneys here in the courtroom,
16 any attorney who's employed by the Public Defender's
17 Office here in the 13th Circuit, or any attorney who
18 works at the Solicitor's Office here in the 13th
19 Circuit? If so, would you please stand.

20 PROSPECTIVE JURORS: (No responses.)

21 THE COURT: All right. Ladies and gentlemen,
22 has any member of the jury panel read, heard, or
23 seen anything about the case of the *State of South*
24 *Carolina v. Carl Stanley Aiken* prior to coming to
25 court today? If so, would you please stand.

1 PROSPECTIVE JURORS: (No responses.)

2 THE COURT: Has any member of the jury panel
3 formed or expressed an opinion about any issue or
4 matter involved in the case of the *State of South*
5 *Carolina or Carl Stanley Aiken*? If so, would you
6 please stand.

7 PROSPECTIVE JURORS: (No responses.)

8 THE COURT: Is any member of the jury panel
9 aware of any bias or prejudice that they may harbor
10 either towards the State of South Carolina or
11 towards the defendant in this case or their
12 respective attorneys? If so, would you please
13 stand.

14 PROSPECTIVE JURORS: (No responses.)

15 THE COURT: Is any member of the jury panel
16 a -- was any member of the jury panel a member of
17 the Greenville County Grand Jury that issued the
18 indictments in this case? If so, would you please
19 stand.

20 PROSPECTIVE JURORS: (No responses.)

21 THE COURT: Is there any member of the jury
22 panel who is a member of or a contributor to any
23 group which has as its primary concern the promotion
24 of law enforcement or victims' rights? Examples,
25 but certainly not a full list of such groups, would

1 be: MADD, SADD or CAVE. But if there's anyone
2 who's a member of or a contributor to any group that
3 has as its primary concern the promotion of law
4 enforcement or victims' rights, would you please
5 stand.

6 PROSPECTIVE JURORS: (No responses.)

7 THE COURT: Does any member of the jury panel
8 know of any reason whatsoever why he or she should
9 not -- should not be selected to serve in the trial
10 of this matter with particular emphasis being placed
11 about your ability to be fair and impartial to both
12 the State of South Carolina and also to Carl Stanley
13 Aiken? If any reason that anybody knows of any
14 reason why you shouldn't serve, would you please
15 stand.

16 PROSPECTIVE JURORS: (No responses.)

17 THE COURT: Very good. All right. Ladies and
18 gentlemen, in just a minute the clerk's going to run
19 a list of your names. They'll provide it to me and
20 they'll have it -- from that list, they will call
21 your names respectively if you appear in a certain
22 order.

23 If your name is called, I'm going to ask that
24 you come through the bar and stand in front of the
25 State and the defense tables. Face them so they can

1 determine whether or not you'll be selected to serve
2 in the trial of this matter. If your name is
3 called, would you bring your personal belongings
4 with you so you don't have to go back and get them?

5 Okay. If you'd run that for me, please, madam
6 clerk.

7 THE CLERK: Juror No. 148, Justin R. Paris.

8 PROSPECTIVE JUROR: (Approaching.)

9 THE CLERK: What say the State?

10 MR. GREGORY: Please excuse this juror.

11 THE CLERK: You may be seated.

12 PROSPECTIVE JUROR: (Complying.)

13 THE CLERK: Juror No. 75, Kathereen D. Graham.

14 PROSPECTIVE JUROR: (Approaching.)

15 THE CLERK: What say the State?

16 MR. GREGORY: Please present this juror.

17 THE CLERK: What say the defendant?

18 MS. MANIGAULT: Please swear Ms. Graham.

19 THE CLERK: You may be seated in the jury box.

20 PROSPECTIVE JUROR: (Complying.)

21 THE COURT: Juror No. 107, Kelliher-Gibson,
22 Matthew.

23 PROSPECTIVE JUROR: (Approaching.)

24 THE CLERK: What say the State?

25 MR. GREGORY: Please present this juror.

1 THE CLERK: What say the defendant?
2 MS. MANIGAULT: Please swear the juror.
3 THE CLERK: You may be seated.
4 PROSPECTIVE JUROR: (Complying.)
5 THE CLERK: Juror No. 86, Beth Hinson.
6 PROSPECTIVE JUROR: (Approaching.)
7 THE CLERK: What say the State?
8 MR. GREGORY: Please present this juror.
9 THE CLERK: What say the defendant?
10 MS. MANIGAULT: Please swear Ms. Hinson.
11 THE CLERK: You may be seated. Thank you.
12 PROSPECTIVE JUROR: (Complying.)
13 THE CLERK: Juror No. 96, John L. Huff.
14 PROSPECTIVE JUROR: (Approaching.)
15 THE CLERK: What say the State?
16 MR. GREGORY: Please present this juror.
17 THE CLERK: What say the defendant?
18 MS. MANIGAULT: Please excuse Mr. Huff.
19 THE CLERK: You may be seated.
20 PROSPECTIVE JUROR: (Complying.)
21 THE CLERK: Juror No. 218, Sierra S. Davis.
22 PROSPECTIVE JUROR: (Approaching.)
23 THE CLERK: What say the State?
24 MR. GREGORY: Please present this juror.
25 THE CLERK: What say the defendant?

1 MS. MANIGAULT: Please swear the juror.

2 THE CLERK: You may be seated.

3 PROSPECTIVE JUROR: (Complying.)

4 THE CLERK: Juror No. 25, Jason C. Brooks.

5 PROSPECTIVE JUROR: (Approaching.)

6 THE CLERK: What say the State?

7 MR. GREGORY: Please present this juror.

8 THE CLERK: What say the defendant?

9 MS. MANIGAULT: Please swear Mr. Brooks.

10 THE CLERK: You may be seated.

11 PROSPECTIVE JUROR: (Complying.)

12 THE CLERK: Juror No. 19, Sandra A. Bowers.

13 PROSPECTIVE JUROR: (Approaching.)

14 THE CLERK: What say the State?

15 MR. GREGORY: Please present this juror.

16 THE CLERK: What say the defendant?

17 MS. MANIGAULT: Please excuse Ms. Bowers for
18 this case.

19 THE CLERK: You may be seated.

20 PROSPECTIVE JUROR: (Complying.)

21 THE CLERK: Juror No. 136, Cynthia R. Moses.

22 PROSPECTIVE JUROR: (Approaching.)

23 THE CLERK: What say the State?

24 MR. GREGORY: Please present this juror.

25 THE CLERK: What say the defendant?

1 MS. MANIGAULT: Please swear Ms. Moses.
2 THE CLERK: You may be seated. Thank you.
3 PROSPECTIVE JUROR: (Complying.)
4 THE CLERK: Juror No. 91, Joy E. Hollingsworth.
5 PROSPECTIVE JUROR: (Approaching.)
6 THE CLERK: What say the State?
7 MR. GREGORY: Please present this juror.
8 THE CLERK: What say the defendant?
9 MS. MANIGAULT: Please swear Ms. Hollingsworth.
10 THE CLERK: You may be seated.
11 PROSPECTIVE JUROR: (Complying.)
12 THE CLERK: Juror No. 72, Anthony Gary.
13 PROSPECTIVE JUROR: (Approaching.)
14 THE CLERK: What say the State?
15 MR. GREGORY: Please present this juror.
16 THE CLERK: What say the defendant?
17 MS. MANIGAULT: Please swear Mr. Gary.
18 THE CLERK: You may be seated, Mr. Gary.
19 PROSPECTIVE JUROR: (Complying.)
20 THE CLERK: Juror No. 150, Larry S. Parnell.
21 PROSPECTIVE JUROR: (Approaching.)
22 THE CLERK: What say the State?
23 MR. GREGORY: Please present this juror.
24 THE CLERK: What say the defendant?
25 MS. MANIGAULT: Please swear Mr. Parnell.

1 THE CLERK: You may be seated in the jury box.
2 PROSPECTIVE JUROR: (Complying.)
3 THE CLERK: Juror No. 207, David R. Vinson.
4 PROSPECTIVE JUROR: (Approaching.)
5 THE CLERK: What say the State?
6 MR. GREGORY: Please excuse this juror.
7 THE CLERK: You may be seated.
8 PROSPECTIVE JUROR: (Complying.)
9 THE CLERK: Juror No. 126, Paul K. McCloud.
10 PROSPECTIVE JUROR: (Approaching.)
11 THE CLERK: What say the State?
12 MR. GREGORY: Please present this juror.
13 THE CLERK: What say the defendant?
14 MS. MANIGAULT: Please swear the juror.
15 THE CLERK: You may be seated.
16 PROSPECTIVE JUROR: (Complying.)
17 THE CLERK: Juror No. 190, Jessica N. Snook.
18 PROSPECTIVE JUROR: (Approaching.)
19 THE CLERK: What say the State?
20 MR. GREGORY: Please excuse this juror.
21 THE CLERK: You may be seated.
22 PROSPECTIVE JUROR: (Complying.)
23 THE CLERK: Juror No. 77, Deborah L. Gray.
24 PROSPECTIVE JUROR: (Approaching.)
25 THE CLERK: What say the State?

1 MR. GREGORY: Please present this juror.

2 THE CLERK: What say the defendant?

3 MS. MANIGAULT: Please excuse the juror for
4 this case.

5 THE CLERK: You may be seated.

6 PROSPECTIVE JUROR: (Complying.)

7 THE CLERK: Juror No. 214, Steven H. Yarbrough.

8 PROSPECTIVE JUROR: (Approaching.)

9 THE CLERK: What say the State?

10 MR. GREGORY: Please excuse this juror.

11 THE CLERK: You may be seated.

12 PROSPECTIVE JUROR: (Complying.)

13 THE CLERK: Juror No. 161, Suzanne G. Rau.

14 PROSPECTIVE JUROR: (Approaching.)

15 THE CLERK: What say the State?

16 MR. GREGORY: Please present this juror.

17 THE CLERK: What say the defendant?

18 MS. MANIGAULT: Please swear Ms. Rau.

19 THE CLERK: You may be seated.

20 PROSPECTIVE JUROR: (Complying.)

21 THE CLERK: Juror No. 89, Pamela G. Holcombe.

22 PROSPECTIVE JUROR: (Approaching.)

23 THE CLERK: What say the State?

24 MR. GREGORY: Please present this juror.

25 THE CLERK: What say the defendant?

1 MS. MANIGAULT: Please excuse the juror.

2 THE CLERK: You may be seated.

3 PROSPECTIVE JUROR: (Complying.)

4 THE CLERK: Juror No. 87, Nathan G. Hitt.

5 PROSPECTIVE JUROR: (Approaching.)

6 THE CLERK: What say the State?

7 MR. GREGORY: Please present this juror.

8 THE CLERK: What say the defendant?

9 MS. MANIGAULT: Please swear Mr. Hitt.

10 THE CLERK: You may be seated.

11 PROSPECTIVE JUROR: (Complying.)

12 THE CLERK: That's our 12 jurors, and now we'll
13 have one alternate.

14 THE COURT: Okay.

15 THE CLERK: Juror No. 140, Kelly A. Norris.

16 PROSPECTIVE JUROR: (Approaching.)

17 THE CLERK: What say the State?

18 MR. GREGORY: Please present this juror.

19 THE CLERK: What say the defendant?

20 MS. MANIGAULT: Please swear the juror.

21 THE CLERK: You may be seated.

22 PROSPECTIVE JUROR: (Complying.)

23 THE COURT: All right. Madam clerk, let me ask
24 you, do we need to have the remaining jurors go back
25 to the jury room?

1 THE CLERK: Yes, sir.

2 THE COURT: Okay. Very good. All right.

3 Ladies and gentlemen, those of you who were not
4 selected, if you'll follow our bailiff down to the
5 jury room, we'll recycle you through and see if you
6 get selected on another jury. Thank you.

7 (Jurors that were not selected to serve were
8 excused at this time.)

9 THE COURT: Let's just review right quick.
10 Well, let me ask a question inside this. State have
11 any objections to the jury selection process?

12 MR. GREGORY: No, Your Honor.

13 THE COURT: Defense?

14 MS. MANIGAULT: None, Your Honor.

15 THE COURT: Any matter about sequestering
16 witnesses in this case?

17 MR. GREGORY: Not from the State, Your Honor.

18 MS. MANIGAULT: No, Your Honor.

19 THE COURT: All right. Very good.

20 All right. Ladies and gentlemen, in just a few
21 minutes we're going to begin the trial in the case
22 of the *State of South Carolina v. Carl Stanley*
23 *Aiken*. Before we get started, first let me check,
24 can you hear me okay?

25 A JUROR: Yes.

1 THE COURT: If at any time during these
2 proceedings you can't hear me or you can't hear
3 what's going on in the courtroom or somebody blocks
4 you from being able to see, raise your hand and
5 we'll make sure we correct that. Okay?

6 Now, if you would, I'm going to ask that you go
7 back in just a second to the jury room. I need you
8 to vote on a foreperson from the jury. Let me tell
9 you that the foreperson at the end of the day when
10 you're told to begin your deliberations will reside
11 over the jury deliberations. The foreperson will
12 also communicate with the Court any time there needs
13 to be any communications.

14 Now, our alternate. Ma'am, you're our
15 alternate; is that correct?

16 ALTERNATE JUROR: Uh-huh.

17 THE COURT: You will be allowed to vote, but
18 you'll not be allowed to serve as a foreperson since
19 you are the alternate. It doesn't have to be
20 unanimous, just by a simple majority.

21 Once you are selected as the foreperson, I'm
22 going to ask that you write your name down on a
23 piece of paper. And then turn around and pole your
24 fellow jurors to determine who, if anyone, would
25 like to have pad and pen to use to take notes with

1 during the course of this trial.

2 Once you get those two issues of information
3 down on a piece of paper, knock on the door, give
4 that piece of paper to the bailiff, and she'll bring
5 it in here for us and we'll be prepared to go
6 forward with the trial. But if you'll go with our
7 bailiff now, please, ma'am.

8 (At 11:54 a.m., the jurors exited the
9 courtroom.)

10 THE COURT: All right. Mr. Hendricks, from the
11 State, my understanding is there's no pretrial
12 matters that I need to deal with?

13 MR. GREGORY: No, Your Honor. It's Mr. Gregory
14 as well. I apologize.

15 THE COURT: Gregory?

16 MR. GREGORY: It's Jon Gregory and Jena
17 Hendricks.

18 THE COURT: I apologize. I wrote it down wrong
19 on a piece of paper. I apologize.

20 MR. GREGORY: Yes, sir.

21 THE COURT: Mr. Gregory. All right.
22 Ms. Manigault, anything from the defense?

23 MS. MANIGAULT: Your Honor, give me just a
24 second.

25 THE COURT: Yes, ma'am.

1 MS. MANIGAULT: Your Honor, my client wishes me
2 to argue these issues as a pretrial matter.

3 One is that the Court lacks subject matter and
4 jurisdiction, and these -- this case does not meet
5 the statutory definition of a vulnerable adult under
6 the act. I've explained to my client that the Court
7 doesn't know anything about the case and that would
8 have to be decided after the State has presented its
9 case.

10 THE COURT: Well, then for your edification, I
11 know your attorney knows which direction the subject
12 matter of jurisdiction would be whether or not I
13 have authority to entertain these type of cases in
14 General, which I do, so I will deny your motion.
15 Anything else?

16 MS. MANIGAULT: That's it.

17 THE COURT: Okay.

18 MS. MANIGAULT: Thank you, Your Honor.

19 THE COURT: Let's just be at ease for a minute.
20 Before we do opening statements, you want to take a
21 minute?

22 MS. MANIGAULT: Yes.

23 THE COURT: Okay. Well, I'm going to give them
24 opening instructions in just a minute, and then
25 we'll take a break and let you come back with

1 opening statements.

2 MS. MANIGAULT: Okay.

3 THE COURT: Will you just let me know when they
4 get that information then, please? And we'll be in
5 recess -- we'll be at ease.

6 (From 11:57 a.m. to 12:07 p.m., a recess was
7 taken.)

8 THE COURT: Juror No. 107 will be the
9 foreperson. We'll bring the jury in, Sam. We'll
10 give them opening statement. Take a break. Bring
11 the jury in. Giving opening charge, break, and then
12 let you come back with opening statements. Any
13 problem with that?

14 MR. GREGORY: None from the State, Your Honor.
15 I'm prepared to go forward.

16 THE COURT: You want a break, right?

17 MS. MANIGAULT: No, that's fine, Your Honor.
18 We can just go ahead.

19 THE COURT: Are you ready to go?

20 MS. MANIGAULT: Yes. Yes, sir.

21 THE COURT: Very good. Would you bring the
22 jury in, please?

23 THE BAILIFF: (Complying.)

24 (Jurors entered the courtroom at 12:09 p.m.)

25 THE COURT: Thank you, ma'am. All right. Sir,

1 are you our foreman?

2 THE FOREMAN: Yes.

3 THE COURT: Okay. And you're our alternate?

4 THE ALTERNATE: (Affirmative response.)

5 THE COURT: If you would, each time you come in
6 and out of the courtroom, if you would use that seat
7 and if you would use that seat, it helps us to keep
8 up with some administrative matters; otherwise, the
9 rest of you can come and go and sit where you'd like
10 to.

11 Now, is there any member of the jury panel that
12 would like to have pad and pen to use to take notes
13 with during the course of this trial? If so, raise
14 your hand.

15 THE JURORS: (No responses.)

16 THE COURT: Very good. All right. Would you
17 swear the jury in please, madam clerk?

18 THE CLERK: Ladies and gentlemen of the jury,
19 please stand up and raise your right hand.

20 THE JURORS: (Complying.)

21 THE CLERK: The correct response to this oath
22 is "I will."

23 You shall well and truly try the case,
24 2015-GS-23-3451, South Caro -- *State of South*
25 *Carolina v. Carl Stanley Aiken*, indicted for

1 exploitation of a vulnerable adult;
2 2016-GS-23-6460(A), for obtaining goods under false
3 pretenses, and a true verdict render according to
4 the law and the evidence so help you God.

5 THE JURORS: (Collectively) I will.

6 THE CLERK: Thank you.

7 THE COURT: All right. Ladies and gentlemen,
8 first, I kind of have a tickle in my throat. So if
9 I have to stop, please bear with me.

10 If at any time -- again, let me remind you. If
11 you don't understand what I tell you or you can't
12 hear what I tell you or you can't hear or see the
13 proceedings, raise your hand. We'll stop and make
14 sure that you can. Okay. Can everybody hear me
15 okay still? Ma'am?

16 THE JUROR: (Affirmative responses.)

17 THE COURT: All right. Ladies and -- oh,
18 Mr. Foreman, this is not an endurance contest. So
19 if at any time the jury needs to take a break before
20 I give a break during the trial, just let me know.
21 We'll let you have a break.

22 If I call you back here before you're ready to
23 come back from the jury room, just let us know and
24 we'll accommodate you. If the jury needs anything
25 throughout this trial, just let your bailiff know

1 and they'll try to accommodate you if possible.

2 Okay?

3 With that being said, ladies and gentlemen, I
4 don't know if any of you have ever been involved in
5 a trial before, either as a spectator or a witness
6 or a participant, but I suspect that each and every
7 one of you have watched on TV something that
8 purports to be a trial, whether it be in the movies
9 or on television.

10 Let me quickly dispel you, what you're about to
11 engage in is nothing like you see on TV. Things
12 don't happen in five minutes. Trials are very slow.
13 They're very deliberate. They're very methodical.
14 But I point out that it's certainly not
15 entertainment, but they are a fundamental part of
16 our democracy to which every citizen is entitled.

17 Now, ladies and gentlemen, these attorneys here
18 in the courtroom, when they're sworn, like any other
19 attorney has to take an oath where they agree and
20 affirm -- swear or affirm that they will zealously
21 represent their client's cause before the Court.
22 And you can expect no different from them in this
23 case.

24 That being said, they're also officers of the
25 court. What that means is, you can expect them to

1 be professional, competent, and ethical in their
2 dealings with one another, in their dealings with
3 any witnesses, and also in dealing with the Court
4 throughout the course of this trial.

5 Now, you have just taken an oath where you
6 swore or affirmed to truly try the case before you,
7 and hopefully you reach a fair and impartial
8 verdict.

9 Now, what that means is, is that the attorneys
10 can expect you, the parties can expect you, and this
11 Court can expect that you will be fair, that you'll
12 be impartial and ethical in your dealings in this
13 case, and that you'll follow the instructions by the
14 Court.

15 Now, what I'm telling you now is not the
16 substantive law that you apply in the case. It's
17 generally some instructions to give you a roadmap to
18 where we are throughout this case so you'll
19 generally know what -- what you are doing throughout
20 the course of this trial.

21 In this case as you heard, the defendant's been
22 charged with two charges: Number one, exploitation
23 of a vulnerable adult; and number two, obtaining
24 goods under false pretenses.

25 Now, I remind you that the fact that this

1 defendant has been arrested, charged, and indicted
2 is not evidence of his guilt. It does not raise an
3 inference of his guilt or any presumption of his
4 guilt. This is simply the charging mechanism by
5 which the State of South Carolina brings a defendant
6 such as Mr. Aiken before the Court in a trial of his
7 guilt or innocence.

8 In fact, Mr. Aiken has pled not guilty to both
9 charges. As a result of that, he is presumed to be
10 innocent in this case. And that puts the burden on
11 the State of South Carolina to prove each and every
12 element of both charges against him by proof beyond
13 a reasonable doubt.

14 At the end of the case, you'll be asked to
15 decide whether or not the State has met its burden
16 with respect to one or both of these charges.

17 That being said, let me give you a brief
18 definition of reasonable doubt so you'll have a
19 general idea of what it is throughout the course of
20 this trial.

21 A reasonable doubt is the kind of doubt that
22 would cause a reasonable person to hesitate to act
23 in an important matter in their own affairs.

24 Now, in civil cases, ladies and gentlemen, the
25 burden of proof is proof beyond -- it's proof by a

1 preponderance or the greater weight of the evidence.

2 In criminal cases, the burden is much higher.
3 It's proof beyond a reasonable doubt. Reasonable
4 doubt is -- proof beyond a reasonable doubt is proof
5 that leaves you firmly convinced of the defendant's
6 guilt.

7 Now, with that being said, ladies and
8 gentlemen, there are very few things in this world
9 that we know with absolute certainty, and the law
10 does not require in criminal cases that the State
11 overcome every possible certainty that may exist.

12 At the end of the case when you're instructed
13 to begin your deliberations, if you have a firmly
14 held convinced feeling or belief that the defendant
15 is guilty of the crime or crimes for which he has
16 been charged, it will be your duty to find him
17 guilty of one or both of the charges.

18 On the other hand, if you think there's a real
19 possibility that the defendant is not guilty to
20 either or both of these charges, it will be your job
21 to give him the benefit of the doubt and find him
22 not guilty.

23 Now, in the vernacular of the law, we call the
24 jury the "judges of the facts." You will determine
25 what the facts are in this case from the testimony

1 and evidence that you hear from this witness stand
2 and from the exhibits that I allow into evidence.

3 The law says you are the sole judges of the
4 facts. In other words, what verdict you're going to
5 reach. No one can invade your provinces being the
6 sole judges of the facts. So at any time I do
7 something or say something or make some type of
8 gesture that seems to indicate to you how you are to
9 find facts, I'm going to ask you and also instruct
10 you to discuss regard it.

11 Our Constitution in South Carolina does not
12 allow a trial judge to make any comments or have a
13 belief about the facts of this case, and I certainly
14 don't in this matter. It will be up to you, once I
15 allow the evidence into -- or the testimony or
16 exhibits into evidence, to infer -- make any
17 inferences from that evidence that you determine is
18 appropriate in any way.

19 Now, ladies and gentlemen, the law that makes
20 you the sole judges of the facts, and with equal
21 emphasis makes me the sole judge of the law. That
22 means that you must accept the law as I charge it to
23 you. You may not concern yourselves with what you
24 think it should be, what you would like it to be,
25 but only what it is. It would be a dereliction of

1 your duty to not apply the law as I give it to you
2 on the substantive matters or on the other charge at
3 the end of this case.

4 Now, that you have been sworn as juries in this
5 case -- jurors in this case, you may not discuss
6 this case with anybody until this case is over, and
7 that includes among yourselves. That means you
8 can't talk to somebody face-to-face, you can't
9 e-mail them, you can't text them, or some other form
10 of communication about this case.

11 I'm married and I have a daughter. Now, I know
12 if I was sitting on the jury, one or both of them
13 would want to question me about the case I'm
14 hearing, what I'm -- what the case is about. It
15 would be inappropriate for you to discuss with them
16 or anyone else what this case is about until you've
17 been released from this trial.

18 Also, during the breaks of this case, talking
19 amongst yourselves about the testimony you just
20 heard would also constitute early deliberations
21 about the case. So just wait until the end of this
22 case when I give you clear, clear instructions that
23 you are to begin your deliberations to talk about
24 the case. And at that point, you'll have all the
25 time in the world to do so.

1 Also, ladies and gentlemen, each trial judge is
2 instructed by our Supreme Court that we are to
3 instruct all jurors that they may not engage in
4 jury -- independent jury research. What that simply
5 means is, you can't -- if it so happens anything
6 about this case appears in any press or paper or
7 blog or anywhere, you can't read it, see it, or hear
8 it.

9 Also, when this case is going on, you can't
10 look up anything about anybody involved in this
11 case, any court officials, the parties, the
12 attorneys, myself, any issue involved in this case,
13 or any issue that you think may be beneficial to
14 this case.

15 The reason being and the reason we don't want
16 you to begin your deliberations as well, we want you
17 to wait to the end of the case until all of the
18 evidence is in, until I've charged you on the law,
19 that way you don't come to an early conclusion based
20 on the wrong perception to what the laws are.

21 Now, in every single case, there will be five
22 phases. In just a minute, the State is going to
23 give you an opening statement. The defendant may,
24 but is not required to give an opening statement
25 because the burden is on the State of South Carolina

1 at all times to prove his guilt by proof beyond a
2 reasonable doubt.

3 After -- let me tell you something about
4 opening statements. It's just what the attorneys'
5 contentions about what the issues and the case is
6 about. And it's helpful to help you understand what
7 the case is about. But at the end of the day, what
8 they tell you is not evidence. They're not sworn
9 in. They're not cross-examined.

10 And I'll remind you, Mr. Foreman, at the end of
11 this case, if what either or both of these attorneys
12 tell you throughout the trial of this case, either
13 in opening or later on their closing statements,
14 differs from your collective memory of what that
15 fact is, then your memory will control.

16 After opening statements, then there will be
17 the presentation of the evidence.

18 And then at the close of all the evidence,
19 they'll be closing arguments by the attorneys.

20 I will charge you on the law.

21 And then the last phase will be you having your
22 deliberations. And, again, I'll make it perfectly
23 clear when you're to begin on your deliberations.
24 Until that time, please do not do so.

25 In every single case I was involved with either

1 as an attorney or as a judge, there were objections.
2 A lawyer has an ethical duty to object any time he
3 or she thinks the process is not properly being
4 followed in the courtroom.

5 The fact, Mr. Foreman, that an objection is
6 made, shall not be a part of the jury's
7 deliberations at the end of this case. And to the
8 extent I may allow you to stay in the courtroom and
9 see my ruling on that objection, that may not be
10 discussed or deliberated by the jury either.
11 Suffice it to say, that objections are just part of
12 the process. It's followed almost 99.9 percent of
13 the cases out there.

14 That being said, if you need anything
15 throughout the course of this trial, Mr. Foreman,
16 write a note and that's the process I always want
17 you to do. Sign your name to it, give it to our
18 bailiffs, and then we'll respond accordingly. Okay,
19 sir?

20 To ensure that I haven't misspoken or omitted
21 to tell you something I should have, I'm going to
22 send you back to your jury room for just a second,
23 and then we will start up with opening statements.
24 If you'll go back to your jury room, please.

25 (At 12:23 p.m., the jurors exited the

1 courtroom.)

2 THE COURT: Any additions or exceptions from
3 the State?

4 MR. GREGORY: None from the State, Your Honor.

5 THE COURT: From the defense?

6 MS. MANIGAULT: None from defense, Your Honor.

7 THE COURT: All right. You're ready to get
8 started?

9 MS. MANIGAULT: Yes, sir.

10 MR. GREGORY: Yes, Your Honor.

11 THE COURT: All right. Bring them back in.

12 THE BAILIFF: (Complying.)

13 THE COURT: Ms. Manigault, do you intend on
14 making an opening statement?

15 MS. MANIGAULT: Very brief, Your Honor.

16 (Jurors entered the courtroom at 12:34 p.m.)

17 THE COURT: All right. Mr. Foreman, one quick
18 note. When we take breaks from the courtroom when
19 we're going to continue the proceedings, if you
20 would leave your pads here in the courtroom while
21 during those breaks, during lunch or overnight, just
22 leave them back in the jury room and we'll lock them
23 up for you. Okay?

24 State ready to proceed, Mr. Gregory?

25 MR. GREGORY: Yes, Your Honor. May it please

1 the Court? Ms. Manigault?

2 Ladies and gentlemen, in 2012, it was a year of
3 change for Raymond Poore. On January 26, 2012,
4 Raymond's wife of over 40 years passed away.

5 In April of 2012, Mr. Poore was diagnosed and
6 began treatment for dementia. Betty and Raymond did
7 not have any children, so Terry Ford, who is a blood
8 relative of Mr. Poore, stepped up. In April, she
9 became -- in April of 2012, she became power of
10 attorney for Raymond Poore.

11 In 2013, March of 2013, as she was going
12 through Raymond's bank accounts, his checkbook, she
13 noticed 13 checks written to this defendant. Those
14 checks were written in exchange for work being done
15 on Mr. Poore's house. This raised red flags for
16 Ms. Ford.

17 One, the amount of checks. The amount of
18 checks were over \$14,000 written over a three-month
19 period.

20 Secondly, the reason for those checks was for
21 work being down on the house, and Ms. Ford will tell
22 you during her testimony that she didn't see any
23 work being done on that house, not to justify
24 \$14,000.

25 That's why we're here today, ladies and

1 gentlemen. The defendant, Carl Aiken, is being
2 charged with exploitation of a vulnerable adult and
3 obtaining goods under false pretenses.

4 And as the judge has already told you, the
5 State bears the burden of proof. All the proof in
6 the courtroom today is on this table, and I embrace
7 that burden. It is my job to come before you and
8 present evidence to lead you beyond a reasonable
9 doubt to believe this defendant committed these two
10 offenses.

11 Well, what do I have to prove? You heard I
12 have to prove each element of the offense beyond a
13 reasonable doubt. Exploitation of a vulnerable
14 adult, according to South Carolina, is -- is at the
15 risk as you exploit a vulnerable adult, but the
16 statute goes on to define exploitation as well as
17 what a vulnerable adult is.

18 Exploitation is the unlawful, improper,
19 unauthorized use of a victim's -- or the vulnerable
20 adult's funds, property, assets.

21 The Statute goes on to say that a vulnerable
22 adult is anyone that's over 18 years of age and is
23 suffering from a mental or a physical condition that
24 substantially impairs his ability to adequately care
25 for himself or protect himself. That's exploitation

1 of a vulnerable adult.

2 The second charge is obtaining goods under
3 false pretenses, and that, again, is exactly how it
4 sounds. Obtaining goods, the defendant has to
5 obtain goods, money, property, assets from the
6 victim under a misrepresentation of false pretenses.

7 And, thirdly, the intent for that is, he has to
8 have the intent to cheat the victim out of the
9 money.

10 So how are we going to prove that? The State
11 will call several witnesses. You'll hear from lay
12 witnesses.

13 You'll hear from Ms. Terry Ford. She's going
14 to tell you about Raymond's condition. She's going
15 to tell you about meeting Carl Aiken. She's going
16 to say what she saw and what she didn't see around
17 Raymond's house at that time.

18 You will hear from other witnesses that work in
19 and out of Raymond's house and also working and
20 dealing with Raymond at that time.

21 You will hear from a banker. The first witness
22 is going to show a lot of documents. She's not
23 going to have -- she didn't have any interaction
24 with Raymond Poore, and she didn't have any
25 interaction with the defendant. She's just here to

1 provide documents, but those documents are just as
2 much a part of the evidence as any testimony you'll
3 hear. You'll hear evidence from testimony as well
4 as the documents.

5 You'll also hear from Dr. Kent Kistler. He was
6 the neurologist that was -- that Raymond was
7 referred to him in April of 2012. He's going to
8 talk to you about his diagnosis and treatment of
9 Raymond at that time.

10 The one person you won't hear from today,
11 ladies and gentlemen, is Raymond Poore. And he's
12 not in the courtroom. If you're looking for him
13 right now, he's not out there. Raymond Poore is in
14 an assisted living home now. He is unable to be in
15 court today. But let me tell you, that does not
16 mean this case is not important to him, it's not
17 important to his family, or it's not important to
18 the State.

19 I ask that you just listen and you remember
20 firmly convinced. Are you firmly convinced that the
21 State proved each element of both these offenses
22 beyond a reasonable doubt?

23 Thank you for your time. At the end of the
24 State's case and the defense case, I will come back
25 before you with a closing argument and ask you to

1 find the defendant guilty of exploitation of a
2 vulnerable adult and obtaining goods under false
3 pretenses.

4 THE COURT: All right. Ms. Manigault, does the
5 defense wish to have an opening statement?

6 MS. MANIGAULT: Very brief, Your Honor. Thank
7 you.

8 Ladies and gentlemen, I'm Dorothy Manigault.
9 Just introducing myself again. My client is Carl
10 Stanley Aiken.

11 The judge has read to you the charges on the
12 indictment. The judge has indicated to you that
13 those are only charging instruments and it is not
14 evidence of guilt.

15 What it comes down to are the facts. You're
16 going to be the trier of the facts, the judges of
17 the facts. You're going to listen to the facts of
18 the case, the testimony that is going to be
19 presented by the State. And when the judge gives
20 you the law at the end of the case, then you will
21 apply those facts to the law.

22 The elements of the charge must be proven.
23 Whether it's a proper charge, it's a decision for
24 the Court itself. We ask you to listen very
25 carefully. The judge has provided you -- allowed

1 you to take notes. And I want to share with you at
2 this point and will share with you again, that each
3 juror has a right to their decision as long as it is
4 bearing with the facts of the case.

5 So when we get to the end of the case, the
6 judge will tell you that your verdict must be
7 unanimous. But, again, I indicate to you that each
8 juror has a right to voice his or her opinion on the
9 facts of the case.

10 Mr. Carl Stanley Aiken has entered a plea of
11 not guilty. The presumption of innocence carries
12 forth through the end of the case and until you
13 reach a decision unanimous, one way or the other.
14 We indicate to you that the decision should be not
15 guilty. Thank you.

16 THE COURT: How long is your first witness,
17 Mr. Gregory?

18 MR. GREGORY: Your Honor, our first witness
19 would take some time. She is the banker. We expect
20 to put in quite a few bank records.

21 THE COURT: All right. Let's take a lunch
22 break now. I think that's a good idea.

23 Mr. Foreman, ladies and gentlemen of the jury,
24 I'm going to go ahead and call a lunch break. It is
25 about 20 minutes until one o'clock. If you would be

1 back in your jury room at two o'clock, we'll resume
2 testimony in this case. I'll remind you, don't
3 speak amongst yourselves about this case with anyone
4 else. If you'll leave your pads in the jury room
5 and be back at two o'clock, we'll begin with the
6 first bit of testimony. Okay. If you'll take a
7 break.

8 (At 12:42 p.m., the jurors were dismissed for
9 lunch.)

10 THE COURT: Ms. Manigault has asked me to give
11 the status of bond. The bond has been met since
12 he's here in trial. What is your position on
13 whether he should remain locked up over lunch?

14 MS. MANIGAULT: Your honor, I'd ask the Court
15 to allow him to remain free. He has been -- he has
16 reported to court. This case has been on the docket
17 at least five or more times. He's reported -- he's
18 come in for every interview or conference with the
19 Public Defender's Office, so we'd ask that the Court
20 allow him to remain on bond.

21 I have asked him to call his bondsman and have
22 him call -- call up here to see whether if the
23 bondsman agree whether the Court would allow him to
24 remain out until the end of the case.

25 THE COURT: I haven't heard anything from the

1 bondsman. If he does, then we can reach that. I
2 will allow him to stay out.

3 But let me tell you, Mr. Aiken, and it's in
4 your bond papers, I'm sure, but just to make sure
5 you understand, this case is going to continue at
6 two o'clock.

7 THE DEFENDANT: Right.

8 THE COURT: And it's going to continue until
9 it's done, barring some unforeseen circumstance. So
10 if you don't come back this afternoon or any other
11 time throughout the course of this trial, it will
12 continue and you'll be tried in your absence. Okay,
13 sir?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: All right. I'm going to go ahead,
16 Officer, and let him stay out. And you ---

17 MS. MANIGAULT: And, Your Honor ---

18 THE COURT: Go ahead.

19 MS. MANIGAULT: Your Honor, I have a matter I
20 want to be heard on when we return I'm going to do
21 some research on, and it's -- and it's going to be
22 about an absent complaining witness, a victim that's
23 not present ---

24 THE COURT: Okay.

25 MS. MANIGAULT: --- to testify.

1 THE COURT: Okay. You want to do that now or
2 you want to ---

3 MS. MANIGAULT: I want to wait until we come
4 back.

5 THE COURT: Okay. All right. We'll be in
6 recess until two o'clock. Thank you.

7 (From 12:44 to 2:04 p.m., the lunch recess was
8 taken.)

9 THE COURT: Do you have a few motions?

10 MS. MANIGAULT: Yes, sir. The defense would
11 move for a mistrial in this case.

12 THE COURT: Mistrial?

13 MS. MANIGAULT: Mistrial. That's the first
14 motion. The State alluded to the victim is not
15 here. He's in assisted living facility during his
16 opening statement.

17 The second prong for my mistrial motion is a
18 Brady motion violation. I was not aware -- was not
19 informed that the victim would not be present for
20 trial. I believe that the Brady motion is a
21 continuing motion that the information disclosed by
22 the State in his opening statement to the jury and
23 the Court was exculpatory information and should
24 have been provided to the defense.

25 THE COURT: Well, let me make -- okay. Let's

1 do the Brady aspect. Mr. Poore, the victim in this
2 case, had exculpatory information by this gentleman?
3 Is that -- I'm not following necessarily what you're
4 saying.

5 MS. MANIGAULT: It would be exculpatory
6 information for the defense that the victim would
7 not be available.

8 THE COURT: How so?

9 MS. MANIGAULT: That would be information
10 relevant to the case because, Your Honor, we have
11 the confrontation clause that the defendant is
12 entitled to question the accuser. Any -- any other
13 testimony that is brought in would be totally
14 hearsay.

15 THE COURT: Well, that may still be the case.

16 MS. MANIGAULT: Correct.

17 THE COURT: It may be. Well, I'm going to deny
18 it based on the Brady aspect of your motion as far
19 as mistrial. Certainly, hearsay would be trial
20 objections that you'll do.

21 Now, the first part of it was what now? Oh, he
22 said that he's not going to be here. He's in
23 assisted living.

24 MS. MANIGAULT: He's in assisted living. The
25 crux of his case for a vulnerable adult is for the

1 State to prove that the adult was vulnerable at the
2 time of the incident.

3 THE COURT: Right.

4 MS. MANIGAULT: There -- the testimony that the
5 State said will be presented by them, no person was
6 present between the transaction with my client and
7 Mr. Poore. So the statement living in assisted
8 living facility, I believe it tries to invoke the
9 sympathy of the jury for the condition that they
10 have to prove.

11 THE COURT: Well, I'll be glad to hear from
12 you.

13 MR. GREGORY: Your Honor, when I said that,
14 that's where he currently is. The testimony that's
15 going to come out will be about his condition from
16 his neurologist and other witnesses that were around
17 him at the time of this incident, not on a specific
18 date, but from April 2012 until March 2013 after
19 everything had occurred.

20 THE COURT: All right. I'm -- I'm not going to
21 grant your motion. I will, however, Ms. Manigault,
22 if you would like me to give a curative instruction
23 to regards, number one, that the condition of being
24 a vulnerable adult that would be charged and defined
25 to them later, will have to be established at the

1 time of the alleged events as set forth in the
2 indictments and that is December the 1st, 2012.

3 And his alleged, the victim -- I don't even
4 want to say "victim," but Mr. Poore's alleged
5 condition at this point is not relevant to this
6 cause of -- to this case at all. I'll be glad to do
7 that.

8 MS. MANIGAULT: Your Honor, the indictment says
9 December the 1st through Dec -- through March 2013.

10 THE COURT: Yeah. Okay.

11 MS. MANIGAULT: Well, if the Court is inclined
12 to give a curative, I guess ---

13 THE COURT: If you request it, I will.

14 MS. MANIGAULT: I'm not requesting it.

15 THE COURT: You're not?

16 MS. MANIGAULT: (Negative response.)

17 THE COURT: Okay. Any other matters,
18 Ms. Manigault?

19 MS. MANIGAULT: Your Honor, would you -- would
20 you make a ruling on the confrontation clause being
21 able to -- to question the alleged victim or the
22 complaining witness in this case?

23 THE COURT: I'll tell you what, I don't want to
24 try to make a preliminary ruling until I hear what
25 the testimony is. Let me hear what that is first.

1 And then if you will bring it back up, I'll
2 certainly be glad to rule on it.

3 Let me say this as far as the mistrial motion
4 as y'all both know: To grant a mistrial, I have to
5 find that it's manifest necessity. The mention of
6 the alleged victim's current mental status,
7 especially based on the dates of the alleged
8 incidents being December 2013, well, the better
9 proof may not have been -- may have been -- did not
10 say that. I'm not saying it was a bad thing to say,
11 it's just -- it's not a necessity. And there's
12 certainly no warrant on a new trial. And, again, if
13 requested, I would give a curative instruction. And
14 if you come down the line and you want me do it, I
15 still will.

16 MS. MANIGAULT: Okay.

17 THE COURT: All right. Are you ready to go?

18 MS. MANIGAULT: My only other request is that
19 the State proffer each witness regarding the
20 contract or checks or whatever they're going to
21 present. The testimony of -- I think he said a
22 relative or a power of attorney that would be -- I'm
23 requesting that that would be proffered so we can
24 see what that testimony is going to be.

25 THE COURT: I'm not going to go through and

1 proffer those two again. If you have a specific
2 reason for it, I'll be glad to entertain it. But
3 just for you to educate yourself and then turn
4 around and cross-examine them, no, ma'am, I will
5 not.

6 MS. MANIGAULT: Your Honor, that is not the
7 reason for the request.

8 THE COURT: Okay.

9 MS. MANIGAULT: The reason for the request
10 hinges on the motions I've just made that they are
11 going to be offering, I'm assuming, hearsay
12 testimony.

13 THE COURT: Then you'll just need to object
14 just like you normally would at any trial that can
15 hearsay or other inadmissible testimony, but I'm not
16 going to unduly delay this trial for proffering his
17 witness based on that.

18 If you -- if there's something that may not ---

19 MS. MANIGAULT: Yes, sir.

20 THE COURT: --- if it's on the fear of hearsay,
21 then no. If it's the fear of something that we
22 can't come back and get when called back to the jury
23 once they hear it, then I certainly will in that
24 situation. Okay.

25 MS. MANIGAULT: Thank you.

1 THE COURT: Yes, ma'am. All right. You ready
2 for your first witness?

3 MR. GREGORY: Yes, Your Honor.

4 THE COURT: Okay. Would you bring the jury in?

5 THE BAILIFF: (Complying.)

6 (Jurors entered the courtroom at 2:12 p.m.)

7 THE COURT: All right. Mr. Gregory, the State
8 ready to proceed?

9 MR. GREGORY: Yes, Your Honor.

10 THE COURT: Ms. Manigault, the defense ready to
11 proceed?

12 MS. MANIGAULT: Yes, Your Honor.

13 THE COURT: All right. Call your first
14 witness, please.

15 MS. HENDRICKS: The State calls Marilee
16 Johnson.

17 THE WITNESS: (Approaching.)

18 THE CLERK: Ms. Johnson, please place your left
19 hand on the Bible and raise your right hand.

20 THE WITNESS: (Complying.)

21 THE CLERK: You do solemnly swear or affirm to
22 tell the truth, the whole truth, and nothing but the
23 truth so help you God?

24 THE WITNESS: I do.

25 THE CLERK: Thank you. Please state your full

1 name for the record.

2 THE WITNESS: Marilee Janell Johnson.

3 THE CLERK: Thank you. You may be seated.

4 THE WITNESS: (Complying.)

5 MARILEE JOHNSON,

6 having been produced and first duly sworn as a

7 witness on behalf of the State, then testified as

8 follows:

9 DIRECT EXAMINATION

10 BY MS. HENDRICKS:

11 Q. Where are you employed?

12 A. I work for BB&T.

13 Q. And what's your position with BB&T?

14 A. I am an AO team leader.

15 Q. And what does that mean?

16 A. It means I manage the operations for the 33

17 branches here in the Upstate.

18 Q. Okay. And how long have you held that
19 position?

20 A. I've been in this position for 12 years. I've
21 been with BB&T for 24.

22 Q. And what kind of duties do you have in your
23 position?

24 A. Manage operations of all the branches. It can
25 be anything from facilities of each branch; staff of

1 each branch; fraud; robberies; security; audit. All
2 of that rolls underneath me.

3 Q. Okay. And what kind of education and training
4 have you received?

5 A. Just the 24 years of banking experience.

6 Q. Okay. And what is BB&T? Can you just tell ---

7 A. Branch Banking & Trust Financial Institution.

8 Q. Okay. And were you sent a subpoena to be in
9 court today?

10 A. Yes, I was.

11 Q. Were you asked to bring anything with you?

12 A. Yes.

13 Q. And in the regular course of business, does
14 BB&T keep records of their customers' accounts?

15 A. Yes, we do.

16 Q. In the regular course of business, does BB&T
17 store information concerning checks? account
18 statements? deposit slips?

19 A. Yes.

20 Q. And does BB&T's storage process accurately keep
21 records of a client's account?

22 A. Yes.

23 Q. In the regular course of business, what does
24 BB&T do with checks, deposit slips, and account
25 statements?

1 A. When they're presented, we post them to or from
2 their account.

3 Q. Okay. And are the exhibits that you were told
4 to bring today originals or copies?

5 A. They're copies of the originals.

6 Q. Okay. And how are the copies made?

7 A. I don't understand the question.

8 Q. So are the copies uploaded -- when they're
9 uploaded into the account, is that how the copy is
10 made from the original document?

11 A. Right. The original document, because a lot of
12 people have things e-mailed through electronic
13 statements and all that type of stuff, so it's
14 imaged when it's brought in. So when the statements
15 are printed, they're imaged into our system so we
16 just print those off from our system.

17 Q. Does that process accurately copy the original
18 documents?

19 A. Yes.

20 Q. And are these copies made in the regular course
21 of business?

22 A. Yes.

23 Q. And are these a fair and accurate
24 representation of the original?

25 A. Yes.

1 Q. As part of your official duties, do you have
2 control and access to BB&T documents?

3 A. Yes, I do.

4 (State showing defense counsel documents.)

5 MS. MANIGAULT: May we have a moment, Judge?

6 THE COURT: Yes, ma'am. You need a moment to
7 study them right quick?

8 MS. MANIGAULT: Yes, sir.

9 THE COURT: Okay. Take your time.

10 (Counsel reviewing documents with defendant.)

11 THE COURT: Have you had sufficient time,
12 Ms. Manigault?

13 MS. MANIGAULT: Yes, Your Honor. We -- my
14 client just had one question, and I resolved that.

15 THE COURT: Okay. Thank you.

16 BY MS. HENDRICKS:

17 Q. I'm going to show you what's been marked
18 State's Exhibit 1 through 13. Can you examine those
19 documents?

20 A. (Complying.)

21 Q. Do you recognize those checks?

22 A. Yes.

23 Q. Are they fair and accurate representations of
24 originals?

25 A. Yes, they are.

1 Q. And can you describe them briefly, just...

2 A. They're checks off of Mr. Poore's account.

3 MS. HENDRICKS: Okay. Your Honor, at this
4 time, the State would like to introduce Exhibits 1
5 through 13 into evidence?

6 THE COURT: Any objection?

7 MS. MANIGAULT: On the checks?

8 MS. HENDRICKS: Just the checks.

9 MS. MANIGAULT: No -- no objection.

10 THE COURT: Admitted.

11 (State's Exhibit Nos. 1 through 13, copies of
12 checks, were admitted into evidence.)

13 MS. HENDRICKS: I'm going to put them on the
14 projector.

15 THE WITNESS: Okay.

16 MS. HENDRICKS: Can the witness step down to
17 see the projector better, Your Honor?

18 THE COURT: (No response.)

19 MS. HENDRICKS: Your Honor, can the witness ---

20 THE COURT: I'm sorry.

21 MS. HENDRICKS: That's okay. Can the witness
22 step down to view if that's okay?

23 THE COURT: Oh, I apologize. Yes, you may.

24 MS. HENDRICKS: Okay. Thank you.

25 (Witness stepped down from the stand.)

1 MS. MANIGAULT: Your Honor, may we have a
2 sidebar for a moment?

3 THE COURT: Yes, ma'am.

4 MS. MANIGAULT: Thank you.

5 (Sidebar discussion between the Court and
6 counsel.)

7 THE COURT: When you go over each one, will you
8 call them by their exhibit number please, ma'am?

9 MS. HENDRICKS: Yes. This is Exhibit No. 1.

10 THE COURT: It's check number what?

11 MS. HENDRICKS: Check No. 7071.

12 BY MS. HENDRICKS:

13 Q. And can you tell us what is Exhibit No. 1?

14 A. This is a check drawn on Mr. Poore's account.
15 It's dated December 1, 2012, in the amount of \$1,250
16 payable to Carl Aiken.

17 Q. And can you tell whether the check was cashed
18 or deposited?

19 A. The check was cashed on January 1, 2012. Right
20 here is our code for cashed check.

21 Q. Okay. And what date did the check clear
22 Mr. Poore's account?

23 A. Based on this, it would be 12/1/2012, but I
24 believe that was a Saturday.

25 Q. Okay. So is there anything else on there that

1 would indicate that it cleared two days later?

2 A. Not on the check itself. It would be on the
3 bank statement.

4 Q. All right. And this is Exhibit No. 2, check
5 7080. Can you tell us what Exhibit No. 2 is?

6 A. This is also a check drawn on Mr. Poore's
7 account dated December 19, 2012, payable to Carl
8 Aiken in the amount of \$2,250, and it was cashed at
9 a branch on 12/19/2012.

10 Q. Okay. And can you tell us what Exhibit 3 is?
11 This is Exhibit 3, check 7125. Can you tell us what
12 Exhibit 3 is?

13 A. This is also a check off of his account dated
14 January 12, 2013, for \$1,250, and it was cashed also
15 on 1/12/2013.

16 Q. And did you say who the check was made payable
17 to?

18 A. It was made payable to Carl Aiken.

19 Q. And can you tell us what the subject line of
20 the check says?

21 A. It says for "painting."

22 Q. And this is Exhibit No. 4, check 7129. Can you
23 tell us what Exhibit No. 4 is?

24 A. This check off of Mr. Poore's account was dated
25 January 18, 2012, for \$1,550 made payable to Carl

1 Aiken, and it too was cashed on 1/18/2013. And the
2 memo line says something "exterior." I can't read
3 it from here.

4 Q. Okay. And this is State Exhibit No. 5. It's
5 check 7131. Can you tell us what Exhibit No. 5 is,
6 please?

7 A. Check off Mr. Poore's account dated January 21,
8 2013, payable to Carl Aiken in the amount of \$950.
9 This cash -- it cleared and was cashed on
10 January 22, 2013.

11 Q. And can you tell us what that memo line says if
12 you can read it?

13 A. No. I can't read it.

14 Q. Okay. And this is Exhibit No. 6, check 7139.
15 Can you tell us what Exhibit No. 6 is?

16 A. A check off Mr. Poore's account dated January
17 26, 2013, for \$850, payable to Carl Aiken. It says
18 "installed gutters" on the memo line. And it also
19 was cashed on January 28th it looks like.

20 Q. Okay. All this is Exhibit No. 7. It's check
21 7141. Can you tell us what Exhibit No. 7 is?

22 A. Off -- a check off Mr. Poore's account
23 February 1, 2013, payable to Carl Aiken for \$1,250.
24 And some sort of work is written. I can't read that
25 first word.

1 Q. Okay.

2 A. It cleared his account -- or it was cashed at
3 the branch of February 1, 2013.

4 Q. Okay. And this is State Exhibit 8, check 7144.
5 Can you tell us what Exhibit 8 is?

6 A. A check off of Mr. Poore's account dated
7 February 4, 2013, payable to Carl Aiken in the
8 amount of \$850. The memo line says "painting and
9 trees." It was cashed at a branch on 2/4/2013.

10 Q. Okay. And this is State's Exhibit No. 9, check
11 7296. Can you tell us what Exhibit 9 is?

12 A. This is a check off of Mr. Poore's account,
13 payable to cash. It was dated February 7th. It was
14 in the amount of \$850, and the memo line here has
15 Carl Aiken's name. This check here was presented to
16 BB&T on February 7, 2013.

17 Q. And it was cashed?

18 A. Yes.

19 Q. We have State's Exhibit 10, check 7299. Can
20 you tell us what that check is?

21 A. This is also a check off of Mr. Poore's account
22 dated February 14, 2013, payable to Carl Aiken in
23 the amount of \$850. And this is -- looks like it's
24 for a house repair, and it was cashed on
25 February 14, 2013.

1 Q. Okay. And this is State's Exhibit 11, check
2 7303. Can you tell us what Exhibit 11 is, please?

3 A. Check off of Mr. Poore's account dated
4 February 15, 2013, payable to Carl Aiken in the
5 amount of \$950 for home repair. And this check was
6 cashed on February 16, 2013.

7 Q. Okay. And State's Exhibit No. 12 is check
8 7305. Can you tell us what Exhibit 12 is?

9 A. This is a check off of Mr. Poore's account
10 dated February 18, 2013, payable to Carl Aiken for
11 \$650. Looks like it's for "home repair," and it was
12 cashed at a branch on two -- February 19, 2013.

13 Q. Okay. And this is State's Exhibit No. 13,
14 check 7316. Can you tell us what State's Exhibit 13
15 is?

16 A. A check off of Mr. Poore's account dated
17 February 23, 2013, payable to Carl Aiken for \$750.
18 It was cashed on February 23, 2013. And I can't
19 read what that says on the memo line.

20 Q. Oh, okay. So it was cashed at a branch?

21 A. It was cashed at a branch, yes.

22 MS. HENDRICKS: Okay. We have no further
23 questions for this witness, Your Honor. You can go
24 back to the stand.

25 THE COURT: Come back around please, ma'am.

1 THE WITNESS: (Complying.)

2 THE COURT: Cross-examination, Ms. Manigault.

3 MS. MANIGAULT: Thank you, Your Honor.

4 CROSS-EXAMINATION

5 BY MS. MANIGAULT:

6 Q. Ms. Johnson, on State's Exhibit No. 3, check
7 7125, do you have that?

8 A. Yes, ma'am.

9 Q. There is a notation at the top of the check,
10 "Mr. Poore." Do you know who put that there?

11 A. I do not know who put that there.

12 Q. On State's Exhibit No. 4, 71 -- check 7129,
13 there's a notation, "Called and verified with
14 Raymond, amount." Do you know who put that there?

15 A. No, I do not.

16 Q. Would that have been your bank personnel?

17 A. Yes.

18 Q. On State's Exhibit No. 6, check 7139, there's a
19 notation on the top of the check that says "Call.
20 Okayed by client." Would that have been one of your
21 bank personnel?

22 A. Yes.

23 Q. And that would be before cashing the check?

24 A. Yes.

25 Q. On State's Exhibit No. 7, Check No. 7141.

1 There's a notation, "Raymond Poore III." Would that
2 have been made by your bank personnel?

3 A. Yes.

4 Q. Would that indicate that they had contacted
5 him?

6 A. I don't know why they would've put that there.
7 I wasn't there.

8 MS. HENDRICKS: Objection. No personal
9 knowledge.

10 THE COURT: She said she didn't know, so I'll
11 sustain the objection.

12 BY MS. MANIGAULT:

13 Q. On State Exhibit No. 10, Check No. 7299, there
14 are some initials and it looks like letters for
15 amount on the top of the check. Would that have
16 been placed there by bank personnel?

17 A. Possibly. Probably, yes.

18 Q. Okay. If a bank personnel places additional
19 information on a check, what would be some of the
20 reasons that they would do that?

21 A. (No response.)

22 Q. You have the person's name. You have the
23 amount. You have the account drawer. You have the
24 signature.

25 If there is additional information placed on

1 the top of a check or anywhere on the check by your
2 bank personnel, why would they do that?

3 A. It could be various different reasons. They
4 could be calling to verify a check. Or in this case
5 here, it could be the check was over the person who
6 was cashing the check's limit, and so they had to
7 get approval by an associate who had that limit to
8 cash that check, and so that may be what this was.
9 I cannot say. I was not there for sure.

10 Q. Okay. But you brought these in as official
11 records, correct?

12 A. Yes.

13 Q. And you were not there when Mr. Poore wrote the
14 check; is that correct?

15 A. Correct.

16 Q. But you presented the information off of the
17 check as what was presented to your bank, correct?

18 A. Correct.

19 Q. If -- if your bank personnel thought there was
20 a problem with the check, would they cash the check?

21 A. They would do some verification before they
22 cashed the check. Depends upon what their
23 suspicions were of the check.

24 MS. MANIGAULT: All right. Thank you.

25 THE COURT: Redirect?

1 MS. HENDRICKS: Thank you, Your Honor.

2 REDIRECT EXAMINATION

3 BY MS. HENDRICKS:

4 Q. So you were not a bank teller?

5 A. No, I am not.

6 Q. So you were not -- you had nothing to do with
7 these checks as far as cashing them?

8 A. No, I did not.

9 Q. And you didn't make any of these notations on
10 the checks?

11 A. No, I did not.

12 MS. HENDRICKS: Thank you. Nothing further,
13 Your Honor.

14 THE COURT: May this witness be excused?

15 MS. HENDRICKS: Yes, sir.

16 MS. MANIGAULT: No objection.

17 THE COURT: Thank you, ma'am. You're free to
18 go.

19 (Witness was excused.)

20 THE COURT: Call your next witness, please.

21 MR. GREGORY: State calls Terry Ford.

22 THE WITNESS: (Approaching.)

23 THE CLERK: Please place your left hand on the
24 Bible and raise your right hand.

25 THE WITNESS: (Complying.)

1 THE CLERK: You do solemnly swear or affirm to
2 tell the truth, the whole truth, and nothing but the
3 truth so help you God?

4 THE WITNESS: I do.

5 THE CLERK: Thank you. Please state your full
6 name for the record.

7 THE WITNESS: It's Zeneca Terry Harrison Ford.

8 THE CLERK: Thank you. You may be seated.

9 THE WITNESS: (Complying.)

10 TERRY FORD,
11 having been produced and first duly sworn as a
12 witness on behalf of the State, then testified as
13 follows:

14 DIRECT EXAMINATION

15 BY MR. GREGORY:

16 Q. Ms. Ford, how old are you?

17 A. Sixty-two.

18 Q. And are you married?

19 A. I'm a widow.

20 Q. When did your husband pass away?

21 A. When I was 41.

22 Q. Do you have any children?

23 A. Yes, sir.

24 Q. What are their names and their ages, please?

25 A. My daughter is Rachel Dawn Pennington. She is

1 40. And my son is Lewis Marlin Ford, and he is 38.

2 Q. And if you would just move that microphone a
3 little bit closer to your mouth. I'm having a hard
4 time hearing you.

5 A. I'm sorry.

6 Q. It's okay. Where do you currently live?

7 A. I live in Fountain Inn.

8 Q. And is that within Greenville County?

9 A. No, sir. I'm in the Laurens County part.

10 Q. Where were you born?

11 A. I was born in Greenville County.

12 Q. Were you raised in Greenville County or the
13 Upstate?

14 A. Until I was 20 till I married, I -- I lived in
15 Greenville County.

16 Q. Where did you go to high school?

17 A. Hillcrest.

18 Q. Did you go to college?

19 A. I attended North Greenville for a short time,
20 but quit.

21 Q. And you know why you're here today, correct?

22 A. Yes, sir.

23 Q. Do you know Raymond Poore?

24 A. Yes, sir.

25 Q. How do you know Raymond Poore?

1 A. He is my cousin.

2 Q. Can you give the jury just a little -- a little
3 family tree of Raymond Poore. How is he connected
4 to you exactly?

5 A. Actually, I'm his first cousin once removed.

6 That side of the family is a little small.

7 Raymond -- all right. Raymond, my Nanny ---

8 Q. Who's your nanny? Is that your grandmother?

9 A. My grandmother and Raymond's daddy were brother
10 and sister. And Mama -- I mean, Nanny had my
11 mother, and big Raymond had little Raymond. So and
12 they were both only children. Raymond and Betty,
13 his wife, never had children. And then my mother
14 had my sister and me.

15 Q. And what was Raymond's wife's name?

16 A. Betty Rimer Poore.

17 Q. And is she still living?

18 A. No. She passed away January 26th of '12.

19 Q. 2012?

20 A. Yes, sir.

21 Q. And is Mr. Poore, Mr. Raymond Poore, is he here
22 today?

23 A. No, sir. He's not able to be.

24 Q. Do you know Carl Aiken?

25 A. Yes, sir.

1 Q. How long have you known Carl Aiken?

2 A. I had met him a few times and spoken on the
3 phone with him a few times.

4 Q. Where were you -- how did you come to know --
5 how did you get to know him?

6 A. Oh, because he was to do some work for Raymond.

7 Q. Now, I want to take you back to March of 2013,
8 so a little -- a little over four years ago. Do you
9 remember that time period?

10 A. Yes, sir.

11 Q. Where was Raymond living at that time?

12 A. At that time he was living at home.

13 Q. Whose home?

14 A. His home, 6 Beaufort Street in Greenville,
15 29615.

16 Q. Is that within Greenville County?

17 A. Yes, sir.

18 Q. And where exactly is Beaufort Street located?

19 Is there ---

20 A. It is right off of East ---

21 Q. I hear you. Go ahead.

22 A. Oh, it is right off of East North Street as
23 you're going out towards -- going out from
24 Greenville.

25 Q. And does he still live at that location?

1 A. No, sir.

2 Q. When did he leave that house?

3 A. This coming October 30th, he will have been at
4 Rolling Green Retirement Village in the Evergreen
5 Memory section.

6 Q. So I'm sorry. When did he move out of the
7 house? You said October 30th of what year?

8 A. 30th of -- it'll be two years.

9 Q. Two years from this coming?

10 A. This coming October 30th.

11 Q. Would that make it October 30th of 2015 then?

12 A. Yes, sir.

13 Q. And how long did he live on Beaufort Street?

14 A. He and Betty had the house built and it's when
15 they were first establishing that development, and
16 so 30-something years probably.

17 Q. Okay. Now, March of 2013, was anyone living
18 with Raymond at 6 Beaufort?

19 A. March 13th?

20 Q. March of 2013.

21 A. No.

22 Q. Okay. So he was living by himself?

23 A. Yes.

24 Q. Tell me, in March of 2000 -- the reason you're
25 here -- let me -- let me show you what's been

1 previously entered as State's Exhibit 1 through 13.

2 If you'll take a look at that, please.

3 A. Yes, sir.

4 Q. Do you recognize those?

5 A. Yes, sir.

6 Q. Is that the first time you've seen those
7 checks?

8 A. Oh, no, sir.

9 Q. When was the first time you saw those checks?

10 A. I was advised by Dr. Patel, his -- his family
11 doctor, to get a ---

12 MS. MANIGAULT: Your Honor, I'm going to
13 object ---

14 THE COURT: Sustained.

15 MS. MANIGAULT: --- to anything Dr. Patel may
16 have said.

17 THE COURT: Sustained.

18 BY MR. GREGORY:

19 Q. Don't tell me what Dr. Patel told you.

20 Let's -- I'll back up to April 2012. In relation to
21 Mr. Poore, what did you do?

22 A. I took care of him.

23 Q. Okay. And when you say you're taking care of
24 him, what do you mean that you did?

25 A. I would check on him. I would have to take him

1 to the doctor. I would have to fix his medicines
2 because he could not take them properly. We would
3 go out to eat. He liked to eat out every meal. You
4 know, just anything that needed doing.

5 MR. GREGORY: Beg the Court's indulgence for
6 one moment.

7 BY MR. GREGORY:

8 Q. Let me show you what's been marked as State's
9 Exhibit 19. If you would just take a look at that,
10 please.

11 A. Yes, sir.

12 Q. If you'll flip to the -- the last page on that.

13 A. (Complying.) Yes, sir.

14 Q. Is that your signature?

15 A. Yes, sir.

16 Q. Is that a fair and accurate representation?

17 A. Yes, sir.

18 Q. And is that -- has that been altered or changed
19 in any way?

20 A. No.

21 MR. GREGORY: Your Honor, at this time the
22 State would seek to introduce State's Exhibit No. 19
23 into evidence.

24 MS. MANIGAULT: Your Honor, if I may review
25 that again.

1 THE COURT: Please. Would you identify what it
2 is?

3 BY MR. GREGORY:

4 Q. Ma'am ---

5 A. I'm sorry.

6 Q. --- will you tell the Court what it is, please.

7 A. It's a durable power of attorney.

8 (Counsel reviewing documents.)

9 BY MR. GREGORY:

10 Q. In April of 2012, where was Raymond living at
11 that time?

12 A. He was living in his home.

13 Q. And who was he living with at that time?

14 A. In '12?

15 Q. April of 2012.

16 A. He was living by himself.

17 Q. Okay. Now, you said that you were taking care
18 of him. What was some of the things that you said
19 you'd do for him in April of 1212?

20 A. Oh, I'd take -- take him to doctors. We'd go
21 eat together. I'd take him to the grocery store.
22 You know, just -- I'd fix medicines, pick up
23 medicines.

24 Q. Was he able to drive at that time?

25 A. He was. Okay. Let me rephrase that. He did,

1 but it -- it was not -- he -- he should not have
2 been driving.

3 Q. Okay. And why do you say that?

4 A. Because he's been known to run red lights, get
5 lost. He just, you know, swerved. I mean, you
6 know, just, he -- he was -- didn't have the ability
7 to drive correctly.

8 Q. And in April of 2012 as you're taking care of
9 him, would you take him to the doctor?

10 A. Yes, sir.

11 Q. And what doctors was he seeing at that time?

12 A. Dr. Patel.

13 Q. Did he see any other doctor in April of 2012?

14 A. I do not remember when we started seeing
15 Dr. Kistler.

16 Q. Okay. Who was Dr. Kistler?

17 A. Dr. Kistler is the neurologist.

18 Q. Is that -- and would you take him to
19 Dr. Kistler's office?

20 A. Yes, sir.

21 Q. And would you sit with him at Dr. Kistler's
22 office?

23 A. Yes, sir.

24 Q. During that time period, did -- was there any
25 other lapses in memory that you noticed with

1 Raymond?

2 A. He would lose things, you know, like put them
3 somewhere and wouldn't remember where it was.

4 Q. What kind of things would he lose?

5 A. Like keys to his house, paperwork. I mean,
6 just his wallet, money. It could be -- sometimes
7 take his glasses off and lose them.

8 Q. And this was all beginning in April of 2012?

9 A. Yes, sir.

10 Q. You said you would take him out to eat.

11 A. Yes, sir.

12 Q. How often would he go out to eat?

13 A. Raymond ate really every meal out because he
14 and Betty always had, except Sunday mornings because
15 a lady from church would pick him up and take him to
16 church and then bring him back.

17 Q. Would you take him out to eat?

18 A. Yes, sir.

19 Q. How often would you take him out to eat?

20 A. Oh, I would say umm -- we ate out a lot. I
21 would say maybe 80 percent of the time.

22 Q. That you -- you would take him out to eat 80
23 percent of the time?

24 A. (Nonverbal response.)

25 Q. And where would you pick him up from?

1 A. His house, or if he drove over to mine because
2 I lived a little over two miles straight shot from
3 him at that point.

4 Q. Did he have any trouble getting to your house?

5 A. He did not getting to mine.

6 Q. What about getting around to other places? Did
7 you ever have any instances where he had trouble?

8 A. Yes. Now, if it was a place he was very
9 familiar with, normally he could get there. But as
10 time progressed, he -- it could've been someplace
11 he'd been before, but then he would forget or forget
12 why he went there, so...

13 Q. And when did some of this forgetfulness begin?
14 Do you remember?

15 A. Well, you know, I noticed stuff around when
16 Betty was still alive. When she was in the
17 hospital, we were in and out of hospital with her,
18 and I attributed to the fact that his wife was sick,
19 and because, you know, you get overwhelmed. And --
20 but then after Betty passed away, he didn't get much
21 better. You know, I kept thinking with time it
22 would, but it didn't.

23 Q. Did it get worse?

24 A. Yes.

25 Q. In March of 2013, how bad did it get?

1 A. Well, it got bad enough that I ended up hiring
2 people to be with him from, like, 7 -- I believe it
3 was 7:00 in the morning to 7:00 at night, which that
4 included me in part of that. We had different days.

5 And they would just -- just whatever Raymond
6 wanted to go and do, they would do and -- because we
7 tried to keep him active. We thought that would
8 help his mind.

9 And so then there came a point that we had to
10 go to 24 hour, seven days a week.

11 Q. Was that in March of 2013, or was that ---

12 A. It was a little past that. Now, in March,
13 usually at night once he went to bed, he -- he was a
14 good sleeper, and so we were pretty well covered,
15 you know, but, yeah, like I say, it wasn't terribly
16 long that we realized we were going to have to get
17 everything covered.

18 Q. Now, you talked about the medication that he
19 was taking. How much medication was he taking
20 between April 2012 to March of 2013?

21 A. Well, he was taking several. I can't remember
22 all the names, but morphine, which you know
23 that's -- keeps your blood stable.

24 Q. So numerous pills?

25 A. Yeah, blood pressure pills.

1 Q. And who helped him with that? Did anybody need
2 to help him?

3 A. I had to get one of the boxes that has like
4 four day -- I mean, four times a day, seven days a
5 week. And because he was messing up taking his
6 medicine, so I was with him on Sundays, and I would
7 fill it out for the whole week.

8 And so then it to -- it got to a point where we
9 just had to give it to him because he would mix up
10 the days or forget to take, that type of thing. And
11 then eventually we had to put it in a lockbox.

12 Q. So you say he forgot to take medicine. How
13 would you know he forgot to take it?

14 A. Well, when you would check behind him, it would
15 be still there or sometimes he would take too much.
16 He might take the morning's and then in a little bit
17 take the afternoon's, which it wasn't time for and
18 so either one could cause a health problem.

19 Q. Did anyone else help you in administering
20 medicine?

21 A. Once -- once we got additional help, yes. They
22 actually would give him his medicine on time.

23 Q. But as far as you setting up a medicine regime
24 for him, when did you start doing that?

25 A. To be honest, I can't ---

1 Q. But it was -- was it prior to March of 2013
2 when people moved in?

3 A. Oh, yes.

4 Q. Six months to a year before, or do you have any
5 recollection?

6 A. I'm sorry. I don't.

7 Q. Okay. Now, let's talk about, you said you took
8 him to the doctor. How did the scheduling go? Did
9 you -- as far as him knowing where to be and that
10 sort of thing, did he need help for that?

11 A. Yes.

12 Q. All right. And who helped him with that?

13 A. We had gotten a big, you know, the white
14 erasable boards. And they were set up, like you
15 would write the month in and the days. And whatever
16 activity or doctor's appointment or whatever, we
17 would write on there for him.

18 We would also -- after I got additional help,
19 we would put on there who was coming that day
20 because he couldn't remember.

21 Q. But that was for March of ---

22 A. That was -- that was a little further along,
23 but ---

24 Q. So the whiteboard stating his schedule, when
25 was that? Did that start -- that started prior to

1 March of 2013?

2 A. Yes.

3 Q. Do you know how far prior?

4 A. I'm sorry.

5 Q. Did you do anything else for Raymond?

6 A. Well, I would ---

7 Q. Specifically.

8 A. --- go to the grocery -- I'd take him to the
9 grocery store. There was -- right down from his
10 house, there was a little gas station, and he
11 enjoyed going and talking to the ladies in there and
12 he would get coffee.

13 So, you know, when he was driving on his own,
14 he would go down there and so -- and -- but if he
15 wanted to go after I was driving or anybody, we'd go
16 visit down there because he had his certain friends.

17 Lunch was usually at OJ's every day. He loved
18 the S&S, Cateran's, you know, just cert -- you know,
19 just places he was used to going. And then we would
20 take him other places.

21 Q. Did you ever help him with paying bills and
22 justifying his bank account?

23 A. Yes, sir.

24 Q. When did you do that?

25 A. When I had taken the durable power of attorney

1 to the bank. I talked ---

2 Q. Do you remember when you did that?

3 A. No, sir.

4 Q. Okay.

5 A. And I talked with Rosemary Trayler who was
6 like --

7 Q. So you helped with his bank records ---

8 A. Right.

9 Q. --- is that correct?

10 A. Yes.

11 Q. Were you doing that in December 1, 2012,
12 through March 1, 2013?

13 A. Yes. Because I could look as long as I had the
14 power of attorney.

15 Q. When did you get the power of attorney?

16 A. I'm sorry. I don't ---

17 Q. Was it prior to December 1, 2012?

18 A. I'm drawing a blank. I'm sorry.

19 Q. No problem. I previously showed you what was
20 marked as State's Exhibit 1 through 13. Do you
21 recognize those?

22 A. Yes, sir.

23 Q. All right. And you said you have seen them
24 before. When did you see them?

25 A. Well, when I went online on Raymond's accounts

1 because I was -- you know, I needed to balance the
2 accounts, I needed to make sure things were paid,
3 needed to make sure -- you know, because when
4 someone is sick, you've got to make sure you're
5 keeping up with the money.

6 Q. And these are things that you did to help
7 Raymond?

8 A. Yes. Yes.

9 Q. Continue.

10 A. And so I started seeing all these checks for
11 big amounts written to Carl -- Mr. Aiken.

12 Once or twice, I did speak with him on the
13 phone. And he told me something needed doing, and
14 because Raymond had used him, I said yes. But when
15 you start looking at all that money and ---

16 Q. Okay.

17 A. --- it -- it just was not matching up to what
18 was being done around the house.

19 Q. And when you say "wasn't matching up to what
20 was being done around the house" ---

21 A. Well, as you notice, on a lot of those it was
22 like painting.

23 Q. Hold -- hold on a second.

24 A. I'm sorry.

25 Q. Let me -- I'm going to show you what's been

1 previously entered as State's Exhibit No. 3. Can
2 you read the memo line on that, please?

3 A. "For painting."

4 Q. And I'm going -- I'm going to put this check up
5 on the overhead, okay, so we can all look at it.

6 Now, you said the memo line, which is right
7 here, you said was "for painting," correct?

8 A. Yes, sir.

9 Q. This check was written on January 12, 2013; is
10 that correct?

11 A. Yes, sir.

12 Q. At that time, as you're helping out Mr. Poore,
13 taking him out to eat, did you ever see any painting
14 being done around his house?

15 A. I did see Carl once or twice at his house, but
16 as to what he was doing...

17 Q. I'm sorry. Answer my question. Did you see
18 any painting at Mr. Poore's house? Did anybody
19 paint anything at Mr. Poore's house?

20 A. There were a few spots.

21 Q. Okay. Were those inside or outside?

22 A. Outside.

23 Q. All right. Let me show you what's been marked
24 as State's Exhibit No. 4. Can you read the memo
25 line there, "painting exterior"?

1 A. Oh, okay. Yes. I can make it out now.

2 Q. I'm sorry. If you need to step down.

3 A. Oh, that's okay.

4 Q. For \$1,550. This is six days later?

5 A. Yes, sir.

6 Q. Did you -- other than the few little spots you
7 saw, did you see any other painting being done?

8 A. Not that I remember.

9 Q. What about there's Check No. 7305 for "home
10 repair," like home repairs. Did you see any home
11 repair being done around Mr. Poore's house when you
12 were checking on him?

13 A. No, sir.

14 Q. Again, we have "home repair," house repair.
15 Now, can you describe Mr. Poore's house to the jury?

16 A. It was mostly brick. You know, it had white
17 gutters. It had a carport, you know, that was
18 painted. You know, it was -- I'm just saying it was
19 already painted.

20 Q. Did you see the car -- was the carport painted
21 during this time period? A new coat of paint put on
22 it.

23 A. Not that I could tell or noticed. The front
24 porch had white columns on it. And then the front
25 door was white. The shutters, if I remember, I

1 think they were white, but I'm sorry.

2 Q. It's all right. State's Exhibit No. 5 is
3 "foundation." Did you notice any foundation work
4 being done on Mr. Poore's house when you would go
5 and visit him?

6 A. No, sir. And there was a problem with that
7 because Raymond couldn't find the keys. It was like
8 a crawl space under his house, and it was locked and
9 Raymond did not know where he put the keys.

10 Q. So the crawl -- you couldn't get into the crawl
11 space, is that what you ---

12 A. Yes, sir. It had a little door and it was
13 locked.

14 Q. All right. Now, when you discovered these
15 checks, what did you do with them?

16 A. I went to the bank.

17 Q. Okay. And after going to the bank, what did
18 you do? Did you ever talk to the defendant?

19 A. Well, I had asked Mr. Aiken for receipts.

20 Q. All right. And was he able to provide you any
21 receipts?

22 A. No, sir. I asked two or three times. I don't
23 remember exactly. And he was going to meet me one
24 Saturday, and Dennis and I were at Raymond's and --
25 but he didn't show with receipts.

1 Q. Okay. You scheduled to meet with the defendant
2 on a Saturday. Do you remember what Saturday that
3 was?

4 A. No, sir.

5 Q. Was that around the same time period you found
6 the checks or a lot after?

7 A. I don't remember. I'm sorry.

8 Q. It's all right. How many times did you ask for
9 the receipts?

10 A. I would say I called two or three times, and
11 Mr. Aiken would say he would get me the receipts.

12 Q. And did you ever receive the receipts?

13 A. No, sir.

14 MR. GREGORY: Beg the Court's indulgence for
15 one second.

16 THE COURT: Yes, sir.

17 BY MR. GREGORY:

18 Q. After talking to the -- talking to the
19 defendant trying to get receipts, did you hire
20 anyone to come look at the house for you?

21 A. Well, may I say? After at the bank, we went to
22 the Sheriff's Department.

23 Q. Okay. You took him to the ---

24 A. Raymond.

25 Q. Who's "we"?

1 A. Well, actually, a friend went with me also, but
2 we took Raymond and saw Inspector Howard. And he
3 said ---

4 MS. MANIGAULT: Objection, Your Honor.

5 BY MR. GREGORY:

6 Q. Don't say anything about what Investigator
7 Howard said. I'm just asking what else did you do
8 after you saw these checks. What did you personally
9 do? Did you call anyone else to come out to the
10 house?

11 A. Yes.

12 Q. All right. Who did you call?

13 A. Jerry Brown.

14 Q. Who is Jerry Brown?

15 A. A licensed contractor.

16 Q. Okay. Did you receive a phone call while you
17 were out there with Jerry Brown?

18 A. Yes, sir.

19 Q. And who was -- who called you at that time?

20 A. It was Mr. Aiken.

21 Q. All right. What did Mr. Aiken say at that
22 time?

23 A. I just -- I told him I had a friend there and
24 could he explain to him what he had done to
25 Raymond's house.

1 MR. GREGORY: Okay. Thank you. Please answer
2 any questions the defense may have for you.

3 THE WITNESS: Yes, sir.

4 THE COURT: Cross-examination.

5 MS. MANIGAULT: Thank you, Your Honor.

6 CROSS-EXAMINATION

7 BY MS. MANIGAULT:

8 Q. Ms. Ford, do you recall what year and/or month
9 that you said you called Carl Aiken?

10 A. No, sir. Excuse me.

11 Q. You're fine.

12 A. No, ma'am. I'm sorry.

13 Q. So you don't -- did you call him in 2013 you
14 think?

15 A. (No response.)

16 Q. Not sure?

17 A. I'm not. I'm sorry.

18 Q. That's fine. Were you aware that Dr. Patel had
19 given permission to Mr. Poore to continue to drive
20 in 2012 and early 2013?

21 A. He had really not given him. He -- he kept
22 telling me I needed to take ---

23 Q. Don't tell me what he said, but ---

24 THE COURT: Hold on. You asked -- you asked
25 the question. She can answer it.

1 THE WITNESS: I was advised to take the cars
2 away. I'm sorry.

3 MS. MANIGAULT: You're fine.

4 THE COURT: Just -- just one second. Take the
5 jury to the jury room real quick, Mr. Foreman.

6 (At 3:06 p.m., the jury exited the courtroom.)

7 THE COURT: First, I'm sorry. I didn't mean to
8 interject.

9 But, now, you asked the question, "Did you know
10 Dr. So-in-so?"

11 She said, "Yes." The doctor, in fact, told
12 her or told him not to drive."

13 And then you said, "Don't tell me what he
14 said."

15 Well, you asked the question. I'm going to let
16 that part come in, but then she started to go off,
17 so I just wanted to send them out.

18 MS. MANIGAULT: Yes, sir.

19 THE COURT: Okay. Anything further about
20 that -- about this one conversation?

21 MS. MANIGAULT: About with the doctor?

22 THE COURT: Not your questions about your
23 objection or the potential objection and me sending
24 the jury out?

25 MS. MANIGAULT: Oh, none.

1 THE COURT: Okay. Anything from the State?

2 MR. GREGORY: No, Your Honor.

3 THE COURT: All right. Let's take about a
4 ten-minute break, and then we'll come back.

5 Ma'am, you can get down and move about. You
6 can't talk to anybody about your testimony.

7 THE WITNESS: Yes, sir.

8 (From 3:07 to 3:27 p.m., a recess was taken.)

9 THE COURT: Would you bring the witness in,
10 please -- I mean, the jury in. Thank you.

11 THE BAILIFF: (Complying.)

12 (The jurors entered the courtroom at 3:29 p.m.)

13 THE COURT: All right. Ms. Manigault, are you
14 ready to proceed?

15 MS. MANIGAULT: Yes, sir.

16 MS. MANIGAULT:

17 Q. Ms. Ford, you are aware that Mr. Poore is
18 driving in 2012; is that correct?

19 A. Yes, ma'am.

20 Q. And he was -- you testified earlier that he
21 could even drive two miles to your house because it
22 was a straight shot?

23 A. Yes, ma'am.

24 Q. Were you aware that he was driving around town,
25 going to OJ's without you?

1 A. I know he would take some trips.

2 Q. All right. So when you say "OJ restaurant,"
3 where is that restaurant located?

4 A. It's on Pendleton Street.

5 Q. So that's through downtown Greenville; is that
6 correct?

7 A. Yes, ma'am.

8 Q. And you testified that 6 Beaufort Street is off
9 of East North Street?

10 A. Yes, ma'am.

11 Q. So that's quite a distance more than two miles,
12 would you say?

13 A. Yes, ma'am.

14 Q. And that is not a straight shot?

15 A. Oh, no, ma'am.

16 Q. Were you aware that Mr. Poore was driving to
17 the grocery store when you didn't take him?

18 A. Yes, ma'am.

19 Q. And were you aware that he was going to the ABC
20 store or the liquor store when you -- when you
21 didn't take him?

22 A. I didn't know he went to the ABC store because
23 he quit drinking a long time ago.

24 Q. Okay. In 2012, he was not drinking?

25 A. He -- he used to drink, but, I mean, it's been

1 a long time since he drank.

2 Q. So if he was drinking in 2012, you would not be
3 aware of it?

4 A. Right. Because he was proud that he'd quit.

5 Q. Okay. Did he receive any traffic citations
6 while he was driving around in 2012, 2013?

7 A. Not to my knowledge.

8 Q. Did you see Mr. Poore every day?

9 A. Not every day.

10 Q. You testified that you prepared his medication
11 for the week on Sunday with those divider tube
12 containers; is that correct?

13 A. Yes, ma'am.

14 Q. So would you check back with him during the
15 week?

16 A. I was in and out.

17 Q. Was that every day?

18 A. No.

19 Q. Would you say it was every four days?

20 A. Or less.

21 Q. Okay. You informed the Court that in March of
22 2013, you hired people to sit with Mr. Poore from
23 7:00 a.m. to 7:00 p.m. and that included you?

24 A. Yes, ma'am.

25 Q. See before March 2013, Mr. Poore lived alone?

1 A. Yes, ma'am.

2 Q. And there was no one hired during the day hours
3 to be with him or to provide care for him?

4 A. Other than, like, me going back and forth or he
5 had friends that would go back and forth. He had a
6 neighbor that would keep an eye out also.

7 Q. The question was, no one was hired?

8 A. Oh, no, ma'am.

9 Q. So the first was March of 2013. Now, from --
10 did you testify that you received a power of
11 attorney in 2012?

12 A. I don't remember the date.

13 Q. Okay.

14 A. I'm sorry.

15 Q. Okay. But you testified that you did receive a
16 power of attorney over Mr. Poore?

17 A. Yes, ma'am.

18 Q. You just don't recall when?

19 A. I'm -- I'm -- I'm sorry. I just don't remember
20 the date.

21 Q. That's fine. Do you have other family members?
22 You have somebody named Debbie in your family?
23 Debbie?

24 A. No, ma'am.

25 Q. Now, you -- you testified that for a period of

1 time it was 7:00 to 7:00, but then you went to
2 24-hour care, seven days a week?

3 A. Yes, ma'am.

4 Q. Do you recall how long the 7:00 to 7:00 care
5 was provided?

6 A. No, ma'am.

7 Q. Okay. Were you ever present when Mr. Poore
8 gave Mr. Aiken a check?

9 A. Not that I remember.

10 Q. Okay. You testified that you had seen or met
11 Mr. Aiken?

12 A. Yes.

13 Q. Did you talk with him?

14 A. Yes. I had talked with him.

15 Q. Okay. And do you recall whether you met him
16 before or after you reported this problem that you
17 perceived as a problem?

18 A. I can't say. I'm sorry.

19 Q. That's fine. And is -- is your testimony that
20 you placed Mr. Poore in assisted living probably
21 October the 30th, 2015?

22 A. Yes, ma'am.

23 Q. And these checks were written -- State's
24 Exhibit 1 through -- 1 through 13 was written in
25 2013?

1 A. They were all previous to Raymond being placed
2 in an assisted living.

3 MS. MANIGAULT: All right. Thank you.

4 MR. GREGORY: Briefly, Your Honor, redirect.

5 THE COURT: Yes, sir.

6 MR. GREGORY: First the State would seek to
7 introduce State's Exhibit No. 18 [sic] into evidence
8 as it's a self-authenticated under seal document?

9 THE COURT: What is it please, sir?

10 MR. GREGORY: It's a power of attorney, Your
11 Honor, that we've been discussing.

12 THE COURT: Any objection?

13 MS. MANIGAULT: None, Your Honor.

14 THE COURT: Okay. Admitted.

15 (State's Exhibit No. 19 was admitted into
16 evidence.)

17 REDIRECT EXAMINATION

18 BY MR. GREGORY:

19 Q. I need you to just take a look at that.

20 A. Yes, sir.

21 Q. You were previously asked if your signature was
22 on there. Is your signature on that anywhere?

23 A. That's what I was looking. I was looking and
24 I'm thinking, well, that's Raymond's signature, but
25 I'm not seeing mine, though on the first page is

1 where it stipulates.

2 Q. Stipulates what?

3 A. That "Raymond Wilson Poore III of Greenville
4 County, South Carolina, had made, constituted, and
5 appointed, and by these presents to make constitute
6 and appoints Zeneca H. Ford; therefore, referred
7 to" ---

8 THE COURT: Just one second. Please don't read
9 that. Go ahead and ask questions.

10 BY MR. GREGORY:

11 Q. Zeneca H. Ford, is that you?

12 A. Zeneca Terry Harrison Ford, yes.

13 Q. And when was that document filed in Greenville
14 County?

15 A. It was filed on April 27th of 2012.

16 MR. GREGORY: I have no further questions, Your
17 Honor.

18 THE COURT: May this witness be excused?

19 MR. GREGORY: Yes, Your Honor.

20 MS. MANIGAULT: No objection, Your Honor.

21 THE COURT: Thank you, ma'am. You may be
22 excused.

23 (Witness excused.)

24 THE COURT: Call your next witness, please.

25 MR. GREGORY: State calls Elizabeth Eudy.

1 (Witness approached.)

2 THE CLERK: Ms. Eudy, please place your left
3 hand on the Bible and raise your right hand.

4 THE WITNESS: (Complying.)

5 THE CLERK: You do solemnly swear or affirm to
6 tell the truth, the whole truth, and nothing but the
7 truth so help you God?

8 THE WITNESS: I do.

9 THE CLERK: Thank you. Please state your full
10 name for the record.

11 THE WITNESS: Zeneca Elizabeth Eudy.

12 THE CLERK: Thank you. You may be seated.

13 THE WITNESS: (Complying.)

14 ELIZABETH EUDY,
15 having been produced and first duly sworn as a
16 witness on behalf of the State, then testified as
17 follows:

18 DIRECT EXAMINATION

19 BY MR. GREGORY:

20 Q. Ms. Eudy, how -- how old are you?

21 A. I will be 25 in a few days.

22 Q. Are you currently employed?

23 A. Yes, sir.

24 Q. Where do you work?

25 A. I work First Baptist Church of Simpsonville in

- 1 a CDC.
- 2 Q. And what do you do there?
- 3 A. I'm a K-2 teacher.
- 4 Q. Do you have any children?
- 5 A. I do.
- 6 Q. How many children do you have?
- 7 A. I have one.
- 8 Q. Are you married?
- 9 A. I am.
- 10 Q. Where were you born?
- 11 A. I was born Greenville Memorial Hospital.
- 12 Q. Have you lived in Greenville your whole life?
- 13 A. Lived in Fountain Inn my whole life.
- 14 Q. And you know Terry Ford?
- 15 A. She's my grandmother.
- 16 Q. And your mother is -- what's your mother's
- 17 name?
- 18 A. Rachel Dawn Pennington.
- 19 Q. And Raymond Poore, do you know him?
- 20 A. I do.
- 21 Q. How do you know him?
- 22 A. He's my grandmother's cousin.
- 23 Q. And between April 2012 and March 2013, did you
- 24 see Raymond Poore?
- 25 A. Yes, sir.

1 Q. Will you please describe for the jury the
2 condition of Raymond Poore as you remember it at
3 that time period?

4 A. He had memory loss. He would lose his keys.
5 He would get lost. Me, personally, did not think he
6 should be driving. He would lose or forget how to
7 use a phone.

8 He had a computer in one of his bedrooms of his
9 house and thought he had internet on it, but did
10 not. And I had to go over there several times to
11 re-explain how to use it. Within just like a month,
12 I would be over there five different times going
13 over, rewriting everything on how to use it, how to
14 use his phone.

15 Q. Now, when you say "rewriting," what would do to
16 help him?

17 A. I would take a notepad and write how to turn it
18 on, how to put his password in, things like just the
19 simple little setup of how to get it going.

20 Q. And did that include his phone as well as his
21 computer?

22 A. Uh-huh.

23 Q. And at that time where was he living?

24 A. He was living at 6 Beaufort Street.

25 Q. And according to Mr. Ford, he ate out a lot.

- 1 Did you eat out with him?
- 2 A. Yes, sir, I did.
- 3 Q. Where would you go?
- 4 A. We would go to Zaxby's or OJ's, just places on
- 5 Wade Hampton. I can't remember the name of it.
- 6 Q. Who would drive him? Would you drive ---
- 7 A. I did.
- 8 Q. Did he ever drive with you at that time?
- 9 A. No.
- 10 Q. And you said you'd go over there. How -- how
- 11 often would you go over there to fix things to help
- 12 him?
- 13 A. Two or three times a week.
- 14 Q. And would he call you?
- 15 A. He would normally call my grandmother, and
- 16 she'd have to call me.
- 17 Q. During this time period, we're talking about
- 18 April 2012 to March 2013, correct?
- 19 A. Uh-huh.
- 20 Q. He's forgetting things. Did he ever forget
- 21 your name?
- 22 A. There was times because I was pregnant at the
- 23 time and I looked different that he would forget me.
- 24 Q. What would he call you?
- 25 A. Couldn't tell you.

1 Q. Okay. And that was -- when were you pregnant?

2 A. I was pregnant from March 2012 to December
3 2012.

4 Q. And that's the time period that you were going
5 to his house?

6 A. Uh-huh.

7 Q. Now, have you ever met Carl Aiken?

8 A. No, sir.

9 Q. You ever seen him before today?

10 A. No, sir.

11 Q. And when you were going to Mr. Poore's house
12 numerous times during that period, did you ever see
13 work being done?

14 A. No, sir. The house looked the same as it did
15 since I was little.

16 Q. All right. Tell me -- tell me about the house.
17 What did the house look like?

18 A. It needed repairing. It really needed sanding
19 and repainting. There was paint chips. It -- nice
20 house, but looked a little run-down.

21 Q. Okay. Did you ever see Mr. Aiken at that
22 house?

23 A. No, sir.

24 Q. You were there multiple times during this time
25 period, multiple times a week is that what you said?

1 A. Yes, sir.

2 Q. Did you take him to the doctors?

3 A. I did.

4 Q. What doctors would you take him to?

5 A. Mr. Patel.

6 Q. And when was that? When did you take him to
7 the doctor?

8 A. After I started sitting with him in March of
9 2013.

10 Q. Would Raymond Poore tell you any stories?

11 A. Yes. He would tell me stories from whenever he
12 was in the Army.

13 Q. What was his position in the Army? Do you
14 remember?

15 A. I do not remember.

16 Q. And how often did he tell you the stories?

17 A. He would tell me a 10-minute story. And 15 or
18 20 minutes later, he'd tell me the exact same story.

19 Q. And when did this occur?

20 A. That started in 2012.

21 Q. Was that a one-time event, or was this -- did
22 this happen ---

23 A. Multiple times.

24 Q. You said earlier that he should not have been
25 driving, so he never drove with you?

1 A. No. Since I was pregnant, I would not let him
2 drive.

3 MR. GREGORY: Beg the Court's indulgence for
4 just one second.

5 THE COURT: Yes, sir.

6 BY MR. GREGORY:

7 Q. Did you help with the medication at all?

8 A. To make sure he took it.

9 Q. What do you mean you would make sure he took
10 it?

11 A. I would go in there and get it out of the box
12 and hand to it him and make sure he took it.

13 Q. Was that every day or just when you were over
14 there?

15 A. Whenever in 2013 when I started working with
16 him on a -- not daily basis, but, yes, I would do it
17 whenever I was there.

18 Q. So 2013, you started working with him on a
19 daily basis. About what time in 2013?

20 A. March, end of March.

21 Q. And how many days a week did you stay with him?

22 A. Two to three.

23 Q. With the computer and the phone?

24 A. That was all 2012.

25 MR. GREGORY: Okay. All right. Please answer

1 any questions the defense may have for you.

2 THE WITNESS: Yes, sir.

3 THE COURT: Cross-examination.

4 MS. MANIGAULT: Thank you, Your Honor.

5 CROSS-EXAMINATION

6 BY MS. MANIGAULT:

7 Q. Ms. "Yew-di"?

8 A. "Eww-di."

9 Q. "Eww-di." Okay. You testified that you were
10 aware that Mr. Poore was still driving?

11 A. Uh-huh. Yes.

12 Q. And that was in 2012 ---

13 A. Right.

14 Q. --- and '13?

15 A. Yes, ma'am.

16 Q. And you -- you worked with him under the plan
17 that your grandmother drew up from 7:00 a.m. to
18 7:00 p.m. on some days?

19 A. Yes, ma'am.

20 Q. And you think that may have been two to three
21 days per week?

22 A. Yes, ma'am.

23 Q. And were you ever present when Mr. Poore made
24 any transaction or brought any checks for Mr. Aiken?

25 A. No, ma'am.

1 Q. You have no knowledge of anything that they
2 would have discussed?

3 A. No, ma'am.

4 MS. MANIGAULT: Thank you.

5 THE COURT: Redirect?

6 MR. GREGORY: No further questions, Your Honor.

7 THE COURT: May this witness be excused?

8 MR. GREGORY: Yes, Your Honor.

9 MS. MANIGAULT: No objection.

10 THE COURT: Thank you, ma'am.

11 (Witness excused.)

12 THE COURT: Call your next witness.

13 MR. GREGORY: State calls Dennis Larson.

14 (Witness approached.)

15 THE CLERK: Mr. Larson, please place your left
16 hand on the Bible and raise your right hand.

17 THE WITNESS: (Complying.)

18 THE CLERK: You do solemnly swear or affirm to
19 tell the truth, the whole truth, and nothing but the
20 truth so help you God?

21 THE WITNESS: I do.

22 THE CLERK: Thank you. Please state your full
23 name for the record.

24 THE WITNESS: Dennis Walter Lawrence.

25 THE CLERK: Thank you. You may be seated.

1 THE WITNESS: (Complying.)

2 DENNIS LARSON,

3 having been produced and first duly sworn as a

4 witness on behalf of the State, then testified as

5 follows:

6 DIRECT EXAMINATION

7 BY MR. GREGORY:

8 Q. Mr. Larson, how old are you?

9 A. I'm 70.

10 Q. Now, are you currently employed?

11 A. Oh, no.

12 Q. Prior to -- are you retired?

13 A. Yes.

14 Q. Prior to retirement, what kind of work were you
15 involved in?

16 A. I was a designer of the restaurants and hotels
17 for the Marriott and all around the country. I
18 worked for 30 years.

19 Q. And where do you currently live, what city?

20 A. I live in Greenville.

21 Q. How long have you lived in Greenville?

22 A. Eight years.

23 Q. Where are you from originally?

24 A. From Michigan area, Vermont for 18 years, and
25 then Texas. I lived in Europe for a while, while I

1 was stationed there and went to school in Sweden.

2 Q. Now, do you know Mr. Poore?

3 A. I do.

4 Q. How do you know Mr. Poore?

5 A. I met him because he would visit Terry across
6 the street. I lived across the street from Terry
7 with my mother. And I went to visit with Terry, and
8 he would be there.

9 And we talked about the Army because he was a
10 retired Colonel in the infantry, did training in
11 Fort Jackson. And I was in the military as well, so
12 we had things to talk about.

13 Q. And when did you first meet Mr. Poore? Do you
14 recall?

15 A. Well, I -- Terry asked me to start look --
16 looking after him two days a week, let's see, in
17 March '13. Two to three months prior to March '13,
18 I believe, is when he would go over to her house,
19 and I would see him and talk to him over there. So
20 it seemed to me three to four months prior to March
21 of '13.

22 Q. So that would put it December of 2012?

23 A. Could be. Yeah, yeah.

24 Q. Can you -- will you please describe Raymond's
25 condition at that time when you first met him?

1 A. He was forgetful because the first thing Terry
2 would tell me was that she'd have to go get him when
3 he get lost. He'd go someplace and get lost. She
4 had to go get him, and so he couldn't explain
5 exactly where he was.

6 On two occasions, I remember that I was kind of
7 laughing. It's a little embarrassing, you know, and
8 so -- and then when I met him, he was -- he was a
9 little forgetful. He had a tendency to tell you the
10 same story every 15 minutes about the Army.

11 Q. So did you -- in December of 2012, how often
12 would you see him?

13 A. Maybe once a week because he would go over to
14 her house because I'd see the car there. He'd park
15 out in the street right in front of our window. And
16 they'd go out. They'd go to different places and
17 then, you know, she would drive him out to go to eat
18 mostly because he ate out three days -- three meals
19 a day.

20 Q. Did you take him out to eat?

21 A. I did.

22 Q. Where did you take him?

23 A. OJ's for lunch always. And then depending on
24 where we were, for instance, I would -- I'd take him
25 on little field trips like Fort Jackson, Officer's

1 Club. We ate down there all day. We would go -- we
2 went to Atlanta once, did go-carting all day because
3 he lost his license.

4 And so I would try to take him picnics out and
5 walking in the Depont Forest at Triple Falls. We'd
6 head out there and I would take pictures of him
7 while he was doing things with me as a reminder
8 of -- because he was losing memory so fast that
9 pictures were a way of remembering what we would do
10 together as friends, so that was kind of fun because
11 he would talk about that.

12 Q. And that was in December of 2012?

13 A. No. That would be between March -- I think I
14 was -- about six months between March, April, May.
15 I think six months, two days a week, on Fridays and
16 Mondays is when I had my schedule from 7:00 to 7:00.

17 Q. But December of 2012 when you took off, who
18 would drive?

19 A. I would.

20 Q. Would you drive his car or your car?

21 A. Drove his car once or twice, but then we
22 started driving mine because Terry took the car away
23 because he would be very angry just seeing the car
24 in the driveway because he wanted to drive. He felt
25 very bad about not being able to drive. That was a

1 constant complaint.

2 Q. Now, do you know Mr. Aiken?

3 A. I do not.

4 Q. Never met him before today?

5 A. Never.

6 Q. Did you have an opportunity to go to Raymond's
7 house in December?

8 A. No. It was probably the first time I was there
9 was some time early March or something, my first day
10 there, and, you know, that's the first time really
11 I'd gone in the house I think was some time in
12 March.

13 Q. Of 2000 ---

14 A. --- '13 I believe.

15 Q. What was the condition of his house at that
16 time? Do you recall?

17 A. It's an all-brick house. It has a two-car --
18 not a garage, a portico. It was painted white. It
19 looked like -- the paint was dirty. It looked like
20 it needed to be repainted. Probably seven or eight
21 years, I would say, you know, was the last time he
22 painted because the paint was dirty dungy, you know,
23 it wasn't pure white.

24 So it was a well-used house. The inside was
25 the same way. I mean, they live in it 30, 40 years,

1 so not much upkeep. It was noticeable.

2 Q. And would Raymond remember your name?

3 A. Generally, yes. Although, there were several
4 occasions where he would talk about me in third
5 person while I was in the car with him. And there
6 were times that I would show up in the morning, and
7 he'd -- he'd look at me kind of quizzically.

8 Generally speaking, he knew my name. But there
9 were times in the last couple months when he'd be
10 talking about me and not -- and I was in the car
11 which is, you know, he'd comment, "Dennis said we
12 would go do this and that."

13 And then quite often when he would -- he'd get
14 in the car and decide where to go for supper, we'd
15 get in the car and go someplace and he'd say, "Where
16 are we going?"

17 I'd say, "We're going to dinner. Five minutes
18 ago we talked about this."

19 He goes, "Where are we going?"

20 So he was pretty forgetful at that point and
21 that was March, April, May, June. That would've
22 been 13 -- 6 months added -- let's see, may be July
23 it started getting to where he was really forgetful.

24 MR. GREGORY: Okay. Please answer any
25 questions the defense may have for you.

1 THE COURT: Go ahead.

2 MS. MANIGAULT: Your Honor, may we sidebar for
3 a moment?

4 THE COURT: Yes, ma'am.

5 (Sidebar discussion between the Court and
6 counsel.)

7 CROSS-EXAMINATION

8 BY MS. MANIGAULT:

9 Q. Mr. Larson, you stated that you would see
10 the -- Mr. Poore's car parked at Ms. Ford's house?

11 A. It was parked at his house for several weeks
12 until she took it from his house to her house in
13 Fountain Inn.

14 Q. I'm talking about when you first met him, you
15 said you would go over ---

16 A. Yes. He would drive from his house to her
17 house. Yes, ma'am.

18 Q. And how often did you see the car there at that
19 point?

20 A. One or two times a week when he would come
21 over.

22 Q. And that continued until March of 2013?

23 A. Yes, ma'am.

24 Q. Did you sit with him the 7:00 a.m. to 7:00 p.m.
25 hours?

1 A. I did, ma'am. Yes.

2 Q. Okay. And how long did that last? How many
3 months?

4 A. About six months if I recall. Roughly six
5 months.

6 Q. So it started on March 2013?

7 A. As I recall, yes. That's correct.

8 MS. MANIGAULT: All right. Thank you.

9 THE COURT: Redirect?

10 MR. GREGORY: I have no further questions, Your
11 Honor.

12 THE COURT: May this witness be excused?

13 MR. GREGORY: Yes, Your Honor.

14 MS. MANIGAULT: No objection.

15 THE COURT: Thank you, sir.

16 (Witness excused.)

17 MR. GREGORY: State calls Dr. Kent Kistler.

18 THE WITNESS: (Approaching.)

19 THE CLERK: Mr. Kistler, please place your left
20 hand on the Bible and raise your right hand.

21 THE WITNESS: (Complying.)

22 THE CLERK: You do solemnly swear or affirm to
23 tell the truth, the whole truth, and nothing but the
24 truth so help you God?

25 THE WITNESS: I do.

1 THE CLERK: Thank you. Please state your full
2 name for the record.

3 THE WITNESS: Kent Howard Kistler.

4 THE CLERK: Thank you. You may be seated.

5 THE WITNESS: (Complying.)

6 DR. KENT KISTLER,
7 having been produced and first duly sworn as a
8 witness on behalf of the State, then testified as
9 follows:

10 DIRECT EXAMINATION

11 BY MR. GREGORY:

12 Q. Dr. Kistler, how old are you?

13 A. Sixty-three.

14 Q. And are you currently employed?

15 A. I closed my practice last year. I'm working
16 part-time with the State of South Carolina.

17 Q. And what do you do for the State of South
18 Carolina?

19 A. I attend the neurology clinic at the Whitten
20 Center which is in Clinton, South Carolina.

21 Q. And your practice that you closed, what kind of
22 practice was that?

23 A. A neurology practice.

24 Q. Now, was that a sole-providership, or was it
25 part of the Greenville hospital system?

1 A. Neither.

2 Q. Okay. Well, what was it?

3 A. Well, it was a group practice, so there were
4 several neurologists. And as it became smaller and
5 it remained to seven and so forth down to two at the
6 time we closed it.

7 Q. And how long did you practice?

8 A. Thirty-two years.

9 Q. And what is neurology?

10 A. Well, it's treatment of diseases involving the
11 nervous system and symptoms reparable to it, so
12 everything from brain problems to spine problems to
13 peripheral nerve problems to neuromuscular diseases
14 to migraine headaches to strokes to epilepsy to
15 degenerative diseases. So it's a full aspect of
16 diseases reparable to the nervous system.

17 Q. Nervous system mean brain, correct?

18 A. Well, the brain, spinal cord, peripheral
19 nerves, and muscles they serve.

20 Q. Where did you get your undergraduate degree?

21 A. North Carolina State.

22 Q. And what did you get it in?

23 A. Zoology.

24 Q. And you went to medical school?

25 A. Yes.

1 Q. Where did you go to medical school?

2 A. Duke.

3 Q. And when did you graduate from Duke Medical
4 School?

5 A. When?

6 Q. Yes, sir.

7 A. December 1979.

8 Q. And when did you become licensed to practice
9 medicine?

10 A. Licensed to practice? I guess my first license
11 would've been January 1980.

12 Q. Did you do a residency after Duke Medical
13 School?

14 A. Yes. So I graduated a little bit early. In
15 December, I worked with the State of North Carolina.
16 It was a research assistant state hospital, so that
17 was my first job.

18 That was before, and then I went from there to
19 St. Louis to do an internship at Washington
20 University. And then that's a one-year training
21 program.

22 And then I left there and went to Vanderbilt
23 and did three years there in neurology.

24 Q. And that was -- that was a specialty neurology
25 at Vanderbilt?

1 A. Yes.

2 Q. And what were your duties at Vanderbilt?

3 A. As a resident? Well, it's kind of a pecking
4 order your first year, and then you stay in the
5 hospital and you admit patients and you see patients
6 and you present them to the next higher up and you
7 go up.

8 And my last year, I served as chief resident,
9 which I got to oversee the people under me, but
10 basically inpatient as well as outpatient neurology.

11 Q. Did you do any diagnosing and treatment at that
12 time?

13 A. Yes.

14 Q. So between the Vanderbilt and your -- your
15 practice, your prior practice for 32 years, did you
16 work anywhere else?

17 A. Well, I've always worked at Whitten Center for
18 32 years. Our practice covered that hospital for
19 32 years. I worked at hospitals, so both
20 Greenville, as well as St. Francis Free Medical
21 Clinic.

22 Q. All in neurology?

23 A. Yes.

24 Q. Have you ever testified in court before?

25 A. Yes.

1 Q. How many times have you testified in court
2 before?

3 A. Maybe 20.

4 Q. And how many times have you been qualified as
5 an expert?

6 A. Half of those.

7 MR. GREGORY: Your Honor, at this time the
8 State would -- would offer Dr. Kistler as an expert
9 in diagnosis and treatment of neurological
10 disorders.

11 THE COURT: Diagnosis and treatment in
12 neurological disorders; is that correct?

13 MR. GREGORY: That's correct, Your Honor.

14 THE COURT: Any voir dire or do you stipulate?

15 MS. MANIGAULT: Just a couple of questions Your
16 Honor.

17 THE COURT: Okay.

18 MS. MANIGAULT: I was writing and missed some.

19 VOIR DIRE EXAMINATION

20 BY MS. MANIGAULT:

21 Q. Dr. Kistler, your testimony is that you have
22 been in the practice of neurology for more than
23 32 years; is that correct?

24 A. Yes, ma'am.

25 Q. And during that 32 years, you have diagnosed

1 and treated patients with that disorder -- with the
2 disorder -- any neurological disorder? Let me say
3 it like that.

4 A. Yes.

5 MS. MANIGAULT: No objection.

6 THE COURT: Okay. Ladies and gentlemen of the
7 jury, defense stipulates and the -- and the State
8 has moved that this witness be deemed an expert in
9 the field of diagnosis and treatment in neurology.

10 Let me tell you this, normally witnesses are
11 not allowed to give their opinion. They are limited
12 to what they saw, they heard, they felt, they smelt,
13 and in very, very limited circumstances may they
14 give their opinion in the courtroom.

15 However, if a person, because of their
16 education or experience, has developed an expertise
17 in a particular area and that area would be helpful
18 to you, the finders of fact, that person upon being
19 qualified as an expert is allowed to give their
20 opinions in the field of their expertise and a
21 reason for their opinions.

22 In this -- in this particular case, Dr. Kistler
23 is deemed an expert in the field of neurology,
24 diagnosis and treatment, in that area. He'll be
25 allowed to give his opinion, the basis of his

1 opinion in that area.

2 Expert testimony, ladies and gentlemen, is just
3 like any other testimony you'll hear. You may
4 accept it, you may reject it, or give as much weight
5 as you think it deserves.

6 MR. GREGORY: Thank you, Your Honor.

7 DIRECT EXAMINATION CONTINUED

8 BY MR. GREGORY:

9 Q. Dr. Kistler, did you have an opportunity to
10 examine Raymond Poore?

11 A. Yes, I did.

12 Q. When did you first meet Raymond Poore?

13 A. My first encounter with him was April 16, 2012.

14 Q. And just for -- what -- what are you looking at
15 right there in front of you?

16 A. These are office notes from my -- my office
17 notes on Mr. Poore. Although, I think it goes up
18 through 2013 and I think I continued seeing him
19 through 2016, so a portion of my office notes.

20 Q. So these are notes that you created after your
21 visit with Raymond Poore?

22 A. These are the notes that would have been
23 created and sent to the referring physician file as
24 well.

25 Q. What was the first -- what was the date the

1 first time you met Raymond Poore?

2 A. April 16, 2012.

3 Q. And how did he come to see you?

4 A. He was referred by his primary care doctor,
5 Dr. Patel.

6 Q. And why does a -- why does a primary care
7 doctor refer someone to you?

8 A. Generally, it's to either establish diagnosis
9 or make recommendations of treatment, sometimes it's
10 for informational prognosis, and all of the above.

11 Q. Was he -- was he previously diagnosed with
12 anything when he came to visit you?

13 A. Well, he had been treated for memory loss, so I
14 don't know that he actually had a diagnosis, but he
15 had been treated by his primary care physician for
16 memory disturbance and memory loss.

17 Q. And when you say "treated," what kind of
18 treatment was he receiving? Was that medication?

19 A. He was prescribed medication, yes.

20 Q. What medication was he taking before seeing
21 you?

22 A. Donepezil which is -- Aricept is the brand.

23 Q. Okay. And what does that medicine do?

24 A. It's a treatment that at that time is probably
25 the only the FDA approved treatment for dementia

1 from Alzheimer's, but it boosts memory indirectly by
2 increasing a chemical called acetylcholine which is
3 involved in memory circuit, so it boosts it a little
4 bit. It doesn't stop the process though.

5 Q. How old was Mr. Poore when he came to visit
6 you?

7 A. Seventy-two.

8 Q. And did you do a little workup on him as far as
9 the -- just looking at him and making determinations
10 about him?

11 A. Yes.

12 Q. What -- what is -- what was your observations?

13 A. Well, we would always take a history and some
14 of that was provided by accompanying people, his
15 previous records from Dr. Patel, and we would do an
16 examination.

17 And then his case, I ordered a CAT scan which
18 is an imaging of his brain.

19 Q. What other kind of testing did you do at that
20 initial visit?

21 A. Well, depending upon what the neurologic
22 condition is, we may do additional focus with him
23 because his was primarily cognitive or thinking,
24 memory problems.

25 We did what was called a Montreal Cognitive

1 Assessment Test, and that's a -- it's a 20-item test
2 of various cognitive formats so it's sort of a
3 standardized memory test.

4 Q. And how did he do with that?

5 A. Not very well. I think he scored 17 out of a
6 potential 30.

7 Q. Just with your interactions with him, what was
8 his -- what was his demeanor like with you? Do you
9 recall?

10 A. I do. He had no insight. You know, he was
11 there not by his own freewill so-to-speak. He
12 didn't see any reason that he should be there. He's
13 very personable and would change the subject very
14 quickly if he could.

15 So he would, you know, when I asked him where
16 he went to college and asked him, "Where did you go
17 to college?" multiple times sort of thing.

18 Q. And that was on April 16th?

19 A. I think that was the first time, but it -- it
20 was what's called jocular, which is sort of
21 inappropriate jokes when somebody sort of laughs,
22 you know, so, "Who is the President?" "Oh, who
23 cares?" you know, that sort of thing. And, in fact,
24 he didn't know who the President was.

25 Q. He did not know who the President was?

1 A. Correct.

2 Q. Did he know what day of the week it was?

3 A. No. But the Montreal Cognitive Assessment Test
4 is more vigorous than that. So it's scaled and then
5 some of it was hard and some of it it's not hard.

6 It includes -- they're called executive
7 functions which are sequencing things like to draw a
8 clock and draw the hands and numbers in. He wasn't
9 able to complete that correctly ---

10 Q. Okay.

11 A. --- which is sort of a function of -- it's
12 called executive function, which is different from
13 memory.

14 Language function, he wasn't able to identify a
15 rhinoceros for example; whereas, he was able to name
16 a lion. So typically things that are common things
17 or you can name, you know, something you use a lot,
18 but something like rhinoceros are more difficult
19 to -- he didn't know what it was.

20 On memory testing, we give words and ask
21 people, you know, after several minutes, "Do you
22 remember those words?" He got -- not very well,
23 zero out of five on that.

24 Attention is tested by giving sequences, and he
25 did fine on attention which was good.

1 Subtracting numbers, that sort of thing, again,
2 these are all different cognitive functions tested
3 separately. He did well on that.

4 On language, he did okay, except that when
5 asked to produce words, so we would ask a person
6 like, "How many words can you come up with that
7 begin with the letter "B" in one minute?" And most
8 people can come up with at least ten. He -- he
9 couldn't, so those sort of things.

10 He was -- he knew the month. He did know the
11 day of the week. He did not know the President at
12 that time. He did know the month at that time and
13 he knew he was in a doctor's office in Greenville.

14 So -- but you tally it all up, and like I said,
15 it's potentially 30 points on that test. And,
16 frankly, you know, we wouldn't get too excited if
17 somebody scored a 27. There's certainly norms for
18 that, but he scored 17 which is definitely abnormal.

19 Q. Is that concerning to you?

20 A. Yeah, I mean, somebody who is trying, that's
21 certainly abnormal.

22 Q. And the CT scan, did you take that that day or
23 was that later?

24 A. That was ordered that day and done later.

25 Q. Okay. After you -- you took these tests, did

1 you actually come up with a diagnosis at that time?

2 A. Well, he had dementia, which is sort of a broad
3 term. So dementia means memory loss in particular,
4 but cognitive loss and dementia can be from a number
5 of things, Alzheimer's disease being the most common
6 form or dementia.

7 You can have dementia from brain tumors,
8 strokes, water on the brain, exposure to chemicals,
9 lots of other things can cause dementia. So he was
10 diagnosed with dementia, but at that point the CAT
11 scan is done to look for some of these other causes
12 of dementia.

13 Q. After the CAT scan, what was -- what was your
14 opinion as to the cause of the dementia for
15 Mr. Poore?

16 A. At that point, it's about a 90 -- over
17 90 percent certainty that it's Alzheimer's disease.

18 Q. Now, what is Alzheimer's disease?

19 A. Alzheimer's is degenerative. In other words,
20 progressive loss of brain function. It's caused by
21 a buildup of excessive proteins that deposit into
22 certain areas of the brain. We don't know why. It
23 may be a little more common. There are some genetic
24 clues, but it's not related to environmental or what
25 you do sort of things typically.

1 And it's progressive, so it accumulates. And
2 initially it serves in the brain where it tends to
3 first start, but then it progresses and so the
4 symptoms also progress. So it may be as simple as
5 not remembering somebody's name, but it progresses
6 to much more than that.

7 Q. How -- what's the gestation period or the
8 progression? How long does it progress? How
9 quickly does it progress?

10 A. It varies somewhat, but frequently it's not
11 diagnosed, you know, initially because it can be
12 pretty mild, but three to five years sort of span.

13 But, I mean, typically you don't die from
14 forgetfulness. You die from medical problems. And,
15 ultimately, you forget simple functions like getting
16 out of bed and moving and people develop pneumonia,
17 for example, is a common cause of death. So more
18 people waste away. They, you know, basically stop
19 eating.

20 Q. At that time, did you prescribe for him any
21 medication in regards to dementia?

22 A. Yes. He had been previously prescribed
23 donepezil which he had stopped, and I asked him to
24 resume that. I started him back on that medication
25 at that time.

1 Q. And, again, is that medication to cure him from
2 dementia, or is that just the ---

3 A. No. It's definitely not curative.

4 Q. When someone has dementia, is there any chance
5 that they could get better over time?

6 A. Better? Well, the -- the medicines, I mean, I
7 would tell people it's kind of like if your IQ is
8 100 and I gave you a pill and made it 102, but it --
9 but it doesn't make you a genius.

10 Likewise, these medicines boost things like
11 meanwhile the curve is going down, so temporarily if
12 you measure things, may be a little better and some
13 of these are intangible things that are to measure
14 such as, you know, cleaning up your kitchen.

15 So there are intangible sort of benefits to
16 these medicines that don't necessarily show up on
17 the memory test easily, but typically if you test
18 what this -- this test I gave him, he might see a
19 one or two point increase, but not a lot.

20 Q. Did you make any other recommendations to
21 Mr. Poore at that time as far as what he should do
22 besides take medication?

23 A. Yeah. Typically, on a patient, it just depends
24 on where they are in the disease that insight and
25 judgment become impaired at some point and because

1 it's a progressive disease, you can sort of
2 anticipate there are going to be problems in that.

3 And I talked to him as well as his family about
4 getting him a power of attorney because at some
5 point you're going to need it. And if you wait too
6 long, it's much more difficult to get it because it
7 involves probate at that point.

8 And so I typically would advise people that
9 have some insight to go ahead if you've got somebody
10 that you trust in overseeing things, you should go
11 ahead and do it. I think we spoke sort of about him
12 getting what is called a "durable power of
13 attorney."

14 Q. And did you know he was driving on April 16,
15 2012?

16 A. I'm aware that he was driving. I believe it
17 was on a limited basis, but yes.

18 Q. Did you have an opinion as to whether or not he
19 should continue driving?

20 A. I think at that point, there was some -- I
21 discouraged it, but he was very strongly by then,
22 "I'm going to drive."

23 Q. And that was April 16, 2012, correct?

24 A. Yes.

25 Q. When was the next time you saw Raymond Poore?

1 A. Three months later.

2 Q. And what day was that?

3 A. July 12, 2012.

4 Q. Is this just a typical follow-up visit, or was
5 there something special for this visit?

6 A. It was first available follow-up which is about
7 three months.

8 Q. And who came with Mr. Poore at that time?

9 A. My notes said his niece and I believe that
10 would be ---

11 Q. Do you recognize Ms. Ford?

12 A. Yes. She looks familiar.

13 Q. Okay. And what was his condition at that time
14 in July of 2012?

15 A. Essentially, the same. He was still living
16 alone and still driving limited. Independent, what
17 we call activities of daily living -- brushing your
18 teeth, shaving, getting your clothes on, that sort
19 of stuff. He was doing those sort of things without
20 any direct supervision that I'm aware of anyway.

21 Q. Did he -- you said previously he was unable
22 to -- to recall who the President was. Did you ask
23 him the same sort of questions at this time?

24 A. Usually what I would do is go back and ask some
25 of the ones that you did to see if there's anything.

1 So let's see. Reading my notes, he was
2 irritable upon questioning. He had difficulty
3 recalling the date, was unable to give the day of
4 the week, but was able to recall the President's
5 name today.

6 Q. Were there any recommendations that you sent
7 him away with at that time?

8 A. Well, because of the potential for safety
9 issues, that's probably the next issue that was
10 discussed, and that would main -- mainly be
11 medications. He was on cardiac medications, and if
12 you don't take your medicines correctly, it could be
13 hazardous, that sort of thing, so...

14 Q. Did you prescribe him any more medication in
15 July of 2012?

16 A. To maintain him on donepezil.

17 Q. And how did that seem to be doing for him?

18 A. Well, he went from unable to recall the day of
19 the week to recalling the day of the week. So the
20 main thing with that is, it may stabilize things,
21 but keep it -- to decline its lessen and decline
22 them is what we hope for you.

23 Q. You might have misspoke because I think you
24 wrote upon -- did you say he was able to recall the
25 date of the week, but not be able to recall the day

1 of the week?

2 A. He was able to recall the President's name
3 which he hadn't been previously.

4 Q. But previously he recalled the day of the week,
5 but not this time?

6 A. Correct.

7 Q. Any change in your diagnosis of him?

8 A. No.

9 Q. When was the next time you -- you met with
10 Raymond Poore?

11 A. Three months later in October 2012.

12 Q. And what was his condition when you spoke with
13 him at -- spoke to him at that time?

14 A. He seemed fairly stable. He still had trouble
15 recalling the date, but he knew the day of the week.
16 He recalled the President's name, which I would ask
17 and typically he would laugh about that because I
18 think he had some recall at that point. He was
19 still living independently and still taking the same
20 medications. No change.

21 Q. And your recommendation -- what kind of
22 recommendations did you make at the end of
23 October 2012?

24 A. I recommended continuing on medication, limit
25 his driving to short distances, no highway driving,

1 sort of a compromise. He had previously said he was
2 going to drive and didn't care what anybody told
3 him.

4 Q. But in your opinion, should he have been
5 driving at that time?

6 A. Well, it's a safety issue. So if you get lost
7 driving to the drug store, nothing bad happens. But
8 if you get on the interstate, it becomes more of an
9 issue.

10 So, typically, we may let people drive if they
11 have some judgment and some sense of memory thing.
12 If they're driving routine where they've driven to
13 their hairdresser the same route for 30 years, most
14 people can do that pretty adequately.

15 But if you put them in a unique situation like
16 go to a new place, it's not -- not so easy. So we
17 usually say as long as you are limited to your three
18 stops -- you go to the post office, you go to your
19 hairdresser, you go to the residence, you go to that
20 sort of thing, typically established patterns remain
21 pretty well.

22 Q. When he came down this time, did he remember
23 who you were?

24 A. I don't think he ever remembered who I was. He
25 would laugh and say, "Oh, you're that guy, you

1 know." That's the jocular way that he would, but

2 I -- I know he didn't know my name, no.

3 Q. Did he know why he was there?

4 A. I think he had some insight to it, but like I
5 said, he would say, "I don't need to be here," you
6 know, that sort of thing.

7 Q. When was the next time you met with Mr. Poore?

8 A. Let's see if I have all those records.
9 Probably the next record I see is February the 1st,
10 2013.

11 Q. What was his condition at that time when he
12 came in?

13 A. He had declined a little. He was still living
14 independently. His niece was overseeing his
15 medications. He had limited insight as to the need
16 for any of all this.

17 Q. What about the day of the week? Was he able to
18 give you that?

19 A. He had difficulty recalling the day, was unable
20 to give the day or the week, was able to recall the
21 President's name.

22 So, typically, at this point, we don't do
23 the -- the memory test takes 30 minutes roughly
24 extra time, so it's not done on every visit, but not
25 a huge change.

1 Q. From April of 2012, not a huge change to
2 February?

3 A. Well, there's some -- some decline, like I
4 said, but not -- he now had more oversight for
5 medications and things like that, but...

6 Q. More oversight from who? Do you know?

7 A. I believe it says his niece is overseeing his
8 medications.

9 Q. And that was February 1, 2013?

10 A. Yes.

11 Q. Did you leave him with any instructions on what
12 to do or what not to do?

13 A. I recommended that his niece oversee
14 medications and monitor for any safety issues and
15 limit his driving to daylight hours and no highways.

16 Q. Thank you. Was that a compromise you made with
17 him?

18 A. Yes.

19 Q. Did he remember who you were during this visit?

20 A. No. I don't believe so.

21 Q. How many times did you see Mr. Poore after
22 February 1, 2013?

23 A. I don't have those notes, but typically it
24 would be probably every six months. So up until --
25 I'm not sure when the last time I saw him. Probably

1 spring of last year maybe.

2 MR. GREGORY: Please answer any questions the
3 defense may have for you.

4 THE COURT: Cross-examination.

5 CROSS-EXAMINATION

6 BY MS. MANIGAULT:

7 Q. Doctor -- excuse me. Dr. Kistler, on your
8 July 12, 2012, notes and history of Raymond Poore,
9 you noted he lived alone; is that correct?

10 A. Yes, ma'am.

11 Q. Patient is driving at this time?

12 A. Yes, ma'am.

13 Q. Alcohol. You says drink -- you say "Drinks a
14 minimum amount of alcohol"?

15 A. Oh, that's typed in by an intake person based
16 off what he says. So once it's populated in there,
17 it'll never change.

18 Q. So this -- this information ---

19 A. So that could be zero or it could be -- I mean,
20 I don't know what a minimal amount is.

21 Q. Well, it means there is some kind of intake of
22 alcohol, no matter how slight?

23 A. I don't know what -- what that actually means.
24 His intake, which is in my notes, says "zero." So
25 the ---

1 Q. Okay.

2 A. --- anything close would've been ---

3 Q. So the ---

4 A. --- that's what I'm saying.

5 Q. So you're saying that this information in your
6 report is not correct?

7 A. It says "minimal." Minimal would be zero to
8 some small number.

9 Q. Okay. All right. Then on October the 23rd,
10 2012.

11 A. Yes.

12 Q. You said that he was stable. He continues
13 exercising, driving, living independently with no
14 safety issues identified; is that right?

15 A. Yes, ma'am.

16 Q. Okay. Judgment appears to be fair; is that
17 right?

18 A. Yes.

19 Q. No medication or compliance issues?

20 A. Correct.

21 Q. And, again, it says "Lives alone. Driving at
22 this time. Drinks a minimal amount of alcohol"; is
23 that correct?

24 A. That's what it says. Yes, ma'am.

25 Q. All right. Then on February the 1st, 2013, you

1 saw Mr. Raymond Poore and your statement says "Lives
2 alone, drives short distances, but his niece
3 oversees his medication." Is that what your
4 statement says?

5 A. Yes.

6 Q. Okay. "She feels that he has some decline, but
7 no safety issues."

8 I want to ask you about this part of your --
9 your statement. "He has limited insight into his
10 illness." When you say he does not recognize his
11 illness or rejects advice about his illness, what
12 does that mean when you wrote that?

13 A. Well, insight would be if I told you you needed
14 to take this medication for whatever. He was on
15 Coumadin, for example, which is for his heart. He
16 would say, "I don't know why I need to take that."

17 Likewise, if you say, "Man, you really
18 shouldn't be driving because your judgment is not
19 what it used to be, your, you know, memory is
20 declining." He would say, "It's just fine." So
21 those sorts of things.

22 Q. All right. So he was kind of resistant ---

23 A. Yes.

24 Q. --- to the diagnosis and the treatment?

25 A. Well, not resistant in a sense that I think he

1 took the medicine as long as somebody -- if you ask
2 him to keep up with it, he wasn't able to, nor even
3 when he was able to, I'm not sure he saw the need
4 for it.

5 Q. Okay. So from April of 2012 when you first saw
6 him to February 1st of 2013, you said that he may
7 have shown some change in his memory or behavior. I
8 don't want to reword what you said, but you said
9 there was some change in his behavior?

10 A. I don't recall saying that.

11 Q. Okay.

12 A. Did you read that or ---

13 Q. No. It's fine if you didn't say it.

14 When you did the test on April the 12th, April
15 the -- April 16th -- I'm sorry -- 2012, you said his
16 attention -- the part of the memory part of the test
17 was good?

18 A. Yes, ma'am.

19 Q. His subtracting was fair to good?

20 A. Yes.

21 Q. His language, you said he did okay?

22 A. Language is broken down into repetition,
23 spontaneous production. On spontaneous production,
24 he didn't do okay. On recall of language, he did
25 okay -- I'm sorry -- he couldn't recall. His

1 spontaneous speech syntax as a whole was normal.

2 Q. So when did you first diagnose him with
3 dementia or Alzheimer's?

4 A. He was diagnosed with dementia the first time I
5 saw him in April 2012. And the diagnosis of
6 Alzheimer's, as I said, is based on progression, and
7 that was probably after his scan, so July of 2012 I
8 believe. Yes.

9 Q. And would there be any notification requirement
10 from you when a patient is diagnosed with
11 Alzheimer's, other than to the family? Any official
12 agency or anything like that?

13 A. No, ma'am.

14 MS. MANIGAULT: Thank you.

15 THE COURT: Redirect?

16 MR. GREGORY: I have no further questions, Your
17 Honor.

18 THE COURT: May this witness be excused?

19 MR. GREGORY: Yes, Your Honor.

20 MS. MANIGAULT: No objection.

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

22 (Witness excused.)

23 THE COURT: How long is your next witness?

24 MR. GREGORY: Maybe 15, 20 minutes, Your Honor.

25 THE COURT: Go ahead and call your witness,

1 please.

2 MS. HENDRICKS: The State calls Jerry Brown.

3 (Witness approached.)

4 THE CLERK: Mr. Brown, please place your left
5 hand on the Bible and raise your right hand.

6 THE WITNESS: (Complying.)

7 THE CLERK: You do solemnly swear or affirm to
8 tell the truth, the whole truth, and nothing but the
9 truth so help you God?

10 THE WITNESS: Yes, ma'am.

11 THE CLERK: Thank you. Please state your full
12 name for the record.

13 THE WITNESS: Jerry Lee Brown.

14 THE CLERK: Thank you. You may be seated.

15 THE WITNESS: (Complying.)

16 JERRY LEE BROWN,
17 having been produced and first duly sworn as a
18 witness on behalf of the State, then testified as
19 follows:

20 DIRECT EXAMINATION

21 BY MS. HENDRICKS:

22 Q. Mr. Brown, how old are you?

23 A. Fifty-seven.

24 Q. Are you married?

25 A. Yes.

- 1 Q. Do you have any children?
- 2 A. Four.
- 3 Q. How old are they?
- 4 A. I got a 30 -- 34, 28, 17, and 12.
- 5 Q. Where do you currently live?
- 6 A. Fountain Inn.
- 7 Q. And how long have you been in Greenville
- 8 County?
- 9 A. Fifty-seven years.
- 10 Q. And did you -- where did you go to high school?
- 11 A. Hillcrest.
- 12 Q. Did you go to college at all?
- 13 A. No.
- 14 Q. Are you currently employed?
- 15 A. Yes, ma'am.
- 16 Q. Where are you employed?
- 17 A. JB Home and Curtains.
- 18 Q. Is that your business?
- 19 A. That's my business.
- 20 Q. What kind of work do you do?
- 21 A. Do remodeling and building new houses and do
- 22 garages. Any kind of remodeling, we do it.
- 23 Q. Okay. And are you licensed?
- 24 A. Yes.
- 25 Q. So you're licensed through Greenville County?

1 A. I got Greenville City. I got Greenville
2 County. I got all the counties.

3 Q. What does it take to become licensed?

4 A. Well, you can get a license, but you got to
5 make sure you get the right, you know. You gotta
6 do -- you can't -- you can't just come off the
7 street and tell them you want a business licence.
8 They do checking, especially in the city of
9 Greenville.

10 Q. So they check that you are qualified and
11 trained?

12 A. Right. You can't have no warrants and no
13 arrests or nothing like that.

14 Q. Right. And you received a subpoena to be here
15 today?

16 A. Yes.

17 Q. And do you recognize the defendant, Mr. Carl
18 Aiken?

19 A. No.

20 Q. You've never met him before?

21 A. No, ma'am.

22 Q. Okay. Prior to me telling you his name, have
23 you heard his name before?

24 A. No.

25 Q. Did you speak with him ever over the phone?

1 A. One day he called and I was there -- up there
2 to look at it. She said he just called the day I
3 pulled -- pulled up there.

4 Q. But was this at the new ---

5 A. At the ---

6 THE COURT: Would you pull that microphone a
7 little closer, please?

8 THE WITNESS: Yeah.

9 BY MS. HENDRICKS:

10 Q. You were at Terry Ford -- did Terry Ford call
11 you to come ---

12 A. Yes.

13 Q. --- out to ---

14 A. She's a friend of mine and she called me to
15 come over and look at a job and see what -- see what
16 was done and what wasn't done.

17 Q. And you were there checking on the house and
18 Mr. Aiken called Terry Ford?

19 A. Called her, yes.

20 Q. And did you speak with him on the phone?

21 A. Just for a little bit and he hung up.

22 Q. What did he -- what did you speak about?

23 A. About the house and receipts. The main thing
24 she was wanting was receipts.

25 Q. Right. And did he, you know, tell you what he

1 had done on the house?

2 A. No. He didn't tell me nothing about the house.

3 Q. Okay. So when you went to Mr. Home --

4 Mr. Poore's home to determine whether or not any
5 work was done, did you -- did his home appear to be
6 painted at all?

7 A. Just a spot about 2 foot probably right at the
8 front door. About 2 foot, maybe 6 foot wide. That
9 was it.

10 Q. So not the trim around the windows?

11 A. No.

12 Q. Not the front door?

13 A. No.

14 Q. What about the columns?

15 A. The columns was the last thing. I mean, they
16 touched one side of it and didn't touch the other
17 side. It was real -- it wasn't...

18 Q. And were new gutters installed?

19 A. No.

20 Q. Did you see where any work had been done
21 recently to the foundation?

22 A. No. There was still cracks there.

23 Q. And did you check on any work being done to the
24 roof? I don't know if you looked at the roof when
25 you were there?

1 A. I don't think I looked at the roof while I was
2 there.

3 Q. Okay. And what about any tree work?

4 A. There was supposed to be a tree cut down.
5 There was a limb cut off about 3 inches around. Cut
6 a little on the back. That was all that was done in
7 the back.

8 Q. Just a limb was cut down?

9 A. (Nonverbal answer.)

10 Q. How much of the wood services would you say
11 were painted?

12 A. Like I said, probably 2 foot by 6 foot. A
13 little bit on the front columns on the front of the
14 house and that was it.

15 Q. Just not much?

16 A. Not much.

17 Q. So when you spoke with the defendant on the
18 phone, who hung up? Did the defendant hang up?

19 A. I gave the phone back to her.

20 Q. Okay. And what did you say on that phone call?

21 A. He was -- she was wanting her receipts.

22 Q. That's all you did was tell the defendant
23 that ---

24 A. She wants receipts.

25 Q. --- you want receipts. And what did he say?

1 A. Didn't get no answer.

2 Q. He just didn't -- he just kind of hung up?

3 A. Yeah.

4 Q. Okay. Did you tell the defendant that you
5 didn't think work had been done or ---

6 A. No.

7 MS. HENDRICKS: No. Okay. No further
8 questions. Please answer any questions the defense
9 may have.

10 THE COURT: Cross-examination.

11 CROSS-EXAMINATION

12 BY MS. MANIGAULT:

13 Q. Mr. Brown?

14 A. Yes.

15 Q. And how long have you been a licensed
16 contractor?

17 A. I've been doing this for 40 years.

18 Q. Forty?

19 A. Been doing it since I was 17. Yes, ma'am.

20 Q. Okay. So you've been licensed for 40 years?

21 A. No. I've been licensed in the city of
22 Greenville for 12.

23 Q. And you said that they check for warrants and
24 arrests ---

25 A. If you go for ---

1 Q. --- things like that?

2 A. --- if you go for just a county license in
3 Greenville County and you got warrants or if you've
4 been arrested for a couple of arrest warrants or
5 something like that, then you don't get no license.
6 You got to have a pretty clean record to get a
7 city -- county license in Greenville County.

8 Q. Okay. Do they check to see what your
9 qualifications are to be licensed, or you just fill
10 out the application and they do the background
11 investigation, that's it?

12 A. You take and send your stuff from Greenville
13 Tech down that you've done took the builder's
14 license course, and then they give you -- it's a
15 certificate -- you've got to go down -- used to go
16 down to Columbia and get it. Now they mail it to
17 you.

18 So you got to go Greenville Tech, -- like go to
19 Greenville Tech and get your builder's license. You
20 have to send that to them, and then they have to
21 send your license in probably 30 days.

22 Q. Okay. So you go to Tech for the builder's
23 license?

24 A. Right.

25 Q. And you take classes there?

1 A. Right.

2 Q. And how -- how long is that coursework?

3 A. It took me 30 days because I do -- been doing
4 this all my life, so it took about 30 days to get
5 it.

6 Q. Okay. Have you ever lived in North Carolina?

7 A. No, ma'am.

8 Q. Okay. And you said you'd never met
9 Mr. Aiken ---

10 A. No, ma'am.

11 Q. --- never seen him before. So were you -- so
12 that means that you were not present when Mr. Aiken
13 and Mr. Poore made any kind of arrangements on the
14 work to be done?

15 A. No, ma'am.

16 Q. And you were not present when the checks were
17 written?

18 A. No, ma'am.

19 Q. And I believe you said you're a friend of Terry
20 Ford's?

21 A. She knows a friend of mine, Bill Allison. They
22 gave her my number and told me that she called and
23 they wanted me to come by and look at it. I had
24 never met her before until Mr. Allison gave me the
25 phone number -- give her my phone number to call me.

1 I went by just for a friend and just to look at it
2 for her.

3 Q. Okay. And you said to your knowledge, there
4 was only a 2 -- 2 feet by 6 feet painted on the
5 house?

6 A. I don't know exactly how many feet. It's just
7 real small. It's not the whole house, I promise
8 you. It's not even a quarter of the house.

9 Q. But testimony was the house was brick, right?

10 A. The house is brick, but this spot -- just one
11 spot under the porch was painted about 2 foot by 6
12 foot and a little paint on the front column. That's
13 all I seen.

14 Q. Okay. And did you go inside the house?

15 A. No, ma'am.

16 Q. And did you go around the back of the house?

17 A. That's where I went around the back to look at
18 trees supposed to been cut down.

19 Q. And did you go into the crawl space or anything
20 like that?

21 A. I walked all around the house, and there was
22 about four or five places that the foundation was
23 cracked. I looked at that.

24 Q. My question was, did you go in the crawl space
25 at any time?

1 A. No, ma'am.

2 MS. MANIGAULT: Okay. Thank you.

3 THE COURT: Redirect?

4 REDIRECT EXAMINATION

5 BY MS. HENDRICKS:

6 Q. If you paint somebody's house and install new
7 gutters and work on the foundation, would you be
8 required to have a license?

9 A. Not really, unless you're in the city of
10 Greenville. I think that's in the county.

11 Q. In the county. So what -- what if you do roof
12 work?

13 A. You do the roof work the same way.

14 Q. You don't need a license for that?

15 A. Not unless it's in the city.

16 Q. Okay. What about if you take trees down? Is a
17 license required for that?

18 A. In the county now if it's, say, 25 foot over
19 somebody else's house, you're supposed to call and
20 get a permit.

21 Q. Okay.

22 A. Best of my knowledge, what I've -- what I've
23 understood they told me it would be 25 foot. If it
24 could fall on somebody else's house, you gotta get
25 somebody -- somebody's gonna have to be liable for

1 it.

2 MS. HENDRICKS: Right. We don't have any
3 further questions.

4 THE COURT: May this witness be excused?

5 MS. HENDRICKS: Yes.

6 MS. MANIGAULT: No objection.

7 THE COURT: Thank you, sir.

8 (Witness excused.)

9 THE COURT: Do we have time for another witness
10 today?

11 MR. GREGORY: We'll have one more witness,
12 Investigator Howard, Your Honor. I think that's
13 probably another short witness, 15 or 20 minutes.

14 THE COURT: All right. Just go ahead and bring
15 that witness forward, please.

16 MR. GREGORY: The State calls Investigator Jon
17 Howard to the stand.

18 (Witness approached.)

19 THE CLERK: Mr. Howard, please place your left
20 hand on the Bible and raise your right hand.

21 THE WITNESS: (Complying.)

22 THE CLERK: You do solemnly swear or affirm to
23 tell the truth, the whole truth, and nothing but the
24 truth so help you God?

25 THE WITNESS: I do.

1 THE CLERK: Thank you. And please state your
2 full name for the record.

3 THE WITNESS: Investigator J.D. Howard.

4 THE CLERK: Thank you.

5 INVESTIGATOR J.D. HOWARD,
6 having been produced and first duly sworn as a
7 witness on behalf of the State, then testified as
8 follows:

9 DIRECT EXAMINATION

10 BY MR. GREGORY:

11 Q. Investigator Howard, where are you employed?

12 A. I'm employed by the Greenville County Sheriff's
13 Office.

14 Q. And what capacity are you employed with?

15 A. I work in the criminal investigative divisions.
16 I'm actually currently assigned to our economic
17 crimes unit.

18 Q. And what are economic crimes?

19 A. Economic crimes is financial crimes. It's
20 where I've been primarily for the last five years or
21 so. Financial crimes being stolen debit cards,
22 frauds, forgeries, embezzlement cases you might read
23 about, business theft employee situations.

24 And we also handle an aspect of vulnerable
25 adult law only when it applies to the financial

1 side. Any allegations of physical mistreatment are
2 actually sent over to a different division for that,
3 but we handle the financial part.

4 Q. What kind of education experience have you
5 received in becoming an investigator with the
6 economics crime unit?

7 A. I've taken some courses here or there as far as
8 basic fraud, identity theft classes. Nothing
9 particular to, I would say, financial records or a
10 vulnerable adult. More of basic awareness classes.

11 Q. Do you receive any ongoing training?

12 A. I do. We -- we do our annual training. We
13 have -- every year we do have inservice training.
14 When classes do come up, we do go to classes for
15 basic crime scene investigators.

16 Like I said, I've done some advanced financial
17 stuff, mostly dealing with mortgage fraud, identity
18 theft, things along those lines, but we do try to
19 maintain a constant state of education.

20 Q. And were you sent a subpoena to be here in
21 court today?

22 A. I was.

23 Q. And do you remember the -- remember this case?

24 A. I do.

25 Q. When did you receive a report on this case?

1 A. I believe I met with the complainant some time,
2 I want to say, around the April, May time frame. I
3 know the report was completed in May of 2013.

4 Q. And who did you meet? Who was the complainant
5 for that?

6 A. Ms. Ford was the initial complainant, and she
7 brought the victim, Mr. Poore, in to come see me.

8 Q. And would you describe Mr. Poore's condition at
9 that time?

10 A. He was very pleasant, cheerful -- cheerful
11 person. We talked a little bit about the nature of
12 the complaint. A lot of the actual information as
13 far as the facts that were the concern that was
14 being brought to me was actually provided by
15 Ms. Ford.

16 As I talked with him, I had a sense that he may
17 not -- that what we were talking about was kind of
18 going a little bit over his head. He was aware
19 there was some kind of issue and that he -- it was
20 involving him, but I was not a 100 percent
21 comfortable or confident that he understood exactly
22 what the particulars were.

23 Q. After your conversation with Mr. Poore and
24 Terry Ford, what did you do?

25 A. After that -- after that conversation, I

1 obtained documentation concerning the transactions.

2 I did speak with Ms. Ford and I -- personally, I
3 don't have a lot of experience with estimations on
4 instructions, so I asked her if she might -- I
5 wasn't sure at that time what level of work had or
6 had not been completed, and I asked her if she could
7 have someone who was a licensed builder take a look
8 at the property and make an estimate as to what --
9 what amount of our financial dollar value would be
10 assigned to the work that had been performed versus
11 the amount that had been paid and the checks that I
12 was being presented.

13 I also discussed with her that the victim
14 probably needs to speak with a physician, and we
15 need to get some kind of confirmation of his medical
16 history, as I was advised or I received information
17 indicating that there was a potential mental health
18 issue on the victim's part.

19 Q. Did you ever respond to the house, Mr. Poore's
20 house?

21 A. I did. I drove out to the location there on
22 Beaufort Street. I spoke with Mr. Poore and asked
23 him if he wouldn't mind if I just stop by and took a
24 look at the residence. So I go back there and met
25 with him.

1 Q. When did you do that?

2 A. I want to say it was early in May of 2013.

3 Q. I want to show you what's been marked ---

4 (Defense counsel looking at documents.)

5 BY MR. GREGORY:

6 Q. Let me show you what's been marked as State's
7 Exhibit No. 18. Do you recognize those?

8 A. These are photographs I took of Mr. Poore's
9 residence.

10 Q. When did you take those photographs?

11 A. May of 2013.

12 Q. Are they fair and accurate representation of
13 the house?

14 A. Yes. As best I could -- as best I could
15 capture in the pictures I took.

16 Q. What -- what did you use to take those pictures
17 with?

18 A. I actually used an older cell phone. I didn't
19 have a county-issued phone -- county-issued camera
20 at the time. So all I had was my phone, so I took
21 them on a cell phone, and then I uploaded it to my
22 computer later.

23 MR. GREGORY: Your Honor, at the time the State
24 would seek to introduce State's Exhibit No. 18 into
25 evidence.

1 THE COURT: Is that a group exhibit?

2 MR. GREGORY: It's State's Exhibit, Your Honor.

3 THE COURT: How many photographs?

4 MR. GREGORY: Oh, I'm sorry. How many
5 photographs? Nine.

6 THE COURT: Okay. Any objection,
7 Ms. Manigault?

8 MS. MANIGAULT: None, Your Honor.

9 THE COURT: Okay. It's admitted as a group of
10 nine. It's Exhibit No. 18.

11 (State's Exhibit No. 19, nine photographs, were
12 admitted into evidence.)

13 MR. GREGORY: You might need to step down just
14 briefly so you can see this.

15 THE WITNESS: (Complying.)

16 BY MR. GREGORY:

17 Q. Will you please tell the jury what we are
18 looking at here?

19 A. This right here, this first picture, is
20 actually a picture of the exterior of Mr. Poore's
21 house that I took standing a little bit off the road
22 in the driveway looking at the front.

23 There we go. This would be the front porch.
24 Right here the front door. Roof. The driveway that
25 walks up here to the front porch area.

1 This driveway here leads to a covered garage,
2 which is not -- does not appear to be fully
3 enclosed.

4 Q. How -- what's the percentage of brick on that
5 house?

6 A. I could guess it's mostly over 50 percent, I
7 would say.

8 Q. What are we looking at here?

9 A. It's just another photo I took. When I was
10 there, Mr. Poore was there. I spoke with him.
11 Basically asked him to walk me through the house and
12 show me what was supposed to have been worked on.

13 These are things that were supposed to have
14 been painted. This is the side of the awning right
15 here. If you look in this picture, you can see
16 where the paint is actually cracked and dirty. That
17 doesn't -- does not appear to be fresh at all. I
18 mean, the paint appears to have been there for quite
19 some time and started that natural cracking process
20 that the paint goes through.

21 This is going to be a picture of one of the
22 pillars on that front porch area. And, again, it's
23 pretty obvious at some points here where you can see
24 the cracks starting to form in the paint or had been
25 formed in the paint. It was not a -- it was not a

1 fresh white color. It appeared to have been very --
2 it appeared dirty and to be very old.

3 And this is a better picture right here. Right
4 here (indicating) especially you can see where this
5 paint right here (indicating) is cracking and
6 flaking off.

7 Q. Is that a different column or is that the same
8 column?

9 A. Can you see -- can I see that previous picture
10 because there were a couple of column -- I think
11 that's a different one because that looks like it's
12 more of the corner. There were several columns.

13 Q. And where is this located?

14 A. This is -- this is in the -- in the porch area
15 looking up at the corner of the overhang. Again,
16 you can see where this is -- these are cracks in the
17 paint. It's -- it's all dirty, dingy. I believe,
18 if I'm not mistaken, I think -- can see in this
19 picture there are cobwebs and older evidence that
20 this stuff had not been touched in quite some time.

21 And this, again, if memory serves, I believe
22 this was inside the garage area looking up at the
23 roof. I believe that that was some molding along
24 the edge of the roof. Where as you look again, you
25 can see a split board, the cracks in the paint, the

1 dirt. Obviously, hadn't been touched in a long
2 time.

3 Q. And inside the garage, what was -- what were
4 the walls of the garage made of?

5 A. A portion of them were brick, and I think some
6 of them were also ---

7 Q. Maybe you could tell from this picture.

8 A. Yeah, I mean, these were brick. I believe
9 there was one smaller section off here behind the
10 car that was -- that was wood panel, but again ---

11 Q. Did that appear to be painted?

12 A. No. Nothing appeared to have been freshly
13 painted there.

14 Q. And what are we looking at here?

15 A. Again, this is -- I want to say this is, again,
16 the roof up here and the garage. Again, we're just
17 looking up here at the molding along the sides and
18 the roof where you can see this trim is -- is
19 cracking. The paint's old. It's not been touched.

20 Q. Who took that picture?

21 A. I did. This right here is actually on the
22 front porch when you're looking up. From this
23 angle, I had to step back to take the shot.

24 This section right here (indicating), which is
25 nice and shiny, is part of the roof on the front

1 porch. It's actually right in front of where the
2 doorway is. So if you were standing under that
3 section, you would be looking straight at the
4 residence door. Vice-versa if you're standing from
5 the door, you'd be looking straight out at that
6 section.

7 Of this roof up here on the overhang over the
8 porch, this was the only part that appeared to have
9 been painted, this bright, shiny little patch right
10 here (indicating). Everything else was the same
11 dirty, dingy, cracked old paint.

12 Q. The last one.

13 A. I believe that is me trying to take a picture
14 from another angle that I can't see the shiny
15 portion there, but you can see the dirt is creeping
16 along the edges here.

17 Q. All right. You can return to your seat.

18 A. (Complying.)

19 Q. How long did you spend -- how long did you
20 spend out at the house?

21 A. Between 20 and 30 minutes just walking around
22 the exterior. Very -- very briefly talked with
23 Mr. Poore. Most of the time we spent just walking
24 around the exterior looking at the services that
25 could've been painted, that kind of thing.

1 Q. Was any -- did anything else appear to have
2 been freshly painted other than that one little
3 strip?

4 A. I can't recall if the columns were. I don't --
5 I remember -- I do remember seeing most -- or a lot
6 of column that was old cracked paint. The only
7 thing that stuck out to me was that one spot right
8 there in front of the front doorway.

9 Q. Did you look at the foundation while you were
10 out there?

11 A. I may have glanced at it. I don't recall
12 paying too much attention to the foundation.

13 Q. Did you notice the tree -- the tree limb? Was
14 there any tree removal?

15 A. I believe it was pointed out. I didn't see any
16 stump where a tree was taken down. If I remember
17 correctly, I think -- I think there was a branch
18 down, but nothing major.

19 Q. Were you able to determine the total value of
20 the checks that were written to this defendant?

21 A. Yes.

22 Q. What was the total value?

23 A. I believe when we calculate it and added it up,
24 all the full amount of checks was over \$14,000.

25 Q. And the -- the house was that Mr. Poore lived

1 at was located where?

2 A. Umm -- excuse me. The street just -- the
3 street just slipped my mind for a second. It was in
4 Greenville County off of the East North Street area.
5 The number 6, and the street name escapes me.

6 Q. Did you ---

7 A. I would've documented it on my report.

8 Q. --- creat a report?

9 A. Yes. I know it was my report when you sent
10 location.

11 Q. Would this help refresh your memory?

12 A. It would. Thank you very much, sir.

13 6 Beaufort Street. My apologies.

14 Q. Did you say that was in Greenville County?

15 A. Yes, sir.

16 MR. GREGORY: Please answer any questions the
17 defense may have for you.

18 THE COURT: Cross-examination?

19 MS. MANIGAULT: Thank you, Your Honor.

20 CROSS-EXAMINATION

21 BY MS. MANIGAULT:

22 Q. Investigator, I was taking some notes. How
23 long have you said you worked at Greenville County?

24 A. In all in Greenville County, I've been there
25 nine years about.

1 Q. Okay. And the section that you work in now is
2 called vulnerable adult?

3 A. No, no, no. The section I work in now is the
4 economic crimes unit ---

5 Q. Okay.

6 A. --- with the criminal investigative division.

7 Q. And how long have you been there?

8 A. Oh, a little over five years. Probably going
9 on six now.

10 Q. In your work, is it required that any official
11 agency, county or state, has notification that a
12 person has been diagnosed with Alzheimer's or
13 dementia?

14 A. To that, I'm not familiar of anyone suggesting
15 we pass on a diagnosis, no.

16 Q. Okay.

17 A. We don't have medical knowledge to make
18 diagnosis anyway's.

19 Q. No. The question was, are you aware of any
20 agency that has to collect that information?

21 A. No, I'm not.

22 Q. Okay. And so if an individual was dealing with
23 another person that may have dementia, what
24 notification should that individual have?

25 A. I'm sorry. Say that -- if an individual is

1 dealing with someone that has dementia?

2 Q. That you classify as a vulnerable adult.

3 A. Okay. Correct.

4 Q. Okay. What notification would that person have
5 that he or she is dealing with a vulnerable adult?

6 A. As far as what would they perceive? I don't
7 know that I would know that.

8 Q. Okay. So you went on what you perceive; is
9 that correct?

10 A. Yeah, the information that was provided to me
11 was what I work with. Yes, ma'am.

12 Q. Okay. And you said that most of the factual
13 information to you came from Ms. Terry Ford?

14 A. Yeah, Ms. Ford was the complainant providing me
15 most of the information. Yes.

16 Q. Okay. But your report is dated May 2013?

17 A. Yes, ma'am.

18 Q. May 10, 2013?

19 A. Yes, ma'am.

20 Q. And did you have a chance to talk with Ms. Ford
21 at that time or before?

22 A. I believe she had come in to file the initial
23 complaint, and I did not have a chance to actually
24 type the report until the 10th of May.

25 Q. Okay. In your investigation, would you have

1 made any contact with Adult Protective Services or
2 DSS?

3 A. I would not have made any contact with Adult
4 Protective Services in this particular case. In
5 this particular case, the victim had family members
6 that were actively involved and caring for him and
7 providing that barrier and protection from any
8 further activity to have occurred, and there was no
9 indicators that any further risk was at hand for the
10 victim to be exploited.

11 Q. Were you the only investigator on the case --
12 this case?

13 A. Yes, ma'am. I believe I -- I don't believe
14 anyone else helped with me with it, no.

15 Q. Okay. Did you -- did you do any further --
16 anything other than walk around the property to note
17 anything that was...

18 A. No. That is -- when I walked around the
19 property and I was fixated on the exterior because I
20 was aware that a great deal of what was being
21 debated or argued by the complainant dealt with
22 exterior paint. So that was my -- the primary focus
23 was to see if exterior paint had occurred or not.

24 MS. MANIGAULT: All right. Could I have one
25 moment?

1 THE COURT: Yes, ma'am.

2 MS. MANIGAULT: No further questions.

3 THE COURT: Redirect.

4 REDIRECT EXAMINATION

5 BY MR. GREGORY:

6 Q. Did you go inside the house?

7 A. I did not. From -- and reason being, that my
8 impression was the vast majority of the work was
9 done on the exterior, so...

10 Q. The Adult Protective Services, are you required
11 to -- to report?

12 A. Well, with -- what Adult Protective Services
13 function is, they get involved specifically if
14 some -- with people, vulnerable persons, elderly
15 persons who are in an unsafe living condition.

16 Generally for law enforcement, and I know they
17 do other things as well, so I may be super
18 oversimplifying this, but for law enforcement
19 perspective, they do not do criminal investigations.
20 We actually get two to three referrals from DSS a
21 week in reference to possible complaints about an
22 exploitation of a vulnerable adult.

23 Essentially, the moment -- the moment an
24 allegation of criminal activity is -- is made to DSS
25 or to Adult Protective Services, they forward it to

1 us because they don't have the authority to process
2 those cases.

3 With Adult Protective Services and DSS,
4 standardly we don't notify them unless there is
5 immediate risk to the victim and we take them into
6 what we call emergency protective custody. We would
7 be the ones making that decision. The Adult
8 Protective Services and DSS are the ones having to
9 find placement at that point. And then they would
10 manage decisions about who -- whether they return
11 home, if they need further assistance, that kind of
12 thing.

13 MR. GREGORY: I have no further questions, Your
14 Honor.

15 THE COURT: May this witness be excused?

16 MR. GREGORY: Yes, Your Honor.

17 MS. MANIGAULT: No objection, Your Honor.

18 THE COURT: All right. Thank you, sir. You
19 may step down.

20 (Witness excused.)

21 MR. GREGORY: The State rests, Your Honor.

22 THE COURT: All right. Very good.

23 All right. Mr. Foreman, ladies and gentlemen
24 of the jury, the State says it rests and that means
25 they have presented to you its case in chief, so

1 we're at the point in time we're going to break for
2 the day. Any reason why anybody can't be here
3 starting the case again at 9:30 in the morning?

4 THE JURORS: (No responses.)

5 THE COURT: All right. I'm going to ask that
6 you be in the jury room around 9:25. Let me remind
7 you not to speak with anybody about this case. And
8 if for some reason it happens to be out there on the
9 news or otherwise, don't read, hear, or listen to
10 anything about it.

11 With that being said, if you'll leave your pads
12 in the jury room, we'll see you in the morning at
13 9:30.

14 (At 5:01 p.m., the jury was excused for the
15 day.)

16 THE COURT: All right. Motions?

17 MS. MANIGAULT: Your Honor, may I make my
18 motion in the morning?

19 THE COURT: You may. Let me go ahead and
20 advise your client of his Fifth Amendment Rights ---

21 MS. MANIGAULT: Okay.

22 THE COURT: --- and we'll break for the day.
23 Would you stand please, Mr. Aiken.

24 THE DEFENDANT: (Complying.)

25 THE COURT: Would you raise your right hand?

1 THE DEFENDANT: (Complying.)

2 THE COURT: Do you swear or affirm to tell the
3 truth, the whole truth, and nothing but the truth?

4 THE DEFENDANT: I do.

5 THE COURT: All right. Mr. Aiken, you can put
6 your hand down.

7 THE DEFENDANT: (Complying.)

8 THE COURT: I need to at this point in time --
9 we're at that point in time in the case where I need
10 to explain to you some of the rights that you have.
11 And if you don't understand anything I ask you,
12 please let me know and I'll explain it to you again.
13 All right, sir?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: First, has your attorney explained
16 to you your rights to testify and not to testify
17 under the Fifth Amendment of the United States
18 Constitution?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: And do you feel like you understand
21 those rights?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Okay. Let me just go over them
24 right quick.

25 At this juncture in the morning, you'll have

1 the right to the claim the protections that are
2 afforded to you by the Fifth Amendment of the United
3 States Constitution which provides in pertinent part
4 that no person shall be compelled in any criminal
5 case to be a witness against himself. Do you
6 understand that?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: That means that your attorney can't
9 make you get on the stand, the State can't make you
10 get on the stand and testify, and I can't make you
11 get on the stand and testify. That is your choice
12 and your choice alone. Do you understand?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Now, in order to make a decision as
15 to whether or not you wish to testify or to claim
16 the protections afforded to you by the Fifth
17 Amendment, you need to know the rights of the Fifth
18 Amendment as I just gave them to you, and you also
19 need to know the consequences if you do testify, so
20 let me go over that with you.

21 If you do decide to testify, you will be
22 subject to examination by your lawyer. You will be
23 subject to cross-examination by the State. If you
24 have any criminal record that would involve
25 dishonesty or crimes of imprisonment by more than a

1 year and I found that their probative value
2 outweighs the prejudice to you, the State would have
3 a right to cross-examine you on your criminal
4 record. Do you understand that?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Okay. So the obvious purpose they
7 would do that is to try to impeach your credibility.

8 On the other hand, if you decide that you do
9 not wish to testify, when I charge the jury at the
10 end of this case, I will instruct them that they may
11 not and shall not consider your failure to testify
12 because that's your right under the Fifth Amendment,
13 and the State has the burden of proving you guilty
14 by proof beyond a reasonable doubt and that's their
15 burden at all times. Do you understand that?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: Now, in order for you to make a
18 decision on whether to testify or not to testify,
19 you can consult with your lawyer, you can consult
20 with friends. But at the end of the day, you need
21 to make a knowing, intelligent, and voluntary
22 decision as to whether or not you're going to
23 testify or not testify. Okay, sir?

24 Now, do you understand what I've explained to
25 you?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Do you have any questions?

3 THE DEFENDANT: No, sir.

4 THE COURT: All right. Anything you'd like to
5 add on the record, Ms. Manigault?

6 MS. MANIGAULT: Your Honor, just regarding the
7 criminal history record of my client. The State has
8 informed me that there is nothing on his record that
9 they intend to use.

10 MR. GREGORY: Everything of -- of note is over
11 ten years old, Your Honor. I don't believe that ---

12 THE COURT: Say that again.

13 MR. GREGORY: Everything of note on his
14 criminal record is over ten years old, the
15 convictions, so I ---

16 THE COURT: So you would not ---

17 MR. GREGORY: --- I don't think I can get it
18 in.

19 THE COURT: All right. Do you understand that?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: So they would not -- the State
22 would not try to use your record against you to
23 impeach your credibility. Okay, sir?

24 THE DEFENDANT: All right.

25 THE COURT: All right. Thank you, Mr. Aiken.

1 THE DEFENDANT: Thank you.

2 THE COURT: For the record, I'm going to allow
3 Mr. Aiken to remain free for the night.

4 Ms. Manigault, the State's afforded that he's
5 shown up to every call. I don't see any sense in
6 keeping him locked up over that night.

7 But, again, Mr. Aiken, as I told you before, if
8 you don't show up, the trial in the morning, it will
9 go on in your absence. Okay?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Anything else, Ms. Manigault?

12 MS. MANIGAULT: That's it, Your Honor.

13 THE COURT: Anything from the State?

14 MR. GREGORY: Not from the State, Your Honor.

15 THE COURT: All right, guys. Thank you. We'll
16 see y'all in the morning.

17 (At 5:05 p.m., court recessed for the day.)

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1 April 4, 2017

9:30 a.m.

2 P R O C E E D I N G S

3 - - -

4 THE COURT: Ms. Manigault, have you had an
5 opportunity to discuss with your client whether or
6 not he intends to testify?

7 MS. MANIGAULT: I have, Your Honor, but not
8 since yesterday. I was going to do my motions for
9 directed verdict and then talk to him.

10 THE COURT: All right. You want to go -- you
11 want to do your motion now?

12 MS. MANIGAULT: I can.

13 THE COURT: Okay. Well, either way because
14 we're going to need to make a call shortly, but if
15 you want to do your motion first, that'll be fine.

16 MS. MANIGAULT: Your Honor, defense would make
17 a motion for directed verdict on the grounds that
18 there has been no finding by the Court in the
19 State's case regarding the unavailability or the
20 availability of the victim under Rule 804.

21 There are exceptions, however, I believe that
22 the Court is required to make a ruling. There was
23 no motion made, no request made by the State for a
24 ruling to allow the victim to be absent.

25 THE COURT: And under what rule are you

1 referring to, please?

2 MS. MANIGAULT: Rule 804, Hearsay Exceptions,
3 declarant unavailable.

4 THE COURT: Well, let me ask you this -- what's
5 that rule again, please?

6 MS. MANIGAULT: 804, number four.

7 THE COURT: So how is that called into play in
8 a situation in this case? That would be a hearsay
9 exception rule, right?

10 MS. MANIGAULT: It is.

11 THE COURT: Okay.

12 MS. MANIGAULT: Your Honor, it's called into
13 play because it is the defense belief that the Court
14 has to make a ruling that a material witness in this
15 case ---

16 THE COURT: Material witness and unavailable
17 witness are not the same thing.

18 MS. MANIGAULT: An unavailable witness, the
19 Court has to make that finding. If the Court allows
20 the State to proceed without making a finding, then
21 it is denying the defendant of his ability or right
22 to cross-examine the alleged victim or complaining
23 witness.

24 And it is -- it is our contention, Your Honor,
25 we offer that no motion was made by the State to

1 have the victim -- alleged victim excused as
2 unavailable for whatever reason. There have been
3 testimony proffered, but nobody ever testified that
4 he could not be in court or he was unavailable, so
5 the Court did not have an opportunity to make a
6 finding on that issue. And that is the first part
7 of our motion for directed verdict.

8 Your Honor ---

9 THE COURT: Let me ask you this.

10 MS. MANIGAULT: Yes, sir.

11 THE COURT: Seems to me that application that
12 for me to be required or asked, you know, to make
13 that determination, availability or lack thereof,
14 that there has to be an issue raised about hearsay
15 that's trying to be introduced into court and then
16 the availability determination is made and see if
17 any of the exceptions apply.

18 In this case, if I recall, you had the power of
19 attorney under a durable power of attorney who
20 initiated the investigation under her power of
21 attorney. She didn't try to testify to the Court
22 that I have any notes of any statements or comments
23 or things made by the victim. And when it was, you
24 objected and it was not allowed in.

25 So what does that have to do? You're saying --

1 you're using 804 I think to say that the victim was
2 a material witness which is different than an
3 unavailable witness. And without him, the case
4 can't go forward. Is that what -- is that what
5 you're saying today?

6 MS. MANIGAULT: Your Honor, I am saying that
7 the Court made no ruling that the victim was -- the
8 alleged victim was unavailable.

9 THE COURT: I just don't think it's applicable
10 to the facts of this case. And what I've heard from
11 the testimony, that has to be raised when there's
12 hearsay that is being proffered before the Court or
13 a proper hearsay objection is made, then you go
14 through that analysis at that point.

15 So, Mr. Gregory, what's your response?

16 MR. GREGORY: Just I think you're completely
17 correct, Your Honor. This is a hearsay exception.
18 If I was trying to get in a statement made by the
19 victim, Raymond Poore, I would have to meet the fact
20 that he's unavailable. You'd have to find that he's
21 unavailable, and then he also has to meet one of
22 these exceptions. It was never my intention to put
23 statements made by Raymond Poore into evidence;
24 therefore, I don't think this -- this rule is even
25 applicable in a DV motion.

1 THE COURT: I agree. I'm going to deny your
2 motion on that, Ms. Manigault.

3 MS. MANIGAULT: Thank you. Your Honor, the
4 second prong of my motion for directed verdict again
5 goes back to the confrontation clause. It appears
6 there's no opportunity to cross-examine the alleged
7 victim in this case. The witnesses provided to the
8 Court for testimony, had no details of the agreement
9 between Mr. Aiken and Mr. Poore that they could
10 testify to. They weren't there. They didn't know
11 anything about it. And that's including the power
12 of attorney -- the durable power of attorney.

13 THE COURT: All right.

14 MR. GREGORY: And the confrontation clause,
15 Your Honor, would go to the same situation whereby
16 putting statements in made by the victim, Raymond
17 Poore, and they haven't had an opportunity to
18 confront him. I did not put any -- any statements
19 in by the victim. I made sure I didn't because I
20 know that's hearsay, Your Honor, and I didn't think
21 it would fit any of the exceptions to be honest with
22 you, Your Honor. So I don't think the confrontation
23 is applicable in this situation.

24 THE COURT: I agree. I don't think it's a
25 confrontation clause issue. The way I understand

1 the evidence and the issues raised by Ms. Lusk or
2 whatever her name ---

3 MR. GREGORY: Ford.

4 THE COURT: Ford. --- Ford and after she --
5 well, around the time she was power of attorney, you
6 did not.

7 And there's no pretrial testimony that was
8 trying to be introduced by the State that came from
9 the victim himself. And, therefore, it doesn't
10 implicate the confrontation clause so I'm going to
11 deny your motion on that.

12 MS. MANIGAULT: Thank you, Your Honor.

13 THE COURT: Yes, ma'am.

14 MS. MANIGAULT: The third prong of my motion
15 for directed verdict is the State violated the Brady
16 Rule and the Rule 5, that under Rule 5 it requires
17 that the prosecution provide the defendant with
18 information that would able -- that would enable the
19 defendant to prepare for this case.

20 And under the Brady filing, the motion of
21 discoveries, Brady and Rule 5, was filed on
22 September 20, 2016, and the discovery information
23 was received on October 5, 2016. It's part of the
24 clerk's file.

25 Your Honor, again, the lack of information and

1 truthfulness of the State to provide to the
2 defendant that the alleged victim would not be
3 present. If the Court recalls, the State offered a
4 witness list dated April 3, 2017, signed by John M.
5 Gregory. And the names -- the first three names --
6 the first two names on the witness list is
7 Investigator Jonathan Howard of Greenville County
8 Sheriff's Department and Raymond Poore.

9 Your Honor, I objected that the only time that
10 the defense was aware that the victim would not be
11 present for trial was in the opening statement that
12 Mr. Gregory made yesterday. And so, again, we -- we
13 believe that's a violation of the Brady Rule and
14 Rule 5, and we do think that information is
15 exculpatory.

16 THE COURT: How?

17 MS. MANIGAULT: Your Honor, it allows the
18 defense to prepare a complete case. The preparation
19 would be ---

20 THE COURT: Let me stop you if you may -- if I
21 may, Ms. Manigault.

22 MS. MANIGAULT: Yes, sir.

23 THE COURT: Looking at exculpatory information,
24 don't you have to have some kind of specific
25 information that you present to me that was not

1 presented to you as required by the rules that is,
2 in fact, exculpatory, as opposed to maybe on
3 cross-examination you could elicit exculpatory
4 information, but you don't really know what it is?
5 I mean, that's what I'm hearing right now, and I may
6 be wrong.

7 MS. MANIGAULT: Your Honor, the fact that the
8 party making the transaction with my client is the
9 one with the firsthand information. By the
10 testimony, nobody knew and ever was present. And so
11 the fact that the victim -- alleged victim was not
12 present for the trial, materially affects my client
13 in preparation and defense.

14 The defense -- preparation may have been
15 different if we had known that the victim, alleged
16 victim, was not going to be present. Then that
17 would have given the -- my client the chance to see
18 whether he could elicit or find witnesses from where
19 he first met Mr. -- Mr. Poore.

20 So we think that is material, Your Honor,
21 because the evidence -- if the Court's going to
22 allow the State to proceed in any trial without the
23 complaining witness or victim being present, then
24 that goes against the fair -- the rights of my
25 client and of the fair trial also.

1 THE COURT: Mr. Gregory, let me ask you this.

2 MR. GREGORY: Yes, sir.

3 THE COURT: I don't find it's a Brady violation
4 because you don't -- I don't have anything before me
5 to show the exculpatory nature in which you intend
6 to elicit it to be.

7 With that being said, in your case in chief --
8 give me one second to frame this.

9 MR. GREGORY: Yes, sir.

10 THE COURT: Under the definition of
11 exploitation and it looks like under Section B that
12 says improper, unlawful, and unauthorized use.

13 MR. GREGORY: Right. "B" and "C" is what I
14 would be arguing, Your Honor.

15 THE COURT: And it causes ---

16 MR. GREGORY: Causes to purchase goods or
17 services.

18 THE COURT: Do you feel like -- obviously you
19 do, but how can the State go forward without the
20 original terms of the agreement being before the
21 jury because there's certainly zero evidence of
22 that.

23 MR. GREGORY: Even circumstantial, Your Honor,
24 with the checks based on what the memo lines of the
25 checks say, Your Honor.

1 The memo lines I think are -- could be
2 circumstantial evidence that the jury could find
3 that this check was an exchange because that's the
4 typical nature of the check. The check was in
5 exchange for it said "exterior painting, foundation
6 work," that sort of thing.

7 THE COURT: What's the total amount of funds
8 that's been ---

9 MR. GREGORY: The total amount of funds, Your
10 Honor, was \$14,125 total, and there were 13 checks.

11 THE COURT: All right.

12 MR. GREGORY: Now, granted, Your Honor, to be
13 forthright with the Court, the first two checks,
14 there's nothing written on the memo line. So we
15 added that to the indictment as part of the
16 allegation just because of the -- the broader scheme
17 of what it looked like.

18 But you're right, Your Honor. There's no
19 direct testimony that there's a contract entered
20 into. There's no contract that I'm aware of, other
21 than just the memo line and any contract that might
22 be made by reference to these checks.

23 THE COURT: All right. Ms. Manigault, I'm
24 going to take that under advisement. I tend, quite
25 frankly, to agree that there's substantial

1 circumstances -- circumstantial evidence based on
2 the testimony in the record and the checks and the
3 work that was done and the timing of it, that there
4 was some type of agreement between the defendant and
5 this gentleman.

6 And so I think it probably could go forward,
7 but I'm going to take it under advisement and look
8 at it further because off the top of my head, I,
9 quite frankly, just don't know, so that's under
10 advisement.

11 Any further motions?

12 MS. MANIGAULT: The only part that's left on my
13 directed verdict motion, Your Honor, is that the --
14 the statement uttered by the State's attorney in his
15 opening statement that this -- that the victim was
16 in an assisted living facility, I believe that
17 prejudiced my client and was trying to invoke
18 sympathy regarding the alleged victim ---

19 THE COURT: I don't ---

20 MS. MANIGAULT: --- and won't be here.

21 THE COURT: I don't necessarily disagree that
22 that was not necessary -- necessary or appropriate
23 statement.

24 You know, I offered the defense an opportunity,
25 and I still will give a curative charge of that. I

1 don't think it runs to the level of manifest
2 necessity to mis-try the case, but I'm more than
3 willing to give that in my closing charge when we
4 bring the jury in in just a few minutes if you want
5 to reconsider that offer.

6 MS. MANIGAULT: Your Honor, I do not want to
7 reconsider the offer.

8 THE COURT: Okay.

9 MS. MANIGAULT: And last -- and that was your
10 ruling, right?

11 THE COURT: Yes, ma'am.

12 MS. MANIGAULT: Okay. And lastly, Your Honor,
13 we would renew all of our motions after the opening
14 statements and before the beginning of the trial.

15 THE COURT: Those will be denied, except the
16 one I'm taking under advisement.

17 Now, that being said, Ms. Manigault, is
18 Mr. Aiken going to testify this morning?

19 MS. MANIGAULT: Your Honor, can we just have
20 two minutes?

21 THE COURT: Yes, ma'am.

22 (Counsel conferred with the defendant.)

23 MS. MANIGAULT: Your Honor, my client would
24 like to testify.

25 THE COURT: Okay. Mr. Aiken, would you raise

1 your right hand.

2 THE DEFENDANT: (Complying.)

3 THE COURT: Do you swear or affirm to tell the
4 truth, the whole truth, and nothing but the truth?

5 THE DEFENDANT: I do.

6 THE COURT: And you can put your hand down.
7 You can actually be seated if you like.

8 THE DEFENDANT: (Complying.)

9 THE COURT: I just want to make sure that
10 you're making the decision to testify or not to
11 testify, in this case to testify, of your own
12 freewill, voluntarily, understanding your rights
13 under the Fifth Amendment and any consequences of
14 your decision to testify. Have you made -- have you
15 considered all of those?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: And you do wish to testify?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Thank you very much.

20 All right. Do you anticipate presenting any
21 other defense at this juncture if you don't mind my
22 asking? If you don't want to answer, that's fine.

23 MS. MANIGAULT: No, Your Honor.

24 THE COURT: Okay.

25 MS. MANIGAULT: We don't anticipate.

1 THE COURT: All right. State ready to proceed?

2 MR. GREGORY: Yes, Your Honor.

3 THE COURT: Defense ready to proceed,

4 Ms. Manigault?

5 MS. MANIGAULT: Yes, sir.

6 THE COURT: All right. Bring the jury in,
7 please.

8 (Jurors entered the courtroom at 10:14 a.m.)

9 THE COURT: Good morning, ladies and gentlemen.
10 Thank you for your patience. Believe it or not, we
11 have been busy. We've been doing things while
12 you're waiting. I just didn't want you to think we
13 were making you sit in the back while we're doing
14 nothing.

15 Ms. Manigault, defense ready to proceed?

16 MS. MANIGAULT: Yes, Your Honor.

17 THE COURT: Would you call your first witness?

18 MS. MANIGAULT: Defense would call Carl Aiken.

19 THE DEFENDANT: (Approaching.)

20 THE CLERK: Mr. Aiken, please place your left
21 hand on the Bible and raise your right hand.

22 THE DEFENDANT: (Complying.)

23 THE CLERK: You do solemnly swear or affirm to
24 tell the truth, the whole truth, and nothing but the
25 truth so help you God?

1 THE DEFENDANT: I do.

2 THE CLERK: Thank you. Please state your full
3 name for the record.

4 THE DEFENDANT: My name is Carl Stanley Aiken.

5 THE CLERK: Thank you. You may be seated.

6 THE DEFENDANT: (Complying.)

7 CARL AIKEN,
8 having been produced and first duly sworn as a
9 witness on behalf of the Defendant, then testified
10 as follows:

11 DIRECT EXAMINATION

12 BY MS. MANIGAULT:

13 Q. Mr. Aiken, would you give your full name again?

14 A. Carl Stanley Aiken.

15 Q. You need to speak up a little bit.

16 A. Carl Stanley Aiken.

17 Q. How old are you?

18 A. I'm 59 years old.

19 Q. All right. And you know why we're here today,
20 correct?

21 A. Correct.

22 Q. All right. Did you ever meet a man named
23 Raymond Poore, P-o-o-r-e?

24 A. Yes, I have.

25 Q. And where did you meet him?

1 A. I met Mr. Poore possibly around 2008.

2 Q. Okay.

3 A. I met him over in Powdersville. We were doing
4 some handyman work over there. And him and his
5 wife, they stopped by where we were working at and
6 he asked me did we work over in Greenville.

7 And then he said -- I can't put into exact
8 words, but he told me, you know, when I'm on his
9 side of town, gave me his address and everything,
10 that he had some work that, you know, he might be
11 interested in.

12 Q. All right. So he saw you working on a home in
13 Powdersville?

14 A. Yes, ma'am.

15 Q. And was he driving by, or how did he happen to
16 see you?

17 A. We were working, I'm going to say, about four
18 houses up above where he was visiting.

19 Q. Where he was visiting?

20 A. Yes, ma'am.

21 Q. And so at -- did you ever respond to his
22 request to come by his house?

23 A. Yes, ma'am.

24 Q. And did you eventually do some work for him in
25 2012 and '13?

1 A. Right.

2 Q. All right. And ---

3 A. Well, actually the work started the week after
4 Thanksgiving.

5 Q. What year?

6 A. 2012.

7 Q. Okay. Did you do any work for him in 2008?

8 A. We just did the basic work like clean out his
9 gutters and he had some Japanese pear trees in the
10 front and stuff like that, trim trees and stuff.

11 We had been doing a lot of the basic stuff, but
12 we didn't -- we never got to the -- what we're here
13 for today though.

14 Q. All right. And so when you started the work,
15 you started for him in November of 2012, how did
16 Mr. Poore act?

17 A. He just act -- he act normal just like you or
18 anyone else.

19 Q. All right. Did you ever see him drive a car?

20 A. Oh, yeah. Plenty of times.

21 Q. Okay. And he drove a car when you were at his
22 house?

23 A. I refrain that. I have seen him leave the
24 driveway in the car.

25 Q. Okay. But he was the driver?

1 A. He was the driver by himself.

2 Q. And did he ever mention to you where he was
3 going? Just "yes" or "no."

4 A. Yes.

5 Q. And did he ever tell you that he was going to
6 OJ Restaurant for lunch?

7 A. Oh, yeah. He told me he do that every day.

8 Q. And the time that you saw him driving --
9 leaving the driveway, he was in the car as the
10 driver by himself?

11 A. Right. Well, I have seen him leave when his
12 wife was living, he was the driver then too.

13 Q. Oh, he was driving then too?

14 A. Yeah.

15 Q. The testimony is that his wife has now passed?

16 A. Right.

17 Q. Now, when you started in November, what kind of
18 work were you doing?

19 A. At first, we sat down. Well, we went around,
20 he showed me basically everything that he would want
21 to be, you know, painted. But first I told him,
22 "Before we paint, we got to clean out those here --
23 clean all the -- pressure clean all the mildew and
24 stuff off the woodwork."

25 Q. Okay.

1 A. And then we -- we started pressure cleaning.
2 That was the first job we did. It was all -- we had
3 figured all the price then, you know.

4 But as we were doing the pressure cleaning, we
5 took all the storm windows out so we could clean
6 because he had the mildew inside some of his storm
7 windows. So we removed all the storm windows out
8 and cleaned all of those. This wasn't a one-day
9 thing, you know.

10 And then we re-glazed -- no. I'm going to back
11 up.

12 We removed the covers from the back gutter. He
13 had them old "Y" covers on the gutters, and we
14 removed those as we were doing the pressure cleaning
15 stuff. We had got finished with the pressure
16 cleaning I think within probably a day and a half.

17 We removed all those and piled them up in the
18 backyard because he wanted us to haul everything off
19 because he said he couldn't put it on the street
20 because he had to tidy his yard up and pick up.

21 Q. So you had to haul things off that you took off
22 the house?

23 A. Yes, ma'am. Shingles, limbs, and all.

24 Q. Okay. And that was at the request of
25 Mr. Poore?

1 A. Right.

2 Q. All right. After you pressure cleaned and took
3 the storm windows off, the gutter cover off, what --
4 what did you do next?

5 A. Well, I told him we were going to wait a couple
6 days and let it dry out before we start painting.
7 So we removed the back gutter from the finishing
8 board. I'm going to say the gutter part was about
9 60 to 80 feet with no seam, just a straight gutter.

10 We removed that and then we took all the fascia
11 board off. That's what the gutter rests on. And we
12 replaced all the fascia board before we started
13 painting, or we'd have to paint the fascia board
14 because of the new wood.

15 And then after that, we continued to paint all
16 the windows. And up on the top -- up on the top, he
17 had some gables that you call press wood. It had
18 rotted out, and we had to replace all that back. He
19 had two gables on each side, and we had painted --
20 we painted all that. And that's all the exterior
21 paint that we did, the windows and the new wood that
22 we installed.

23 Q. Did you do anything else outside? Tree -- tree
24 limbs?

25 A. Oh, yeah.

1 Q. What did you do regarding that?

2 A. We -- we put up two columns on the carport side
3 and he had redid the bricks where they keep -- where
4 they say foundation, we redid the top layer of the
5 brick that had cracked up before we could install
6 the columns in there.

7 Q. Okay. And ---

8 A. And then ---

9 Q. I'm sorry.

10 A. And then, every time we put them vents, air
11 vents, around the house, I think we replaced round
12 about seven of them.

13 Q. Did you ever do any work in -- in -- under the
14 house or in the crawl space or anything like that?

15 A. No, ma'am. We never went under the house.

16 Q. And did you do any other work in the backyard
17 or anything like that?

18 A. Just painting. And he had a row of pine trees
19 that separated his property from the other property.
20 There's a lot of limbs. I think it might've been a
21 storm, you know, they had broke off, and we cut all
22 those off as we hauled them off and stuff.

23 Q. But you were not asked to cut down a tree?

24 A. Just one tree right in the corner of his house.
25 It might've been about this round (indicating). Not

1 no great big tree or nothing like that.

2 Q. So did you cut that down?

3 A. Yes, ma'am.

4 Q. Did you do any work on the inside of
5 Mr. Poore's home?

6 A. We painted two bedrooms and a kitchen. And in
7 the shower, we installed a ceiling. It's the
8 sheetrock, drywall.

9 Q. Okay.

10 A. And we painted ---

11 Q. And that ---

12 A. --- and we painted a bathroom.

13 Q. And that was at Mr. Poore's request?

14 A. It was -- all the work at his request.

15 Q. Was there anybody ever present when you talked
16 to Mr. Poore or received a check from Mr. Poore?

17 A. No, ma'am.

18 Q. Did you provide Mr. Poore with your contact
19 information?

20 A. Oh, yeah. Yes, ma'am.

21 Q. When did you provide him with that?

22 A. I provided him with that when I met him over in
23 Powdersville.

24 Q. All right. Did you come to Mr. Poore in
25 response to a request that he had made, or did you

1 just show up at his house?

2 A. Well, actually, we were working over there
3 across the -- off East North too. Then we -- I
4 said, "I'm going to ride around." This was around
5 about September.

6 And then that's the time I had -- we might've
7 been in the yard doing something that I didn't fix,
8 and I stopped by. I hollered at him then. And he
9 say, "Yeah ---

10 MR. GREGORY: Objection, Your Honor. Hearsay.

11 THE COURT: Sustained.

12 BY MS. MANIGAULT:

13 Q. Okay. After you hollered at him, did y'all
14 have a conversation?

15 A. Yes, ma'am.

16 Q. And did he -- as a result of that conversation,
17 did -- did you go to his house and do some work for
18 him?

19 A. It was about a month or two months after.

20 Q. Okay.

21 A. But we talked about the work then though.

22 Q. All right.

23 A. But he would tell me about his wife had passed.

24 Q. Okay. You can't tell ---

25 A. Oh, excuse me then.

1 Q. All right. Now, so you saw him in September,
2 so in November is when you went back to do the work?

3 A. Yes, ma'am. That's when we got started.

4 Q. Okay. So in September, your discussion was the
5 kinds of things that he wanted you to do around his
6 house?

7 A. Right. But he was just talking to me at the
8 road. We -- I didn't get out and look around the
9 house at the time then.

10 Q. All right. And when you saw him in the yard in
11 September, was he by himself?

12 A. By himself.

13 Q. All right. Now, in your conversations with
14 Mr. Poore, could you ever tell that he had a
15 sickness or an illness of any kind?

16 A. No, ma'am. Because he had a high spirit all
17 the time.

18 Q. He had a high spirit?

19 A. Yeah, liked to joke, you know, and talk about
20 the Army, things like that.

21 Q. And so in your estimation, Mr. Poore presented
22 to you that he was an okay or all right or a normal
23 person?

24 A. Oh, yeah.

25 Q. Did he ever tell you himself that his wife had

1 passed?

2 A. Yeah, that's -- that's how I found out.

3 Q. Okay. When Mr. Poore paid you by checks, when
4 you cashed the checks at the banks, did you note
5 that the teller would call Mr. Poore?

6 A. Oh, yeah. She'd say she have to verify before
7 she'd cash it.

8 Q. Okay. Do you know whether that was done with
9 every check?

10 A. I think it's a certain amount. I think it's
11 everything over \$500 or something like that.

12 Q. Okay. So they verified the -- the check with
13 Mr. Poore while you waited for them ---

14 A. Right.

15 Q. --- to cash it?

16 A. Right.

17 Q. With the money, did you buy the materials and
18 supply and paint ---

19 A. Yes, ma'am.

20 Q. --- that was used?

21 A. Yes, ma'am. All the materials.

22 Q. All right. There was some testimony that --
23 did you know Mr. Poore had a power of attorney,
24 somebody that takes care of his business?

25 A. No, ma'am. He never mentioned that.

1 Q. He never mentioned it?

2 A. No, ma'am.

3 Q. And you did not know that?

4 A. No, ma'am.

5 Q. All right. So you talked to him in September
6 of 2012. You went back in November of 2012 to start
7 the work?

8 A. Right.

9 Q. And you did not know during that time or any
10 time that he had a power of attorney?

11 A. No, ma'am.

12 Q. Some testimony came yesterday that the power of
13 attorney is Ms. Terry Ford. Have you ever talked to
14 her?

15 A. Not to my knowledge.

16 Q. Have you ever called her on the telephone?

17 A. No, ma'am.

18 Q. Have you ever talked to -- there was a
19 contractor that testified yesterday. I think it's
20 Mr. Brown. Did you ever talk to him?

21 A. No, ma'am.

22 Q. You never talked to him on the phone?

23 A. No, ma'am.

24 Q. Did you ever meet him?

25 A. No, ma'am.

1 Q. Had you ever seen him before yesterday?

2 A. No, ma'am.

3 Q. And have you ever met Ms. Ford?

4 A. Yesterday was the first day I seen her.

5 Q. Ms. Ford?

6 A. I never seen her.

7 Q. Did you ever see anybody between November and
8 the end of February 2012 at Mr. Poore's house taking
9 care of him?

10 A. No, ma'am.

11 Q. So during the time that you were there doing
12 the work, there was nobody there providing care for
13 him?

14 A. No, ma'am. Huh-uh.

15 Q. Had you completed the work by -- by March, or
16 was there still some work to be done?

17 A. The work was completed when he gave me the last
18 check I think around February 23rd.

19 Q. Okay.

20 A. Because I told him from the beginning that we
21 wasn't -- we were going to stay there till we get
22 finished with everything. That's why I told him,
23 you know, it would be awhile before I get over there
24 to talk to him over in Powdersville because we were
25 on a project then.

1 Q. All right. Did he recognize you when you came
2 around his house -- came back ---

3 A. Oh, yeah.

4 Q. --- to do the work?

5 A. Oh, yeah.

6 Q. He recognized you?

7 A. Yes, ma'am.

8 Q. He recognized you as the person that was doing
9 the work, or did he recall your name?

10 A. Recalled my name.

11 Q. Did he ever mention to you that he may have
12 been on some kind of medication of any kind?

13 A. No. He never mentioned no kind of medical
14 problems or anything.

15 Q. Did he ever appear to you at any time dizzy or
16 couldn't stand up or unstable on his feet?

17 A. No, ma'am.

18 Q. Did he ever appear to you in your conversations
19 between November 2012 and February 23rd of 2012 ---

20 MR. GREGORY: Objection, Your Honor. I would
21 ask that this -- this direct examination to ask
22 open-ended questions as opposed to these leading
23 questions.

24 THE COURT: Well, let her finish the question
25 so I can hear it. Go ahead.

1 MS. MANIGAULT: Thank you.

2 BY MS. MANIGAULT:

3 Q. Did you ever note between the time frame that
4 you were doing the work, you testified
5 November 2012, and you testified that your last
6 check was February 23, 2013?

7 A. Right.

8 Q. Did you ever notice him confused?

9 A. No, ma'am. Like I said, from the first time I
10 met him, he was just like the same person, you know.

11 Q. Okay. And your -- you testified that you first
12 met him in what year?

13 A. Around 2008.

14 Q. Did you have any way of knowing that Mr. Poore
15 had been diagnosed with dementia?

16 A. No, ma'am. I wouldn't never believe it.

17 Q. Why wouldn't you believe it?

18 A. Because the way he act, you know, normal
19 actions and everything just like, you know, a normal
20 person.

21 MS. MANIGAULT: Beg the Court's indulgence.

22 THE COURT: Yes, ma'am.

23 MS. MANIGAULT: No further questions, Your
24 Honor.

25 THE COURT: Cross-examination.

1 MR. GREGORY: May it please the Court?

2 THE COURT: Yes, ma'am -- yes, sir.

3 CROSS-EXAMINATION

4 BY MR. GREGORY:

5 Q. Mr. Aiken, you said you were 59 years old?

6 A. Right.

7 Q. And how long have you been doing construction
8 work, housing repair work?

9 A. I'm going to say about 30 years.

10 Q. Okay. And what kind of ---

11 A. I'm going to say handyman.

12 Q. --- (cross-talking) ---

13 A. I'm going to say handyman.

14 Q. Handyman? Did you have your ---

15 A. Yeah, because I had a regular job by doing a
16 lot of side when I was -- back in the '70s and '80s,
17 I was helping my uncle and stuff.

18 Q. Okay. And did you -- did you go through any
19 classes to do any handyman work? Was there some ---

20 A. No. Learned from the basic.

21 Q. I'm sorry?

22 A. Learned from the basic. People in the family
23 and stuff.

24 Q. Okay. And as a handyman owning your own
25 company, what -- what kind of work would you do

1 around the house?

2 A. I do different types. Anything except
3 electricity and plumbing.

4 Q. I'm sorry. What was the first thing?

5 A. I said ---

6 Q. Everything except -- I'm sorry. I just
7 couldn't understand you.

8 A. Repeat the question, please.

9 Q. Oh, I asked you what you would do around the
10 houses as a handyman. You said you did everything
11 except plumbing, and I just couldn't hear the first
12 thing.

13 A. What houses are you referring to?

14 Q. Just in general. In general as you normally do
15 business.

16 A. Oh, okay. I do a little bit of everything
17 except electricity and plumbing.

18 Q. Electricity.

19 A. Electricity.

20 Q. Gotcha.

21 A. Yeah.

22 Q. You kept saying, "We went to his house on
23 November 2012." Was there somebody with you?

24 A. Yeah. Like I said, we were working across from
25 East North Street.

1 Q. Okay.

2 A. I had two more guys with me.

3 Q. Two more guys. Who were they?

4 A. They were Robert Davis and Roxy Carr. They
5 were from Due West, South Carolina.

6 Q. And do they work with your company or with you
7 regularly?

8 A. Yeah.

9 Q. Now, you said that you pressure washed the
10 outside of the house?

11 A. Yes.

12 Q. Was that just ---

13 A. That's the woodwork.

14 Q. The woodwork?

15 A. Yeah.

16 Q. You didn't pressure wash this brick?

17 A. No bricks. The driveway and the walkway and up
18 under the carport.

19 Q. Okay. And that house, you've seen the
20 pictures -- I'll be happy to show you the pictures
21 again -- is mostly brick; is that correct?

22 A. Well, it's -- it's an average brick house, but
23 it's got boxing all the way around it.

24 Q. Okay. And by "boxing," you mean around the
25 windows, around the doors?

1 A. I meant these are window frames.

2 Q. Yeah, yeah. And then I assume there would be
3 some around the door?

4 A. I didn't paint around the doors. I just.
5 painted all the new wood we installed. And all of
6 this was called pressboard.

7 Q. Okay.

8 A. That was rotting out. We installed all that.
9 Painted all that.

10 And then over on that side, the same just like
11 that. And then over on this side is the carport
12 just like that.

13 Q. Just like that. And you replaced all that wood
14 and paneled that wood?

15 A. We -- yeah.

16 Q. All right. So any testimony of the officer or
17 the -- the -- Jerry Brown that came out and said
18 nothing was painted would be inaccurate?

19 A. They said nothing up under the box, which I
20 didn't paint. We wasn't -- we didn't contract on
21 the box.

22 Q. I'm not going to argue what they said. And you
23 said you did the back gutters as well. You took off
24 the covers?

25 A. Yeah. Like, we removed all the "Y" covers and

1 put cool seal back down there to keep it from
2 rusting out.

3 Q. And you said you couldn't get under the
4 foundation because the door was locked?

5 A. We had no reason to go under the foundation.

6 Q. No reason to go under the foundation. You
7 didn't do all that foundation work outside?

8 A. We didn't do no foundation. We did a carport
9 wall.

10 Q. You didn't do any foundation work?

11 A. Huh-uh.

12 Q. So there's a check that says on the memo line
13 "foundation."

14 A. Yeah, I see he wrote that on there.

15 Q. That was inaccurate?

16 A. It was brick work now.

17 Q. It was brick work?

18 A. I don't know what he meant about that. You
19 know what I'm saying.

20 Q. Okay. So that would be inaccurate?

21 A. Yeah, that's inaccurate.

22 Q. He wrote a check that he didn't know what he
23 was writing apparently?

24 A. I don't -- I can't answer that.

25 Q. He wrote found -- I'll show you the check. He

1 wrote "foundation."

2 A. Yeah, I seen the check.

3 Q. Okay. Well, let's -- this is Check No. 7131.

4 As you can right here "foundation."

5 A. Yeah.

6 Q. And are you saying that is what Raymond Poore
7 wrote?

8 A. Oh, yeah.

9 Q. Okay. And you're saying you didn't do any
10 foundation work?

11 A. We did a wall. It goes into where the column
12 supposed to be placed, the column and the brick.

13 Q. Okay.

14 A. Yeah, that's what that check was for.

15 Q. Okay. But it's not foundational work?

16 A. It's a part of the foundation.

17 Q. Okay. All right.

18 A. Not around the house. Around the side of the
19 wall.

20 Q. Now, the other pictures that were introduced,
21 did you pressure wash this?

22 A. We pressure washed all the woodwork.

23 Q. Okay. Now, did you paint this?

24 A. No.

25 Q. Did not paint it?

1 A. I told you we did only painted the new wood we
2 installed.

3 Q. The new wood?

4 A. Yeah.

5 Q. Okay. And this same -- same thing for this?

6 A. That's -- that's the box. That's -- this is a
7 piece of a fascia board right there come into the
8 box.

9 Q. Okay. Now, did you paint that?

10 A. I don't think -- I don't know if we replaced
11 that part or not. We didn't replace all the fascia
12 board around the whole house.

13 Q. Okay. Now, the column, is this the brick that
14 you replaced right here?

15 A. No. That's on the front porch and he said he'd
16 like to have the whole porch did. Wasn't no need to
17 do these columns around here.

18 Q. Okay. And this -- you did not paint this?
19 That was not about part of your --

20 A. This (indicating). We painted all this.

21 Q. Okay.

22 A. This is what I was telling you about press
23 wood.

24 Q. Okay.

25 A. This fascia board, this is the back here

1 (indicating).

2 Q. That's the back of the fascia board?

3 A. Yeah. We replaced that whole strip right there
4 now. Already had -- we had to take the whole gutter
5 off. I told him we might as well replace the whole
6 thing because it dry rotted.

7 Q. All right. So this right here (indicating),
8 is -- is this what you put on?

9 A. This 1 by 4 board.

10 Q. Yeah, that little board right there
11 (indicating). Is that ---

12 A. That's a 1 by 4.

13 Q. Okay. And then you put that on?

14 A. Yeah, we put it on.

15 Q. Okay. Now, this was according to -- if you
16 remember the testimony of Jerry Brown and
17 Investigator Howard, they said that the only thing
18 they saw painted was this little strip right here
19 outside the front door. Do you know anything about
20 that?

21 A. No, sir.

22 Q. No?

23 A. I know we painted this because we -- we
24 replaced this up and down, this over this carport.
25 And we replaced that fascia board where the gutter

1 rests on it.

2 Q. The ones you just showed us, you replaced that
3 one?

4 A. We replaced all the bad fascia board.

5 Q. Okay. And, again, this is -- you pressure
6 sprayed this?

7 A. That's the molding now.

8 Q. That's molding right there (indicating)?

9 A. Yeah.

10 Q. You didn't pressure spray this?

11 A. We washed all of the wood interior on the
12 house.

13 Q. Okay.

14 A. All of it.

15 Q. Okay.

16 A. Yeah.

17 Q. Now, when you washed the exterior of the house,
18 would -- would this molding come off, or was that
19 just kind of permanent?

20 A. It's mildew.

21 Q. Mildew. Would it come off?

22 A. Yeah. Oh, yeah.

23 Q. All right. And, again, is this the -- down
24 here (indicating), is this anything you replaced?

25 A. Huh-uh. That's the front porch again.

1 Q. Okay. You didn't -- you didn't paint
2 anything ---

3 A. We sealed by that whole porch there because the
4 wall had done pulled loose from the porch there.

5 Q. Okay. Now, the first check, State's Exhibit --
6 it's been entered as State's Exhibit No. 1, is made
7 out to you; is that correct?

8 A. That's correct.

9 Q. All right. Did you cash this check?

10 A. That's correct.

11 Q. All right. What was this check for?

12 A. That's what -- we had sat down. We had figured
13 the paint, the pressure cleaning, and glazing the
14 windows, and calking around the window frames that
15 needed it, and all of that.

16 Q. Okay.

17 A. We had figured about -- I think everything came
18 up like about \$5,500 starting, that's with the paint
19 and everything.

20 And then when we got finished with the pressure
21 cleaning, I told him I was going to have to have
22 payment as we work along.

23 Q. Sure.

24 A. And he agreed with that.

25 Q. Okay.

1 A. And he gave me this 1250 to get started to buy
2 my paint and my glaze, calk, and, you know, whatever
3 I needed, you know.

4 Q. All right.

5 A. And then I think about three more days
6 later ---

7 Q. 19th? December 19th?

8 A. Okay. It was ---

9 Q. For \$2,250?

10 A. Yeah. I got that one -- I don't know actually
11 what date it was, but to give our fellows some
12 money, it was around Christmastime.

13 Q. Yeah, but you don't remember what it was for?

14 A. Yeah, part of all -- it was to pay me because
15 we would deduct it as we go along.

16 Q. Okay.

17 A. Yeah.

18 Q. Now, would you also as -- as he's writing
19 checks, would you provide him receipts or provide
20 his power of attorney receipts?

21 A. No. No one ever asked.

22 Q. No one asked for receipts?

23 A. Because he would have his -- he would dock it
24 off of his checkbooks or whatever, you know, how he
25 did it. And he'd say -- but I -- I never did

1 provide them. He just seen the, you know, the
2 materials and everything.

3 Q. Yeah. And you said you never talked to Terry
4 Ford?

5 A. Not to my knowledge.

6 Q. So she never asked you for any receipts or
7 anything?

8 A. Not to my knowledge.

9 Q. Not to your knowledge?

10 A. Huh-uh.

11 Q. Okay. And as a handyman, would you -- would
12 you keep receipts in your ordinary course?

13 A. Nah, not really.

14 Q. You wouldn't?

15 A. No.

16 Q. You don't think that's important to show, hey,
17 I'm -- I'm spending \$100 for paint here?

18 A. No. Because I kinda figure it up in my head
19 because I've been doing it a good bit, and I kinda
20 have a ballpark figure about what they ---

21 Q. Correct. You do. But Mr. Poore, wouldn't he
22 want to know?

23 A. I gave him -- I gave him two options. I told
24 him I'd do it for this if he furnished. I'd do it
25 for this if I furnished.

1 Q. Okay.

2 A. That's when he said ---

3 Q. Okay. Now, January 12, 2013, this check is
4 made out to you, correct?

5 A. Right.

6 Q. This is your signature?

7 THE COURT: Refer to the exhibit numbers
8 please, sir.

9 BY MR. GREGORY:

10 Q. Oh, I'm sorry. This is Exhibit No. 3, Check
11 No. 7125. Is this your signature right here,
12 Mr. Aiken?

13 A. Oh, yeah. All of them on the checks is my
14 signature.

15 Q. Okay. And this was for painting; is that
16 correct?

17 A. That's correct.

18 Q. Okay. Now, you -- you mentioned that you
19 painted some stuff on the outside, but you also
20 painted two bedrooms and a kitchen on the inside; is
21 that correct?

22 A. That's right.

23 Q. Was this for interior paint or exterior paint?

24 A. This is on the exterior. We ain't got to the
25 interior yet.

1 Q. Okay. So this is all exterior paint?

2 A. Yeah. Right.

3 Q. Okay. And this check was cashed. You received
4 cash for that check, right?

5 A. Most all them checks was cashed at the same
6 branch, because he gave me the check on a Saturday
7 and I say -- and he told me, he say, "Go down to
8 Haywood Road. The bank down there will be open
9 until one o'clock." He say, "You can take a break
10 and go down there now." And that's mostly where all
11 the checks were cashed.

12 Q. So let's go up here to State's Exhibit No. 4.
13 It's going to be Check No. 7129 in the amount of
14 \$1,550.

15 A. Right.

16 Q. It's made out to you?

17 A. Uh-huh.

18 Q. This was January the 18th for -- this is ---

19 A. It's "paint" ---

20 Q. --- "paint exterior."

21 A. Right.

22 Q. Now, did -- did Mr. Poore write that in, or is
23 that your handwriting?

24 A. Mr. Poore did all the front writing.

25 Q. Okay. So the only thing you do was just ---

1 A. Sign my name.

2 Q. --- sign your name?

3 A. Yeah.

4 Q. And that's your signature?

5 A. Right.

6 Q. And it was cashed, right? And we've already

7 talked about this, the \$950 ---

8 A. Right.

9 Q. --- based on the ---

10 A. That's two now. That was two columns and ---

11 Q. The -- the brick wall?

12 A. --- the brick wall around there, yeah.

13 Q. Okay. So you didn't do any foundation work as

14 far as under the house?

15 A. No. He -- no. No. I didn't have no reason to

16 go under the house.

17 Q. Okay. All right. Check No. 6 -- oh, I'm

18 sorry. This is State's Exhibit No. 6, Check No.

19 7139 in the amount of \$850 on January 26th, correct?

20 A. Yes.

21 Q. That's 2013 now. It's made out to you. This

22 is "install gutters"?

23 A. That say "gutter," not "gutters."

24 Q. Oh, I'm sorry. "Gutter."

25 A. Yeah.

1 Q. So what gutter are you installing here?

2 A. There were two -- there were two individual at
3 the front. One on the carport and one on the front
4 porch.

5 Q. The down ---

6 A. The down -- no. The gutter and down stylus.

7 Q. So you replaced the whole thing?

8 A. It was about -- I'd say they were approximately
9 20 feet each.

10 Q. Okay. And did you save the receipt. I assumed
11 you purchased a new gutter?

12 A. Yeah.

13 Q. Did you -- did you save the receipt for that
14 purchase?

15 A. I had it. I didn't just personally save it.

16 Q. Okay. But you didn't provide it to Mr. Poore
17 or anyone else?

18 A. Huh-uh. Because I had already gave him, you
19 know, the figure for what I would go.

20 Q. Okay. State's Exhibit No. 7, Check No. 7141.
21 This is for roofing work?

22 A. That's -- that's where we started on the --
23 that's where they had the ceiling -- well, we're
24 going to get to it. But at the back, he had 21
25 squares of shingles of Argentina that we did tore

1 off. Like I said, had to haul all of it off until
2 we had one sheet of plywood installed around this
3 bathroom -- over this bay window right there.

4 Q. And this is your signature?

5 A. That's my signature.

6 Q. And you cashed that check?

7 A. I cashed that check.

8 Q. All right. February 4, 2013, for \$850?

9 A. That's inside now.

10 Q. This is inside?

11 A. Right.

12 Q. So "paint and trim"?

13 A. Trees.

14 Q. I'm sorry. Trees. You're correct. I'm sorry.

15 "Paint and trees." Was this part of a tree that you
16 took down?

17 A. That was part of the trees and the shrubs
18 because we had to cut the shrubs back to where we
19 could get in and work around to the windows and
20 everything.

21 Q. All right. So you trimmed up the shrub and cut
22 down you said ---

23 A. I ain't going to say we trimmed. I cut some of
24 it back where we could get behind them.

25 Q. You -- you cut it back?

1 A. Yeah, where we could walk to get behind them
2 with stepladders and stuff.

3 Q. Okay. Is this your signature right here, sir?

4 A. That's my signature.

5 Q. February 7th. This would be State's Exhibit
6 No. 9, Check No. 7296, \$850 made out to cash and it
7 says for "Carl Aiken." What was this check for?

8 A. That check, I'm not really sure. I think it
9 was for -- he had a hallway door where you pull down
10 the steps. I think that check was for that and them
11 vents that we put in.

12 Q. The vents around the foundation?

13 A. Yeah.

14 Q. Okay.

15 A. Yeah.

16 Q. All right. Another one. This is will
17 State's ---

18 A. That's part of the roof. All the checks you
19 see from here on that says "house repair," that's
20 part of the roof because I think the roof came to
21 about \$8,000 -- about \$6,000, I believe, yeah.

22 Q. Okay. This will be State's ---

23 A. That's part of the roof.

24 Q. Is that your signature?

25 A. That's my signature.

1 Q. For home repair and you're saying roof work?

2 A. That's for part of the roof.

3 Q. \$150. This is State's Exhibit No. 12, Check
4 No. 7035, February the -- I think it's the 18th.

5 A. Now, that's -- that's a fascia -- that was a
6 fascia board across that front.

7 Q. All right. So the one that you ---

8 A. The carport.

9 Q. Yes. You pointed out that you replaced that.

10 A. Yeah, we replaced that ---

11 Q. And I think home repair ---

12 A. But we had to come ---

13 THE COURT: Just one second. Let him answer
14 and let him ---

15 MR. GREGORY: I apologize.

16 THE COURT: --- and, sir, if you'd let him
17 finish his question before you ---

18 THE DEFENDANT: All right.

19 THE COURT: --- respond please, sir. Go ahead
20 and ask your question again.

21 BY MR. GREGORY:

22 Q. All right. I -- I believe I thought it was --
23 it says "home repair and vinyl." What is -- this is
24 for the roof; is that correct? You're saying it's
25 fascia boarding?

1 A. That's -- that's a part of the roof. I think
2 where that -- that plywood I was telling you we had
3 to put -- where he had that leak over his shower.

4 Q. Okay.

5 A. Yeah.

6 Q. So you had -- you put \$650 plywood over a leak?

7 A. This shingles and all in with the roof.

8 Q. Okay.

9 A. It ain't no individual price on it. It was
10 just all ---

11 Q. And then the last State's Exhibit No. 13, this
12 is your signature?

13 A. Yes, sir.

14 Q. All right. And it's for a fascial board --
15 fascia board?

16 A. Right.

17 Q. And was this the one you were ---

18 A. No. That's for part of the -- the gutter --
19 no, it wasn't. I know that. That was about the
20 eave -- excuse me. That was the eave on the far
21 side of the house coming in like a "V" there and the
22 outside board.

23 Q. Okay.

24 A. Yeah, that's for that.

25 Q. And that's for replacing it and painting that?

1 A. That was the last check right there. Right
2 there was the last check.

3 Q. That's that last check?

4 A. That's correct.

5 Q. And that was for replacing the ---

6 A. That fascia board on the side and finish
7 the ---

8 Q. Painting?

9 A. The -- yeah, they had to paint it too.

10 Q. Okay.

11 A. Like I said, we painted all the new wood.

12 Q. So you did all the exterior. You replaced
13 wood, painted it, and did two rooms and a kitchen.
14 What color did you paint the bedrooms and the
15 kitchen inside?

16 A. We painted them about the same color. Sort of
17 like a -- I really, to tell you the truth, I can't
18 recall.

19 Q. You can't recall what color you painted it?

20 A. It was kinda brownish looking.

21 Q. Okay. And part of this -- part of your home
22 repair work is you -- you would go out and purchase
23 everything to do the work, correct?

24 A. Yes, sir.

25 Q. And you didn't provide any receipts to Raymond

1 Poore?

2 A. If you he had asked for them, I would have.
3 But, you know, like I say, I gave him two options.
4 I could furnish or he could furnish. Since I was
5 furnishing, I didn't feel like I needed to, but he
6 did not ask me for them.

7 Q. And you -- you said you saw Ms. Ford?

8 A. I never seen Ms. Ford.

9 Q. You never saw Ms. Ford?

10 A. No.

11 Q. Okay. And you never talked to her on the
12 phone?

13 A. No, no, no.

14 Q. And you never talked to a Jerry Brown on the
15 phone?

16 A. No. Huh-uh.

17 Q. And nobody ever requested receipts from you; is
18 that correct?

19 A. That's correct. If anyone had, it would've
20 been Mr. Poore.

21 Q. Okay.

22 A. Because that's the one I was dealing with.

23 MR. GREGORY: I beg the Court's indulgence for
24 one second.

25 THE COURT: Sure.

1 BY MR. GREGORY:

2 Q. The air vents that you said you replaced in the
3 foundation, what does that involve?

4 A. That involved the climate control up under the
5 house.

6 Q. Right. And you would've had to take them out?

7 A. You chisel it off from the outside, then you
8 put the concrete back around it.

9 Q. Okay. So you don't need to go inside ---

10 A. No, sir.

11 Q. --- to do any foundation work?

12 A. Huh-uh.

13 MR. GREGORY: I have no further questions, Your
14 Honor.

15 THE COURT: Redirect?

16 MS. MANIGAULT: None, Your Honor.

17 THE COURT: Okay. Thank you, sir. You may
18 step down.

19 THE DEFENDANT: Okay.

20 (Defendant excused from the stand.)

21 THE COURT: Ms. Manigault, would you call your
22 next witness please, ma'am?

23 MS. MANIGAULT: Your Honor, that's the defense
24 case.

25 THE COURT: All right. Very good.

1 Mr. Foreman and ladies and gentlemen of the
2 jury, defense has stated to me that they -- that's
3 their defense, and so I have to take up some
4 administrative matters at this juncture. If you'll
5 go back to your jury room, we'll get you back here
6 as soon as we can.

7 (At 10:52 a.m., the jury exited the courtroom.)

8 THE COURT: Motions?

9 MS. MANIGAULT: Your Honor, I would renew my
10 motions, all of them on the record, and especially
11 the motion for directed verdict.

12 THE COURT: Those will be denied, except for
13 the motion that's under consideration.

14 MS. MANIGAULT: Thank you.

15 THE COURT: All right. Are you going to put up
16 any reply testimony?

17 MR. GREGORY: I would like one reply witness,
18 Your Honor.

19 THE COURT: Okay.

20 MR. GREGORY: And she's not on my witness list.
21 It would just be Terry Ford to discuss the interior
22 painting.

23 THE COURT: All right, sir. Are you ready to
24 go forward, or do you want to take a quick break?

25 MR. GREGORY: Can I take one minute, Your

1 Honor?

2 THE COURT: Let's do -- okay. Let's take five
3 minutes and then we'll come back.

4 MR. GREGORY: Thank you, Judge.

5 (From 10:53 to 11:10 a.m., a recess was taken.)

6 THE COURT: Mr. Gregory, are you ready to
7 proceed?

8 MR. GREGORY: Yes, Your Honor. After speaking
9 with my witnesses, the State's going to call
10 Elizabeth Eudy just in reply.

11 THE COURT: I'm sorry?

12 MR. GREGORY: The State will call Elizabeth
13 Eudy in reply. After speaking with my witnesses,
14 that's ---

15 THE COURT: Very good.

16 MR. GREGORY: --- in reply?

17 THE COURT: All right. Ms. Manigault, are you
18 ready?

19 MS. MANIGAULT: Yes, sir.

20 THE COURT: All right. Will you bring the jury
21 in, please?

22 THE BAILIFF: (Complying.)

23 (Jury entered the courtroom at 11:12 a.m.)

24 THE COURT: Mr. Gregory, the State have any
25 reply witnesses?

1 MR. GREGORY: We do, Your Honor. The State
2 calls Eliz -- recalls Elizabeth Eudy to the stand.

3 THE COURT: Ms. Eudy, you're still under oath.
4 Okay?

5 THE WITNESS: Yes, sir.

6 THE COURT: Come around, please.

7 THE WITNESS: (Complying.)

8 ELIZABETH EUDY,
9 having been previously produced and duly sworn as a
10 witness on behalf of the Defendant, then testified
11 as follows:

12 REBUTTAL EXAMINATION

13 BY MR. GREGORY:

14 Q. Elizabeth, between December 1, 2012, and March
15 of 2013, was anything painted inside Mr. Poore's
16 house?

17 A. No, sir.

18 Q. What color were the walls inside Mr. Poore's
19 house?

20 A. White. But there was one room that was blue.

21 Q. And what room was blue?

22 A. It was the room at the house that had two twin
23 beds in it.

24 Q. Was that the room that Mr. Poore stayed in?

25 A. No, sir.

1 Q. Were there any -- any rooms painted brownish?

2 A. No.

3 Q. Was there any paint work done in the kitchen?

4 A. No.

5 Q. Did you see signs of any paint work whatsoever
6 being done in the house?

7 A. No, sir.

8 Q. Well, did the columns that -- did you hear
9 Mr. Aiken say -- and I'll just call them "columns in
10 the carport." Were there any new columns installed
11 in the carport?

12 A. No, sir.

13 MR. GREGORY: Please answer any questions the
14 defense has for you.

15 THE COURT: Cross-examination?

16 MS. MANIGAULT: I don't have any, Your Honor.

17 THE COURT: Thank you, ma'am. You may -- you
18 may step down?

19 (Witness excused.)

20 MR. GREGORY: That's all the State has in
21 reply, Your Honor.

22 THE COURT: All right. Very good.

23 Mr. Foreman, ladies and gentlemen of the jury,
24 that concludes the second phase of this case which
25 is the presentation of the evidence. I'm going to

1 have a meeting with these lawyers about the law that
2 I'm going to charge you. That will take a little
3 bit of time.

4 The next phase would be the closing arguments
5 by the attorney -- by the attorneys. And after they
6 conclude that, I will then charge you on the law.
7 And then, Mr. Foreman, you'll be given explicit word
8 to begin your deliberations. Just to know where you
9 are. So if you go back to the jury room, this will
10 probably take about 25 to 30 minutes. Thank you,
11 sir.

12 (At 11:14 a.m., the jury exited the courtroom.)

13 THE COURT: Have you had an opportunity to look
14 at the two versions of exploitation and the
15 vulnerable adult charge?

16 MR. GREGORY: Yes, Your Honor. We have -- I
17 have.

18 THE COURT: Ms. Manigault?

19 MR. MANIGAULT: Yes, sir.

20 THE COURT: Okay. One, I just got from Judge
21 Miller, and the other we just added some definitions
22 I felt like might be appropriate. I wanted to hear
23 from either one of you. As to them, you may prefer
24 if you have any other requests to charge.

25 MR. GREGORY: As for the State, Your Honor, I

1 prefer the definitions be in there. Obviously, my
2 argument is to go over Subsection B and -- we'll
3 talk about "B" and "C." I think "C" is probably
4 more applicable in this case, and obviously the
5 theory of my case would be the swindle part. So I'd
6 prefer that the definition be in there. I don't
7 have anything additional to add to the charge.

8 THE COURT: Okay. Ms. Manigault?

9 MS. MANIGAULT: Your Honor, I have nothing to
10 add to the charge. I would like to change the
11 exploitation of a vulnerable adult in the first
12 paragraph.

13 THE COURT: How would you like to change it?

14 MS. MANIGAULT: On the second sheet, it takes
15 out Mr. Poore's name out of the charge.

16 THE COURT: Well, I tell you, I was going to do
17 that, but would you rather me put "victim"?

18 MS. MANIGAULT: (No response.)

19 THE COURT: Or give me some language you would
20 propose?

21 MS. MANIGAULT: The one that you gave us. "The
22 defendant is charged with violation of the South
23 Carolina Code of Law, Section 43-35-85. The State
24 must prove beyond a reasonable doubt that the
25 defendant exploited a vulnerable adult." That's the

1 sheet your clerk handed us this morning.

2 THE COURT: Okay.

3 MS. MANIGAULT: That's only thing that I
4 would -- so I would totally delete the first
5 paragraph on the first set of charges you gave us.

6 THE COURT: I'm not going to totally delete it
7 because I think without saying that, the jury
8 just ---

9 MS. MANIGAULT: No. Just totally delete the
10 first one, but go with the second one you gave us
11 this morning.

12 THE COURT: Okay.

13 MS. MANIGAULT: And -- and leave everything
14 else as is.

15 THE COURT: So the State must prove in the
16 first paragraph, page one, beyond a reasonable doubt
17 that the defendant exploited a vulnerable adult?

18 MS. MANIGAULT: Yes, sir.

19 MR. GREGORY: I have no objection to that, Your
20 Honor.

21 THE COURT: Give me five minutes. I am so
22 sorry. I'll change that. I don't know what in the
23 world is going on. I'll -- I'll change that, come
24 back, and then we'll go over it real quick.

25 (From 11:17 to 11:21 a.m., a recess was taken.)

1 THE COURT: Now, Ms. Manigault, if I -- this is
2 looking at the charge that says to -- roughly, four
3 pages, a part of the fourth page that my law clerk
4 gave me this morning. And the only -- if I
5 understand what you're saying, the only change that
6 you request is Paragraph No. 1, page 1.

7 And it says, "The defendant is charged with
8 violation of South Carolina Code 43-35-85. The
9 State must prove beyond a reasonable doubt that the
10 defendant exploited a vulnerable adult." And that's
11 the only change you're asking?

12 MS. MANIGAULT: That's correct, Your Honor.

13 THE COURT: Okay. Except any mention of the
14 alleged victim's name?

15 MS. MANIGAULT: That correct, Your Honor.

16 THE COURT: Does it occur anywhere else in
17 there? I don't think it does. It does not.

18 Okay. All right. I know Ms. Manigault. I've
19 tried cases with you in the past. But, Mr. Gregory,
20 I don't know if you and I have tried cases, but I'll
21 tell you that I shamelessly plagiarize Judge Hill's
22 charge where he goes through the three sections
23 of -- of the charge.

24 The first is the rules and duties that define
25 and control the jurors' duties as jurors, and then

1 the substantive law, and then some issues about
2 their deliberations.

3 Okay. That gives you the general framework.
4 And you are more than welcome, either or both of
5 both of you, I'll pull it out and let y'all study it
6 right quick, but that's what it is.

7 MR. GREGORY: Judge, I do have one question
8 when you're ready. As far as the order of closing
9 arguments go, in light of that new State Supreme
10 Court case, I haven't tried a case since that came
11 down.

12 THE COURT: Well, I -- I thought that there was
13 a proposed rule that said that you have to open, and
14 that -- that was not passed.

15 MR. GREGORY: Okay. That might be the case. I
16 apologize. I just want to make sure.

17 THE COURT: That's still the law. It's just
18 the way we've done it. If the defense doesn't
19 present any evidence ---

20 MR. GREGORY: Okay.

21 THE COURT: --- then they get last argument.

22 MR. GREGORY: Okay.

23 THE COURT: That's the way we've been working
24 under it.

25 MR. GREGORY: That's why I -- Your Honor, I

1 apologize.

2 THE COURT: That's okay. If there's something
3 else I -- I missed.

4 MR. GREGORY: Not that I'm aware. I just -- I
5 remember that case being passed out several months
6 ago, and I just want to make sure I was ready to go
7 when it was my turn to go.

8 THE COURT: Okay. Now, do y'all feel like you
9 want me to go into -- give me two seconds. Okay.

10 Do y'all -- do you want me to go over -- I tell
11 you what I'll do. The only real change from my
12 other charge is under *State v. Clarence Logan*. I
13 give that charge on circumstantial evidence. I'm
14 going to let my law clerk keep them in order. Let
15 you -- bring it to you and let you look at it.

16 Gentlemen, let me bring y'all back and let me
17 talk to y'all right quick. If y'all have any
18 problems with any of it, let me know. Okay?

19 MS. MANIGAULT: Yes, sir.

20 (From 11:25 to 11:41, a recess was taken.)

21 THE COURT: All right. Has -- has the State
22 had sufficient time to review the proposed charge?

23 MR. GREGORY: Yes, Your Honor. We have no
24 objection.

25 THE COURT: Okay. Other than the correction,

1 Ms. Manigault, how about defense?

2 MS. MANIGAULT: None, Your Honor.

3 THE COURT: Very good. Y'all ready to do the
4 closing arguments?

5 MR. GREGORY: Yes, sir.

6 MS. MANIGAULT: Yes, sir.

7 (An off-the-record discussion was had.)

8 THE COURT: While we're waiting, any objection
9 to the proposed verdict form?

10 MR. GREGORY: Not from the State, Your Honor.

11 MS. MANIGAULT: Nothing from the defense, Your
12 Honor.

13 THE COURT: All right. Thank you, ma'am.

14 MS. MANIGAULT: Your Honor, while we're
15 standing, you took a matter under advisement. Has
16 the Court made a decision on the matter under
17 advisement?

18 THE COURT: No. I'll be honest with you, I am
19 leaning toward I told you that there was
20 circumstantial evidence in the record to support
21 giving it to the jury. But as you've seen, I
22 haven't had a chance to do any looking at it ---

23 MS. MANIGAULT: All right.

24 THE COURT: --- and researching.

25 (Brief recess.)

1 THE COURT: They're ready?

2 THE BAILIFF: Yes, sir.

3 THE COURT: Would you bring them in please,
4 ma'am?

5 THE BAILIFF: Sure.

6 THE COURT: Just one second. State ready for
7 closing?

8 MR. GREGORY: Yes, Your Honor.

9 THE COURT: Ms. Manigault?

10 MS. MANIGAULT: Yes, sir.

11 THE COURT: State will go first and
12 Ms. Manigault goes last; is that correct?

13 MR. GREGORY: I believe the State goes last
14 because she put the defendant up.

15 THE COURT: She did? Oh, excuse me. Duh.
16 Okay. Yes.

17 MS. MANIGAULT: Flip it.

18 THE COURT: Are you going to require him to end
19 on the law?

20 MS. MANIGAULT: No, sir.

21 THE COURT: Okay. Very good.

22 (At 11:52 a.m., jury entered the courtroom.)

23 THE COURT: Mr. Foreman, ladies and gentlemen,
24 has everybody gotten their lunch orders in?

25 THE JURY: (Affirmative responses.)

1 THE COURT: All right. We will now move to the
2 third phase of this case, which is closing
3 arguments. Ms. Manigault will go first and the
4 State will go last because they have the burden of
5 proving their case.

6 All right. Ms. Manigault.

7 MS. MANIGAULT: Thank you, Your Honor.

8 Ladies and gentlemen, I want to thank you for
9 your attention and attentiveness. I noted that some
10 of you were taking notes when Your Honor was
11 instructing you about the use of notes when he gives
12 you the charge.

13 As I told you in our opening statement that
14 there is a presumption of innocence that follows
15 through with a person that's charged, in this case
16 the defendant, Carl Stanley Aiken, and throughout
17 the entire trial, even when your deliberation begins
18 until you reach a unanimous verdict.

19 So the defendant does not have to prove his
20 innocence. The State has to prove to your
21 satisfaction beyond a reasonable doubt that he is
22 guilty of what he's charged with. That burden of
23 proof is totally upon the State of South Carolina
24 represented by these two attorneys and these two
25 days trial.

1 The reasonable doubt, Your Honor will give you
2 the instruction as to the law, and he's told you,
3 whatever the attorney says is not fact. It's not
4 evidence, but you take the law from him and we're
5 arguing our points of views. So Your Honor will
6 charge you the law applicable to both parties.

7 What I'm asking you to do is apply the facts.
8 Your are the fact finders, the judges of the facts.
9 And I am asking that you apply the facts that you
10 find collectively, unanimously to the law that Your
11 Honor will give.

12 The defendant is charged with two charges. One
13 is the exploitation of a vulnerable adult, and the
14 other is obtaining goods under false pretenses. The
15 law and definitions, the judge will give you.

16 The issues in the case, in this case, is how
17 would Mr. Aiken know that Mr. Poore was diagnosed
18 with dementia? How would he know that he was
19 diagnosed with Alzheimer's some time in 2012 or
20 2013, as Dr. Kistler testified?

21 I offer to you and for your consideration for
22 you to think about is that if a person is presenting
23 themselves to the public as normal going about life
24 as usual, driving an automobile, going to lunch by
25 themselves, leaving home, driving by themselves, the

1 testimony from Ms. Ford is that he received no
2 citations, traffic citations, to her knowledge.

3 The testimony by Dr. Kistler is he is -- there
4 were no safety issues that he was still driving. He
5 was still living alone. He did say that he had
6 minimal insight into his illness, but he also said
7 that the medication would boost the mind and so
8 there would be no way in presenting himself in that
9 manner that Carl Aiken would know that he would be
10 considered a vulnerable adult.

11 You cannot impute -- you should not impute that
12 knowledge to anyone in public or an individual,
13 Mr. Poore particularly. Again, on the four visits
14 that the doctor testified about -- April 16, 2012,
15 July 12, 2012, October 23, 2012, and February 1,
16 2013.

17 Dr. Kistler testified that Mr. Poore is still
18 driving. There are no safety issues. He has
19 problems forgetting names sometimes, dates
20 sometimes, days of the week sometimes, sometimes he
21 knows the days of the week, but doesn't know the
22 President. Other times he knows the President, but
23 doesn't know the days of the week.

24 Well, I offer to you that in your daily life
25 experiences, that could happen to anybody with or

1 without the diagnosis of dementia. Some people lay
2 their glasses down and don't know where it is. Some
3 people put their glasses on their head and are
4 looking all around for their eyeglasses. Some
5 people washing dishes put the dishcloth in the
6 refrigerator and looking for the dishcloth, but they
7 don't have dementia.

8 I offer to you that the issue of the work being
9 done, Ms. Ford says it doesn't look like anything
10 was done. I think Mr. Brown said the only thing he
11 noticed was the paint spot under the front porch I
12 believe. Please recall the facts as you recall
13 them.

14 My client testified he doesn't even know
15 anything about that paint spot, but my client
16 testified to the work that he did. My client's
17 interaction was not with Ms. Ford, was not with
18 Ms. Eudy, and was not with Investigator Howard.

19 My client's interaction was with Mr. Poore.
20 And Mr. Poore presented himself to my client as a
21 normal individual; so therefore, he would have no
22 insight of his condition.

23 When an individual is generally caring for
24 themselves, living alone, still driving, presenting
25 to the public, it looks like a normal individual.

1 Dr. Kistler testified that he may've been a
2 little stubborn. He was very independent.
3 Mr. Poore was very independent. He was resistant to
4 certain things. He would take his medication at
5 night, but resistant to other things, but he was
6 stable.

7 As the doctor's testimony, he was stable. His
8 judgment was fair. And sometimes some of the
9 decisions people make were not diagnosed, their
10 judgment is also fair as opposed to good or horrible
11 or bad.

12 I offer to you that in your life experiences,
13 contract work, repair work, remodel work has been
14 done and there are times when the contractor will
15 give you a total quote or an hourly quote for
16 whatever the parties can agree on.

17 Mr. Aiken testified that he gave Mr. Poore -- I
18 believe the first set of work was \$5500, and I
19 believe the second set of work he said was
20 6,000-plus dollars. If I am incorrect, it is not
21 intentional.

22 So the information that we have from the person
23 who was involved in the transaction was Mr. Aiken.
24 He gave a total sum for -- for the individual jobs.
25 Mr. Poore wrote the checks; signed the checks.

1 Mr. Aiken did not sign the checks.

2 According to Mr. Aiken, Mr. Poore instructed
3 him what bank to go to. And according to Mr. Aiken
4 and the bank official that brought the records, is
5 that a notation on the check may mean that the clerk
6 has called the individual that wrote the check to
7 verify that the check is to this person and it is
8 the correct amount.

9 Some of the State's Exhibits 1 through 13 has,
10 "Okay. Mr. Poore. Call Mr. Poore." So if a person
11 with dementia or a vulnerable adult can talk to a
12 bank personnel to say, "Yes. I wrote that check.
13 Yes. I wrote to that individual. Yes. That is the
14 right amount," he is again operating as a normal
15 individual. He's not operating under diminished
16 capacity. The doctor did say the curve is going
17 down, but he is still operating and presenting as a
18 normal individual.

19 In life experiences people hire lawyers. They
20 go to one lawyer, just like they shop for a car.
21 They go to one lawyer. That lawyer gives them a
22 price for what they want done. They don't like that
23 price, so they go to another lawyer and get another
24 price or fee. They go to another lawyer, and then
25 they decide which one of these people I want to

1 hire.

2 Life experiences says, they'll probably go with
3 the lower-cost lawyer. Not all the time. They
4 know -- they may go with the highest-cost lawyer.
5 The lawyer they choose may charge two, three, four,
6 five times more than the lowest lawyer, but that's
7 their choice. That's their decision.

8 When you car shop, you compare prices. What do
9 you want to spend? You consider what's in your
10 pocket, what's in your bank, what can you afford.
11 And according to the testimony from Mr. Aiken, this
12 discussion was had with Mr. Poore. "How do you want
13 to handle this? Lump sum costs, or do you want to
14 pay me per job?"

15 Mr. Aiken testified that Mr. Poore says lump
16 sum. All of this first work will be included in the
17 \$5,500 amount. And all of this second work will be
18 included in the 6,000-plus dollars. I don't
19 remember the exact amount.

20 Was the work done? Mr. Aiken says the work was
21 done. He did the work and completed the work as
22 requested by Mr. Poore. Again, nobody was present
23 with Mr. Poore and Mr. Aiken to overhear any
24 conversation of what was discussed or what was
25 requested.

1 Was there other services offered to Mr. Poore
2 that Mr. Aiken was paid for? Well, we will never
3 know because Mr. Poore is not here. So there
4 could've been other services not included on the
5 memo line that Mr. Aiken did for Mr. Poore.

6 I offer to you that the State has not carried
7 its burden of proof of every element in the charges
8 of both cases. An individual has to know or should
9 know is what I offer you to think about, that a
10 person is diagnosed with dementia or Alzheimer's so
11 he can know who he's dealing with.

12 So if you don't have -- if he didn't have that
13 knowledge and is dealing with front-on conversation
14 and that conversation appears normal. Mr. Aiken
15 testified that Mr. Poore invited him to his house in
16 2008 when his wife was living to come do some work
17 then. He did something for him then. And Mr. Poore
18 wanted other things done and he couldn't get back to
19 it, so he swung around in September of 2012.

20 Mr. Poore, according to Mr. Aiken, was in the
21 front yard by himself, and they had a brief
22 conversation. And as a result of that conversation,
23 Mr. Aiken went back in November of 2012 to see
24 exactly what needed to be done, to negotiate a
25 price, and to begin the work or tell Mr. Poore when

1 the work would begin.

2 So I ask that you carefully consider and
3 carefully listen to all of the elements of the
4 charge that the judge is going to give you. And
5 that as you weigh the facts of the case out, that
6 you would apply the facts to the law.

7 2012 and 2013 is a -- is a couple of years ago.
8 Memories have faded. Ms. Ford didn't remember some
9 things. My client didn't remember some things.
10 What color did you paint the room on the inside? He
11 said, "I think I painted the same color. I'm not
12 sure. It might've been brownish. I'm not sure."
13 So memories have faded for everybody. Life's
14 experiences every day pushes things out of the mind
15 that are not necessary to be there to make room for
16 new information.

17 So I offer to you that you should find the
18 defendant not guilty of exploitation of a vulnerable
19 adult and not guilty of obtaining goods by false
20 pretenses.

21 THE COURT: Mr. Gregory.

22 MR. GREGORY: May it please the Court?
23 Ms. Manigault?

24 Good morning, ladies and gentlemen. Good
25 afternoon, ladies and gentlemen. You've heard all

1 the evidence in this case. The evidence is closed.
2 In a few minutes, the judge is going to instruct you
3 on the law, what the law is according to the State
4 of South Carolina. What I say the law is and what
5 Ms. Manigault says the law is, is -- what matters is
6 what the judge says.

7 If we misinterpret the law, the judge is the
8 ruler of the law and he's going to tell you that in
9 a second. Again, the State has the burden of proof.
10 It is my job to prove beyond a reasonable doubt that
11 this defendant is guilty of exploitation of a
12 vulnerable adult and taking goods under false
13 pretenses.

14 And, again, as we talked about earlier, that
15 beyond a reasonable doubt standard is -- is a heavy
16 standard. It is not your civil case where just the
17 weight tips just ever so slightly in favor. It's a
18 heavy standard. It's firmly convinced. Are you
19 firmly convinced that this defendant is guilty of
20 these two charges?

21 I want to take a minute just to talk about each
22 charge and the facts of the case and what you heard
23 and apply it to the laws. The first one is
24 exploitation of a vulnerable adult.

25 In South Carolina, it is defined as -- a

1 vulnerable adult is defined as anyone over 18 years
2 old. We know that. Mr. Poore is 73 years old in
3 2012 when he met Dr. Kistler. He's over 18. He
4 suffers from a mental or physical condition which
5 substantially impairs his ability to adequately care
6 for himself or protect himself.

7 You heard Dr. Kistler say that Raymond was
8 referred to him in 2012. He met him for the first
9 time on April 16, 2012. At that time, he scored
10 very poorly on the Montreal Knowledge Test that he
11 gave him. He couldn't even name what a rhinoceros
12 was. I think he said he scored a 13 or 17 out of 30
13 on that test.

14 Dementia. He was headed for dementia. He was
15 CAT scanned and later came back dementia, early
16 onset Alzheimer's is what he's talking about.

17 Over the course of his time meeting with
18 Dr. Kistler, his ability to know who Dr. Kistler was
19 and day of the week had changed. And he -- as
20 Dr. Kistler said, it's a progressive decline.
21 That's what dementia is. He -- he prescribed some
22 medication for that to help boost it ever so
23 slightly as he said, but really just try to keep it
24 from going -- deteriorating too fast. And that's
25 what he did.

1 Dr. Kistler also said that when he would come
2 in, he was in a jovial, almost an inappropriate
3 laughing behavior. And that's exactly what the
4 defendant said. When he was meeting with him, he
5 described his behavior exactly the same. He said it
6 was -- he was happy-go-lucky, jovial.

7 So what Dr. Kistler took as might be a problem
8 here, he took it as this guy is completely fine.
9 There's nothing wrong with him. He's joking. He's
10 having a good time. Keep that in mind what
11 Dr. Kistler was telling you about that, about his
12 behavior, what he knew and what he didn't know. He
13 couldn't remember who Dr. Kistler was.

14 The medication that Ms. Ford has to go and lay
15 out every day. Remember it substantially impairs
16 his ability to care for himself. He couldn't care
17 for himself. He needed somebody to lay out his
18 medication for him.

19 Yes, he was driving. And Dr. Kistler said it
20 was a recolonize. He did say in his report that
21 there were safety issues, safety concerns that he
22 had to the point where he said no nighttime driving,
23 no -- no highway driving. Safety concerns based on
24 his ability to drive a car.

25 But, again, as Ms. Manigault said, that's an

1 independent thing. That's a hard thing to take away
2 from somebody, especially an older man, to say, "You
3 can't drive anymore." And even Dr. Kistler said
4 that. He said that made him mad, so he compromised.
5 He had his concerns and he restricted the driving.
6 He suggested restricted driving because Dr. Kistler
7 can't make him stop driving. He can make
8 suggestions. He can make suggestions what medicine
9 to take.

10 Not only did Ms. Ford put out medicine, but she
11 had a calendar. Remember the calendar she talked
12 about? Every Sunday she'd go lay out the medicine,
13 but also do the calendar so he could be where he's
14 supposed to be. Raymond's supposed to be there.
15 She took him to all his doctor appointments. He
16 needed that help to care for himself, to care for
17 his health. He did live alone. He ate out all the
18 time. She took him and she ate out with him
19 80 percent of the time.

20 Generally, keep in mind that Dr. Kistler said
21 this is a slow -- this is a progressive disease,
22 dementia is. It's -- it's not one of those things
23 that one -- one day he's fine and the next day
24 he's -- he's not able to communicate with us. It's
25 a progressive disease.

1 The second part of exploitation of a vulnerable
2 adult is we have the vulnerable adult, and then the
3 exploitation of that adult. And the State gives us
4 three areas that a vulnerable adult can be
5 exploited.

6 The first one is they're forced to do labor.
7 Forced to do something that they shouldn't have to
8 do.

9 The second one is improper, unlawful,
10 unauthorized use of funds or assets.

11 And the third one, which I'm going to spend the
12 majority of my time on, is the defendant causes the
13 vulnerable adult, in this case Mr. Poore, to
14 purchase goods or services. In this case, it's
15 services. This is painting a house. This is doing
16 work around the house and it's for the benefit of
17 the defendant, so he's purchasing something for the
18 benefit that he wrote checks to the defendant.

19 You heard the defendant get up here and
20 testify, "I cashed these checks. These were my
21 checks for work that I did," so it's for the benefit
22 of this defendant. But this also has to be done,
23 and the State Statute gives us a list of things that
24 have to accompany this.

25 And there's such things as duress. No duress

1 here.

2 Harassment. Doesn't seem to be harassment
3 here.

4 But the last one is swindle. And swindle,
5 according to the statute, is to cheat somebody out
6 of their property. To cheat somebody out of their
7 property. It's an overreaching. It's creating a
8 scheme whereby you can take property from somebody.

9 Ladies and gentlemen, I submit to you, this was
10 a scheme. The housework -- the supposed housework
11 that was done. You will be able to take these
12 pictures back to the jury room, and I know putting
13 them on the projector with the lights in here and
14 the lights, they're hard to see. I -- I recognize
15 that. But when you step back into your jury room,
16 you will look at these.

17 The defendant got on the stand and said he
18 pressure washed this house. He pressure washed the
19 fascia board. He replaced some of the fascia board.
20 Replaced some of the gutters.

21 Look at this. Look at these pictures. He said
22 there was mildew and mold on it. There still is.
23 And if you look at these closely, you -- you will
24 see that back in the jury room.

25 I found this one extremely interesting. When

1 he was on the stand, he said that -- and as you can
2 see, it's tough to see. There's a -- I think he
3 said quarter-inch piece of wood here. He told you
4 he replaced that. He told you he replaced the
5 fascia board.

6 And I asked him that twice. And the reason I
7 asked him that is because let's remember, this
8 picture was taken in May of 2013. All the work was
9 supposedly done prior to that. So if he
10 replaced this fascia board prior to that, why is
11 there still mold and mildew on the house? Why is
12 that still there? This wasn't replaced. This
13 hasn't been replaced.

14 Cheat somebody out of their property, a scheme
15 to cheat somebody. That's what this picture shows.
16 This picture with a little bit of paint right above
17 the front door, why is there paint above the front
18 door? I submit to you because he wanted to make it
19 look -- he's getting lots of checks for painting, so
20 got to make it look like I'm doing something.

21 So if Mr. Poore opens his front door and steps
22 out and looks up, that's what he's going to see.
23 That's what he's going to see. That's the scheme to
24 cheat somebody out of their property, out of their
25 money.

1 You will also have the benefit of looking at
2 the checks back there. Each -- we went through each
3 check. And I'm not going through each check right
4 now. Look at the checks for painting; \$1,250.
5 Painting and trees; \$850. We're over \$2,000 at that
6 point. Paint exterior; \$1,550. We're up to over
7 \$3,000 for painting.

8 Does this house -- now, he said he didn't paint
9 all this. He said he painted just -- just a little
10 bit right here. Is that \$3,000 worth of stuff? Or
11 is this a scheme? Is this a plan to take money
12 from -- from an elderly gentleman? That's your
13 question. That's the question that you will answer
14 back there today.

15 He also talked about foundation. The check for
16 \$950 for foundation. I asked him about that, and he
17 said he built a brick -- brick wall or something. I
18 couldn't understand it. I hope your notes are clear
19 as to what he built.

20 But was he did say as far as the foundation
21 that I could understand, was that the little air
22 vents inside the foundation of the house that you
23 see, maybe two on the side of the house, just to
24 keep the air flow blowing through so there's no mold
25 underneath the house. He said he replaced all of

1 those.

2 But you hear from Jerry Brown who said, "I came
3 out there about March of 2013. I walked around that
4 whole place, and there was nothing done to the
5 foundation. There's cracks in the foundation."
6 Wouldn't a licensed contractor have seen that and
7 know that these things have just been replaced and I
8 could tell they're just replaced?

9 Same goes to the house -- or for the painting.
10 Jerry Brown said, "I walked around that place.
11 Nothing looked painted. The only place I saw paint
12 was right above the door and maybe on the column."
13 He looked at it. That's a licensed contractor.

14 That's -- and keep in mind, the judge is going
15 to tell you that you can believe part of what a
16 witness says, all of what a witness says, or none of
17 it. And you will assess the credibility of each
18 witness, so who do you find credible?

19 Jerry Brown does not know Terry Ford, did not
20 know Raymond Poore. He was called out there just to
21 look, and he said nothing was done except for the --
22 the paint right there in front of the door. And he
23 was adamant about that. And the interior paint, you
24 heard Elizabeth Eudy say nothing was painted inside.
25 And the defendant said, "I painted two rooms and the

1 kitchen."

2 Someone is going over there as Elizabeth did
3 to -- remember, Elizabeth said, "I went over there
4 to fix his phone. I had to -- I always had to set
5 up his cell phone. I had to set up his computer. I
6 had to help him with that. He got a vacuum cleaner.
7 I had to help him with that." She was over there.
8 If a house is painted on the inside, she's going to
9 see it. She's going to know.

10 Ms. Ford says, "I never saw the defendant there
11 working. I never saw any result of any work." If a
12 house is painted, two rooms are painted. The
13 kitchen is painted, the lady that's there once a
14 week putting out medication and hanging the
15 schedule, she's going to know that. She's going to
16 see that.

17 It's a scheme to swindle. It's to cheat
18 someone out of their property. Ladies and
19 gentlemen, that's exactly what this defendant did,
20 and that's the exploitation of Mr. Poore. He
21 cheated him out of his money.

22 There's one other thing I want to -- I want you
23 to look at when you're back in your jury room. If
24 you look closely at the dates of these, of the
25 checks, when they were written to him, there are two

1 checks originally at the very beginning. He says it
2 was for work that he was supposed to do, but the
3 majority of these checks are from late January and
4 February.

5 Now, I find that interesting because we heard
6 from multiple witnesses to say in March of 2013,
7 that's when people started staying with him
8 full-time. February -- February 14th, February
9 18th, February the 4th, we're writing big checks.
10 He's writing big checks. Scheme. Cheating somebody
11 out of their money for work that no one saw done,
12 that the independent contractor said was not done.

13 The last charge, ladies and gentlemen, is very
14 similar to what I've been discussing as far as a
15 scheme. It's obtaining goods under false pretenses.
16 And what that means is, you obtain -- it's just like
17 it says, obtain goods.

18 So in this case it's for checks, it's money,
19 with the intent of misrepresenting and saying, "I'm
20 going to do something for you for these checks," and
21 then not doing it. And you have that intent to
22 cheat, to defraud them. That's what happened here,
23 ladies and gentlemen. There was a scheme to cheat
24 Mr. Poore out of his money, and that's exactly what
25 this defendant did.

1 If you're spending over \$14,000 and you're
2 doing this much work, don't you hand over receipts?
3 Ms. Ford said, "I talked to him on the phone."
4 Dennis Larson said, "We were scheduled to meet with
5 the defendant to get the receipts." No receipts
6 were ever brought. He had no intention of bringing
7 receipts. Why, ladies and gentlemen? Because he
8 didn't have receipts.

9 The independent contractor said, "I talked to
10 him on the phone too. He just hung up on me." But
11 this defendant said, "No. I didn't talk to Ray. I
12 didn't talk to Terry Brown. I didn't talk to Terry
13 Ford. I didn't talk to anybody." It's your job to
14 assess the credibility of the witnesses. Who do you
15 find credible? Who do you find believable?

16 I submit to you, ladies and gentlemen, this
17 defendant is guilty of exploitation of a vulnerable
18 adult and obtaining goods under false pretenses.
19 Thank you.

20 THE COURT: All right. Mr. Foreman, it's time
21 for me to charge you on the law in this case.
22 You've been here sitting listening to closing
23 arguments for a few minutes. I anticipate my charge
24 will probably be in the neighborhood of 25, 30
25 minutes. Would you like to take a break, or would

1 you like to go forward? Would you check with your
2 jury please, sir?

3 THE FOREMAN: Go forward.

4 THE COURT: I figured you would say that.

5 All right. Ladies and gentlemen of the jury,
6 now that you've heard all the evidence that's been
7 presented in this case, the arguments of the
8 attorneys in this matter, it is my duty as the trial
9 judge to instruct you on the law.

10 These instructions are going to be in three
11 parts. The first part will be the general rules
12 that define and control your duties as jurors.

13 The second aspect will be the substantive law
14 that applies in this case. In other words, what the
15 State must make out in order to prove its case
16 against this defendant.

17 And, finally, have some consideration about
18 your deliberations.

19 Mr. Foreman, I'll then go over the verdict form
20 with you and -- and -- and give it to you for you
21 and the jury to go back and begin your deliberations
22 when you're instructed.

23 Now, ladies and gentlemen, you will recall I
24 told you and it's your duty as jurors to find the
25 facts in this case. You're the sole judges of the

1 facts in this case, but you shall and you must apply
2 the law as I give it to you now to the facts as you
3 find them to be. You must follow the law and may
4 not be concerned with what you think it should be,
5 but only what it is.

6 Also, you should not be influenced by any
7 personal likes or dislikes within you, prejudice, or
8 undue sympathy that you may have for one side or the
9 other. That means that you are to decide this case
10 solely upon the evidence that's been presented to
11 you here in this courtroom and according to the law
12 as I give it to you now. And if you'll recall again
13 in this case, you took an oath that you would do
14 just that.

15 Also, the instructions I give to you now are
16 important. All of them are important and they're
17 more than just the substantive law. You may
18 disagree with some of it, but you've got to apply
19 all of it.

20 Also, ladies and gentlemen, if I've done
21 anything throughout the course of this trial that
22 seems to indicate to you the facts or the verdict
23 you are to reach, I'm going to ask you and also
24 charge you that you are to disregard that. You and
25 you alone are the judges of the facts. And you will

1 determine what those facts are by evaluating and
2 weighing the evidence that you heard during this
3 trial.

4 And when you say "weigh evidence," that's
5 certainly not something I send back a set of scales
6 to you. You can't weigh evidence in the literal
7 sense, but it is entirely a mental process that you
8 12 jurors will go through by considering all the
9 evidence and using your good common sense and your
10 sound judgment and applying the law as I give it to
11 you now.

12 So that leads me to this: The only thing that
13 you may consider as evidence in this case is
14 twofold.

15 Number one, the sworn testimony of the
16 witnesses in this case. Whether it be from the
17 State, from the defense, or whether it be from
18 direct or cross-examination, regardless of who
19 called the witness.

20 Also, any exhibits that I have allowed into
21 evidence is evidence. As far as this case goes,
22 that's the only true evidence that you may consider
23 as evidence.

24 So that leads me to a discussion of, what is
25 not evidence? If you'll recall again, in this case

1 I told you that the arguments and the statements by
2 the attorneys is not evidence. They're not sworn
3 in. They're not cross-examined. What they say is
4 to help you understand what their case is about or
5 what they say their issues are about.

6 But at the end of the day, if your collective
7 memory differs from what either one or both of these
8 attorneys told you, then your memory of that issue
9 or fact will control.

10 Also, Mr. Foreman, remember that just because
11 something may appear in one of the jurors' notes
12 does not mean it trumps another jurors' memory of
13 that same issue. Some of you are better note takers
14 than others. That's why they call them
15 deliberations. If you have a disagreement about
16 what the fact is, then y'all just have to discuss
17 that.

18 Also, ladies and gentlemen, the questions
19 raised by the lawyers to their witnesses is not
20 evidence. Or the fact that they objected, and my
21 ruling on that objection if I let you stay in here,
22 is not evidence.

23 Also, anything that you may've heard when the
24 court is not in session is not evidence. So the
25 boils back down to what I told you, the testimony of

1 the witnesses and the exhibits that I allow into
2 evidence.

3 Now, ladies and gentlemen, we recognize two
4 types of evidence in criminal cases and in civil
5 cases in this state. And, generally, two types of
6 evidence are presented in trial.

7 We have what is known as direct evidence.
8 Direct evidence is evidence that immediately
9 establishes the facts and does not require deduction
10 or inference in order to prove that fact.

11 There's also circumstantial evidence.
12 Circumstantial evidence is a proof of a chain of
13 facts and circumstances indicating the existence of
14 a fact. And that's a fancy way of saying you infer
15 or you deduce something from another fact.

16 So let me give you an example of both. If the
17 issue in the case was whether or not I ran a stop
18 sign and my law clerk testifies that I ran the stop
19 sign, her testimony would be direct evidence because
20 what she saw immediately establishes the question at
21 issue of whether or not I ran the stop sign.

22 Think about circumstantial evidence like this:
23 If each of you were to go to bed at night and you
24 were to have a sheet -- fresh sheet of snow in your
25 front yard. If you were to wake up the next day and

1 see tracks going through that snow, you may
2 reasonably infer that someone or something walked
3 through your yard through the night, although you
4 did not actually see it. In other words, you defer
5 or you deduce a fact from another fact.

6 The only prohibition, Mr. Foreman, is the
7 deduction or inference that you reach can't be
8 based -- based on conjecture or surmise.

9 Now, ladies and gentlemen, crimes may be proven
10 by circumstantial evidence just like with direct
11 evidence, and the law makes absolutely no
12 distinction from the weight or value that you, the
13 jury, will give to either direct or circumstantial
14 evidence.

15 However, to the extent that the State relies on
16 circumstantial evidence in this case, all of the
17 circumstances must be consistent with each other and
18 when taken together point conclusively to the guilt
19 of the accused beyond a reasonable doubt. If the
20 circumstances merely portray the defendant's
21 behavior as suspicious, then that proof has failed.

22 Now, ladies and gentlemen, the State has the
23 burden of proving the defendant guilty beyond a
24 reasonable doubt. And this burden remains with the
25 State regardless of whether or not the State used

1 direct evidence, circumstantial evidence, or a
2 combination of both of those.

3 Now, in deciding which testimony that you wish
4 to -- excuse me -- in deciding what the facts are in
5 this case, ladies and gentlemen, you're going to
6 have to consider which testimony that you wish to
7 believe and which testimony you wish not to believe.

8 You have a right to disbelieve all or part of
9 any witness's testimony who testified before you in
10 this case. You have a right to believe all of it.
11 Now, in making this decision of what we call the
12 credibility of the witnesses, you may, but you're
13 not required to take into account a number of
14 factors and let me give those to you.

15 The first would be was the witness -- was the
16 witness able to hear or see or know the things about
17 which that witness testified?

18 How well was the witness able to recall and
19 describe the subject of their testimony?

20 What was the witness's manner while they're on
21 the witness stand? In other words, what was their
22 demeanor while they're being questioned by the
23 attorneys?

24 You may ask yourself if there's some reason a
25 witness would want to give testimony that would help

1 or hurt one side or the other.

2 Did they have a bias or interest for or against
3 any party or any issue involved in the case?

4 Also, you can ask yourself how reasonable that
5 witness's testimony was in light of all the other
6 evidence in this case and whether that witness's
7 testimony had been contradicted by what that witness
8 had said at another time or by another witness or by
9 any other evidence in the case.

10 Now, Mr. Foreman, ladies and gentleman of the
11 jury, those are simply some factors that you may
12 consider in determining the credibility of the
13 evidence when you go back and consider it.

14 And, of course, when you're sworn in as jurors,
15 you don't check your common sense at the door and
16 you shouldn't do so in this case. You should use
17 those things that in your day-to-day lives that you
18 find indicative of truthfulness and indicative of
19 lack of truthfulness in making this determination of
20 the truthfulness or the credibility of the evidence.

21 One thing you may not do, however, is to add up
22 the number of witnesses who may have appeared for
23 one side or the other in determining the issue of
24 credibility because it does not matter to you where
25 the truth comes from, whether it be a witness for

1 the State, a witness for the defense, or some
2 combination thereof.

3 Now, in this case, ladies and gentlemen, please
4 let me remind you that each indictment is a
5 freestanding separate docket. In other words,
6 Mr. Foreman, you'll have to consider one, and the
7 jury will need to try to attempt to make a unanimous
8 decision as to one charge before you consider the
9 other.

10 And you'll make your consideration of the other
11 based -- not based on your decision in the first
12 charge, but based on the testimony and evidence in
13 this case and according to the law as I give it to
14 you now.

15 Each one is separate. And I'll remind you
16 again, the fact that this gentleman was arrested,
17 charged, and indicted is not evidence of his guilt.
18 It does not raise any inference of his guilt, nor a
19 presumption of his guilt. It is simply the charging
20 mechanism by which the State of South Carolina
21 brings a person such as this defendant before court
22 for a trial and a determination by you, the jury, of
23 their guilt or innocence.

24 Now, I will remind you that the defendant has
25 pled not guilty to both indictments in this case.

1 And, therefore, that plea puts the burden on the
2 State to prove him guilty. A person charged with
3 committing a criminal offense in South Carolina is
4 never required to prove himself or herself innocent.

5 And I'll charge you that it is an important
6 rule of law in a criminal case no matter what the
7 seriousness of the charge may be that a person will
8 always be presumed innocent of the crime or crimes
9 for which they have been indicted, unless you are
10 satisfied of their guilt by proof establishing that
11 guilt beyond a reasonable doubt.

12 And this presumption of innocence, ladies and
13 gentlemen, does not end when you begin your
14 deliberations, but it accompanies this defendant
15 throughout the trial and into your deliberations
16 until you, the jury, reach a verdict of guilt based
17 on evidence satisfying you of proof beyond a
18 reasonable doubt.

19 The presumption of innocence and the law is
20 said to be like a robe of righteousness which is
21 placed about the shoulders of the defendant and
22 where it remains until it has been stripped by the
23 State by presenting evidence satisfying you of guilt
24 beyond a reasonable doubt.

25 And the presumption of innocence, ladies and

1 gentlemen, is not just a mere legal theory, and it's
2 not just a nice -- it's just not -- just a simple
3 legal phrase. It is a substantial right which every
4 defendant is entitled, unless you, the jury, were
5 satisfied of guilt beyond a reasonable doubt.

6 So that leads me to a definition of reasonable
7 doubt and this is that: A reasonable doubt is the
8 kind of doubt that would cause a reasonable,
9 sincere, honest, and conscientious person to
10 hesitate to act in an important matter in their own
11 affairs. Proof beyond a reasonable doubt is proof
12 that leaves you firmly convinced of the defendant's
13 guilt.

14 With that being said, ladies and gentlemen,
15 there are very few things we know in this world with
16 absolute certainty. And in criminal cases, the law
17 does not require that the State overcome every
18 possible doubt.

19 If based on your consideration of the evidence
20 you are firmly convinced that the defendant is
21 guilty of the crimes or crime for which he has been
22 charged, it will be your duty to find him guilty.

23 On the other hand, if you think there's a real
24 possibility that he is not guilty of either or both
25 of the charges, it will be your duty to find him not

1 guilty. A reasonable doubt may arise from the
2 evidence or from the lack of the evidence.

3 I further instruct you that a defendant in
4 every criminal case is entitled to every reasonable
5 doubt that may arise in that case. And what that
6 simply means is this: That if upon any issue of
7 fact essential to a conviction and a verdict of the
8 guilt for which he has been charged, that if you
9 have any reasonable doubt as to how that should be
10 resolved, it is your duty to resolve that in favor
11 of the defendant.

12 Now, ladies and gentlemen, in order to
13 establish criminal liability, criminal intent is
14 required to be proven. For example, the mental
15 state required to be proven by the State for a
16 particular crime might be purpose, intent, knowledge
17 recklessness, or criminal negligence.

18 Criminal intent must be proven by the State
19 beyond a reasonable doubt. Criminal intent is
20 always a matter that must be determined by you, the
21 jury, from the circumstances surrounding the
22 situation. There's no way to prove to a
23 mathematical certainty on what a person had in their
24 mind to do.

25 There's no way that medical science can dissect

1 a person's brain to determine what they had to do.
2 So the law says that in criminal cases, criminal
3 intent may be inferred from the circumstances shown
4 to have existed. And, ladies and gentlemen, that's
5 how you'll make the determination of whether or not
6 the element requiring intent is present in either
7 one of these charges.

8 It is not necessary to establish intent by
9 direct or positive evidence, but intent may be
10 established by inference in the same way as any
11 other fact by taking into consideration the acts of
12 the parties and all the facts and the circumstances
13 of this case.

14 Criminal intent is a mental state. It is a
15 conscious wrongdoing. It is up to you to determine
16 what the intent -- the defendant intended to do
17 based on the circumstances shown to have existed.

18 Criminal intent can arise from action or a
19 failure to act. It may arise from negligence,
20 recklessness, or an indifference to a duty or to the
21 consequences that are considered by law to be the
22 equivalent of criminal intent.

23 Now, Mr. Foreman, ladies and gentlemen, I know
24 that's a lot of information I just threw at you, but
25 that is the first phase of my charge. That is the

1 longest part of my charge. Let's just sit here for
2 a moment and let you digest that, and then I'm going
3 to give you the law on the substantive charges that
4 apply in this case. If anybody would like to stand
5 up and move about, you may.

6 (Brief recess.)

7 THE COURT: All right. You ready to proceed?

8 THE JURORS: (Affirmative responses.)

9 THE COURT: All right. This will be the law on
10 exploitation of a vulnerable adult.

11 Ladies and gentlemen, the defendant is charged
12 with violation of South Carolina Code of Law Section
13 43-35-85. The State must prove beyond a reasonable
14 doubt that the defendant exploited a vulnerable
15 adult.

16 Under the statutes, a vulnerable adult is
17 defined as this: It's a person 18 years of age or
18 older who has a physical or mental condition which
19 substantially impairs the person from adequately
20 providing for his own -- for his or her own care or
21 protection.

22 This includes a person who is impaired in the
23 ability to adequately provide for the person's own
24 care or protection because of the infirmities of
25 aging, including but not limited to: Organic brain

1 damage, advanced age, and physical or mental or
2 emotional disfunction. A resident of a facility is
3 a vulnerable adult.

4 Under the statute, exploitation means this:
5 Causing or requiring a vulnerable adult to engage in
6 activity or labor which is improper, unlawful, or
7 against the reasonable and rational wishes of the
8 vulnerable adult.

9 Exploitation does not include requiring a
10 vulnerable adult to participate in an activity or
11 labor which is part of a written plan of care or
12 which is prescribed or authorized by a licensed
13 physical attending physician attending the patient.

14 Under Section B, exploitation further means:
15 An improper, unlawful, or unauthorized use of the
16 funds, assets, property, power of attorney,
17 guardianship, or conservatorship of a vulnerable
18 adult by a person for the profit or advantage of
19 that person or another person.

20 It also means under Section C: Causing a
21 vulnerable adult to purchase goods or services for
22 the profit or advantage of the seller or another
23 person through; number one, undue influence; number
24 two, harassment; three, duress; four, force; five,
25 coercion; or six, swindling by overreaching,

1 cheating, or defrauding the vulnerable person
2 through cunning arts or devices that delude the
3 vulnerable adult and cause him to lose money or
4 other property.

5 Undue influence means the improper use of power
6 or trust in a way that deprives a person of freewill
7 and substitutes another objective -- another's
8 objective.

9 The exercise of enough control over another
10 person that a question act by this person would not
11 have otherwise have been performed, the person's
12 free agency having been master -- let me do that
13 again.

14 The exercise -- this is under undue influence.
15 The exercise of enough control over another person
16 that a question act by this person would not have
17 otherwise been performed, the person's free agency
18 having been overmastered.

19 Harassment means words, conduct, or action that
20 being directed at a specific person annoys, alarms,
21 or causes substantial emotional distress to that
22 person and serves no legitimate purpose.

23 Duress means a threat of harm made to compel a
24 person to do something against his or her will or
25 judgement.

1 Force means power, violence, or pressure
2 directed against another person or thing.

3 Coercion means compulsion of a free agent by
4 physical force, moral or economic force, or threat
5 of physical force.

6 And, finally, ladies and gentlemen, swindle
7 means to cheat a person out of property.

8 That's the law on exploitation of a vulnerable
9 adult.

10 And, Mr. Foreman, I do not send my charges back
11 to you, but if at any time or at any place the jury
12 wants to hear more about the law and any part of my
13 charge, I'll be more than glad to give it to you.

14 The next charge in this case is obtaining goods
15 under false pretenses and this is under Code Section
16 16-3-240. The defendant is charged with obtaining
17 goods by false -- false pretenses. The State must
18 first prove beyond a reasonable doubt that the
19 defendant used false pretense or representation.

20 A false pretense is a false representation of
21 an existing or past fact which is known by the
22 defendant to be false and is made to induce another
23 person to give up something of value.

24 Next, the State must prove beyond a reasonable
25 doubt that the defendant used the false pretense to

1 obtain the signature of a person on a written
2 instrument or to obtain from another person any
3 money, valuable security, or other real or personal
4 property with the intent to cheat and defraud the
5 person of that property.

6 Intent means willful, intending to result which
7 actually occurs, not accidentally or involuntarily.
8 Intent may be shown by acts in conduct of which of
9 the defendant and other circumstances from which you
10 may naturally and reasonably infer intent.

11 Now, that is the law on obtaining goods under
12 false pretenses.

13 And, Mr. Foreman, that leads me to the final
14 aspect of my charge, and that's the considerations
15 about your deliberations.

16 When you began the jury selection process
17 downstairs and up here in front of me, you
18 represented that you could be fair and impartial to
19 both the State and to the defendant in this matter,
20 and that's why you were chosen to be on this jury.
21 You're not to serve on a jury to be partisans or
22 advocates for one side of the case or the other.

23 Also, although this has been a relatively short
24 case, you're not to be in a hurry to rush to
25 judgment. In fact, the definition of deliberation

1 is this: It is a careful consideration, weighing up
2 with a view to a decision.

3 Now, regardless of what any of you may think
4 about our judicial system, I would submit to you
5 that the genius of the system is that it allows 12
6 men and women, such as yourselves, who come from
7 different walks of life, who have different
8 experiences, and perspectives who come together to
9 listen to the testimony and the evidence and the law
10 and go back and engage in meaningful, courteous, and
11 deliberate -- deliberations, and ultimately to
12 hopefully to come to a unanimous decision.

13 Remember, you're not partisan, but you're the
14 sole judges of the facts. When I send word back to
15 you to begin your deliberations, I'm going to ask
16 and I'm going to instruct that you listen to
17 everyone's points and their points of view, allow
18 people to explain to you why they have those points
19 of view and where they come up with them, and
20 discuss through and consider all the evidence that
21 you've been presented to you from the testimony or
22 the exhibits.

23 You should not be in a big hurry. This case is
24 important to both the State and to this defendant.
25 They will not have a second bite at the apple. This

1 is their only day in court.

2 Now, in order for your verdict to stand, it
3 means it has to be unanimous. In other words, all
4 12 of you must agree. But with that being said,
5 you're going to have to decide this case by
6 yourselves in some sense of the word and do so in
7 discussions -- excuse me -- discussions with your
8 fellow jurors.

9 If the conversation convinces you that it is a
10 certain ruling or finding in this case that's the
11 right thing to do, don't be afraid to change your
12 mind about the weight of the evidence if you think
13 that is the right thing to do.

14 On the other hand, do not change a firmly held
15 belief as to what the facts in this case are simply
16 to appease your fellow jurors.

17 Now, Mr. Foreman, if at any time the jury needs
18 anything, I'm going to ask that you write it down on
19 a piece of paper, send it to me, and sign it and we
20 will respond accordingly here in the courtroom.
21 When you get back there, I anticipate -- has the
22 lunch gotten back there yet?

23 THE BAILIFF: Should be coming any minute.

24 THE COURT: It should be coming any time soon.
25 Feel free to eat your lunch over your deliberations,

1 and we'll go forward that way.

2 Now, if you have any questions about anything
3 once you send the word out, stop your deliberations.
4 Don't deliberate any further until we respond to
5 you. Okay.

6 One thing you don't need to do is tell us where
7 the jury stands numerically because that's never any
8 of our business. If you're 11 to 1 or 6 to 6 or any
9 possible combination of that, keep that to
10 yourselves. Don't tell us anything about that.
11 Okay, sir?

12 Now, when you fill out your verdict form, this
13 will be your options. The first charge will be
14 consideration of the exploitation of a vulnerable
15 adult. If you want to go to the second charge
16 first, that's your discretion. But I have to put
17 them in some order, and the way it appears is really
18 of no consequence.

19 The first option you have is under the
20 vulnerable adult. It's as to the charge of
21 exploitation of a vulnerable adult. "We the jury
22 unanimously find the defendant not guilty."

23 If that is the jury's verdict, then you'll
24 check that option by "A," and then you'll go
25 consider the next charge.

1 The other option under this charge would be as
2 to the charge of exploitation of a vulnerable adult.
3 "We the jury unanimously find the defendant guilty."
4 If that's your decision, then you'll check "B" and
5 go down to the next charge or vice versa.

6 Under the following charge, obtaining goods
7 under false pretenses, you'll have the same options,
8 the same or. So as to the charge of obtaining goods
9 under false pretenses, "We the jury unanimously find
10 the defendant not guilty."

11 Again, you'll check that option. Then you'll
12 do the same under "B" that, "We the jury as to the
13 charge of obtaining goods under false pretenses
14 unanimously find the defendant guilty."

15 Once you have reached a decision as to both
16 charges, then I'm going to ask that you sign your
17 name to it, Mr. Foreman. When you give the verdict
18 form, you'll fold it over and crease it, knock on
19 the door, and we'll receive you back into evidence.
20 Okay.

21 Now, with that being said, I'm going to ask
22 that you go back to your jury room, and I'm going to
23 ask these lawyers whether I misstated a point of
24 law, if I omitted in telling you a point of law. I
25 don't think I'll bring you back here, but it may be

1 the situation. Do not begin your deliberations yet
2 until we send word to start your deliberations.
3 When we do that, you'll get the verdict form and the
4 exhibits. Okay, sir.

5 Madam alternate, once we send word for them to
6 begin their deliberations, you can get your lunch
7 and come back out if you don't mind.

8 THE ALTERNATE: Okay.

9 THE COURT: And I'd like to speak to you for a
10 second.

11 THE ALTERNATE: Okay.

12 (At 12:53 p.m., the jury exited the courtroom.)

13 THE COURT: Any additions or exceptions from
14 the State?

15 MR. GREGORY: None, Your Honor?

16 THE COURT: From the defense?

17 MS. MANIGAULT: None, Your Honor.

18 THE COURT: All right. If you guys would look
19 at the exhibits and make sure y'all have those.

20 And, madam bailiff, if you would take the
21 verdict form and those exhibits and tell them to
22 begin their deliberations.

23 (At 12:54 p.m., the jury began their
24 deliberations.)

25 THE COURT: If you're getting ready to go

1 anywhere, if you'll leave your number with my law
2 clerk so she can get to you. But let me thank the
3 lawyers for your preparation today. I'm sorry about
4 the hacking and coughing through the whole thing.
5 It's just been one of those things.

6 (The courtroom personnel was in recess awaiting
7 a verdict.)

8 THE COURT: We have a question and the question
9 is: "Can we have a definition of exploitation of a
10 vulnerable adult?" I'm going to clarify. I think
11 they probably just want to have the whole charge,
12 but I'll ask.

13 Would you bring the jury in?

14 THE BAILIFF: (Complying.)

15 (The jury entered the courtroom at 1:40 p.m.)

16 THE COURT: Mr. Foreman, the jury has a
17 question and this is it: "Can we have the
18 definition of exploitation of a vulnerable adult"?

19 Now, if you recall, you had two definitions.
20 One was what a vulnerable adult was, also what
21 exploitation means. Do you want the entire charge,
22 or do you want a particular aspect? I'm good to do
23 either way you want to go.

24 MR. FOREMAN: The big one was the first one,
25 the first part, what is a vulnerable adult?

1 THE COURT: Well, tell you, let's do this so
2 you're not picking and choosing.

3 MR. FOREMAN: Yeah.

4 THE COURT: Let's just go ahead. It's really
5 four pages -- or less than four pages. Let me just
6 give you the whole thing and see if that answers it
7 to you. And I'll -- I'll try to do it so that you
8 understand each version. Okay. All right.

9 First, ladies and gentlemen, the defendant is
10 charged with violation of South Carolina Code of Law
11 Section 43-35-85. In this case, the State must
12 prove beyond a reasonable doubt that the defendant
13 exploited a vulnerable adult.

14 This is the definition under the statute of a
15 vulnerable adult: It is a person 18 years of age or
16 older who has a physical or mental condition which
17 substantially impairs the person from adequately
18 providing for his or her own care or protection.

19 This includes a person who is impaired in the
20 ability to adequately provide for the persons own
21 care or protection because of the infirmities of
22 aging, including but not limited to: Organic brain
23 damage, advanced age, and physical or mental, or
24 emotional dysfunction. A resident of a facility is
25 a vulnerable adult.

1 Now, that is the definition of a vulnerable
2 adult. The next would be the definition of
3 exploitation and then subpar-definitions under
4 Section C.

5 Under the statute exploitation means: Causing
6 or requiring a vulnerable adult to engage in
7 activity or labor which is improper, unlawful, or
8 against the reasonable and rational wishes of the
9 vulnerable adult.

10 Exploitations does not include requiring a
11 vulnerable adult to participate in an activity or
12 labor which is a part of a written plan of care or
13 which is prescribed or authorized by a licensed
14 physical physician attending the patient, or
15 exploitation can mean under the statute an improper,
16 unlawful, or unauthorized use of the funds, assets,
17 property, power of attorney, guardian, or
18 conservative -- conservatorship of a vulnerable
19 adult by a person for the profit or advantage of
20 that person or another person.

21 Or it can also mean causing a vulnerable adult
22 to purchase goods or services for the profit or
23 advantage of the seller or another person through
24 undue influence; two, harassment; three, duress;
25 four, force; five, coercion; or swindling by

1 overreaching, cheating, or defrauding the vulnerable
2 adult through cutting, arts, or devices that delude
3 the vulnerable adult and cause him to lose money or
4 other property.

5 So it could be any of -- any of those five, and
6 these definitions are the sub-definitions included
7 in part "C."

8 Undue influence means the improper use of power
9 or trust in a way that deprives a person of freewill
10 and substitutes another objective. The exercise of
11 enough control over another person that a question
12 act by this person would not have otherwise have
13 been performed. The person's free agency having
14 been overmastered.

15 Harassment means words, conduct, or action that
16 being directed at a specific person annoys, allow,
17 alarms, or causes substantial emotional distress to
18 that person and serves no legitimate purpose.

19 Duress means a threat of harm made to compel a
20 person to do something against his or her will or
21 judgment.

22 Force means power, violence, or pressure
23 directed against a person or thing.

24 Coercion means compulsion of a free agent by
25 physical, moral, or economic force or threat of

1 physical force.

2 And, finally, swindle means to cheat a person
3 out of property.

4 Now, Mr. Foreman, does that respond to the
5 jury's inquiry?

6 MR. FOREMAN: Yes.

7 THE COURT: Okay. If you would, stop your
8 deliberations. I'm going to ask the attorneys
9 whether or not there are any exceptions or additions
10 to what I've given to you. And if so, I'll bring
11 you back. If not, we'll send word for you to resume
12 your deliberations. Has everybody gotten a lunch
13 and things you need for that?

14 THE JURORS: (Affirmative responses.)

15 THE COURT: Okay. Good. If you'll go back to
16 the jury room, please.

17 (At 1:46 p.m., the jury exited the courtroom.)

18 THE COURT: All right. Any additions or
19 exceptions from the State?

20 MR. GREGORY: Not from the State, Your Honor.

21 THE COURT: From defense?

22 MS. MANIGAULT: None from the defense, Your
23 Honor.

24 THE COURT: All right. We'll be in recess
25 again.

1 MS. MANIGAULT: Just one question, Your Honor.

2 THE COURT: Ma'am?

3 MS. MANIGAULT: Just one question.

4 THE COURT: Sure.

5 MS. MANIGAULT: Is the Court making that jury's
6 request a part of the record?

7 THE COURT: I don't know, but -- are you
8 talking about the jury's question just now? Oh,
9 yeah, I always do that.

10 MS. MANIGAULT: All right. Thank you.

11 (At 1:48 p.m., the jury continued their
12 deliberations.)

13 THE COURT: All right. Guys, we have a
14 verdict. Anything from the State before we bring
15 the jury out?

16 MR. GREGORY: No, Your Honor.

17 THE COURT: From the defense?

18 MS. MANIGAULT: Nothing, Your Honor.

19 THE COURT: All right. You lawyers know this,
20 but if everybody would act in an appropriate manner
21 with the verdict, we'd appreciate it.

22 Would you bring the jury in, please?

23 THE BAILIFF: (Complying.)

24 (At 2:52 p.m., jury entered the courtroom.)

25 THE COURT: All right. Mr. Foreman, has the

1 jury reached a verdict?

2 MR. FOREMAN: Yes, they have.

3 THE COURT: And is it unanimous?

4 MR. FOREMAN: Yes, it is.

5 THE COURT: Would you pass it to the bailiff
6 please, sir?

7 MR. FOREMAN: (Complying.)

8 THE COURT: Madam clerk, would you publish the
9 verdict please, ma'am?

10 THE CLERK: Your Honor, this is Case No.
11 2015-GS-23-03451 and Case 2016-GS-23-6460(A), the
12 *State of South Carolina v. Carl Stanley Aiken*.

13 Number one: Exploitation of a vulnerable
14 adult, Section 43-35-85. As to the charge of
15 exploitation of a vulnerable adult, Indictment No.
16 2015-GS-23-3451, we the jury unanimously find the
17 defendant not guilty.

18 Number two: Obtaining goods under false
19 pretenses, Section 16-13-240. As to the charge of
20 obtaining goods under false pretenses, Indictment
21 No. 2016-GS-23-6460(A), we the jury unanimously find
22 the defendant guilty, signed Mathew Kelliher-Gibson,
23 Foreperson, April 4, 2017.

24 THE COURT: All right. Ladies and gentlemen,
25 if that was your verdict in the jury room and if

1 that is your verdict now, will each of you raise
2 your right hand?

3 THE JURORS: (Complying.)

4 THE COURT: Okay. Let the record reflect that
5 all 12 responded in the affirmative.

6 All right. Ladies and gentlemen, two things,
7 the Court is never concerned with your verdict, but
8 that you paid attention and you stayed engaged
9 throughout the trial. I watched you variously, even
10 during my rambling charge and I appreciate that.
11 And I know it's not ever easy, number one, to sit in
12 judgment of somebody, but, number two, sometimes go
13 through the proceedings that were not the most
14 exciting.

15 Y'all did that. You did your job. We thank
16 you for that. Without people like yourselves who
17 are willing to sit on a jury to do your civic duty,
18 the rule of law is nonexistent.

19 I'd like to say that you're done for the week,
20 but we're going to go forward with another trial in
21 the morning.

22 Do you know, Mr. Solicitor, what time we need
23 to have everybody report, or they can just call in
24 after 6:00?

25 MR. GREGORY: I believe they just call in after

1 6:00 to the jury hotline.

2 THE COURT: Okay. If you would, after six
3 o'clock call into the jury hotline. We're going to
4 get you -- we're going to go forward with some other
5 trials this week. Thank you for your service and
6 see you back tomorrow morning. Thank you very much.

7 (At 2:55 p.m., jury was excused from these
8 proceedings.)

9 THE COURT: Just for the record, I noticed I
10 haven't ruled on your one directed verdict --
11 directed verdict motion about availability. No I
12 did on that one. What's -- what's the one I kept
13 under advisement, please?

14 MS. MANIGAULT: Obtaining.

15 THE COURT: I'm going to deny that motion. If
16 you'll prepare me a sentencing sheet. Let me know
17 when you have it.

18 Come around, please. Do you want to make your
19 motions first?

20 MS. MANIGAULT: Yes, sir.

21 THE COURT: Okay.

22 MS. MANIGAULT: Your Honor, I would renew all
23 of my motions made at the beginning of the trial at
24 the directed verdict, and also add a motion for a
25 new trial in that the conviction on the obtaining

1 goods under false pretense, I do not believe that
2 the testimony presented, presented any false
3 representation testimony by any of the party
4 testifying for the State that would be required as
5 an element in the conviction for obtaining goods
6 under false pretense.

7 THE COURT: Okay. That is denied. That
8 evidence was, he agreed to do work that wasn't
9 performed and those would be the representations.
10 So, Mr. Aiken, come around please, sir.

11 THE DEFENDANT: (Complying.)

12 THE COURT: All right. What do you -- what
13 would you like to tell me about Mr. Aiken?

14 MS. MANIGAULT: Your Honor, my client is
15 59 years old.

16 This case was reassigned to the Public
17 Defender's Office from a private attorney.

18 He lives in Abbeville County. He's a lifelong
19 resident of Abbeville County.

20 He has a ninth grade education from Dixie High
21 School, Abbeville County.

22 He suffers from heart disease. He's on meds.
23 His diagnosis was 1996.

24 He's worked as a handyman. The Court has heard
25 his representation that he's worked that kind of

1 work for the past 30 years and has been in that work
2 with his family. He formerly worked, when he was
3 working full-time, was working at a mill.

4 He is single.

5 He has two children. Both are adults.

6 Your Honor, he's asking the Court in light of
7 the conviction -- the guilty verdict from the jury,
8 he's asking the Court if the Court would consider a
9 probationary sentence and any other conditions that
10 the Court would apply.

11 THE COURT: What is his criminal record?

12 MR. GREGORY: May it please the Court?

13 1979; petit larceny.

14 1986; burglary third degree and larceny, two
15 counts of forgery, grand larceny by trick.

16 1989; swindling, failure to return rental
17 property.

18 1991; obtaining goods by false pretenses.

19 1992; petit larceny.

20 1994; obtaining property by false pretenses;
21 petit larceny, two counts of forgery.

22 1997; no business license, three counts of
23 breach of trust, possession of crack cocaine, DUS,
24 and simple possession of marijuana.

25 1998; two counts of petit larceny, 16 counts of

1 forgery, grand larceny, strong arm robbery, burglary
2 second degree.

3 In 2000; petit larceny and breach of trust.

4 And in 2001; obtaining property under false
5 pretenses and forgery.

6 THE COURT: Tell me about his work history.
7 Sounds to me from his record, all he's made -- his
8 living has been by stealing or some offshoot of
9 that.

10 MS. MANIGAULT: Your Honor, his work history,
11 according to my client is, he's formally a mill
12 worker. And when ---

13 THE COURT: When's the last time he actually
14 worked?

15 MS. MANIGAULT: The last full-time job -- the
16 last job he had with an employer was Erskine Powers
17 in 1998 landscaping, maintenance. Otherwise, the
18 30 years he's testified to is the handy work that
19 he's been doing.

20 THE COURT: When's the last time you filed tax
21 returns? And I'm asking you, Mr. Aiken, when was
22 the last time?

23 THE DEFENDANT: '99 I believe.

24 THE COURT: '99?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: Well, first, Mr. Aiken, what --
2 tell me, is this going to make a difference? What
3 you're going to do and how you're going to make this
4 gentleman's estate or his power of attorney to
5 refund that money because it was clear to me that
6 you didn't -- that you took at least portions of
7 which were not appropriate, but I'm going to make
8 you pay back \$14,250. Tell me how much and when
9 you'll get it done.

10 THE DEFENDANT: I'm going to say -- say at
11 least two to three years or two-and-a-half years.

12 THE COURT: You're going to have to speak up.
13 You didn't have a problem speaking before. You need
14 to speak up.

15 THE DEFENDANT: I'm gonna -- I'm gonna say at
16 least two years.

17 THE COURT: Tell me what you're going to do
18 without defrauding somebody else to pay these
19 monies.

20 THE DEFENDANT: Well, I'm just -- I'm on my SSI
21 now. I really don't just do work unless someone
22 calls me.

23 THE COURT: I gotcha. Okay. So you have no
24 plan or the ability to pay?

25 THE DEFENDANT: Sir?

1 THE COURT: You have no real plans or the
2 ability to pay?

3 MS. MANIGAULT: How are you going to pay? What
4 ability do you have to pay?

5 THE DEFENDANT: About monthly.

6 MS. MANIGAULT: How much monthly?

7 THE DEFENDANT: 150, 200.

8 THE COURT: What's the longest time you've
9 spent in jail?

10 THE DEFENDANT: That was back in 2001, I
11 believe. It was five.

12 THE COURT: Five?

13 THE DEFENDANT: Yes, sir. And I haven't been
14 in no more trouble, you know, since then.

15 THE COURT: Until now. You have ten days to
16 appeal this for the record.

17 Based on your extensive criminal record of
18 thieving and stealing and related-type activity, I'm
19 going to sentence you to ten years. I'm going to
20 suspend that on the --- has he spent any time in
21 jail?

22 MR. GREGORY: No, Your Honor. He was in and
23 out. I have zero days.

24 THE COURT: --- on the service of four years.
25 You'll be on probation for five years. The only

1 reason I didn't send you to ten years today is
2 because you're going to pay \$14,250 in restitution
3 to the victim in this matter. I put it on the
4 sentencing sheet and signed the restitution order.
5 Good luck to you.

6 THE DEFENDANT: Thank you.

7 MR. GREGORY: Thank you, Judge.

8 (The proceedings concluded at 3:04 p.m.)

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1 C E R T I F I C A T E O F R E P O R T E R

2

3 STATE OF SOUTH CAROLINA

4 COUNTY OF GREENVILLE

5

6 I, the undersigned, Lisa Scott, Circuit Court
7 Reporter for the Thirteenth Judicial Circuit of the
8 State of South Carolina, do hereby certify that the
9 foregoing is a true, accurate and complete
10 transcript of record of all the proceedings had and
11 the evidence introduced in the trial of the
12 captioned cause, relative to appeal in the Criminal
13 Court for Greenville County, South Carolina, on the
14 3rd day of April, 2017.

15 I do further certify that I am neither of kin,
16 counsel, nor interest to any party hereto.

17

18

July 18, 2017

19

20

/s/Lisa Scott

21

22

Lisa Scott
Circuit Court Reporter

23

24

25

FORM 5

STATE OF SOUTH CAROLINA

County of GreenvilleCARL STANLEY Aiken, 218840

Full name and prison number (if any) of Applicant

v.

State of South Carolina

IN THE COURT OF COMMON PLEAS

APPLICATION FOR

POST-CONVICTION RELIEF

2019-CP-23- 00484

FEB - 1 PM 1:43
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 M.C.I 502, BECKMAN DR.
COLUMBIA, S.C. 29203
2. Name and location of Court which imposed sentence COURT OF GENERAL SESSIONS
OF GREENVILLE COUNTY, 305 EAST NORTH ST. GREENVILLE, S.C. 29601
3. Name(s) of co-defendant(s) (if any) N/A
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) EXPLOITATION OF A VULNERABLE ADULT-2015-BS-23-3451
 - (b) OBTAINING GOODS UNDER FALSE PRETENSES-2016-BS-23-6460A

(c) UNLAWFUL PRACTICE OF A REGULATED PROFESSION-2016-05-23-644dA

5. The date upon which sentence was imposed and the terms of the sentence:

(a) 4-4-17 4 YEARS

(b) 5 YEARS PROBATION

(c) _____

6. Check whether a finding of guilty was made:

(a) after a plea of guilty _____

(b) after a plea of not guilty ✓

(c) after a plea of nolo contendere _____

7. Did you appeal from the judgment of conviction or the imposition of sentence?

YES

8. If you answered "yes" to (7), list:

(a) the name of each Court to which you appealed:

i. S.C. COURT OF APPEAL

ii. _____

iii. _____

(b) the result in each such Court to which you appealed:

i. APPEAL DISMISSED

ii. _____

iii. _____

(c) the date of each such result:

i. 10-10-18

ii. _____

iii. _____

(d) if known, citations of any written opinion or orders entered pursuant to such results:

i. N/A

ii. _____

iii. _____

9. If you answered "no" to (7), state your reasons for not so appealing:

(a) N/A

(b) _____

- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL
- (b) FAILED TO GET FAIR TRIAL
- (c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) ON ADDITIONAL PAGES 1-3
- (b) _____
- (c) _____
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? NO
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO
- (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. N/A
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. _____
- ii. N/A
- iii. _____
- iv. _____

(c) the disposition thereof:

- i. _____
- ii. N/A
- iii. _____
- iv. _____

(d) the date of each such disposition:

- i. _____
- ii. N/A
- iii. _____
- iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

- i. _____
- ii. N/A
- 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?

No

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

- i. N/A
- ii. _____
- iii. _____

(b) the proceedings in which each ground was raised:

- i. _____
- ii. N/A
- iii. _____

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) FIRST FILING(S)
 (b) _____
 (c) _____

17. Were you represented by an attorney at any time during the course of:

(a) your arraignment and plea? NO
 (b) your trial, if any? YES
 (c) your sentencing? YES
 (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? YES
 (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?
NO

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. GREENVILLE COUNTY PUBLIC DEFENDER
DOROTHY MANAGUAT
 ii. _____
 iii. _____

(b) the proceedings at which each such attorney represented you:

i. P.D. AT ALL CRIMINAL TRIAL PROCEEDING(S), b, c, d
 ii. _____
 iii. _____

19. State clearly the relief you seek in filing this application:

ENTITLED TO NEW TRIAL

20. Are you now under sentence from any other court that you have not challenged?

NO

STATE OF SOUTH CAROLINA)

County of RICHLAND)

VERIFICATION

I, CARL S. Aiken, 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.

Carl S. Aiken

SWORN to and subscribed before me this 2nd day of January, 2017.

[Signature] (L.S.)
Notary Public

My Commission Expires: 1/20/2022

**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, CARL S. Aiken, 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.

Carl S. Aiken
Applicant

SWORN or affirmed to and subscribed before me this

2nd day of January, 2019

[Signature]
Notary Public

My Commission Expires: 1/20/2022

From Page 3 - Sections 10, 11

INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL
COUNSEL WAS INEFFECTIVE FOR FAILING TO
RAISE MOTION TO QUASH INDICTMENTS. EXHIBIT
A, INDICTMENT # 2015-GS-23-3451 WERE FILED
ON MAY 19, 2015 BEFORE GOING TO THE GRAND
JURORS OF GREENVILLE COUNTY. (SEE EXHIBIT A)
ONE YEAR LATER INDICTMENT # 2015-GS-23-3451
WAS SUPPOSEDLY ACTED ON BY THE GRAND JURORS
IT WAS ALTER FROM 2015 TO 2016 (SEE EXHIBIT C).
DIRECT INDICTMENT # 2016-GS-23-6460A, SHOWED
NO WHERE THAT IT WAS FILED WITH THE CLERK'S
OFFICE IN VIOLATION OF S.C. RULES OF CRIMINAL
PROCEDURE. (SEE EXHIBIT B). COUNSEL FAILED
TO RAISE MOTION TO QUASH CHECKS EXHIBITS
BY STATE, ALL EXHIBITS EXCEPT ONE WAS
MAGISTRATE COURT 30 DAYS CHARGES, SEE
S.C. CODE OF LAWS (1976) AMENDED SECTION
16-13-240 OBTAINING GOODS UNDER FALSE PRETENSES.

From Page 3 - SECTIONS 10, 11

APPLICANT FAILED TO GET FAIR TRIAL
 APPLICANT WAS UNABLE TO CONFRONT HIS
 ALLEGED VICTIM. APPLICANT WAS UNAWARE
 THAT VICTIM WOULD NOT BE IN COURT
 UNTIL OPEN STATEMENTS BY THE STATE
 See Record (R.P. 41, lines 10-15.

STATE FAILED TO HAVE ALL 14 EXHIBITS
 TO BE TESTIFIED TO, THE ONLY EXHIBITS
 THAT WAS TESTIFIED TO EXHIBITS (No. 3
 DATE 1-12-13, EXHIBIT NO. 4, 1-18-13 see R.P. 84 lines
 4-25 - P. 85 lines 1-25, P. 86, lines 2-11.)

APPLICANT WAS ORIGINAL CHARGE WITH
 EXPLOITATION. STATE PRESENTED 14
 EXHIBITS IN COURT. (See Record (R.P. 53, lines
 11-17.). FROM INDICTMENT # 2016-GS-23-6460A

AN INDICTMENT # 2016-GS-23-6461A CAME
 AFTER WOULD NOT PLEA TO A LESSER CHARGE
 INTIMIDATION OF A VULNERABLE ADULT. INDICTMENT
 # 2015-GS-23-3451 WAS NOT A DSS CASE
 DSS WAS NEVER INVOLVED IN THIS CASE.

THERE WAS NO JOINT INVESTIGATION WITH
 DSS WHERE THE SOLICITOR COULD
 BRING FORTH A MORE SERIOUS CHARGE.

THE EXPLOITATION CHARGE DID NOT FAIL
 UNDER THE OMBUDSMAN PROGRAM TITLE 43
 SOCIAL SERVICES CHAPTER 35 VICTIM -

From Page 3 - Sections 10, 11

WASN'T A VULNERABLE ADULT UNDER THE
"ACT" SEE DEFINITION SEC 43-35-10 UNDER
THE LAW. SOLICITOR OFFICE CAME UP WITH
NEW CHARGES AFTER APPLICANT RELIEVED
HIS ATTORNEY ON 6-21-16 (SEE EXHIBITS
D, E, F) ALL OF THIS WAS PROSECUTION
MIS CONDUCT. APPLICANT WAS ON TRIAL
FOR TWO INDICTMENT FOR THE SAME ISSUE THAT
CAME FROM THE SAME WARRANT #203A2330203952
EXPLOITATION OF A VULNERABLE ADULT ONE WARRANT
TWO INDICTMENT FOR THE SAME THING. THIS
WAS A CASE FOR THE ATTORNEY GENERAL OFFICE.

WITNESSES

Jon D Howard

Greenville County Sheriffs Office

2/9/2015

ARREST WARRANT NUMBER
2013A2330203952

ACTION OF GRAND JURY

Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2015-GS-23-
WCM

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

TERM 2015

THE STATE

vs.

CARL STANLEY AIKEN

Indictment for

2657

EXPLOITATION OF A VULNERABLE ADULT

VIOLATION § 43-35-0085(

FILED

MAY 19 2015

**Clerk of Court
Greenville County**

Exhibit-A

003071

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GREENVILLE)

INDICTMENT FOR
 EXPLOITATION OF A VULNERABLE ADULT

At a Court of General Sessions, convened on

the Grand Jurors of Greenville

County present upon their oath:

That CARL STANLEY AIKEN did in Greenville County, between the 1st day of December 2012, and the 1st day of March 2013, knowingly and willfully abuse, neglect or exploit RAYMOND POORE, a vulnerable adult, to wit: The defendant obtained funds from the victim, who suffers from dementia, claiming to have performed painting, and/or other odd jobs, which were never done. This is in violation of §43-35-0085 of the South Carolina Code of Laws (1976) as amended.

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



SOLICITOR

11605

BAR # 11605

WITNESSES

Jon D Howard

Greenville County Sheriffs Office

2/9/2015

ARREST WARRANT NUMBER

DIRECT PRESENTMENT

D.O.B. 9/29/57 B/M SSN: 251-11-8552

ACTION OF GRAND JURY

TRUE BILL

FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Guilty (RUD)

Foreperson of Petit Jury

Date: 4-4-17

DOCKET NO. 2016-GS-23-
JMG

006460A

EXhibit-B

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

July TERM 2016

THE STATE

vs.

CARL STANLEY AIKEN

Indictment for

3471

**OBTAINING GOODS UNDER FALSE
PRETENSES**

VIOLATION § 16-13-0240

ENTER
ACCT. #
DATE

Exhibit C

003731

WITNESSES

Jon D Howard *MS 5/21/16*

Greenville County Sheriffs Office

2/9/2015

ARREST WARRANT NUMBER
2013A2330203952

ACTION OF GRAND JURY

TRUE BILL

Thomas J Pad

FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2015-GS-23-
WCM

The State of South Carolina
County of Greenville

COURT OF GENERAL SESSIONS *2016*

May **TERM 2015**

THE STATE

vs.

CARL STANLEY AIKEN

Indictment for

2657.

EXPLOITATION OF A VULNERABLE ADULT

VIOLATION § 43-35-0085(

FILED

MAY 19 2015

Clerk of Court
Greenville County

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GREENVILLE)

INDICTMENT FOR
 EXPLOITATION OF A VULNERABLE ADULT

MAY 24 2016

At a Court of General Sessions, convened on

the Grand Jurors of Greenville

County present upon their oath:

That CARL STANLEY AIKEN did in Greenville County, between the 1st day of December 2012, and the 1st day of March 2013, knowingly and willfully abuse, neglect or exploit RAYMOND POORE, a vulnerable adult, to wit: The defendant obtained funds from the victim, who suffers from dementia, claiming to have performed painting, and/or other odd jobs, which were never done. This is in violation of §43-35-0085 of the South Carolina Code of Laws (1976) as amended.

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


 SOLICITOR

11605

BAR # 11605

EXHIBIT 1-12

15-3491

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)
STATE OF SOUTH CAROLINA,)
Plaintiff,)
V.)
CARL STANLEY AIKEN,)
Defendant,)

IN THE COURT OF GENERAL
SESSIONS
CASE NO.: 2013A2330203952

**MOTION AND CONSENT TO BE
RELIEVED AS COUNSEL**

2016 JUN 21 PM 2:20
CLERK
E.O. SC

This matter is before me as a Motion to be relieved as Counsel by Cedric Cunningham, Attorney for the above named Defendant. Wherein, Mr. Cunningham, requests an Order relieving him as counsel for the Defendant, Carl Stanley Aiken. The parties have mutually agreed that it is in Mr. Aiken's best interests to seek other counsel and would show unto this Honorable Court the following:

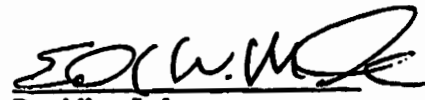
1. That the parties attended a hearing on a previous Motion to be Relieved as Counsel on April 19, 2016.
2. That at that hearing the Defendant was present along with Cedric Cunningham Esq. of Kinlaw and Cunningham, P.A. and Asst. Solicitor Jonathan Gregory, Esq..
3. That the parties indicated a mutual agreement to relieve Cedric Cunningham, Esq. as counsel in this case at that hearing.
4. That the Defendant indicated in court that he had spoken to additional counsel and wished to relieve Mr. Cunningham as counsel immediately.
5. That the Honorable Judge Edward Miller indicated that Mr. Cunningham is to be relieved upon the hiring of new counsel.

6. To date, the Defendant has elected not to retain new counsel.
7. The Defendant has indicated to Mr. Cunningham his decision to proceed Pro Se as of June 9, 2016 with full knowledge of the upcoming trial on July 13, 2016 in Greenville, SC.
8. That the Defendant and Mr. Cunningham mutually agree that Mr. Cunningham should be relieved as counsel.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Cedric Cunningham is hereby relieved of his representation of Defendant, Carl Stanley Aiken.

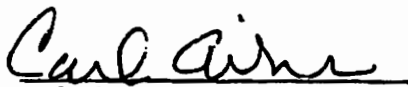
IT IS SO ORDERED.

Entered this 26 day of June 2016.


Presiding Judge

I SO CONSENT:


Cedric Cunningham
Kinlaw & Cunningham, P.A.
Attorney for the Defendant
309 Mills Avenue
Greenville, SC 29605
P: 864-509-6249
F: 864-509-6250

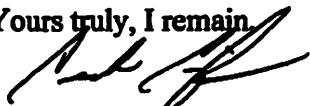

Defendant

Kinlaw & Cunningham, P.A.**Attorneys and Counselors at Law****Alex Kinlaw, III****309 Mills Ave****Cedric A. Cunningham****Greenville, SC 29605****Phone (864) 509-6249 • Fax (864) 509-6250****Email: AlexK@KinlawCunningham.com • CedricC@KinlawCunningham.com****June 15, 2016****Mr. Carl Aiken
P.O. Box 325
Donalds, SC 29638****Re: State v. Carl Aiken****Dear Mr. Aiken:**

Please find this letter as confirmation of our conversation on June 13, 2016. You confirmed that you were aware of the trial date on July 13, 2016 at 8:30 a.m.. I have included a copy of the notice that I received. You also confirmed that you still wanted to relieve my office as Counsel in your case. At that time, I indicated that I had drafted another Consent motion to be relieved as counsel. You indicated that you wanted to handle everything at the hearing. I must warn you that the trial date is set. It is not simply a hearing. If we were to walk in on that date seeking to relieve me as counsel, I'm afraid that the Judge would deny it and we have to proceed anyway. The problem with that is that we must prepare for a trial if we do not have a clear answer on the motion soon. You have indicated that you will be willing to come by my office and sign the motion and consent. I have also included with this letter supplemental discovery from the Solicitor's office.. Thanks and I look forward to hearing back from you.

Please let me know if you have any other questions.

Yours truly, I remain,



**Cedric A. Cunningham, Esq.
Kinlaw & Cunningham, P.A.**

Enclosure(s)

State of South Carolina
Solicitor, Thirteenth Judicial Circuit



Telephone: 864-467-8647
Telefax: 864-467-8610

Greenville County Courthouse
305 E. North Street, Suite 325
Greenville, SC 29601-2185

Solicitor
W. Walter Wilkins

July 13, 2016

Mr. Carl Aiken
P. O. Box 325
Donalds, SC 29638

Re: STATE OF SOUTH CAROLINA vs. CARL STANLEY AIKEN
Intimidation Of A Vulnerable Adult
Warrant/Ticket # (s) 2013A2330203952

Dear Mr. Aiken:

Pursuant to Rule 5 (C) South Carolina Rules of Criminal Procedure, Continuing Duty to Disclose, the State has recently received additional evidence or material previously requested or ordered, which is subject to discovery or inspection under this rule. The additional discovery is as follows:

1. Indictment No. 2015-GS-23-03451

Please note that the State may introduce video recording(s) relevant to this case, which are also available for viewing and downloading on the internet, at www.greenvillegov.org, using the attorney log-in screen in the Solicitor's Department. Instructions for downloading and viewing video(s) can be found at the log-in screen. Please let me know if you have problems accessing this information, and I will assist you. (VIDEO AVAILABLE IN GREENVILLE COUNTY CASES ONLY AT THIS TIME). There may also be a 911 recording available in this case. Please provide a blank CD to receive a copy. Otherwise, you may contact my investigator to make an appointment to listen to the recording.

If you have any questions regarding this defendant's case(s) or need any further assistance, please do not hesitate to contact me.

Sincerely,

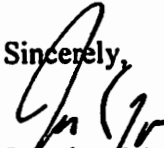

Jonathan M. Gregory
Assistant Solicitor

EXhibit-1

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

) IN THE COURT OF GENERAL SESSIONS

STATE OF SOUTH CAROLINA

2016 GS-23-6460A

2016 GS-23-6461A

vs.

ORDER FOR BAIL

CARL STANLEY AIKEN,

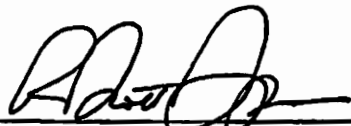
DEFENDANT.

IT APPEARS that the defendant, CARL STANLEY AIKEN, was arraigned on the charges of EXPLOITATION OF A VULNERABLE ADULT, as set forth in warrant 2013A2330203952 and was released on a \$15,000 recognizance bond on February 10, 2015. The State presented this charge and directly presented the charges of OBTAINING GOODS UNDER FALSE PRETENSES OVER \$10,000 and UNLAWFUL PRACTICE OF A REGULATED PROFESSION to the Greenville County Grand Jury on July of 2016, and true bill 2016 GS-23-6460A and 2016 GS-23-6461A was returned. Defendant is representing himself.

THE STATE NOW MOVES (1) to continue the defendant, CARL STANLEY AIKEN, on the original bond, (2) to include the newly indicted true bill in the original bond, (3) to note that the defendant has been served with a copy of the indictment and consents to such service and (4) to order the defendant to report to the Greenville County Law Enforcement Center to be fingerprinted and to provide a DNA sample on the new charges.

HAVING BEEN INFORMED by the defendant, CARL STANLEY AIKEN, that he has been served with a copy of Indictment 2016 GS-23-6460A and 2016 GS-23-6461A, that he consents to such service, and that he waives the reading thereof, the State's motion is HEREBY GRANTED and the defendant is continued on his current bond until this matter is resolved. All other bonds shall remain in effect and shall not be affected by this Order.

IT IS SO ORDERED.


Presiding Judge

Greenville, South Carolina

Dated: 8-12, 2016

Paul/K ✓

I SO MOVE:



Jonathan M. Gregory, Esquire
Attorney for the State

I CONSENT:

Carl Aiken, Defendant

WITNESSES

Jon D Howard

Greenville County Sheriffs Office

2/9/2015

ARREST WARRANT NUMBER

DIRECT PRESENTMENT

D.O.B. 9/29/57 B/M SSN: 25-855

ACTION OF GRAND JURY

TRUE BILL

FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2016-GS-23-

JMG

006461A

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

July

TERM 2016

THE STATE

vs.

CARL STANLEY AIKEN

Indictment for

2791

**UNLAWFUL PRACTICE OF A REGULATED
PROFESSION**

VIOLATION § 40-01-0200

EXhibit-6

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

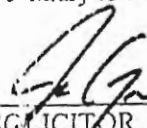
INDICTMENT FOR
UNLAWFUL PRACTICE OF A REGULATED PROFESSION

At a Court of General Sessions, convened on **JUL 26 2016** the Grand Jurors of Greenville
County present upon their oath:

DIRECT PRESENTMENT

That CARL STANLEY AIKEN did in Greenville County, between the 1st day of December 2012, and the
1st day of March 2013, practice or offer to practice a regulated profession, to wit: construction contractor, in the
State of South Carolina without a valid license. This is in violation of § 40-01-0200 of the South Carolina Code
of Laws (1976) as amended.

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



SOLICITOR

BAR # 73601

EXhibit H

State of South Carolina
Solicitor, Thirteenth Judicial Circuit

Telephone: 864-467-8647
Telefax: 864-467-8610



Greenville County Courthouse
305 E. North Street, Suite 325
Greenville, SC 29601-2185

Solicitor
W. Walter Wilkins

8/28/2015

CEDRIC CUNNINGHAM
309 MILLS AVENUE
GREENVILLE, SC 29605

RE: Plea Offer for State v. Carl Stanley Aiken

Dear Cedric Cunningham :

I am willing to make the following proposal to your above-referenced client in order to dispose of these charges by way of a guilty plea:

The Defendant will plead guilty to the following:

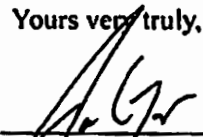
<i>Warrant Number:</i>	<i>Charge:</i>
2013A2330203952	Intimidation Of A Vulnerable Adult

The State will make the following sentence recommendations/negotiation:

The State will recommend 18 months HIP followed by probation and payment of restitution.

Please contact me as soon as possible with your client's response as plea negotiations must be concluded and the guilty plea entered before 1/8/2016 or this and any other offers are automatically withdrawn. If your client does not plead guilty by this date, the case(s) will be placed on the trial calendar for disposition without further negotiation.

Yours very truly,


Jonathan Gregory
Assistant Solicitor

M.C. I.
502, BECKMAN DR.
Columbia, S.C.
29203



PAUL B. WICKENSIMER
Greenville County Clerk of Court
305, EAST NORTH ST.
Greenville, S.C. 29601

2019-CP-23- 00484

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Greenville County

Honorable R. Lawton McIntosh, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

CARL STANLEY AIKEN,

APPELLANT

APPELLATE CASE NO 2017-000907

ANDERS BRIEF OF APPELLANT

ROBERT M. PACHAK
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Whether the trial court erred in failing to grant a directed verdict to the charge of obtaining goods under false pretenses when the State failed to present any evidence beyond a reasonable doubt concerning what false pretenses were made?

STATEMENT OF THE CASE

Appellant was convicted of obtaining goods under false pretenses after a jury trial held before the Honorable R. Lawton McIntosh on April 3, 2017, in Greenville County. Appellant was sentenced to ten (10) years suspended upon four (4) years with five (5) years probation thereafter. Restitution of \$14,250 was also ordered. Dorothy Manigault, Esq. was defense counsel. Johnathan Gregory, Esq. and Jena Hendricks, Esq. were the assistant solicitors.

This appeal follows.

ARGUMENT

The trial court erred in failing to grant a directed verdict to the charge of obtaining goods under false pretenses because the State failed to present any evidence beyond a reasonable doubt concerning what false pretenses were made.

The indictment charging appellant with obtaining goods under false pretenses read as follows:

That CARL STANLEY AIKEN did in Greenville County, between the 1st day of December 2012, and the 1st day of March 2013, with intent to cheat and defraud the victim, RAYMOND MOORE, to obtain U.S. CURRENCY, valued at more than Ten Thousand dollars, from the victim under the false pretense of having performed “handyman” work. However, the work was never done. This is in violation of §16-13-0240 of South Carolina Code of Laws (1976) as amended.

At trial, Marilee Johnson testified that she was an operations manager for BB&T bank. She oversaw 33 branches in the Upstate. (R. p. 53, lines 11-17). She identified the following checks written by the victim along with their amounts and what they were written for:

MS. HENDRICKS: Yes. This is Exhibit No. 1.

THE COURT: It's check number what?

MS. HENDRICKS: Check No. 7071.

BY MS. HENDRICKS:

Q. And can you tell us what is Exhibit No. 1?

A. This is a check drawn on Mr. Poore's account. It's dated December 1, 2012, in the amount of \$1,250 payable to Carl Aiken.

Q. And can you tell whether the check was cashed or deposited?

A. The check was cashed on January 1, 2012. Right here is our code for cashed check.

Q. Okay. And what date did the check clear Mr. Poore's account?

A. Based on this, it would be 12/1/2012, but I believe that was a Saturday.

Q. Okay. So is there anything else on there that would indicate that it cleared two days later?

A. Not on the check itself. It would be on the bank statement.

Q. All right. And this is Exhibit No. 2, check 7080. Can you tell us what Exhibit No. 2 is?

A. This is also a check drawn on Mr. Poore's account dated December 19, 2012, payable to Carl Aiken in the amount of \$2,250, and it was cashed at a branch on 12/19/2012.

Q. Okay. And can you tell us what Exhibit 3 is? This is Exhibit 3, check 7125. Can you tell us what Exhibit 3 is?

A. This is also a check off of his account dated January 12, 2013, for \$1,250, and it was cashed also on 1/12/2013.

Q. And did you say who the check was made payable to?

A. It was made payable to Carl Aiken.

Q. And can you tell us what the subject line of the check says?

A. It says for "painting."

Q. And this is Exhibit No. 4, check 7129. Can you tell us what Exhibit No. 4 is?

A. This check off of Mr. Poore's account was dated January 18, 2012, for \$1,550 made payable to Carl Aiken, and it too was cashed on 1/18/2013. And the memo line says something "exterior." I can't read it from here.

Q. Okay. And this is State Exhibit No. 5. It's check 7131. Can you tell us what Exhibit No. 5 is, please?

A. Check off Mr. Poore's account dated January 21, 2013, payable to Carl Aiken in the amount of \$950. This cash -- it cleared and was cashed on January 22, 2013.

Q. And can you tell us what that memo line says if you can read it?

A. No. I can't read it.

Q. Okay. And this is Exhibit No. 6, check 7139. Can you tell us what Exhibit No. 6 is?

A. A check off Mr. Poore's account dated January 26, 2013, for \$850, payable to Carl Aiken. It says "installed gutters" on the memo line. And it also was cashed on January 28th it looks like.

Q. Okay. All this is Exhibit No. 7. It's check 7141. Can you tell us what Exhibit No. 7 is?

A. Off -- a check off Mr. Poore's account February 1, 2013, payable to Carl Aiken for \$1,250. And some sort of work is written. I can't read that first word.

Q. Okay.

A. It cleared his account -- or it was cashed at the branch of February 1, 2013.

Q. Okay. And this is State Exhibit 8, check 7144. Can you tell us what Exhibit 8 is?

A. A check off of Mr. Poore's account dated February 4, 2013, payable to Carl Aiken in the amount of \$850. The memo line says "painting and trees." It was cashed at a branch on 2/4/2013.

Q. Okay. And this is State's Exhibit No. 9, check 7296. Can you tell us what Exhibit 9 is?

A. This is a check off of Mr. Poore's account, payable to cash. It was dated February 7th. It was in the amount of \$850, and the memo line here has Carl Aiken's name. This check here was presented to BB&T on February 7, 2013.

Q. And it was cashed?

A. Yes.

Q. We have State's Exhibit 10, check 7299. Can you tell us what that check is?

A. This is also a check off of Mr. Poore's account dated February 14, 2013, payable to Carl Aiken in the amount of \$850. And this is -- looks like it's for a house repair, and it was cashed on February 14, 2013.

Q. Okay. And this is State's Exhibit 11, check 7303. Can you tell us what Exhibit 11 is, please?

A. Check off of Mr. Poore's account dated February 15, 2013, payable to Carl Aiken in the amount of \$950 for home repair. And this check was cashed on February 16, 2013.

Q. Okay. And State's Exhibit No. 12 is check 7305. Can you tell us what Exhibit 12 is?

A. This is a check off of Mr. Poore's account dated February 18, 2013, payable to Carl Aiken for \$650. Looks like it's for "home repair," and it was cashed at a branch on two -- February 19, 2013.

Q. Okay. And this is State's Exhibit No. 13, check 7316. Can you tell us what State's Exhibit 13 is?

A. A check off of Mr. Poore's account dated February 23, 2013, payable to Carl Aiken for \$750. It was cashed on February 23, 2013. And I can't read what that says on the memo line.

Q. Oh, okay. So it was cashed at a branch?

A. It was cashed at a branch, yes.

(R. p. 58 line 9- p. 62, line 21).

Terry Ford testified that she was a cousin of Raymond Poore's. He was not able to be at trial because he had moved into an assisted living home. Prior to that she would come by and look after him and his affairs. She had a durable power of attorney in that regard. (R. p. 69, line 1- p. 74, line 7). She helped balance his bank accounts. She started seeing a lot of checks for large amounts written to appellant. The checks did not match up to what appellant was doing around the house. (R. p. 83, line 10- p. 84, line 22).

Elizabeth Eudy testified that she was Terry Ford's granddaughter. She would go over two-three times a week to help Raymond Poore with things. (R. p. 99, lines 14-15; R. p. 101, lines 10-13). She never saw work being done and she did not see appellant at the house. (R. p. 102, lines 11-23).

Jerry Brown testified that he was in the business of remodeling and building new homes. (R. p. 143, lines 20-22). Terry Ford called him to come look at the Poore house and see if he could tell her what had been done. Mr. Brown could not tell that much had been done to the house. (R. p. 145, line 10- p. 147, line 14).

At the conclusion of the State's case several direct verdict motions were made. The second motion rested in the Confrontation Clause. There was no opportunity to cross-examine

the alleged victim in the case. The witnesses who did testify gave no details of the agreement between appellant and Mr. Poole that they could testify to. The trial court denied that motion. (R. p. 181, line 3- p. 182, line 11). That ruling was in error.

Due process as guaranteed by the Fourteenth Amendment requires “that no person shall be made to suffer the onus of a criminal conviction except upon sufficient proof—defined as evidence necessary to convince a trier of fact beyond a reasonable doubt of the existence of every element of the offense.” Jackson v. Virginia, 443 U.S. 307, 316, 99 S.Ct. 2781, 2787 (1979).

Our Court has held:

[T]he trial judge is concerned with the existence or non-existence of evidence, not with its weight; and, although he should not refuse to grant the motion where the evidence merely raises a suspicion that the accused is guilty, it is his duty to submit the case to the jury if there be any substantial evidence which reasonably tends to prove the guilt of the accused, or from which his guilt may be fairly and logically deduced. [Emphasis added].

State v. Littlejohn, 228 S.C. 324, 89 S.E.2d 924, 926 (1955); State v. Edwards, 298 S.C. 272, 379 S.E.2d 888 (1989), cert. denied, 493 U.S. 895, 110 S.Ct. 246 (1989).

In applying this standard, our Court has held that evidence which is “sufficient to raise a strong suspicion of the guilt of the accused” is not sufficient to constitute “any evidence form which the guilt of the accused may be fairly and logically deduced.” State v. Totherow, 263 S.C. 275, 210 S.E.2d 228, 230 (1974). See, also, State v. Turner, 117 S.C. 470, 109 S.E. 119, 120 (1921). The motion for a directed verdict should be granted, therefore, “where evidence merely raises a suspicion of guilt, or is such to permit the jury to merely conjecture or to speculate as to the accused’s guilt.” State v. Brown, 267 S.C. 311, 227 S.E.2d 674, 677 (1976), citing State v. Matarazzo, 262 S.C. 662, 207 S.E.2d 93, cert. denied, 420 U.S. 945 (1974). “If the evidence is

consistent with both innocence and guilt it cannot support a conviction.” United States v. Varoz, 740 F.2d 772, 775 (10th Cir. 1984); United States v. Ortiz, 445 F.2d 1100, 1103 (10th Cir 1971). Guilt is only to be found when there is a “rationally supportable state of near certitude.” Evans-Smith v. Taylor, 19 F.3d 899, 906 (4th Cir 1994).

In this case the State failed to present any testimony between appellant and Mr. Poore over what they agreed to. Without testimony from Mr. Poore, appellant was unable to confront him as a witness.

CONCLUSION

Appellant's conviction should be reversed.

Robert M. Pachak
Robert M. Pachak
Appellate Defender

ATTORNEY FOR APPELLANT

This 14th day of November, 2017.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Greenville County

Honorable R. Lawton McIntosh, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

CARL STANLEY AIKEN,

APPELLANT

PETITION TO BE RELIEVED AS COUNSEL

Counsel for Carl Stanley Aiken states:

1. He is Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent appellant.
2. He has reviewed the record of appellant's trial before Judge R. Lawton McIntosh, which was held on April 4, 2017, and, in his opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. He has, pursuant to Anders v. California, 386 U.S. 738, 87 S.Ct. 1396 (1967), briefed an arguable legal issue which arose during the course of the trial.

WHEREFORE, He asks the Court to relieve him as counsel for Carl Stanley Aiken.

Respectfully Submitted,



Robert M. Pachak
Appellate Defender
ATTORNEY FOR APPELLANT

This 14th day of November, 2017.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Greenville County
Honorable R. Lawton McIntosh, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

CARL STANLEY AIKEN,

APPELLANT

**DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL**

Appellant proposes the following be included in the Record on Appeal:

- (1) True-billed indictment
- (2) Trial Transcript dated April 3, 2017

I certify that this designation contains no matter which is irrelevant to this appeal.

November 14, 2017

Robert M. Pachak

Robert M. Pachak
Appellate Defender

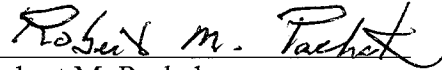
South Carolina Commission on Indigent
Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

CERTIFICATE OF COUNSEL

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

November 14, 2017.



Robert M. Pachak
Appellate Defender

South Carolina Commission on Indigent
Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Greenville County

Honorable R. Lawton McIntosh, Circuit Court Judge

THE STATE,

RESPONDENT,

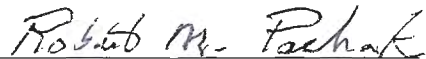
V.

CARL STANLEY AIKEN,

APPELLANT

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the Anders Brief of Appellant and Designation of Matter in the above referenced case has been served upon J. Ben Aplin, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and a copy of the Anders Brief of Appellant and Designation of Matter have been served on Carl Stanley Aiken, 218840, at Catawba Pre-Release Center, 1030 Millen Road, Rock Hill, SC 29730, this 14th day of November, 2017.


Robert M. Pachak
Appellate Defender
ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 14th day of November, 2017.

 (L.S)
Notary Public for South Carolina
My Commission Expires: July 5, 2027.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	)	THE THIRTEENTH JUDICIAL CIRCUIT
	)	
Carl Stanley Aiken, # 218840,	)	Case No.: 2017-CP-23-5234
	)	
Applicant,	)	
	)	RETURN AND MOTION TO DISMISS
v.	)	
	)	
State of South Carolina,	)	
	)	
Respondent.	)	

Respondent, making its Return to the application for Post-Conviction Relief ("PCR") filed on August 17, 2017, would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Greenville County Clerk of Court. In May of 2016, the Greenville County Grand Jury indicted Applicant for exploitation of a vulnerable adult (2016-GS-23-03451). Applicant was subsequently indicted for obtaining goods under false pretenses (2016-GS-23-06460A). Dorothy Manigault, Esquire represented Applicant at trial. Johnathan Gregory, Esquire and Jena Hendricks, Esquire prosecuted the case. On April 3, 2017, Applicant proceeded to trial before the Honorable R. Lawton McIntosh and a jury. The jury found Applicant guilty as to the obtaining goods under false pretenses and not guilty to the charge of exploitation of a vulnerable adult. Judge McIntosh sentenced Applicant to imprisonment for ten years provided that upon the service of four years the balance of the sentence would be suspended with probation for five years.

On April 11, 2017 Applicant filed a notice of appeal to the South Carolina Court of Appeals. As of the date of this Return, briefs have been filed and the appellate matter is still

pending in the Court of Appeals.

Attached to this Return and incorporated by reference are the records of the Greenville County Clerk of Court regarding the subject convictions. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

In his application for post-conviction relief, Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Denied The Actual Effective Assistance of Trial Counsel
 - a. Criminal defense has failed to file a criminal direct appeal where applicant engaged a jury trial. *Wilson v. State* 559 SE2d 581
2. Denied The Right To Appeal
3. Direct Indictments Not Filed With Court's Clerk
 - a. The 2016 indictments fail to show where they were filed with the clerk's office in violation of SC Crim. Pro R. Trial Counsel was ineffective for failing to pursue motion to quash!
4. Additional allegations pg (4-5) of Application

III.

Respondent submits that this Application for Post-Conviction Relief should be summarily dismissed without prejudice for lack of subject matter jurisdiction because Applicant's direct appeal is currently pending.

Under Rule 227, SCACR, and S.C. Code Ann. § 17-27-20(b) (1985), at the present time, PCR is not available to Applicant because the direct appeal is pending in the appellate courts. *Al-Shabazz v. State*, 338 S.C. 354, 527 S.E.2d 742 (2000). Therefore, this application should be dismissed without prejudice until such time as the direct appeal is resolved. Applicant's one-year statute of limitations will begin to run when the appellate court issues its remittitur.

IV.

WHEREFORE, Respondent moves to summarily dismiss all allegations **without prejudice** because Applicant has a pending direct appeal in the Court of Appeals.

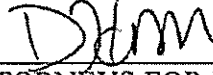
Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

DESHAWN H. MITCHELL
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

September 10, 2018 ,

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	)	
	)	
	)	2017-CP-23-5234
	)	
CARL STANLEY AIKEN, 218840	)	
	)	
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 and Motion to Dismiss** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Carl Stanley Aiken, 218840
Manning Correctional Institution
502 Beckman Drive
Columbia SC 29203

DATED this 10th day of September, 2018.


 Judy A. C. Carey, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

Carl Stanley Aiken, # 218840,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
THE THIRTEENTH JUDICIAL CIRCUIT

Case No.: 2017-CP-23-5234

**ORDER OF DISMISSAL
WITHOUT PREJUDICE**

ENTERED COMPUTER

20 SEP 28 AM 10:41
SOUTH CAROLINA - JUDICIAL CIRCUIT

This matter comes before the Court by way of an application for post-conviction relief filed August 17, 2017. Respondent made its Return, requesting the application be summarily dismissed.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Greenville County Clerk of Court. In May of 2016, the Greenville County Grand Jury indicted Applicant for exploitation of a vulnerable adult (2016-GS-23-03451). Applicant was subsequently indicted for obtaining goods under false pretenses (2016-GS-23-06460A). Dorothy Manigault, Esquire represented Applicant at trial. Johnathan Gregory, Esquire and Jena Hendricks, Esquire prosecuted the case. On April 3, 2017, Applicant proceeded to trial before the Honorable R. Lawton McIntosh and a jury. The jury found Applicant guilty as to the obtaining goods under false pretenses and not guilty to the charge of exploitation of a vulnerable adult. Judge McIntosh sentenced Applicant to imprisonment for ten years provided that upon the service of four years the balance of the sentence would be suspended with probation for five years.

On April 11, 2017 Applicant filed a notice of appeal to the South Carolina Court of

Copy mailed to

Attorney General / PPS

on 9, 28, 2018

Page 1 of 3

2017-CP-23-5234

Appeals. As of the date of this Return, briefs have been filed and the appellate matter is still pending in the Court of Appeals.

This Court has before it a copy of the records of the Greenville County Clerk of Court, Applicant's notice of appeal, PCR application, and Respondent's Return and Motion to Dismiss.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Court has reviewed the pleadings and all relevant supporting documents. Pursuant to S.C. Code Ann. § 17-27-70(b) (2003), the Court makes the following findings of fact and conclusions of law:

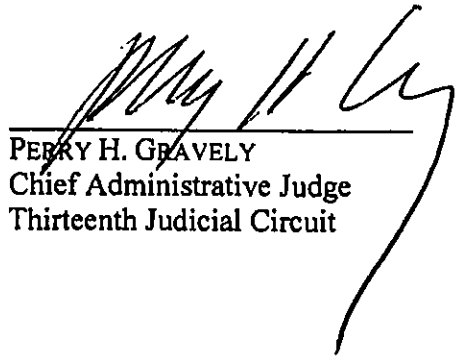
This Court finds that this matter is currently on appeal before the Court of Appeals. Under Rule 227, SCACR, and S.C. Code Ann. § 17-27-20(b) (1985), this Court finds that at the present time, PCR is not available to the Applicant because the direct appeal is pending in the appellate courts. Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (2000). Therefore, this Court finds that this Application for PCR must be summarily dismissed without prejudice until such time as the direct appeal is resolved. Applicant's one-year statute of limitations will begin to run when the appellate court issues its remittitur.



IT IS THEREFORE ORDERED:

1. That the application for post-conviction relief be dismissed **without prejudice**; and
2. That the applicant be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 20th day of Sept, 2018.



PERRY H. GRAVELY
Chief Administrative Judge
Thirteenth Judicial Circuit

Greenville, South Carolina

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State, Respondent,

v.

Carl Stanley Aiken, Appellant.

Appellate Case No. 2017-000907

Appeal From Greenville County
R. Lawton McIntosh, Circuit Court Judge

Unpublished Opinion No. 2018-UP-375
Submitted September 1, 2018 – Filed October 10, 2018

APPEAL DISMISSED

Appellate Defender Robert M. Pachak, of Columbia, and
Carl Stanley Aiken, pro se, for Appellant.

Attorney General Alan McCrory Wilson and Senior
Assistant Deputy Attorney General John Benjamin Aplin,
both of Columbia, for Respondent.

PER CURIAM: Dismissed after consideration of Appellant's pro se brief and review pursuant to *Anders v. California*, 386 U.S. 738 (1967). Counsel's motion to be relieved is granted.¹

APPEAL DISMISSED.

KONDUROS, MCDONALD, and HILL, JJ., concur.

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.

STATE OF SOUTH CAROLINA

County of GreenvilleCARL STANLEY Aiken, 218840

Full name and prison number (if any) of Applicant

v.

State of South Carolina

IN THE COURT OF COMMON PLEAS

APPLICATION FOR

POST-CONVICTION RELIEF

2019-CP-23- 00484

FEB - 1 PM 1:43
CLERK OF COURT
JUDICIAL BRANCH**INSTRUCTIONS - 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 M.C.I 502, BECKMAN DR.
COLUMBIA, S.C. 29203
2. Name and location of Court which imposed sentence COURT OF GENERAL SESSIONS
OF GREENVILLE COUNTY, 305 EAST NORTH ST. GREENVILLE, S.C. 29601
3. Name(s) of co-defendant(s) (if any) N/A
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) EXPLOITATION OF A VULNERABLE ADULT-2015-CS-23-3451
 - (b) OBTAINING GOODS UNDER FALSE PRETENSES-2016-CS-23-6460A

(c) UNLAWFUL PRACTICE OF A REGULATED PROFESSION - 2016-05-23-644A

5. The date upon which sentence was imposed and the terms of the sentence:

(a) 4-4-17 4 YEARS

(b) 5 YEARS PROBATION

(c) _____

6. Check whether a finding of guilty was made:

(a) after a plea of guilty _____

(b) after a plea of not guilty ✓

(c) after a plea of nolo contendere _____

7. Did you appeal from the judgment of conviction or the imposition of sentence?

YES

8. If you answered "yes" to (7), list:

(a) the name of each Court to which you appealed:

i. S.C. COURT OF APPEAL

ii. _____

iii. _____

(b) the result in each such Court to which you appealed:

i. APPEAL DISMISSED

ii. _____

iii. _____

(c) the date of each such result:

i. 10-10-18

ii. _____

iii. _____

(d) if known, citations of any written opinion or orders entered pursuant to such results:

i. N/A

ii. _____

iii. _____

9. If you answered "no" to (7), state your reasons for not so appealing:

(a) N/A

(b) _____

- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL
- (b) FAILED TO GET FAIR TRIAL
- (c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) ON ADDITIONAL PAGES 1-3
- (b) _____
- (c) _____
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? NO
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO
- (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. N/A
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. _____
- ii. N/A
- iii. _____
- iv. _____

(c) the disposition thereof:

- i. _____
- ii. N/A
- iii. _____
- iv. _____

(d) the date of each such disposition:

- i. _____
- ii. N/A
- iii. _____
- iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

- i. _____
- ii. N/A
- 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?

N/A

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

- i. N/A
- ii. _____
- iii. _____

(b) the proceedings in which each ground was raised:

- i. N/A
- ii. _____
- iii. _____

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) FIRST Filing(s)
 (b) _____
 (c) _____

17. Were you represented by an attorney at any time during the course of:

(a) your arraignment and plea? NO
 (b) your trial, if any? YES
 (c) your sentencing? YES
 (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? YES
 (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?
NO

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. Greenville County Public Defender
Dorothy MANAGUAT
 ii. _____
 iii. _____

(b) the proceedings at which each such attorney represented you:

i. PD AT ALL CRIMINAL TRIAL PROCEEDING(S), b, c, d
 ii. _____
 iii. _____

19. State clearly the relief you seek in filing this application:

ENTITLED TO NEW TRIAL

20. Are you now under sentence from any other court that you have not challenged?

NO

STATE OF SOUTH CAROLINA)

County of RICHLAND)

VERIFICATION

I, CARL S. Aiken, 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.

Carl S. Aiken

SWORN to and subscribed before me this 2nd day of January, 2019.

(L.S.)

[Signature]
Notary Public

My Commission Expires: 1/20/2022

**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, CARL S. AIKEN, 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.

Carl S. Aiken
Applicant

SWORN or affirmed to and subscribed before me this

2nd day of January 2019

[Signature]
Notary Public

My Commission Expires: 1/20/2022

From Page 3 - Sections 10, 11

INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL
COUNSEL WAS INEFFECTIVE FOR FAILING TO
RAISE MOTION TO QUASH INDICTMENTS. EXHIBIT
A, INDICTMENT # 2015-GS-23-3451 WERE FILED
ON MAY 19, 2015 BEFORE GOING TO THE GRAND
JURORS OF GREENVILLE COUNTY. (SEE EXHIBIT A)
ONE YEAR LATER INDICTMENT # 2015-GS-23-3451
WAS SUPPOSEDLY ACTED ON BY THE GRAND JURORS
IT WAS ALTER FROM 2015 TO 2016 (SEE EXHIBIT C).
DIRECT INDICTMENT # 2016-GS-23-6460A, SHOWED
NO WHERE THAT IT WAS FILED WITH THE CLERK'S
OFFICE IN VIOLATION OF S.C. RULES OF CRIMINAL
PROCEDURE. (SEE EXHIBIT B). COUNSEL FAILED
TO RAISE MOTION TO QUASH CHECKS EXHIBITS
BY STATE, ALL EXHIBITS EXCEPT ONE WAS
MAGISTRATE COURT 30 DAYS CHARGES, SEE
S.C. CODE OF LAWS (1976) AMENDED SECTION
16-13-240 OBTAINING GOODS UNDER FALSE PRETENSES.

From Page 3 - SECTIONS 10, 11

APPLICANT FAILED TO GET FAIR TRIAL
APPLICANT WAS UNABLE TO CONFRONT HIS
ALLEGED VICTIM. APPLICANT WAS UNAWARE
THAT VICTIM WOULD NOT BE IN COURT
UNTIL OPEN STATEMENTS BY THE STATE
SEE RECORD (R.P. 41, lines 10-15.

STATE FAILED TO HAVE ALL 14 EXHIBITS
TO BE TESTIFIED TOO, THE ONLY EXHIBITS
THAT WAS TESTIFIED TOO EXHIBITS (No. 3
DATE 1-12-13, EXHIBIT No. 4, 1-18-13 SEE R.P. 84 lines
4-25 - P. 85 lines 1-25, P. 86, lines 2-11.)

APPLICANT WAS ORIGINAL CHARGE WITH
EXPLOITATION. STATE PRESENTED 14
EXHIBITS IN COURT. (SEE RECORD (R.P. 53, lines
11-17.). FROM INDICTMENT # 2016-GS-23-6460A
AN INDICTMENT # 2016-GS-23-6461A CAME
AFTER WOULD NOT PLEA TO A LESSER CHARGE
INTIMIDATION OF A VULNERABLE ADULT. INDICTMENT
2015-GS-23-3451 WAS NOT A DSS CASE
DSS WAS NEVER INVOLVED IN THIS CASE.
THERE WAS NO JOINT INVESTIGATION WITH
DSS WHERE THE SOLICITOR COULD
BRING FORTH A MORE SERIOUS CHARGE.
THE EXPLOITATION CHARGE DID NOT FAIL
UNDER THE OMBUDSMAN PROGRAM TITLE 43
SOCIAL SERVICES CHAPTER 35 VICTIM -

From Page 3 - Sections 10, 11

WASN'T A VULNERABLE ADULT UNDER THE
"ACT" SEE DEFINITION SEC 43-35-10 UNDER
THE LAW. SOLICITOR OFFICE CAME UP WITH
NEW CHARGES AFTER APPLICANT RELIEVED
HIS ATTORNEY ON 6-21-16 (SEE EXHIBITS
D, E, F) ALL OF THIS WAS PROSECUTION
MIS CONDUCT. APPLICANT WAS ON TRIAL
FOR TWO INDICTMENT FOR THE SAME ISSUE THAT
CAME FROM THE SAME WARRANT #2013A2330203952
EXPLOITATION OF A VULNERABLE ADULT ONE WARRANT
TWO INDICTMENT FOR THE SAME THING. THIS
WAS A CASE FOR THE ATTORNEY GENERAL OFFICE.

WITNESSES

Jon D Howard

Greenville County Sheriffs Office

2/9/2015

ARREST WARRANT NUMBER

2013A2330203952

ACTION OF GRAND JURY

Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2015-GS-23-
WCM

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

TERM 2015

THE STATE

vs.

CARL STANLEY AIKEN

Indictment for

2657

EXPLOITATION OF A VULNERABLE ADULT

VIOLATION § 43-35-0085(

FILED

MAY 19 2015

Clerk of Court
Greenville County

003031

Exhibit-A

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

**INDICTMENT FOR
EXPLOITATION OF A VULNERABLE ADULT**

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

That CARL STANLEY AIKEN did in Greenville County, between the 1st day of December 2012, and the 1st day of March 2013, knowingly and willfully abuse, neglect or exploit RAYMOND POORE, a vulnerable adult, to wit: The defendant obtained funds from the victim, who suffers from dementia, claiming to have performed painting, and/or other odd jobs, which were never done. This is in violation of §43-35-0085 of the South Carolina Code of Laws (1976) as amended.

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

1

SOLICITOR

11605

BAR # 11605

WITNESSES

Jon D Howard

Greenville County Sheriffs Office

2/9/2015

ARREST WARRANT NUMBER
DIRECT PRESENTMENT

D.O.B. 9/29/57 B/M SSN: 251-11-8552

ACTION OF GRAND JURY
TRUE BILL

FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Guilty (RU)

Foreperson of Petit Jury

Date: 4-4-17

DOCKET NO. 2016-GS-23-
JMG

006460A

Exhibit-B

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

July TERM 2016

THE STATE

vs.

CARL STANLEY AIKEN

Indictment for

3471

OBTAINING GOODS UNDER FALSE
PRETENSES

VIOLATION § 16-13-0240

ENTERED
ACCT. 1/24/17

WITNESSES

Jon D Howard

WMS 5/24/16

Greenville County Sheriffs Office

2/9/2015

ARREST WARRANT NUMBER
2013A2330203952

ACTION OF GRAND JURY

TRUE BILL

Thomas J Pad

FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2015-GS-23-
WCM

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

May

TERM 2015

THE STATE

vs.

CARL STANLEY AIKEN

Indictment for

2657.

EXPLOITATION OF A VULNERABLE ADULT

VIOLATION § 43-35-0085(

EXhibit T-C

364

FILED

MAY 19 2015

Clerk of Court
Greenville County

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GREENVILLE)

INDICTMENT FOR
 EXPLOITATION OF A VULNERABLE ADULT

MAY 24 2016

At a Court of General Sessions, convened on

the Grand Jurors of Greenville

County present upon their oath:

That CARL STANLEY AIKEN did in Greenville County, between the 1st day of December 2012, and the 1st day of March 2013, knowingly and willfully abuse, neglect or exploit RAYMOND POORE, a vulnerable adult, to wit: The defendant obtained funds from the victim, who suffers from dementia, claiming to have performed painting, and/or other odd jobs, which were never done. This is in violation of §43-35-0085 of the South Carolina Code of Laws (1976) as amended.

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


 SOLICITOR

11605

BAR # 11605

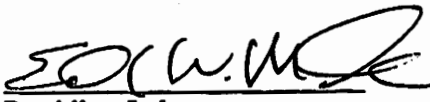
1. That the parties attended a hearing on a previous Motion to be Relieved as Counsel on April 19, 2016.
2. That at that hearing the Defendant was present along with Cedric Cunningham Esq. of Kinlaw and Cunningham, P.A. and Asst. Solicitor Jonathan Gregory, Esq..
3. That the parties indicated a mutual agreement to relieve Cedric Cunningham, Esq. as counsel in this case at that hearing.
4. That the Defendant indicated in court that he had spoken to additional counsel and wished to relieve Mr. Cunningham as counsel immediately.
5. That the Honorable Judge Edward Miller indicated that Mr. Cunningham is to be relieved upon the hiring of new counsel.

6. To date, the Defendant has elected not to retain new counsel.
7. The Defendant has indicated to Mr. Cunningham his decision to proceed Pro Se as of June 9, 2016 with full knowledge of the upcoming trial on July 13, 2016 in Greenville, SC.
8. That the Defendant and Mr. Cunningham mutually agree that Mr. Cunningham should be relieved as counsel.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Cedric Cunningham is hereby relieved of his representation of Defendant, Carl Stanley Aiken.

IT IS SO ORDERED.

Entered this 26 day of June 2016.


Presiding Judge

I SO CONSENT:


Cedric Cunningham
Kinlaw & Cunningham, P.A.
Attorney for the Defendant
309 Mills Avenue
Greenville, SC 29605
P: 864-509-6249
F: 864-509-6250


Defendant

Kinlaw & Cunningham, P.A.**Attorneys and Counselors at Law****Alex Kinlaw, III****309 Mills Ave****Cedric A. Cunningham****Greenville, SC 29605****Phone (864) 509-6249 • Fax (864) 509-6250****Email: AlexK@KinlawCunningham.com • CedricC@KinlawCunningham.com**

June 15, 2016

Mr. Carl Aiken
P.O. Box 325
Donalds, SC 29638

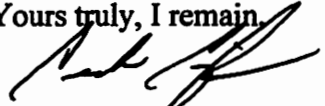
Re: State v. Carl Aiken

Dear Mr. Aiken:

Please find this letter as confirmation of our conversation on June 13, 2016. You confirmed that you were aware of the trial date on July 13, 2016 at 8:30 a.m.. I have included a copy of the notice that I received. You also confirmed that you still wanted to relieve my office as Counsel in your case. At that time, I indicated that I had drafted another Consent motion to be relieved as counsel. You indicated that you wanted to handle everything at the hearing. I must warn you that the trial date is set. It is not simply a hearing. If we were to walk in on that date seeking to relieve me as counsel, I'm afraid that the Judge would deny it and we have to proceed anyway. The problem with that is that we must prepare for a trial if we do not have a clear answer on the motion soon. You have indicated that you will be willing to come by my office and sign the motion and consent. I have also included with this letter supplemental discovery from the Solicitor's office.. Thanks and I look forward to hearing back from you.

Please let me know if you have any other questions.

Yours truly, I remain,


Cedric A. Cunningham, Esq.
Kinlaw & Cunningham, P.A.

Enclosure(s)

State of South Carolina
Solicitor, Thirteenth Judicial Circuit



Telephone: 864-467-8647
Telefax: 864-467-8610

Greenville County Courthouse
305 E. North Street, Suite 325
Greenville, SC 29601-2185

Solicitor
W. Walter Wilkins

July 13, 2016

Mr. Carl Aiken
P. O. Box 325
Donalds, SC 29638

Re: STATE OF SOUTH CAROLINA vs. CARL STANLEY AIKEN
Intimidation Of A Vulnerable Adult
Warrant/Ticket # (s) 2013A2330203952

Dear Mr. Aiken:

Pursuant to Rule 5 (C) South Carolina Rules of Criminal Procedure, Continuing Duty to Disclose, the State has recently received additional evidence or material previously requested or ordered, which is subject to discovery or inspection under this rule. The additional discovery is as follows:

1. Indictment No. 2015-GS-23-03451

Please note that the State may introduce video recording(s) relevant to this case, which are also available for viewing and downloading on the internet, at www.greenvillegov.org, using the attorney log-in screen in the Solicitor's Department. Instructions for downloading and viewing video(s) can be found at the log-in screen. Please let me know if you have problems accessing this information, and I will assist you. (VIDEO AVAILABLE IN GREENVILLE COUNTY CASES ONLY AT THIS TIME). There may also be a 911 recording available in this case. Please provide a blank CD to receive a copy. Otherwise, you may contact my investigator to make an appointment to listen to the recording.

If you have any questions regarding this defendant's case(s) or need any further assistance, please do not hesitate to contact me.

Sincerely,


Jonathan M. Gregory
Assistant Solicitor

EXhibit - F

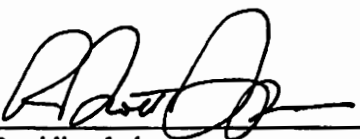
STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
COUNTY OF GREENVILLE	)	
	)	2016 GS-23-6460A
STATE OF SOUTH CAROLINA	)	2016 GS-23-6461A
	)	
vs.	)	
	)	ORDER FOR BAIL
CARL STANLEY AIKEN,	)	
	)	
<u>DEFENDANT.</u>	)	

IT APPEARS that the defendant, CARL STANLEY AIKEN, was arraigned on the charges of EXPLOITATION OF A VULNERABLE ADULT, as set forth in warrant 2013A2330203952 and was released on a \$15,000 recognizance bond on February 10, 2015. The State presented this charge and directly presented the charges of OBTAINING GOODS UNDER FALSE PRETENSES OVER \$10,000 and UNLAWFUL PRACTICE OF A REGULATED PROFESSION to the Greenville County Grand Jury on July of 2016, and true bill 2016 GS-23-6460A and 2016 GS-23-6461A was returned. Defendant is representing himself.

THE STATE NOW MOVES (1) to continue the defendant, CARL STANLEY AIKEN, on the original bond, (2) to include the newly indicted true bill in the original bond, (3) to note that the defendant has been served with a copy of the indictment and consents to such service and (4) to order the defendant to report to the Greenville County Law Enforcement Center to be fingerprinted and to provide a DNA sample on the new charges.

HAVING BEEN INFORMED by the defendant, CARL STANLEY AIKEN, that he has been served with a copy of Indictment 2016 GS-23-6460A and 2016 GS-23-6461A, that he consents to such service, and that he waives the reading thereof, the State's motion is HEREBY GRANTED and the defendant is continued on his current bond until this matter is resolved. All other bonds shall remain in effect and shall not be affected by this Order.

IT IS SO ORDERED.


 Presiding Judge

Greenville, South Carolina

Dated: 8-12, 2016

Jan/16 ✓

I SO MOVE:



Jonathan M. Gregory, Esquire
Attorney for the State

I CONSENT:

Carl Aiken, Defendant

WITNESSES

Jon D Howard

Greenville County Sheriffs Office

2/9/2015

ARREST WARRANT NUMBER

DIRECT PRESENTMENT

D.O.B. 9/29/57 B/M SSN: 25-855

ACTION OF GRAND JURY

TRUE BILL

FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2016-GS-23-

JMG

006461A

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

July

TERM 2016

THE STATE

VS.

CARL STANLEY AIKEN

Indictment for

2791

**UNLAWFUL PRACTICE OF A REGULATED
PROFESSION**

VIOLATION § 40-01-0200

EXhibit G

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

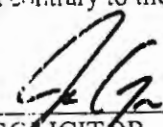
INDICTMENT FOR
UNLAWFUL PRACTICE OF A REGULATED PROFESSION

At a Court of General Sessions, convened on JUL 26 2016 the Grand Jurors of Greenville
County present upon their oath:

DIRECT PRESENTMENT

That CARL STANLEY AIKEN did in Greenville County, between the 1st day of December 2012, and the
1st day of March 2013, practice or offer to practice a regulated profession, to wit: construction contractor, in the
State of South Carolina without a valid license. This is in violation of § 40-01-0200 of the South Carolina Code
of Laws (1976) as amended.

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


SOLICITOR

BAR # 73601

State of South Carolina
Solicitor, Thirteenth Judicial Circuit

Telephone: 864-467-8647
Telefax: 864-467-8610



Greenville County Courthouse
305 E. North Street, Suite 325
Greenville, SC 29601-2185

Solicitor
W. Walter Wilkins

8/28/2015

CEDRIC CUNNINGHAM
309 MILLS AVENUE
GREENVILLE, SC 29605

RE: Plea Offer for State v. Carl Stanley Aiken

Dear Cedric Cunningham :

I am willing to make the following proposal to your above-referenced client in order to dispose of these charges by way of a guilty plea:

The Defendant will plead guilty to the following:

<i>Warrant Number:</i>	<i>Charge:</i>
2013A2330203952	Intimidation Of A Vulnerable Adult

The State will make the following sentence recommendations/negotiation:

The State will recommend 18 months HIP followed by probation and payment of restitution.

Please contact me as soon as possible with your client's response as plea negotiations must be concluded and the guilty plea entered before 1/8/2016 or this and any other offers are automatically withdrawn. If your client does not plead guilty by this date, the case(s) will be placed on the trial calendar for disposition without further negotiation.

Yours very truly,


Jonathan Gregory
Assistant Solicitor

M.C. I.
502, BECKMAN DR.
COLUMBIA, S.C.
29203



PAUL B. WICKENSIMER
GREENVILLE COUNTY CLERK OF COURT
305, EAST NORTH ST.
GREENVILLE, S.C. 29601

2019-CP-23- 00484

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	)	FOR THE THIRTEENTH JUDICIAL CIRCUIT
	)	
Carl Stanley Aiken, SCDC #218840,	)	Case No.: 2019-CP-23-00484
Applicant,	)	
	)	
v.	)	RETURN
State of South Carolina,	)	
Respondent.	)	

The State (Respondent), making its return to the application for post-conviction relief filed by Carl Stanley Aiken (Applicant) on February 1, 2019, would respectfully show this Court:

I. Procedural History

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Greenville County Clerk of Court.¹

During its May 2016 term, the Greenville County Grand Jury indicted Applicant for exploitation of a vulnerable adult (2015-GS-23-3451). During its July 2016 term, the Greenville County Grand Jury indicted Applicant for unlawful practice of a regulated profession (2016-GS-23-06461A) and obtaining goods under false pretenses (2016-GS-23-06460A). These charges stem from Applicant receiving payments from an elderly victim for handywork that was never performed.

He was represented by Dorothy Manigault, Esquire. The cases were prosecuted by Assistant Solicitors Jonathan Gregory and Jena Hendricks of the Thirteenth Circuit Solicitor's Office.

On April 3, 2017, the State called Applicant's case to trial and proceeded forward on the

¹ According to Applicant's records from the South Carolina Department of Corrections, which are attached to this return, Applicant is expected to complete his sentence on or before April 20, 2019.

exploitation of a vulnerable adult indictment and the obtaining goods under false pretenses indictment. Applicant was tried by a jury before the Honorable R. Lawton McIntosh, circuit court judge. At the conclusion of the trial, the jury convicted Applicant of obtaining goods under false pretenses and acquitted Applicant of exploitation of a vulnerable adult. Judge McIntosh sentenced Applicant to ten years imprisonment suspended upon the service of four years imprisonment followed by five years of probation.

Applicant filed a timely notice of appeal and an appeal was perfected by Appellate Defender Robert M. Pachak, who submitted an Anders² brief and motion to be relieved as counsel for Applicant. Applicant then filed a *pro se* brief. On September 1, 2018, the South Carolina Court of Appeals dismissed the appeal. The Remittitur was returned to the circuit court on October 26, 2018.

While Applicant's direct appeal was pending, Applicant filed an application for post-conviction relief (2017-CP-23-05234). This application was dismissed without prejudice with leave for Applicant to refile for post-conviction relief when his direct appeal concluded.

II. Current Action, Allegations Raised, and Relief Requested

In his application for post-conviction relief, Applicant alleges he is being held in custody unlawfully on the following grounds:

1. Ineffective Assistance of Counsel
 - a. Counsel failed to move to quash his indictments, including an argument that he was on trial for two indictments for the same crime/course of conduct
 - b. "failed to get a fair trial" because he was not able to confront his victim who did not appear at his trial

As requested relief, Applicant requests a new trial.

² Anders v. California, 386 U.S. (1967).

Attached to this amended return and incorporated by reference are the records of the Greenville County Clerk of Court regarding the subject conviction, the records from Applicant's direct appeal (including the record on appeal with a full copy of the trial transcript), and Applicant's records from the South Carolina Department of Corrections. Respondent reserves the right to further amend this Return upon receipt of any relevant materials.

III. Response to Allegations of Ineffective Assistance of Counsel

Applicant asserts his trial counsel was constitutionally ineffective for failing to move to quash his indictments based on purported irregularities and double indictments for the same crime, and for failing to ensure he received a fair trial when the victim did not appear or testify during his trial.

The Sixth Amendment to the United States Constitution guarantees a defendant the right to effective assistance of counsel. U.S. Const. amend. VI; Strickland v. Washington, 466 U.S. 668 (1984); Lomax v. State, 379 S.C. 93, 665 S.E.2d 164 (2008).

In a post-conviction relief action, an 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, the applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result." Strickland, 466 U.S. 668. Butler, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland, 466 U.S. 668. First, an applicant must prove that counsel's performance was deficient. Id.; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney's performance by its

“reasonableness under prevailing professional norms.” Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). The proper measure of performance is whether an attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. “Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” Id. (citing Strickland, 466 U.S. at 690). The applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. Second, 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.” Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

First, Applicant argues trial counsel was ineffective for failing to move to quash his indictments. Indictments are not jurisdictional in nature but are merely notice documents. State v. Gentry, 363 S.C. 93, 610 S.E.2d 494 (2005). When judging the sufficiency of an indictment, the court must determine “whether (1) the offense is stated with sufficient certainty and particularity to enable the court to know what judgment to pronounce, and the defendant to know what he is called upon to answer and whether he may plead an acquittal or conviction thereon; and (2) whether it apprises the defendant of the elements of the offense that is intended to be charged.” Id. at 102-03, 610 S.E.2d at 500 (citing State v. Wilkes, 353 S.C. 462, 578 S.E.2d 717 (2003)). “An indictment passes legal muster if it ‘charges the crime substantially in the language of the . . . statute prohibiting the crime or so plainly that the nature of the offense charged may be easily understood.’” State v. Reddick, 348 S.C. 631, 635, 560 S.E.2d 441, 443 (Ct. App. 2002) (quoting S.C. Code Ann. § 17-19-20 (1985)). Moreover, “whether the indictment could be more definite or certain is irrelevant.” Id. at 103, 610 S.E.2d at 500. In the present case, Applicant was

only convicted of obtaining goods under false pretenses, and therefore, he can only challenge this conviction. This indictment is facially-valid, as it states with sufficient certainty and particularity with which crime Applicant was charged. This allegation should be dismissed.

Second, Applicant argues he was denied his right to a fair trial because the victim was not present for his trial. From a review of the record, it appears counsel made several arguments pertaining to the victim's absence, including a motion for a directed verdict which was denied by the trial court. Applicant has failed to state what additional action counsel should have taken or how such action would have resulted in his acquittal.

Respondent contends the record refutes these allegations and Applicant cannot meet his requisite burden of proof necessary for relief. However, the allegations of ineffective assistance of counsel probably raises questions of fact the record does not conclusively refute. Accordingly, Respondent requests an evidentiary hearing to fully resolve this issue. Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV. Any Future Amendments and Invocation of Discovery Process

Applicant must specify any claims he intends to raise at the 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 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 that 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. Response to Any and All Other Allegations

Each and every allegation contained within the application not expressly admitted, qualified, or explained in this return is hereby denied.

VI. Request for an Evidentiary Hearing

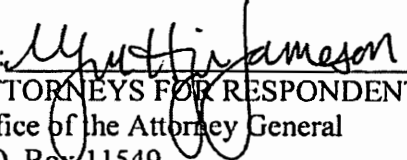
WHEREFORE, having made its return, Respondent requests an evidentiary hearing be held on the issues of ineffective assistance of counsel.

Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

By: 
ATTORNEYS FOR RESPONDENT
Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211

3/19, 2019

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	)	
	)	
	)	2019-CP-23-00484
	)	
CARL STANLEY AIKEN, #218840,	)	
	)	
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:

Susannah C. Ross, Esquire
Ross & Enderlin, PA
330 East Coffee Street
Greenville, South Carolina 29601

DATED this the 19th day of March, 2019.



Caroline Collins, Administrative Coordinator
 For Respondent



ALAN WILSON
ATTORNEY GENERAL

March 19, 2019

The Honorable Paul B. Wickensimer
Clerk of Court, Greenville County
305 East North Street; Room 224
Greenville, South Carolina 29601-2121

Re: Carl Stanley Aiken, #218840 v. State of South Carolina
2019-CP-23-00484

Dear Mr. Wickensimer:

Enclosed please find the original **Return** in the above-captioned case for filing in your office.

Sincerely,


Megan Harrigan Jameson *for MHJ*
Senior Assistant Deputy Attorney General

MHJ/cc
Enclosure

cc: Susannah C. Ross, Esquire

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

COURT OF COMMON PLEAS
2019-CP-23-00484

CARL STANLEY AIKEN,
APPLICANT,)

vs.)

TRANSCRIPT OF RECORD

STATE OF SOUTH CAROLINA,
RESPONDENT.)

ORIGINAL

April 17, 2019
Greenville, South Carolina

B E F O R E:

THE HONORABLE ALEX KINLAW, JR., JUDGE.

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

SAMUEL L. KEY, ESQ.
Assistant Attorney General

SUSANNAH C. ROSS, ESQ.
Attorney for the Applicant

HOLLIE M. JENKINS
Circuit Court Reporter

I N D E X

(There were no witnesses called.)

INDEX (CONTINUED)E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EVD.</u>

(State's Exhibits)

S-1	Letter dated 3/19/2019.....		

All Exhibits were retained by the Clerk of Court for
Greenville County.

P R O C E E D I N G S

THE COURT: Mr. Key.

MR. KEY: May it please the Court.

This is Carl Stanley Aiken v. State of South Carolina, case number 2019-CP-23-00484.

Mr. Aiken filed this application for post-conviction relief on February 1st, 2019. He currently is not incarcerated.

After speaking with his counsel, Ms. Susannah Ross, she has indicated to me that when she was appointed, she notified him of this hearing by letter. At the time, he was still incarcerated. However, he has now maxed out and is no longer in the South Carolina Department of Corrections.

He's not here today. And the State would move to dismiss for failure to prosecute.

THE COURT: You really thought he was coming?

MR. KEY: No, sir.

THE COURT: All right. Any opposition to that?

MS. ROSS: No, Your Honor.

THE COURT: Okay. You got an order?

MR. KEY: I will get you an order, Your Honor.

Should we --

MS. ROSS: You can put it on the record.

MR. KEY: Can we make this an exhibit?

1 THE COURT: That's the letter?

2 MR. KEY: Yes, sir.

3 THE COURT: All right. It will be a State's Exhibit
4 or Applicant's?

5 MS. ROSS: It doesn't -- it doesn't matter. That's
6 fine.

7 MR. KEY: We'll do it as a State's Exhibit.

8 THE COURT: All right. That'll be fine.

9 (WHEREUPON, State's Exhibit No. 1 was marked for
10 identification and admitted into evidence.)

11 MS. ROSS: And, Judge, I tried to be pretty clear
12 that, you know, I know you're maxing out in a couple
13 weeks. You've got to keep in contact with me or else it's
14 going to go away.

15 THE COURT: Okay.

16 MS. ROSS: And I think it's in his best interest to
17 withdraw at this time as well just after reviewing the
18 case.

19 THE COURT: Right.

20 *****END OF TRANSCRIPT OF RECORD*****
21
22
23
24
25

CERTIFICATE OF REPORTER

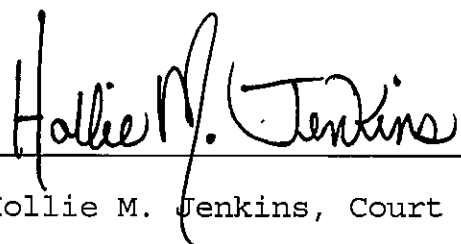
STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

I, HOLLIE JENKINS, Official Court Reporter for the Thirteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete Transcript of Record of the proceedings had and the evidence introduced in the captioned case, relative to appeal, in the Court of General Sessions for Greenville County, South Carolina, on the 17th day of April, 2019.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

June 19, 2020



Hollie M. Jenkins, Court Reporter

My Commission Expires: 09/24/20

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS	19 SEP 23 PM 2:04 301 Wickensmeyer 000 901 50
COUNTY OF GREENVILLE	)	THIRTEENTH JUDICIAL CIRCUIT	
	)		
CARL STANLEY AIKEN,	)	CASE NO. 2019-CP-23-0484	
APPLICANT,	)		
	)		
VS.	)	AMMENDED APPLICATION	
	)		
STATE OF SOUTH CAROLINA,	)		
RESPONDENT.	)		

This matter comes before the Court by way of application for post conviction relief filed February 1, 2019, alleging ineffective assistance of trial counsel for failure to move to quash the indictment and violation of Applicant's rights of confrontation. This application incorporates Applicant's prior allegations and adds allegations of ineffective assistance of trial counsel for:

(1) failing to argue in her motions for directed verdict and a new trial on the charge of obtaining goods under false pretenses that "A promise to do something in the future cannot constitute the basis of a prosecution for obtaining goods under false pretenses" See State v. McCutcheon, 284 S.C. 524, 525, 327 S.E.2d 372 (Ct.App.1985) & State v. Dickinson, 528 S.E.2d 675, 339 S.C. 194 (S.C. App., 2000);

(2) failing to request a jury instruction that "A promise to do something in the future cannot constitute the basis of a prosecution for obtaining goods under false pretenses." See State v. McCutcheon, 284 S.C. 524, 525, 327 S.E.2d 372 (Ct.App.1985) & State v. Dickinson, 528 S.E.2d 675, 339 S.C. 194 (S.C. App., 2000); and

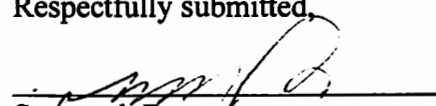
(3) failing to argue for a verdict form requiring a finding on the value of the property when the State offered no evidence of the terms of any agreement between the

alleged victim and the Applicant relying only on circumstantial evidence of an agreement based on the notations of the memo lined of the checks. While thirteen checks totaling \$14,125 were cashed by the Applicant, only \$6950 worth of checks contained legible memos. See transcript pp. 186 & pp. 58-62.

Applicant also alleges ineffective assistance of appellate counsel for failing to brief argument that the trial court erred in denying the directed verdict motion and motion for a new trial on the charge of obtaining good under false pretenses because the ruling was based on an error of law. The court denied the motions stating, "That evidence was, he agreed to do work that wasn't performed..." (Transcript p. 294, l. 7) That is an error of law because "A promise to do something in the future cannot constitute the basis of a prosecution for obtaining goods under false pretenses" See State v. McCutcheon, 284 S.C. 524, 525, 327 S.E.2d 372 (Ct.App.1985) & State v. Dickinson, 528 S.E.2d 675, 339 S.C. 194 (S.C. App., 2000);

Finally, Applicant also argues Due Process violations due violations of his rights to a fair trial guaranteed by the Fifth and Fourteenth Amendment of the Constitution of the United States & Art. I Sec. 3, 10, & 14 of the South Carolina Constitution.

Respectfully submitted,


 Susannah Ross
 Attorney for the Applicant
 330 E. Coffee St,
 Greenville, SC 29601
 (864) 242-0029

Greenville, South Carolina
 This 9 day of Sept, 2019

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS

CARL STANLEY AIKEN,)
)
 APPLICANT,)
)
 -VS-)
)
 STATE OF SOUTH CAROLINA,)
)
 RESPONDENT.)
 _____)

2019-CP-23-00484

TRANSCRIPT OF RECORD

OCTOBER 23, 2019
GREENVILLE, SOUTH CAROLINA

B E F O R E:

THE HONORABLE EDWARD W. MILLER

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

ATTORNEY FOR APPLICANT:

SUSANNAH C. ROSS, ESQ.

ATTORNEY FOR RESPONDENT:

LILLIAN L. MEADOWS
ASSISTANT ATTORNEY GENERAL

SUSAN W. HUDGINS
CIRCUIT COURT REPORTER

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DIRECT BY MS. ROSS	-----	22
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REDIRECT BY MS. ROSS	-----	28
RECROSS BY MS. MEADOWS	-----	29
CERTIFICATE OF REPORTER	-----	37

EXHIBITS

<u>NO</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EVIDENCE</u>

(No Exhibits Were Presented During This Hearing)

1 **MS. MEADOWS:** May it please the Court? The next matter
2 is Carl Stanley Aiken versus the State of South Carolina,
3 docket number 2019-CP-23-0484.

4 During its May 2016 term, the Greenville County Grand
5 Jury indicted the Applicant for exploitation of a vulnerable
6 adult under indictment 2015-GS-23-3451. And then during its
7 July 2016 term, the Greenville County Grand Jury indicted the
8 Applicant for unlawful practice in a regulated profession and
9 obtaining goods under false pretenses under indictment numbers
10 2016-GS-23-6461A and 6460A.

11 On April 3rd, 2017 Applicant proceeded to a jury trial
12 before the Honorable R. Lawton McIntosh on the indictments for
13 exploitation of a vulnerable adult, obtaining goods under
14 false pretenses. Dorothy Manigault, Esquire, represented the
15 Applicant. Assistant Solicitors Jonathan Gregory and Jenna
16 Hendricks prosecuted the case.

17 The jury found the Applicant not guilty of exploitation
18 of a vulnerable adult and guilty of obtaining goods under
19 false pretenses. Judge McIntosh sentenced Applicant to ten
20 years suspended to four years imprisonment and five years
21 probation and ordered Applicant to pay fourteen thousand, two
22 hundred and fifty dollars (\$14,250.00) in restitution to the
23 victim.

24 On April 7th, 2017 Ms. Manigault filed a timely notice of
25 appeal on Applicant's behalf. On November 14th, 2017

1 Appellate Defender Robert Paychak perfected the appeal by
2 filing an Anders Brief.

3 On September 1st, 2018 the Court of Appeals dismissed the
4 appeal. And the remittitur was returned to the Circuit Court
5 on October 28th, 2018. And while Applicant's direct appeal
6 was pending he did file a PCR application. And that
7 application was dismissed without prejudice with leave for him
8 to file PCR when his directed appeal concluded.

9 On February 1st, 2019 Applicant filed a timely
10 application for a PCR. And Susannah Ross, Esquire, was
11 subsequently appointed to represent him.

12 An evidentiary hearing was scheduled on April 17th of
13 this year before Judge Kinlaw. And the Applicant did not show
14 up, but Ms. Ross was present on his behalf. Judge Kinlaw
15 dismissed the application on the State's motion, failure to
16 prosecute, but gave Applicant 30 days to respond with a
17 sufficient reason as to why the dismissal should not become
18 final.

19 Applicant, through Ms. Ross, provided a timely response
20 showing good cause as to why the order should not become
21 final. The State consented to this request. Judge Kinlaw
22 issued an order vacating the order of dismissal on July 31st.

23 And then on September 23rd Ms. Ross filed an amended
24 application. And Applicant's present and represented by Ms.
25 Ross.

1 **THE COURT:** Okay.

2 **MS. ROSS:** And, Judge, the reason it got dismissed
3 before, he wasn't here because he'd been in prison and then
4 got released and didn't get notice of the hearing.

5 **MS. MEADOWS:** Right.

6 **THE COURT:** Okay.

7 **MS. ROSS:** So in the amended application, you can look at
8 it, it sort of sets out basically the issues I saw in the
9 case. Essentially Ms. Manigault just didn't argue in her
10 motion for directed verdict, her motion for a new trial that
11 the charge of obtaining goods under false pretenses -- she
12 didn't argue State v. McCutcheon or State v. Dickinson, which
13 basically say a promise to do something in the future cannot
14 constitute the basis for a prosecution for obtaining goods
15 under false pretenses. She didn't ask for a jury instruction
16 to that effect.

17 And for another sort of separate issue, was there a
18 number of checks involved in this case that amounted to
19 fourteen thousand dollars (\$14,000.00) total? We're alleging
20 she failed to argue for a verdict form requiring a finding on
21 the value of the property that was stolen.

22 Essentially, -- and I'd go on to say while 13 checks
23 totaling fourteen thousand, one hundred and twenty-five
24 (14,125.00) were cashed by the Applicant, only sixty-nine
25 hundred and fifty (6950) worth of the checks contained legible

1 memos. And that -- these little memos on the checks were the
2 only evidence in the case that any agreement had been made.
3 The other checks were just checks. And then like six of them
4 had some memo saying like roof, doorway, something like that.

5 And then we'd argue ineffective assistance of appellate
6 counsel for failing to brief -- and this is a specific
7 argument that the trial court erred in denying the directed
8 verdict motion and motion for a new trial on the charge of
9 obtaining goods under false pretenses because the ruling was
10 based on an error of law. The court denied the motion saying
11 Dorothy Manigault made good motions for a new trial at the end
12 of the case.

13 And the judge denied and made the statement that evidence
14 was -- he agreed to do work that wasn't performed. And that's
15 on page 294, line 7 of the transcript. That is an error of
16 law because a promise to do something in the future cannot
17 constitute the basis of a prosecution for obtaining goods
18 under false pretenses.

19 And then we argue due process violations. And I have
20 State v. McCutcheon and State v. Holcomb to hand up to you
21 now, if I could approach.

22 **THE COURT:** Yeah.

23 **MS. ROSS:** So it's a pretty legal and set out in the
24 transcript argument. The appellate defense is not here. Mr.
25 Aiken sent me a letter stating that he would be happy to allow

1 him to testify by telephone, but I didn't get it in time. But
2 he'd say that right now.

3 Or I think the testimony -- it's just clear from the
4 record, it is -- my experience appellate defense is going to
5 testify they briefed the strongest issues they see. If
6 something's not briefed it's because they didn't feel it was
7 the strongest issue.

8 Here, again, the error of law part is the one that -- I
9 just think it's there in the transcript. It is or isn't. So
10 I'm willing to do phone, or continue for an affidavit, or
11 allow the record to remain open for an affidavit to come in
12 later or however we want to work this. But I would like to
13 proceed today if possible.

14 **MS. MEADOWS:** And, Judge, I have -- I talked to Mr.
15 Paychak last week about testifying by phone. And I tried to
16 get ahold of him last night, and I could not.

17 And it's just the State's position that Applicant needs
18 to elect whether he's going forward on the first allegation
19 that trial counsel did not move for a directed verdict by
20 arguing that a promise to do something in the future cannot
21 constitute the basis of prosecution for obtaining goods under
22 false pretenses or ineffective assistance of appellate counsel
23 because, I mean, either trial counsel was ineffective for not
24 preserving the issue or appellate counsel did not raise a
25 preserved issue. I don't see how he can have both.

1 **MS. ROSS:** That's part of the ruling. You know, would --
2 was the issue preserved or not? It doesn't, I mean, I think
3 if there's an error of law in the judge's ruling, that should
4 be briefed as a, you know, an error on the part of the judge.

5 It's true Ms. Manigault did not object to his -- the
6 judge's conclusion in his ruling. But if you find that she
7 did object, then I don't want to give up that argument that
8 appellate counsel could have briefed that. But, again, these
9 are all issues that are very clear from the transcript and the
10 appellate brief.

11 **THE COURT:** Well, direct me to the ---

12 **MS. ROSS:** The transcript is -- I just read it and I hid
13 my ...

14 **MS. MEADOWS:** I think you said 294.

15 **MS. ROSS:** Yeah. On the transcript it's page 294, line
16 7. And the appellate brief -- the argument -- it was an
17 Anders brief. The argument was whether the trial court erred
18 in failing to grant a directed verdict to the charge of
19 obtaining goods under false pretenses when the State failed to
20 present any evidence beyond reasonable doubt what false
21 pretenses were made. He did not brief the issue that the
22 judge's ruling ---

23 **THE COURT:** So what's your -- I'm still in the trial.

24 **MS. ROSS:** Okay.

25 **THE COURT:** You're stating that Ms. Manigault's motion

1 for directed verdict -- what are you saying? It just has to
2 be more specific? I do not believe ---

3 **MS. ROSS:** Yeah.

4 **THE COURT:** --- the testimony presented, presented any
5 false representation of testimony by any of the parties
6 testifying for the State that would be required as an element
7 in conviction. Why is that not exactly what you're alleging
8 in the McCutcheon?

9 **MS. ROSS:** Well, I think it does address a lot of that,
10 but she doesn't specifically point that out. He says the
11 evidence was he agreed to do work that wasn't performed. So
12 that's agreement, and it wasn't performed, which is a promise
13 to do something in the future.

14 So I guess the argument would be that counsel should have
15 presented ---

16 **THE COURT:** Was he paid?

17 **MS. ROSS:** Pardon?

18 **THE COURT:** Did he get paid for his promise? You said
19 ---

20 **MS. MEADOWS:** Yes.

21 **MS. ROSS:** Yes. There were checks that he was -- cashed.
22 And it's a weird case because essentially Mr. Aiken was doing
23 work for an older man who was later, after he quit doing work,
24 found to have dementia, diagnosed later. And then his
25 daughter alleged that work wasn't done.

1 These checks were written. And each time Mr. Aiken would
2 go and cash a check at the bank, the bank would call Mr. Poe
3 [sic], I believe was his name, and say, is this a good check
4 for Mr. Aiken? And Mr. Poe would say, oh, yeah, that's fine.

5 Then like two years later Mr. Poe's put ---

6 **THE COURT:** Well, he is -- then he is obtaining goods,
7 the goods being money.

8 **MS. ROSS:** Right.

9 **THE COURT:** How does that fit into your McCutcheon
10 theory?

11 **MS. ROSS:** Well, the promise to do something like -- then
12 Mr. Poe didn't appear in court or testify at all. And so the
13 issue was what was the contract between Mr. Poe and Mr. Aiken?
14 And all they had was some of the checks contained a notation
15 at the bottom saying porch, something like that. And so since
16 ---

17 **THE COURT:** Well, that would not -- that doesn't jump
18 into the McCutcheon, if I could use -- that's just a
19 credibility issue.

20 **MS. ROSS:** Well, it -- right. With no -- with no
21 testimony at trial whatsoever of what contract was, how would
22 there be -- if these checks were paid, here, Mr. Aiken, here's
23 ---

24 **THE COURT:** But that's a jury argument, is it not?
25 That's just credibility. That doesn't ...

1 **MS. ROSS:** Well, we'd argue that the ruling by the judge
2 is basically saying a promise to -- what happened here was a
3 promise to do something in the future. And so ---

4 **MS. MEADOWS:** Judge, Mr. Aiken did testify that all of
5 the work was completed by the time he received the last check.
6 So I'm not really sure where the future promise comes in, but
7 ---

8 **MS. ROSS:** Well, ...

9 **MS. MEADOWS:** I would just say McCutcheon was different
10 circumstances because in that case the checks were post-dated
11 and were for items that were to be delivered at that date, but
12 were not. So there was no way to show that at the time the
13 defendant agreed to deliver the items he was making a
14 fraudulent representation.

15 **THE COURT:** Okay. Before we get into all this, do you
16 need to put any evidence up or are you just relying on the
17 record?

18 **MS. ROSS:** No, I need to put evidence up from him ---

19 **THE COURT:** Well, let's put that up. Let's put that up.

20 **MS. ROSS:** Okay.

21 **THE COURT:** Let's get that out of the way.

22 **MS. MEADOWS:** And, Judge, I just have one more request.
23 Since Mr. Aiken is no longer incarcerated and is out on
24 probation, I would respectfully ask the Court to engage in a
25 colloquy with him to appraise him of the relief available if

1 PCR is granted, and that his sentence will be vacated and the
2 case will go back to square one. And I believe obtaining
3 goods of false pretenses carries a maximum of ten years.

4 **MS. ROSS:** It does.

5 **THE COURT:** All right. Mr. Aiken, raise your right hand.
6 You swear to tell the truth? You swear to tell the truth?

7 **MR. AIKEN:** Yes, sir.

8 **THE COURT:** State your name for the record.

9 **MR. AIKEN:** My name is Carl Stanley Aiken.

10 **THE COURT:** Okay. You can put your hand down. I want
11 you to understand that your sentence has been imposed on these
12 cases. And you're coming back and you're saying, hey, I want
13 to go start over. I don't like the result that's occurred for
14 whatever reason, and I want to go back to square one. And I
15 want you to understand that if you win and you go back to
16 square one, you could get put in jail for ten years.

17 **MR. AIKEN:** Yes, sir. I understand that.

18 **THE COURT:** Okay. Well, you -- do you want to go
19 forward?

20 **MR. AIKEN:** Yes, sir.

21 **THE COURT:** What other charges were there? It was just
22 the one charge? You got found not guilty on ---

23 **MS. MEADOWS:** Exploitation of a vulnerable adult.

24 **THE COURT:** Okay. All right. You're sure?

25 **MR. AIKEN:** Yes, sir.

CARL AIKEN - DIRECT EXAMINATION BY MS. ROSS

14

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

2 **MS. ROSS:** We'd call Mr. Aiken to the stand.

3 **THE COURT:** Come on around. Now he's still under oath.
4 You don't have to worry about it.

5 **Carl Aiken,** having been
6 previously duly sworn, testifies as follows;

7 **MS. MEADOWS:** Judge, I also just wanted to bring to the
8 Court's attention that Your Honor did hear his motion to
9 relieve counsel before his trial. It was not Ms. Manigault,
10 it was his, I guess, his first attorney. I just wanted to put
11 that ---

12 **THE COURT:** Who was that?

13 **MS. MEADOWS:** I think it was Cunningham. Does that sound
14 familiar?

15 **THE COURT:** Cunningham?

16 **MS. MEADOWS:** I'm sorry. Just one second. It's in --
17 it's actually in his application. Yes. Let's see. Cedric
18 Cunningham. And it's in his application. I think he wrote
19 exhibit D on it.

20 **THE COURT:** Who was your first lawyer?

21 **MR. AIKEN:** Cedric Cunningham.

22 **THE COURT:** Who is that?

23 **MR. AIKEN:** Kinlaw and Cunningham on Mills Street.

24 **MS. MEADOWS:** It says Kinlaw and Cunningham.

25 **THE COURT:** Oh, oh, oh, oh. All right. Well, you

CARL AIKEN - DIRECT EXAMINATION BY MS. ROSS

15

1 understand I ruled. You want me not to hear this? I
2 apparently have had some involvement in your case. You got
3 any objection to me hearing this?

4 **MR. AIKEN:** No, sir.

5 **THE COURT:** You sure?

6 **MR. AIKEN:** Yes, sir.

7 **THE COURT:** Okay. All right.

8 **Direct Examination by Ms. Ross:**

9 Q. All right. Mr. Aiken, now my amended application always
10 includes the allegations you made. You made an allegation of
11 failure to investigate and prepare for trial. What is the
12 basis of that allegation against Ms. Manigault?

13 A. That's the indictments. I was being charged for the same
14 issue on two indictments, fourteen thousand, two hundred and
15 fifty dollars (\$14,250.00).

16 Q. Okay. So you mean you had the vulnerable adult and the
17 obtaining goods under false pretenses and you think they're
18 both the same issues?

19 A. Yes, ma'am.

20 Q. And the same actions that led to those charges?

21 A. Right.

22 Q. Okay. But you were acquitted of one of them, correct?

23 A. That's right.

24 Q. Okay. Now, what was the indictment order? Did they wait
25 til you went to trial to pull a second indictment on you or

CARL AIKEN - DIRECT EXAMINATION BY MS. ROSS

16

1 anything like that?

2 A. It was approximately about six months before I went to
3 trial. No sooner that I relieved Mr. Cunningham, that's when
4 the second indictment came in.

5 Q. Okay. And you testified that you did the work. Were
6 there any other witnesses to the fact that you did the work on
7 the house?

8 A. Yes, ma'am. Some of them -- I got some witness in the
9 incident report here. And also I got where Mr. Poe stated
10 what the work was did to an incident report.

11 Q. Okay. And what did Mr. Poe say in an instant -- in the
12 incident report?

13 A. This read, my wife passed -- passed away about a year ago
14 in January of 2012. My cousin, Zena Ford, is my power ---

15 **MS. MEADOWS:** Judge, I object to hearsay.

16 **THE COURT:** That's all right. Over your ---

17 **MS. MEADOWS:** Okay.

18 **THE COURT:** --- objection.

19 Q. You can continue.

20 A. Continue?

21 Q. Um-hum (affirmative).

22 A. Ms. -- my cousin, Zena Ford, is my power of attorney to
23 help me with my financials. Investigator Howard showed me a
24 picture of Carl Aiken. And I told him, that's, yes, the same
25 Carl Aiken that comes to my house and does work.

CARL AIKEN - DIRECT EXAMINATION BY MS. ROSS

17

1 Investigator Howard asked me what kind of work Carl has
2 done for me? I know that he trimmed a tree and painted the
3 exterior of my house a few times. He also does odd jobs like
4 repairs at my residence. Carl had done some little work and
5 small jobs.

6 Q. Okay. And had you discussed having Mr. Poe -- what did
7 you think Mr. Poe would say at your trial?

8 A. That the work would be what we agreed on.

9 Q. All right. And did you have any other witnesses who
10 helped do the work?

11 A. Yes. I had one in the incident report a couple of days
12 after he come where he paid Mr. Tracy Anders [sic] fifteen
13 hundred dollars (\$1500.00) on the roof too.

14 Q. And was he charged, Mr. Tracy Allen [sic]?

15 A. No, ma'am.

16 Q. No one else. And did you discuss having those witnesses
17 at your trial with Ms. Manigault?

18 A. I think I brought it up to her, but I felt kind of
19 comfortable as long as I know Mr. Poe, you know, -- but I
20 didn't find out that he wasn't going to be here until we had
21 picked the jury and everything.

22 Q. Okay. So you felt comfortable with Mr. Poe being there,
23 that the jury couldn't convict you because he's saying you did
24 the work?

25 A. Right.

CARL AIKEN - DIRECT EXAMINATION BY MS. ROSS

18

1 Q. And you're saying you did the work?

2 A. Yes, ma'am.

3 Q. And about -- what was the contract between y'all? When
4 y'all -- when you were paid a check, how did that work?

5 A. Well, he would pay as we'd go along. We might do
6 pressure cleaning or something first. And then we'll get --
7 we'll dry off the roof. Well, the roof was the main issue
8 that, you know, the main big job that we were doing. We might
9 get, you know, money in advance, you know, after we do so much
10 work like that.

11 Q. Okay.

12 A. Yes, ma'am.

13 Q. So you'd just get advanced some money and then ---

14 A. Like if I have to go buy some material or something like
15 that, I'll get advanced cut.

16 Q. All right. Okay. Is there anything else that you want
17 to allege against the ---

18 A. And also I wanted to -- after -- during trial they
19 introduced 13 exhibit checks ---

20 Q. Okay.

21 A. --- from the start of December the 1st of 2012 when at
22 trial they discussed no checks in the month of December. They
23 just jumped from December to January and had three checks
24 testified to about painting the box, in which we didn't agree
25 on painting the box. Only thing we agreed on, painting the

CARL AIKEN - DIRECT EXAMINATION BY MS. ROSS

19

1 new wood that we installed because he had said in the future
2 you're going to have vinyl siding, aluminum siding put on his
3 house.

4 Q. Okay. And I want to just refer you to page 186 I've
5 noted. They say on 186 -- do you have the transcript? Or I
6 can show it to you. Line 9, they say the total amount of the
7 checks, correct?

8 A. Yes, ma'am.

9 Q. And on page 58 through 62 they go through some of the
10 checks.

11 A. Thirteen exhibits, yes, ma'am.

12 Q. Okay. So they go through all those checks?

13 A. All the checks, yes, ma'am.

14 Q. And do all of them have notations or memos on them or
15 what they were for?

16 A. No, ma'am, I don't think so.

17 Q. So some of them are just straight checks. Okay. All
18 right. Is there anything else you want to put on the record
19 or tell the Judge?

20 A. The main -- like I say, the roof, they never had no one
21 to testify whether the roof was did or not did. They brought
22 it up on -- in the record on page 46, line 23, and page --
23 through page 147, line 1. But it never did have no one to
24 testify to that.

25 Q. Okay.

CARL AIKEN - CROSS-EXAMINATION BY MS. MEADOWS

20

1 A. And I have one more -- another in this incident report,

2 ---

3 Q. Um-hum (affirmative).

4 A. --- where she say that she -- she talked to a private
5 contractor. And let me find it. Okay. This is -- it say, my
6 friend, Jerry Brown, with JB Homes ---

7 **MS. MEADOWS:** Judge, I'd object on hearsay grounds again.

8 **THE COURT:** Yeah. Okay.

9 Q. And part of your trial with Mr. Poe you testified -- did
10 he seem incompetent to you when you were going over there
11 working for him?

12 A. No, ma'am.

13 Q. Okay. And you were there at the trial. Was he found to
14 be or diagnosed with any kind of dementia or anything ---

15 A. No, ma'am.

16 Q. --- before the time?

17 A. No, ma'am.

18 Q. So all that diagnosis happened well after the time you
19 were working for him?

20 A. Yes, ma'am.

21 **MS. ROSS:** Nothing further.

22 **THE COURT:** Okay. Cross.

23 **MS. MEADOWS:** I just have a couple of questions.

24 **Cross-examination by Ms. Meadows:**

25 Q. Mr. Aiken, do you recall when you testified, the

CARL AIKEN - CROSS-EXAMINATION BY MS. MEADOWS

21

1 solicitor going through each check with you individually and
2 you telling him which -- what each individual check was for,
3 even the ones without the memo lines?

4 A. No, ma'am.

5 Q. Do you have the transcript with you?

6 A. I have it on the table -- my table back there.

7 Q. And I think it starts at 215 and goes through 225.

8 A. All right.

9 Q. So even the checks that didn't have anything on the memo
10 line, you explained to the solicitor what those were for,
11 correct?

12 A. To my best of my knowledge. And I wasn't exactly sure
13 because it had been over a period of time.

14 Q. Okay.

15 A. Yes, ma'am.

16 Q. And then on page 203 do you recall telling the solicitor
17 or do you recall the solicitor asking if you had completed all
18 the work by March or if there was still some work to be done?
19 I think it's line 15 or 18.

20 A. On what page that is?

21 Q. 203.

22 A. 203? Line -- what line you say that was?

23 Q. 15 through 18.

24 A. Okay. Yes, ma'am.

25 Q. And you told him the work was simply when Mr. Moore gave

DOROTHY MANIGAULT - DIRECT EXAMINATION BY MS. ROSS

22

1 you the last check on February 23rd, correct?

2 A. That's right.

3 Q. Okay.

4 **MS. MEADOWS:** Nothing further from the State.

5 **MS. ROSS:** Nothing further.

6 **THE COURT:** All right. Thanks. You can step down.

7 **MS. ROSS:** We'd call Ms. Manigault.

8 **Dorothy Manigault,** duly

9 affirmed and testified as follows;

10 **MADAM CLERK:** Thank you.

11 **MS. MANIGAULT:** Thank you.

12 **MADAM CLERK:** You may be seated. And please state your
13 full name for the record.

14 **MS. MANIGAULT:** Dorothy Ann Manigault.

15 **Direct Examination by Ms. Ross:**

16 Q. Ms. Manigault, were you appointed or retained in this
17 case?

18 A. Appointed.

19 Q. All right. And you recall this was a case where the
20 victim was not present? He was not technically unavailable
21 because he was alive and in Greenville, ---

22 A. Correct.

23 Q. --- but they were allowed to proceed without him?

24 A. Correct.

25 Q. And you made a number of motions as to that issue ---

DOROTHY MANIGAULT - DIRECT EXAMINATION BY MS. ROSS

23

1 A. Yes.

2 Q. --- during the trial. And those were overruled by the
3 judge?

4 A. Yes.

5 Q. And so they were allowed to proceed even -- despite your
6 confrontation issue ---

7 A. Yes.

8 Q. --- issues that you brought up?

9 A. Yes.

10 Q. And were there any witnesses to any contract or any
11 agreement between -- presented at the trial of Mr. Aiken that
12 you recall?

13 A. No.

14 Q. And you made an argument that that was problematic in
15 your motions for directed verdict and at the close of evidence
16 as well?

17 A. Yes. The only discussion was between my client and Mr.
18 Poe.

19 Q. Okay. And according to the record you didn't
20 specifically argue the sort of quote from State v. McCutcheon
21 and State v. Dickinson. And I believe that they're both --
22 that a promise to do something in the future cannot serve as a
23 basis of a prosecution of obtaining goods under false
24 pretenses.

25 A. Well, I didn't bring that up or argue that point because

DOROTHY MANIGAULT - DIRECT EXAMINATION BY MS. ROSS

24

1 the monies were received on an ongoing basis as the work was
2 being completed according to my client.

3 Q. Okay.

4 A. So I didn't see the need to argue that.

5 Q. And was there an argument that -- did you ask or make any
6 distinction about whether he was ever paid before the work was
7 done or not?

8 A. No. The only distinction was made was information I
9 received from my client.

10 Q. Okay.

11 A. He said he would go to the supposed house and get the
12 check and do work, get the check, do work, get the check, do
13 work. So ---

14 Q. I got you. And so you didn't argue that or request a
15 jury instruction on that specific ---

16 A. I did not.

17 Q. Okay. Now I'll just refer you to page 260 of the
18 transcript, line 19. This is closing argument.

19 A. Um-hum (affirmative).

20 Q. The State said, so in the case it's -- this case is for
21 checks. It's money with intent of misrepresentation in saying
22 I'm going to do something for you for these checks and then
23 not doing something.

24 **THE COURT:** Where ---

25 **MS. ROSS:** It's 260 line ---

DOROTHY MANIGAULT - DIRECT EXAMINATION BY MS. ROSS

25

1 **THE COURT:** Oh, ---

2 **MS. ROSS:** --- 19.

3 **THE COURT:** 260. Okay. Sorry. Thank you.

4 **MS. ROSS:** That's fine.

5 **THE COURT:** Okay.

6 Q. And you didn't object during his closing to that
7 statement by the solicitor?

8 A. I did not.

9 Q. And he's clearly saying it's a promise to do something in
10 the future when he says, I'm going to do something for you for
11 these checks?

12 A. That's what it says.

13 Q. Okay. Page -- page 294, line 7. You've argued that
14 there's -- this is what we referred to pretrial or pre-
15 testimony. This is where you renew all your motions and point
16 out that there was no testimony at all that requires an
17 element for the conviction of obtaining goods by false
18 pretenses.

19 And then the judge denies it saying, the evidence was he
20 agreed to do work that wasn't performed. And those would be
21 the representations. And at that point you didn't
22 specifically argue State v. McCutcheon, a promise to do
23 something in the future shouldn't be the basis for obtaining
24 goods.

25 A. That's correct.

DOROTHY MANIGAULT - CROSS-EXAMINATION BY MS. MEADOWS

26

1 Q. And then I've got as far as the verdict form, you didn't
2 make a specific request for a verdict form distinguishing
3 between like which amounts were obtained under false
4 pretenses?

5 A. I did not.

6 Q. Okay.

7 MS. ROSS: I've got no further questions.

8 THE COURT: Okay. Cross.

9 **Cross-examination by Ms. Meadows:**

10 Q. Ms. Manigault, what was your overall during your -- or
11 trial strategy in this case?

12 A. My client said he'd performed all the work ---

13 Q. Okay.

14 A. --- for the monies received.

15 Q. Okay. And what type of an investigation did you do?

16 A. We discussed the discovery, went over the discovery. I
17 think Mr. Aiken has a problem reading, but I'm not sure. But
18 I read the discovery to him. He came into the PD's office.
19 We went over everything about the case. He offered no
20 witnesses or anything else.

21 Q. Okay. And you cross-examined the State's witnesses,
22 correct?

23 A. Yes.

24 Q. And did you call any witnesses?

25 A. Mr. Aiken.

DOROTHY MANIGAULT - CROSS-EXAMINATION BY MS. MEADOWS

27

1 Q. Okay. And before trial did you discuss with Mr. Aiken
2 his right to testify or his right to remain silent?

3 A. Yes, I did. He was adamant about testifying.

4 Q. Okay. And the judge went over this with him as well,
5 correct?

6 A. Correct.

7 Q. Okay. Let's see. Did you recall on what grounds you
8 moved for a directed verdict at the close of State's case?

9 A. Just a summary that they did not prove the elements of
10 the crimes charged.

11 Q. Okay. And did you make any type of argument at trial
12 that a promise to do something in the future cannot constitute
13 a basis of prosecution for obtaining goods under false
14 pretenses?

15 A. Not in those specific words. I argued that there was no
16 testimony about misrepresentation ---

17 Q. Okay.

18 A. --- because the complaining witness was not available to
19 us.

20 Q. Right. And as to the jury charge, did you see -- did you
21 request any special jury charge?

22 A. No, I did not.

23 Q. Okay. Did you see any basis for objecting to the jury
24 charge or adding the -- or asking the judge to include the
25 promise to do something in the future ---

DOROTHY MANIGAULT - REDIRECT EXAMINATION BY MS. ROSS

28

1 A. I did not object and I did not ask for that charge.

2 Q. Okay. Do you think on the whole that the judge
3 accurately charged the jury with the correct law?

4 A. Yes. I reviewed my notes from the jury charge today.
5 And I did not make an objection then, and I still wouldn't
6 make one.

7 Q. Okay. And this is on page 278 of the transcript. But
8 the judge did say in his charges that a false pretense is a
9 false representation of an existing or past fact, correct?

10 A. Yes, line 20.

11 Q. Yes, ma'am.

12 A. Um-hum (affirmative).

13 Q. Okay. And as to the verdict form -- Mr. Aiken testified
14 about each of the checks and the work he did, even on the ones
15 that did not contain -- didn't say anything on the memo lines
16 about the type of work?

17 A. Correct.

18 Q. Okay.

19 **MS. MEADOWS:** Nothing further.

20 **THE COURT:** Any redirect?

21 **Redirect Examination by Ms. Ross:**

22 Q. Did you consider, when Mr. Poe wasn't present, subpoena
23 him to trial?

24 A. No, I did not.

25 Q. Did -- why not?

DOROTHY MANIGAULT - RECROSS-EXAMINATION BY MS. MEADOWS

29

1 A. We were both in shock that he wouldn't be here. And I
2 just didn't ---

3 Q. Okay.

4 A. --- think about subpoenaing him.

5 Q. And you expected that at least at the time that, you
6 know, when the charges were made he was helpful to your case?

7 A. Yes.

8 Q. In the discovery?

9 A. Yes. According to my client he would verify that the
10 work was done. And one of the reasons I did not think about
11 subpoenaing Mr. Poe is because we had received information
12 that he was already diagnosed with dementia.

13 Q. Okay.

14 A. And he may not have been a good witness. We did have
15 that.

16 Q. Yeah. And just -- and I just lost that thought.

17 **MS. ROSS:** No further questions.

18 **THE COURT:** Anything else?

19 **Recross-examination by Ms. Meadows:**

20 Q. So as to the agreements, you didn't have -- did you have
21 any evidence of those agreements or did you just rely on Mr.
22 Aiken's statements?

23 A. I relied on Mr. Aiken. There was no evidence of
24 agreement. And I asked him for contracts. He did not have
25 any.

DOROTHY MANIGAULT - RECROSS-EXAMINATION BY MS. MEADOWS

30

1 Q. Okay.

2 A. So I had nothing, ---

3 Q. Okay.

4 A. --- except his word.

5 Q. All right.

6 **MS. MEADOWS:** Nothing further, Judge.

7 **THE COURT:** Well, I tried to think of a question to ask,
8 but -- you may step down. Okay. Anything else?

9 **MS. ROSS:** No. We have nothing further. I would like
10 some just very brief argument. And there's a new case on
11 point.

12 **THE COURT:** Okay. What do you want to tell me?

13 **MS. ROSS:** So I guess a couple of months ago this new
14 case, State v. Holcomb came out.

15 **THE COURT:** You got the cite on it?

16 **MS. ROSS:** Yeah. I've got -- the cite is 827 S.E. 2d
17 367. It came out -- rehearing denied in May of 2019. I'll
18 hand it up.

19 But on page, I guess, 371 of -- they argue. Holcomb
20 argues that the trial court erred in refusing to grant him a
21 directed verdict of obtaining money by false pretenses charge
22 because the State failed to provide any statement that proved
23 to be false at the time it was made. And they agree.

24 So it's essentially another charge on this same obtaining
25 goods, promise to do something in the future case law. So I'd

1 hand that up for your consideration.

2 And then, you know, further argue had Mr. Paychak
3 effectively brief that issue as opposed to Anders brief, this
4 Mr. Aiken could have been Mr. Holcomb, he would be in that
5 place because here certainly no evidence was presented other
6 than he was getting checks and then doing the work. That was
7 his testimony. That was Ms. Manigault's testimony. That's
8 the promise to do something in the future. And that's a lot
9 of our argument.

10 **THE COURT:** I just -- I'm, you know, why is that -- the
11 goods that he obtained were the checks, was the money.

12 **MS. ROSS:** But since there was no evidence to the
13 contract or anything, kind of meeting of the minds between Mr.
14 Poe and Mr. Aiken, at the time there was no evidence presented
15 that there was any false representation, that Mr. Aiken ever
16 said I've done this work, now pay me for it. All the evidence
17 was pay me this and I'll go do this work. And I don't think
18 that falls under obtaining goods under false pretenses. And
19 that's just been the case law on that particular 16 13 240 for
20 a long time.

21 So we'd just argue -- what's the saying? That stands for
22 that reasoning and that should have been argued by counsel and
23 appellate counsel. And it could have changed the outcome of
24 the case.

25 And also with the checks being different, you know, this

1 becomes a five year charge if the amount is less than ten
2 thousand (10,000). So if -- the jury could have, if they had
3 a verdict form that distinguished between sections of the
4 statute or amounts of money, it might have made a difference
5 in the outcome of the case.

6 **THE COURT:** Okay. Well, I'm just looking at this Holcomb
7 case.

8 **MS. ROSS:** Okay.

9 **THE COURT:** And this is -- it reads; The cases
10 interpreting this statute make clear that a future promise
11 cannot constitute a false representation. A future promise,
12 not a promise to do something in the future.

13 In this case the representation was that Holcomb would
14 replace McGinn's roof. At the time the representation was
15 made Holcomb could have used the payment to replace the roof.
16 This is a little bit confusing.

17 **MS. ROSS:** It is -- I keep going back to this language
18 that they keep using. State v. McCutcheon, a promise to do
19 something in the future can't constitute the basis of
20 prosecution for obtaining goods under false pretenses. And I
21 think it's confusing too.

22 I think if someone came and rang my doorbell and said
23 give me twenty dollars (\$20.00) and I'll mow your lawn, and
24 they didn't mow their lawn, they have done -- they have not,
25 you know, they've said, give me money, and I promise I'll do

1 this. It has to be I have mowed your lawn, that's the false
2 representation, now give me the twenty dollars (\$20.00). So
3 that's our argument.

4 **THE COURT:** Yeah. Just a bridge too far for me. I don't
5 interpret it that way. And I don't -- I think that the
6 objections made by trial counsel, while not citing the
7 specific language, certainly covered the law, were correct
8 statements under the law.

9 And what was the -- and the State cited something in the
10 charge, I don't have it right in front of me, that the judge
11 made, which I think also ---

12 **MS. MEADOWS:** Yes. The judge's charge -- in part of his
13 charge he said the false pretenses -- I don't have it in front
14 of me, but part of it -- a past or existing fact. So I didn't
15 see that he needed to add the extra charge about the future
16 promise.

17 **THE COURT:** I'm not finding anything wrong done at the
18 trial level.

19 **MS. ROSS:** And, Judge, just on that, that is -- the
20 problem is the ruling and the argument in closing were stating
21 an error of law when they talked about he promised to do this
22 and he didn't, this is clearly that. So -- all right. Then I
23 would like to -- given that ruling I would go ahead and assert
24 that that argument should have been briefed and not an Anders
25 brief by appellate counsel.

1 **MS. MEADOWS:** Judge, I would just submit that Mr. Aiken
2 testified that the work was completed by the time he got the
3 last check. And he went through with the solicitor on every
4 single check and explained what -- the work that he did. So I
5 just don't see any basis for this -- I don't think the future
6 promise applies here.

7 **THE COURT:** Yeah. It's certainly -- in a light most
8 favorable to the non-moving party that -- I just don't see
9 that there's been a failure to fall below an objective
10 standard of reasonableness. Even assuming, I mean, I -- so
11 I'm going to deny that application.

12 **MS. ROSS:** Thank you, Your Honor.

13 **THE COURT:** Okay. Does that give you enough? You know,
14 prepare an order with a -- addresses all those issues.

15 **MS. MEADOWS:** Okay. So on ineffective assistance of
16 appellate counsel are you saying that it wasn't preserved or
17 that he did choose the best argument to brief?

18 **THE COURT:** I mean, we don't have any evidence that --
19 I'm quite sure that the -- I know what he'll say, that they
20 chose the best argument ---

21 **MS. MEADOWS:** Right.

22 **THE COURT:** --- to pursue. Do you want -- I mean, you
23 want to put something -- you want to get an affidavit or
24 something from him? I mean, I'll let you do that, but that's
25 what he's going to say. We all know it.

1 **MS. ROSS:** I know it is. I just want to make sure the
2 record's -- people are getting burned on this. I want to make
3 sure the record's preserved for me that you have a package in
4 your hand that contains the Appellate Court brief and ---

5 **THE COURT:** I do.

6 **MS. ROSS:** --- the ruling ---

7 **THE COURT:** I do.

8 **MS. ROSS:** And that's part of the record here. I don't
9 think I'm just going to go out on a limb and say I don't need
10 to read that into evidence or anything ---

11 **THE COURT:** No, ---

12 **MS. ROSS:** --- to preserve ---

13 **THE COURT:** --- it's part ---

14 **MS. ROSS:** --- that issue.

15 **THE COURT:** It's part of the record. Yeah.

16 **MS. ROSS:** Okay. I understand.

17 **THE COURT:** Okay. All right. Good.

18 **MS. MEADOWS:** Judge, when would you like the order by?

19 **THE COURT:** Why as soon as possible.

20 **MS. MEADOWS:** Okay.

21 **THE COURT:** What is your standard time-line?

22 **MS. MEADOWS:** Now, it's about -- usually about 30, 45
23 days.

24 **THE COURT:** That'll be fine.

25 **MS. MEADOWS:** Okay.

5 (End of Requested Transcript of Record)

Certificate of Reporter

I, The undersigned, Susan W. Hudgins, Official Court Reporter for the Thirteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the trial/hearing of the captioned case, relative to appeal, in the Circuit Court for Greenville County, South Carolina, on the 23rd day of October 2019.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

June 17, 2020

s/Susan W. Hudgins

Circuit Court Reporter

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

Carl Stanley Aiken

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
IN THE THIRTEENTH JUDICIAL CIRCUIT

Case No. 2019-CP-23-0484

ORDER OF DISMISSAL
ENTERED COMPUTER

FILED-CLERK OF COURT
PAUL B. HARRIS
2020 JAN 27 PM 1:21

I. INTRODUCTION

The matter before the Court is an action for post-conviction relief (PCR) commenced by Carl Stanley Aiken (Applicant) on February 1, 2019. The State requested an evidentiary hearing through its return on March 3, 2019. On October 23, 2019, this Court convened an evidentiary hearing at the Greenville County Courthouse before the undersigned. Applicant was present and represented by Susannah Ross, Esquire. Assistant Attorney General Lillian L. Meadows represented the State. Applicant testified on his own behalf at the hearing, as did his trial counsel, Dorothy Manigault, Esquire (Counsel). In addition to the pleadings in this action, the Court had before it a copy of the records of the Greenville County Clerk of Court regarding the subject convictions, Applicant's appellate records, including the trial transcript and record on appeal, and Applicant's records from the South Carolina Department of Corrections.

After hearing the testimony at the PCR hearing and a full review of the record, this Court finds Applicant's allegations regarding ineffective assistance of counsel are without merit. Therefore, for the reasons discussed below, this Court denies relief and dismisses this action with prejudice.

II. PROCEDURAL HISTORY

Applicant is not presently confined in the South Carolina Department of Corrections. During its May 2016 term, the Greenville County Grand Jury indicted Applicant for exploitation of a vulnerable adult (2015-GS-23-3451). The Greenville County Grand Jury subsequently indicted Applicant for unlawful practice of a regulated profession (2016-GS-23-06461A) and obtaining goods under false pretenses (2016-GS-23-06460A) during its July 2016 term. These charges stem from Applicant's receipt of payments from an elderly victim for handiwork that was never performed.

On April 3, 2017, the State called Applicant's case to a jury trial for exploitation of a vulnerable adult and obtaining goods under false pretenses before the Honorable R. Lawton McIntosh. Dorothy Manigault, Esquire represented Applicant and Assistant Solicitors Jonathan Gregory and Jenna Hendricks prosecuted the case.

A. Summary of Evidence Adduced at Trial

Applicant began performing handiwork for the victim, Raymond Poore (Victim), in 2008. Then on December 1, 2012 through February 23, 2013, Applicant allegedly performed more extensive home repairs on Victim's house, such as installing gutters, exterior painting, etc. Applicant received payment from Victim by check. Applicant received thirteen checks from Victim over three months, which totaled \$14,250. However, only \$6,950 worth of the checks contained legible memos, such as "house repair."

Victim's first cousin, Terry Ford, had power of attorney over Victim beginning in 2012 when Victim was diagnosed with dementia. (Trial Tr. 126-127). Ford testified that in March of 2013, Victim's condition reached a point where Ford hired someone to stay with Victim during the day. Ford testified she helped Victim pay his bills and balance his checkbook after she was

given power of attorney, which included the three-month period where Applicant was doing work on Victim's house. (Trial Tr. 81-82).

When Ford noticed several checks for large amounts written to Applicant, Ford called Applicant to ask him about the work being done. (Trial Tr. 83). Ford testified that what Applicant told her "just was not matching up to what was being done around the house." (Trial Tr. 83). Ford saw Applicant once or twice at Victim's house, but could not tell what he was doing at the time. (Trial Tr. 84). Ford testified she noticed a few small spots were painted outside the house, but not enough that was worth what Applicant was being paid. (Trial Tr. 84-85). Ford asked Applicant to provide her with receipts for the supplies he purchased, but Applicant never provided them. (Trial Tr. 86-87). Ford then took Victim to the bank and then the Sheriff's Department. (Trial Tr. 88). The investigator Ford spoke with asked Ford to have a licensed contractor take a look at the property and make an estimate as to the value of the work performed versus what had been paid. (Trial Tr. 157). Ford then contacted a license contractor, Jerry Brown, who went to Victim's house to evaluate the work Applicant had allegedly done. (Trial Tr. 88).

Brown testified Ford was a friend of his who asked him to "come over and look at a job and see what was done and what wasn't done." (Trial Tr. 145). When they arrived at the house, Brown testified Applicant called Ford. (Trial Tr. 145). Brown testified he spoke with Applicant briefly about receipts, but Applicant did not provide any information. (Trial Tr. 145). Regarding the painting, Brown testified that only the only part of the home that appeared to be painted was a spot in the front approximately two by six feet and on the front column of the house. (Trial Tr. 146). Brown testified that the trim around the windows, the front door, and the rest of the columns were not touched. (Trial Tr. 146). Brown also testified that new gutters were not

installed, and that no work had been done to the foundation. (Trial Tr. 146). Brown testified he did not check the roof while he was there. (Trial Tr. 147). Brown testified that the only tree work that was done was a limb about three inches around was cut down. (Trial Tr. 147).

Ford's granddaughter, Elizabeth Eudy, who also spent a substantial amount of time with Victim, testified that the "house looked the same as it did when [she] was little." (Trial Tr. 102). Eudy testified that the house looked "run-down," and needed to be sanded and re-painted. (Trial Tr. 102). Victim's neighbor, Dennis Larson, also testified. (Trial Tr. 107). Larson testified that Ford asked him to start looking after Victim two days a week starting in December 2012. (Trial Tr. 108). Larson testified he routinely took Victim to lunch because Victim could no longer drive. (Trial Tr. 109-110). The first time Larson went to Victim's house was in March of 2013, after Applicant had allegedly completed all the work. (Trial Tr. 111). Larson testified that the exterior paint was dirty, and guessed it had not been repainted for seven or eight years. (Trial Tr. 111). Larson testified he had never seen Applicant at Victim's house. (Trial Tr. 111).

B. Applicant's Trial Testimony

Applicant testified he met the victim, Raymond Poore (Victim), around 2008 when Applicant was performing handiwork on a house in Powdersville. (Trial Tr. 193). Victim and his wife approached Applicant, and asked Applicant if he would be interested in doing some work on their house. (Trial Tr. 193). Applicant testified he did some basic work for Victim later that year, such as cleaning out the gutters and trimming trees in the front yard. (Trial Tr. 193). In November of 2012, after Victim's wife passed away, Victim told Applicant he needed more extensive work done on his house, such as painting the exterior. Applicant testified that at that time, Victim was acting normal and driving around town just as he had back in 2008. (Trial Tr. 193).

Before Applicant began working, the two sat down to figure out pricing and go over exactly what Victim wanted done. Applicant testified that Victim gave him the first check, for \$1,250, to “get started” buying the paint and whatever else he needed. (Trial Tr. 216). Applicant testified that after he finished pressure washing the house to prepare for painting, he told Victim he would need payment as he went along. (Trial Tr. 215). Applicant testified he removed Victim’s storm windows, cleaned and re-glazed them, replaced and painted the fascia boards, and painted all the windows. (Trial Tr. 195–196). The solicitor then went over the checks, and Applicant specified the work he did in exchange for each check. Applicant testified that all the “work was completed when [Victim] gave [him] the last check around February 23rd.” (Trial Tr. 203).

Applicant testified he never spoke with Ford or Brown. (Trial Tr. 202). Applicant testified he never saw anyone between November of 2012 and February 2013 at Victim’s house taking care of him. (Trial Tr. 203). Applicant testified that Victim never told him about any medical problems. (Trial Tr. 204).

C. Verdict & Subsequent Proceedings

On April 4, 2017, the jury returned verdicts on both indictments, finding Applicant guilty of obtaining goods under false pretenses and not guilty of exploitation of a vulnerable adult. Judge McIntosh sentenced Applicant to ten years’ imprisonment suspended upon the service of four years’ imprisonment followed by five years’ probation. Judge McIntosh also ordered Applicant to pay \$14,250.00 in restitution to the victim.

Ms. Manigault filed a timely notice of appeal on Applicant’s behalf. Appellate Defender Robert M. Pachak perfected Applicant’s appeal by filing an *Anders*¹ brief with the Court of

¹ *Anders v. California*, 386 U.S. 738 (1967).

Appeals. Applicant then filed a *pro se* brief.² On September 1, 2018, the Court of Appeals dismissed Applicant's appeal. *State v. Aiken*, Op. No. 2018-UP-375. (S.C. Ct. App. filed June 13, 2018). The case was remitted back to the circuit court on October 26, 2018. Applicant timely commenced this PCR action on February 1, 2019.

On April 17, 2019, the Court convened an evidentiary hearing at the Greenville County Courthouse before the Honorable Alex Kinlaw, Jr. Applicant was not present; however, Susannah Ross, Esquire, was present on Applicant's behalf. Assistant Attorney General Samuel L. Key represented the State. Judge Kinlaw dismissed the application on the State's motion for failure to prosecute, but gave Applicant thirty days to respond with a sufficient reason as to why the dismissal should not become final. Applicant, through PCR counsel, filed a timely 59(e) motion, indicating that Applicant did not receive notification of the hearing through no fault of his own. The State consented to Applicant's request to rescind the order. Judge Kinlaw issued an order vacating the order of dismissal on July 31, 2019.

III. ISSUES BEFORE THIS COURT

In his original PCR application, Applicant alleged he was being held in custody unlawfully due to ineffective assistance of counsel. Specifically, Applicant alleged ineffective assistance of trial counsel based on:

1. Failure to move to quash his indictments, including an argument that Applicant was on trial for two indictments for the same crime/course of conduct
2. Applicant "failed to get a fair trial" because he was not able to confront his victim who did not appear at his trial

² While Applicant's direct appeal was pending, Applicant filed a PCR application (2017-CP-23-05234). The Honorable Perry H. Gravely issued an order dismissing the application without prejudice, with leave for Applicant to refile for post-conviction relief when his direct appeal concluded.

Pursuant to Rule 71.1, SCRCP, Applicant, through PCR counsel, amended his application to include the following claims:

1. Ineffective assistance of trial counsel for:
 - a. "Failing to argue in her motions for directed verdict and a new trial on the charge of obtaining goods under false pretenses that 'A promise to do something in the future cannot constitute the basis of a prosecution for obtaining goods under false pretenses.' See State v. McCutcheon, 284 S.C. 524, 525, 327 S.E.2d 372 (Ct.App.1985) & State v. Dickinson, 528 S.E.2d 675, 339 S.C. 194 (S.C. App., 2000);"
 - b. "Failing to request a jury instruction that 'A promise to do something in the future cannot constitute the basis of a prosecution for obtaining goods under false pretenses.' See State v. McCutcheon, 284 S.C. 524, 525, 327 S.E.2d 372 (Ct. App. 1985) & State v. Dickinson, 528 S.E.2d 675, 339 S.C. 194 (S.C. App. 2000);"
 - c. "Failing to argue for a verdict form requiring a finding on the value of the property when the State offered no evidence of the terms of any agreement between the alleged victim and the Applicant relying only on circumstantial evidence of an agreement based on the notations of the memo lined of the checks. While thirteen checks totaling \$14,125 were cashed by the Applicant, only \$6950 worth of checks contained legible memos. See transcript pp. 186 & pp. 58-62."
2. "Applicant also alleges ineffective assistance of appellate counsel for failing to brief argument that the trial court erred in denying the directed verdict motion and motion for a new trial on the charge of obtaining good under false pretenses because the ruling was based on an error of law. The court denied the motions stating, 'That evidence was, he agreed to do work that wasn't performed...' (Transcript p. 294, 1. 7). That is an error of law because 'A promise to do something in the future cannot constitute the basis of a prosecution for obtaining goods under false pretenses.' See State v. McCutcheon, 284 S.C. 524, 525, 327 S.E.2d 372 (Ct. App.

1985) & State v. Dickinson, 528 S.E.2d 675, 339 S.C. 194 (S.C. App. 2000);”

3. “Finally, Applicant also argues Due Process violations due violations of his rights to a fair trial guaranteed by the Fifth and Fourteenth Amendment of the Constitution of the United States & Art. I Sec. 3, 10, & 14 of the South Carolina Constitution.”

At the outset of the evidentiary hearing, PCR counsel expressly withdrew all allegations pled in the original PCR application. To the extent the allegations set forth in Applicant’s original application can be construed as separate grounds for relief from the grounds stated at the PCR hearing, this Court finds those claims were voluntarily waived and abandoned, and those claims are therefore denied and dismissed with prejudice. S.C. Code Ann. § 17-27-90.

IV. STANDARD OF REVIEW

An applicant may seek PCR upon the following types of allegations:

1. That the conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State;
2. That the court was without jurisdiction to impose sentence;
3. That the sentence exceeds the maximum authorized by law;
4. That there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice;
5. That his sentence has expired, his probation, parole or conditional release unlawfully revoked, or he is otherwise unlawfully held in custody or other restraint; or
6. That the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding or remedy[.]

S.C. Code Ann. § 17-27-20(A).

Ordinarily, PCR allegations are centered upon an allegation that the applicant did not receive *effective* assistance of counsel guaranteed them by the Sixth and Fourteenth Amendments to the United States Constitution. *Strickland v. Washington*, 466 U.S. 668 (1984); *Taylor v. State*, 404 S.C. 350, 359, 745 S.E.2d 97, 101 (2013); *see generally* S.C. Code Ann. § 17-27-20(A) (enumerating allegations cognizable in PCR actions). The allegation of denial of such representation sets forth a *prima facie* violation of this constitutional right, and raises a question of fact that can only be determined by an evidentiary hearing. *Rogers v. State*, 261 S.C. 288, 291, 199 S.E.2d 761, 762 (1973).

In a PCR action, the applicant bears the burden of proving the allegations by a preponderance of the evidence—a mere allegation of ineffective assistance is not sufficient to warrant granting relief. Rule 71.1(e), SCRCP; *Butler v. State*, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985); *State v. Pendergrass*, 270 S.C. 1, 4, 239 S.E.2d 750, 751 (1977). The reviewing court applies the two-part test outlined in *Strickland* to determine whether counsel's conduct "was so ineffective as to require reversal" of the applicant's conviction or sentence. 466 U.S. at 687. First, the applicant must show that counsel's performance was deficient; and second, that the deficient performance prejudiced the applicant. *Id.* 668; *Butler*, 286 S.C. at 442, 334 S.E.2d at 814.

The first prong—constitutional deficiency—is "necessarily linked to the practice and expectations of the legal community." *Padilla v. Kentucky*, 559 U.S. 356, 366, 130 S. Ct. 1473, 1482, 176 L. Ed. 2d 284 (2010). In order to prove deficient performance, the applicant must show counsel's representation fell below an objective standard of "reasonableness under prevailing professional norms." *Cherry v. State*, 300 S.C. 115, 117–18, 386 S.E.2d 624, 625 (1989). The proper measure of performance is whether the attorney provided representation

within the range of competence required in criminal cases. *Butler*, 286 S.C. at 442, 334 S.E.2d at 814.

Strickland, however, “does not guarantee perfect representation[—]only a ‘reasonably competent attorney.’” *Harrington v. Richter*, 562 U.S. 86, 110 (2011) (quoting *Strickland*, 466 U.S. at 687). Representation is constitutionally ineffective only if counsel’s conduct “so undermined the proper functioning of the adversarial process” that the defendant was denied a fair proceeding. *Strickland*, 466 U.S. at 686. Just as there is “no expectation that competent counsel will be a flawless strategist or tactician, an attorney may not be faulted for a reasonable miscalculation or lack of foresight or for failing to prepare for what appear to be remote possibilities.” *Harrington*, 562 U.S. at 110.

Accordingly, “[j]udicial scrutiny of counsel’s performance must be highly deferential, as it is all too tempting for a defendant to second-guess counsel’s assistance after conviction or an adverse sentence, and it is all too easy for a court, examining counsel’s defense after it has proved unsuccessful, to conclude that a particular act or omission of counsel was unreasonable.” *Strickland*, 466 U.S. at 689; see also *Yarborough v. Gentry*, 540 U.S. 1, 6 (2003) (“The Sixth Amendment guarantees reasonable competence, not perfect advocacy judged with the benefit of hindsight.”). Thus, a fair assessment of attorney performance requires every effort be made to eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel’s challenged conduct, and to evaluate the conduct from counsel’s perspective at the time. *Id.*

The second, or “prejudice” prong of *Strickland* is rooted in the very purpose of the Sixth Amendment guarantee of counsel—to ensure a defendant has the assistance necessary to justify reliance on the outcome of the proceeding. *Id.* at 691–92. In order to prove prejudice, an applicant must demonstrate counsel’s deficient performance 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.” *Cherry*, 300 S.C. at 117-18, 386 S.E.2d at 625. A reasonable probability is a probability “sufficient to undermine confidence in the outcome.” *Strickland*, 466 U.S. at 694. Thus, it is not enough “to show the errors had some conceivable effect” on the outcome of the proceeding—counsel’s errors must be “so serious as to *deprive the defendant of a fair trial*.” *Id.* at 687 (emphasis added). Moreover, the South Carolina Supreme Court has repeatedly held a PCR applicant must produce the testimony of a favorable witness or otherwise offer the testimony in accordance with the rules of evidence at the PCR hearing in order to establish prejudice. *Bannister v. State*, 333 S.C. 298, 303, 509 S.E.2d 807, 809 (1998).

The performance and prejudice standards, however, “do not establish mechanical rules; [t]he ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged.” *Strickland*, at 696. Moreover, “there is no reason for a court deciding an ineffective assistance claim to approach the inquiry in the same order or even to address both components of the inquiry if the defendant makes an insufficient showing on one.” *Id.* at 697. The court “need not determine whether counsel’s performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies. *Id.* If it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, the court may evaluate the prejudice prong only. *Id.*”

V. FINDINGS OF FACT & CONCLUSIONS OF LAW

This Court has reviewed the testimony presented at the PCR hearing, observed the witnesses, passed upon their credibility, and weighed their testimony accordingly. After hearing the testimony presented and considering the legal arguments by counsel, as well as the record in this action incorporated by way of the State’s return, this Court proceeds to the claims raised in

the amended application and finds each to be without merit. Pursuant to S.C. Code Ann. § 17-27-80, this Court makes the following findings of facts and conclusions of law based upon all of the probative evidence presented.

1. **Ineffective assistance of trial counsel for failing to argue in the motions for a directed verdict and failing to request a jury instruction that, "A promise to do something in the future cannot constitute the basis of a prosecution for obtaining goods under false pretenses."**

In the amended application, Applicant first alleges Trial Counsel was ineffective for failing to argue in the motions for a directed verdict and new trial, and failing to request a jury instruction that, "A promise to do something in the future cannot constitute the basis of a prosecution for obtaining goods under false pretenses." Applicant cites *State v. McCutcheon*, 284 S.C. 524, 525, 327 S.E.2d 372 (Ct. App. 1985), and *State v. Dickinson*, 528 S.E.2d 675, 339 S.C. 194 (S.C. App. 2000), in support of his argument.

This Court disagrees, and finds Counsel was not deficient based on Counsel's testimony that she based her trial strategy on the theory that Applicant performed all the work for the money received. This strategy is consistent with Applicant's testimony at trial that all of the work was completed by the time Applicant received the last check from Victim. (Trial Tr. 203). Thus, no "future promise" existed.

A reviewing court "must judge the reasonableness of counsel's challenged conduct on the facts of the particular case, viewed at the time of counsel's conduct." *Strickland*, 466 U.S. at 690. Because of the difficulties inherent in making such an evaluation, the reviewing court must indulge in a "strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance." *Butler*, 286 S.C. at 445, 334 S.E.2d at 816. The applicant must overcome this presumption to receive relief. *Cherry*, 300 S.C. at 118, 386 S.E.2d at 625. Thus, an applicant making a claim of ineffective assistance "must identify the acts or omissions of

counsel that are alleged *not* to have been the result of reasonable professional judgment.” *Strickland*, 466 U.S. at 690 (emphasis added). The reviewing court must then “determine whether, in light of all the circumstances, the identified acts or omissions were outside the wide range of professionally competent assistance.” *Id.*

The *Strickland* standard must be applied with scrupulous care, lest “intrusive post-trial inquiry” threaten the integrity of the very adversary process the right to counsel is meant to serve. 466 U.S. at 689-690; *see also Harrington*, 562 U.S. at 105 (cautioning that an ineffective assistance of counsel claim could potentially function as a way to escape rules of waiver and forfeiture and raise issues not presented at trial). Even under *de novo* review, the standard for judging counsel’s representation is a most deferential one. *Harrington*, 562 U.S. at 105. Unlike a later reviewing court, the attorney observed the relevant proceedings; knew of materials outside the record; and interacted with the client, opposing counsel, and the judge. Thus, the question is whether an attorney’s representation amounted to incompetence under “prevailing professional norms,” *not* whether it deviated from best practices or most common custom. *Id.* (quoting *Strickland*, 466 U.S. at 690) (emphasis added).

... Trial Counsel testified that she moved for a directed verdict on the basis that the state had not proven the elements of the charged crimes. Trial Counsel challenged the existence of an agreement because the State did not solicit testimony from anyone with direct knowledge of an agreement between Victim and Applicant. (Trial Tr. 181). The State admitted that it was relying on exclusively circumstantial evidence of the agreement. (Trial Tr. 186–187). The trial court took the matter under advisement, but ended up denying Counsel’s directed verdict motion.

At the PCR hearing, Trial Counsel testified that she did not argue nor did she request a jury instruction that a promise to do something in the future cannot be the basis of false

pretenses. As discussed above, Trial Counsel's strategy was not based on the theory that Applicant made any promise regarding future work. Trial Counsel's theory was that Applicant completed the work as he went along, and thus no false pretenses existed.

Applicant testified that Victim would have corroborated his version of events at trial, which he told Trial Counsel. Applicant further testified that he believed Victim as diagnosed with dementia after Applicant had completed the work for him. Applicant testified, as he did at trial, that Victim never indicated that he had dementia or any other mental health issue. When Victim did not appear at trial, Trial Counsel testified that, although she had anticipated Victim testifying, she did not believe Victim's testimony would have been particularly helpful to Applicant given his dementia. Trial Counsel believed the jury would have found the Victim not credible. However, Trial Counsel nonetheless argued during her directed verdict motion that Applicant was denied his right to confront his accuser. (Trial Tr. 181). The trial court denied this motion, finding that the confrontation clause was not implicated because the State never attempted to introduce testimony from Victim. (Trial Tr. 182).

Trial Counsel testified that part of her trial strategy was challenging the State's lack of direct evidence regarding any agreement between Applicant and the victim. At the PCR hearing, Trial Counsel pointed out that she argued that the State's witnesses had no direct knowledge of any agreement. (Trial Tr. 181). Trial Counsel testified she informed Applicant of his right to remain silent, but Applicant was adamant about testifying. Applicant recalled testifying at trial, but did not remember testifying as to the work he did for each check. However, after seeing the transcript, Applicant admitted he testified to the best of his knowledge the purpose of each check, including the checks with blank memo lines. Applicant admitted that the work was complete when Victim gave him the last check.

Thus, because asking for a directed verdict, new trial, or jury instruction based on the “future promise” argument would have been inconsistent with Counsel’s articulated defense theory, this Court finds Applicant’s trial counsel was not deficient on this basis, nor was it prejudicial to Applicant’s defense. Accordingly, Applicant’s ineffective assistance claim pertaining to Trial Counsel’s failure to argue or request a jury instruct that, “a promise to do something in the future cannot constitute the basis of a prosecution for obtaining goods under false pretenses,” is **DENIED**.

2. Failing to argue for a verdict form requiring a finding on the value of the property when the State offered no evidence of the terms of any agreement between the alleged victim and the Applicant relying only on circumstantial evidence of an agreement based on the notations of the memo line of the checks.

Applicant’s allegation Counsel was ineffective for failing to request a verdict form is similarly without merit because the amount of money Applicant received from the victim was never disputed by either party. In fact, requesting a verdict form on the total amount would have been inconsistent with the defense theory—that Applicant performed all the work for the money received. Trial Counsel testified her strategy was to challenge the “false pretenses” element, not the amount money received. Trial Counsel further testified that Applicant was adamant about testifying. As discussed above, Applicant went through each of the thirteen checks at trial, and testified to the specific work he completed in exchange for each check. A verdict form challenging the amount Applicant received would therefore have had little effect on the jury’s verdict. Thus, this Court finds Applicant failed to show any deficiency on the part of Trial Counsel or any resulting prejudice. Accordingly, Applicant’s ineffective assistance claim pertaining to Trial Counsel’s failure to request a verdict form on the value of the property is **DENIED**.

3. Ineffective assistance of appellate counsel for failing to brief argument that the trial court erred in denying the directed verdict motion and motion for a new trial on the charge of obtaining good under false pretenses because the ruling was based on an error of law.

As an initial matter, this Court finds the State correctly pointed out Applicant alleged both trial counsel was ineffective in failing to preserve these issues and appellate counsel was ineffective in failing to raise them. It cannot be both ways, as appellate counsel cannot be deficient for failing to raise an unpreserved issue. *Legge v. State*, 349 S.C. 222, 562 S.E.2d 618 (2002). In order for an issue to properly be preserved for appellate review, the issue must be: (1) raised to and ruled upon by the trial court; (2) raised by the appellant; (3) raised in a timely manner; and (4) raised to the trial court with sufficient specificity. *State v. Rogers*, 361 S.C. 178, 183, 603 S.E.2d 910, 912–913 (Ct. App. 2004). South Carolina's issue preservation requirements are designed "to enable the lower court to rule properly after it has considered all relevant facts, law, and arguments." *I'On, L.L.C. v. Town of Mt. Pleasant*, 338 S.C. 406, 422, 526 S.E.2d 716, 724 (2000).

A defendant is constitutionally entitled to the effective assistance of appellate counsel. *Evitts v. Lucey*, 469 U.S. 387 (1985). In analyzing a claim of ineffective assistance of appellate counsel, the reviewing court applies the *Strickland* test just as it would when analyzing a claim of ineffective assistance of trial counsel. See generally *Southerland v. State*, 337 S.C. 610, 524 S.E.2d 833 (1999). Specifically, when an applicant contends appellate counsel rendered ineffective assistance for failing to argue a specific issue on appeal, he must show failure to raise that issue was objectively unreasonable and that, but for this failure, there is a reasonable probability he would have prevailed on appeal. *Id.* at 616, 524 S.E.2d at 836; *Anderson v. State*, 354 S.C. 431, 434, 581 S.E.2d 834, 835 (2003).

In the *Anders* brief filed on Applicant's behalf, Appellate Counsel raised the following issue: whether the trial court erred in failing to grant a directed verdict to the charge of obtaining goods under false pretenses because the State failed to present any evidence beyond a reasonable doubt concerning what false pretenses were made." Applicant specifically alleges Appellate Counsel should have instead briefed the issue of trial court error "in denying the directed verdict motion and motion for a new trial . . . because the ruling was based on an error of law."³ However, as discussed above, Trial Counsel never raised the "future promise" issue at trial because her trial strategy was based on showing the jury that Applicant had in fact performed the work for the money he received. *State v. Dunbar*, 356 S.C. 138, 142, 587 S.E.2d 691, 693–94 (2003) ("In order for an issue to be preserved for appellate review, it must have been raised and ruled upon by the trial judge."). Trial Counsel's articulated trial strategy is consistent with Applicant's testimony at trial, which was that he "had completed all the work" by the time the victim gave him the last check, further refuting the idea of any existing future promise. (Trial Tr. 203).

Appellate Counsel was therefore precluded from raising this issue on appeal because the issue was never raised by Trial Counsel nor ruled upon by the trial court. *State v. Jordan*, 255 S.C. 86, 177 S.E.2d 464 (1970) (explaining that issues not raised to the trial court in support of the directed verdict motion are not preserved for appellate review). This Court notes that even if Trial Counsel had raised the issue in the motion for a new trial, it would not have been preserved

³ To the extent Applicant alleges Appellate Counsel should have filed a merits brief, the *Strickland* standard similarly applies. See *Smith v. Robbins*, 528 U.S. 259, 285 (2000) (finding that *Strickland* is the proper standard for evaluating claim that appellate counsel was ineffective in neglecting to file a merits brief). Thus, an applicant must first show appellate counsel was objectively unreasonable . . . in failing to find arguable issues to appeal—that is, that counsel unreasonably failed to discover nonfrivolous issues and to file a merits brief raising them." *Id.* The applicant must then show a reasonable probability that, "but for his counsel's unreasonable failure to file a merits brief, he would have prepared on appeal." *Id.*

for appellate review. *Dixon v. Dixon*, 362 S.C. 388, 399, 608 S.E.2d 849, 854 (2005) (holding that an issue first raised in a post-trial motion is not preserved for appellate review).

Aside from the lack of preservation, this Court finds Appellate Counsel was not ineffective for failing to raise this issue. As discussed above, Trial Counsel testified at the PCR hearing that her trial strategy was based on showing that Applicant had completed the work, not that he promised to do work at some point in the future. Moreover, because Applicant failed to present any testimony from Appellate Counsel on this issue, this Court further finds Applicant cannot overcome the presumption the decision was based on strategy. *See Anderson*, 354 S.C. 431, 581 S.E.2d 834 (noting that a PCR applicant has the burden of proving appellate counsel's performance was deficient)). Applicant has therefore failed to show either deficiency or prejudice on the part of Appellate Counsel. Accordingly, Applicant's ineffective assistance claim pertaining to appellate counsel is **DENIED**.

VI. ALL OTHER ALLEGATIONS

As to any and all allegations raised in the application or at the hearing in this matter and not specifically addressed in this order, this Court finds Applicant failed to present any evidence regarding such allegations. Accordingly, this Court finds those claims were voluntarily waived and abandoned, and those claims are therefore denied and dismissed with prejudice. S.C. Code Ann. § 17-27-90.

VII. CONCLUSION

Based on the evidence presented at the PCR hearing and a thorough review of the record, this Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application for post-conviction relief. Counsel was not deficient in any manner, nor was Applicant prejudiced by Counsel's

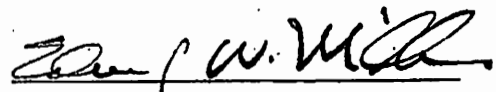
representation. Therefore, based on the foregoing, this Court denies relief on all allegations and dismisses this PCR action with prejudice.

Applicant must file and serve a notice of appeal within thirty days from PCR counsel's receipt of written notice of entry of judgment to secure the appropriate appellate review pursuant to Rule 203, SCACR. Applicant has a right to appellate counsel's assistance in seeking review of the denial of PCR. *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991). Rule 71.1(g), SCRCP, provides that if Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on Applicant's behalf. Applicant is directed to Rule 243, SCACR, for appropriate procedures for appeal.

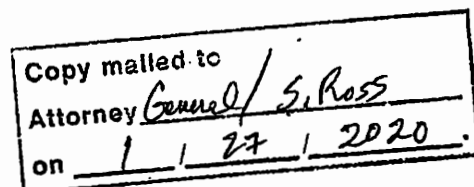
IT IS THEREFORE ORDERED:

1. The Court denies relief and dismisses the action with prejudice.

AND IT IS SO ORDERED this 21 day of January, 2020.


 THE HONORABLE EDWARD W. MILLER
 Presiding Circuit Court Judge
 Thirteenth Judicial Circuit

Greenville, South Carolina



WITNESSES

Jon D Howard

Greenville County Sheriffs Office

2/9/2015

ARREST WARRANT NUMBER

DIRECT PRESENTMENT

D.O.B. [REDACTED] 57 B/M SSN: [REDACTED]

ACTION OF GRAND JURY

TRUE BILL

Richard D. [Signature]
FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2016-GS-23-

JMG

006461A

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

July

TERM 2016

THE STATE

vs.

CARL STANLEY AIKEN

Indictment for

2791

**UNLAWFUL PRACTICE OF A REGULATED
PROFESSION**

VIOLATION § 40-01-0200

GENERAL SESSIONS DOCKET TRACKING SHEET

Name: CARL STANLEY AIKEN

Indictment #: 2016GS2306461A

Address: [REDACTED]

Warrant/Ticket #: 2016GS2306461A

City: Donalds State: SC ZIP: 29638-8708

No Warrant: _____

SS#: [REDACTED] Sex: M Race: BOffense Code: 2791

Date of Birth: [REDACTED] 1957

Offense Name: Professions / Unlawful PrState: SC Driver's License #: [REDACTED]Date of Arrest: July 26, 2016**FILED**DATE OF DISPOSITION: 0, 0

APR 06 2017

Clerk of Court
Greenville County

DISPOSITION:

____ 1. Guilty Plea

* ____ 7. Remanded

____ 2. Trial (Guilty)

____ 8. Dismissed at Prelim

____ 3. Trial (Not Guilty)

____ 8. No Bill

* X 4. Dism Nol Pros/Pros Ended

* ____ 9. Failure to Appear

* ____ 5. Judicial Commitment

* ____ 10. Other

____ 6. Judicial Dismissal

* Explain: Prosecutorial Discretion

Judge: _____

Ct. Reporter: _____

Defense Attorney: M. A. B. - 1Solicitor: Jonathan M. GregoryBar #: 73601Offense Code: 2791Offense Name: Professions / Unlawful Pr

Sentence: _____

WITNESSES

Jon D Howard

MS 5/24/16

Greenville County Sheriffs Office

2/9/2015

ARREST WARRANT NUMBER
2013A2330203952

ACTION OF GRAND JURY

TRUE BILL

Thomas J Pad

FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2015-GS-23-
WCM

000731

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

May

TERM 2015

THE STATE

vs.

CARL STANLEY AIKEN

Indictment for

2657.

EXPLOITATION OF A VULNERABLE ADULT

VIOLATION § 43-35-0085(

FILED

MAY 19 2015

**Clerk of Court
Greenville County**

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GREENVILLE)

INDICTMENT FOR
 EXPLOITATION OF A VULNERABLE ADULT

MAY 24 2016

At a Court of General Sessions, convened on

the Grand Jurors of Greenville

County present upon their oath:

That CARL STANLEY AIKEN did in Greenville County, between the 1st day of December 2012, and the 1st day of March 2013, knowingly and willfully abuse, neglect or exploit RAYMOND POORE, a vulnerable adult, to wit: The defendant obtained funds from the victim, who suffers from dementia, claiming to have performed painting, and/or other odd jobs, which were never done. This is in violation of §43-35-0085 of the South Carolina Code of Laws (1976) as amended.

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


 SOLICITOR

11605

BAR # 11605

General Sessions Tracking Sheet

Indictment # 0000GS23

Name: Aiken, Carl Stanley

Warrant/Ticket #: 2013A2330203952

AKA:

Date of Arrest: 02/09/2015

Addr: [REDACTED]
Donalds, SC 29638-8708

Date of Offense: 12/01/2012

Date Rev by Clerk 02/12/2015

Magistrate: Garrett, Charles R.

SSN# [REDACTED]

Counts: Code: 2657/Exploitation / Exploitation of a vulnerable adult

Sex: M Race: B

DOB: [REDACTED] 1957

DL# [REDACTED]

Indictment # ~~0000GS23~~

15-3451

Disposition Information

1. Transmitted to SOL & SCCA:
2. Disp Received by Clerk:
3. Date of Disposition:

- Disposition
- | | |
|--|----------------|
| ☐ 1. Guilty plea | |
| ☐ 2. Trial -- guilty | |
| ☒ 3. Trial -- not guilty | |
| ☐ 4. Dism/Not Pros/Pros Ended | Explain: _____ |
| ☐ 5. Judicial Commitment | Explain: _____ |
| ☐ 6. Judicial Dismissal | |
| ☐ 7. Remanded | Explain: _____ |
| ☐ 8. Dismissed at Prelim | |
| ☐ 8. No Bill | |
| ☐ 9. Failure to Appear | Explain: _____ |
| ☐ 10. Other | Explain: _____ |

Judge: _____

Court Reporter: _____

Defense Atty: Dorothy ManigaultSolicitor: Griffin 73601

Counts: _____ Code: _____

Sentence: _____

WITNESSES

Jon D Howard

Greenville County Sheriff's Office

2/9/2015

ARREST WARRANT NUMBER

DIRECT PRESENTMENT

D.O.B. [REDACTED] 57 B/M SSN: [REDACTED]

ACTION OF GRAND JURY

TRUE BILL

Richard Love
FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Guilty (PUD)

X. [Signature]
Foreperson of Petit Jury

Date: 4-4-17

DOCKET NO. 2016-GS-23-
JMG

006460A

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

July

TERM 2016

THE STATE

vs.

CARL STANLEY AIKEN

Indictment for

3471

**OBTAINING GOODS UNDER FALSE
PRETENSES**

VIOLATION § 16-13-0240

**ENTERED
ACCT. FILED**

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

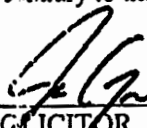
INDICTMENT FOR
UNLAWFUL PRACTICE OF A REGULATED PROFESSION

At a Court of General Sessions, convened on **JUL 26 2016** the Grand Jurors of Greenville
County present upon their oath:

DIRECT PRESENTMENT

That CARL STANLEY AIKEN did in Greenville County, between the 1st day of December 2012, and the
1st day of March 2013, practice or offer to practice a regulated profession, to wit: construction contractor, in the
State of South Carolina without a valid license. This is in violation of § 40-01-0200 of the South Carolina Code
of Laws (1976) as amended.

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


SOLICITOR

BAR # 73601

STATE OF SOUTH CAROLINA

COUNTY OF Greenville
STATE VS.
Carl Stanley Aiken

AKA: _____
Race: BLACK Sex: M Age: 59
DOB: 1957 SS#: _____
Address: _____
City, State, Zip: DONALDS, SC 00000
DL#: _____ SID#: _____

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was
TO: Breach / Obtain signature or prop. under false pretenses, value \$10,000 or more

in violation of § 16-13-0240 of the S.C. Code of Laws, bearing CDR Code # 3471

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45
w/minor 1st or Lewd Act)

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)

The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Gregory, Jonathan M.

73601
SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,

for a determinate term of 10 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years

and/or to pay a fine of \$ _____; provided that upon the service of 4 days/months/years and/or payment

of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for 5

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:

☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.

☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.

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

SPECIAL CONDITIONS:

☒ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

PTUP

Total: \$ 14,250 plus 20% fee: \$ _____

Payment Terms: _____

☐ Set by SCDPPPS

Recipient: _____

*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$	
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ <u>100.00</u>
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 61.6 (Public Def/Probation)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ <u>25.00</u>
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
3% to County (if paid in installments)	\$	\$ <u>3.75</u>

TOTAL

\$ 128.75

Clerk of Court/ Deputy Clerk: Paul B. Wickens

Court Reporter: Lisa Scott

SCCA/217 (07/2016)

prob begins w/m comp of any early rel prob

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2016GS2306460A

A/W#: 2016GS2306460A

Date of Offense: 12/1/2012

S.C. Code § : 16-13-0240

CDR Code #: 3471

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

Presiding Judge

Judge Code: 7-155

Sentence Date: 4-4-17

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐

Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

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

STATE OF SOUTH CAROLINA)
 COUNTY OF GREENVILLE)

IN THE COURT OF GENERAL SESSIONS
 THIRTEENTH JUDICIAL CIRCUIT

State of South Carolina)

vs.)

Indictment No.: 2015-GS-23-03451

2016-GS-23-06460A

VERDICT FORM

Carl Stanley Aiken,
 Defendant.

I. Exploitation of a Vulnerable Adult § 43-35-85

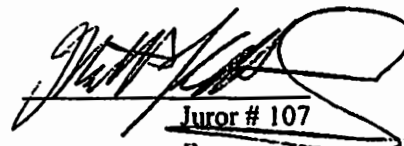
A. X As to the charge of Exploitation of a Vulnerable Adult, Indictment No. 2015-GS-23-03451, We, the Jury, unanimously find the Defendant not guilty.

B. _____ As to the charge of Exploitation of a Vulnerable Adult, Indictment No. 2015-GS-23-03451. We, the Jury, unanimously find the Defendant guilty.

II. Obtaining Goods Under False Pretenses § 16-13-240

A. _____ As to the charge of Obtaining Goods Under False Pretenses, Indictment No. 2016-GS-23-06460A. We, the Jury, unanimously find the Defendant not guilty.

B. X As to the charge of Obtaining Goods Under False Pretenses, Indictment No. 2016-GS-23-06460A, We, the Jury, unanimously find the Defendant guilty.


 Juror # 107
 Foreperson

April __, 2017
 Greenville, South Carolina