

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

CERTIORARI - PCR-GREENVILLE COUNTY
Court of Common Pleas
Alex Kinlaw, Jr., Circuit Court Judge

Appellant Case No. 2020-000678
Lower Case No. 2018-CP-23-05668

RECEIVED

JUN 16 2020

S.C. SUPREME COURT

The State, Respondent,

vs.

Polly McAbee Hindman Petitioner

APPENDIX

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INDEX

Indictment, Sentencing Sheet and Arrest Warrant 1

Transcript of Trial December 14, 2016 5

Transcript of Restitution and Sentencing hearing February 17, 2017 160

Notice of Appeal dated December 4, 2017 251

Order Dismissing Appeal dated August 29, 2018 252

PCR Application 253

Return to PCR Application and Motion For More Definite Statement 261

PCR Hearing Transcript April 15, 2019 275

Exhibit A-9, Deposition of Funeral Director Wesley Matthew James 351

Order of Dismissal filed July 23, 2019 388

Motion to Alter or Amend Judgement dated July 30, 2019 401

Return To Motion To Alter/Amend Judgement dated October 29, 2019 405

Order Denying Motion to Alter/Amend filed April 1, 2020 413

Notice of Appeal filed April 27, 2020 421

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

AMENDED INDICTMENT FOR
EXPLOITATION OF A VULNERABLE ADULT

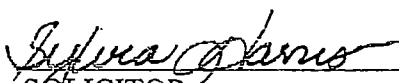
At a Court of General Sessions, convened on **OCT 18, 2016** the Grand Jurors of Greenville

County present upon their oath:

That POLLY McABEE HINDMAN did in Greenville County, between the 29th day of November 2012, and the 8th day of April, 2014, knowingly and willfully abuse, neglect or exploit BETTE RIDDLE, a vulnerable adult, to wit: The defendant did take an improper, unlawful or unauthorized use of the funds, assets, property or power of attorney of the vulnerable adult, BETTE RIDDLE, for the profit or advantage of that person or another person.

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

BAR # 64840

WITNESSES

J T Martin

Greenville County Sheriffs Office

12/15/2014

ARREST WARRANT NUMBER

2014A2330210136

ACTION OF GRAND JURY

TRUE BILL

Thomas J. Pridemore

FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2015-GS-23-001563

Amended Indictment SPH

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

October

TERM 2016

THE STATE

vs.

POLLY McABEE HINDMAN

Indictment for

2657

EXPLOITATION OF A VULNERABLE ADULT

VIOLATION §43-35-0085

ENTERED ACCT. *LEH*

ARREST WARRANT

2014A2330210136

STATE OF SOUTH CAROLINA

County/ Municipality of

Greenville

AFFIDAVIT

ORIGINAL

Form approved by
S.C. Attorney General
April 21, 2003
SCCA 518

STATE OF SOUTH CAROLINA

County/ Municipality of

Greenville

appeared before me the affiant

J T Martin

being duly sworn deposes and says that defendant

Polly Mcabee Hindman

who

violates the criminal laws of the

11/29/2012

State of South Carolina (or ordinance of

County/ Municipality of

Greenville

in the following particulars:

THE STATE

14-083128

against

Polly Mcabee Hindman

DESCRIPTION OF OFFENSE: Exploitation / Exploitation of a vulnerable adult

Address:

Easley, SC 29640-

Phone: _____ SSN: _____
Sex: F Race: W Height: 5 3 Weight: 135

DL State: SC DL #: _____

DOB: _____/1955 Agency ORI #: SC0230000

Prosecuting Agency: Greenville County Sheriffs Office

Prosecuting Officer: J T Martin - 0224

Offense: Exploitation / Exploitation of a vulnerable adult

Offense Code: 2657

Code/Ordinance Sec: 43-35-0085(D)

This warrant is CERTIFIED FOR SERVICE in the
 County/ Municipality of

The accused is to be arrested and brought before me to be dealt with according to the law.

(L.S.)

Signature of Judge

Date: _____

RETURN

A copy of this arrest warrant was delivered to defendant on Polly Hindman 12/15/14

J.M. Brown 533 x802
Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

Greenville General Sessions
305 E. North Street
Greenville County Courthouse
Greenville, SC 29601-2120

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

Signature of Judge

Leila Foster

Judge Code: 5762

(L.S.)

Judge's Address: Law Enforcement Center
Greenville, SC 29601-2256

Judge's Telephone: (864)467-5312

Issuing Court: Magistrate Municipal Circuit

ORIGINAL

ORIGINAL

ORIGINAL

Signature of Affiant

STATE OF SOUTH CAROLINA

County/ Municipality of

Greenville **COMPUTER ENTERED**

Affiant's Address: 4 Mcgee Street
Greenville, SC 29601-
Affiant's Telephone: (864)271-5210

NOV 10 2014

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

GREENVILLE COUNTY
SHERIFF'S OFFICE

the above affidavit that there are reasonable grounds to believe that

on or about 11/29/2012

defendant Polly Mcabee Hindman

violates the criminal laws of the State of South Carolina (or ordinance of

County/ Municipality of Greenville

) as set forth below:

DESCRIPTION OF OFFENSE: Exploitation / Exploitation of a vulnerable adult

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable

Sworn to and subscribed before me

on 11/5/2014

Judge's Address: Law Enforcement Center
Greenville, SC 29601-2256

Judge's Telephone: (864)467-5312

Issuing Court: Magistrate Municipal Circuit

ORIGINAL

ORIGINAL

ORIGINAL

COUNTY OF Greenville
 STATE VS.
Polly McCabe Hindman
 AKA:
 Race: WHITE Sex: F Age: 61
 DOB: 1955 SS#: [REDACTED]
 Address: [REDACTED]
 City, State, Zip: Easley, SC 29640
 DL#: [REDACTED] SID#: [REDACTED]

INDICTMENT/CASE#: 2015GS2301563
 A/W#: 2014A2330210136
 Date of Offense: 11/29/2012
 S.C. Code § : 43-35-0085(D)
 CDR Code #: 2657

SENTENCE SHEET

*CDL Yes No CMV Yes No Hazmat Yes No
 In disposition of the said indictment comes now the Defendant who was
 TO: Intimidation Of A Vulnerable Adult

CONVICTED OF or PLEADS

in violation of § 43-35-0085(D) of the S.C. Code of Laws, bearing CDR Code # 2657
 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: [Signature] 64840
Harrison, Sylvia 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 5 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 90 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. 124Y
 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.

HEARING WITHIN 60 DAYS SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered
 Total: \$ _____ plus 20% fee: \$ _____
 Payment Terms: _____
 Set by SCDPPPS PER ORDER

PTUP
20 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: _____

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/ca	\$
3% to County (if paid in installments)	\$	\$ <u>3.75</u>
TOTAL	\$	\$ <u>128.75</u>

DEFER SENTENCE
 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.

Clerk of Court/ Deputy Clerk Paul B. [Signature]
 Court Reporter: [Signature]
 SCCA/217 (07/2015) prob begins upon completion of any entry to Prob.

Presiding Judge [Signature]
 Judge Code: 2130
 Sentence Date: 12/14/16
 SENTENCING DATE 2-17-17
[Signature]

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

COURT OF GENERAL SESSIONS
2015-GS-23-01563

STATE OF SOUTH CAROLINA,)
vs.)
POLLY MCABEE HINDMAN,)
DEFENDANT.)

TRANSCRIPT OF RECORD

ORIGINAL

December 14, 2016
Greenville, South Carolina

B E F O R E:

THE HONORABLE EDWARD W. MILLER, JUDGE; and a jury.

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

SYLVIA P. HARRISON, ESQ.
JULIA V. HENDRICKS, ESQ.
Assistant Solicitors

JAMES P. O'CONNELL, ESQ.
Attorney for the Defendant

HOLLIE M. JENKINS
Circuit Court Reporter

I N D E X

(SW) - Denotes State's Witness
(DW) - Denotes Defense Witness

	<u>Page No.</u>
Jury Qualification.....	8
Jury Selection.....	10
Introductory Remarks by the Court.....	17
Opening Statement by Ms. Harrison.....	22
Opening Statement by Mr. O'Connell.....	26
<u>(SW) RACHAEL GARNER:</u>	
Direct Examination by Ms. Hendricks.....	30
<u>(SW) LEISA NORRIS:</u>	
Direct Examination by Ms. Harrison.....	36
Cross-Examination by Mr. O'Connell.....	48
Redirect Examination by Ms. Harrison.....	49
<u>(SW) NANCY KAY ROOF:</u>	
Direct Examination by Ms. Harrison.....	51
Cross-Examination by Mr. O'Connell.....	56
<u>(SW) MARY ELLEN CERVETTI:</u>	
Direct Examination by Ms. Harrison.....	58
Cross-Examination by Mr. O'Connell.....	66
<u>(SW) TYLER BRADLEY O'SHIELDS:</u>	
Direct Examination by Ms. Hendricks.....	67
Voir Dire Examination by Mr. O'Connell.....	69
Continued Direct Examination by Ms. Hendricks.....	69
Matters of Law.....	74
<u>(SW) TYLER BRADLEY O'SHIELDS:</u>	
Continued Direct Examination by Ms. Hendricks.....	76
Cross-Examination by Mr. O'Connell.....	78
<u>(SW) JOHN T. MARTIN:</u>	
Direct Examination by Ms. Harrison.....	80
Cross-Examination by Mr. O'Connell.....	83
State Rests.....	83
Motions.....	84
Questioning of the Defendant.....	86
Matters of Law.....	87

INDEX (CONTINUED)

	<u>Page No.</u>
<u>(DW) POLLY ANN HINDMAN:</u>	
Direct Examination by Mr. O'Connell.....	90
Cross-Examination by Ms. Harrison.....	103
<u>(DW) ROBERT LEWIS HINDMAN:</u>	
Direct Examination by Mr. O'Connell.....	117
Cross-Examination by Ms. Harrison.....	120
Defense Rests.....	126
<u>(SW) HARVARD RIDDLE:</u>	
Direct Examination by Ms. Harrison.....	127
State Rests.....	128
Motions.....	129
Closing Argument by Mr. O'Connell.....	130
Closing Argument by Ms. Harrison.....	133
Charge on the Law by the Court.....	140
Verdict of the Jury.....	147
Motions.....	148
Certificate of the Court Reporter.....	156

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	Power of Attorney-Harvard Riddle.....	5.....	29
S-2	Power of Attorney Recorded on 11/30/12.....	5.....	29
S-3	Power of Attorney Recorded on 12/21/12.....	5.....	29
S-4	Power of Attorney Recorded on 12/26/12.....	5.....	29
S-5	Power of Attorney Recorded on 12/27/12.....	5.....	29
S-6	Title Recorded on 7/29/13.....	5.....	29
S-7	Title Recorded on 12/26/12.....	5.....	29
S-8	Probate Judgments and Orders.....	5.....	29
S-9	Checks and Statements from Wells Fargo.....	5.....	32
S-10	Photograph.....	5.....	52
S-11	Photograph.....	5.....	52
S-12	BB&T Records.....	5.....	64
(Court's Exhibits)			
C-1	Note from the Jury.....	76.....	76

All Exhibits were retained by the Clerk of Court for Greenville County.

P R O C E E D I N G S

1
2 (WHEREUPON, State's Exhibit Nos. 1, 2, 3, 4, 5, 6, 7,
3 8, 9, 10, 11, and 12 were marked for identification
4 only.)

5 THE COURT: Have we got anything before we get a jury
6 up here?

7 MS. HARRISON: Nothing from the State, Your Honor.

8 MR. O'CONNELL: Nothing from us, Your Honor.

9 Thank you.

10 THE COURT: How about witness lists or voir dire?

11 MS. HARRISON: Well, Your Honor, I've handed my
12 witness list up.

13 THE COURT: I see it.

14 Two witnesses; right?

15 MR. O'CONNELL: I turned my voir dire in earlier, but
16 if you want another copy of it.

17 THE COURT: Well, you turned it into who?

18 MR. O'CONNELL: The Court up here. The Clerk of
19 Court, I believe.

20 THE CLERK: I'm not aware of it. He didn't turn it
21 in today.

22 THE COURT: We don't have it. So if you have some
23 voir dire, you need to --

24 MR. O'CONNELL: There you go.

25 THE CLERK: Thank you.

1 THE COURT: I think my voir dire will cover it.

2 All right. Are you ready to go?

3 MS. HARRISON: The State's ready, Your Honor.

4 MR. O'CONNELL: We are ready, Your Honor.

5 Thank you.

6 THE COURT: Okay. Let's get a jury.

7 THE CLERK: Do you know how many you want? Did you
8 tell her?

9 THE COURT: Five and five, so probably 30.

10 (Pause.)

11 (WHEREUPON, the jury panel entered the courtroom.)

12 THE COURT: Ladies and gentlemen, welcome up to
13 courtroom four.

14 And, again, I want to thank you for your
15 participation this week as members of our jury pool.

16 We are going to now begin the process of qualifying
17 you for the next case on the docket. And so let me
18 introduce that case to you. This is the State of South
19 Carolina v. Polly McAbee Hindman.

20 And this indictment is for exploitation of a
21 vulnerable adult. And it alleges that Polly McAbee
22 Hindman did in Greenville County between the 29th day of
23 November, 2012, and the 8th day of April, 2014, knowingly
24 and willfully abuse, neglect, or exploit Bette Riddle, a
25 vulnerable adult, in that the Defendant did take an

1 improper, unlawful, or unauthorized use of the funds,
2 assets, property, or power of attorney of the vulnerable
3 adult, Bette Riddle, for the profit or advantage of that
4 person or another person.

5 Now, ladies and gentlemen, to this indictment, the
6 Defendant has pled not guilty. And, as such, certain
7 rights attach, which belong to every person charged with a
8 criminal offense in this country. And that is she is
9 presumed to be innocent, unless and until the State can
10 prove beyond a reasonable doubt each and every element of
11 the offense that she is charged with. Please keep that in
12 mind throughout the course of these proceedings.

13 I would, also, tell you that this document which I
14 published to you, the indictment, is not evidence. And
15 you should take no inference or make any presumption from
16 the fact that that document issued. It's just the formal
17 written instrument which allows this case to wind its way
18 through our system to arrive here in court for
19 disposition.

20 Now, before I begin the questioning to qualify you
21 all to serve on this particular case, I'll ask the
22 attorneys to stand, identify themselves and their client.

23 MS. HARRISON: I'm Sylvia Harrison. I'm with the
24 Greenville Solicitor's Office. I'm the prosecutor in this
25 case.

1 MS. HENDRICKS: I'm Jenna Hendricks. I'm, also, with
2 the Greenville Solicitor's Office.

3 MR. TIM MARTIN: Tim Martin, Greenville County
4 Sheriff's Office, criminal investigator.

5 THE COURT: All right.

6 MR. O'CONNELL: I'm Jim O'Connell.

7 I represent Ms. Polly Hindman, the Defendant, in this
8 case.

9 THE COURT: All right. Thank you very much.

10 JURY QUALIFICATION

11 THE COURT: Is there any member of the jury panel who
12 is related by blood or marriage, or who has a business,
13 personal, or social relationship with any of the attorneys
14 involved in this case, or a member of the Thirteenth
15 Circuit Solicitor's Office? If so, please, stand.

16 (WHEREUPON, there was no response.)

17 THE COURT: Is there any member of the jury panel
18 related by blood or marriage, or who has a business,
19 personal, or social relationship with either Ms. Polly
20 McAbee Hindman or Ms. Bette Riddle? If so, please, stand.

21 (WHEREUPON, there was no response.)

22 THE COURT: I'm going to read a list of potential
23 witness in the case, so, please, listen. I'll need to
24 know the same about these folks. Harvard Riddle, Tim
25 Martin, Claire Riddle, Leisa Norris, Nancy Roof, Tyler

1 O'Shields, Rachel Garner, Mary Ellen Cervetti, Polly
2 Hindman, and Bob Hindman.

3 Is there any member of the jury panel related by
4 blood or marriage, or who has a business, personal, or
5 social relationship with any of those potential witnesses
6 whose names I have just read? If so, please, stand.

7 (WHEREUPON, there was no response.)

8 THE COURT: Is there any member of the jury panel who
9 has any knowledge about the events that are alleged in
10 this indictment? If so, please, stand.

11 (WHEREUPON, there was no response.)

12 THE COURT: Is there any member of the jury panel, or
13 a family member, or a close personal friend who has ever
14 been the victim of or charged with this type of offense?
15 If so, please, stand.

16 (WHEREUPON, there was no response.)

17 THE COURT: Is there any member of the jury panel
18 who's aware of any bias or prejudice towards either the
19 State or the Defense? If so, please, stand.

20 (WHEREUPON, there was no response.)

21 THE COURT: Is there any member of the jury panel who
22 is a member of or a contributor to a group whose primary
23 concern is the promotion of law enforcement or victims
24 rights? Examples would be MADD, SADD, or CAV. If so,
25 please, stand.

1 (WHEREUPON, there was no response.)

2 THE COURT: Does any juror know of any reason
3 whatsoever why you should not serve in this case with
4 particular emphasis on your ability to be fair and
5 impartial to both the State and the Defense, and to judge
6 this case based solely on the merits of the evidence
7 presented in this courtroom and the law as I would give it
8 to you? If you cannot do that, please, stand and let us
9 know now.

10 (WHEREUPON, there was no response.)

11 THE COURT: Anything further from the State?

12 MS. HARRISON: Nothing, Your Honor.

13 THE COURT: Defense?

14 MR. O'CONNELL: Nothing from us.

15 Thank you.

16 THE COURT: Okay. Let's strike the jury.

17 THE CLERK: Okay. And it's five and five?

18 THE COURT: Five and five.

19 JURY SELECTION

20 THE CLERK: Juror #21, Caitlin Clark.

21 Please stand in place.

22 (WHEREUPON, Caitlin Clark, a white female, stood.)

23 THE COURT: What says the State?

24 MS. HARRISON: Please present Ms. Clark.

25 MR. O'CONNELL: Please strike the juror, Your Honor.

1 THE CLERK: You may take your seat.

2 Juror #41, Devin Gossett.

3 (WHEREUPON, Devin Gossett, a black male, stood.)

4 THE CLERK: What says the State?

5 MS. HARRISON: Please excuse this juror.

6 THE CLERK: You may take your seat.

7 Juror #109, Karen Trieper.

8 (WHEREUPON, Karen Trieper, a white female, stood.)

9 THE CLERK: What says the State?

10 MS. HARRISON: Please present this juror.

11 THE CLERK: What says the Defendant?

12 MR. O'CONNELL: Seat the juror, Your Honor.

13 THE CLERK: You may bring your things and have a seat
14 in the jury box.

15 Juror #44, Michael Hamilton.

16 (WHEREUPON, Michael Hamilton, a black male, stood.)

17 THE CLERK: What says the State?

18 MS. HARRISON: Please present this juror.

19 THE CLERK: What says the Defendant?

20 MR. O'CONNELL: Seat the juror, Your Honor.

21 THE CLERK: You may bring your things and have a seat
22 in the jury box.

23 THE BAILIFF: This way, sir. This way.

24 THE CLERK: Juror #110, Todd Tucker.

25 (WHEREUPON, Todd Tucker, a white male, stood.)

1 THE CLERK: What says the State?

2 MS. HARRISON: Please present Mr. Tucker.

3 MR. O'CONNELL: Seat the juror, Your Honor.

4 THE CLERK: You may bring your things and have a seat
5 in the jury box.

6 Juror #74, Julia O'Brien.

7 (WHEREUPON, Julia O'Brien, a white female, stood.)

8 THE CLERK: What says the State?

9 MS. HARRISON: Please present this juror.

10 MR. O'CONNELL: Strike this juror, Your Honor.

11 THE CLERK: You may take a seat.

12 Juror #87, Kara Queen.

13 (WHEREUPON, Kara Queen, a white female, stood.)

14 THE CLERK: What says the State?

15 MS. HARRISON: Please present this juror.

16 THE CLERK: What says the Defendant?

17 MR. O'CONNELL: Strike the juror, Your Honor.

18 THE CLERK? You may take your seat.

19 Juror #11, James Breisch.

20 (WHEREUPON, James Breisch, a white male, stood.)

21 THE CLERK: What says the State?

22 MS. HARRISON: Please present the juror.

23 THE CLERK: What says the Defendant?

24 MR. O'CONNELL: Seat the juror, Your Honor.

25 THE CLERK: You may take your -- bring your things

1 and have a seat in the jury box.

2 Juror #104, John Stanley.

3 (WHEREUPON, John Stanley, a white male, stood.)

4 THE CLERK: What says the State?

5 MS. HARRISON: Please present this juror.

6 THE CLERK: What says the Defendant?

7 MR. O'CONNELL: Seat the juror, Your Honor.

8 THE CLERK: You may bring your things and have a seat
9 in the jury box.

10 Juror #86, Barbara Pulley.

11 (WHEREUPON, Barbara Pulley, a black female, stood.)

12 THE CLERK: What says the State?

13 MS. HARRISON: Please present this juror.

14 THE CLERK: What says the Defendant?

15 MR. O'CONNELL: Strike this juror, Your Honor.

16 THE CLERK: You may take your seat.

17 Juror #27, Charnley Demeritt.

18 (WHEREUPON, Charnley Demeritt, a white female,
19 stood.)

20 THE CLERK: What says the State?

21 MS. HARRISON: Please present this juror.

22 THE CLERK: What says the Defendant?

23 MR. O'CONNELL: Seat the juror, Your Honor.

24 THE CLERK: You may bring your things and have a seat
25 in the jury box.

1 Juror #100, Marina Shew.

2 (WHEREUPON, Marina Shew, a white female, stood.)

3 THE CLERK: What says the State?

4 MS. HARRISON: Please present this juror.

5 THE CLERK: What says the Defendant?

6 MR. O'CONNELL: Seat the juror, Your Honor.

7 THE CLERK: You may have a seat in the jury box.

8 Juror #97, Michelle Shaw.

9 (WHEREUPON, Michelle Shaw, a white female, stood.)

10 THE CLERK: What says the State?

11 MS. HARRISON: Please present this juror.

12 THE CLERK: What says the Defendant?

13 MR. O'CONNELL: Seat the juror, Your Honor.

14 THE CLERK: You may have a seat in the jury box.

15 Juror #115, Thomasina Wolfe.

16 (WHEREUPON, Thomasina Wolfe, a black female, stood.)

17 THE CLERK: What says the State?

18 MS. HARRISON: Please present this juror.

19 THE CLERK: What says the Defendant?

20 MR. O'CONNELL: Seat the juror.

21 THE CLERK: You may have a seat in the jury box.

22 Juror #111, Jonathan Turmon.

23 (WHEREUPON, Jonathan Turmon, a black male, stood.)

24 THE CLERK: What says the State?

25 Ms. HARRISON: Please present this juror.

1 MR. O'CONNELL: Please strike the juror, Your Honor.

2 THE CLERK: You may take your seat.

3 Juror #2, Christopher Abreu.

4 (WHEREUPON, Christopher Abreu, a Hispanic male,
5 stood.)

6 THE CLERK: What says the State?

7 MS. HARRISON: Please present this juror.

8 THE CLERK: What says the Defendant?

9 MR. O'CONNELL: Seat the juror, Your Honor.

10 THE CLERK: You may bring your things and have a seat
11 in the jury box.

12 Juror #9, Tony Bisbee.

13 (WHEREUPON, Tony Bisbee, a white male, stood.)

14 THE CLERK: What says the State?

15 MS. HARRISON: Please present this juror.

16 THE CLERK: What says the Defendant?

17 MR. O'CONNELL: Seat the juror, Your Honor.

18 THE CLERK: You may bring your things and have a seat
19 in the jury box.

20 Juror #7, Debra Barnett.

21 (WHEREUPON, Debra Barnett, a white female, stood.)

22 THE CLERK: What says the State?

23 MS. HARRISON: Please present this juror.

24 THE CLERK: What says the Defendant?

25 MR. O'CONNELL: Strike this juror, Your Honor.

1 THE CLERK: I have five --

2 THE COURT: No --

3 THE CLERK: I'm sorry.

4 MS. HARRISON: I think you've ran out.

5 THE COURT: It's five and five.

6 MR. O'CONNELL: Okay.

7 THE COURT: For cause?

8 MR. O'CONNELL: Then we'll seat the juror.

9 THE COURT: Okay.

10 THE CLERK: Bring your things and have a seat in the
11 jury box.

12 And alternates?

13 THE COURT: Yes. Let's get one alternate.

14 One and one.

15 THE CLERK: Juror #23, Katherine Collins.

16 (WHEREUPON, Katherine Collins, a black female,
17 stood.)

18 THE CLERK: What says the Stat?

19 MS. HARRISON: Please present the juror.

20 THE CLERK: What says the --

21 MR. O'CONNELL: Seat the juror, Your Honor.

22 THE CLERK: You may bring your things and have a seat
23 in the jury box.

24 THE COURT: All right. Any exception or objection to
25 the jury as impanelled from the State?

1 MS. HARRISON: None from the State, Your Honor.

2 THE COURT: From the Defense?

3 MR. O'CONNELL: Nothing from us, Your Honor.

4 THE COURT: Okay.

5 THE CLERK: Send them back to Judy.

6 THE COURT: Ladies and gentlemen, at this time, I'll
7 excuse you all to return back to the jury assembly room.

8 Thank you.

9 (WHEREUPON, the remaining jury panel members exited
10 the courtroom.)

11 INTRODUCTORY REMARKS

12 THE COURT: Ladies and gentlemen, thank you all for
13 being here again.

14 I want to tell you we have a dispute about the facts
15 in this case which can't be resolved in any fashion other
16 than to ask a jury to come up, listen to the evidence
17 presented in the courtroom, and the law as I will give it
18 to you, and come to a decision which will resolve the
19 dispute.

20 I would remind you that the indictment is not
21 evidence, and you should take no inference or make any
22 presumption from the fact that it issued with respect to
23 the question of guilt or innocence. It's just a formal
24 document which allows this case to arrive here in court
25 for disposition.

1 I, also, remind you that every person charged with a
2 criminal offense is presumed to be innocent, unless and
3 until the State can prove them guilty beyond any
4 reasonable doubt of each and every element of the offense
5 that they are charged with.

6 For your benefit, I break a trial into five parts to
7 give you a little bit of a procedural road map to let you
8 know where you are in the trial and what's coming next.
9 The first part we're engaged in now are the opening
10 statements to you. I'll make these brief comments and
11 then turn it over to the attorneys, after y'all have taken
12 your oath, to make their brief, non-argumentative opening
13 statements to you.

14 The second part of the trial is the meat and potatoes
15 of every case, and that's the presentation of the
16 testimony and the evidence in this case. And the evidence
17 will come to you in, generally, one of three ways. The
18 first most commonly thought of way is through oral
19 testimony from this witness stand. The second most common
20 way is through the introduction of documents or tangible
21 items. And the third most common way is when the parties
22 agree that some fact is so beyond dispute that you should
23 accept it as true, or what we call a stipulation of the
24 parties.

25 Now, the third part of the trial will be after all of

1 the evidence has been presented. We'll -- then the
2 attorneys will make their closing arguments to you. And
3 it's an opening statement, which are brief and
4 non-argumentative, and a closing argument where the
5 attorneys argue the facts and the law, and present their
6 side of the case, and urge you to resolve the dispute in
7 their favor.

8 The fourth part of the trial will be when I charge
9 you with what the law is in this case. And then the fifth
10 part of the trial will be when you all retire to your jury
11 room to deliberate the case and resolve the dispute.

12 Now, they're not of equal length. And, as you can
13 imagine, in almost every case, the presentation of the
14 evidence is the longest part of the trial. But, at least,
15 you'll know what's coming next if you can hang on to that
16 little map I've outlined for you.

17 I want to -- I'll ask you to do a number of things
18 throughout the course of the trial. Most importantly, I
19 ask you to keep an open mind. Don't have a -- don't make
20 a decision about how this case should be resolved until
21 after all the evidence has been presented and the law has
22 been given to you.

23 And the second thing I ask you to do is to pay
24 attention. It's easy to let your mind wander off. And if
25 you do that, you might miss an answer from a witness or

1 how a witness reacts to a question, what we call a
2 witnesses demeanor, which might be important in your
3 deliberations at the conclusion of the trial. And if you
4 weren't paying attention, you'd be at a disadvantage in
5 resolving this dispute.

6 And then, finally, I instruct you not to discuss the
7 case with anyone until the conclusion of the trial when
8 you're free to deliberate. That means when we break for
9 lunch and you go to lunch with a family member or a
10 friend, you can't talk about it with them. You can't talk
11 about it with the bailiffs, or you can't even talk about
12 the facts of the case among yourself -- among yourselves.

13 And that -- the reason for that is even an innocent
14 comment from someone who you like and trust might impact
15 your state of mind. And that would not be fair to the
16 parties here. It wouldn't be fair to your fellow jurors.
17 It wouldn't be fair to yourself to allow someone who is
18 not making the sacrifices that each of you are making to
19 have any input in the outcome of this trial.

20 So don't talk about it. And don't -- if you hear
21 about a location or -- don't go visit the location. Don't
22 do any Internet research. Don't get on some social media
23 site and discuss it.

24 Everything you're going to need to know to resolve
25 this case you'll hear in this courtroom. And that's a

1 vital and important rule of our procedure. And if you all
2 violate it in this case, it's like chipping away at some
3 giant statue. And if you chip away enough, the whole
4 thing falls down. So protect it right here right now.

5 I'll tell you that you all are the sole judges of the
6 facts in the case. It's up to you to determine who to
7 believe and who not to believe, what is true and what is
8 not true.

9 And a trial judge is not allowed by law to have an
10 opinion about the facts of the case. So don't think by
11 anything I say or do throughout the course of the trial
12 that I have such an opinion. It is up to you all to make
13 that determination.

14 The same law that makes you the sole judge of the
15 facts makes me the sole judge of the law. So if you think
16 you have any idea as to what the law is or what the law
17 ought to be and it disagrees with what I tell you the law
18 is throughout the course of the trial and at the
19 conclusion of the trial, then you're going to swear an
20 oath in just a second to set aside your own opinion and
21 apply the law precisely as I state it to you, which
22 ensures that everyone is tried under the same law.

23 A couple other things I guess I could tell you.
24 There may be times during the trial when I ask the lawyers
25 to approach the bench and discuss some issue. We call

1 that a bench conference. Or I would ask y'all to retire
2 to your jury room so we can discuss some matter of law.

3 I will tell you that we are not trying to deceive
4 you, but we may well be trying to keep something from you.
5 And we may be discussing a disputed piece of evidence that
6 should not be admitted. And you can understand, I think,
7 that if it's inappropriate to be in the trial, you all
8 shouldn't hear it. And we talk about other things like
9 the length of a witness and logistical things.

10 So we are not trying to deceive you with anything in
11 any way. But we may be trying to discuss some things that
12 are not appropriate for the jury to hear. That's what
13 we'll be doing in those circumstances.

14 With that, I'm going to ask y'all to stand in place
15 and take the oath.

16 THE CLERK: The correct response to the oath is, "I
17 will."

18 Will you raise your right hand?

19 (WHEREUPON, the jury was sworn at approximately
20 10:20 a.m.)

21 THE CLERK: Thank you.

22 You may have a seat.

23 THE COURT: Okay.

24 OPENING STATEMENTS

25 MS. HARRISON: Thank you, Your Honor.

1 May it please the Court.

2 Thank you for being here today.

3 Today's case is about exploiting a vulnerable adult.
4 And what that means is taking advantage of someone because
5 of their age or their mental status. The person that was
6 taken advantage of today is a lady by the name of Bette
7 Riddle. She spells her name B-E-T-T-E. And later on,
8 that's going to be an important fact.

9 The Defendant sitting over there is her half-sister.
10 She has another half-sister, Leisa Norris, who you'll,
11 also, hear from today. They didn't grow up with Bette
12 Riddle. There's probably 20 to 25 years difference
13 between them. They have the same father, but not the same
14 mother.

15 In 2011, Ms. Riddle's husband died, Leonard. They
16 were very close. And he left her quite well off. She had
17 an estate well over half a million dollars.

18 All of the sudden about a year later, Ms. Hindman
19 shows up, along with her half-sister, and takes the
20 brother-in-law off a power of attorney and executes three,
21 three powers of attorney dated November 29th, ~~2015~~ ²⁰¹².

22 These powers of attorney are used to access the Wells
23 Fargo account, banking account. Suddenly, there are two
24 people on this account now, Leisa and Bette Riddle. Now,
25 that happened November 29th, 2012.

1 On December 19th, 2012, the Defendant commits the
2 vulnerable adult to Marshall Pickens. The day before
3 that, on December 18th, 2012, she writes herself three
4 checks with the assistance of her sister to herself for
5 "Ms. Riddle's funeral." It adds up to be about \$13,000.
6 And this is December 18th, 2012, the day before she
7 commits her to Marshall Pickens.

8 I'd like to tell you that you will not hear from
9 Ms. Riddle today. But she's alive and well in assisted
10 care living. And this is four years after, almost to the
11 day.

12 She, also, wrote herself a check for death
13 certificates. The same day she committed Ms. Riddle to
14 Marshall Pickens, she and her sister go to BB&T Bank --
15 and Mary Ellen Cervetti will give you this testimony --
16 with the power of attorney where Ms. Riddle's name is
17 misspelled and ask to get ahold of \$339,000. Ms. Mary
18 Ellen Cervetti looks at the power of attorney and says,
19 no, that's not happening. They return two days later with
20 another power of attorney that's executed on the same day
21 with different handwriting that's recorded two days later.

22 In the meantime, though, BB&T has been proactive.
23 They've contacted Mr. Harvard Riddle and said, somebody is
24 trying to access your and Bette's CDs, what do you want to
25 do? And they protected them. To make things further --

1 worse further, they go to BB&T a third time and demand
2 access to her \$339,000.

3 I'm here today to tell you, and you'll hear
4 testimony, that that money is still safe for Ms. Riddle's
5 care, which she needs. It's pretty expensive each month
6 to take care of her.

7 The State's case here is based on two theories.
8 Number one, these powers of attorney were misused. They
9 were not used in Ms. Riddle's best interest. It was not
10 in Ms. Riddle's best interest, number one, for these
11 ladies to go in and try to get her \$339,000. It was not
12 in her best interest for them to be put on her checking
13 account. It was not in her best interest for her to pay
14 for funeral expenses to the tune of \$13,000, which, by the
15 way, these checks weren't made payable to McAfee Mortuary
16 or Woodlawn Mortuary. They're paid directly payable to
17 the Defendant, which she deposited in her checking account
18 the day before she commits her to Marshall Pickens.

19 Even if Ms. Riddle wanted to do that, it was not in
20 her best interest. You're taking advantage of a
21 vulnerable adult. And that's what the evidence is going
22 to show you here today.

23 You may be asking or thinking, how -- okay, this is
24 2012. This happened -- we're now in 2006, what happened?
25 Well, we worked this case backwards. Two attorneys

1 contacted Investigator Tim Martin and said -- this was in
2 2015 -- we think you need to come to a probate court
3 hearing and hear what's going on. Because Mr. Harvard
4 Riddle hired an attorney to protect his sister-in-law.

5 At the end of that, Mr. Martin will testify and let
6 you know that he opened up a criminal case. And that's
7 where this developed.

8 At the end of this case -- you're going to hear all
9 the witnesses. We have about seven. I want you to come
10 back and find Ms. Hindman guilty of exploiting her
11 half-sister, Bette Riddle.

12 Thank you very much.

13 MR. O'CONNELL: Your Honor, may it please the Court.

14 THE COURT: Yes.

15 MR. O'CONNELL: Okay. Good morning.

16 Essentially, this case is about someone trying to do
17 a good thing. Now, no good deed goes unpunished.

18 My client did have some kind of input into these
19 powers of attorney, but they weren't hers. She didn't
20 type them up and draw them up as far as they were done.
21 They were done by Leisa Norris. And they were asked --
22 Polly was asked to come over with her husband and witness
23 the signing. But when you look them over, I think only
24 one really has her name on it. The others have other
25 peoples name on it, Leisa and her husband on it.

1 Now, as to this going to the banks and stuff, it is
2 our intention to show you that my client didn't go to the
3 bank, that Leisa Norris went to the bank. And we were
4 told -- or she was told that they had to put these peoples
5 name on there. So that's why that was done.

6 Yes, my client did get her into Marshall Pickens, I
7 think, on December 12th of 2012. And that's because she
8 wouldn't feed herself, or wouldn't take care of herself.
9 And then later in early January, the Judge at probate
10 court found that she was in need of help.

11 Well, then you go for a whole year and a half of
12 nobody doing anything. No money was taken out of these
13 accounts. My client only got money to take care of the
14 lawn and when she went to get like pens, or something of
15 that nature, you know, store stuff. She didn't get any
16 money out of this case.

17 And then they went to this probate hearing. And the
18 two attorneys, rightfully so -- I probably would have done
19 the same thing -- said there's something not right about
20 this because, you know, four powers of attorney. There's,
21 actually, another one that Mr. Riddle had done. But he
22 had one, too. But all that money was in an account.

23 And, at that hearing, there's a court order that
24 says -- it doesn't say their power of attorney was
25 invalid. It just said they had to come to court and ask

1 the court to do anything about it. It was never rendered
2 invalid.

3 My client is here, like I started off and said -- you
4 know, you just try to do the best you can sometimes. And
5 she was trying to help out. And that's why we're here.

6 I think they -- the Solicitor is using those four
7 powers of attorney and the money, which my client didn't
8 get any of, to say, hey, you did something wrong. And she
9 didn't do it.

10 We thank you very much.

11 I hope you guys will listen up and just find my
12 client not guilty.

13 Thank you.

14 THE COURT: Okay. Call your first witness.

15 MS. HARRISON: Your Honor, the first thing we would
16 like to do is admit State's Exhibit Nos. 1 through -- 1
17 through 8 in under 902 sub four, certified copies of
18 public record. These are the powers of attorney in the
19 probate court commitments.

20 Here, let me give you copies.

21 THE COURT: Any objection?

22 MR. O'CONNELL: Your Honor, these are the same ones
23 we got in discovery, I believe. So, at this time, I don't
24 object to them.

25 THE COURT: Okay.

1 (WHEREUPON, State's Exhibit Nos. 1, 2, 3, 4, 5, 6, 7,
2 and 8 were admitted into evidence.)

3 MS. HARRISON: Let me get him copies so -- just to
4 make it maybe a little more organized.

5 THE COURT: All right.

6 (Pause.)

7 MS. HARRISON: Thank you, Your Honor.

8 So these are admitted into evidence, State's Exhibit
9 Nos. 1 through 8?

10 THE COURT: Without objection.

11 MS. HARRISON: Thank you.

12 THE COURT: Have they been marked?

13 MS. HARRISON: Yes, sir. They have been pre-marked.

14 THE COURT: Okay.

15 MS. HENDRICKS: The State calls Rachael Garner.

16 THE CLERK: Will you, please, come forward?

17 And put your left hand on the Bible, and raise your
18 right hand.

19 WHEREUPON,

20 RACHAEL GARNER,

21 after first having been duly sworn, testified as follows:

22 THE CLERK: Please have a seat.

23 And will you state your full name for the record?

24 THE WITNESS: Rachael Garner.

25 MS. HENDRICKS: May it please the Court.

DIRECT EXAMINATION

BY MS. HENDRICKS:

Q Where are you employed?

A Wells Fargo.

Q And what is your position?

A I'm a branch manager.

Q And how long have you been a branch manager with Wells Fargo?

A I've been a branch manager just a few months, since late September.

Q Okay. Can you start back, at least, 10 years and give a brief rundown of your work experience and training?

A Uh-huh. I've been with Wells Fargo for almost six years. I've had every position, teller, banker, retailer, service manager.

I was a service manager for two years, which is like a teller manager. And before that, I worked at a shoe company. And that was for about two and a half years, three years as an assistant manager there.

Q Okay. And did you get training for all of these positions?

A I did. Through every change that I had at Wells Fargo, I got training starting as a teller and every change from there.

Q Okay. I'd like to show you what's been pre-marked as

1 State's Exhibit No. 9. Can you identify what these
2 documents are?

3 A I can. The first one is a bank statement for
4 November 1, 2012 through November 30, 2012; a bank
5 statement December -- for -- all for Wells Fargo
6 December 1st through the 31st of 2012; and January 1st,
7 2013 through January 31st, 2013. All for -- it looks like
8 a checking account. And then there's multiple checks
9 drawn off the same account.

10 Q Okay. And is this a fair and accurate copy of the
11 originals?

12 A Yes, ma'am.

13 Q And in the regular course of business at Wells Fargo,
14 does Wells Fargo have a system for document storage for
15 originals?

16 A No. We don't store originals.

17 Q But you have a -- you store copies, instead of
18 originals?

19 A Yes, we store copies. I understand. We keep
20 electronic copies --

21 Q Okay.

22 A -- of the originals.

23 Q And does that process accurately copy and store
24 records of Wells Fargo's customers bank records?

25 A Yes, ma'am.

1 Q And do the copies you have today appear to be a fair
2 and accurate copy of original Wells Fargo statements and
3 checks?

4 A Yes, ma'am.

5 MS. HENDRICKS: Okay. Your Honor, at this time, the
6 State would like to introduce State's Exhibit No. 9 into
7 evidence.

8 MR. O'CONNELL: I have --

9 THE COURT: Show it to him.

10 Do you object or not?

11 MR. O'CONNELL: No. No objection.

12 THE COURT: Okay. No objection.

13 (WHEREUPON, State's Exhibit No. 9 was admitted into
14 evidence.)

15 MS. HENDRICKS: Okay.

16 MR. O'CONNELL: It's the -- it's the --

17 THE COURT: Okay. That's all we need.

18 All right. Go ahead.

19 BY MS. HENDRICKS:

20 Q Can you tell us whose account this is?

21 A This account is for Bette Riddle.

22 Q Okay. And you -- can you tell us the difference
23 between the November 2012 statement and the December 2012
24 statement as far as whose name the account is in?

25 A Yes. The November has just Bette Riddle alone as the

1 sole owner. And the second statement has Bette M. Riddle
2 with Leisa M. Norris as the POA --

3 Q Okay.

4 A -- in December.

5 Q And can you go to check number 3308?

6 A Okay. Yes, ma'am.

7 Q Okay. Can you tell us the amount of the check?

8 A \$6,059.16.

9 Q And what is the date the check was written on?

10 A 12/18/12.

11 Q And what does the check say it is for?

12 A Funeral expenses.

13 Q And who is the check made payable to?

14 A Polly Hindman.

15 Q And so the check was made payable to an individual?

16 A Yes, ma'am.

17 Q And can you tell us what happened to the check as far
18 as who it -- whose account it was deposited in?

19 A According to the back, it was Polly Hindman. And
20 then there's an account number under it.

21 Q Okay. Can you go to check 3307?

22 A Uh-huh.

23 Q And what is the amount of that check?

24 A \$6,773.70.

25 Q And what date is that check written on?

1 A 12/18/12.

2 Q And what is the check for?

3 A For funeral expenses.

4 Q And who is it made payable to?

5 A Polly Hindman.

6 Q And then was it deposited into Ms. Hindman's account?

7 A It appears so.

8 Q Okay. And then can we look at check 3345?

9 A Uh-huh.

10 Q Okay. And what is the amount of that check?

11 A \$1,498.

12 Q And what date was the check written on?

13 A 12/18/12.

14 Q And what is the check for?

15 A Care.

16 Q And who is it written to?

17 A Polly Hindman.

18 Q And then what happened to the check?

19 A This one says "deposit only," and has the account
20 number for Polly.

21 Q Okay. And then can you go to check 3306? It should
22 be before those in the stack.

23 A I'm sorry. I missed it. Okay.

24 Q And can you tell us what the amount of this check is
25 for?

1 A \$20.

2 Q And what's the date?

3 A 12/18/12.

4 Q And what does it say the check is for?

5 A Death certificates.

6 Q And who is the check made payable to?

7 A Polly Hindman.

8 Q And what happened to the check?

9 A It's signed with an account number, so deposited.

10 Q Deposited?

11 A Uh-huh.

12 Q Whose account was it deposited into?

13 A Polly's.

14 MS. HENDRICKS: Okay. No further questions.

15 MR. O'CONNELL: No questions, Your Honor.

16 MS. HARRISON: Your Honor, just briefly, I --

17 THE COURT: Only one lawyer per witness.

18 Cross-examine --

19 MR. O'CONNELL: No questions, Your Honor.

20 THE COURT: No questions.

21 All right. Thank you.

22 You can stand down.

23 MS. HARRISON: Thank you, Your Honor.

24 The State would call Leisa Norris.

25 THE CLERK: Ma'am, come forward.

1 And put your left hand on the Bible and raise your
2 right.

3 THE BAILIFF: Turn to the Judge.

4 WHEREUPON,

5 LEISA M. NORRIS,
6 after first having been duly sworn, testified as follows:

7 THE CLERK: Please have a seat.

8 And will you state your full name for the record?

9 THE WITNESS: Leisa M. Norris.

10 DIRECT EXAMINATION

11 BY MS. HARRISON:

12 Q Good morning, Ms. Norris.

13 Do you know the Defendant, Ms. Hindman, over there?

14 A Yes, ma'am.

15 Q How do you know her?

16 A She's my sister.

17 Q Okay. How are you related to Bette Riddle?

18 A She's my half-sister.

19 Q Okay. Do you know the difference between your ages?

20 A I'm 56 and she's around 84, 85.

21 Q Okay. So 23, 24 years sounds about right?

22 A Uh-huh.

23 Q Do you know what your sister does for a living?

24 A She's not employed right now as I know of.

25 Q Is she, in fact, disabled?

1 A Huh-uh.

2 Q She's not disabled?

3 A Oh, Bette you're talking about?

4 Q No, ma'am. I'm talking about the Defendant,
5 Ms. Hindman.

6 A No, ma'am, not as I know of.

7 Q Okay. Were you, also, charged with exploitation of a
8 vulnerable adult concerning Bette Riddle?

9 A Yes, ma'am.

10 Q What happened to those charges?

11 A I got five years probation.

12 Q Did you plead guilty?

13 A Yes.

14 Q Did you make restitution to Harvard Riddle?

15 A Yes.

16 Q Okay. Thank you.

17 The powers of attorney we're going to talk about
18 right over here that were entered into evidence, can I ask
19 you to look at these three? Would you look at these
20 three, please, ma'am, that give you power of attorney?
21 Did you prepare those documents?

22 A No, ma'am.

23 Q Do you know who did prepare those documents?

24 A Yes, ma'am.

25 Q Who prepared them?

1 A Polly.

2 Q Okay. The Defendant prepared the powers of attorney?

3 A Yes.

4 Q Okay. Is your signature anywhere on these documents?

5 A Yes, ma'am.

6 Q It is?

7 A No, ma'am. No.

8 Q It's okay. I'm nervous, too.

9 A I'm sorry.

10 Q It's all right.

11 All right. Would you tell the jury what the dates
12 are on all these powers of attorney, the date Ms. Riddle
13 signed them? It should be on like the second page.

14 A November 29th, November 29th, and November 29th.

15 Q Okay. Would you look at the signatures, please? Are
16 you familiar with Ms. Riddle's handwriting?

17 A Yes, ma'am.

18 Q Okay. Would you be able to recognize her signature?

19 A Yes.

20 Q Okay. Would you look at the first one, the first
21 power of attorney, please?

22 A Yes, ma'am.

23 Q Did Ms. Riddle sign that?

24 A Yes, ma'am. That's her handwriting.

25 Q Okay. Well, what's wrong with the power of attorney?

1 A She's got it spelled wrong.

2 Q Okay. So Ms. Riddle spelled her own first name
3 wrong?

4 A Yeah. It's spelled on here, B-E-T-T-Y. But she
5 spells it B-E-T-T-E.

6 Q Right. So it's your testimony today that Ms. Riddle
7 misspelled her own first name?

8 A Yes.

9 Q Okay. Let's look at the second one. Is that her
10 signature?

11 A It don't look like it.

12 Q Okay. Will you look at the second one -- look at the
13 third one, please? Does that look like it?

14 A No, ma'am.

15 Q Okay. On the last two powers of attorney that were
16 executed, who witnessed and notarized those last two?

17 A Polly, R.L. Hindman.

18 Q Okay. Who are those people? Now, Polly Hindman is
19 the Defendant; right?

20 A Yes.

21 Q Okay. And is R.L. Hindman her husband?

22 A Yes.

23 Q Is there anybody else that witnessed or notarized
24 these last two powers of attorney?

25 A No.

1 Q Other than the Defendant or her husband?

2 A No, ma'am.

3 Q Okay. Now, how did your name get added to the
4 checking account at Wells Fargo?

5 A With my POA.

6 Q Okay. Which one?

7 A The first one is the one I had.

8 Q The first one you --

9 A Yes.

10 Q Okay. So the first one with the misspelled first
11 name Wells Fargo took?

12 A Yes.

13 Q Okay. Did -- and they put your name on the checking
14 account?

15 A Yes.

16 Q Did BB&T take this first one?

17 A No, ma'am.

18 Q They didn't. Okay. Why not?

19 A Because her name was spelled wrong.

20 Q Okay. Did they take the second one that was
21 presented to them?

22 A No, ma'am. They wouldn't take -- take any of them.

23 Q All right. So three powers of attorney were
24 presented to BB&T that Ms. Riddle allegedly signed all on
25 the same day?

1 A Yes.

2 Q But were recorded at different times?

3 A Yes, ma'am.

4 Q To try to access \$339,000?

5 A Yes. That was what was in the account.

6 Q Okay. Were y'all able to access that account?

7 A No, ma'am.

8 Q All right. I want you to look at these three checks.

9 Who signed the bottom of those? Does that look like

10 Ms. Riddle's signature?

11 A Uh --

12 Q Who signed those checks?

13 A No, ma'am. They're not Bette's signature.

14 Q And who are those checks made payable to?

15 A Polly Hindman.

16 Q How much are they for?

17 A One is for \$6,059.16, another one is for \$6,773.70,
18 and one is for \$1,498.

19 Q Did you sign Ms. Riddle's name to these checks?

20 A No, ma'am. Because I always put my name up above it
21 with a "POA" beside it.

22 Q Okay. So you're on the account. You didn't sign
23 these checks?

24 A No.

25 Q Okay. And that is not Ms. Riddle's signature?

1 A No.

2 Q A couple of other just kind of brief questions I've
3 got here. When did you find out that Ms. Riddle had
4 dementia?

5 A She started -- or after her husband died and
6 everything, I was -- we was over there taking care of her.
7 It was right before I'd say October, November. We were
8 noticing that she wasn't feeling good. She needed to go
9 to the doctor. So it was after December sometime...

10 Q All right. You took her to the doctor before she was
11 committed?

12 A Yeah. We tried to get her heart medicine, blood
13 pressure pills, and all that.

14 Q Were you aware that Ms. Riddle had signed her home
15 over to you?

16 A Yes.

17 Q You were. Okay. Let's talk about those just a
18 little bit then. When did Ms. Riddle give you her house?

19 A It was before she went into the nursing home. I
20 think that's the -- it was before.

21 Q Okay. She -- all right. I'm not asking you when the
22 document was recorded. I'm asking you when you knew you
23 took possession of her home.

24 A In the will that she had done before all of this even
25 took place.

1 Q She left you the home in the will?

2 A Yes.

3 Q Okay. Do you have possession of that home today?

4 A No, ma'am.

5 Q Why not?

6 A I have turned it back over to Harvard.

7 Q Okay. Can we look -- I mean, these titles for the
8 real estate -- all right. Let's go back to that, when you
9 took possession of the house. Did you pay Ms. Hindman to
10 cut the grass for the house?

11 A Yes.

12 Q Out of Ms. Riddle's account?

13 A Yes.

14 Q Her house that you owned?

15 A Yes.

16 Q Okay. Do you think that was -- that was the best use
17 of Ms. Riddle's funds since she didn't own the home?

18 A Well, I thought it was all right to do that. I
19 didn't know at the time --

20 Q Did Ms. Riddle pay the taxes for this home that she
21 no longer owned out of her account?

22 A Yes. But she had paid that before all that.

23 Q But she doesn't own the home anymore; correct, not in
24 your mind? So she's still paying for the taxes?

25 A Yes.

1 Q How about the roof?

2 A That was done through an insurance company.

3 Q And then wasn't a check written for reimbursement on
4 the roof?

5 A No. It was, actually, paid -- the check was,
6 actually, deposited into her account that had mine and her
7 name on it. And we paid for the roof out of that.

8 Q All right. On these titles to the roof -- I mean the
9 title to the house -- very briefly, let's look at the one
10 that was recorded December 26th, 2012. Have you ever seen
11 this before?

12 A Yes. I've got -- I've got copies at home, yes.

13 Q Okay. Anything about this bother you?

14 MR. O'CONNELL: Your Honor, I'm going to object to
15 that question because --

16 THE COURT: Yes. How's that --

17 MS. HARRISON: All right. I'll withdraw it.

18 Okay.

19 BY MS. HARRISON:

20 Q If you would, look, who witnessed Ms. Riddle's
21 signature?

22 A Uh --

23 Q Giving you the home?

24 A Polly Hindman and her husband, Bob.

25 Q Okay. And does this appear to be Ms. Riddle's

1 signature?

2 A It looks like it, but...

3 Q What date was this document executed?

4 A June the --

5 Q June of what year?

6 A It's 2005.

7 Q Okay. At that time, was Mr. Leonard Riddle still
8 alive?

9 A Yes.

10 Q Did he, also, own part of the home?

11 A Yes.

12 Q Well, where is his signature?

13 A It's not.

14 Q Okay. On the front of this document -- excuse me --
15 does it reference something that happened in the year
16 2012?

17 A Yes. That's the year that her husband had passed
18 away.

19 Q Okay. But this was signed in 2004?

20 A Yes. It was -- conveyed granter of Leonard Riddle,
21 deceased, August 24, 2012.

22 Q All right. But this was signed before Mr. Riddle
23 died?

24 A Yes.

25 Q So how could you reference something that hadn't

1 happened in 2012 --

2 MR. O'CONNELL: Your Honor, I'm going to object to
3 that. That gives her -- is she a mind reader, or
4 something?

5 THE COURT: Yes. Don't --

6 MS. HARRISON: Okay

7 BY MS. HARRISON:

8 Q Who drafted this document?

9 A Polly.

10 Q You did not draft it?

11 A No.

12 Q Okay. You just took it at what it was worth?

13 A Yes.

14 Q All right. There was another title. Are you
15 familiar with this one as well, the second one? I'll show
16 you a copy of it. When was this one executed? When was
17 this signed?

18 A June 16, 2004.

19 Q All right. Who witnessed it?

20 A Polly and Bob.

21 Q Okay. Once again, is Leonard Riddle's name on there
22 as well since he was alive at the time and owned part of
23 this home?

24 A Yes.

25 Q His name is on there?

1 A Oh, on the front -- no. On the front, it's just
2 saying it's his property.

3 Q Correct. He did not sign anything?

4 A No.

5 Q And on the front, again, is there a -- something
6 referencing his death in 2012?

7 A Yes.

8 Q Okay. And who drafted this document?

9 A Polly did.

10 Q Okay. Thank you, ma'am.

11 So all these documents were drafted by your -- by the
12 Defendant, your half-sister?

13 A Yes, ma'am.

14 Q You did not sign these checks for the funeral
15 expenses?

16 A No.

17 Q And you got title to a home in 2004 or 2005 before
18 Mr. Riddle had died?

19 A Yeah. That paperwork is all wrong, I mean.

20 Q Yeah. Clearly, it is all wrong.

21 A Yeah.

22 MS. HARRISON: I'll tell you what, would you answer
23 any questions that Mr. O'Connell might have for you?

24 MR. O'CONNELL: May it please the Court.

25 THE COURT: Cross.

CROSS-EXAMINATION

1
2 BY MR. O'CONNELL:

3 Q You stated at the very beginning that you made
4 restitution to Harvard. Who's Harvard?

5 A That's Bette's brother-in-law.

6 Q And part of your plea bargain was to pay back money,
7 or something; is that right?

8 A Yeah. I paid back what they -- the courts asked me
9 to pay back, yes.

10 Q Okay. And these documents that are prepared, they
11 were done off the Internet, or something, as far as you
12 know; is that correct?

13 A I don't know that they were done on the Internet or
14 not.

15 Q Okay. And did Polly ever go to the Wells Fargo bank
16 with you?

17 A No.

18 Q Okay. Did she -- the checks that you wrote out from
19 your sister's estate, every check you wrote out from the
20 estate indicated that you were the power of attorney; is
21 that right?

22 A Yes. I usually put "POA" on there. The check I
23 wrote for her for the funeral, I know I signed my name on
24 it because I've got a copy of it at home.

25 Q Well, that's been entered into evidence. Did you

1 write "power of attorney" on there?

2 A No. I didn't sign that one.

3 Q So Bette signed that one?

4 A I don't know. I don't think she did.

5 Q Okay. Now, you said you were paying real estate
6 taxes for, what, 2013 and 2014; is that right?

7 A Yes. We paid the taxes on the house.

8 Q That's just something you did out of the -- out of
9 her estate or her money; right?

10 A Out of her checking account, yes.

11 Q Her checking account. Just some natural thing you
12 paid out; right?

13 A Well, no. She was still there. We knew the taxes
14 was behind. So she asked us would we go and pay them, and
15 we did.

16 MR. O'CONNELL: I mean, I have no questions at this
17 time, Your Honor.

18 THE COURT: Any other redirect?

19 MS. HARRISON: Just one question.

20 - REDIRECT EXAMINATION

21 BY MS. HARRISON:

22 Q After Ms. -- after Bette Riddle was committed to
23 Marshall Pickens on December 19th, 2012, did she ever come
24 back home and live?

25 A No.

1 Q Where did she go?

2 A She went to Pendleton Manor.

3 Q Okay. And is she still there today?

4 A She is as far as I know, yes.

5 Q And the home we've been talking about, is that here
6 in Greenville County?

7 A Yes.

8 MS. HARRISON: Okay. Thank you.

9 THE COURT: All right. Do you have any recross on
10 that since it was a new issue?

11 MR. O'CONNELL: Not on that issue, Your Honor,
12 no.

13 Thank you.

14 THE COURT: Thank you.

15 You can step down.

16 Okay. Next witness.

17 MS. HARRISON: Your Honor, the State would call Nancy
18 Roof.

19 THE BAILIFF: Stand right there.

20 WHEREUPON,

21 NANCY KAY ROOF,

22 after first having been duly sworn, testified as follows:

23 THE CLERK: Please have a seat.

24 And will you state your full name for the record?

25 THE WITNESS: Nancy Kay Roof.

DIRECT EXAMINATION

1
2 BY MS. HARRISON:

3 Q Thank you, Ms. Roof.

4 Ms. Roof, where do you live?

5 A Wade Hampton Gardens.

6 Q Do you mind if I ask where you've worked in the past?

7 A When I started -- when I was young, South Carolina
8 Law Enforcement Division, SLED in Columbia. And then I
9 did catering. And then I owned a skating rink for
10 28 years. And, now, I work for my son doing home health
11 equipment.

12 Q Do you know the victim in this case, Bette Riddle?

13 A Yes. She's like my mom. We're friends. And we've
14 been friends for about 40 -- over 40 years.

15 Q Okay. How close do you live to Ms. Riddle?

16 A Just down the street.

17 Q Do you both live here in Greenville County?

18 A Uh-huh.

19 Q What kinds of things did you do with Ms. Riddle?

20 A We shopped. We played bridge together. We had a
21 garden club, just a lot of what friends do.

22 Q I'd like to show you what's been marked as State's
23 Exhibit Nos. 10 and 11.

24 A Okay.

25 Q Can you identify this?

1 A Yes. That's Ms. Riddle.

2 Q Who took those pictures?

3 A I did.

4 Q Okay.

5 A At the nursing home.

6 Q Are these the same pictures that you brought to my
7 office but, perhaps, enlarged?

8 A Uh-huh.

9 Q Have they been changed or altered in any way?

10 A No.

11 Q Do you know about an approximate time frame these
12 pictures were taken?

13 A Probably last year or the year before last.

14 MS. HARRISON: Okay. Your Honor, we would move these
15 two exhibits into evidence. I believe it's number 11.

16 MR. O'CONNELL: Your Honor, could we have a more
17 specific time range? The whole year, last year, some
18 time.

19 THE WITNESS: Well, at Christmastime or just when I
20 went to visit her. And I went two or three times a week.

21 MR. O'CONNELL: Okay. I don't object to the
22 pictures.

23 THE COURT: All right. No objection.

24 (WHEREUPON, State's Exhibit Nos. 10 and 11 were
25 admitted into evidence.)

1 BY MS. HARRISON:

2 Q Okay. So this is Bette Riddle?

3 A Yes.

4 Q I take it Ms. Riddle is a Clemson fan?

5 A Yes.

6 Q A big one?

7 A Yes.

8 Q What is she like today? What's Ms. Riddle like
9 today? Do you still visit her?

10 A I do. I don't go as often. But, usually, I try to
11 go, at least, once a week. And she's doing fine. But
12 she's still -- you know, she's not making any sense too
13 much. But she does talk about the past a lot, her mother
14 and daddy, and even Leonard. She still talks about her
15 husband who has passed.

16 Q She does?

17 A Yes.

18 Q Physically, how is she? Do you know?

19 A She's great. I mean, she looks great. She's doing
20 great. She doesn't -- she doesn't walk too much anymore.
21 She's just in a wheelchair. But she looks wonderful.

22 Q Are you familiar with Bette's handwriting, also?

23 A I am.

24 Q How are you familiar with her handwriting?

25 A Just with her -- she would write me checks to go to

1 the grocery store, or she'd give -- she kept cash all the
2 time, so. But birthday cards, Christmas cards, stuff like
3 that.

4 Q If I showed you checks, could you give a layperson's
5 opinion whether Bette wrote that check or didn't write
6 that check?

7 A I could, hopefully. She had beautiful handwriting.

8 Q Is there anything distinctive about her handwriting?

9 A Big "B," big "R." And she spelled her last name -- I
10 mean, first name B-E-T-T-E.

11 Q I'd like to show you a check written to Leisa Norris
12 on September 15th, 2012. Does that look like her
13 signature -- Ms. Riddle's signature?

14 A Maybe.

15 Q Okay.

16 A It's hard for me to tell. But she did have nice
17 handwriting.

18 Q Let me show you some checks further down.

19 A Okay.

20 Q What about this check for \$6,059?

21 A No.

22 Q And what's that check -- who's that check made
23 payable to?

24 A Polly.

25 Q And what's it for?

1 A It says, funeral expenses.

2 Q And the date on that?

3 A 12/18/12.

4 Q I'm going to hand you the second check. What's the
5 date on that?

6 A 12/18/12. And it's for -- to Polly Hindman, \$6,773.
7 And that's not her handwriting.

8 Q Thank you.

9 A You're welcome.

10 Q So that adds up to be a little over \$12,000?

11 A Yes. It looks like it.

12 Q I'd like for you to look at two more documents and
13 tell me if you think Ms. Riddle signed these. In your
14 opinion, is that her handwriting?

15 A No.

16 Q Okay. And what is this document? It's on the front.

17 A Power of attorney.

18 Q Do you know when it was signed?

19 A November 29th, '12.

20 Q Okay. I'd like to show you another one. Is this her
21 signature?

22 A No.

23 Q Okay. When was that one signed?

24 A The same date, November the 29th, 2012.

25 Q And the last one, is that her signature?

1 A I don't believe so.

2 Q And what date was that power of attorney signed?

3 A The same date, November the 29th, '12.

4 Q So you don't believe any of these are her signature?

5 A (There was no verbal answer.)

6 MS. HARRISON: I have no other questions.

7 Please answer anything Mr. O'Connell might have for
8 you.

9 THE COURT: Cross.

10 MR. O'CONNELL: Thank you.

11 CROSS-EXAMINATION

12 BY MR. O'CONNELL:

13 Q So some of those, you think are not her signature; is
14 that right?

15 A I do not think they're her signatures.

16 Q But other ones could be her signature?

17 A I don't think so.

18 Q Okay. And if I were to show you a check from 2013
19 with her signature on it, could you tell me whether it's
20 her signature or not?

21 A If you want to show it to me, yes.

22 (Pause.)

23 MS. HARRISON: We'd have to get this authenticated.

24 MR. O'CONNELL: I just --

25 MS. HARRISON: Yeah. But I cannot --

1 THE COURT: Whoa, whoa, whoa. No speaking
2 objections.

3 MR. O'CONNELL: No further questions, Your Honor.

4 THE COURT: Okay. You can step down.

5 Thank you, ma'am.

6 THE WITNESS: Thank you.

7 THE COURT: Okay.

8 MS. HARRISON: The State would call Mary Ellen
9 Cervetti.

10 THE BAILIFF: Stand right there.

11 THE CLERK: Do you swear or affirm to tell the truth,
12 the whole truth, and nothing but the truth, so help you
13 God --

14 THE COURT: Other way.

15 THE WITNESS: I'm sorry.

16 THE CLERK: Do you --

17 THE WITNESS: Yes, I do.

18 WHEREUPON,

19 MARY ELLEN CERVETTI,

20 after first having been duly sworn, testified as follows:

21 THE CLERK: Please have a seat.

22 THE COURT: Stokes or Cervetti?

23 MS. HARRISON: Cervetti.

24 THE COURT: Did you say Stokes or Cervetti? That's
25 what I'm asking.

1 MS. HARRISON: I hope I said Cervetti.

2 THE COURT: Okay.

3 MS. HARRISON: Your Honor, just briefly, may the
4 witness from Wells Fargo be excused?

5 THE COURT: Any objection?

6 MR. O'CONNELL: None, Your Honor.

7 THE COURT: All right. You're released from
8 subpoena.

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

11 THE WITNESS: My name is Mary Ellen Cervetti.

12 THE CLERK: Thank you.

13 DIRECT EXAMINATION

14 BY MS. HARRISON:

15 Q Ms. Cervetti, where do you work?

16 A I currently work for BB&T in corporate
17 investigations.

18 Q Okay. How long have you worked there?

19 A I've worked there for about seven years.

20 Q Could you go back, at least, 20, 25 years and give
21 the jury a breakdown of your work experience, training,
22 certifications?

23 A Sure. I started in 1990 as a special agent with the
24 Federal Bureau of Investigations. And, in that role, I
25 moved on to a supervisory special agent role. And I

1 retired from the FBI in 2010. And then I started work at
2 BB&T.

3 I'm, also, a member of the Association of Certified
4 Fraud Specialists, which I obtained when I went to work at
5 BB&T.

6 Q Have you had any special training in bank fraud or
7 that area that you could --

8 A Yes. As an agent with the FBI, I worked bank fraud
9 cases. I worked insurance fraud cases. So I have a vast
10 experience in those kinds of investigations. And I've
11 taken training both with the FBI and as a bank
12 investigator, and, also, put on bank fraud training for
13 other individuals.

14 MS. HARRISON: Your Honor, the State would move to
15 qualify Ms. Cervetti as an expert in bank fraud.

16 THE COURT: Any voir dire?

17 MR. O'CONNELL: No, Your Honor. I'll take her as
18 what she says she is.

19 THE COURT: All right. She's qualified as an expert
20 in those subjects.

21 BY MS. HARRISON:

22 Q Ms. Cervetti, were you the investigator assigned by
23 BB&T in this case?

24 A Yes, I was.

25 Q Could you tell the jury a little bit -- why you were

1 assigned this case?

2 A Yes. What happened was I work the region for South
3 Carolina for BB&T. And so if something happens in a
4 branch where they have a suspicion or something has not
5 gone right, they will call me.

6 So, in this particular case, they were given a power
7 of attorney by two individuals, two women that came in
8 that said they were sisters of Bette Riddle. And they
9 wanted to have their names put on her accounts.

10 And the first glance at the POA was that the name on
11 the POA was incorrect as to what we had on our account.
12 In addition to that, there were questions raised because
13 these two women were very adamant that this needed to be
14 done right away, that this money was for Mrs. Riddle's
15 care. And that we, as a bank, had incorrectly listed
16 Mr. Harvard Riddle on the account, and we had violated our
17 policies, that an employee had violated policies in doing
18 that.

19 So, right away, that would come to me because I need
20 to investigate did someone within BB&T do something wrong.

21 Q What did your investigation find out?

22 A What my investigation found out was that, no, we
23 followed procedures correctly. And what I did -- I'll
24 just tell you how I went about investigating that.

25 Initially, right away, what I did -- we had five CDs

1 in Bette Riddle's name that -- name that were, also, in
2 Harvard's name. And that happened back in July of 2012
3 where his name -- he had been the beneficiary -- I'm
4 sorry -- the beneficiary on those CDs. But after Bette's
5 husband became deceased, they came in and requested that
6 he be put onto the CD so that he could be able to use them
7 if something were to happen to her for her care.

8 So the policy, at that time, was in order to do that,
9 he, also, had to be on the signature card. And we had to
10 produce a new signature card. And Bette would've had to
11 sign that. And Bette did come to the bank and did sign
12 it. And our employee was able to verify that. And then I
13 went and spoke with Mr. Riddle and he verified the same
14 procedure of how that was done.

15 So we determined that they were good accounts that
16 were done back in June, July.

17 Q All right. So you did not allow -- now, when -- when
18 both the Defendant and Ms. Norris approached BB&T, were
19 they -- was one person being asked to be put on the
20 account or both being asked to be put on those CDs?

21 A Initially, the first power of attorney had two
22 individuals asking to be, actually, on the power of
23 attorney. And it was both Ms. Hindman and Ms. Norris that
24 were there and asking to be on the POA.

25 Q And that was turned down because?

1 A That one was turned down because of the misspelling
2 of Ms. Riddle's name.

3 Q Did they come -- did Ms. Hindman, the Defendant,
4 and/or Ms. Norris come back a second time?

5 A My understanding from the employee at our branch is
6 that they came back three separate times.

7 Q Okay. Did BB&T allow them access to these funds?

8 A No. At that point when it came -- it came to my
9 area. I told them to -- any further communication with
10 either Ms. Hindman or Ms. Norris needed to come through
11 me. And I just advised them to give them my phone number,
12 and my information, and I would take things from that
13 point.

14 Q Did you receive a letter from Ms. Norris?

15 A I did.

16 Q Okay. What did that letter ask BB&T to do?

17 A That letter -- at one point -- just to backtrack. I
18 had talked to Ms. Norris and told her that any
19 communication with the bank -- because she was threatening
20 legal action -- needed to be put into writing.

21 And so she sent me a letter, basically, telling me
22 that if we would relinquish -- give half of the control of
23 the accounts that were in Harvard Riddle's name to her
24 brother in Florida, then they would drop all legal action
25 against BB&T.

1 Q Are these accounts still available today?

2 A To my knowledge, they are. What -- what we did --
3 there was 339 -- about 339,000, give or take a little
4 bit, in five CDs that were not going to mature for a
5 year.

6 So in -- at the end of 2013, Harvard Riddle and his
7 attorney for -- I guess it was his probate attorney or
8 whatever had settled that issue, had come in and asked for
9 us to provide some of the funds to the law firm in a check
10 for escrow. And we did that.

11 The other amount -- it was about 199,000, we kept in
12 the CD. Because it was not going to mature until the next
13 year. And in looking through the records, Mr. Riddle put
14 that into an investors deposit account, which has not been
15 touched since early 2014. And I'm not sure because I'm
16 not looking at the documentation. But it hasn't been
17 touched. It's, actually, gained money. So that -- all
18 that money is still in tact at BB&T.

19 Q Let me show you what's been marked as State's Exhibit
20 No. 12. Can you identify these documents?

21 A Yes. These are statements -- these are statements on
22 the account of Bette Riddle and Harvard Riddle. And these
23 are for December of 2012.

24 Q Okay. On the last page is correspondence from Leisa
25 Norris?

1 A Yes.

2 Q Okay. Does BB&T keep copies of such correspondence
3 as part their business records practice?

4 A We do.

5 Q Okay. Did you produce the copies to me that are
6 being presented today?

7 A I did.

8 Q Do they appear to be fair and accurate copies of what
9 BB&T produced to the Solicitor's office?

10 A They are.

11 MS. HARRISON: Your Honor, I would move this exhibit
12 into evidence.

13 THE COURT: Any objection?

14 (Pause.)

15 THE COURT: Well, show him what it is your -- you
16 want --

17 MS. HARRISON: He should have it.

18 They're in the copies I gave you.

19 THE COURT: Show him a copy.

20 MS. HARRISON: Okay. Your Honor, he has a copy.

21 THE COURT: Any objection?

22 MR. O'CONNELL: Not to the document, Your Honor.

23 THE COURT: Okay.

24 (WHEREUPON, State's Exhibit No. 12 was admitted into
25 evidence.)

1 BY MS. HARRISON:

2 Q Ms. Cervetti, in your opinion, what would have
3 happened if BB&T had not caught the misspelling of the
4 PO -- misspelling of Ms. Riddle's name on the power of
5 attorney?

6 MR. O'CONNELL: Your Honor, I object to in her
7 opinion what would have happened.

8 THE COURT: Yes. That -- you're asking her to
9 speculate.

10 MS. HARRISON: Well, Your Honor, she has been offered
11 as an expert.

12 THE COURT: There's a difference between offering an
13 opinion as an expert and speculating on the future, so.

14 MS. HARRISON: Okay.

15 BY MS. HARRISON:

16 Q So, as of this date, Mr. Harvard Riddle has not made
17 any withdrawals from these accounts?

18 A No, he has not.

19 Q What did BB&T do about the letter they received from
20 Ms. Norris demanding half of the funds?

21 A That letter -- I received that letter. I forwarded
22 it to our legal counsel. And we did nothing. We kept an
23 assignment on those funds and did nothing.

24 MS. HARRISON: Okay. Thank you.

25 Would you, please, answer any questions Mr. O'Connell

1 might have.

2 MR. O'CONNELL: May it please the Court.

3 THE COURT: Yes.

4 CROSS-EXAMINATION

5 BY MR. O'CONNELL:

6 Q I'm just -- two questions. One, the money is still
7 in the funds; right? BB&T has this money?

8 A I'm sorry. I didn't hear you.

9 Q Does BB&T still have all these funds?

10 A BB&T has 194,000 or some odd in an account -- in an
11 investors deposit account. The other half -- rest of that
12 money has been given to probate. It was put into probate
13 and given into an attorney's escrow account.

14 Q And you weren't present when the supposedly two
15 ladies went in the bank and supposedly tried to get an
16 account changed, or whatever. You weren't there?

17 A I wasn't present the day they came in. But I did
18 speak to them on the phone after they came in.

19 MR. O'CONNELL: Thank you.

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

21 You can step down.

22 Do you want to release her from subpoena?

23 MS. HARRISON: Yes, Your Honor.

24 THE COURT: Any objection?

25 MR. O'CONNELL: None, Your Honor.

1 Thank you, though.

2 THE COURT: Okay.

3 MS. HENDRICKS: The State calls Tyler O'Shields.

4 WHEREUPON,

5 TYLER BRADLEY O'SHIELDS,

6 after first having been duly sworn, testified as follows:

7 THE CLERK: Please have a seat.

8 And will you state your full name for the record?

9 THE WITNESS: Tyler Bradley O'Shields.

10 MS. HENDRICKS: May it please the Court.

11 DIRECT EXAMINATION

12 BY MS. HENDRICKS:

13 Q Can you tell us where you're employed?

14 A Yes, ma'am. I'm a self-employed attorney with
15 offices in Greenville and Pickens County.

16 Q Okay. And how long have you been with your own law
17 firm?

18 A Since 2010.

19 Q Okay. Will you start back, at least, 10 years and
20 give us a brief rundown of your work experience and
21 training?

22 A Sure. Well, let's see. I'll work from present
23 backwards. I was sworn in as a licensed South Carolina
24 attorney in the fall of 2010. Prior to that, I was
25 required to do some internships by law school and served

1 as a legal assistant or law clerk, if you will, for an
2 elder law firm here in Greenville. And then after that in
3 approximately '09, I formed a general practice in Easley,
4 South Carolina. Prior to that, roughly 2005, 2008, I was
5 up in the state of Michigan in law school.

6 Q And you worked with elder law in Michigan?

7 A I did, yes, ma'am. When I was in law school, I just
8 kind of randomly volunteered for a non-profit corporation
9 up there, Elder Law, Inc., I believe it was. And that's
10 how I kind of got my start with all things probate, and
11 wills, and powers of attorney, and such.

12 Q And that's been the focus of your practice since
13 then?

14 A Yes, ma'am, it has. I draft estate planning
15 documents, which would include wills and powers of
16 attorney, deeds, probate court for both incapacitated
17 people and, of course, the deceased portion that most
18 people are familiar with. Other than probate court, the
19 only other court that I practice in would be family court.

20 MS. HENDRICKS: Your Honor, the State would move to
21 qualify Mr. O'Shields as an expert in elder law.

22 MR. O'CONNELL: I object, Your Honor. He's done no
23 curriculum vitae. He's -- he's not --

24 THE COURT: Well, do you want to question him on it?

25 MR. O'CONNELL: Okay.

VOIR DIRE EXAMINATION

1
2 BY MR. O'CONNELL:

3 Q Do you have any written articles out there, or any
4 substantive articles written about elder law, or anything?

5 A I have not, no, sir.

6 Q And do you have any other experience just practicing
7 in probate court as an elderly [sic] attorney?

8 A I believe the answer is no, no, sir. I mean, I draft
9 documents and practice in probate court.

10 MR. O'CONNELL: Your Honor, he's not an expert in
11 elderly [sic] law.

12 THE COURT: I -- you're going to have to produce a
13 little more. Has he ever been qualified before, ever
14 testified in any other court as an expert?

15 THE WITNESS: The answer is no, no, ma'am [sic].
16 I've never testified in court before as a witness, no.

17 MS. HENDRICKS: Okay. We'll withdraw that.

18 THE COURT: All right.

CONTINUED DIRECT EXAMINATION

19
20 BY MS. HENDRICKS:

21 Q And can you tell the jury how you became involved in
22 this case?

23 A Yes, ma'am. I believe it was March of 2014, I was
24 court appointed by the Greenville County Probate Court for
25 guardianships and conservatorships as we would call them

1 in the probate court world when there's an allegedly
2 incapacitated person. The law in South Carolina requires
3 the probate court to appoint an attorney for the allegedly
4 incapacitated person, which, in this case, was Ms. Bette
5 Riddle.

6 I was appointed by the probate court in roughly March
7 of 2014. And that case concluded with a hearing on
8 December 29th of 2014.

9 Q I was going to ask you if licensed notaries who are
10 not licensed attorneys can draft legal documents, to your
11 knowledge?

12 A To my knowledge, no, ma'am. That would violate --
13 that violates notary public law in South Carolina. It,
14 also, kind of hinges upon what us lawyers would call the
15 unauthorized practice of law, which is, at a minimum, a
16 misdemeanor, as far as I'm aware.

17 Q Okay. And can you tell us how long a notary license
18 lasts?

19 A 10 years. I'm a notary myself. A lot of attorneys
20 that are previous employers of mine are. That's a process
21 you go through with a local -- a local person in your
22 county. And then you send -- some forms get sent to the
23 Secretary of State in Columbia and -- with a check. But
24 it lasts a period of 10 years. And if you wish to
25 continue being a notary after that period, then you have

1 to jump through a little -- process to start another 10
2 years.

3 Q Okay. I'd like to show you what's been marked as
4 State's Exhibit No. 7. Can you identify this document?

5 A Sure. I would call this a deed. It is formally
6 titled Title to Real Estate for a Greenville County piece
7 of real estate.

8 Q And who does it transfer title from and to?

9 A The owner, at the time, would appear to be Bette M.
10 Riddle. It conveyed ownership to Leisa Ellen Norris
11 reserving what's called a life estate dated -- the typed
12 document dated June 6, 2005.

13 Go ahead. I'm sorry.

14 Q And what date was it notarized on?

15 A The notary date is identical to the date that
16 Ms. Riddle supposedly -- based on the face of the document
17 supposedly signed the document with the notary date being
18 June 6, 2005.

19 Q And who notarized the document?

20 A The signature is clear enough. It seems to read
21 Polly Hindman. And then, also, as a notary, there is a
22 seal or a stamp. And that clearly in print reads, Polly
23 M. Hindman.

24 Q And what date does her notary license expire on?

25 A Yes, ma'am. According to the stamp of the notary,

1 3/9/2016.

2 Q Is it possible to have a notary license that expires
3 later than 10 years after the document was signed?

4 A No, ma'am. You have to be within that 10-year window
5 of time.

6 Q Okay. And I'm going to show you what's been marked
7 as State's Exhibit No. 6.

8 A Yes, ma'am.

9 Q Can you identify this document?

10 A Again, I would call it a deed. Formally it's a title
11 to real estate for Greenville County real estate. Bette
12 Riddle being the current owner when the document was
13 signed. This time conveying the property to Leisa Ellen
14 Norris.

15 I will note that the name Leisa is spelled
16 differently amongst the two documents.

17 Q And can you tell us the date that the document was
18 signed and notarized on?

19 A Yes, ma'am. Again, the date is the same as far as
20 the date that Bette M. Riddle allegedly signed, June 16th
21 of 2004. And then lower down on the same page, the date
22 of the notary, June 16th, 2004.

23 Q And who notarized the document?

24 A Again, the signature clearly looks to be Polly M.
25 Hindman. And then there's, also, the notary seal that

1 clearly in print reads Polly M. Hindman.

2 Q And what date does her notary license expire on?

3 A 3/9/2016, which I believe is the exact same as the
4 prior document.

5 Q So is it possible that her notary license expires
6 later than 10 years after the document was signed?

7 A No, ma'am. If the document was truly dated, and
8 signed, and everything on June 16h of 2004, her commission
9 would -- would not be allowed to expire past, what, I
10 guess, June 16th, 2014. So no.

11 MS. HENDRICKS: One second.

12 BY MS. HENDRICKS:

13 Q Would it be in Ms. Riddle's best interest to transfer
14 her home to Ms. Leisa Norris before she went to assisted
15 living?

16 MR. O'CONNELL: Your Honor, I object to that.

17 THE COURT: Sustained.

18 THE WITNESS: As --

19 THE COURT: I sustained the objection, so you can't
20 answer the question.

21 BY MS. HENDRICKS:

22 Q Okay. Can you tell us what duties a power of
23 attorney would have?

24 A Sure.

25 MR. O'CONNELL: Your Honor, I know he's a notary. I

1 don't know that he's --

2 THE COURT: Yes.

3 Hang on.

4 I'll tell you what, let's take a short morning
5 recess, ladies and gentlemen. I'm going to excuse y'all
6 to your jury room, if you would.

7 And let me ask you, while you're in there to see if
8 you all can decide who you would like to be your
9 foreperson. The foreperson is the moderator of your
10 discussions during your deliberations and the juries
11 spokesperson here in the courtroom, if that becomes
12 necessary. See if y'all can decide that yourself. If
13 not, I'll pick somebody out for you. Okay.

14 (WHEREUPON, the jury was excused from open court at
15 approximately 11:23 a.m.)

16 THE COURT: What relevance does this witness have to
17 this case?

18 MR. O'CONNELL: Your Honor --

19 THE COURT: I'm not asking you. I'm asking the
20 State.

21 MS. HARRISON: Your Honor, he was the conservator and
22 guardian ad litem for Ms. Riddle. We haven't finished
23 with all the questions. But, at the very end, he
24 represented her in probate court. And he will testify the
25 finding in probate court was to set aside these powers of

1 attorney and to give her back the home.

2 THE COURT: I don't think he's been introduced as
3 being appointed by the Court in this case. So you need to
4 start out --

5 MS. HARRISON: I believe --

6 Did you not testify to that, that you were appointed
7 as --

8 THE COURT: He said generally that's what he does. I
9 do not remember hearing anything with respect to specifics
10 with respect to this case.

11 So having said that, we'll take a short break and --

12 MS. HARRISON: Okay. I believe he did say that he
13 was appointed for Ms. Bette Riddle at the very end.

14 THE WITNESS: In the probate --

15 MS. HARRISON: In probate court. But I'll --

16 THE COURT: Okay. Fine. Well, you're -- the
17 questioning is -- these documents speak for themselves.
18 They need to relate to the issues in this case.

19 MS. HARRISON: All right.

20 THE COURT: Mr. O'Shields, you may stand down.
21 Please don't discuss your testimony with anybody.

22 We'll take about a 10-minute break.

23 THE WITNESS: Yes, Your Honor.

24 (WHEREUPON, a break was taken.)

25 THE COURT: Are we ready?

1 MS. HARRISON: Yes, sir.

2 THE COURT: Come on back up.

3 The Foreperson is Marina Shew.

4 (WHEREUPON, Court's Exhibit No. 1 was marked for
5 identification and admitted into evidence.)

6 (WHEREUPON, the jury came into open court at
7 approximately 11:39 a.m.)

8 THE COURT: Ms. Shew, thank you for agreeing to
9 serve. All right.

10 CONTINUED DIRECT EXAMINATION

11 BY MS. HENDRICKS:

12 Q Mr. O'Shields, were you appointed by the probate
13 court as guardian ad litem for Ms. Riddle?

14 A Yes, ma'am.

15 Q And did you make a recommendation to the probate
16 court?

17 A Yes, ma'am. I would have been asked by the judge
18 recommendations. As I recall, a hundred percent, I had no
19 objection to the petitioners request. And the petitioners
20 were Harvard and Claire Riddle seeking to be made guardian
21 and conservator over Bette. So I would have agreed with
22 their position.

23 Q Okay. And what was the ultimate ruling of the
24 probate court?

25 A Yes, ma'am. The December 29, 2014 ruling, basically,

1 in my words, I would say is that there was an agreement,
2 if you will. There was not a final all-day trial or
3 anything of that nature.

4 So the settlement that was made was that Harvard and
5 Claire Riddle were made guardian and conservator over
6 Bette Riddle. And Ms. Riddle was -- or Bette Riddle was
7 deemed in a final decision to be an incapacitated person
8 by the Court as well.

9 Q So did the probate court, ultimately, remove
10 Ms. Hindman and Ms. Norris as powers of attorney?

11 A According to the temporary order that was issued June
12 of 2014 by the probate court in the guardianship
13 conservatorship cases, yes. The language of those orders,
14 actually, said that those powers of attorney were
15 suspended. And then a guardianship conservatorship
16 supersedes them.

17 Q Okay.

18 A There were -- it's my understanding there -- that
19 certain portions of things that Harvard and Claire Riddle
20 asked for in the guardianship conservatorship case such as
21 the undoing of these titles to real estate that you've
22 shown me as exhibits, that portion was removed to civil
23 court. That was not a proper probate decision, so, yes,
24 ma'am.

25 MS. HENDRICKS: Okay. No further questions.

1 MR. O'CONNELL: Your Honor, may it please the Court.

2 THE COURT: Yes.

3 CROSS-EXAMINATION

4 BY MR. O'CONNELL:

5 Q You were there present on the -- you said it was
6 December 29th of 2014, probate court, the Honorable Edward
7 Savine issued an order. That order did not revoke the
8 power of attorney, did it?

9 A That is correct, which is what I testified a moment
10 ago that the temporary order suspended them. And I've
11 noticed that the final order -- I don't really think there
12 was much language about the powers of attorney in the
13 final order. Your statement is correct in that that order
14 didn't really make hide nor hair of the powers of
15 attorney.

16 Q So they're still valid as far as we know; is that
17 correct?

18 A My opinion as a probate court attorney is that the
19 guardianship conservatorship supersedes those. And,
20 therefore, nullifies them.

21 THE COURT: You're -- you have not been qualified as
22 an expert, so.

23 BY MR. O'CONNELL:

24 Q I'll ask it -- as far as you know, they've not been
25 revoked; is that correct?

1 A They were suspended by the temporary order.

2 Q But the final order of that court just left them in
3 place; is that correct?

4 A It did not address them, that's correct.

5 Q No. Do I need to show you the final order?

6 A I'll be -- yeah. Well, I'll be glad to look at it.
7 But I guess my testimony is it doesn't mention them. So
8 it doesn't say they're good, bad, ugly, which is why I
9 kept referencing to the temporary which said they were
10 suspended.

11 Q But they -- as far as you know -- one question.

12 A Yes, sir.

13 Q They're still valid as far as you know?

14 A And I swear I'm not -- I'm not trying to be
15 difficult. I just -- the validity -- if they're properly
16 notarized, who's to say they're invalid -- valid or
17 invalid. I think they're invalid.

18 MR. O'CONNELL: That's your opinion, though.

19 Okay. Your Honor, I have no further questions of
20 this witness.

21 THE COURT: Any redirect?

22 MS. HARRISON: None, Your Honor.

23 THE COURT: Okay. You can step down.

24 MS. HARRISON: Your Honor, the State would call
25 Investigator Tim Martin.

1 WHEREUPON,

2 JOHN T. MARTIN,

3 after first having been duly sworn, testified as follows:

4 THE CLERK: Please have a seat.

5 And will you state your full name for the record?

6 THE WITNESS: John T. Martin.

7 DIRECT EXAMINATION

8 BY MS. HARRISON:

9 Q Investigator Martin, where are you employed?

10 A The Greenville County Sheriff's Office.

11 Q How long have you been there?

12 A 30 years.

13 Q Wow. What areas do you work?

14 A Uniform patrol about 15. And then I went into
15 criminal investigations. I've been there about 10.

16 Q Were you the investigator assigned to the case?

17 A Yes, ma'am.

18 Q How did you get involved with this case against
19 Ms. Hindman?

20 A Two attorneys called me and wanted to have a meeting
21 with me. It was Karen McMahan -- no, McMaway [phonetic]
22 and Kimberly Thompson. Both of them are probate
23 attorneys. And they asked me to have a meeting with them.
24 And they presented me with certain documents. And they,
25 actually, had records subpoenaed from banks and different

1 things like that they provided to me. And they sat down.
2 And we discussed it. And they said that it's fixing to go
3 before a probate hearing. And they wanted me to be
4 present at the probate hearing.

5 Q Did you go to the final probate court hearing?

6 A I did.

7 Q Okay. At what point did you begin your criminal
8 investigation?

9 A I started collecting evidence before the probate
10 hearing, and started reviewing stuff. Once I completed
11 the probate hearing -- once the probate hearing was
12 completed, I made a decision to go ahead and file criminal
13 charges.

14 Q Okay. So you were present for everything that
15 happened?

16 A Yes.

17 Q Some of the documents that have been introduced
18 today, are -- did these factor in with your criminal
19 investigation?

20 A Yes, ma'am.

21 Q These powers of attorney, these titles, these bank
22 records. You've had a chance to review these?

23 A Yes.

24 Q Okay. And did you review these before bringing
25 charges?

1 A Yes.

2 Q How long did you work on this case before you brought
3 any charges? Do you remember?

4 A Let's see. I guess I started 4/8/2014. And it looks
5 like the warrants were signed 11/29/2000 [sic].

6 Q Based on -- based on your investigation of this case,
7 and the documents that have been presented and moved into
8 evidence, your questioning of witnesses, what did you do?

9 A Repeat that again.

10 Q I'm sorry. Based on your criminal investigation of
11 this case, your review of the documents, once you
12 completed your investigation, what did you do?

13 A I signed warrants.

14 Q On who?

15 A On both of -- Polly and Leisa.

16 Q Polly. Full name, please.

17 A Polly Hindman and Leisa -- Leisa Norris.

18 Q What did you charge them with?

19 A I charged both of them with exploitation of a
20 vulnerable adult.

21 Q Okay. And is that the Defendant that's here today?

22 A Yes, ma'am.

23 MS. HARRISON: Okay. No further questions.

24 Please answer anything Mr. O'Connell might have.

25 MR. O'CONNELL: Just a couple.

CROSS-EXAMINATION

1
2 BY MR. O'CONNELL:

3 Q You were called into this case by two probate
4 attorneys?

5 A Yes.

6 Q And I understood you said you went to the probate
7 hearing?

8 A I did.

9 Q And after that probate hearing, you, actually,
10 prepared a case and gave the information to a magistrate;
11 is that correct?

12 A Correct.

13 Q You didn't sign the charges and brought the charges.
14 You had to go through a magistrate; correct?

15 A Correct.

16 MR. O'CONNELL: Okay. I have no further questions.

17 MS. HARRISON: No redirect, Your Honor.

18 THE COURT: All right. Thanks.

19 You can step down.

20 THE WITNESS: Thanks, Judge.

21 THE COURT: Yes.

22 MS. HARRISON: Your Honor, that would be the State's
23 case.

24 MR. O'CONNELL: Your Honor, I'd like to make a motion
25 to --

1 THE COURT: All right. Ladies and gentlemen, it's a
2 little bit like -- I'm an Episcopalian, so I can make fun
3 of it, like an Episcopal church service, up and down, up
4 and down. I'm going to have to excuse y'all to discuss a
5 legal matter with the attorneys at this time.

6 We'll be back with you very shortly.

7 (WHEREUPON, the jury was excused from open court at
8 approximately 11:47 a.m.)

9 MOTIONS

10 THE COURT: All right. Do you have a motion?

11 MR. O'CONNELL: Your Honor, may it please the Court.

12 I'd like to ask for a directed verdict based on the
13 grounds they never showed that this lady is a -- Bette
14 Midler -- excuse me, Bette Riddle is a vulnerable adult.
15 They've given no testimony that she was a vulnerable
16 adult.

17 Number two in our matter is where's the proof that my
18 client got any money, got any goods or materials out of
19 this, or anything?

20 THE COURT: All right. I believe they testified that
21 she was found to be incompetent.

22 MR. O'CONNELL: At a December 29th final hearing in
23 probate court of 2014.

24 THE COURT: Well, and, also, her neighbor testified
25 that she was --

1 Well, I'll let you respond to it. I don't want --

2 MS. HARRISON: Your Honor, that's fine.

3 Not only did her neighbor testify to that, but Leisa
4 Norris testified that the dementia had set in prior to her
5 being committed. She was committed on December 19th,
6 2012. And they'd taken her to the doctor prior to that.
7 And she'd been consistently going downhill since her
8 husband had died in July of 2011.

9 THE COURT: Okay. So --

10 MS. HARRISON: And anybody that is -- by statute,
11 anybody that's a member of a facility is immediately
12 declared a vulnerable adult. Anybody that is caring for
13 somebody -- or needs daily care would be considered a
14 vulnerable adult. They don't have to be completely
15 incompetent to fall under the statute.

16 As far as his client getting money, I think we've had
17 direct testimony that she received over \$12,000 or \$13,000
18 for funeral checks.

19 THE COURT: That'll be a question of fact for the
20 jury.

21 MR. O'CONNELL: Thank you, Your Honor.

22 THE COURT: Okay. Are y'all ready to go?

23 MR. O'CONNELL: Are you ready to go?

24 THE COURT: First of all, Ms. Hindman, please, raise
25 your right hand.

1 WHEREUPON,

2 POLLY MCABEE HINDMAN,

3 after first having been duly sworn, testified as follows:

4 THE COURT: All right. And I want to inform you that
5 you have a Constitutional right to testify in your own
6 defense. You have an equal absolute Constitutional right
7 not to testify, and it cannot be held against you.

8 Whether or not you decide to testify is a -- involves
9 strategic decisions with respect to how a trial is
10 conducted, or a defense is conducted. And whether or not
11 you present evidence or testify is something that you and
12 your attorney must discuss and decide.

13 I -- and I recommend that you follow the advice of
14 your attorney, or listen carefully to it. But, in the
15 end, it is your Constitutional right, and only you can
16 make that decision.

17 So have you made a decision about whether or not you
18 will or will not testify?

19 DEFENDANT HINDMAN: I will.

20 THE COURT: Okay. Do you have any questions you want
21 to ask about that?

22 DEFENDANT HINDMAN: No, sir.

23 THE COURT: Are there any impeachable offenses?

24 MS. HARRISON: She has no prior record.

25 But, Your Honor --

1 THE COURT: You need to stand up when you address the
2 Court.

3 MS. HARRISON: Yes, sir. I'm sorry. I'm sorry.

4 She has no prior record. However, we do have
5 information that a similar event has occurred with a
6 Mr. Frank Painter. It's the same thing with the titles
7 and the powers of attorney that would go to common scheme
8 or plan.

9 THE COURT: So -- and this is the first -- so you're
10 going to -- you want to get into Lyle evidence; is that
11 right?

12 MS. HARRISON: There's a possibility, depending on
13 what he asks her and what she says. We have the exact
14 same scenario in Spartanburg County.

15 MR. O'CONNELL: Your Honor, my position is it's not
16 what she's charged with, totally different facts, totally
17 different circumstances.

18 THE COURT: Well, I don't know anything about it.

19 MR. O'CONNELL: If it -- what I've got from them,
20 it's not the same thing. So how can it be a plan, or a
21 scheme, or anything?

22 I think it goes out of the bounds of what we're here
23 for today.

24 THE COURT: Well, what is it you're going to -- I
25 mean, what is it -- what common scheme, or plan, or Lyle

1 evidence is it that you're going to want to impeach her
2 with?

3 MS. HARRISON: Identical powers of attorney,
4 identical transfers of title of deeds. All executed well
5 outside her notary license. It's almost verbatim word for
6 word what's right over there on that desk.

7 THE COURT: Well, what's -- and what was the result
8 of the conduct in Spartanburg?

9 MS. HARRISON: Mr. Martin can probably address that
10 better than I --

11 THE COURT: Well, you're the lawyer, and I'm asking
12 you. You're the one that wants to introduce the Lyle
13 evidence. So it's up to you to tell me.

14 MS. HARRISON: I do not believe Spartanburg County is
15 pursuing charges on it.

16 MR. O'CONNELL: See, Your Honor --

17 THE COURT: Well, then how -- you know, how do you --

18 MS. HARRISON: Well, because it's dated in 2004.
19 Once again, it has the notary stamp of 2016 on it. So
20 these are, once again, fraudulent documents. They're
21 identical.

22 MR. O'CONNELL: They're alleging --

23 THE COURT: Well, I -- we'll just have to see. I
24 mean, if she's got -- I mean, she can cross-examine her
25 with respect to other conduct.

1 MR. O'CONNELL: Okay. The only reason I say that,
2 Your Honor, is it might confuse the jury if they're
3 bringing up something that is totally unconnected to this
4 case.

5 THE COURT: Well, it's not about -- she's not trying
6 to convict her based on the prior conduct. But she would
7 be impeaching her credibility based on other improper
8 conduct.

9 So do you want to talk to your client about it? Do
10 you want a couple of minutes, or not?

11 MS. HARRISON: Your Honor, I'd, also, like to add
12 that her husband signed these as well just like the other
13 ones. So he may want to talk to Mr. Hindman as well.

14 MR. O'CONNELL: May I have five minutes with my
15 client?

16 THE COURT: Yes. Take five minutes.

17 (WHEREUPON, a break was taken.)

18 MR. O'CONNELL: We're ready, Your Honor.
19 Thank you.

20 THE COURT: Okay. Let's get the jury.

21 (WHEREUPON, the jury came into open court at
22 approximately 11:57 a.m.)

23 THE COURT: All right. Mr. O'Connell.

24 MR. O'CONNELL: May it please the Court.
25 Come up here and take the stand.

1 THE BAILIFF: Stand right here.

2 THE CLERK: Will you put your left hand on the Bible
3 and raise your right?

4 WHEREUPON,

5 POLLY ANN HINDMAN,
6 after first having been duly sworn, testified as follows:

7 THE CLERK: Thank you.

8 Have a seat.

9 State your full name for the record.

10 THE WITNESS: Polly Ann Hindman.

11 MR. O'CONNELL: Your Honor.

12 DIRECT EXAMINATION

13 BY MR. O'CONNELL:

14 Q Ms. Hindman, back in September of 2012, what were you
15 doing?

16 A I was -- what was I doing?

17 Q Yeah.

18 A I was just staying at home taking care of my husband
19 and --

20 Q What have you done historically for work, or
21 employment, or anything?

22 A I was a -- I've been volunteering at the VA clinic
23 since 2013 -- the first of 2013 in Anderson and Greenville
24 Counties. And for the last 25 years up until 2008; I was
25 a title abstractor -- a real estate title abstractor. I

1 did title searches for Ronnie Bruce in Greer, Wyche and
2 Burgess, Terry Laws in Greenville, several different
3 attorneys.

4 Q And in those -- during those title searches, did you
5 ever notarize any documents?

6 A Yes, I did.

7 Q Did you ever notarize any documents that had the
8 incorrect dates, or dates that weren't right on them, or
9 anything of that nature?

10 A Yes, I did.

11 Q Were those dates that were already preprinted on the
12 document?

13 A Yes, sir. They were already preprinted on the
14 document.

15 Q And you're not allowed to change anything on a
16 document; is that correct?

17 A No, sir, I'm not.

18 Q These powers of attorney here that the Court has
19 admitted into evidence, on most all these, you're just the
20 witness or notary, aren't you?

21 A Yes, sir.

22 Q Okay. Let me start off with -- we'll start off with
23 this one. Look this document over. It's State's
24 Exhibit -- I think that's a five. Look that over.

25 A (Witness complied.)

1 Q Ms. Hindman --

2 A Yes, sir.

3 Q -- whose named the attorney -- in fact, who's given
4 the power of attorney?

5 A Me and Leisa.

6 Q Okay. Who prepared that document?

7 A This was printed off line.

8 Q By who? Do you know who did it?

9 A I printed this one off line.

10 Q Okay. And what'd you do, just go on a computer and
11 print them off the computer?

12 A Yes, sir, I did.

13 Q Okay. And how did that come about? Did somebody
14 tell you to do it? How did it come about?

15 A Leisa called me crying and -- toward the end of
16 October, 2012, the first of November, and said that she --
17 well, she had been taking care of Bette for -- since about
18 2010. And she wanted me to get involved because she said
19 Mr. Riddle was taking money from Bette. And she was,
20 actually, crying saying that that -- she needed to get a
21 power of attorney so she could help Bette pay her -- pay
22 her bills.

23 Q Okay. What happened? Did you print it out, or what
24 happened?

25 A I printed it out. And she -- we went over to Bette's

1 house.

2 Q And Bette signed it in your presence?

3 A Bette signed this in our -- in my presence, yes.

4 Q Okay. And then I think there's another one. I'll
5 just pick these up as they are. This is a durable power.
6 I think it's State's Exhibit No. 1. Would you look this
7 one over?

8 A This is a power of attorney for Harvard Riddle.
9 Bette gave Harvard Riddle power of attorney.

10 Q And who notarized that?

11 A It looks like a Christy Lewis.

12 Q Okay. What's the date on it?

13 A September the 9th, 2011.

14 Q Okay. And that was the power of attorney, as far as
15 you know, that was in place when Leisa asked you to come
16 and do another power of attorney?

17 A Yes, sir.

18 Q Okay. I'm going to just bring all these up to you.
19 I'll put them in order.

20 Okay. That's State's Exhibit No. 2. Who's the --
21 who was given the power of attorney on that one?

22 A On this one, it's Bette giving Leisa Norris and/or
23 me.

24 Q Okay. And who witnessed or signed that one?

25 A A Claudette Pittman, Jr., witnessed it, and a Dean

1 Norris.

2 Q So you didn't witness that one at all?

3 A No.

4 Q Okay. What's the next one? Read the number on the
5 bottom of it.

6 A This is number two, State's Exhibit No. 2.

7 Q Okay.

8 A State's Exhibit No. 4, this one's giving just power
9 of attorney to Leisa Norris.

10 Q Okay. And who witnessed that one?

11 A My husband and I witnessed this one.

12 Q Who?

13 A Robert Hindman.

14 Q Okay. That's your husband?

15 A My husband.

16 Q And you went to whose house -- or where were you when
17 this was signed?

18 A This is where we went to the -- to the hospital and
19 got Bette. Bette witnessed it and signed it.

20 Q And you're saying that's Bette's signature on there?

21 A Yes, it is.

22 Q Okay. And what's the third or fourth one you have up
23 there? Do you have a third or fourth one?

24 A Number three is -- this one's giving power of
25 attorney just to Leisa.

1 Q And who signed it? Who witnessed it?

2 A Bob, my husband, and I did.

3 Q Okay. And it's signed by Bette?

4 A Signed by Bette.

5 Q Okay. Is three of those -- are all of those dated
6 the day -- I think the 29th of November?

7 A Yes, sir. 2012.

8 Q And why is that? How can you -- do you know why it's
9 dated 29/12 -- or whatever it was?

10 A All I know it's -- it's a -- an error, a typo.

11 Q You printed them off the computer --

12 A I printed them off. And they were -- the platelet --
13 the template wasn't changed is all I know.

14 Q Were you trying to defraud anybody?

15 A No, sir, I wasn't.

16 Q What were you trying to do with all those powers of
17 attorney?

18 A Well, to get Bette health care. The doctors wouldn't
19 speak to us -- or wouldn't speak to me about her health
20 care -- she -- her medications refilled.

21 Q Okay.

22 A I was only to do her health care. That's my only --
23 was my only purpose of being brought in. Because I had
24 worked in health care. Leisa was already paying her bills
25 way before I got involved.

1 Q Those -- I think Ms. Norris testified she always
2 wrote checks out and she put a power of attorney on; is
3 that correct?

4 A Yes, sir.

5 Q Do you have any copy --

6 A I have a check here where she --

7 MR. HARRISON: Objection --

8 THE WITNESS: -- put power of attorney --

9 MS. HARRISON: Objection --

10 THE COURT: Whoa, whoa.

11 What's your objection?

12 MS. HARRISON: Authentication.

13 MR. O'CONNELL: I'm just asking her did Leisa
14 write -- she said she always put power of attorney on
15 every check. I'm asking her if she has a copy of a check
16 that Leisa just wrote her name on.

17 THE COURT: Okay. She can -- that's all right.

18 Overruled.

19 Go ahead.

20 THE WITNESS: Yes, sir, I do. But this is -- this is
21 one of the checks that she wrote that does not have power
22 of attorney by her name. It just has, Leisa Norris.

23 BY MR. O'CONNELL:

24 Q Okay. Let me ask you -- there's a document here --
25 as a matter of fact, let me show you these first. Is this

1 what Bette -- what Bette Riddle looks like?

2 A Yes, it is.

3 Q Is that what she looked like back in 2012, September,
4 October, November?

5 A Yes. It looks like her. I haven't seen her since
6 they arrested me. They won't let me.

7 Q Okay. During the year 2013, did you have any contact
8 with Ms. Riddle?

9 A No, because they wouldn't let me.

10 Q 2013?

11 A 2013, no, sir.

12 Q You didn't go to the nursing home and take care of
13 her, or anything?

14 A Not -- just the first of 2013 up until they told me I
15 couldn't.

16 Q And when did they tell you in 2013 --

17 A Well, it was 2014. I'm sorry.

18 Q Okay.

19 A 2014, the first of 2014.

20 Q And how many times did you go to a nursing home and
21 see her?

22 A I went three to four days a week.

23 Q And how long were you with her every day?

24 A Two to three hours a day.

25 Q Well, tell the Court -- tell the jury --

1 A I went to see her every day. I drove from Easley to
2 Greenville. And I was the one that took her to all her
3 doctors appointments, not Leisa. I took her to all her
4 dental appointments. I met her at the emergency room
5 every time she had to go.

6 THE COURT: All right. Just calm down, ma'am.

7 THE WITNESS: I was the one.

8 THE COURT: Hold on. Take a minute.

9 MR. O'CONNELL: Can we get her some napkins --

10 THE WITNESS: I -- Leisa wanted me to help her
11 because she worked and all, I didn't. And I was trying to
12 keep Leisa from losing her job. I was only trying to keep
13 her from getting off of work all the time. And I didn't
14 know she was taking Bette's money. I didn't know it until
15 she went to see an attorney. And she told the attorney in
16 front of me she was taking Bette's money for her own
17 personal use.

18 BY MR. O'CONNELL:

19 Q So those powers of attorney weren't to defraud
20 anybody?

21 A No. I was only wanting to get her health care. I
22 didn't do -- I didn't get any money.

23 Q What are these two documents, State's Exhibit Nos. 6
24 and 7?

25 A These are deeds where Bette gave Leisa her house.

1 She wanted Leisa, at the time, to have her house because
2 Leisa had been caring for her for -- since 2010. Bette
3 told me she wanted her to have it.

4 Q Didn't we hear testimony, I think, from Leisa that
5 she was named in the will --

6 A Leisa was, actually, named in the will to get her
7 home.

8 Q Now, the State has pointed out there's some errors on
9 those wills like dates and times. Explain those to the
10 Court, if you can.

11 A That -- those are errors -- errors, too. They're
12 just errors, I guess, date errors -- I mean, the year --
13 the date is handwritten, but the year was typewritten.

14 Q In your experience as a -- now, you said you did --

15 A Title searches.

16 Q -- title work for 25 years. Have there been deeds
17 that were written out and everything, but then recorded
18 later?

19 A Yes, sir. Lots of deeds I found in doing title
20 searches were done like in the 40s and recorded in the 90s.

21 Q You as a title search person, you can't give legal
22 advice, can you?

23 A No, sir I can't.

24 Q Did you give any legal advice on those powers of
25 attorney?

1 A No, I didn't.

2 Q Did you give any legal advice on those deeds right
3 there?

4 A No, sir, I didn't.

5 Q You just had them and gave them to her -- or how did
6 that come about?

7 A And printed them out and took them over there for
8 Bette to witness.

9 Q Okay. This is State's Exhibit No. 8. Will you look
10 it over?

11 A Yes, sir. This is where I went to see the probate
12 judge about having Bette admitted to the emergency room
13 for some -- you know, for emergency care. Because she
14 wasn't bathing. She wasn't eating, except every meal I
15 took her. I had to take her three meals a day, except the
16 meals that Leisa took her. But I was taking her three
17 meals sometimes because she wasn't -- she couldn't cook.
18 She wasn't cooking.

19 Q So you're the one that did that. You took her --

20 A I'm the one that took her meals, except for the ones
21 Leisa did because Leisa worked.

22 Q And you took her to the -- where'd you take her?

23 A The emergency -- the cops -- the police department
24 came and got her and took her to memorial hospital
25 emergency room.

1 Q And then what happened?

2 A They evaluated her and had her admitted to Marshall
3 Pickens until we could get her a place in assisted living.

4 Q And that happened?

5 A And that happened.

6 Q And I'll give you these last two, State's Exhibit
7 Nos. 9 and 10 -- 9 and 12. Let's go over State's Exhibit
8 No. 9 first. On State's Exhibit No. 9, what bank is that?

9 A This is Wells Fargo. Wells Fargo bank was like
10 bank -- was like Bette's account, just her name is on it.

11 Q Okay. And then who's next on her account?

12 A The next -- let's see. The next bank account, BB&T,
13 is Bette Riddle and Harvard Riddle.

14 Q Which one did you -- did you go over to Wells
15 Fargo -- to the bank anytime to Wells Fargo?

16 A No, sir, I didn't. I've never been in Wells Fargo
17 bank.

18 Q Okay. What about the next one?

19 A I went one -- to BB&T, I went once with Leisa because
20 she was trying to get the accounts put in her name.

21 Because she was already writing checks out of Bette's
22 account. She was wanting her name on the account. And
23 she said that Harvard had already taken the CDs out.

24 Q Did you get any other funds or any other money from
25 this estate?

1 A No, sir. I didn't get any funds from this estate. I
2 was repaid for diapers, Depends, clothes, quilts for
3 her -- so we could decorate her room at the nursing home,
4 and underclothes.

5 And the only thing I got -- I got repaid back because
6 Leisa worked. And I couldn't drive all the way to where
7 she worked to get a check. She would mail me a check.
8 And I would pay out of my own account and deposit that
9 check to pay me back. I didn't write checks out of
10 Bette's account. I didn't have access to them. Leisa
11 would mail me checks. Every check I got was mailed to my
12 house. She never even gave me a check in person. She
13 mailed it to me.

14 And whenever I went to the -- Bette wanted her
15 pre-burial arrangements. She picked out her own little
16 marker, her little stuff that she wanted on it. I paid
17 for it out of my own account and put the money back in
18 that I got from Bette. And that was like over \$13,000.
19 But it was for her. It wasn't to benefit me. I can't be
20 buried in Bette's plot. She's next to her husband and her
21 little boy.

22 Q So her -- those are still in her name and in her --

23 A Yes, sir. She -- her marker and everything is in her
24 name.

25 Q And it's a preneeds so they don't -- is that right?

1 It's a preneed?

2 A Preneeds.

3 Q Okay. And so it's all taken care of. She doesn't --

4 A It's all taken care of. If something happens to her,
5 nobody has to worry. She's ready.

6 Q And you didn't make one more dime out of that than
7 just getting repaid for --

8 A Just getting repaid for what I wrote out of my own
9 checking account.

10 MR. O'CONNELL: Okay. At this time, would you answer
11 any questions the State has?

12 CROSS-EXAMINATION

13 BY MS. HARRISON:

14 Q Ms. Hindman, were you aware that on September 26th,
15 1966, that Mr. Leonard Riddle had already bought the plot
16 that you so alleged that you bought at Woodland [sic]
17 Memorial?

18 A (There was no response.)

19 Q "Yes" or "no"?

20 A No, ma'am. All I know is I've got my funeral
21 contract right here.

22 Q That's not the question.

23 A Where I bought --

24 Q The question --

25 A -- and paid for Bette's marker and her casket.

1 Q That's not the question. The question is, were you
2 aware that Woodland -- Woodlawn had sold to Mr. Riddle
3 those three plots in 1966?

4 A This is for her funeral expenses -- what -- her
5 memorial, her marker, and her casket. I didn't say I
6 bought her a lot. I prayed for her -- paid for her
7 services. And they're -- and it's right here.

8 Q Okay. So you --

9 A That I paid for her services.

10 Q You paid for her services?

11 A Yes, I did, and her marker, and her --

12 Q The day before --

13 A -- casket.

14 Q The day before you had her committed to Marshall
15 Pickens, you decided to plan her funeral?

16 A No, I didn't.

17 Q Well, why pay for her services?

18 A She asked me to. She wanted to pick out her marker.

19 Q Okay. A lady that you are going to commit to
20 Marshall Pickens that you signed the documents -- your
21 name's on them; right?

22 A (There was no response.)

23 Q Your name's on these documents; right?

24 A Her name and my name are on the documents.

25 Q Well, she didn't commit herself?

1 A I didn't have her committed, the physician did. I
2 was trying to get her help because she threatened Leisa
3 with a knife. I did not know the day before when I went
4 and paid for her pre-burial arrangements -- like Bette's
5 the one that went -- that helped me do it. I took all the
6 stuff to her house. And we went through the books.

7 Q Wait just a minute. Let me ask you a question before
8 you start answering it. Okay.

9 You're telling me -- this is your signature; right?

10 A I told you I did take Bette to --

11 Q Is this your signature? These aren't complicated
12 questions.

13 A Yes, it is my signature.

14 Q Thank you. All right.

15 A Wouldn't you get somebody help that needed it --

16 THE COURT: Whoa, ma'am. You don't get to volunteer.
17 You just answer --

18 BY MS. HARRISON:

19 Q And this is on December 19th, 2012, you committed --

20 THE COURT: Do not interrupt me.

21 MS. HARRISON: I'm sorry, sir.

22 THE COURT: Our court reporter takes down everything
23 we say. And she cannot record it when two people are
24 talking at the same time.

25 All right. Now, proceed.

1 MS. HARRISON: Okay.

2 BY MS. HARRISON:

3 Q And this was on December 19th, 2012. And your
4 testimony is the day before -- that on this date
5 Ms. Riddle was mentally ill. That is what -- you have an
6 application for involuntary emergency hospitalization for
7 mental illness. You signed that document?

8 A I signed it. But it wasn't for mental illness. It
9 was for care, to have her evaluated. I'm not a physician.
10 I can't say she's mentally ill. I don't -- I can't say
11 whether somebody's mentally ill or not.

12 Q Well, did you go -- where did you -- did you go to
13 probate court and fill out this form?

14 A To tell them that she was not caring for herself or
15 bathing. And I had to stay with her at night because she
16 couldn't be left alone. But that doesn't make her
17 mentally ill. She knew me. She knew Leisa. She knew my
18 husband. She talked about daddy. She talked about my
19 momma. She knew us all.

20 Q All right. But now -- so it's your testimony to this
21 jury that the day before, she decided to go plan her own
22 funeral; right?

23 A I planned my own funeral.

24 Q And she decided to pay for it by writing you checks
25 that nobody could recognize her handwriting?

1 A Leisa sent me the checks. Bette did not write me --
2 Leisa had control of Bette's bank account, not Bette, or
3 me. Leisa did.

4 Q Well, I -- I'm sure that's correct that y'all had
5 control of her bank account.

6 A I didn't. I said Leisa had control, not me.

7 Q Okay.

8 A And Bette didn't have control of her bank account,
9 Leisa did.

10 Q But you did get this money for these funeral
11 arrangements?

12 A To pay me back because I took my own money. We don't
13 have a lot of money.

14 Q Okay. Now, Ms. Riddle is still alive today; correct?

15 A Yes, she is.

16 Q Okay. So she doesn't need a funeral right now?

17 A Well, I don't either, but I've got mine paid for in
18 case I die, and my husband's.

19 Q Okay.

20 A Bette wanted to pick out her own marker. She put a
21 rose on it and a bunny rabbit, her two favorite things.
22 And she put the inscription that she wanted on it.

23 Q All right. You testified earlier that you went --
24 that these are just typographical errors on these
25 templates of these powers of attorney that you came out

1 with?

2 A Yes, ma'am.

3 Q Okay. You testified, also, that you took something
4 into the hospital for Ms. Riddle to sign. Now, you're
5 aware that --

6 MR. O'CONNELL: Your Honor, I'm going to object. I
7 didn't hear any testimony that she took them into the
8 hospital to have them signed.

9 THE COURT: Re-ask your question.

10 MS. HARRISON: Yes, sir

11 BY MS. HARRISON:

12 Q Did -- during earlier testimony, you stated that the
13 dates on the powers of attorney were all the same because
14 you did not change the template?

15 A I didn't look to change the date and the year.

16 Q Okay. So --

17 A It's an error.

18 Q Correct. Okay. So then the first power of attorney
19 was signed on December -- it was signed on November 29th.
20 The other ones were signed after that date. And you
21 testified you went and had her sign them in the hospital
22 when she was in the hospital?

23 A Which one?

24 Q Number --

25 A Are you talking about the last one?

1 Q Number two and number three that were signed in
2 November, the second two?

3 A She -- she was signing documents for the hospital.
4 She was not -- that's before she was declared mentally
5 incompetent. She signed in front of two witnesses so that
6 I could still get her health care.

7 Q Okay. But who are these two witnesses? You and your
8 husband?

9 A Well, I -- I don't know what you're talking about. I
10 guess me and my husband was the two witnesses.

11 Q That's what I'm talking about. I'm talking about the
12 first power of attorney where her name was misspelled.

13 A That one, I don't know about. You're going to have
14 to show it to me again. I can't remember everything.

15 Q Okay. I'll be happy to.

16 A The first one is the one that me and Leisa had power
17 of attorney. And I did her health care.

18 Q Okay. That's the one where her name is misspelled.
19 That's number two.

20 A That's not misspelled. That's her legal name on her
21 social security card. B-E-T-T-Y is her legal name. She
22 did that. She, actually, did that. Sometimes she would
23 spell it B-E-T-T-E. She would do that.

24 Q Okay. Your testimony now --

25 A She changed her name her own self.

1 Q Your testimony now is to the jury that she would just
2 randomly change the way she spelled her first name?

3 A She did. She did. It wasn't legally done. That's
4 just the way Bette did it. She didn't like her name being
5 B-E-T-T-Y. And she started spelling it B-E-T-T-E.
6 Because I asked her why she did that. She said, because I
7 didn't like my original name.

8 Q Okay. Lastly, let's go through some of these checks
9 that were made payable to you. Let's go through them.
10 Would it be fair to say that you were paid over about
11 \$16,000 from her account?

12 A For -- for her funeral services and other services
13 that I did, yes, ma'am.

14 Q Okay. What kind of services did you do?

15 A I went over there every other week and cut her grass
16 so that her house would continue to look nice.

17 Q All right. So you --

18 A And I would go and get Depends when Leisa couldn't.
19 She would call me. And Bette would call me and say, can I
20 have some fingernail polish?

21 Q But you testified earlier that this was Leisa's house
22 that had been given to her in the will; correct?

23 A Well, that still didn't keep me -- it was still
24 Bette's home.

25 Q Well, now, it was Leisa's house. Why are you being

1 paid out of Ms. Riddle's account for doing things for
2 Leisa's house?

3 A Because it was Bette's home, to me. So I kept her
4 grass cut so it would look nice.

5 Q But you did it for a price?

6 A Everybody else that -- that's cut her grass did it
7 for \$50, or more. I did it for only 50. And Leisa paid
8 some people 75 and a hundred to cut it.

9 And my husband had to come all the way to Greenville
10 just to keep up her lawn mower, because it would tear up
11 on me. I had nothing to gain, but -- except I wanted
12 Bette's home to look nice like she kept it, because she
13 was a perfectionist. And she was a landscaper. I did it
14 for Bette.

15 Q I will agree, you've done a lot to Bette.

16 All right. Let's keep going and look at some of
17 these checks. You were, also, paid close to \$1,500 for
18 your care right -- the day before you committed her to --

19 A No. That \$1,500 was \$1,000 paid toward a nursing --
20 an assisted living, Emeritus. Leisa paid me back for the
21 money I wrote a check for.

22 Q Ma'am, I think you're confusing a lot. I'm going to
23 ask you --

24 A I'm not trying to confuse anybody. I'm just telling
25 you what the check was for. It was to pay a thousand

1 dollars to hold her a bed. And then the rest was for
2 items we bought to make her room look nice before she got
3 there. She had to have -- she had to have a couch. She
4 had curtains. She had lamps.

5 Q I'm talking about this check right here on 12/18 for
6 1,400 --

7 A That's the one that was written for Emeritus Assisted
8 Living. I wrote it out of my own check -- checking
9 account. I was paid back. And the \$498 was for quilts,
10 and sheets, and anything else that she needed. I helped
11 Leisa.

12 Q What does --

13 A That's care. That's the same thing. Assisted living
14 is care. We had to hold her a room. They wanted a
15 thousand down.

16 Q Well, why didn't the check just get written directly
17 to --

18 A Because I didn't --

19 Q -- Emeritus?

20 A -- Leisa and I lived too far apart. That's why she
21 mailed me the checks.

22 Q Well, why didn't Leisa just --

23 A I couldn't go pick them up. Leisa couldn't get off.
24 She couldn't get off from work to do it. I was the one
25 that was at home not working, except volunteering at the

1 VA.

2 Q Okay. I'm not talking about the care. I'm talking
3 about the check.

4 A She mailed it to me.

5 Q Why couldn't Leisa just have made it to Emeritus and
6 mailed it to them?

7 A I -- you'll have to ask Emeritus that. They wanted a
8 check right then. They would not let us mail it. Because
9 we were taking her the next day for assisted living. I
10 went around interviewing several different nursing homes.
11 And that's what they wanted was a thousand down.

12 Q Then I'd like to show you check #3347, Ms. Hindman.
13 Who's this check made payable to?

14 A That's another one for Emeritus where Leisa --

15 Q But who's it made payable to?

16 A Emeritus Assisted Living. So she could have the
17 whole month paid out.

18 Q So they don't have to be made payable to you, they
19 can be made to Emeritus --

20 A That's because Leisa was there. Leisa took this one
21 in herself. That's where Leisa, actually, physically went
22 in and took it.

23 Q Okay.

24 A That's why. She had Bette's checkbook.

25 Q So you did prepare these powers of attorney. You

1 went on the Internet and filled them out, and you prepared
2 them?

3 A I didn't prepare them. I printed them out. I didn't
4 physically type each line myself.

5 Q Okay.

6 A Verbatim, no, ma'am.

7 Q And you were a -- you were a title examiner?

8 A Yes, ma'am.

9 Q Okay. Aren't you on disability?

10 A What's -- what's that got to do with anything?

11 Q Just a question. "Yes" or "no"?

12 A Yes, I am.

13 Q Okay. And you get disability from the government?

14 A Yes.

15 Q But you are able to work?

16 A I can volunteer. I'm not working.

17 Q I thought you were a title examiner.

18 A I'm not a title examiner. I told y'all I stopped
19 doing it in 2008.

20 Q When did you start getting your disability? What
21 year?

22 A 2012.

23 Q From -- no. From the Greenville Hospital System?

24 A I don't get disability from the Greenville Hospital
25 System. I never have.

1 Q Did you not sue them?

2 A No, I did not. I did not sue Greenville Hospital
3 System. I was working for them in 2012. I left on my
4 own. I was -- I sued them way back in the 90s for sexual
5 harassment.

6 Q Okay.

7 A But they hired me back.

8 Q As a title examiner, you just notarize what's put in
9 front of you; right? I mean, that's just your statement?

10 A If someone comes to me, I notarize it. I do not
11 change a document. It's not my place to. And I do not
12 read through the document and question the people why
13 they're doing whatever they're doing.

14 Q What about the ones you produce?

15 A What do you mean the ones I produce?

16 Q Well, you said that you print off and you bring in
17 the template.

18 A Well, I printed it off.

19 Q Okay. So you printed it off and it had all the dates
20 and all the names in it. Or did you have to fill those
21 out?

22 A It depends on if I handwrote it, or whatever. I
23 filled it out, yes, I did.

24 Q Okay. But these are all typed. So you had to have
25 gone in and filled that out?

1 A I filled the dates out. But everybody makes
2 mistakes, ma'am.

3 Q That's true. But I'm just getting to creating the
4 document. You did create the document?

5 A I didn't create the document. I printed it out. I'm
6 not an attorney.

7 MS. HARRISON: I think we're through.

8 THE COURT: Any redirect?

9 MR. O'CONNELL: No redirect, Your Honor.

10 THE COURT: All right. Thank you.

11 You can step down.

12 MR. O'CONNELL: We just have a -- not a small
13 witness, but a short question.

14 Mr. Bob Hindman.

15 (Pause.)

16 THE COURT: Call your next witness.

17 MR. O'CONNELL: Bob Hindman, Your Honor.

18 THE CLERK: Will you step forward, please?

19 And put your left hand on the Bible and raise your
20 right.

21 WHEREUPON,

22 ROBERT LEWIS HINDMAN,

23 after first having been duly sworn, testified as follows:

24 THE CLERK: Please have a seat.

25 And will you state your full name for the record?

1 THE WITNESS: Robert Lewis Hindman.

2 THE CLERK: Thank you.

3 DIRECT EXAMINATION

4 BY MR. O'CONNELL:

5 Q Mr. Hindman, is this your wife, Polly Hindman, the
6 Defendant?

7 A Yes, sir.

8 Q How long have you known her?

9 A A little over 30 years.

10 Q How long have you been married to her?

11 A 30 years.

12 Q Okay. In those 30 years, has she worked as a -- what
13 do you call it -- a title person that checks titles, and
14 everything?

15 A I'm sorry.

16 Q Has she worked as a title person?

17 A Yes, sir.

18 Q Has she worked at the hospital?

19 A Yes, sir.

20 Q And what does she do now? What is -- what's her type
21 of business right now? What is she doing?

22 A She volunteers for the veterans clinic in Anderson
23 and Greenville.

24 Q And is she on disability?

25 A Yes, sir.

1 Q And that's -- do you know the nature of that
2 disability?

3 A I -- I'm -- I don't know what they call it.

4 Q But it wasn't from the Greenville Hospital System?

5 A Oh, no. No, sir.

6 Q Okay. Do you know who prepared these -- these powers
7 of attorney here, or typed them up, or however they came
8 into being? Do you know anything about that?

9 A Well, Leisa Norris asked her to do that. She did
10 call the house crying and all upset, and, you know,
11 claiming that Howard Riddle -- Harvard Riddle was stealing
12 money. And that she wanted -- Bette wanted her to do the
13 POA to take care of her money and stop that.

14 And, you know, she -- her and Bette -- I don't know
15 if Bette did it on some -- they told Polly what they
16 wanted to -- to appear on the POA, how it was to be
17 written. And she said she didn't have enough money to get
18 a lawyer, could she help her find the information they
19 needed to write documents on the Internet.

20 Q But she never held herself out as an attorney; right?

21 A No, sir.

22 Q And you signed some of these documents, too, didn't
23 you?

24 A Yes, sir.

25 Q And all you did was sign as a witness?

1 A Yes, sir.

2 Q And as a power of attorney?

3 A Yes, sir.

4 Q What about those deeds that appear to have errors in
5 them of dates, and times, and stuff?

6 A Did I --

7 Q No. Do you -- where did they come from? How did
8 they come into being? Do you know?

9 A Unless they come off the Internet.

10 Q I'm asking you, is that how you know -- did they come
11 off the Internet?

12 A If Polly did them, they came off the Internet. And,
13 also, I think one time she asked attorney Ronnie Bruce for
14 like a form. She told her [sic] what she wanted, what
15 Bette was requesting. So they got a form and then she
16 typed the names in for Leisa.

17 Q Has Polly got any extra money out of this, other than
18 some money for helping out, and the reimbursement for the
19 burial stuff?

20 A No, sir. We've lost a lot of money over that.
21 Because Polly's bought I don't know how much stuff for
22 Bette out of her own pocket, and never asked for any
23 reimbursement for that.

24 Q The stuff that was on these checks?

25 A Except for what Leisa had requested.

1 Q And is she right, Leisa would always send her a
2 check, she never went to pick up a check, or went through
3 the person?

4 A No, sir. It always -- it was always at our expense.
5 No one came to us. We had to go over there to witness
6 stuff, to sign stuff. Everything was at our expense.
7 They would not come to us. And then she paid her through
8 the mail.

9 MR. O'CONNELL: Okay. Answer any questions the State
10 may have.

11 CROSS-EXAMINATION

12 BY MS. HARRISON:

13 Q Thank you, Mr. Hindman.

14 Mr. Hindman, you -- you said you saw Ms. Riddle sign
15 both of these powers of attorney?

16 A I went over there to her house and --

17 Q It's a "yes" or "no" question.

18 A Oh, yes.

19 Q You did?

20 THE COURT: You can explain your answer

21 BY MS. HARRISON:

22 Q Okay. Now, explain your answer.

23 A Yes. We were called so many times to come over
24 there. And I remember distinctly, we signed -- I
25 witnessed or notarized one right there -- there's a

1 counter as you come in the kitchen -- or the living
2 room -- between the kitchen and living room. And Bette
3 was sitting over there in her rocking chair, recliner,
4 whatever it was. I've signed various things over there at
5 her house.

6 Q I'd like for you to look at these two signatures. Is
7 it your testimony today that you saw Ms. Riddle sign both
8 of these?

9 A Yes, I believe so.

10 Q Okay. Was she in the hospital? In the home?

11 A I don't know if these were at the home or the
12 hospital.

13 Q Are they both dated the same dates?

14 A It says here they were November the 29th.

15 Q Okay. Look at those signatures.

16 A (Witness complied.)

17 Q Does that look like Ms. Riddle's signature?

18 A I would say, yes. They're [sic] a little difference
19 there. But it's different -- it depends on her
20 medication, what she was on, or how she was feeling. I've
21 seen her sign stuff that you couldn't even hardly tell it
22 like later on at the hospital. And she does sign it
23 different. Polly fussed at her about using an "E,"
24 instead of a "Y."

25 Q So it's your testimony that while this lady was in

1 Marshall Pickens, you took documents for her to sign
2 knowing that she was incompetent?

3 A No.

4 Q That's not your testimony?

5 A No.

6 Q Who is Frank Painter?

7 A I don't -- never -- I did see -- I think that's Dean
8 Norris -- that is Dean Norris' friend.

9 Q Correct. And who is Dean Norris?

10 A Leisa Norris' husband.

11 Q Something similar happened -- that happened to
12 Ms. Riddle happened with Mr. Painter.

13 A I'm sorry. What?

14 Q Did a similar event of transferring deeds, and
15 titles, and powers of attorney happen with Mr. Painter?

16 A Leisa and Dean --

17 MR. O'CONNELL: Your Honor, this is --

18 THE COURT: Wait. Wait.

19 What does -- what does he --

20 MS. HARRISON: He's the witness on this and notarized
21 it.

22 THE COURT: Well, come up here.

23 (WHEREUPON, a bench conference was held.)

24 BY MS. HARRISON:

25 Q Mr. Hindman, did you witness Frank Painter sign

1 similar documents, titles to real estate?

2 A Yes. It was where -- I think Dean was helping this
3 fellow.

4 Q What date -- what date was it done?

5 A I have no idea.

6 Q What's the date on the document I'm showing you?

7 A Oh, this date?

8 Q The date it's executed, sir.

9 A The 10th of November, 2002.

10 Q Okay. And what is that?

11 A What is that?

12 Q What is the document that you notarized -- that you
13 witnessed -- you witnessed Mr. Painter sign?

14 A Title -- it says, Title to real estate.

15 Q Is this title that you're looking at very similar to
16 the title --

17 MR. O'CONNELL: Your Honor, I object.

18 THE COURT: On what ground?

19 MR. O'CONNELL: On that this is not very similar to
20 it. It has --

21 THE COURT: Well, I don't know. I'm going to let
22 her -- see where she goes with it.

23 BY MS. HARRISON:

24 Q I'd like for you to look at the title that gave --
25 that you witnessed the probate court giving title over

1 there. Do they seem similar to you?

2 A Yeah. I think these are the same things that Leisa
3 got Polly to get off the Internet for her.

4 Q Well, except one of them is deeding over a house from
5 Mr. Painter, and the other is deeding over a house --

6 A Well, they're different names, yes.

7 Q But the exact same documents?

8 A This is just a general form. Because Leisa and them
9 kept begging -- they begged my wife for everything. My
10 wife has helped everybody in this country. She's
11 volunteered everywhere. I used to drive 40 miles a day to
12 feed one man and come back. We never received a penny,
13 never asked for a penny.

14 When my wife worked at Greenville Hospital System in
15 the cancer treatment area, if someone --

16 THE COURT: We're getting pretty far afield here.

17 THE WITNESS: Okay. I'm just trying to say that my
18 wife is --

19 THE COURT: I understand what you're trying to
20 do.

21 THE WITNESS: Okay.

22 BY MS. HARRISON:

23 Q Okay. So your wife drafts a lot of documents; is
24 that correct, helps out a lot of people?

25 A No. This is the only one she's drafted documents for

1 is Leisa.

2 Q Mr. Painter?

3 A Yes. Leisa -- well, at Leisa's request for
4 Mr. Painter, yes.

5 Q Well -- well, wait a minute. What about -- isn't
6 there -- how about Cleo Black? How about drafting those
7 documents?

8 A Who?

9 MR. O'CONNELL: Your Honor, this is something
10 totally --

11 THE COURT: Wait.

12 I'm going to overrule.

13 Go ahead.

14 BY MS. HARRISON:

15 Q You said that was the only one you knew about. How
16 about Cleo Black? Are you familiar with powers of
17 attorney and documents drafted for him?

18 A I have no idea who Cleo Black is -- oh, is that
19 Mr. Black -- June Black's father-in-law?

20 Q I don't know who he is.

21 A I -- the only Blacks we know is --

22 THE COURT: Wait, wait.

23 Mr. Hindman, you don't ask questions.

24 THE WITNESS: Oh, I'm sorry.

25 THE COURT: It's up to the Prosecutor to ask the

1 questions.

2 THE WITNESS: I didn't know.

3 MS. HARRISON: Your Honor, we have no further
4 questions.

5 MR. O'CONNELL: I have no further questions.

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

7 You can step down.

8 MR. O'CONNELL: That is the case for the Defendant,
9 Your Honor.

10 Thank you.

11 THE COURT: All right. Is there going to be any case
12 in reply?

13 MS. HARRISON: Yes, Your Honor, one witness very
14 briefly.

15 THE COURT: All right. Call them.

16 MS. HARRISON: The State would call Harvard Riddle.

17 THE CLERK: Put your left hand on the Bible and raise
18 your right.

19 Switch them.

20 WHEREUPON,

21 HARVARD RIDDLE,

22 after first having been duly sworn, testified as follows:

23 THE CLERK: Please have a seat.

24 And will you state your full name for the record?

25 THE WITNESS: Harvard Riddle.

DIRECT EXAMINATION

1
2 BY MS. HARRISON:

3 Q Mr. Riddle, how do you know the victim, Bette Riddle?

4 A Pardon?

5 Q I'll speak louder. Mr. Riddle, how do you know the
6 victim, Bette Riddle?

7 A Oh, she was my sister-in-law. She married my
8 brother, Leonard Riddle.

9 Q Okay. When did your brother, Leonard, die?

10 A I think it was in June -- or July of 2011, I believe.

11 Q And did he leave a will?

12 A Yes.

13 Q Who was the executor of the will?

14 A Me.

15 Q Okay. In that will, did he leave -- did he leave
16 Ms. -- their house to Leisa Norris?

17 A No.

18 Q Did you probate this will?

19 A Yes, I did.

20 Q Did you, also, hire attorneys and take these ladies
21 into probate court?

22 A Yes.

23 Q What was the outcome in the probate court?

24 MR. O'CONNELL: Your Honor, I hate to say this, but
25 this is --

1 THE COURT: Yes. I --

2 MS. HARRISON: That's fine. I'll withdraw.

3 THE COURT: Okay.

4 MS. HARRISON: No further questions.

5 Answer any questions --

6 MR. O'CONNELL: Your Honor, I have no questions.

7 THE COURT: All right. Thank you.

8 MS. HARRISON: Thank you, Mr. Riddle.

9 THE COURT: You can step down.

10 MS. HARRISON: Your Honor, that's -- that's all we
11 have.

12 THE COURT: All right. Ladies and gentlemen. It's a
13 quarter of 1:00. It's probably a good time to break for
14 lunch. I'm going to ask you all to return -- I'm going to
15 let you all go to lunch on your own and ask you to return
16 at -- is about 2:00 okay? That's an hour and 15 minutes.

17 Remember not to talk about the case. And don't
18 go look anything up on the Internet, or anything like
19 that.

20 We'll see you back here at 2:00.

21 Thank you.

22 (WHEREUPON, the jury was excused from open court at
23 approximately 12:44 p.m.)

24 THE COURT: Anything before we break?

25 MS. HARRISON: Nothing from the State, sir.

MOTIONS

1
2 MR. O'CONNELL: Your Honor, again, I would make my
3 motion for directed verdict based on two things. This
4 time all they've appeared to do is prove, in a sense, I
5 guess, that the notaries weren't done properly. I don't
6 see them proving anything other than -- in taking of any
7 money, or anything of that nature from her. My client --

8 THE COURT: It's the same thing that they presented
9 in their case in chief. I told you I -- it's a question
10 of fact whether or not she benefited from it, who they
11 believe. It's up to the jury.

12 Any request to charge from anybody?

13 MR. O'CONNELL: Your Honor, I have a couple here.

14 (Pause.)

15 THE COURT: All right. Anything?

16 I'm going to charge them what the law is with respect
17 to exploitation of a vulnerable adult.

18 Is there anything else that you've got?

19 MR. O'CONNELL: Nothing from our side.

20 Thank you.

21 THE COURT: Okay. We'll see you all at 2:00.

22 (WHEREUPON, a lunch break was taken.)

23 THE COURT: Is there any reason to charge
24 circumstantial evidence in this case?

25 MS. HARRISON: No reason from the State, Your Honor.

1 MR. O'CONNELL: Not from us, Your Honor.

2 THE COURT: Okay. Anything else before we go?

3 MS. HARRISON: Nothing from the State, Your Honor.

4 MR. O'CONNELL: Your Honor, I'd like to -- because
5 there was a reply witness, does the State get to go last?

6 THE COURT: Do you want to give up your right to go
7 last?

8 MS. HARRISON: No, Your Honor, I do not.

9 MR. O'CONNELL: Thank you, Your Honor.

10 THE COURT: Okay.

11 (WHEREUPON, the jury came into open court at
12 approximately 2:10 p.m.)

13 THE COURT: Ladies and gentlemen, welcome back. I
14 hope you had a pleasant lunch.

15 And if you remember the five parts of a trial, we've
16 now completed the first two parts. So you've heard the
17 opening statements. And, now, all of the testimony and
18 all of the evidence that's going to be presented is before
19 you. And we'll move directly into the closing arguments
20 of these attorneys.

21 Thank you.

22 CLOSING ARGUMENTS

23 MR. O'CONNELL: Your Honor, ladies and gentlemen of
24 the jury, I hope you'll forgive me. As you can see from
25 this case, what I started to tell y'all is this was a case

1 of no good deed goes unpunished.

2 Polly prepared some documents, got them off the
3 Internet, typed them up, whatever you do. And this is
4 family. She knew it was family. She didn't question it.
5 She wasn't an attorney. She wasn't going to do anything
6 that way. They have some documents. They've redone them.
7 There's -- there's testimony that -- but they all say the
8 same thing. When you look them over, that's what
9 [inaudible] --

10 THE COURT REPORTER: Judge, I can't hear him.

11 THE COURT: Mr. O'Connell, could you raise your voice
12 level, please? We can't hear you over here.

13 MR. O'CONNELL: Oh, okay, Your Honor.

14 What she did was she typed up some documents or
15 prepared some documents, however you want to use that
16 term, facilitated. She did it for family members. I've
17 done it for family members with no intent to cause anybody
18 any harm or trouble. That's what happened here.

19 As you heard the testimony, the most Polly got out of
20 this case was about \$16,000. \$13,000 was paid for prepaid
21 funeral burial and the funeral, not the two lots they were
22 talking about. And she was reimbursed. She didn't get
23 anything out of that. She, actually, paid out of her
24 pocket.

25 The second part about all this was that she paid for

1 like a nursing home. My mom is in a nursing home, so
2 you've got to pay upfront. You can't go and just stick
3 them in a nursing home. That was done. She was
4 reimbursed for that.

5 So if my math is right, the only difference here is
6 about \$1,500, right around that amount. But she got paid
7 for going and getting pens, going to Walmart and getting
8 stuff for her. You know how people are, they like to have
9 a pen or pencil.

10 So what did she do? She did nothing in this case
11 that most anybody would not have done for their family,
12 friends, or anyone else. We see a lot of this stuff about
13 other papers and documents. She was helping somebody out.

14 And if you're going to get blamed for that and get
15 people to jump all over you for helping people out -- I
16 hate to tell you this, the worst I can see Polly getting
17 on this is maybe -- maybe abuse of a notary, because she
18 didn't check the dates and stuff on there twice. But I'm
19 a notary. I think every attorney -- or most, after a
20 while, gets to be a notary because you've got to have that
21 to do documents and such.

22 We're not -- I don't think we're required to check
23 dates, required to check the names, to ask somebody, is
24 that your name? And when you witness, all you do is just
25 do the witnesses name. You don't have to ask -- did you

1 see somebody sign that? That's all you're doing there.

2 So when I first got this case, I said, what is she
3 being charged with? The first indictment said it was
4 financial. And that's what it said. Then the last one
5 that came out just this year, they've added a phrase in
6 there. I think the Solicitor is going to show you an
7 indictment that says something about abusing a power of
8 attorney -- or abusing the power of attorney.

9 My client didn't use the power of attorney for
10 anything. It was all used by Leisa Norris. She used them
11 for whatever she got out of it. You heard her on the
12 stand, she's already pled guilty to that.

13 What do they have my client for? For preparing
14 documents. There's got to be something other than that.
15 She's not guilty of defrauding or taking any money from
16 her aunt or her sister -- I think it's her half-sister,
17 but her sister in this case.

18 So when you go back to deliberate, I hope you realize
19 that, hey, that's what it is. She did some documents.
20 But she didn't get any benefit out of these documents.

21 Thank you very much.

22 THE COURT: Okay.

23 MS. HARRISON: Thank you, Your Honor.

24 Ladies and gentlemen, for you to believe the story
25 you were told by Polly Hindman that the day before

1 Ms. Riddle was committed to Marshall Pickens, she decided
2 to go plan her own funeral, that she decided to go to
3 Woodlawn Funeral Home with her and pick out her marker, as
4 she testified to on the stand, with bunnies and a rose --
5 they didn't take a checkbook with them. And they had to
6 be paid immediately, even though Ms. Hindman [sic] had not
7 died.

8 And the other thing I find interesting about that, to
9 believe that story, is why did you have to write two
10 checks to the funeral home? Why not one? Or why not wait
11 and have Ms. Norris write it and mail it? You know, these
12 are good questions. These are questions I would ask.

13 If you add those two checks up together, if you
14 believe they really were for her funeral, it was a great
15 funeral for about 13 grand.

16 In putting all the checks together that were written
17 for Ms. Hindman...

18 (Pause.)

19 MR. O'CONNELL: Your Honor, I'm going to object.
20 This document was never --

21 THE COURT: Whoa.

22 MS. HARRISON: Your Honor, it's just a summary to
23 help in closing.

24 THE COURT: It's all right. It's demonstrative. She
25 can do it.

1 Go ahead.

2 MS. HARRISON: Instead of making you add all these
3 checks up, I added them for you. And you'll have each one
4 of these checks in the exhibits.

5 And in there, it lists what they all were for, grass
6 cutting, thank you for being there, dentist appointments.
7 But what I want you to look at are those big funeral
8 expense checks, what the numbers are for, 3308, 3306,
9 3307. Those are out of sequence for the regular checks
10 that Leisa Norris wrote to her sister for various
11 assundry, grass cutting, etc.

12 These checks are completely and totally out of order.
13 Why? I don't know. But it doesn't really make sense that
14 during this time frame when these checks were being
15 written that on that same date, she wrote her a check --
16 and Leisa testified she did write her a check for care for
17 1,498 -- that she would, also, write checks completely out
18 of numerical sequence to Ms. Hindman for about 13 grand
19 for a funeral of which there has been absolutely no
20 evidence presented to you today, other than her testimony,
21 that there is such a funeral, plot, burial, casket, marker
22 that is in existence today.

23 What you have are checks written to Polly Hindman
24 that went in Polly Hindman's checking account. We have no
25 checks to any funeral home. What we have is a transfer

1 out of Ms. Hindman's [sic] savings account and then the
2 next day, checks are written.

3 And I ask you, does it logically make sense that a
4 lady is going into Marshall Pickens -- and here is the
5 report on the 19th, the day before -- does that story make
6 sense? She goes down to Woodlawn and spends hours picking
7 out her own funeral. She's still alive today.

8 Next, let's look at some of these notaries that we
9 talked about. These are just merely slips of the tongue.
10 And let me just be honest, ladies and gentlemen, these
11 powers of attorney, what they are, they're just a means to
12 get to the end.

13 You've got to have legal documents to get your name
14 on stuff. Like you've got to have a power of attorney to
15 get your name on the checking account. You've got to have
16 a power of attorney to get your name on all those CDs at
17 BB&T; right?

18 You can't just walk up one day and say, hey, I'd like
19 to be on your checking account. You don't want to be on
20 my checking account. There's nothing in there. But --
21 see, look at these documents. The first document, does it
22 seem reasonable that a lady that's in her 80s would just
23 randomly decide to misspell her name, B-E-T-T-Y. This day
24 on November 29th, that day, I decided that I would just
25 misspell my first name. And then there's these that are

1 executed on the same date.

2 You've heard testimony that that's not her signature.
3 Oops. Excuse me. Oops. Sorry. That's not her
4 signature. And that's not her signature.

5 The only people that people will know is Polly
6 Hindman and her husband on these two powers of attorney.
7 So why do we have three? Well, because they kept going
8 back to BB&T to try to get access to 339,000. Thank
9 goodness for Mary Ellen Cervetti, who stopped that.

10 Mr. O'Connell, also, just told you that she's just
11 guilty of being kind of slack on being a notary.
12 Ms. Hindman signed that right there saying it happened
13 June 16th, 2004. But that's impossible for that to have
14 happened in her -- on that date because her notary license
15 expires in 2016. A notary is only good for 10 years;
16 right? As you heard testimony, it's only good for 10
17 years.

18 So she is signing something -- she has notarized
19 something that couldn't have happened in 2004 because a
20 notary license would have had to have expired, at the
21 latest, 2014. She had just gotten it re-upped.

22 Also, on this document, somebody had to type this in
23 because this simply is not part of -- of a format or
24 template. No, this is somebody types in the -- let me
25 pull this down a little bit -- the actual legal block in

1 that number of the -- the deed that they're transferring
2 for the sisters. Somebody had to type that in.

3 Notice that they say, probate file. They reference
4 the probate file that Mr. Harvard Riddle told you he
5 handled. But when Leonard Riddle died, it's referenced
6 August 24th, 2012. Well, explain to me how we could have
7 really seen Ms. Riddle give her property to Leisa in 2004
8 without Leonard signing it and referencing something that
9 happened eight years later.

10 It's the same thing with this document. Glaring
11 errors. These are not -- these are not template errors.
12 These are errors that somebody would have to type in who
13 probably had done title abstracts trying to help her
14 sister out.

15 Ladies and gentlemen, there are two defendants in
16 this case, Leisa Norris and Polly Hindman. They acted
17 together. They worked together. And with that, they
18 attacked these assets of their half-sister as best they
19 could. We're talking about half a million dollars. We
20 have the 339,000 at BB&T, a house that's worth probably
21 160,000 to 200,000, and then money in the checking
22 account. And they went in after it at every way.

23 Luckily, there was some safeguards in there. But,
24 unluckily, there weren't enough. And Ms. Hindman walked
25 away with over 16 grand. And she has not presented one

1 shred of evidence to show you that she did not take that
2 and put it in her checking account. As a matter of fact,
3 the evidence you have with these checks right when you
4 look on them, you will see they went directly into her
5 checking account, each and every one of these.

6 Because the evidence is so compelling and because it
7 is, I believe, beyond a reasonable doubt, I ask you, find
8 her guilty of exploiting a vulnerable adult on two
9 reasons.

10 Number one, she misappropriated her assets in the
11 amount of \$16,000. But even if you believe her story
12 about the funeral, you can, also, find her guilty, too,
13 for misuse of a power of attorney. Because she drafted
14 these powers of attorney to help out her sister, to put
15 her sister on the checking account, to give her sister a
16 house, to give her sister access to the money.

17 If you look at this indictment, it says both. It
18 says, misuse of a fund and misuse of a power of attorney
19 for the profit and advantage of that person or another
20 person. I contend that she did all three. She took
21 money. She used the power of attorney for her own benefit
22 and for her sister.

23 But, ladies and gentlemen, if you go back in the jury
24 room and you can find that she did one of those three, I
25 would ask you to come back with a verdict of guilty for

1 exploiting a vulnerable adult, Bette Riddle.

2 Thank you.

3 CHARGE ON THE LAW

4 THE COURT: Ladies and gentlemen of the jury, during
5 this trial, you and I have certain duties to perform. As
6 the trial judge, it's my responsibility to preside over
7 the trial of the case and rule on the admissibility of the
8 evidence that's offered during the trial. It's, also, my
9 duty to charge you the law applicable to the case. And it
10 is your duty, as jurors, to accept and apply the law as I
11 now state it to you.

12 As I told you previously, if you think you have any
13 idea as to what the law is or what the law ought to be and
14 it does not agree with what I now tell you the law is, you
15 have sworn an oath to set aside your own idea and apply
16 the law precisely as I state it to you.

17 I, also, remind you that in every case tried in this
18 Court before a jury, the jury is the sole and exclusive
19 judge of the facts. And a trial judge is not allowed to
20 have an opinion about the facts. So, please, don't think
21 by anything I have said or done throughout the course of
22 the trial that I have such an opinion. You all are the
23 sole judges of the facts. And you all determine what to
24 believe, and what not to believe, and what is true, and
25 what is not true.

1 I, again, instruct you that the fact that the
2 Defendant was arrested, charged, and indicted in this case
3 is not evidence of guilt, nor does it create any
4 presumption or inference of guilt. These documents are
5 simply the formal written instruments which contain the
6 charge made against this Defendant. And they serve as the
7 formal documents by which this case is processed and
8 brought into court for resolution.

9 Now, necessarily, you all, the jury, must determine
10 the credibility or believability of the witnesses who have
11 testified. And it becomes your duty, as jurors, to
12 evaluate the evidence and determine which evidence
13 convinces you that it is true.

14 And in determining the believability of the
15 witnesses, you may believe one witness over several, or
16 several over one. You may believe a part of the testimony
17 of a witness and reject the remaining part. You may
18 believe the testimony of a witness in its entirety, or
19 reject the testimony in its entirety.

20 And you may consider whether the witness has an
21 interest in the result of the trial, whether the witness
22 is prejudiced towards either the State or the Defense, the
23 opportunity for the witness to have seen the matters and
24 things about which the witness has testified, and the way
25 the witness acts on the witness stand, or what we call a

1 witnesses demeanor.

2 Now, the rules of evidence ordinarily do not permit
3 witnesses to testify to opinions or conclusions. An
4 exception to this rule exists for witnesses we call
5 experts. And a witness who by education and experience
6 has become an expert in some art, science, or profession
7 may give an opinion as to the subject the matter -- the
8 subject the witness has been qualified as an expert in,
9 and may, also, give the reasons for their opinion.

10 And you should consider any expert opinion given by a
11 witness. And like all of the other evidence, give it the
12 weight that you think it deserves. If you think that an
13 expert witnesses opinion is not based on sufficient
14 education and experience, or if you decide that the
15 reasons given in support of the opinion are not sound, or
16 that the opinion is outweighed by other evidence, you may
17 disregard the opinion entirely.

18 Now, the Defendant has pled not guilty to this
19 indictment. And that plea puts the burden on the State to
20 prove the Defendant guilty.

21 A person charged with committing a criminal offense
22 in South Carolina is never required to prove themselves
23 innocent. So I charge you that it is a cardinal and a
24 signal rule of the law that a defendant in a criminal
25 trial will always be presumed to be innocent in the crime

1 for which an indictment has issued, unless and until guilt
2 has been proven to you satisfying you of guilt beyond a
3 reasonable doubt.

4 Now, a reasonable doubt is the kind of doubt which
5 would cause a reasonable person to hesitate to act. A
6 reasonable doubt may arise from the evidence which is in a
7 case, or from the lack or absence of evidence in a case.
8 And you, the jury, must determine whether or not
9 reasonable doubt exists as to the guilt of this Defendant.
10 I remind you, the State has the burden of proving each and
11 every element of a crime beyond a reasonable doubt.

12 Now, the Defendant is charged with a violation of
13 South Carolina Code of Laws Section 43-35-85. The State
14 must prove beyond a reasonable doubt that the Defendant
15 exploited a vulnerable adult.

16 Exploitation means causing or requiring a vulnerable
17 adult to engage in activity or labor which is improper,
18 unlawful, or against the reasonable and rational wishes of
19 the vulnerable adult, or an improper, unlawful, or
20 unauthorized use of the funds, assets, property, power of
21 attorney, guardianship, or conservatorship of a vulnerable
22 adult by a person for the profit or advantage of that
23 person or another person, or causing a vulnerable adult to
24 purchase goods or services for the profit or advantage of
25 the seller or another person through either undue

1 influence, harassment, duress, force, coercion, or
2 swindling by overreaching, cheating, or defrauding the
3 vulnerable adult through cunning arts or devices that
4 delude the vulnerable adult and cause them to lose money
5 or other property.

6 And a vulnerable adult is a person 18 years of age or
7 older who has a physical or mental condition which
8 substantially impairs that person from adequately
9 providing for their own care or protection. And it
10 includes a person who is impaired in the ability to
11 adequately provide for their own care or protection
12 because of the infirmities of aging, including, but not
13 limited to, organic brain damage, advanced age, physical,
14 mental, or emotional dysfunction. A resident of a
15 facility is considered a vulnerable adult under our law.

16 Now, ladies and gentlemen, there are two possible
17 verdicts which you can reach in this case. There is no
18 significance in the order in which I state them. One has
19 to be stated first. They are guilty or not guilty.

20 I want to tell you that your verdict must be
21 unanimous. All 12 of you must agree.

22 And your verdict cannot be based on sympathy or on
23 passion, prejudice, emotion, or any other consideration
24 which is not in the evidence presented in this court
25 today. Remember, you have no enemies to punish. And you

1 have no friends to reward.

2 So, Madam Forelady, I've prepared a verdict form
3 which I think is self-explanatory. And we'll send it back
4 in there with you. When you all have reached a unanimous
5 decision with respect to guilt or innocence, then, please,
6 indicate on the form what your verdict is, sign it, and
7 indicate to the bailiffs. And we'll receive you back and
8 take your verdict.

9 I'm going to excuse you right now. I ask you not to
10 begin your deliberations just yet. As we -- I need to go
11 over my charge to make sure I did not omit or misstate
12 something.

13 When the verdict form comes back, along with all of
14 the evidence, then you all may begin your deliberations.

15 So, at this time, I excuse you all, with the
16 exception of Ms. Collins, back to the jury room.

17 (WHEREUPON, the jury was excused from open court at
18 approximately 2:32 p.m.)

19 THE COURT: Ms. Collins, you are just as qualified as
20 those 12 people. You have made every sacrifice they've
21 might -- that they have made. And I always hate doing
22 this. I made you sit through the trial, but I can't let
23 you go back and deliberate, because the law only allows
24 12.

25 So I want to thank you for your service. And I

1 understand that your service is complete for the week. So
2 you're excused.

3 And thank you very much again.

4 JUROR #23, KATHERINE COLLINS: Okay. Thank you.

5 (WHEREUPON, Juror #23, Katherine Collins, exited the
6 courtroom.)

7 THE COURT: All right. Any exception or objection to
8 the instructions?

9 MS. HARRISON: None from the State, Your Honor.

10 MR. O'CONNELL: Nothing from us, Your Honor.

11 Thank you.

12 THE COURT: All right. Y'all go ahead and get with
13 the court reporter. And let's send them back and get them
14 working.

15 (Pause.)

16 THE COURT: Here's the verdict form.

17 Get them working.

18 THE BAILIFF: Yes, sir.

19 THE COURT: Thanks.

20 (WHEREUPON, the proceeding were recessed at
21 approximately 2:34 p.m.)

22 THE COURT: Verdict; right?

23 THE BAILIFF: Yes.

24 THE COURT: Bring the jury in.

25 (WHEREUPON, the jury came into open court at

1 approximately 3:11 p.m.)

2 THE COURT: Madam Forelady, I understand you've
3 reached a verdict.

4 JUROR #100, MARINA SHEW: Yes, Your Honor.

5 THE COURT: All right. Would you hand it to the
6 bailiff for us, please?

7 Thank you.

8 Madam Clerk, would you publish?

9 VERDICT

10 THE CLERK: In case number 2015-GS-23-1563, State v.
11 Polly McAbee Hindman, as to the charge, exploitation of a
12 vulnerable adult, Bette Riddle, we, the jury, find the
13 Defendant guilty.

14 THE COURT: If this is your verdict, so say you all.
15 Please indicate by raising your right hand.

16 (WHEREUPON, all of the jurors raised their right
17 hand.)

18 THE COURT: Thank you.

19 Anything further for the jury from the State?

20 MS. HARRISON: Nothing, Your Honor.

21 THE COURT: Defense?

22 MR. O'CONNELL: Nothing.

23 Thank you, Your Honor.

24 THE COURT: All right. Madam Forelady, and, ladies
25 and gentlemen of the jury, I want to thank you very much

1 for your service and the sacrifices you've made this week.

2 I hope that you have found it to be a rewarding
3 experience. And if not right now, I hope and believe you
4 will find it to be a very rewarding experience as you look
5 back on it.

6 And this is not a reward for your having served, but
7 we have finished all the work for the week, which means
8 we've finished all the work for the year.

9 So y'all are free. You're cut loose and you're free
10 to talk about it, and do any kind of research you want to
11 do.

12 And I wish you all the best. And happy holidays to
13 each and every one of you.

14 Thank you very much.

15 (WHEREUPON, the jury was excused from open court at
16 approximately 3:13 p.m.)

17 MOTIONS

18 THE COURT: Any motions, or anything?

19 MS. HARRISON: None from the State, Your Honor.

20 MR. O'CONNELL: Your Honor, I'd like you to be the
21 13th juror and set aside the verdict of the jury. Because
22 there was no evidence presented that I could see that had
23 my client exploiting a vulnerable adult through the use of
24 a power of attorney. There were just mistakes done on the
25 powers of attorney, and such.

1 THE COURT: Okay. Well, I decline to do that. And I
2 deny any motions for a new trial.

3 MR. O'CONNELL: Do you want us to come up?

4 THE COURT: Anybody have a sentencing sheet?

5 MS. HARRISON: Yes, sir, we do.

6 MR. O'CONNELL: Do you want us to stand up?

7 THE COURT: Yes. Come on around.

8 Okay. Is there anything anybody wants to tell me?

9 MS. HARRISON: Your Honor, the only thing we would
10 ask is that restitution be ordered to Ms. Riddle, in
11 addition to whatever sentence the Court might hand down.

12 With me is Ms. Kimberly Thomason. She's handled all
13 the probate matters.

14 Do you have a guesstimate of what you think --

15 THE COURT: We don't guess.

16 MS. HARRISON: I'm sorry.

17 What would you like --

18 MS. KIMBERLY THOMASON: We, actually, did an in-depth
19 analysis. And it was 138,000 total. There were
20 co-defendants in the matter.

21 And so we have collected from the other defendant, so
22 far, 12,500. And 38,500 is outstanding.

23 THE COURT: 38,500?

24 MS. KIMBERLY THOMASON: On that particular
25 settlement. So if you deduct that, it's about 88,000

1 remaining.

2 MR. O'CONNELL: Your Honor, may it please the Court.

3 They --

4 THE COURT: 88 -- you say that --

5 MS. KIMBERLY THOMASON: 38,500 -- it's 50,000 total
6 would be collected from the other co-defendant. It's a
7 138,000 total that was taken.

8 THE COURT: Why is she at 50,000?

9 MS. KIMBERLY THOMASON: There was a previous plea
10 with restitution. And so that's just what's outstanding
11 still.

12 THE COURT: All right.

13 MR. O'CONNELL: Your Honor, if it please the Court.

14 If I'm not mistaken, they said it was 16,000, which
15 the evidence presented showed there was a burial lot that
16 was bought. And Mr. Riddle even said it was there. So
17 they got the burial lot.

18 And the 1,500 was for putting some money in a
19 nursing -- a nursing home. The lady -- so they -- all
20 that was presented at the hearing was 16,000.

21 MS. HARRISON: Well, Your Honor, a restitution
22 hearing is separate from the trial. And the issue of the
23 restitution is --

24 THE COURT: Well, what -- where has this money gone?

25 MS. KIMBERLY THOMASON: I'm sorry, Your Honor. Where

1 has the money gone that --

2 THE COURT: You claim that this lady owes \$88,500.
3 Where did the 138,000 go?

4 MS. KIMBERLY THOMASON: Actually, we have a full
5 analysis of that. It went in and out of bank accounts,
6 some on personal things. And so as to which of the two
7 took what, they worked in concert is how we've dealt with
8 it inside the probate case.

9 And so the total amount that was taken was used for a
10 number of personal things. I mean, none of it...

11 THE COURT: How come I didn't hear about that at the
12 trial?

13 MS. HARRISON: Your Honor, we chose to simplify.
14 This case -- I could have tried this case for a week.
15 Instead, I chose to -- instead, I chose to make it a
16 simpler case for the jury.

17 THE COURT: Well --

18 MR. O'CONNELL: But that's not what was presented at
19 the hearing, Your Honor. They said 16,000. The closing
20 argument said 16,000. We showed evidence that the burial
21 plot was paid for, and the nursing home was paid for.

22 So the most, if my math is right, is right around
23 \$1,500. And we can't go back and redo a hearing that was
24 just done, or coming up with new numbers and showing new
25 numbers before the Court.

1 THE COURT: I guess we'll have to have a full
2 restitution hearing.

3 MS. HARRISON: That's fine.

4 THE COURT: I --

5 MS. HARRISON: Your Honor, that's fine.

6 THE COURT: Why this wasn't presented at trial I
7 don't know.

8 MS. HARRISON: Your Honor, strategy. It was simply
9 what Ms. Thomason said. So many funds were co-mingled. I
10 had to pull out what went directly to Ms. Hindman and
11 present that to the jury.

12 MR. O'CONNELL: Well, that's -- then that's it. You
13 said "present," it's 16,000. She paid 13,000 for one and
14 1,500 for the other.

15 That's what they presented, Your Honor. I couldn't
16 do anything about that.

17 THE COURT: Does she have a criminal history?

18 MS. HARRISON: No, sir.

19 MR. O'CONNELL: No, Your Honor. She does not.

20 THE COURT: How many days did she spend in jail?

21 MR. O'CONNELL: One overnight. I don't know.

22 MS. HARRISON: One day.

23 MR. O'CONNELL: Is that right?

24 DEFENDANT HINDMAN: Yes.

25 THE COURT: I've never been faced with this before.

1 You're going to have to present some kind of proof
2 with respect to the restitution.

3 MS. HARRISON: We will, Your Honor, at the
4 restitution hearing.

5 THE COURT: Well, yes.

6 MS. HARRISON: I'll have Ms. Thomason --

7 THE COURT: I mean, I just --

8 MS. HARRISON: -- present that. We can defer that
9 until we have a hearing.

10 MR. O'CONNELL: Okay. Refer [sic] the whole thing
11 until we get to the hearing.

12 I don't know, Your Honor. I thought they had one
13 bite of the apple. Now, they're getting two bites of the
14 apple.

15 THE COURT: I mean, your client has been adjudged
16 guilty.

17 MR O'CONNELL: Yes, Your Honor.

18 THE COURT: As far as what the restitution is, I
19 guess we'll -- you'll have ample opportunity to do
20 research to show that it should be limited to what they
21 presented at trial. Otherwise, we'll have a hearing
22 within 60 days.

23 Well, what should I do to her?

24 MR. O'CONNELL: Your Honor, first offense. And the
25 other person, I think, got -- if I'm not mistaken,

1 probation, so.

2 THE COURT: Well, why wouldn't your client step up to
3 the plate?

4 MR. O'CONNELL: Because she didn't think she did
5 anything wrong, Your Honor.

6 DEFENDANT HINDMAN: I didn't.

7 MR. O'CONNELL: She drew up some documents. And they
8 weren't used on her behalf to get anything out of the
9 estate. These were used by another party to get money out
10 of the estate. She didn't even know what was going on.

11 THE COURT: Where did all this \$138,000 go? Where
12 did it go?

13 MS. KIMBERLY THOMASON: Your Honor, we can provide a
14 full accounting of what our research showed. It went in
15 and out of various bank accounts and was used to purchase
16 various things for --

17 THE COURT: For instance, like what?

18 MS. KIMBERLY THOMASON: Well, credit card purchases,
19 payment of other debts for the individuals. They drew out
20 a little bit at a time over the course of a couple of
21 years. And it added up to that amount.

22 MR. O'CONNELL: Your Honor, my thing is my client
23 doesn't have credit cards. And none of this money --

24 THE COURT: Well, fine. We're going to have a
25 hearing. And you can present your evidence. And they're

1 going to present theirs.

2 And I'm going to defer sentencing. Because if --
3 depending on what I hear at the restitution hearing, it's
4 going to determine what happens with the sentence.

5 So I'm going to allow her to remain on bond and --
6 until the hearing. And then we'll sentence her.

7 *****END OF TRANSCRIPT OF RECORD*****

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State of South Carolina
County of Greenville

Court of General Sessions

State of South Carolina)
)
)
 v.)
)
 Polly McAbee Hindman)
)
 Defendant.)

Transcript of Record
2015-GS-23-001563

February 17, 2017
Greenville, South Carolina

B E F O R E:

The Honorable Edward Miller, Judge.

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

Sylvia Harrison, Assistant Solicitor
Attorney for the State

Clifford Gaddy, Esquire
Attorney for the Defendant

Lisa Scott
Circuit Court Reporter

I N D E X

<u>WITNESS</u>	<u>PAGE</u>
MARK CHASTAIN	
Direct examination by Ms. Harrison.....	10
Cross-examination by Mr. Gaddy.....	20
Redirect examination by Ms. Harrison...	39
ROBERT HINDMAN	
Direct examination by Mr. Gaddy.....	41
Cross-examination by Ms. Harrison.....	59
Redirect examination by Mr. Gaddy.....	66
POLLY HINDMAN	
Direct examination by Mr. Gaddy.....	68
Cross-examination by Ms. Harrison.....	78
Redirect examination by Mr. Gaddy.....	84

S O L I C I T O R E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EVD.</u>
1	Mr. Chastain's records		X

D E F E N D A N T E X H I B I T S

1	Binder labelled No. 6		X
2	Copies of comp. exhibit		X
3	Paul Howell e-mail	X	
4	Binder labelled No. 5		X
5	Letter from VA		X
6	Total paid for pre-needs		X
7	Binder labelled No. 2		X
8	Binder labelled No. 3		X
9	Binder labelled No. 4		X

C O U R T E X H I B I T S

1	Copy of cashier's check		X
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P R O C E E D I N G S

* * * * *

1
2
3 MS. HARRISON: Your Honor, just briefly.

4 Sorry. It appears Mr. Gaddy does not have enough
5 copies for the Solicitor to have one. To expedite
6 this -- because this is the restitution hearing and
7 sentencing, we tried the case in front of the jury
8 in December -- I will work with Mark Chastain's
9 copies the best I can. This is the first time I've
10 ever seen -- I've been presented these, but, Judge,
11 I'm ready to go forward and get this case resolved.

12 THE COURT: Yeah, I -- I am very ready to have
13 this done.

14 MS. HARRISON: And so, Judge, let -- if
15 you mind -- if you don't mind, I can go ahead and
16 open up and we can start.

17 THE COURT: You're the moving party.

18 MS. HARRISON: Yes, Your Honor. Thank you.

19 First of all, this is the sentencing and
20 restitution hearing for Polly Hindman that was
21 convicted during the jury trial. I believe it was
22 December 13th. You have the copy in front of you.

23 MR. GADDY: Your Honor, by way of expediting
24 the hearing, I was asking the court reporter to mark
25 these documents as exhibits. They can certainly

1 wait until we present our case, as opposed to having
2 them marked in advance.

3 THE COURT: Okay. Well, let's do that. Let's
4 move forward.

5 MR. GADDY: All right.

6 THE COURT: Let's go.

7 MR. GADDY: Okay.

8 MS. HARRISON: Your Honor, as Your Honor is
9 well aware, this is a joint and severable state
10 concerning restitution. This is the case of two
11 codefendants that stole from their half sister.
12 Both have been found guilty. One codefendant, Lisa
13 Norris, plead guilty. The second one, Polly
14 Hindman, was found guilty by a jury.

15 Your Honor, I'm going to inform the Court of
16 the same things I informed Mr. Eppes of yesterday.

17 THE COURT: Mr. Gaddy, please return to counsel
18 table until it's appropriate for you to participate.

19 MS. HARRISON: Your Honor, this case is -- in
20 fairness to the Court and everyone here, this case
21 is ongoing as far as the criminal aspects. I do
22 expect more warrants to be brought probably against
23 Ms. Hindman and/or her husband. In all fairness,
24 Your Honor, I don't want somebody to take the stand
25 without knowing this. I told Mr. Eppes the exact

1 same thing.

2 Mr. Gaddy handed me 52 pages of information
3 from the VA that shows a clear path of fraud where
4 she defrauded the VA of benefits with Ms. --
5 Ms. Riddle.

6 THE COURT: This is what he intends to
7 introduce?

8 MS. HARRISON: Yes, Your Honor. And when
9 somebody gives me that much information, I turn it
10 over to law enforcement. I don't have any choice.

11 THE COURT: Well...

12 MS. HARRISON: I just want everybody to -- I
13 want a clean playing field, Your Honor.

14 THE COURT: You're saying what he intends to
15 introduce is incriminating to his client?

16 MS. HARRISON: I believe so. Yes, sir. I
17 could have Mr. Chastain speak to that. He's a
18 forensic accountant that's been certified as an
19 expert in all the courts here in Greenville County,
20 and that would be our first witness.

21 THE COURT: Well, I'm not going forward with a
22 hearing in which someone may incriminate themselves.
23 Mr. Gaddy, yeah.

24 MR. GADDY: Your Honor, we're here for a -- on
25 a restitution hearing. It is my position that we

1 are entitled, meaning Hindman is entitled to present
2 to the Court evidence which will be related to
3 whatever amount of money that the Solicitor's Office
4 says that presents to the Court that Hindman took.
5 That's our -- that's our position. I have prepared
6 a memorandum which I can wait until my case, or I
7 can give it to the Court now which sets forth in
8 writing our position.

9 And in addition to that, Your Honor, the
10 defendant Hindman was found guilty on December the
11 14th for violation of South Carolina Code of Laws
12 43-35-00-85. Now, that particular code section has
13 got six or seven different subsections, all of which
14 set forth a different type of offense in some
15 degree.

16 It is our position that it is difficult, if not
17 impossible, to find -- issue a sentence with respect
18 to Hindman because there's no specification by the
19 jury of which subsection applies as opposed to the
20 whole statute. So each subsection of the statute
21 allows for a different type or a different nature of
22 sentence.

23 So we have that motion before the Court with
24 respect to how can the Court issue a sentence when
25 the statute, and compared to the verdict, is very

1 vague and ambiguous and subject to more than one
2 interpretation, but...

3 THE COURT: I've been informed by the State
4 that the materials that you produced to them and
5 intend to introduce at this hearing are
6 incriminatory of other crimes against your client.
7 I don't intend to go forward until they can do some
8 -- I -- I'm not going to go with a hearing that may
9 cause your client to suffer more -- to be arrested
10 for other crimes based on her own testimony. I
11 mean, I -- you need to ---

12 MR. GADDY: Well, we didn't -- we don't have to
13 call ---

14 THE COURT: You're talking about introducing
15 material into the hearing which the State is saying
16 is evidence of new crimes.

17 MS. HARRISON: Your Honor ---

18 MR. GADDY: Well, Your Honor, the Solicitor has
19 got to introduce some figure that the Solicitor
20 feels should be reimbursed to the conservator or to
21 the victim, Betty Riddle. And we were furnished a
22 schedule by a person I thought was hired by the
23 Solicitor. She says not, but at any rate, if she's
24 not hired by the Solicitor, the gentleman, his name
25 is Mark Chastain, is here in the courtroom and he

1 has prepared a schedule which shows money that I
2 understood the Solicitor was going to ask as to her
3 case, the Solicitor's case, to be reimbursed by
4 Hindman. And so I think we're entitled to counter
5 that with other evidence. That's where we're going.

6 MS. HARRISON: Your Honor, I leave it up to
7 Mr. Gaddy. What -- what we plan to do is put up and
8 show the aggregate losses by both codefendants.
9 Once again, this is joint and severable state. The
10 hand of one is the hand of all. So to expedite
11 this, could we just put Mark Chastain up and let him
12 testify to the losses?

13 THE COURT: Okay. Go ahead.

14 MS. HARRISON: Mr. Chastain.

15 THE WITNESS: (Approaching.)

16 MS. HARRISON: Your Honor, I'd like the record
17 to also reflect that Mr. Chastain has met with
18 Mr. Gaddy on these documents ---

19 THE COURT: Well, you can -- when he gets up,
20 you can ask him about it.

21 MS. HARRISON: Yes, sir.

22 THE COURT: Go ahead.

23 THE CLERK: Do you swear or affirm to tell the
24 truth, the whole truth, and nothing but the truth so
25 help you God?

1 THE WITNESS: Yes, I do.

2 THE CLERK: Please have a seat.

3 THE WITNESS: (Complying.)

4 MARK CHASTAIN,

5 having been produced and first duly sworn as a
6 witness on behalf of the State, then testified as
7 follows:

8 DIRECT EXAMINATION

9 BY MS. HARRISON:

10 Q. Mr. Chastain, would you state your name and
11 what you do?

12 A. My name is Mark Chastain, and I practice as a
13 management consultant and financial litigation
14 support.

15 Q. Could you give the Court ---

16 MR. GADDY: Your Honor ---

17 MS. HARRISON: --- a brief background ---

18 MR. GADDY: --- with your permission, may I
19 stand up on the right?

20 THE COURT: You can't hear him?

21 MR. GADDY: May I stand up on the right?

22 MS. HARRISON: He can't hear him.

23 THE COURT: Yeah. Go ahead. Speak into
24 that ---

25 MS. HARRISON: Mr. Chastain ---

1 THE COURT: --- just a minute. Speak into the
2 microphone.

3 BY MS. HARRISON:

4 Q. Mr. Chastain, what is your background in
5 accounting?

6 A. I have a finance degree and I've been working
7 in accounting and finance for 24 years and
8 litigation support since 2003.

9 Q. Have you ever been declared an expert in any of
10 the courts here in Greenville County?

11 A. Yes, ma'am, I have. In Family Court.

12 Q. Okay. How about other courts within the state
13 or ---

14 A. In Sanford County, Florida, and Marietta,
15 Georgia.

16 Q. Okay. What -- what type of expert were you
17 qualified as?

18 A. A financial expert for analysis of marital
19 assets, tracing monies that were misspent, and
20 business litigation.

21 Q. Were you asked to perform a financial or
22 forensic accountant of Betty Riddle's assets?

23 A. I was asked to look at accounts that I brought
24 with me today.

25 Q. Okay. Did you prepare a summary for the Court?

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

2 Q. Okay. Did you bring that summary with you?

3 A. I brought multiple copies.

4 Q. Okay.

5 A. I believe we have one for the judge.

6 MS. HARRISON: Would you please mark this as
7 Exhibit No. 1, please?

8 COURT REPORTER: (Complying.)

9 MS. HARRISON: Your Honor, would you like to
10 review this, or would you just -- we have marked
11 summary along with the supporting documentation.

12 THE COURT: Do you have a extra copy?

13 MS. HARRISON: Yes, sir, I do.

14 THE WITNESS: Yes, I do.

15 THE COURT: Have copies have been provided to
16 the defense?

17 MS. HARRISON: Yes, sir.

18 THE COURT: All right.

19 MS. HARRISON: Mr. Chastain ---

20 MR. GADDY: Your Honor, if the witness
21 represents that these are the same records that have
22 been furnished to me, we have no objection.

23 THE COURT: Okay. All right.

24 (Solicitor's Exhibit No. 1 was received into
25 evidence.)

1 BY MS. HARRISON:

2 Q. Mr. Chastain, have you met with Mr. Gaddy prior
3 to this?

4 A. We had a meeting last week, and we've had a
5 couple of phone calls.

6 Q. So you've gone over this -- these documents
7 with him?

8 A. Yes, ma'am. I went over the previous version
9 of this document.

10 Q. Okay. In this document, what is -- well, let's
11 just -- we'll just cut to the chase on a couple of
12 these. What is the bottom line of the amounts that
13 you believe that the codefendants took from Betty
14 Riddle?

15 MR. GADDY: Your Honor, I object to that ---

16 MS. HARRISON: Your Honor ---

17 THE COURT: Whoa. Whoa. Let's get one thing
18 clear. She's taking down everything we say, so do
19 not interrupt each other.

20 Mr. Gaddy, do you have an objection?

21 MR. GADDY: Yes, I do.

22 THE COURT: State your objection.

23 MR. GADDY: My objection is that based upon
24 prior conversations with the witness, Mark Chastain,
25 with respect to his analysis of funds that he says

1 were either taken by -- they said Betty Riddle is
2 responsible for. He has put together a list of
3 checks ---

4 THE COURT: Well, wait a minute. What is your
5 objection to the question?

6 MR. GADDY: My objection is that he has
7 combined in his schedule of so-called money taken by
8 Betty with -- also with money that was taken by
9 sister Lisa.

10 THE COURT: Okay. Your objection is overruled.
11 That's proper grounds for cross-examination.

12 All right. Go ahead.

13 MS. HARRISON: Yes, Your Honor.

14 BY MS. HARRISON:

15 Q. Mr. Chastain, after your forensic accounting,
16 what do you say that is the amount that has been
17 taken from Ms. Riddle by the two codefendants?

18 THE COURT: Well, before we go there, you're --
19 you're asking that he be qualified as an expert so
20 he can render an opinion?

21 MS. HARRISON: Yes, sir. I can, but according
22 to State v. Gull -- okay. I'll be happy to do that.

23 THE COURT: Go ahead.

24 MS. HARRISON: Okay. Your Honor, State would
25 move Mr. Chastain as an expert according to

1 accounting based on his prior testimony as an
2 expert.

3 THE COURT: All right. Do you have any voir
4 dire you want to ask of him or any objection to him
5 being qualified?

6 MR. GADDY: I don't have an objection to his
7 testifying.

8 THE COURT: To be qualified as an expert in
9 forensic accounting. That's what she's tendering
10 him for.

11 MR. GADDY: That will be fine. Yes. No
12 objection.

13 THE COURT: Okay. No objection. All right.
14 Go ahead.

15 BY MS. HARRISON:

16 Q. Based on your calculations, Mr. Chastain, what
17 is the aggregate loss to Ms. Riddle by the
18 codefendants Ms. Hindman and Ms. Norris?

19 A. The net amount which you'll find on the second
20 page of the Wells Fargo accounts that I looked at,
21 the VA benefits, and the real estate taxes, the net
22 amount outstanding is \$139,697.42.

23 Q. Okay. Does that amount include restitution
24 that has been paid by the codefendant Norris?

25 A. It includes a \$12,500 restitution payment and a

1 \$47,923.02 return of funds that were the balance in
2 the account that was converted.

3 Q. So what -- what was the -- the total amount,
4 the aggregate amount that was lost before anything's
5 been repaid?

6 A. It was over \$337,000 when you include the home
7 that was deeded out.

8 Q. All right. When you -- when you put in
9 these -- this money, did you also include
10 Ms. Riddle's average monthly expenses?

11 A. I did. I looked at the bank account records
12 that I was furnished and calculated for her
13 insurance and very basic monthly living expenses
14 when she was in her home. You'll see it on the
15 first page of \$625 a month, and then \$425 a month
16 when she was in the nursing home.

17 Q. So -- so the funds that are missing, they give
18 the ben -- they give the benefit of the doubt of
19 paying the average monthly bills of Ms. Riddle?

20 A. Yes, ma'am, they do. And they also give a
21 benefit of the doubt for any caregiving expenses.

22 Q. Okay. So -- so this is a -- this is a gross
23 net number. Two questions and then I will go very
24 briefly.

25 Did you ever contact the funeral home

1 concerning the checks that were written to Polly
2 Hindman concerning Ms. Riddle's funeral expenses?

3 A. I went with Ms. Thomas and we paid one visit,
4 but we were turned away and never been able to get
5 any contact with them.

6 Q. Were you able to -- were you ever able to get
7 any documents from them whatsoever?

8 A. No, ma'am.

9 Q. Were ever able to substantiate those for the
10 pre-needs fund?

11 A. No, ma'am. I've never gotten any resolution to
12 it.

13 Q. All right. And the benefits from the Veterans
14 Administration that Ms. Hindman filed on behalf of
15 Ms. Riddle, what was that amount?

16 A. The amount was approximately \$20,340 that were
17 received, and I only see a payment of \$1,130 that
18 was paid back.

19 Q. Okay. Mr. Gaddy has given you a cashier's
20 check for an amount that allegedly Ms. Hindman has
21 repaid the VA for asking for and getting
22 Ms. Riddle's benefits; is that correct?

23 A. Yes, ma'am. Are you referring to the check
24 that we saw earlier this morning?

25 Q. Yes, sir, I am.

1 A. Yes, ma'am.

2 Q. Why didn't you include that check in this
3 amount?

4 A. I don't have any evidence that that actually
5 ever cleared with the VA, and the e-mail it purports
6 to be is for a different amount and different
7 timing. The months are different.

8 Q. If you don't cash a cashier's check, what could
9 happen to the check?

10 A. People can actually go back to them and usually
11 get the money back in their account. That can
12 happen.

13 Q. So I could have a cashier's check issued and
14 then have the money put back in?

15 A. Yes, ma'am, you can.

16 MS. HARRISON: I don't have any more questions,
17 Your Honor. That would be the State's case and the
18 supporting documentation.

19 THE COURT: You have a cashier's check, it's a
20 negotiable instrument, is it not, under the UCC? Is
21 it not a negotiable instrument?

22 THE WITNESS: Yes, sir.

23 THE COURT: So in order for it to be back in
24 somebody's account, the actual negotiable instrument
25 has to be given to the bank; is that right?

1 THE WITNESS: That's correct..

2 THE COURT: So if you saw an existing cashier's
3 check, is that what you saw?

4 THE WITNESS: I saw the copy of the front of
5 the cashier's check.

6 THE COURT: Okay.

7 THE WITNESS: And the amount the cashier's
8 check was made out for didn't correspond at all to
9 the e-mail that it was said to have paid for, nor
10 did it ---

11 THE COURT: So you haven't ever actually seen
12 the actual cashier's check?

13 THE WITNESS: No, sir. Nor the copy of the
14 bank account which it came out of.

15 THE COURT: Okay. And so you did not give a
16 credit on these on your accounting for that amount;
17 is that right?

18 THE WITNESS: Yes, Your Honor. That's correct.

19 THE COURT: Okay. All right. Go ahead.

20 Cross-examination.

21 BY MS. HARRISON:

22 Q. Just -- just for the record, what was that
23 amount you think the cashier's check was for?

24 A. It's behind you in my box. If you don't mind
25 getting that. It should be right on top or bring me

1 my box. My apologies.

2 MR. GADDY: We have a copy of the cashier's
3 check which we're going to present, but while we're
4 looking for that, I want to proceed with questions.

5 THE COURT: Well, she's not done yet. Just a
6 minute.

7 MR. GADDY: She's got it now.

8 BY MS. HARRISON:

9 Q. Okay. So how -- how much was that check for?

10 A. This check is for \$12,294, and it appears to be
11 on 8/6 of '14.

12 Q. All right. Now, how much were the benefits
13 taken from the Veterans Administration?

14 A. \$20,340.

15 Q. All right. So this check would not cover that
16 entire amount?

17 A. That's correct.

18 MS. HARRISON: Thank you. Mr. Gaddy, please
19 answer -- please answer any questions Mr. Gaddy
20 might have.

21 CROSS-EXAMINATION

22 BY MR. GADDY:

23 Q. Mr. Chastain, I show you the first page in this
24 notebook that's been provided, which I believe you
25 have the notebook in front of you.

1 A. I do.

2 Q. And the note -- a copy of the notebook was
3 provided to the Court. The first column says
4 "withdrawals from account per statement." Do you
5 agree?

6 A. Yes, sir.

7 Q. And it's got Wells Fargo bank checking number
8 2592. It's got 2012, then the months July, August,
9 September, October, and November. And across from
10 those amounts, you have "amounts." Do those amounts
11 represent, what, like \$4,294.20? That is a summary
12 of something. What is it?

13 A. That is -- you will find that those are the
14 total withdrawals on the bank statement for the
15 month of August from this account.

16 Would you like me to go across the line and
17 just explain each column?

18 Q. You say they're withdrawals?

19 A. They're withdrawals.

20 Q. You have backup records to support the amount
21 of \$4,294.20; is that correct?

22 A. Yes, sir, I do. They're in the bank statements
23 behind this.

24 Q. All right. Now, likewise, in September, there
25 were withdrawals of \$2,442. There were also in

1 November withdrawals of \$5,785.35.

2 Now, have you included in those withdrawals
3 checks written to how many people?

4 A. It's various people. If I explain this, it
5 might help you see the logic behind how I did it.

6 Q. If I'm hearing you correctly, you have included
7 in your withdrawals checks written to Betty Riddle,
8 Lisa Norris, and to various third parties; is that
9 correct?

10 A. Yes. Ms. Hindman, Mr. Grant, the grass cutting
11 guy, the caregivers. There are multiple people and
12 copies of checks are provided here.

13 Q. All right. And you having -- and going on down
14 to in your first page there under the year 2013,
15 you've got 12 months listed. And you don't have a
16 grand total for the year 2013; but you have monthly
17 amounts that I want to make sure that you are
18 telling the Court that these are withdrawals from
19 this checking account during those 12 months?

20 A. That's correct. I just have a grand total on
21 the far right column.

22 Q. Okay. And, again, you have included in your
23 withdrawals checks written to Betty Riddle, Lisa
24 Norris, and to various third parties, correct?

25 A. Correct. Businesses, insurance companies,

1 things of that nature.

2 Q. All right. Now, you have got a column which
3 says "approximate funds stolen." Now, how did you
4 come up and why did you use the term "stolen"?

5 A. There was -- they were not spent by Betty and
6 they were not spent on Betty's behalf for her
7 benefit.

8 Q. So you made a conclusion that the funds were
9 stolen and you have included that Betty Riddle stole
10 them?

11 MS. HARRISON: Objection, Your Honor.

12 MR. GADDY: I'm asking for his ---

13 THE COURT: Wait a minute. What's the basis of
14 your objection?

15 MS. HARRISON: The question is very vague for
16 my witness. I don't know if he can answer that.

17 THE COURT: Well, he can answer as best he can
18 and explain his answer. Go ahead.

19 THE WITNESS: No, sir. That wouldn't be true.
20 The allowance for the monthly expenses column, that
21 includes monies that she would pay for things like
22 her United Healthcare, Medicare supplement, her All
23 State Insurance, her utilities, very basic things
24 that she would pay.

25 And she does not actually write checks to

1 herself. There is only a couple of checks to
2 herself. One of them is not included in this
3 amount, but it is highly suspicious.

4 The caregiving column would represent all the
5 payments to third-party caregivers and the nursing
6 homes. And in the month of November, the caregiver
7 by the last name of Rush was paid an abnormally high
8 amount of money.

9 But everyone, this situation, the benefit of
10 the doubt is gone on the side of spending the money
11 to try to take care of Ms. Riddle. It includes all
12 nursing home payments that were run through these
13 accounts.

14 BY MR. GADDY:

15 Q. Well, any rate, your amounts and your
16 withdrawals from account per statement is the
17 lump-sum withdrawal for that particular month as
18 you've allocated per month; is that correct?

19 A. That's correct. It comes right off the bank
20 statement.

21 Q. Okay. Then you have calculated what you
22 consider to be a basic monthly expense of the victim
23 Betty Riddle; is that correct?

24 A. Yes, sir.

25 Q. Why do you believe that you are an authority on

1 how much it costs Betty Riddle to live each month?

2 A. Well, I looked at her prior bank statements.
3 That why this exhibit includes July and August, even
4 though there are no funds noted. And, also, you can
5 look through all those statements and you can come
6 up with a basis of what her very basic living
7 expenses are.

8 Q. Is it not possible that Betty Riddle had income
9 that did not go through this checking account, this
10 Wells Fargo checking account 2592, and that
11 additional income could've been used for monthly
12 expenses?

13 A. No, sir. During this time, it appears that all
14 her income comes through this account, especially
15 when you get to January of 2013 and forward.

16 Q. So you feel that you know what Betty Riddle's
17 income was in July, August, September, October, and
18 November of 2012?

19 A. Yes, sir. On the bank statements it shows her
20 social security deposits, her pension deposits, and
21 then if they transfer back ---

22 Q. The bank statements show what money went into
23 the account. It doesn't show what her income was.
24 They're not synonymous. You agree with that, don't
25 you?

1 A. In her case, this shows pretty much what all
2 her income was. Her interest income from any
3 investments may or may not show up.

4 Q. Any rate, it's your testimony that monthly
5 expenses you've allocated to Betty Riddle of \$625 a
6 month, right?

7 A. While she was living in her home, yes, sir.

8 Q. And then you've allocated to caregiver nursing
9 home the figures that you show in the column which
10 you've labelled "caregiving and nursing home
11 related."

12 Now, when it comes home up to your last column
13 where you've labelled it "approximate funds stolen,"
14 are you telling us that it's your testimony to the
15 Court that Polly Hindman stole \$897.47? stole
16 \$1,012.50? stole \$2,253.85?

17 A. My testimony is that the parties involved in
18 this matter, both parties, took that money. I don't
19 have it divided out other than the checks. There's
20 so many debit card transactions to tanning salons
21 and cell phone bills, all kinds of other things, I
22 don't know which person used them.

23 Q. Why is it you know that the funds were stolen
24 as opposed to being used to pay third parties all
25 for the benefit of Betty Riddle? How do you know

1 that?

2 A. Say what -- say your question again. I lost
3 you right at the beginning.

4 Q. You've chosen to label your column, the last
5 column in your form, as money that -- as "funds
6 stolen."

7 A. Yes, sir. Let me give -- maybe a bit of back
8 up. I was asked to provide this by Ms. Thomason,
9 the attorney for Ms. Riddle, for the purposes of
10 giving it to Tim Martin way back when this matter
11 was first opened, and so that just happened to be
12 what I was choosing.

13 If there was any amount of money that was
14 available -- that would have been stolen from her,
15 it would be this amount of money because I
16 subtracted out her usual, reasonable, and customary
17 expenses.

18 And then if you actually looked at the bank
19 statements, it becomes very, very obvious the ladies
20 in the nursing home, she's fairly incapacitated,
21 but, you know, Wal-Mart spending \$200 a trip, donuts
22 are being bought, tanning salons, so it becomes real
23 obvious with the debit cards.

24 Q. Well, wouldn't it have been more accurate if
25 you had called your column "funds that were

1 remaining" as opposed to "funds stolen"?

2 A. Well, they were spent. If the money was still
3 in the account, I certainly wouldn't use that type
4 of -- but the money was spent.

5 Q. You don't agree it would've been more accurate
6 to say "funds remaining" or "funds spent" or
7 whatever as opposed to using the word "stolen"?

8 MS. HARRISON: Your Honor, I'm going to object.
9 I believe he's asked and answered that question
10 twice.

11 THE COURT: Well, the way -- Mr. Chastain, what
12 you're saying about the use of the term "stolen,"
13 these are funds that were not used for the benefit
14 of the victim; is that right?

15 THE WITNESS: That's correct, Your Honor, nor
16 did she have any control over their usage.

17 THE COURT: Okay. So maybe your selection of
18 that word "stolen" was in ---

19 MR. GADDY: I'm -- I'm --

20 THE COURT: Just a minute, Mr. Gaddy.

21 Maybe your selection of the word "stolen" might
22 be inappropriate?

23 THE WITNESS: Yes, Your Honor.

24 THE COURT: Okay. I'm the fact finder, and I
25 understand why he chose the word, and I am not

1 swayed by the fact that it's labelled as "stolen."
2 Misappropriated might be more appropriate.

3 MR. GADDY: I'm going to ---

4 THE COURT: We're not here to argue over the
5 accountant's selection of the words. He's explained
6 what the column contains, and I think that's the
7 important part, Mr. Gaddy.

8 All right. Go ahead.

9 MR. GADDY: I -- I don't need to ask questions
10 about every month. I'm going to ask the witness a
11 couple more questions to make sure that what I'm
12 suggesting is correct.

13 BY MR. GADDY:

14 Q. In all of your amounts shown in the appropriate
15 funds stolen for 2012, 2013, and 2014, simply
16 represents funds that are not accounted for; is that
17 correct?

18 A. That's incorrect. They're accounted for in the
19 bank statement.

20 Q. When you say accounted for, you mean you got a
21 check for them?

22 A. There's either checks here. There are also, as
23 y'all may be aware, the checks cleared like debit
24 card transactions these days as well. And there's
25 actual debit card, you know, entries.

1 Q. All right. Again, you had piece of paper that
2 you looked at to come up with the amounts shown in
3 this last column?

4 A. It's actually a formula, sir. It's all the
5 withdrawals, and then subtracting from that Betty's
6 monthly living expenses and the caregiver related
7 expenses ---

8 Q. Well, the point I'm making, which you seem to
9 want to hedge about, is that the amounts in the last
10 column labelled "appropriate funds stolen" include
11 funds which went to third parties as well as
12 Betty -- as well as Polly Hindman; isn't that
13 correct?

14 A. Yes, sir. They -- there are other third
15 parties that have received money.

16 MR. GADDY: Thank you.

17 THE COURT: Just so I'm clear, you're -- and
18 with respect to that column of money, you are saying
19 that those funds received were not -- those amounts
20 were not used for the benefit of Ms. Riddle; is that
21 right?

22 THE WITNESS: Yes, Your Honor.

23 THE COURT: All right. Thank you.

24 BY MR. GADDY:

25 Q. Have you got a grand total somewhere on a

1 schedule?

2 A. I do. So the grand total for the checking and
3 savings account Wells Fargo bank that was
4 misappropriated was \$169,352.86.

5 I have a credit for the return by Lisa Norris
6 of the funds that were left in her account that she
7 converted of \$47,923.02.

8 I have a credit for the restitution payment by
9 Lisa Norris of \$12,500.

10 Then we have an additional amount of the
11 estimated benefits taken from the VA, which is
12 \$20,340.

13 We have the benefit -- Veterans Administration
14 benefits paid back by Polly Hindman of \$1,130.

15 And then we have the property tax increase from
16 2015 to 2018, minus the \$2400 that Ms. Riddle
17 would've paid.

18 The property tax, Your Honor, went up to as
19 high as \$3500. If you look at your last tab, you'll
20 actually see the seizure notice that was put on her
21 home. And you will see the subsequent years
22 increase in property tax. That money had to be paid
23 for out of Ms. Riddle's funds and placed with her
24 attorney, Ms. Thomason, and the homestead
25 exemption's been lost.

1 THE COURT: Okay.

2 THE WITNESS: And so that brings us to the
3 total of 139,697.42.

4 THE COURT: Okay.

5 BY MR. GADDY:

6 Q. I have -- Mr. Chastain, I have presented you
7 with a binder which I have labelled six, and by way
8 of explanation, funds obtained by Lisa Norris during
9 2012 from a Wells Fargo savings account owned by
10 Betty Riddle. It contains a withdrawal by Lisa
11 Norris of \$121,920.33, and also a withdrawal of
12 \$10,000 in cash on December 22, 2012. You see those
13 documents?

14 A. I do.

15 Q. Have you included those in your list of funds
16 that were withdrawn from the Wells Fargo savings
17 account and Wells Fargo checking account as part of
18 the total funds that were taken?

19 A. Yes, sir.

20 Q. So even though these withdrawals were,
21 according to the paperwork, made to Lisa -- made by
22 Lisa Norris, you have included them in a figure that
23 you are telling the Court is owed by Polly Hindman?

24 A. I'm telling the Court that's the figure that is
25 owed in this matter. That's what is misappropriated

1 from Ms. Riddle.

2 Q. You're saying that's the amount that's
3 misappropriated, not the amount taken by Polly
4 Hindman?

5 A. Yes. I'm trying to use your terms, but it's
6 the total amount that was taken from Ms. Riddle.

7 Q. And the total amount taken includes \$131,925.33
8 which we show by the withdrawal slips that went to
9 Lisa?

10 A. It includes that amount of money. Absolutely.

11 MR. GADDY: Okay. We'd like to offer this into
12 evidence. The rest of it is not relevant.

13 THE COURT: Without objection.

14 (Defense Exhibit No. 1 entered into evidence.)

15 BY MR. GADDY:

16 Q. Based upon your analysis and inspection of the
17 checking account records and the savings account
18 records, is it not likely that Lisa Norris received
19 most of the funds?

20 A. I have no way of knowing that because of all
21 the debit card transactions. I don't know who did
22 it.

23 Q. Well, you did observe checks payable to Lisa
24 Norris, did you not?

25 A. Yes, I did. I put a listing in my report.

1 Q. And you put them on a schedule, didn't you?

2 A. Yeah, Lisa Norris had \$565 of checks made out
3 to her, and Polly had \$17,006.97.

4 Q. I'm going to direct your attention to your
5 notebook pages. Unfortunately, they're not --
6 they're not numbered, but you've got two pages
7 called "listing of checks written to Lisa Norris or
8 Polly Hindman."

9 A. Right. Yes, sir.

10 Q. And according to your listing, did you find
11 checks to her for the benefit of Polly Hindman came
12 to \$17,006.97; is that correct?

13 A. Yes, sir.

14 MR. GADDY: We offer these into evidence.
15 Although, they already may be in evidence and it
16 would be Exhibit 2.

17 THE COURT: Well, they're already in. Have
18 you -- you've offered the -- this notebook is in
19 evidence ---

20 MR. GADDY: All right.

21 THE COURT: --- so you don't need to put it in.

22 MR. GADDY: All right.

23 BY MR. GADDY:

24 Q. Now, you have included the sum of your listing
25 of checks written to Lisa Norris or Polly Hindman in

1 your grand total; have you not?

2 A. Yes, sir.

3 Q. Included in your grand total is what you are
4 representing of funds received from the Veterans
5 Administration by Polly Hindman that were not
6 repaid?

7 A. That's correct.

8 Q. Have you been given any documentation to
9 indicate that the funds were, in fact, repaid, but
10 you choose to say that those funds -- those
11 documents don't substantiate?

12 A. The documents that you showed me don't tie back
13 to any reasonable proof that the funds actually went
14 to the VA.

15 Q. Okay. In your grand total of funds that you
16 are representing as misappropriated, have you
17 included approximately \$13,000 that relate to
18 so-called "pre-burial expenses"?

19 A. I have funds in December that were taken that
20 were labelled that were made out to Polly and
21 they're subject to this dispute about they went to
22 pay the funeral home.

23 Q. But in your grand total you've included those
24 funds as being misappropriated, haven't y

25 A. Yes, sir.

1 Q. Yes, you have?

2 A. Yes, sir, I have.

3 Q. Okay. Mr. Chastain, you sent to me by e-mail
4 what you represented to be documents used by you
5 consisting of bank statements, copies of checks, and
6 some memoranda that you used to conclude how much
7 money was taken from Betty Riddle, did you not?

8 A. I did. I believe everything I have in this
9 notebook is what I submitted.

10 Q. And you put them in the notebook?

11 A. Yes, sir.

12 Q. Mr. Chastain, I am holding in my hand copies of
13 the documents you sent to me. I have allocated them
14 by e-mail. I have added them up. And I represent
15 to you that the total of those items come to
16 \$47,776.34, and I hand it to you for your review.

17 A. Okay. Can you walk me through what items we're
18 talking about? I mean, what is this specifically?
19 These -- these are just checks. Not all these are
20 in my total.

21 Q. I beg your pardon?

22 A. Not all in my total. I didn't put anything in
23 until the month of September. So everything
24 prior -- all checks dated June, July, and August are
25 not in this.

1 Q. Well, in sending me your e-mails, you
2 represented that -- that that -- the attachments to
3 those e-mails were the documents that you reviewed
4 to come up with your conclusions of the amount
5 taken, did you not?

6 A. That's correct. And we met when I just started
7 digging into the work that had been sitting for a
8 couple of years. And I sent all that to you as a
9 professional courtesy because I was putting them
10 together in this format.

11 But you're adding up things that aren't in here
12 from materials in here that are not in the
13 calculations so they would be a reference point for
14 the Court to be able to see and because those are
15 all the documents I was asked to analyze, but I was
16 asked to start with the first month if you can ---

17 Q. Do you have any idea about the difference in
18 the documents you failed to send me compared to the
19 documents you did send?

20 A. No, sir. I sent you everything. You just
21 didn't -- you added up all the documents, and all
22 the documents are not added up in the report. We
23 only start with the month of September and then we
24 go forward to 2014.

25 MR. GADDY: I'm going to ask that these be

1 marked as exhibits for the defendant.

2 THE COURT: Any objection?

3 MS. HARRISON: None, Your Honor.

4 THE COURT: Okay.

5 (Defense Exhibit No. 2 entered into evidence.)

6 BY MR. GADDY:

7 Q. I do want to have you identify as having
8 previously been shown by me a photocopy of an e-mail
9 from a man named Paul Howell.

10 A. Yes, sir.

11 MS. HARRISON: Your Honor, I'm going to have to
12 object. I don't see how he can possibly identify an
13 e-mail that he did not send or receive.

14 THE COURT: Sustained.

15 MR. GADDY: You object?

16 MS. HARRISON: Of course.

17 MR. GADDY: I just ask that these be marked for
18 identification. I understand the Court has
19 sustained the objection of the Solicitor.

20 THE COURT: All right.

21 MR. GADDY: That's for identification.

22 THE COURT: All right.

23 (Defense Exhibit No. 3 marked for
24 identification.)

25 MR. GADDY: That's all the questions I have.

1 THE COURT: Okay. Anything else?

2 MS. HARRISON: Your Honor, just about four very
3 quick points.

4 REDIRECT EXAMINATION

5 BY MS. HARRISON:

6 Q. The information that Mr. Gaddy just gave you
7 concerning I believe July and August. Would that
8 increase or decrease the amount misappropriated?

9 A. It would have a higher likelihood that it would
10 increase it because there's one questionable
11 transaction in that amount.

12 Q. All right. Thank you. Did the numbers of
13 amounts misappropriated from Ms. Riddle include
14 Ms. Hindman transferring the house to her sister via
15 power of attorney?

16 A. The initial figure of the 337,000 did.

17 Q. Okay. But this final number we're bringing in
18 did not?

19 A. Because the house was signed back over.

20 Q. Correct. And, lastly, on this withdrawal and
21 his number six, this withdrawal was made on
22 December 18, 2012, is that correct, from the -- from
23 the savings account -- Wells Fargo savings account?

24 A. Yes.

25 Q. At that time, the checking account was just in

1 Ms. Riddle's name, correct?

2 A. Yes. And you'll note in my report though I
3 show the month that Lisa comes on that account in
4 December.

5 Q. To get those -- for Ms. Norris to get those
6 funds, wouldn't she have had to present the power of
7 attorney executed by Ms. Hindman to access them?

8 A. That would be the common practice to get on the
9 account.

10 MS. HARRISON: No further questions.

11 MR. GADDY: We have no further questions of
12 this witness.

13 THE COURT: All right.

14 MS. HARRISON: Your Honor, that would be the
15 State's case as far as the statute of restitution
16 owed.

17 THE COURT: Okay. Anything from the defense?

18 MR. GADDY: Our next witness will be Bob
19 Hindman.

20 THE WITNESS: (Approaching.)

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

24 THE WITNESS: I do.

25 THE CLERK: Please have a seat.

1 THE WITNESS: (Complying.)

2 THE CLERK: And will you state your full name
3 for the record?

4 THE WITNESS: Robert Lewis Hindman.

5 THE CLERK: Thank you.

6 ROBERT HINDMAN,
7 having been produced and first duly sworn as a
8 witness on behalf of the Plaintiff, then testified
9 as follows:

10 DIRECT EXAMINATION

11 BY MR. GADDY:

12 Q. State your name for the record.

13 A. Robert Lewis Hindman.

14 Q. And what is your connection with Polly Hindman?

15 A. My wife.

16 Q. How long have you been married?

17 A. Thirty-one years.

18 Q. Thirty-one years. Have you had a joint
19 checking account with your wife, Polly, at -- during
20 the year -- calendar 2012, 2013, 2014, or 2015?

21 A. Yes, sir.

22 Q. Do you know whether or not that joint account
23 being you and your wife together on the account,
24 correct?

25 A. Yes, sir.

1 Q. Do you know if the Veterans Administration sent
2 her a check each month for a number of months
3 representing Veterans benefits that to which Betty
4 Riddle was entitled?

5 A. (No response.)

6 MS. HARRISON: Your Honor, may we approach?

7 MR. GADDY: If he's familiar with this checking
8 account ---

9 MS. HARRISON: May we approach?

10 MR. GADDY: --- they went into the checking
11 account.

12 THE COURT: What? Come up.

13 (Sidebar discussion.)

14 BY MR. GADDY:

15 Q. Okay. Again, my question to you was -- or my
16 question to you now is, are you aware if Veterans
17 Administration came into a joint checking account of
18 you and your wife for several months?

19 A. Yes, sir. For several months.

20 Q. Are you aware that a separate checking account
21 was established in which the Veterans Administration
22 would send monthly benefits that were for the
23 benefit of Betty Riddle?

24 A. Yes, sir.

25 Q. By reason of being, would you say that you were

1 familiar with the checking -- these checking
2 accounts?

3 A. Yes, sir.

4 Q. By reason of your familiarity with these two
5 checking accounts, can you tell us if the benefits
6 received from the Veterans Administration and these
7 checking accounts was used by your wife for the
8 benefit of Betty Riddle?

9 A. Yes, sir.

10 Q. And when I say "benefit," what would be the use
11 of the funds?

12 A. Primarily to pay the nursing home.

13 Q. And which nursing home is that?

14 A. Pendleton Manor I believe is the name.

15 Q. And Betty Riddle is a patient or a resident of
16 Pendleton Manor; is that correct?

17 A. Yes, sir.

18 Q. Did there come a time when the Veterans
19 Administration sent several ben -- monthly benefits
20 at once to your wife?

21 A. Yes, sir.

22 Q. What transpired with respect to the spending or
23 allocation or disbursement of those benefits
24 received in a lump sum?

25 A. It -- it was back pay.

1 Q. I know they were back -- you're telling us they
2 were back paid. I'm asking you what was done with
3 the money?

4 A. Oh, we -- I think there was -- oh, no. There
5 was three payments made to Pendleton Manor. And
6 then my wife ---

7 Q. Have you and your wife prepared a binder with
8 documents which contain information relative to
9 these VA benefits and what was done with them?

10 A. Yes, sir.

11 Q. I present you with a binder with roughly 30 to
12 40 pages contained in the binder which is labelled
13 "Veterans Affairs with a pension received and
14 returned." It's also labelled "Number 5." Do you
15 see that?

16 ~~AND~~
A. Yes, sir.

17 Q. Did you and your wife together prepare that?

18 A. Yes, sir.

19 Q. What -- what is this related to?

20 A. This is the -- all of the money that we
21 returned back to the VA.

22 MR. GADDY: All right. We offer it into
23 evidence. I've previously given the Solicitor's
24 Office a copy.

25 THE COURT: Any objection?

1 MS. HARRISON: Oh, no, sir. Not at all.

2 THE COURT: It's admitted without objection.

3 Next exhibit.

4 (Defendant's Exhibit No. 4 received into
5 evidence.)

6 MR. GADDY: I pass that up to the Court, but
7 let me ask the witness a couple of questions.

8 BY MR. GADDY:

9 Q. Open it up. Open up exhibit -- Defendant's
10 No. 4.

11 A. (Complying.)

12 Q. What is the first page after the title page?

13 A. This is a check from Founders Credit Union
14 where we returned \$12,294 to the VA.

15 Q. It's a cashier's check issued by Founders
16 Federal Credit Union payable to the Veterans
17 Administration; is that correct?

18 A. Yes, sir.

19 Q. And it's for \$12,294?

20 A. Yes, sir.

21 Q. I show you a packet of seven pages and ask you
22 to identify it.

23 A. Yes, sir. Those were pages faxed directly to
24 me from the Veterans Administration showing where
25 they received money we sent to them and also where

1 we overpaid them.

2 MR. GADDY: We're going to offer it into
3 evidence. I previously ---

4 THE COURT: Let him finish his answer ---

5 MR. GADDY: --- showed it to opposing counsel.

6 THE COURT: --- Mr. Gaddy. Finish your answer.

7 THE WITNESS: The lady said that we overpaid
8 the VA by \$4.

9 MS. HARRISON: And I don't have no idea what
10 he's...

11 THE COURT: Show it to the opposing counsel.
12 Show it to her, Mr. Gaddy, so she can see what
13 you're talking about.

14 MR. GADDY: (Complying.)

15 MS. HARRISON: Your Honor, I'm going to have to
16 object to this because it doesn't look like it's a
17 full letter. Looks like it just one -- one page.

18 THE COURT: Well, that's not a basis for an
19 objection.

20 MS. HARRISON: But it's not -- it's not
21 complete. Okay. Sure. Let it in.

22 THE COURT: I guess without objection?

23 MS. HARRISON: Without objection.

24 (Defense Exhibit No. 5 was received into
25 evidence.)

1 BY MR. GADDY:

2 Q. I direct your attention to Defendant's Exhibit
3 5, the second page, and ask you to identify that,
4 please.

5 A. Yes, sir. That's from the Administration. If
6 I may read, we received two checks on this case, a
7 check for \$11,030 on 7/11/2014, and a check for
8 \$13,428 on 10/23/2014.

9 Q. All right. Is this a photocopy of an e-mail;
10 is it not?

11 A. I guess that's what that is. It was sent ---

12 MS. HARRISON: Your Honor, I'm going to have to
13 object.

14 THE COURT: Wait. Wait. What's the objection?

15 MS. HARRISON: Is the e-mail from or to

16 Mr. Hindman so he can authenticate it, or is this
17 something...

18 THE WITNESS: This was sent to my wife from ---

19 MR. GADDY: Wait a minute. Be quiet.

20 THE COURT: This is already in evidence ---

21 MS. HARRISON: Okay.

22 THE COURT: --- without objection.

23 MS. HARRISON: Your Honor -- okay.

24 THE COURT: Is there a question? Let's move
25 along.

1 MR. GADDY: I thought they were going to make a
2 statement, Judge. Excuse me.

3 THE COURT: No.

4 BY MR. GADDY:

5 Q. Directing your attention to page two of
6 Defendant's Exhibit 5. I was asking you to tell us
7 what it represents.

8 A. This represents where we repaid the VA, the
9 Veterans Administration, and this is from the VA
10 Pension Office.

11 Q. To? To?

12 A. To Polly Hindman. It's at the bottom there.

13 Q. Now, it refers to, quote, We received two
14 checks on this case. A check for \$1,130 on
15 7/11/2014 and a check for \$13,428 on 10/23/2014.
16 There is -- there is a date of July and a date of
17 October. Can you explain ---

18 A. Yes.

19 Q. --- the difference there, why the difference?

20 A. Well, because the first -- she had paid the
21 first check to Pendleton Manor, and then Ms. Norris
22 had told her that she was worried about -- I'm not
23 sure how to word it. There was \$339,000 missing
24 from Betty's account, and Ms. Norris had told my
25 wife that her ---

1 MS. HARRISON: Objection, Your Honor. Hearsay.

2 BY MR. GADDY:

3 Q. You really can't get into what Ms. Norris has
4 to say.

5 A. Well, we had -- the Court had ordered ---

6 Q. I'm not asking why you sent it back.

7 A. Oh.

8 Q. I'm asking you simply to tell us why one check
9 is under date of 1,000 -- one -- one check is under
10 date of July 11th and one check is under date of
11 October 23rd.

12 A. It was because no monies were spent. They
13 were -- my wife was worried about Betty becoming
14 noneligible by retrieving some money missing.

15 And when she retrieved the money that was
16 missing, we drove to Columbia and made those aware
17 of that, and my wife told them that she felt that
18 Betty was not eligible for this money anymore and
19 wanted to return it.

20 Q. That's not the answer to my question, but I
21 guess we'll stop with that particular inquiry.

22 You have heard testimony by Mark Chastain that
23 included in the amount that he says was
24 attributable, or a word of that effect, to your
25 wife, Polly Hindman, as coming from the Betty Riddle

1 checking account is an item for burial expenses.

2 A. Yes, sir.

3 Q. Are you familiar with your wife paying pre-
4 burial expenses for Betty Riddle?

5 A. Yes, sir.

6 Q. Have you and your wife prepared a brochure
7 which contains documents relating to the payment of
8 the pre-burial expenses?

9 A. Yes, sir.

10 Q. I show this to you and ask you to identify it.

11 MS. HARRISON: Your Honor, I'll allow all of
12 this to go in without objection.

13 THE COURT: I don't know what you're referring
14 to.

15 MS. HARRISON: This one that he's just handing
16 up.

17 THE COURT: All right. You can have it marked.
18 She's seen it. She doesn't object.

19 THE WITNESS: Yes, sir. That's where she paid
20 for Betty's cemetery side and the funeral side ---

21 MR. GADDY: Okay.

22 THE WITNESS: --- and pre-burial.

23 MR. GADDY: I've previously furnished this to
24 you. Do you have an objection?

25 MS. HARRISON: I'll allowed it into evidence.

1 MR. GADDY: There's been no objection ---

2 THE COURT: She has -- she has no objection,
3 Mr. Gaddy.

4 (Defendant's Exhibit No. 6 received into
5 evidence.)

6 BY MR. GADDY:

7 Q. I want you to go through this and tell the
8 Court what the various documents represent and why
9 they're relevant.

10 A. Well, these are contracts and deeds. Betty
11 wanted my wife to assist her with pre-burial. And
12 by doing so, this protected her ---

13 Q. Well, I'm going to -- I will make this move a
14 little bit faster. This -- this binder that you
15 have in front of you that which is labelled
16 Defendant's Exhibit 6, does it show what the
17 pre-burial expenses were?

18 A. Yes, sir. 12,286.37. And then by pre-burial
19 in the back, these are the new prices showing the
20 money saved by doing so as the cost for burial goes
21 up every day.

22 Q. What documents are in that binder which reflect
23 an acknowledgment by Woodlawn Memorial Gardens or
24 whatever they're called of these funds?

25 A. Well, there -- there -- there's checks and

1 there's deeds showing where those funds were paid.

2 Is that what you're asking?

3 Q. I'm asking you to tell us if there are any
4 documents in that binder which is acknowledgement or
5 receipts or contracts by Woodlawn indicating that
6 Woodlawn received these burial expenses?

7 A. Oh, yes, sir. Everything's in here. The
8 receipts ---

9 Q. Well, trying to tell us everything's in here.
10 Tell us what it is.

11 A. Well, here's a contract. Here's a schedule of
12 the single premium and where it was paid. Here's a
13 check to my wife from Betty to reimburse her for
14 these pre-need services.

15 Q. How much was the check for?

16 A. \$6,773.70.

17 Q. Is there a comment on the check about what it's
18 for?

19 A. Yes, sir. It says for funeral expenses.

20 Q. But there was no funeral, was there?

21 A. No, sir. It says under there pre-need
22 services.

23 Q. All right. Go ahead. Is there any other
24 copies of checks in that binder?

25 A. Here's a receipt from Woodlawn Memorial.

1 Here's another check for \$6,059.16 to my wife for
2 pre-need services.

3 Q. Who signed it?

4 A. Betty Riddle.

5 Q. All right. Now, why is Betty Riddle giving
6 your wife checks ---

7 MS. HARRISON: Objection, Your Honor.
8 Speculation.

9 MR. GADDY: --- when you testified that your
10 wife ---

11 THE COURT: Just let him ask it.

12 MR. GADDY: --- made pre-funeral
13 arrangements -- pre-burial arrangements with
14 Woodlawn?

15 THE WITNESS: When my wife took Betty down
16 there to pick out her things, her pre-needs, she
17 didn't have her checkbook, so my wife paid for it
18 out of our personal account and then was later
19 reimbursed by Betty.

20 BY MR. GADDY:

21 Q. Are you telling us that Betty Riddle went with
22 your wife to Woodlawn to make these arrangements for
23 a pre-burial ---

24 A. Yes, sir.

25 Q. --- situation?

1 A. Yes, sir. She wanted to pick her little rabbit
2 out and her little things that she wanted on her
3 marker.

4 Q. Okay. And you're saying that your wife used
5 her money or your money or both your monies together
6 to pay Woodlawn?

7 A. Yes, sir.

8 Q. And you're telling us that Betty wrote these
9 checks to reimburse your wife?

10 A. Yes, sir.

11 MR. GADDY: Okay.

12 THE WITNESS: If I may answer to your prior
13 question.

14 THE COURT: No. You just answer questions.

15 THE WITNESS: Okay.

16 BY MR. GADDY:

17 Q. I'm going to show you three binders which have
18 a text on the cover of each one and have been
19 labelled two, three, and four. Are you familiar
20 with those binders?

21 A. Yes, sir.

22 Q. Did you work with your wife and you and your
23 wife together prepare the material and place them in
24 the binders?

25 A. Yes, sir.

1 Q. Was this done in the last five or six days?

2 A. Yes, sir. It was changed. We already had
3 these records, but it was changed to make it look
4 nice. And that was my part to just stick things ---

5 Q. All right. But you and your wife did it
6 together?

7 A. Yes, sir.

8 Q. Before I show it to opposing counsel, what's
9 the purpose of the three binders which are labelled
10 two, three, and four?

11 A. Number two is for checks written by Betty
12 Riddle and/or Lisa Norris to Greenville County Tax
13 Collector.

14 Q. All right. How about number three?

15 A. Number three is written to Polly from Lisa
16 Norris or Betty for services performed and/or items
17 purchased at Betty's -- at Lisa's request.

18 Q. And the binder labelled four?

19 A. Number four is for checks written by Betty
20 Riddle -- Riddle or Lisa Norris to other people.
21 Total 13,821.86.

22 MR. GADDY: We're going to offer them into
23 evidence as separate exhibits, and we'll show them
24 to opposing counsel.

25 MS. HARRISON: Which -- Your Honor, we have

1 copies. No objection.

2 THE COURT: No objection.

3 (Defense Exhibit Nos. 7, 8, and 9 were received
4 into evidence.)

5 BY MR. GADDY:

6 Q. Directing your attention to binder two which
7 has been marked Defendant's Exhibit 7. Tell the
8 Court what that binder represents and what does it
9 contain?

10 A. It contains letters for Greenville County Tax
11 Collector -- I mean, bills paid to the Greenville
12 County Tax Collector, Duke Power Company, Greenville
13 Water, Comfort Keepers, to Betty herself, oral
14 pathology, and other medical entities, and Pendleton
15 Manor Assisted Living.

16 Q. What connection that -- does this incident have
17 to the claim as outlined by Mark Chastain?

18 A. It should be nothing to do with Polly. It's
19 8 -- 8,000 plus dollars was to pay for Betty's bills
20 and whatever.

21 Q. Are you telling us that checks were received by
22 your wife from either Lisa Norris or Betty Riddle
23 and the funds were used as indicated by the
24 documents in this exhibit?

25 A. No, sir. These were checks written directly

1 from Betty Riddle to these people. My wife's ---

2 Q. Tell us what they are.

3 A. Okay. Here's one for Green -- Greenville
4 County Tax Collector for \$784.82 signed by Bet --
5 signed actually Betty Riddle, and then under it Lisa
6 Norris POA.

7 MS. HARRISON: Your Honor, can I -- I'd like to
8 object. I think this has all been included in
9 Mr. Chastain's summary where he took those numbers
10 out in the third column.

11 THE COURT: Well, it's just argument, you know.

12 BY MR. GADDY:

13 Q. What is number -- what does binder number three
14 represent which is Defendant's Exhibit 8?

15 A. Now, these are actually written to my wife,
16 Polly, from Lisa Norris for Betty Riddle. And these
17 are services performed by my wife or items requested
18 by Betty or Lisa, included assisted living deposit
19 of \$1,000 where Lisa was working and asked my wife
20 to take the check and pay that; dentures, what was
21 given to my wife to pay the dentist; wheelchair,
22 given to my wife to pay for the wheelchair; checks
23 like that.

24 Q. All right. Take a look at Defendant's Exhibit
25 9, which has got the number four on the cover page.

1 What does it represent?

2 A. These were checks written by Betty Riddle or
3 Lisa to other people in the amount of \$13,821.86
4 that my wife composed because she had no idea who
5 these people are or what they were for. None of
6 these were written to my wife. These were just
7 other people.

8 Q. All right. Now, is it the position of your
9 wife ---

10 MS. HARRISON: Objection, Your Honor. He can't
11 testify ---

12 MR. GADDY: Let me get to the question, please.

13 BY MR. GADDY:

14 Q. Is it the position of your wife that all the
15 money that she had received from Lisa Norris
16 relating to Betty or from Betty Riddle herself were
17 all for the benefit of Betty Riddle?

18 A. Yes, sir.

19 MS. HARRISON: Objection, Your Honor.

20 THE COURT: Sustained.

21 MS. HARRISON: He can't testify.

22 THE COURT: I'm not going to let him testify to
23 her state of mind. She can get up and testify to
24 it.

25 MR. GADDY: Okay.

1 THE COURT: I'm giving wide latitude in what
2 I've allowed him to testify to. Let's move along.

3 BY MR. GADDY:

4 Q. Okay. After listening to the testimony of Mark
5 Chastain and participating in the preparation of
6 these binders which have been introduced into
7 evidence, can you tell us whether or not the various
8 items reflected in the binders are also included in
9 these totals testified to by Mark Chastain.

10 A. Yes, sir.

11 THE COURT: Sustained. You can't pit
12 witnesses. He hasn't been qualified as an expert.
13 This is way beyond the scope of his knowledge.

14 MR. GADDY: That's all, Judge.

15 THE COURT: Cross?

16 MS. HARRISON: Yes, sir.

17 CROSS-EXAMINATION

18 BY MS. HARRISON:

19 Q. Mr. Hindman, you're referring to the joint
20 checking. That's the checking account at SunTrust
21 bank?

22 A. Yes, ma'am.

23 Q. Okay. So you were aware the whole time when
24 the Veterans checks were coming to your joint
25 checking account that those were to be used for

1 Ms. Riddle?

2 A. Yes, ma'am.

3 Q. You were aware of that the entire time?

4 THE COURT: Well, wait. Before you answer that
5 question, I want to tell you that you have a
6 right -- I believe where she's going is that
7 those -- wait a minute -- that those funds are
8 misappropriated and they have resulted -- they are
9 part of the evidence presented that resulted in a
10 conviction for your wife.

11 So at this point, I want you to understand that
12 you have a right to remain silent. I think she is
13 heading towards asking you whether or not you have
14 been involved in a crime. Do you understand?

15 THE WITNESS: Yes, sir.

16 THE COURT: Okay. Do you want to answer the
17 question or assert the Fifth Amendment?

18 THE WITNESS: I will assert the Fifth
19 Amendment, Your Honor.

20 THE COURT: Okay.

21 BY MS. HARRISON:

22 Q. Now, you also stated under oath that you were
23 present when the checks to repay the VA were issued
24 by Heritage Federal Credit Union?

25 A. Founders.

1 Q. Founders Credit Union. You were present when
2 those were issued?

3 A. Yes, ma'am. That was my credit union, and we
4 had went to get that one big lump sum to save money.

5 Q. What account did that come from?

6 A. I'm sorry?

7 Q. I said what account did the amount come from,
8 the -- whichever amount you're referring to, the
9 12,000?

10 A. That -- that was the VA money for Betty.

11 Q. Yes, sir. But what -- the question I'm asking
12 you is, where did the money come from to get this
13 cashier's check?

14 A. I'm not sure which -- which account that came
15 from.

16 Q. Do you have several accounts at Founders
17 Federal Credit Union?

18 THE COURT: Show him the check and then talk
19 about it.

20 MS. HARRISON: Okay.

21 THE COURT: Let him identify the bank that
22 issued it.

23 BY MS. HARRISON:

24 Q. This it at Founders Federal Credit Union.
25 Where did that money come from to get the cashier's

1 check?

2 A. To the cashier's check. It -- it came out of
3 one of our accounts, either the -- our joint account
4 or Betty's account.

5 Q. Okay.

6 A. I'm thinking it was ---

7 Q. All right.

8 A. Gosh. I don't know which account.

9 THE COURT: How many accounts do you have over
10 there?

11 THE WITNESS: We -- we have -- to my knowledge
12 now, I think we only have -- or at that time our
13 joint account and an account, Betty's and my wife's,
14 for the VA money.

15 Q. Mr. Hindman, what -- what bank are we talking
16 about? Are we talking about Founders Credit Union
17 or are we talking about SunTrust Bank?

18 A. SunTrust. Oh, and I've had an account with
19 Founders. That's ---

20 Q. You did have an account with Founders or not?

21 A. I have a savings account with Founders.

22 Q. Okay. Did this money come out of your savings
23 account with Founders?

24 A. No, ma'am.

25 Q. Okay. So your testimony under oath ---

1 A. Yes.

2 Q. --- is this money either came out of the
3 SunTrust account that your wife set up specifically
4 for the VA funds, or it came out of your joint
5 checking account at SunTrust?

6 A. To the best of my ability, it came out ---

7 Q. Not to the best of your ability.

8 THE COURT: Let him answer the question.

9 THE WITNESS: My wife handles the banking. I'm
10 sorry. This was my Founders.

11 MR. GADDY: If I might say so ---

12 THE COURT: Whoa, wait a minute. Wait a
13 minute. Do you have an objection?

14 MR. GADDY: No.

15 THE COURT: Okay. Answer the question.

16 THE WITNESS: My wife handles the banking, so
17 I -- you know, I trust her and I let her handle the
18 banking.

19 BY MS. HARRISON:

20 Q. All right. So your testimony is you don't know
21 anything that's going on in your checking accounts?

22 A. No. Not at all.

23 Q. Okay. So when you presented all these binders
24 to the Court as being fair and accurate, you really
25 don't know if they're fair and accurate, do you,

1 because you don't have any access or any input on
2 checking accounts?

3 A. Yes, sir. I saw -- yes, ma'am. I saw all the
4 checks and everything.

5 Q. So then you did see your bank statements?

6 A. I saw what was all in here. I don't know --
7 there's a lot of stuff there. I can't differentiate
8 here and here. She's the bookkeeper.

9 Q. Would you be surprised if I told you there is
10 not a \$12,000 check coming out of your joint
11 checking account?

12 A. No.

13 Q. Would you be surprised if I told you there's
14 also no \$12,000 check coming out of the single
15 account for the VA?

16 A. No, I wouldn't.

17 Q. Okay. So where's -- when you saw this check
18 getting made out, where'd the money come from? If
19 it didn't come from your joint account and it didn't
20 come from the separate account, where'd it come
21 from?

22 A. It could've come out from cash at the house.

23 Q. Cash at the house?

24 A. Yes.

25 MS. HARRISON: Thank you. Your Honor, I don't

1 have any further questions.

2 THE COURT: Well, I do. The cash at the house,
3 where'd that come from?

4 THE WITNESS: I -- I keep a lot of cash because
5 of tractor shows and this and that.

6 THE COURT: Well, where does the cash come
7 from? I don't know why you keep it, but where does
8 the cash come from?

9 THE WITNESS: Our bank account. I get my VA
10 check every month, and we go down and draw cash out.
11 We don't always write checks. We don't trust a
12 bank, so we usually ---

13 THE COURT: All right.

14 THE WITNESS: --- pay everything in cash.

15 THE COURT: On your examination, your direct
16 examination, I've been told about this -- can I look
17 at that document, please?

18 This is the cashier's check for the record
19 that's being talked about, the \$12,294 issued by
20 Money Gram Payment Systems in Minneapolis,
21 Minnesota. We'll make this a Court's exhibit.

22 You testified that this -- you're saying this
23 amount is paid -- was money to pay back the VA; is
24 that right?

25 THE WITNESS: Yes, sir. That was one of those



1 checks.

2 THE COURT: And then you testified on direct
3 that there was another check for the amount of
4 \$1,130; is that right?

5 THE WITNESS: Yes, sir.

6 THE COURT: And you testified there was another
7 check in the amount of \$13,428; is that right?

8 THE WITNESS: Yes, sir.

9 THE COURT: Only \$20,340 were misappropriated,
10 and you're saying you paid back \$36,852?

11 THE WITNESS: No, sir. We only overpaid by \$4.

12 THE COURT: Here. This is a Court's exhibit.

13 (Court's Exhibit No. 1 was received into
14 evidence.)

15 THE COURT: Do you have any other questions of
16 this witness?

17 MR. GADDY: I have ---

18 THE COURT: One other thing. No, I don't.

19 Okay. You got anymore questions?

20 THE GADDY: I have one on redirect.

21 THE COURT: All right. One. Go.

22 REDIRECT EXAMINATION

23 BY MR. GADDY:

24 Q. Were you with your wife when you went to
25 Frontier [sic] and bought this cashier's check

1 payable to the VA, a copy of which has been
2 introduced into evidence?

3 A. Yes, sir. I'm almost certain I was at
4 Founders.

5 MR. GADDY: All right. That's all the
6 questions I have.

7 THE COURT: Okay. You can stand down.

8 (Witness excused.)

9 MR. GADDY: Well, we're going to call Polly
10 Hindman.

11 THE COURT: All right. Let's go. Let's get it
12 going.

13 (Defendant approached.)

14 THE CLERK: Place your left hand here and raise
15 your right hand.

16 THE DEFENDANT: (Complying.)

17 THE CLERK: Do you swear or affirm to tell the
18 truth, the whole truth, and nothing but the truth so
19 help you God?

20 THE DEFENDANT: I do.

21 THE CLERK: Please have a seat.

22 THE DEFENDANT: (Complying.)

23 THE CLERK: Will you state your full name for
24 the record?

25 THE DEFENDANT: Polly ---

1 MR. GADDY: Polly ---

2 THE DEFENDANT: --- Polly Hindman.

3 THE CLERK: Thank you.

4 POLLY HINDMAN,

5 having been produced and first duly sworn as a
6 witness on behalf of the Defendant, then testified
7 as follows:

8 DIRECT EXAMINATION

9 BY MR. GADDY:

10 Q. Ms. Hindman, your sister is Betty Riddle; is
11 that correct?

12 A. Yes, sir.

13 Q. She's -- matter of fact, she's your
14 half-sister?

15 A. Yes, sir.

16 Q. She's roughly 20 years older than you are?

17 A. Yes, sir. A little -- maybe a little older
18 than 20 years.

19 Q. All right. Do you have another sister named
20 Lisa Norris?

21 A. Yes, sir.

22 Q. What?

23 A. Yes, sir.

24 Q. Do you recall when the husband of Betty Riddle
25 died?

1 A. Around July 2011.

2 Q. All right. Tell the Court how you became
3 involved with obtaining funds from either -- well,
4 obtaining funds from ---

5 MS. HARRISON: Your Honor, I'm ---

6 THE COURT: This is a restitution hearing.
7 We're here to determine the amount of money that she
8 owes, so let's cut right to the chase.

9 MR. GADDY: Okay.

10 THE COURT: And if you've got problems with
11 what the State has presented, you need to get into
12 that and get into it in a hurry.

13 MR. GADDY: All right. I'm glad to, Judge.

14 BY MR. GADDY:

15 Q. You and your husband have prepared six -- five
16 different binders, and what do those binders and
17 summaries show?

18 A. Yes, sir.

19 Q. I said what do they show?

20 A. It categorizes the checks and stuff I -- that
21 we received through discovery. It separates them
22 out -- the funeral, from the VA, from checks that
23 Lisa or Betty wrote to pay for other gas truck --
24 gas -- grass cutters to come in, sitters, or pay
25 Betty's power bill, water bill. They're all

1 separated out.

2 Q. Okay. These binders contain copies of checks
3 received by you from your sister Betty and also your
4 sister Lisa?

5 A. Yes, sir.

6 Q. Were any of these checks for -- let me withdraw
7 that. Were all of the checks for items or services
8 that you purchased either at the request of Betty or
9 at the request of your -- or your sister for Betty?

10 A. Yes, sir.

11 Q. Did you receive funds from Lisa or Betty that
12 you used to pay the expenses or debts or whatever of
13 Betty or two third parties?

14 A. No, sir.

15 Q. You didn't?

16 A. I didn't receive any -- I never paid Betty's
17 bills.

18 Q. Some of the binders have checks payable to
19 places like Duke Power and the Greenville Tax
20 Collector.

21 A. Yes, sir.

22 Q. And so why is that?

23 A. They were sent to Jim.

24 Q. What?

25 A. They were -- they were sent to Jim O'Connell

1 through discovery. The Solicitor's Office sent them
2 to Jim through discovery against me.

3 Q. You're saying that you don't -- didn't have
4 anything to do with checks going to third parties?

5 A. No, sir, I didn't. Only to the funeral home --
6 to the funeral home for burial expenses.

7 Q. We'll get into that. You did hold a power of
8 attorney from your sister Betty, did you not?

9 A. Yes, sir.

10 Q. Did you ever use that power of attorney to
11 obtain any kind of funds from any checking or
12 savings account of your sister Betty?

13 A. No, sir.

14 THE COURT: Look, the jury has spoken. She has
15 been convicted.

16 MR. GADDY: Right.

17 THE COURT: We're not going to retry the case.
18 This is about the amount of money that's been
19 misappropriated.

20 MR. GADDY: All right. We'll move on.

21 BY MR. GADDY:

22 Q. Included in an amount which the witness Mark
23 Chastain concluded has been taken was a sum that
24 were named in checks from Betty Riddle to you.

25 A. Yes, sir.

1 Q. Can you explain why Betty Riddle wrote you
2 checks for these sums with respect to burial
3 expenses?

4 A. Yes, sir. I went to Woodlawn Memorial Gardens.
5 That's where her husband's buried to just -- to make
6 her pre-needs arrangements at her request. And we
7 paid to have those done. We picked out her casket,
8 her marker. It's all in the booklet -- booklet.

9 It's irrevocable. I had it irrevocable so I
10 couldn't get the money, Betty couldn't get the
11 money, the funeral home can't get the money. The
12 only time those funds are used is when she's buried.

13 Q. Well, just let's stick to -- just stick to the
14 fact that you did write personal checks to Woodlawn.

15 A. Yes, I did.

16 Q. Did Betty reimburse you for those personal
17 checks?

18 A. Yes, sir.

19 Q. I'll show you Defendant's Exhibit 6, which has
20 been labelled "Total paid for pre-needs expenses."
21 Do you see that?

22 A. Yes, sir.

23 Q. I want you to open it up and see if there's any
24 contracts in there that relate and say the services
25 or whatever is going to be furnished to Betty

1 Riddle.

2 A. This benefit summary says "Benefit summary for
3 Betty M. Riddle," and it has her policy number, date
4 of birth ---

5 Q. All right. Keep going to other pages.

6 A. Okay. You want the contract where it was paid?

7 Q. I just want you to tell us what pages you find
8 that indicate that the funds were being paid for
9 Betty Riddle.

10 A. It says right here our -- our insurance policy
11 was issued on December the 20th, 2012, for Betty M.
12 Riddle, purpose of funding a prearranged funeral for
13 Betty M. Riddle. The benefit has been assigned to
14 Woodlawn Memorial Funeral Home to fund services
15 provided by the arranged funeral service agreement.

16 Q. All right. Thank you. I want to direct
17 your attention to this matter of Veterans
18 Administration funds being returned.

19 Why -- did you have anything to do with funds
20 coming from the Veterans Administration for benefits
21 of your sister Betty Riddle?

22 A. I was told that Betty only had like 12- or
23 \$13,000 in the bank account.

24 Q. What's it got to do with you?

25 A. I was helping with Betty's healthcare and I

1 knew her husband was an Army veteran, and I knew
2 that the VA does offer widow's pensions to help with
3 nursing home payments. So I went to the Veterans
4 Administration and applied for her to get her
5 widow's pension so that we could help Lisa pay her,
6 you know, funeral -- not funeral, but her nursing
7 home bill every month which was like \$3500.

8 And \$1130 paid part of that, and then Lisa took
9 the social security and Leonard's pension to pay the
10 rest. That's how I got involved, to get her widow's
11 pension. And it's only for people that don't have a
12 certain amount of money in their bank account.

13 Q. What -- how did -- were Veterans Administration
14 benefit checks sent to you as opposed to Betty?

15 A. They were sent -- I was appointed the fiduciary
16 for the VA for Betty Riddle. They came to the
17 nursing home and met with me and her and my husband
18 and appointed me as the fiduciary.

19 Q. Let's move -- let's move along. Were any
20 Veterans Administration benefits received by you and
21 went to the joint checking account of you and your
22 husband?

23 A. Yes, sir. That's where the VA told me to send
24 it until we could get an account open for her.

25 Q. So for a number of months, the VA benefit went

1 to a joint checking account of you and your husband;
2 is that correct?

3 A. Yes.

4 Q. Did you open up a separate checking account
5 with respect to VA benefits?

6 A. Yes, sir.

7 Q. And did funds from the VA go into the separate
8 checking account that were solely for VA benefits?

9 A. Yes, sir.

10 Q. Did there come a time when you felt that the --
11 that the VA should be reimbursed for funds sent?

12 A. Yes, sir, I did.

13 Q. What caused you to come to that conclusion?

14 A. Umm -- I got a phone call and said that
15 Mr. Riddle was taking out a lawsuit against us, and
16 he's the one that had her CDs. And the -- the Court
17 made him return the CDs, then that made her
18 ineligible.

19 And the VA knew about those funds not being
20 there for her to tap into. They -- I told them from
21 the very beginning that she had CDs, but she could
22 not use them. And that's why they approved her for
23 the VA funds.

24 And when I found out, I sent them a copy of the
25 summons and the court order so that they would see

1 that her money had been returned and we didn't need
2 the money.

3 Q. Well, that's all very interesting, but what
4 caused you to send money back to the VA?

5 A. Because they would've held me responsible for
6 paying -- paying the money back to them if I had use
7 it knowing that Betty had a large sum of money.

8 Q. Give us the procedure followed by you in
9 returning funds to the VA?

10 A. I sent them several -- I started sending them a
11 letter and telling them what was going on and told
12 them that I wished to be withdrawn as her fiduciary,
13 and I sent several letters.

14 And then I started sending -- they sent a back
15 paycheck for \$12,290 -- whatever the amount was --
16 292. They sent it in a check form. They did not
17 put in my account or Betty's account. It was sent
18 by check. And that's how I got my check -- my
19 cashier's check.

20 Q. What do you mean you got your -- that's how you
21 got your cashier's check?

22 A. The cashier's check at Founders, they give it
23 to us for free. Instead of charging us to make out
24 the cashier's check to send back to the VA. The VA
25 didn't want their money back. They told me to wait.

1 Q. Well, forget about what the VA wants. I want
2 to know what you did. So you took a VA check to
3 Founders. Is that what you're telling us?

4 A. I took cash money or a VA check to Founders and
5 got a certified check.

6 Q. There's a difference between cash money and a
7 check.

8 A. I don't remember what it was, Mr. Gaddy. It's
9 been five years this has been going on. It's -- I
10 took money to the Founders and got a certified
11 check, and took the check that they sent me into
12 Betty's account.

13 They -- and that's how come it comes up to
14 \$13,000. The 12,000 back pay, retro -- retroactive
15 pay, plus \$1130 check that was deposited into her --
16 our, mine and her, bank account. I took them both
17 and got certified checks, and that's why it comes up
18 to an uneven number.

19 And they kept sending checks monthly, and
20 that's why I sent them back like I did as they sent
21 them to me.

22 Q. All right. Have you tried to get records from
23 the VA to -- relating to what you're telling us
24 about sending money back?

25 A. Yes, I have. And I have got records.

1 Q. Did you enlist the help of Senator Graham
2 dealing with the VA?

3 A. Yes, I did.

4 Q. And did Senator Graham's office give you a copy
5 of an e-mail that related to checks that have been
6 sent to the VA by you?

7 A. Yes, he did. From the Philadelphia Pension
8 Office. He got me an e-mail sent directly to him.

9 MR. GADDY: That's all.

10 MS. HARRISON: Just a few questions.

11 CROSS-EXAMINATION

12 BY MS. HARRISON:

13 Q. Ms. Hindman, I heard you testify earlier that
14 you didn't know about the CDs.

15 A. I knew about the CDs, but I knew that Harvard
16 -- Lisa told me that Harvard Riddle had taken them
17 out and put them in his name.

18 Q. Okay. Do you -- do you remember going to BB&T
19 and trying to get that money?

20 A. No. I did not go to BB&T and try to get any
21 money. I went with Lisa because Lisa -- they wanted
22 me off the power of attorney. They said only one of
23 us could be on it. I've never handled her banking
24 account, never.

25 I know I was found guilty, but I would never

1 touch her bank account, never. I only used her
2 power of attorney to do her healthcare and take care
3 of her.

4 Q. And binder number one for these pre-needs
5 expenses, why don't any of the check amounts match
6 up?

7 A. They always gave me extra money for gas and my
8 time because I drove from Easley several days in a
9 row to Greenville to take care of Betty, bring her
10 hot dogs, and food. That's why.

11 Q. All right. So when you wrote the check to WPM
12 for 56.72 on the 18th, and Ms. Riddle on the 18th
13 reimbursed you, she reimbursed you more?


14 A. Yes, she did. She always gave me more money
15 for gas.

16 Q. And this was the day before you had her
17 committed to ---

18 A. That was not ---

19 Q. --- Marshall Pickens?

20 A. --- planned. We did the burial because Betty
21 wanted us to. She got sick the next day and got a
22 knife after Lisa and chased her out of the house is
23 the only reason we had to call the doctor to get her
24 some help because she was -- she was upset with
25 Lisa.



1 Q. The contract you brought us is for \$6,706; is
2 that correct? This page right here (indicating)?
3 You've got it right here (indicating).

4 Does that amount add up to any checks that have
5 been issued? Is it possible that this -- these
6 payments were not for Ms. Riddle's funeral?

7 A. They were for Ms. Riddle's burial. Why -- they
8 were for Ms. Riddle's burial.

9 Q. Is the only -- is it true if you go through
10 this binder the only thing that references pre-needs
11 is your handwritten on the back of the check where
12 it says "pre-need services" on the back of the
13 check?

14 A. It's on the front of the check too. It says
15 "funeral care" ---

16 Q. Correct.

17 A. --- on the -- on the checks.

18 Q. But the con -- but the contract from America
19 Memorial?

20 A. It's to Betty. These are ---

21 Q. It's a single premium whole-life, irrevocable?

22 A. What are you talking about?

23 Q. Well, you put this together. Look under
24 number -- the first tab.

25 A. It's for pre-needs.

1 Q. Look at -- under American Memorial Life
2 Insurance Company. Who's the beneficiary?

3 A. I'm the beneficiary because of Betty. I had to
4 be.

5 Q. That's all I needed ---

6 A. I signed. ---

7 Q. That's all I needed to know.

8 THE DEFENDANT: Your Honor, these are for
9 Betty. I can't be buried next to her husband. It's
10 proof right here it's irrevocable. If I wanted the
11 money, I wouldn't have initialed irrevocable.

12 MS. HARRISON: Well, Your Honor, it's ---

13 THE COURT: All right. Go ahead. Next
14 question.

15 BY MS. HARRISON:

16 Q. Okay. Now, you also issued all these powers of
17 attorney, correct?

18 A. I did what?

19 Q. You witnessed and you were the notary on
20 several of these powers of attorney?

21 MR. GADDY: Now, Your Honor ---

22 THE COURT: Why are -- why are we going there?

23 MS. HARRISON: Because she had to have ---

24 THE COURT: This is about the amount of money
25 owed.

1 MS. HARRISON: Because without the power of
2 attorney, Lisa Norris could not have accessed the
3 checking accounts or these savings accounts.

4 THE COURT: As you have pointed out, it's joint
5 and severable.

6 MS. HARRISON: Yes, Your Honor. It's joint and
7 severable.

8 BY MS. HARRISON:

9 Q. All right. Now, Ms. Hindman, the money for the
10 VA, what did you do with the lump-sum payment?

11 A. It was returned in a certified check.

12 Q. Initially. Initially. Initially. When you
13 received the lump-sum payment, where did it go?

14 A. It went in my drawer because we were told they
15 were bringing a lawsuit against us.

16 Q. Okay. So you never cashed that check?

17 A. I cashed the check.

18 Q. Then what happened ---

19 A. It stayed in my drawer.

20 Q. Okay. Then what happened with the money?

21 A. The money, nothing happened with it. It went
22 into a certified check. We don't have that kind of
23 money laying around.

24 Q. Okay. Let me just make sure I follow you.

25 Okay. So when you got the check from the VA for

1 the 12 ---

2 A. I held the money for a -- but the VA told me
3 they didn't want the money returned.

4 Q. Ma'am, it's an -- it's an easy question. What
5 did you do with the check?

6 A. It stayed in my drawer.

7 THE COURT: Let -- let her -- hang on a minute.

8 THE DEFENDANT: I'm telling you ---

9 THE COURT: Ms. Hindman, let her finish the
10 question.

11 BY MS. HARRISON:

12 Q. Okay. After it stayed in your drawer for an
13 undetermined length of time, what happened to the
14 check? Was the check returned to the VA? Did you
15 cash the check? Did you deposit the check?

16 A. I did not deposit the check. It was returned
17 to the VA in a certified check form.

18 Q. All right. But, Ms. Hindman, at some point the
19 funds would've had to been converted from a check to
20 you from the Veterans Administration to a
21 certified ---

22 A. I cashed the check. I told you once. The
23 check was cashed and put in -- in my drawer.

24 Q. So you put the cash from the VA check in your
25 draw?

1 A. Yes, I did until they would tell me what to do
2 with the money. They didn't want it back.

3 Q. That's all I needed to know, that you cashed
4 the VA check.

5 A. I did not spend the VA check. They have all
6 their money.

7 Q. I didn't ask that. I asked if you cashed it.

8 A. We've overpaid the VA.

9 Q. Did you cash the Veterans Administration check?

10 A. I told you ---

11 THE COURT: That is asked and answered.

12 MS. HARRISON: All right. Thank you. That's
13 all we've got.

14 MR. GADDY: Just one final question.

15 REDIRECT EXAMINATION

16 BY MR. GADDY:

17 Q. Is it your position that the totals testified
18 to by Mark Chastain include items which are
19 described in the various binders that were prepared
20 by you and your husband introduced into evidence?

21 A. Yes, sir.

22 MR. GADDY: That's all.

23 THE COURT: All right. You can step down.

24 MR. GADDY: Wait a minute. May she come down?

25 THE COURT: Yeah, I told her to.

1 (Witness excused.)

2 MR. GADDY: Your Honor, I have prepared a
3 memorandum that summarizes our case.

4 THE COURT: Hand it madam clerk.

5 MR. GADDY: I've given this to you before.

6 THE CLERK: I'll take it. Thank you.

7 MR. GADDY: That concludes the defendant's
8 case, Your Honor.

9 THE COURT: You have anything in reply?

10 MS. HARRISON: Nothing, sir. I think the facts
11 speak for themselves.

12 THE COURT: Well, here's my problem. At trial,
13 someone said that BB&T was the loser, it was the
14 bank involved. Everything that Mr. Chastain
15 testified to was Wells Fargo.

16 At the trial, it was the conclusion of the
17 trial, Ms. Kimberly Thomason testified that the
18 total amount taken based on, I presume, this
19 forensic accounting was 138,000, and that the other
20 defendant had entered into an agreement to pay back
21 50,000 and that 88,000 was outstanding.

22 MS. HARRISON: Your Honor, that's been --
23 that's pretty much correct. And those ---

24 THE COURT: That is correct. It's in the
25 transcript.

1 MS. HARRISON: Yes, Your Honor. And that would
2 add up with Mr. Chastain's numbers.

3 THE COURT: Well, actually it doesn't. But
4 Mr. Chastain, in his 139,697.42 has already deducted
5 the 12,500 restitution payment. So I'm not clear
6 what's going on, but I'm going to find for the
7 benefit of the defendant and order that she pay
8 \$88,000 in restitution. Find that as the amount.

9 Is there anything else with respect to
10 sentencing because sentencing was deferred?

11 MS. HARRISON: Nothing from the state, Your
12 Honor.

13 THE COURT: Can you call and tell somebody --
14 we've got to have somebody from probation. There's
15 nobody here.

16 THE CLERK: (Complying.)

17 THE COURT: Anything you want to tell me about
18 her sentencing? She can get five years in prison.
19 I'll send her to prison for five years, she won't
20 owe anything. How about that? The time will
21 satisfy the money. Is that what y'all want?

22 MR. O'CONNELL: May it please the Court?

23 THE COURT: Yeah, what do you want to tell me?

24 MR. O'CONNELL: As her previous attorney, I've
25 known Polly for other 30 something years. And I

1 believe her. She didn't take no money. We showed
2 at the hearing that the amount was 16,000. She
3 paid ---

4 THE COURT: Well, I tell you what you do with
5 that. You don't believe that, you can file an
6 appeal and that's fine.

7 MR. O'CONNELL: Okay.

8 THE COURT: I can solve the money owed issue
9 and put her in prison.

10 MR. O'CONNELL: Other than that, Your Honor ---

11 MR. GADDY: Your Honor, Lisa either agreed to
12 or somehow worked out a deal with the Solicitor's
13 Office. She paid, my information is, \$47,000. That
14 should be subtracted from any money that Lisa should
15 be found owing.

16 THE COURT: Well, that's what I've done.
17 That's what I said. Fifty thousand is what
18 understood it was.

19 MS. HARRISON: Correct.

20 THE COURT: Why shouldn't I put her in prison?
21 Somebody tell me that.

22 MS. HARRISON: Your Honor, it's the State's
23 position that you should. I think what's happened
24 is horrible.

25 THE COURT: Okay.

1 MR. O'CONNELL: Your Honor, again, I believe
2 she has no other record. Nothing was done. The
3 other defendant got five years probation, and she
4 was only ordered to pay back \$12,500.00 if my math
5 is correct.

6 THE COURT: Fifty thousand. Fifty. Doesn't
7 she owe another 38?

8 MS. HARRISON: She does and they're working it
9 out. Mr. Eppes is working it out with defense -- I
10 mean, excuse me, civil counsel.

11 MR. O'CONNELL: Your Honor, no other records or
12 same as the other party got five years of probation.

13 THE COURT: She spend any time in jail?

14 MS. HARRISON: One day.

15 THE COURT: Anything you want to tell me?

16 THE DEFENDANT: Your Honor, I didn't have
17 access to that bank account to get that kind of
18 money. Lisa had the ATM card. I didn't -- I never
19 went to the bank and got funds with a power of
20 attorney.

21 I don't know where -- where this is coming
22 from. They haven't -- I mean, can't -- don't they
23 have to prove I actually got this kind of money?
24 The VA was paid back. I bought her burial. It's
25 not for my benefit. It was for Betty's. I only got

1 \$4,800.

2 THE COURT: Ma'am, I'm talking about whether or
3 not to send you to prison.

4 THE DEFENDANT: Okay.

5 THE COURT: Anything you want to tell me about
6 that?

7 THE DEFENDANT: No, sir.

8 THE COURT: The jury has spoken. We went
9 through this trial and the jury spoke.

10 THE DEFENDANT: I'm innocent.

11 THE COURT: Huh?

12 THE DEFENDANT: I'm innocent.

13 THE COURT: No, you're not. You're guilty.
14 Simple as that.

15 THE DEFENDANT: Well, how am I going to find a
16 job to pay the money back? I'm considered a felon
17 now and nobody will hire me.

18 THE COURT: Five years; provided upon 90 days
19 in the Home Incarceration Program; the balance is
20 suspended to five years of probation; restitution
21 pursuant to the order in the amount of \$88,000;
22 twenty days of public service; random drug and
23 alcohol testing.

24 I guess we'll just have to hold her until
25 probation gets here.

(The proceedings concluded at 1:25 p.m.)

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THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM GREENVILLE COUNTY
COURT OF GENERAL SESSIONS

Edward W. Miller, Circuit Court Judge

Case No.: 2015-GS-23-01563 and 2014A-2330210136

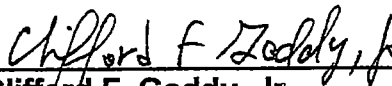
State of South Carolina.....Respondent

Polly McAbee Hindman.....Appellant

NOTICE OF APPEAL

Defendant Polly McAbee Hindman appeals the Order of Circuit Judge Edward W. Miller filed on November 8, 2017 and received by the Appellant on November 30, 2017.

December 4, 2017


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

Other Counsel of Record:

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139 Grace Drive
Easley, South Carolina, 29640
(864) 220-0005
Attorney for Appellant

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13th Circuit Solicitors Office
305 East North Street, Ste. 325
Greenville, SC 29601
(864) 467-8647
Attorney for Respondent

The South Carolina Court of Appeals

The State, Respondent,

v.

Polly McAbee Hindman, Appellant.

Appellate Case No. 2017-000635

The Honorable Edward W. Miller
Greenville County
Trial Court Case No. 2015GS2301563

ORDER

Appellant's counsel filed a motion to dismiss the appeal. Appellant consented. The motion is Granted. Accordingly, this appeal is dismissed. The remittitur will be sent as provided by Rule 221(b), SCACR.

FOR THE COURT

BY V. Claire Allen, Deputy
CLERK

Columbia, South Carolina

cc:
Clifford F. Gaddy, Jr., Esquire
John Benjamin Aplin, Esquire
Alan McCrory Wilson, Esquire
William Walter Wilkins, III, Esquire

FILED
Aug 29 2018

FORM 5

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF GREENVILLE)

Polly McAbee Hindman, Applicant)

2018-CP-23- 05668

ENTERED COMPUTER

v.)

APPLICATION FOR

State of South Carolina)

POST-CONVICTION RELIEF

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: Applicant is not incarcerated.
2. Name and location of Court which imposed sentence: Court of General Sessions, Greenville, SC

Revised 3/2003

15 NOV 6 PM 3:45
PULASKI COUNTY, SC

3. Name(s) of co-defendant(s) (if any): Leisa Norris
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2015-GS-01563
 - (b) _____
 - (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) February 17, 2017. Sentence was 5 years suspended upon 90 days in the Home Incarceration Program, the balance suspended to 5 years probation.
 - (b) _____
 - (c) _____
6. Check whether a finding of guilty was made:
 - (a) after a plea of guilty ___
 - (b) after a plea of not guilty X
 - (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. South Carolina Court of Appeals
 - ii. _____
 - iii. _____
 - (b) the result in each such Court to which you appealed:
 - I. Appeal was withdraww on August 21, 2018
 - ii. _____
 - iii. _____
 - (C) the date of each such result:
 - I. N/A
 - 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) —
- (b) —
- (c) —

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- (a) Trial counsel failed to properly prepare for my trial. He failed to call key witnesses and failed to introduce key documents that would have established my innocence.
- (b) Trial counsel failed to cross examine Leisa Norris to obtain information that would have established my innocence.
- (c)
- (d)
- (e)
- (f)

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

- (a) The allegation against me was that I stole over \$12,000 from Bette Riddle, my half sister. The State presented two checks totaling \$12,832.86 payable to me. In fact these check merely reimbursed me for a payment I had made on behalf of my half sister for a pre-paid funeral. At the restitution hearing, my new attorney had the funeral director testify that I had personally pre-paid for these items from my own funds. In addition I had numerous receipts that I had kept for expense I paid for my half sister which my trial attorney never introduced into evidence.
- (b) My trial attorney did not cross exmaine my sister Leisa Norris about the payment for the funeral expenses nor the reason for the other payments made to me for cutting grass at my half sister's house. I am informed an believe that had my sister been properly

Revised 3/2003

cross examined, she would have testified in my favor.

- (c)
- (d)
- (e)
- (f)

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? No

13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:

(a) the specific nature thereof:

- i. —
- ii. —
- iii. —
- iv. —

(b) the name and location of the Court in which each was filed:

- I. —
- ii. —
- iii. —
- iv. —

(c) the disposition thereof:

- I. —
- ii. —
- iii. —
- iv. —

(d) the date of each such disposition:

- I. —

- ii. ___
- iii. ___
- iv. ___

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

- I. ___
- ii. ___
- iii. ___
- iv. ___

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

No

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

- I. ___
- ii. ___
- iii. ___

(b) the proceedings in which each ground was raised:

- I. ___
- 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) Trial counsel failed to preserve any of the issues

(b) Trial Counsel failed to proerly cross examine and therefore issue not preserved.

- (c)
- (d)
- (e)
- (f)

17. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? Yes
- (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? Yes

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. James O. O'Connell

- 139 Grace Drive

- Easley, SC 29640

- (864) 751-5818

- ii. Cliff Gaddy

- 121 Inglewood Way

- Greenville, SC 29615

- (864) 250-5155

- iii. C. Rauch Wise

- 305 Main Street

- Greenwood, SC 29646

- (b) the proceedings at which each such attorney represented you:

- I. initial plea, pretrial motions, trial

- ii. sentencing and appeal to the South Carolina Court of Appeals

- iii. preparation of this application for Post Conviction Relief

19. State clearly the relief you seek in filing this application:

New trial

20. Are you now under sentence from any other court that you have not challenged?

No

STATE OF SOUTH CAROLINA)
)
County of)

VERIFICATION

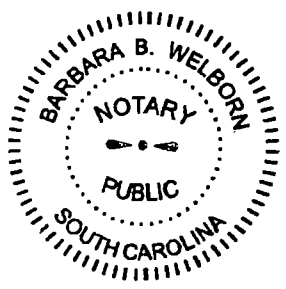
I, POLLY McABEEHINDMAN, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Polly Hindman
Polly McAbee Hindman

SWORN to and subscribed before me this 3rd
day of October, 2018.

Barbara B. Welborn (L.S.)
Notary Public

My Commission Expires: 03-15-22



APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF

I, _____, 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:

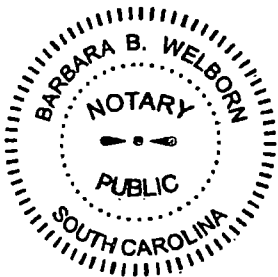
- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Peggy Meaker Hibbman
Applicant

SWORN or affirmed to and subscribed before me this
3rd day of October, 2018

Barbara B. Welborn
Notary Public

My Commission Expires: 03-15-22



STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE)	IN THE THIRTEENTH JUDICIAL CIRCUIT
)	
Polly McAbee Hindman,)	Case No.: 2018-CP-23-05668
)	
Applicant,)	
)	RETURN AND MOTION
v.)	FOR MORE DEFINITE
)	STATEMENT
State of South Carolina,)	
)	
Respondent.)	
)	

The State of South Carolina (Respondent), making its Return to the Application for Post-Conviction Relief filed on November 6, 2018, would respectfully show this Court:

I. Procedural History

Polly McAbee Hindman (Applicant) is not presently incarcerated. During its October 2016 term, the Greenville County Grand Jury indicted Applicant for the exploitation of a vulnerable adult (2015-GS-23-001563). James P. O’Connell, Esquire, represented Applicant on these charges at trial and Clifford Gaddy, Esquire, represented Applicant at the sentencing hearing. Assistant Solicitors for the Thirteenth Judicial Circuit Sylvia P. Harrison, Esquire, and Julia V. Hendricks, Esquire, prosecuted the case. On December 14, 2016, Applicant appeared before the Honorable Edward W. Miller and a jury and was convicted after a jury trial. Judge Miller deferred sentencing so that he could make his decision taking into account the outcome of the restitution hearing. The Applicant appeared before Judge Miller again on February 17, 2017, for a restitution and sentencing hearing, at which time Judge Miller sentenced Applicant to five years of incarceration, provided that upon 90 days of the Home Incarceration Program, the balance is suspended to five years of probation, twenty days of public service,

random drug and alcohol testing, and with restitution in the amount of \$88,000. Applicant filed a direct appeal and a Remittitur was issued on September 25, 2018.

II. Factual History

As summarized by the solicitor in her opening statement at Applicant's trial, Appellant exploited and took advantage of her older half-sister Bette Riddle (Victim). Victim's husband Leonard died in 2011 and left Victim an estate worth well over a half million dollars. Approximately a year later, on November 29, 2012, Appellant prepared three powers of attorney, purportedly signed by Victim, attempting to give Appellant's other half-sister, Leisa Norris (Norris), access to Victim's bank accounts. Less than a month later, on December 19, 2012, Appellant committed Victim to Marshall Pickens.¹ This was done one day after Appellant wrote three checks to herself from one of Victim's bank accounts, purportedly for funeral expenses for Victim. Appellant and Norris then made several unsuccessful attempts to gain access to another of Victim's bank accounts which was worth \$339,000. The solicitor argued Appellant and Norris misused the powers of attorney and unlawfully took advantage of a vulnerable adult. She asked the jury to find Appellant guilty of exploiting Victim. (Tr.p.23-p.26). In response, Appellant claimed this case was simply about someone trying to do a good thing. She argued that while she may have had some input in the preparation of the powers of attorney, Norris was actually the person who typed them up and then went to the bank to try and access Victim's money. Appellant claimed she did not get any money out of this case besides being paid for lawn care and being reimbursed for some store items like pens. She insisted she did not do anything wrong. (Tr.p.26-p.29).

¹ Marshall I. Pickens Hospital is a Psychiatric Hospital in Greenville which is managed by Department of Psychiatry and Behavioral Medicine of Greenville Health Systems.

At trial, the State first called Rachael Garner, a branch manager of Wells Fargo, to the stand. Garner identified the November 2012, December 2012, and January 2013, bank statements for Victim's bank account and those statements were admitted into evidence without objection. Garner then testified that between November and December of 2012, Norris' name was added to the Victim's account after the bank was presented with a power of attorney for Victim. On December 18, 2012, two checks bearing the numbers 3307 and 3308 were written from the account in the amounts of \$6,773.70 and \$6,059.16. They were made payable to Appellant and were both designated as being for "funeral expenses." The checks were deposited into Appellant's account. Two additional checks were written to Appellant on December 18, 2012, one check for \$1,498 with the number 3345 was written for "care" and the other check for \$20 with the number 3306 was written for "death certificates." (Tr.p.29-p.35). At the time of trial, Victim was still alive and living in an assisted living facility, after first being committed to a psychiatric hospital on December 19, 2012. (Tr.p.24, p.50). The four checks were deposited into Appellant's account for a total of \$14,350.86.

Next, Norris testified on behalf of the State. She explained she is Appellant's sister and Victim's half-sister. Norris admitted she had also been charged with exploitation of a vulnerable adult. Unlike Appellant, however, she pled guilty to the charges, was sentenced to five years of probation, and was ordered to pay restitution to Harvard Riddle, Victim's brother-in-law, as he was the conservator of the estate. Norris testified that Appellant prepared three powers of attorney, all of which were dated November 29, 2012, and were purportedly executed by Victim. Being familiar with Victim's handwriting, Norris identified the signature on the first POA as being Victim's, but also noted that Victim spelled her own first name wrong. The signatures on the second and third POA's, however, did not appear to match that of the Victim. Norris noted

Appellant witnessed and notarized the last two POAs, and that Appellant's husband was the second witness. No one else was present at the creation of these two POAs. (Tr.p.36-p.40).

Norris testified that using the first POA, she and Appellant were able to have Norris' name added to Victim's Wells Fargo account. BB&T, however, refused to accept this first POA, because Victim's name was spelled incorrectly. BB&T did not accept the second or third POAs either, and as a result, Norris and Appellant were unable to access Victim's \$339,000 at BB&T. Though all three were created on the same day, each POA was recorded at a different time. (Tr.p.40-p.41). Regarding the previously identified checks written to Appellant for "funeral expenses" and "care", Norris testified that neither Victim nor Norris signed the checks. She explained that when she did write checks she always signed her own name with "POA" along with Victim's name, and the checks in question lacked these markings. (Tr.p.41).

Norris testified Victim signed over her house to Norris in her Will, but claimed this was done before Victim got dementia and was placed in a nursing home. Norris testified she took possession of Victim's house when Victim was moved to the nursing home and sometimes paid Appellant out of Victim's bank account to cut the grass. She also paid Victim's property taxes. (Tr.p.41-p.43). Norris explained she actually got title to the house by way of a title deed that was recorded on December 12, 2012, which purportedly contained Victim's signature and which was witnessed by Appellant and Appellant's husband. The "title" indicates it was executed in June of 2005, but was signed in 2004, both of which were times when Victim's husband was still alive. Victim's husband's signature, however, was notably lacking from the deed. The document also referenced the husband's 2012 death, though it was purportedly executed in 2005. Norris testified that these documents were drafted by Appellant. (Tr.p.44-p.46). A second "title" also was executed and signed on June 16, 2004, and was again witnessed by Appellant and her husband. Again,

Victim's husband did not sign the document and it referenced his 2012 death, though he was certainly still alive in 2004. (Tr.47.) This second document was also drafted by Appellant. (Tr.p46-p.47).

Next, Victim's friend and neighbor, Nancy Kay Roof was called to the stand. She testified she is familiar with Victim's handwriting and opined that neither check made out to Appellant for "funeral expenses" was signed by Victim. Roof further testified that in her opinion, Victim did not sign any of the three POA's purportedly executed on November 29th, 2012. (Tr.p.50-p.57).

The State then called Mary Ellen Cervetti, an employee of BB&T's corporate investigations, to testify at trial. She was admitted as an expert in bank fraud without objection. Cervetti was assigned to investigate this case after "two women that came in that said they were sisters of Bette Riddle" attempting to have their names added to Victim's account. The bank flagged this as being suspicious and contacted Cervetti to investigate because: (1) the name on the POA did not match the name on the account, (2) the women were so adamant that they be added to the account immediately, and (3) they stated that Appellant's brother-in-law (the conservator) was incorrectly on Victim's accounts and that this had been done in violation of BB&T policy. During her investigation, Cervetti determined everything had been done by BB&T per policy. She found that Victim's brother-in-law was changed from the beneficiary on the accounts to actually being on the accounts so that he could access them, if need be, after the death of Victim's husband. Victim also consented to her brother-in-law's addition to the accounts. In Appellant's case, however, both she and Ms. Norris appeared at the bank with the POA and attempted to add themselves to the accounts. After not having success the first time, they returned on two further and separate occasions and attempted the same thing, but were denied access by BB&T each time. Norris continued to attempt to gain access to the accounts by writing a letter threatening legal

action against the bank, but never succeeded in accessing the BB&T accounts belonging to Victim. (Tr.p.58-p.65).

Next the state called Tyler Bradley O'Shields to the stand. O'Shields was the attorney appointed by the Greenville County Probate Court in March of 2014 to serve as initial conservator and guardian ad litem for Victim's estate. He was offered as an expert in elder law but the trial court declined to admit him as such. O'Shields explained he was appointed because Victim was an allegedly incapacitated person who needed protection. He was appointed in March of 2014 and the case concluded with a hearing on December 29, 2014. O'Shields testified that to his knowledge licensed notaries who are not also licensed attorneys are not allowed to draft legal documents. He noted he is a notary himself and that a license lasts for ten years. O'Shields identified State's Exhibit #7 as a deed purportedly conveying ownership of Victim's house to Norris reserving a life estate for Victim on June 6, 2005. He noted Appellant notarized the document but also noted her notary expiration date was more than ten years after the date the document was allegedly signed, which was impossible. O'Shields then identified State's Exhibit #6 as a second deed, this one dated June 16, 2004, which was notarized by Appellant and also bore an impossible expiration date. (Tr.p.67-p.73). He explained that, on December 29, 2014, following a hearing in the probate court, Victim's brother-in-law, Harvard Riddle, and Riddle's wife Claire were made guardians and conservators over Victim after Victim was determined to be an "incapacitated person." O'Shields further explained that in 2014 the probate court had issued a temporary order suspending the powers of attorney which had been used by Appellant and Norris. (Tr.p.73-p.78). On cross-examination O'Shields acknowledged the final order from the probate court did not mention the powers of attorney; however, he did not believe they were still valid because the guardianship/conservatorship superseded them. (Tr.p.78-p.79).

Finally the State called Investigator John T. Martin from the Greenville County Sheriff's Office to the stand. Martin explained that he got involved in the case against Appellant based on a telephone call from two probate attorneys. The attorneys met with Martin and presented him with various documents and bank records and asked that he attend the final probate hearing. Based on the evidence provided, and after witnessing the probate hearing, Martin made the decision to file criminal charges against both Appellant and Norris for exploitation of a vulnerable adult. (Tr.p.80-p.83). After the State rested, Appellant moved for a directed verdict on two grounds. She argued that the State failed to prove Victim is a vulnerable adult and that the State failed to show Appellant got any money, goods, or materials out of her interactions with Victim. (Tr.84). The trial judge disagreed, found there were sufficient questions of fact to send the case to the jury, and denied the motion. (Tr.85).

Appellant then took the stand in her own defense. She testified that for 25 years she was employed as a title abstractor and frequently was required to notarize documents. She claimed that during her career she had notarized documents with incorrect dates, but noted she was not allowed to change anything when acting as a notary because she merely was witnessing the signature. In regard to the first power of attorney which named both Appellant and Norris, Appellant testified she printed a form she found online after getting a tearful phone call from Norris claiming Riddle was taking money from Victim and that Norris needed the power of attorney so she could help Victim pay her bills. Appellant noted she did not witness the first power of attorney. Appellant then admitted the second power of attorney, which named Norris alone, and the third and final power of attorney, which also named Norris alone, were both witnessed by Appellant and her husband. Appellant claimed Victim signed the powers of attorney when they visited her in the hospital. Although she claimed she merely printed the powers of attorney from a template, she also

contended the error with the date was simply the result of a typo. According to Appellant, her purpose and Norris' purpose in getting the powers of attorney were so that they could "get [Victim] healthcare." She insisted they were not trying to defraud anybody. (Tr.p.90-p.96).

Regarding the errors in the deeds notarized by Appellant that purported to convey Victim's house to Norris, Appellant attempted to explain the errors by stating that "[t]hey're just errors, I guess, date errors..." Appellant testified that after Victim was placed in the nursing home, she visited her three or four days a week for two to three hours a day, and was the one who took Victim to all of her doctor and dentist appointments. She claimed that in helping Norris she was merely trying to keep Norris from losing her job and did not know Norris was taking Victim's money until Norris admitted to an attorney she was taking it for her own personal use. Appellant insisted she did not get any of Victim's money and maintained Victim told her she wanted Norris to have her house. (Tr.p.96-p.100).

Appellant testified she was the one who prompted Victim being admitted to Marshall Pickens. She explained she took Victim to the emergency room because she was not eating, and that following an evaluation at the hospital, Victim was admitted to Marshall Pickens. Appellant claimed she never went to Wells Fargo and only went to BB&T once with Norris when Norris was trying to get her name added to Victim's account. She repeated her claim that she did not receive any funds or other money Victim's estate and was merely repaid for things she spent in caring for Victim. Appellant said she never wrote any checks from Victim's account and that instead Norris would mail her checks to pay her back for expenses. Appellant testified Victim wanted to make pre-burial arrangements and had even picked out a marker, so Appellant paid for these out of her own account and then put the money back in that she got from Victim. She admitted she received

checks totaling over \$13,000 but said the money was for Victim and was of no benefit to her. (Tr.p.101-p.103).

On cross-examination, Appellant was asked if she knew that Victim's husband had already purchased their burial plots from Woodlawn in 1966. Appellant said she did not, but claimed she had paid for Victim's pre-burial funeral expenses, including a marker and a casket, not plots. She further claimed that she and Victim went together to plan for the pre-burial arrangements merely one day before Victim was taken to the emergency room and committed for exhibiting symptoms that raised concerns regarding her mental well-being. Appellant admitted accepting and depositing checks written by Norris from Victim's account, but again claimed this was simply to pay her back. Ultimately, Appellant agreed that she had been paid over \$16,000 from Victim's account, but contended that she was merely being repaid for things like paying for the funeral expenses and extraneous items from the store, and for completing tasks such as cutting the grass at Victim's house. (Tr.p.103-p.116).

Next, Appellant called her husband, Robert Lewis Hindman to the stand. He testified that Appellant prepared the powers of attorney in question because Norris called and asked her to do so. Hindman claimed Norris called the house crying and all upset and said Harvard Riddle was stealing money from Victim. He said the forms came off the internet and insisted Appellant did not get any extra money from Victim beyond being paid for helping out around the house and "the reimbursement for the burial stuff." (Tr.p.116-p.119). After the defense rested, the State called Victim's brother-in-law, Harvard Riddle in reply. He testified he was the executor of his brother, Leonard Riddle, estate and noted Leonard's will did not leave the Riddle's house to Norris. (Tr.p.126-p.128).

III. Current Application for Post-Conviction Relief

In her Application for Post-Conviction Relief, Applicant alleges that she is being held in custody unlawfully based on:

1. Ineffective Assistance of Counsel.
 - a. Applicant alleges that trial counsel did not adequately prepare for Applicant's trial.
 - b. Applicant alleges that trial counsel failed to call witnesses that would have established Applicant's innocence.
 - c. Applicant alleges that trial counsel failed to introduce documents that would have established Applicant's innocence.
 - d. Applicant alleges that trial counsel inadequately cross-examined Leisa M. Norris about information that would have established Applicant's innocence.

Applicant prays for the relief of a new trial.

Attached to this Return and incorporated by reference are the records of the Greenville County Clerk of Court regarding the subject conviction, the transcript from Applicant's plea hearing and sentencing, and Applicant's Post-Conviction Relief Application. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

IV. Response to Claim of Ineffective Assistance of Counsel

In a post-conviction relief action, an applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRCP; *Butler v. State*, 286 S.C. 441, 334 S.E.2d 813 (1985). When an applicant alleges ineffective assistance of counsel as a ground for relief, the applicant must prove "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." *Strickland v. Washington*, 466 U.S. 668 (1984); *Butler*, 286 S.C. 441, 334 S.E.2d 813.

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove counsel's performance was deficient. Under this prong, attorney

performance is measured by its “reasonableness under professional norms.” *Cherry*, 300 S.C. at 117, 385 S.E.2d at 625 (citing *Strickland*). Courts presume counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. *Butler*, 286 S.C. 441, 334 S.E.2d 813. The applicant must overcome this presumption to receive relief. *Cherry v. State*, 300 S.C. 115, 386 S.E.2d 624 (1989).

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. In order to satisfy the prejudice prong of this test following a guilty plea, the applicant “must show that there is a reasonable probability that, but for counsel’s errors, he would not have pleaded guilty and would have insisted on going to trial.” *Hill v. Lockhart*, 474 U.S. 52, 59 (1985).

Strickland requires that trial counsel must be given leeway to make reasonable strategic decisions. No particular set of detailed rules for counsel’s conduct can satisfactorily take account of the variety of circumstances faced by defense counsel or the range of legitimate decisions regarding how best to represent a criminal defendant. *Strickland v. Washington*, 466 U.S. 668, 688-689 (1984). “Representation is an art, and an act or omission that is unprofessional in one case may be sound or even brilliant in another.” *Id.* at 691. Therefore, judicial scrutiny of counsel’s performance must be highly deferential. *Id.* at 689. Where counsel articulates a valid strategic reason for his action or inaction, counsel’s performance should not be found ineffective. *Roseboro v. State*, 317 S.C. 292, 454 S.E.2d 312 (1996); *Underwood v. State*, 309 S.C. 560, 425 S.E.2d 20 (1992); *Stokes v. State*, 308 S.C. 546, 419 S.E.2d 778 (1992). Courts must be wary of second guessing counsel’s trial tactics; and where counsel articulates a valid reason for employing such

strategy, such conduct is not ineffective assistance of counsel. *Whitehead v. State*, 308 S.C. 119, 417 S.E.2d 529 (1992).

In her Application for Post-Conviction Relief, Applicant presents three allegations that Respondent interprets as a claims of ineffective assistance of counsel based on trial counsel's alleged failure to call a witness, alleged failure to introduce exculpatory evidence, and alleged failure to adequately cross-examine a witness. Respondent submits that Applicant likely can satisfy neither requirement of the *Strickland* test on her various claims of ineffective assistance of counsel. However, the claims of ineffective assistance of counsel probably raise questions of fact that the record may not conclusively refute. Accordingly, Respondent requests an evidentiary hearing to fully resolve these issues. See *Sharper v. State*, 279 S.C. 264, 305 S.E.2d 247 (1983).

V. Motion for a More Definite Statement

Applicant alleges that she is being held in custody unlawfully based on vague allegations of ineffective assistance of appellate counsel; namely, that trial counsel failed to prepare for trial. However, Applicant fails to set forth with specificity the facts and circumstances upon which this claim of ineffective assistance of counsel is based. The Uniform Post-Conviction Procedure Act requires that the Applicant must "... specifically set forth the grounds upon which the application is based." Section 17-27-50 of the Code of Laws of South Carolina (1976). In an application for post-conviction relief, it is incumbent upon Applicant to make at least a *prima facie* showing which would entitle her to relief before an evidentiary hearing will be scheduled and held. *Welch v. MacDougall*, 246 S.C. 258, 143 S.E.2d 455 (1965); *Blandshaw v. State*, 245 S.C. 385, 140 S.E.2d 784 (1965).

Applicant has failed to state with any specificity the specific facts giving rise to this. Additionally, these allegations are not supported by any other additional information in the

application. Respondent moves pursuant to Rule 12(e), SCRPC, to require Applicant to provide a more definite statement of her allegations of ineffective assistance of counsel. The Uniform Post-Conviction Procedure Act requires applicants to “specifically set forth the grounds upon which the application is based.” S.C. Code Ann. § 17-27-50 (1985) (emphasis added). Furthermore, Rule 8(a), SCRPC, requires all civil pleadings include “a short and plain statement of the facts showing that the pleader is entitled to relief.” Therefore, Respondent moves to require Applicant to file an amended application well in advance of the hearing scheduled in this matter. If Applicant fails to file a timely and responsive amended application setting forth specific allegations for relief, Respondent reserves the right to move to dismiss the application.

VI. Discovery Issues

Applicant must specify any claims she intends to raise at the post-conviction relief evidentiary hearing. Any claims not specifically laid out in this post-conviction relief 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 retained counsel, 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 post-conviction relief 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.

VII. General Denial of Allegations

Each and every allegation contained within the application not expressly admitted, qualified, or explained in this Return is hereby denied.

VIII. Conclusion

WHEREFORE, Respondent requests that this Court convene an evidentiary hearing on the allegations of ineffective assistance of counsel.

Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

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Senior Assistant Deputy Attorney General

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By: 
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March 19, 2019

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

COURT OF COMMON PLEAS)
2018-CP-23-05668)

POLLY MCABEE HINDMAN,)
)
APPLICANT,)

vs.)

TRANSCRIPT OF RECORD)

STATE OF SOUTH CAROLINA,)
)
RESPONDENT.)

ORIGINAL

April 15, 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:

C. RAUCH WISE, ESQ.
Attorney for the Applicant

TAYLOR Z. SMITH, ESQ.
SAMUEL L. KEY, ESQ.
Attorneys for the Respondent

HOLLIE M. JENKINS
Circuit Court Reporter

I N D E X

(AW) - Denotes Applicant's Witness
 (RW) - Denotes Respondent's Witness

Page No.

<u>(AW) POLLY MCABEE HINDMAN:</u>	
Direct Examination by Mr. Wise.....	6
Cross-Examination by Mr. Smith.....	21
Redirect Examination by Mr. Wise.....	30
<u>(AW) CLIFFORD F. GADDY, JR.:</u>	
Direct Examination by Mr. Wise.....	34
Cross-Examination by Mr. Key.....	39
<u>(RW) JAMES PATRICK O'CONNELL:</u>	
Direct Examination by Mr. Key.....	43
Cross-Examination by Mr. Wise.....	54
Redirect Examination by Mr. Key.....	70
Recross-Examination by Mr. Wise.....	72
Examination by the Court.....	72

INDEX (CONTINUED)

E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EVD.</u>
	(Applicant's Exhibits)		
A-1	Checks.....	9.....	9
A-2	Checks.....	11.....	11
A-3	Receipts.....	13.....	13
A-4	Funeral Markers.....	15.....	15
A-5	Memorial Order.....	15.....	15
A-6	Certificate of Birth.....	18.....	18
A-7	Certificate of Marriage.....	19.....	19
A-8	Will.....	32	
A-9	Deposition of Wesley James.....	35.....	35
A-10	Deposition Exhibits.....	36.....	36
A-11	Order dated 11/8/17.....	39	
A-12	Motion for Continuance.....	55.....	55
A-13	Indictment #2015-GS-23-01563.....	66.....	66
A-14	Letter dated 2/23/15.....	69.....	69

All Exhibits were retained by the Clerk of Court for Greenville County.

P R O C E E D I N G S

1 MR. SMITH: May it please the Court.

2 THE COURT: Yes, sir.

3 MR. SMITH: This is the case of Polly Hindman v.
4 State, docket number 2018-CP-23-05668. Polly McAbee
5 Hindman, who's the Applicant, is not presently
6 incarcerated.
7

8 During its October of 2016 term, the Greenville
9 County Grand Jury indicted the Applicant for the
10 exploitation of a vulnerable adult. The case citation for
11 that is 2015-GS-23-01563. James P. O'Connell represented
12 Applicant on those charges at trial. And Mr. Clifford
13 Gaddy represented Applicant at the sentencing hearing and
14 restitution hearing. Assistant Solicitors for the
15 Thirteenth Judicial Circuit Sylvia Harrison and Julia
16 Hendricks prosecuted the case.

17 On December 14th, 2016, Ms. Hindman appeared before
18 the Honorable Edward W. Miller and a jury and was
19 convicted after a jury trial. Judge Miller sentenced --
20 Judge Miller deferred sentencing so that he could make his
21 decision after hearing the restitution hearing.

22 The Applicant appeared before Judge Miller again on
23 February 17th for the restitution hearing and the
24 sentencing hearing, at which time Judge Miller sentenced
25 Applicant to five years incarceration provided upon 90

1 days of home incarceration, the balance suspended to five
2 years of probation, 20 days of public service, drug and
3 alcohol testing, and restitution of 88,000.

4 The Applicant filed a direct appeal. And a
5 remittitur was issue on September 25th, 2018. The
6 application for post-conviction relief was filed on
7 November 6th, 2018. Ms. Hindman is present and is
8 represented by Mr. Rauch Wise.

9 Your Honor, the State is ready. But I would like to
10 request that Mr. Wise confirm that Ms. Hindman will be
11 moving forward today solely on the basis of the claims in
12 the amended application that the State received by e-mail
13 on April 10th.

14 MR. WISE: That's correct, Your Honor.

15 THE COURT: All right.

16 MR. WISE: I have a signed copy of the amended
17 complaint, which I'd like to file. It just alleges two
18 grounds that are just, basically, pure legal grounds, more
19 than anything else.

20 THE COURT: All right. Mr. Wise, are you ready to
21 proceed?

22 MR. WISE: Yes, sir.

23 THE COURT: All right. You can call your first
24 witness.

25 MR. WISE: I'd like to call Polly Hindman.

1 THE COURT: Ms. Hindman, if you would come forward.

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

4 WHEREUPON,

5 POLLY MCABEE HINDMAN,
6 after first having been duly sworn, testified as follows:

7 THE CLERK: Thank you.

8 You may be seated.

9 Please state your full name for the record.

10 THE WITNESS: Polly McAbee Hindman.

11 DIRECT EXAMINATION

12 BY MR. WISE:

13 Q Ms. Hindman, where do you presently live?

14 A I live at 109 Georgetown Way, Easley, South --

15 Q In Greenville?

16 A Easley, Pickens County.

17 Q Easley.

18 Okay. And you were indicted in this case for abuse
19 of a vulnerable adult?

20 A Yes, sir.

21 Q And what were the -- without going into the specific
22 allegations, but, generally, what do they allege against
23 you in the indictment?

24 A They allege that I misused the power of attorney and
25 took funds for my own personal use.

1 Q Okay. And who was your lawyer in this case?

2 A James O'Connell.

3 Q All right. And did you retain him or was he
4 appointed?

5 A I retained him.

6 Q Okay. And where were you working at the time of this
7 incident?

8 A I wasn't working. I was unemployed.

9 Q Okay. Now, in your trial, there was mention on more
10 than one occasion concerning funeral expenses?

11 A Yes, sir.

12 Q Correct?

13 A Yes, sir.

14 Q And did you testify about the funeral expenses?

15 A Yes, I did.

16 Q Now, had you given your attorney various documents
17 about the funeral expenses?

18 A Yes, sir.

19 Q And what was the story behind the funeral expenses?

20 A Bette asked me to help her get pre-needs for her
21 burial. She already had her lots because her husband had
22 already passed away. And she asked me would I help her
23 get her pre-needs for her. And I agreed to help her.

24 She picked out everything that she wanted, the
25 casket, the marker, what she wanted written on it, and the

1 bunny rabbit that she wanted to put on it, and the rose.
2 Because that was her favorite two things.

3 Q Were any documents introduced to support what you
4 said?

5 A Yes, sir.

6 Q I mean, were any documents introduced at the trial --

7 A No, sir.

8 Q -- in support of what you did?

9 A No.

10 Q Did you have documents that supported that?

11 A Yes, I did.

12 Q Had you provided those to Mr. O'Connell?

13 A Yes, I had.

14 Q All right. I want you to look at, first of all, this
15 and I'll ask you if you recognize what that is?

16 A Yes, sir. It's to the funeral -- funeral home.

17 Q All right. Is this a document that you helped
18 prepare? And look through several pages of it.

19 A Yes, sir, it is.

20 Q Were these documents in your possession?

21 A Yes.

22 Q And were they used at trial?

23 A They was not used at trial.

24 MR. WISE: I'd like to introduce this as Applicant's
25 Exhibit No. 1.

1 THE COURT: Any objection?

2 MR. SMITH: No objection.

3 THE COURT: All right. Without objection,
4 Applicant's Exhibit No. 1.

5 BY MR. WISE:

6 Q Tell us then in some detail --

7 THE COURT: Hold on. Hold on.

8 THE COURT REPORTER: I've got to mark it.

9 MR. WISE: Oh, I didn't have it marked. Excuse me.
10 My fault.

11 (WHEREUPON, Applicant's Exhibit No. 1 was marked for
12 identification and admitted into evidence.)

13 BY MR. WISE:

14 Q I hand you Applicant's Exhibit No. 1. And look
15 through there and tell us, generally, what that has in it.

16 A It has the check that I wrote for Bette's pre-needs.
17 And it's broken down into the policy --

18 Q Now, what -- go ahead.

19 A It's broken down by the annuity, the full benefit
20 amount. It has her name, and address, and her social
21 security number.

22 Q All right. And the first page of that is a check
23 written by -- by whom to whom?

24 A It's from Bette to me.

25 Q All right. Now, was that, actually, Bette or your

1 sister?

2 A It looks like Leisa's writing, but Leisa had control
3 of her bank account, yes.

4 Q Okay. Now, look at the second page.

5 A Yes, sir.

6 Q What is that check?

7 A That's the -- that's for the other side of the
8 funeral -- wait a minute. That's for the -- the AML,
9 which is -- there's two sides to the funeral home. One's
10 for funeral costs and one's for the memorial services, and
11 stuff.

12 Q On the second page of Applicant's Exhibit No. 1, who
13 wrote that check?

14 A I did.

15 Q All right. And what's the date on that check?

16 A 12/18.

17 Q All right. And were you reimbursed for that check?

18 A Yes, I was.

19 Q And is that the check on the first page?

20 A Yes, sir, it is.

21 Q Now, that's -- the one on the first page is about
22 \$200 more than the one you wrote. Do --

23 A Yes, sir.

24 Q -- you know what the reason for that was?

25 A Yes, sir. It was for some items to go into her --

1 her apartment in the nursing home.

2 Q All right. Did Leisa occasionally give you extra
3 money for helping out?

4 A Yes, she did, to buy her items that she needed, like
5 the pens and --

6 Q We're going to get to the other items in a second.

7 I hand you this and ask you if you can identify this
8 exhibit.

9 A This is the other part to her funeral pre-needs.

10 Q Okay. And --

11 A It's a check on the first page.

12 MR. WISE: All right. I'd like to introduce this as
13 Applicant's Exhibit No. 2.

14 THE COURT: Any objection?

15 MR. SMITH: No objection.

16 THE COURT: Without objection, Applicant's Exhibit
17 No. 2.

18 (WHEREUPON, Applicant's Exhibit No. 2 was marked for
19 identification and admitted into evidence.)

20 BY MR. WISE:

21 Q Now, let's go through Applicant's Exhibit No. 2.
22 Were these items in your possession?

23 A Yes, sir, they were.

24 Q And did you provide these to your attorney?

25 A Yes, sir, I did.

1 Q Were these introduced at trial?

2 A No, sir.

3 Q And what were these?

4 A These were checks for her memorial services --

5 Q All right.

6 A -- and stuff.

7 Q And the first check on the first page is from whom
8 and to whom?

9 A It's from Bette to me -- from Bette to Polly.

10 Q All right. Now, again, is that Bette's signature or
11 your sister's?

12 A Leisa's.

13 Q All right. Now, the second check?

14 A Let's see.

15 Q On the second -- the check on the second page, what
16 is that?

17 A That's my -- that's my check where I paid for it.
18 And I was reimbursed by the first check on the first page.

19 Q And then you were reimbursed a little more than the
20 actual expenses?

21 A Well, yes. Yes, sir.

22 Q All right. And attached to that are?

23 A It's the contract.

24 Q With the funeral home?

25 A With the funeral home.

1 Q All right. And were any -- and no -- and the actual
2 funeral expenses contract was with Woodland Memorial Park?

3 A Yes, sir, the actual ones broken down.

4 Q Now, you testified at trial about these funeral
5 expenses or how they came about?

6 A Yes, sir, I did.

7 Q All right. But did you ever introduce any exhibits
8 to back it up?

9 A No, sir.

10 Q All right. Now, I hand you this group of documents.
11 What do they, basically, represent?

12 A This is some receipts that I kept where I bought
13 items for Bette to use at the -- at the nursing home and
14 at her home before she went into a nursing home.

15 MR. WISE: All right. I'd like to introduce this as
16 Applicant's Exhibit No. 3.

17 THE COURT: Any objection?

18 MR. SMITH: No objection.

19 THE COURT: Without objection, so admitted.

20 (WHEREUPON, Applicant's Exhibit No. 3 was marked for
21 identification and admitted into evidence.)

22 BY MR. WISE:

23 Q All right. So these are receipts that you held on
24 to?

25 A Yes, sir, I did.

1 Q Were any of these introduced at your trial?

2 A No, sir.

3 Q All right. And these are receipts for what exactly?

4 A This is receipts that's for stuff that Bette
5 requested, also. She would call me or Leisa would call me
6 from work and say, I can't get by there, would you -- do
7 you mind picking Bette up some --

8 Q Now, I notice on some of these receipts, there's a
9 whole lot more items than just for Bette?

10 A Yeah. But I just -- I went ahead and marked through
11 what was Bette's.

12 Q All right. And would you be reimbursed for these?

13 A Yes, sir, I would.

14 Q And who would reimburse you for them?

15 A Leisa would.

16 Q Okay. I hand you these little exhibits. I probably
17 should have introduced those earlier because they go to
18 another matter. And what are those?

19 A This was the bunny rabbit that she wanted on her
20 bronze marker.

21 Q Okay. And that was part of the funeral expenses?

22 A It -- it was part of the funeral expenses, yes,
23 sir.

24 MR. WISE: All right. I'd like to introduce --

25 THE WITNESS: And the rose that she wanted.

1 MR. WISE: I'd like to introduce this as Applicant's
2 Exhibit No. 4.

3 THE COURT: Any objection?

4 MR. SMITH: No objection.

5 THE COURT: So admitted, Applicant's Exhibit No. 4.

6 (WHEREUPON, Applicant's Exhibit No. 4 was marked for
7 identification and admitted into evidence.)

8 BY MR. WISE:

9 Q Were those in your possession and given to your
10 attorney?

11 A Yes, sir.

12 Q All right. Were they used at trial?

13 A No, sir.

14 Q And I'll hand you this single sheet and ask you if
15 you recognize that?

16 A Yes. It's Bette's marker.

17 Q Okay.

18 A It's what she wanted written on it.

19 MR. WISE: Okay. I move to introduce this as
20 Applicant's Exhibit No. 5.

21 THE COURT: Any objection?

22 MR. SMITH: No, Your Honor.

23 THE COURT: Without objection, so admitted.

24 (WHEREUPON, Applicant's Exhibit No. 5 was marked for
25 identification and admitted into evidence.)

1 BY MR. WISE:

2 Q All right. And was Applicant's Exhibit No. 5 in your
3 possession?

4 A Yes, it was.

5 Q Okay. Was it ever introduced at trial?

6 A No, sir, it wasn't.

7 Q I think I'm missing one here.

8 Now, during this trial, did the State make a big
9 to-do about any documentation on the -- the funeral
10 expenses?

11 A They said that I made -- that nobody makes pre-needs.

12 Q That what?

13 A That nobody makes pre-needs on a family member, that
14 what I did was very unusual, that I did it for myself.
15 Mainly, I was going to --

16 Q At whose request did you do it --

17 A Bette asked me to do the funeral expenses.

18 Q Okay. Do you remember the State making any comments
19 in their closing arguments about documentation of these
20 funeral expenses?

21 A No, sir.

22 Q I want to refer you to the transcript, Page 135. And
23 look at Lines 19 through 22.

24 A Okay.

25 Q Does that refresh your memory?

1 A Yes.

2 Q All right. What was said about that at -- at -- at
3 the trial?

4 A It says that I didn't produce any evidence at all,
5 other than my testimony. That there was --

6 Q And did you have evidence, other than your testimony?

7 A That's -- they -- my stuff was not presented --

8 Q Did you have evidence other than your testimony to
9 prove --

10 A Yes, I did. I had lots of evidence, yes.

11 Q Okay. Now, there was, also, a point raised at the
12 trial about the spelling of Bette's name?

13 A Yes.

14 Q And that was on a power of attorney?

15 A Yes.

16 Q All right. And I believe you had gotten the power of
17 attorney off line?

18 A Yes. She asked me to.

19 Q And what was the controversy about the name?

20 A She -- Bette didn't like her name being spelled
21 B-E-T-T-Y. So she just took it upon herself to sign it as
22 B-E-T-T-E. She did not ever have it legally -- legally
23 changed.

24 So everywhere she went, she would change it, write
25 her name B-E-T-T-E. And on the power of attorney, it was

1 spelled as B-E-T-T-Y at one time. And they didn't want it
2 that way because she signed it B-E-T-T-E.

3 Q All right. But what was the --

4 A So that's where the controversy came in at.

5 Q I'll hand you this, and ask you if you can identify
6 that?

7 A This is Bette's birth certificate.

8 Q All right. Is that something you had in your
9 possession?

10 A I had it in my possession, yes.

11 Q All right. And how is it --

12 MR. WISE: Well, let me introduce this as Applicant's
13 Exhibit No. 6.

14 THE COURT: Any objection?

15 MR. SMITH: No, Your Honor.

16 THE COURT: So admitted, Applicant's Exhibit No. 6.

17 (WHEREUPON, Applicant's Exhibit No. 6 was marked for
18 identification and admitted into evidence.)

19 BY MR. WISE:

20 Q And how is it spelled on that?

21 A It -- it is B-E-T-T-Y.

22 Q All right. I'll hand you this, and see if you can
23 identify that and tell us what that is.

24 A This is her certificate of marriage.

25 MR. WISE: All right. I'd like to move this in as

1 Applicant's Exhibit No. 7.

2 THE COURT: Any objection?

3 MR. SMITH: No, Your Honor.

4 THE COURT: So admitted.

5 (WHEREUPON, Applicant's Exhibit No. 7 was marked for
6 identification and admitted into evidence.)

7 BY MR. WISE:

8 Q And how's it spelled on that?

9 A It's spelled B-E-T-T-Y.

10 Q Did the State make a deal -- a lot of comments about
11 how you spelled the name on the -- on the power of
12 attorney?

13 A Yes, they did.

14 Q All right. And what was your understanding of the
15 name that should be on a power of attorney?

16 A That -- I understood it to be -- should have been her
17 legal name that was on all her documentation, her birth
18 certificate and her social security card.

19 Q Would those documents have given your statement
20 credibility --

21 A Yes, sir, it would have.

22 Q And were they available to your attorney?

23 A Yes, sir.

24 Q Did he introduce any of those?

25 A No, sir.

1 Q All right. Now, in your trial, you were indicted for
2 alleged improper use of a power of attorney?

3 A Yes, sir.

4 Q Did your attorney ever ask for a directed verdict
5 on -- on improper use of a power of attorney?

6 A No, sir.

7 Q Was there any testimony in that trial that you used
8 the power of attorney improperly?

9 A Not that I can remember, sir, no.

10 Q Okay. If you had had all these documentations of all
11 these monies you spent for -- for Bette, do you think that
12 would have made a difference in the trial?

13 A I think it would have made a difference, yes.

14 Q Would you have been able to prove --

15 MR. SMITH: Objection, Your Honor. She's --
16 objection. She's offering her opinion.

17 THE COURT: I'm going to -- I'm going to sustain that
18 objection.

19 MR. SMITH: Okay.

20 BY MR. WISE:

21 Q Let me rephrase the question this way then. Would
22 these written documents have supported your testimony?

23 A Yes, sir.

24 MR. WISE: Okay. Thank you.

25 Answer any questions the State may have.

1 THE COURT: All right. Cross-examination.

2 MR. SMITH: Thank you, Your Honor.

3 I just beg the Court's indulgence for a second.

4 (Pause.)

5 CROSS-EXAMINATION

6 BY MR. SMITH:

7 Q Ms. Hindman, how many times did you meet with your
8 attorney prior to trial?

9 A Several occasions. I don't know how many times. At
10 least, weekly, sometimes twice.

11 Q Okay. And if you had to put a number on it, can you
12 guess for me?

13 A (There was no response.)

14 Q You said "weekly," how --

15 A At least, weekly. I don't know. I don't know how
16 many times I met with him.

17 Q Okay. How long was Mr. O'Connell your attorney
18 before Mr. Gaddy got involved in the case?

19 A At least, a year.

20 Q Okay.

21 A At least, a year.

22 Q During that time, were you dealing exclusively with
23 Mr. O'Connell?

24 A Yes.

25 Q Okay. Did Mr. O'Connell ever review discovery with

1 you?

2 A Yes, he did.

3 Q Okay. And he showed it to you?

4 A Yes, sir. Because I went through it.

5 Q Okay. And you talked about it, he explained it to
6 you?

7 A Yes, sir.

8 Q Okay. Now, you talked about showing him some
9 documents. So can you tell me when you provided these
10 documents to him?

11 A No, sir. I can't tell you exact dates.

12 Q Okay. Do you know about how long before trial that
13 would have been?

14 A It was a long time before trial.

15 Q Well, what's a "long time"?

16 A I -- I guess it -- when I first went and seen him, I
17 produced all the documents to him.

18 Q Okay. Other than these documents, did you tell him
19 about any -- any other leads or witnesses?

20 A I told hum about several witnesses and stuff that
21 could help me during the trial.

22 Q Okay. So let's -- let's talk about -- let's talk
23 about trial. I'm going to ask you some things that were
24 discussed at trial. You allege that he didn't
25 cross-examine your sister about the repayments.

1 Do you recall at trial that your sister did,
2 actually, testify that she did write checks to repay you
3 for some things that you had spent for your sister?

4 A I don't remember her saying she would pay me for
5 anything at my trial.

6 Q Okay. Let's take a look. Okay.

7 MR. SMITH: Your Honor, may I approach the witness?

8 THE COURT: Yes, sir.

9 BY MR. SMITH:

10 Q Okay. And this is a copy of the transcript. I would
11 direct your attention, please, to Page 43. Let me know
12 when you're there.

13 A I'm there.

14 Q Okay. And start reading on Line 9 for me, the first
15 full sentence.

16 A When you took possession of the house, did you pay
17 Ms. Hindman to cut the grass for the house?

18 She said, Yes.

19 She said, Out of Ms. Riddle's account?

20 She said, Yes.

21 Q Okay. Is it not true that here your sister was
22 referring to repaying you?

23 A That was for cutting the grass only.

24 Q Okay. But she is referring to repaying you?

25 A Paying me for -- for cutting the grass.

1 Q Okay. And you did testify at trial, too, that you --
2 you had a hand in preparing these powers of attorney?

3 A I was asked to help prepare these attorney -- these
4 powers of attorney, yes.

5 Q Okay. And you did prepare them -- help prepare them?

6 A Yes, I did.

7 Q Okay. The three that you did help prepare, none of
8 those listed Mr. Harvard -- Harvard Riddle as your
9 sister's agent; correct?

10 A No. Because he didn't want to be.

11 Q Okay. Let's -- at trial, you did testify that the
12 money that -- these checks you've identified today, that
13 those were repaying you -- reimbursing you for pre-needs,
14 funeral expenses?

15 A Yes, sir.

16 Q Okay. Isn't it correct that your husband, also,
17 testified to that?

18 A Yes. I guess he did, yes.

19 Q Okay. So the jury would have heard that at trial?

20 A Yes.

21 Q Okay. So they weren't in -- they weren't in
22 back [phonetic] when that was said at trial?

23 A No.

24 Q Okay. Now, let's take a look. You've introduced
25 some documents today. I'm going to refer to these. These

1 are -- this is Applicant's Exhibit Nos. 6 and 7. And you
2 testified that this shows that your sister did spell her
3 name with a "Y"?

4 A It was legally with a "Y." She spelled it with an
5 "E."

6 Q Okay. At the time when you were using the power of
7 attorney based off of this -- this name, what were you
8 doing?

9 A I was doing the healthcare power -- I was doing her
10 healthcare needs with the nursing home and conversing
11 between her for her doctors and her medicines to be
12 refilled.

13 Q Okay. Well, I'm going to refer you to Page 60 of the
14 transcript, please. And this portion of the transcript is
15 from Ms. Harrison's [sic] testimony from BBC -- BB&T;
16 correct?

17 A Yes.

18 Q Okay. And let's look at Line 6, please. Would you
19 read -- starting -- read Lines 6 through 9.

20 A Do you want me to read that out loud?

21 Q I do, if you would, please.

22 A Have you had any special training in bank fraud or
23 that -- that area that you could --

24 Q I'm sorry. On Page 60.

25 A Oh.

1 Q Lines 6 through 9.

2 A So this particular case, they were given a power of
3 attorney by two individuals, two women that came in the
4 bank that said they were sisters of Bette Riddle. And
5 they wanted to have their names put on her account.

6 Q Okay. And isn't it true that Ms. Harrison says that
7 the bank had red flags because you were insisting that
8 this be done right away?

9 A I didn't ask to be put on her account. The bank told
10 me that we could only have one person.

11 Q That's not what I'm asking you. I'm saying, isn't
12 that what she testified to?

13 A Who? Bette?

14 Q Ms. Harrison.

15 A Ms. Harrison -- yes, Ms. Harrison did.

16 Q Okay. And she said you were insisting this needed to
17 be done right away. Okay. And what were you doing at the
18 bank at that time?

19 A I went in to the bank with Leisa because Leisa asked
20 me to go with her. And I sat with her. Because she said
21 the lady at the bank had a problem with the power of
22 attorney, and wanted me there, and wanted me to take my
23 name off because she could only let Leisa -- let Leisa --
24 one person have access to her bank account. And that was
25 Leisa.

1 She asked me to remove my name. And that's what I
2 did. I didn't want access to Bette's bank account. It
3 was Leisa. Leisa was asking for access. She had had
4 access to it for five years prior to getting permission
5 with a power of attorney.

6 They wanted me to take my name off. They said only
7 one person could handle her bank account. And that's what
8 happened. Leisa was the only one writing checks and
9 handling Bette's bank account. And she had an ATM card
10 that Mr. Riddle had given her to use at will.

11 Q Okay. But Ms. Hindman, doesn't Ms. Harrison [sic]
12 testify on behalf of BBC [sic] -- BBT [sic] that when you
13 came in the bank, you wanted your name put on the account?

14 A No, sir. I did not want my name --

15 Q That's not what I'm asking you, ma'am. I'm asking
16 you --

17 A Well, she said that, yes. She said that, but it's
18 incorrect.

19 Q Okay.

20 A It's incorrect.

21 Q Okay. Well, let's, also, look -- let's, also, look
22 at Page 61, Lines 21 through about 23. Doesn't
23 Ms. Harrison testify again that the two of you were trying
24 to be listed on the account as --

25 A Yes, she does. Yeah, she does.

1 Q Okay. And on Page 62, again, doesn't she say that
2 it's her understanding that you came back three separate
3 times? They, plural they?

4 A She says that. But the bank asked us to come back
5 and bring a new power of attorney. I went back at their
6 request.

7 Q Do you have anything in writing showing that?

8 A Showing what?

9 Q That the bank was asking you to come back.

10 A They didn't ask -- they didn't put nothing in
11 writing. They just asked us like two adults. Could you,
12 please, change the power of attorney to Leisa, one
13 person to handle her banking affairs. And that's what we
14 did.

15 Why would I have to go in the bank and ask them? My
16 name was already on the power of attorney. They said they
17 only allowed one person at a time to handle banking
18 affairs.

19 Q And the purpose of getting the name put on the
20 account was so that you and your sister could withdraw
21 funds?

22 A I was not withdrawing funds.

23 Q Well, that's because --

24 A Leisa was. I was not asking to be put on the power
25 of attorney.

1 Q But your sister wanted to withdraw funds?

2 A She was already withdrawing funds. She wanted her
3 name only on the power of attorney because she was paying
4 Bette's bills and buying Bette's groceries.

5 Q And you were there with her at the time with the
6 power of attorney with both of your names on it; correct?

7 A I was with her. But I was -- I was not asking to do
8 anything illegal. I was sitting right there just to give
9 Leisa support and to do what the lady at the bank asked me
10 to do.

11 Q But your name was, also, on the power of --

12 A It was on there to help with Bette's care. So I
13 could take her to the doctor and the emergency room.

14 Q Okay. And I'll draw your attention to Page 66 of the
15 transcript. And Mr. O'Connell's cross-examining
16 Ms. Harrison. And if you look at Line 14, isn't it true
17 that she testifies that she got a phone call -- a phone
18 call from you and your sister afterwards?

19 A Not from me. She got it from Leisa, my sister. I am
20 one single person. I'm not a twin to my sister. I'm an
21 individual. Leisa did this, not me. I didn't make no
22 phone calls to any banking lady whatsoever.

23 MR. SMITH: Okay. I beg the Court's indulgence for a
24 second, please.

25 (Pause.)

1 BY MR. SMITH:

2 Q Is it your assertion that the checks written to you
3 for -- reimbursing you for the funeral expenses were
4 written by your sister?

5 A Yes, sir.

6 Q Which sister?

7 A Leisa Norris.

8 Q Okay. Now, she testified that they were not written
9 by her; correct?

10 A I know she did.

11 MR. SMITH: Okay. Just a second, Your Honor.

12 (Pause.)

13 MR. SMITH: Your Honor, I have no further questions.

14 MR. WISE: Just a few questions on redirect.

15 THE COURT: All right.

16 REDIRECT EXAMINATION

17 BY MR. WISE:

18 Q Ms. Hindman, I probably should have covered this a
19 little bit on direct. But to explain a little bit from
20 what he went into on cross. Bette Riddle was what kin to
21 you and Leisa?

22 A She was our half sister.

23 Q All right. And what age difference was there roughly
24 between her, and you, and your sister, Leisa?

25 A At least, 25 years or more.

1 Q Okay. When you and your sister went into the BB&T
2 Bank, do you know the name of the woman you talked to?

3 A Not from -- no, I don't remember. I remember where
4 she was sitting.

5 Q All right. Was Ms. Harrison [sic] the person that
6 y'all talked to?

7 A (There was no response.)

8 Q Let me -- just a second. The transcript on Page 66,
9 Line 14, see if that refreshes your memory, Line 14
10 through about 17.

11 A Yes. I -- I guess it was her, but --

12 Q What does it say there? What is the question? What
13 is she -- what is the question and what did she answer?

14 A Which one are you talking about? Right here, I
15 wasn't present?

16 Q Yeah. Question 14 and the answer.

17 A Okay. Question 14, And you weren't present when the
18 supposedly two ladies went in the bank and supposedly
19 tried to get an account changed, or whatever. You weren't
20 there?

21 I wasn't present the day they came in --

22 Q Okay.

23 A -- but I did speak to them on the phone.

24 Q So she wasn't present when y'all went in --

25 A No, she wasn't.

1 Q And you helped prepare some powers of attorney?

2 A Yes, sir, I did.

3 Q And are you aware that Ms. Riddle had prepared a will
4 leaving some property to Leisa?

5 A Yes, she did to Leisa.

6 Q And I hand you this and ask you if you recognize that
7 as -- as the will. I think I can speed it up a little bit

8 --

9 A Yes. I think -- I'm trying to read. The writing's
10 so small.

11 Q I'm going to -- I'm going to -- if you start reading
12 at the top of the second page, I think you'll refresh your
13 memory a little quicker.

14 A I really need some reading glasses. Can I borrow --
15 Thank you.

16 Q Yeah.

17 A Yes, sir. I see where she had given Leisa --

18 Q To Leisa?

19 A -- to Leisa some property. And, also, Harvard Riddle
20 is listed.

21 MR. WISE: All right. Hold on a second.

22 I don't have an extra copy of this, unfortunately.

23 But it's the will of Bette Riddle.

24 (WHEREUPON, Applicant's Exhibit No. 8 was marked for
25 identification only.)

1 BY MR. WISE:

2 Q Now, I want to ask you about this will in which your
3 sister received the -- the house. Did you witness that
4 will?

5 A No, sir.

6 Q Do you know who the witnesses are?

7 A No. I don't recognize -- I don't know.

8 Q You don't recognize them?

9 A No, sir.

10 Q So they're not people that you know well?

11 A No. They're not people that I know well, no.

12 MR. WISE: Thank you.

13 I'll take my glasses back.

14 That's all we have, Your Honor, of her.

15 THE COURT: Anything on recross?

16 MR. SMITH: No, Your Honor.

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

18 You can step down.

19 MR. WISE: I call Cliff Gaddy.

20 THE COURT: All right. Mr. Gaddy.

21 THE CLERK: Mr. Gaddy, let me swear you in.

22 WHEREUPON,

23 CLIFFORD F. GADDY, JR.,

24 after first having been duly sworn, testified as follows:

25 THE CLERK: Thank you.

1 A Yes, I do. It's the deposition of -- it's a copy of
2 the deposition of Wesley Matthew Jones [sic].

3 MR. WISE: Okay. I'd like to introduce this.

4 (Pause.)

5 MR. KEY: Your Honor, this is -- this is the first
6 I've seen this deposition. I don't have any objection at
7 this time. But I would like to be able to look through it
8 and see later.

9 MR. WISE: There's no -- there's no objection to
10 his -- his wanting to do that. The guts of the
11 deposition --

12 There may be some peripheral things you want to
13 delete. And that's fine.

14 MR. KEY: Okay.

15 MR. WISE: But the guts of it, I think [inaudible]
16 after hearing it.

17 THE COURT: All right.

18 (WHEREUPON, Applicant's Exhibit No. 9 was marked for
19 identification and admitted into evidence.)

20 MR. WISE: And -- and for the record, too, I think
21 under Pauline v. State, it would -- it would be
22 admissible.

23 THE COURT: All right.

24 MR. WISE: And I've given him a -- a smaller copy.

25 THE COURT: All right.

1 BY MR. WISE:

2 Q Now, at this deposition, did you introduce any
3 exhibits?

4 A Yes, I did.

5 Q All right. Look through those and see if you
6 recognize those.

7 A They appear to be the exhibits of the deposition of
8 Wesley Matthew Jones.

9 MR. WISE: Okay. I'd like to move this in as
10 Applicant's Exhibit No. 10.

11 THE COURT: Any objection? Same concern?

12 MR. SMITH: Applicant's Exhibit No. 10?

13 MR. WISE: Applicant's Exhibit No. 10.

14 It's the exhibit you've got there that I gave you.

15 MR. KEY: No objection.

16 THE COURT: Without objection.

17 (WHEREUPON, Applicant's Exhibit No. 10 was marked for
18 identification and admitted into evidence.)

19 BY MR. WISE:

20 Q Mr. Gaddy, what was the purpose in taking this
21 deposition?

22 A Well, in preparing for the restitution hearing, of
23 course, I had a transcript of the trial of Polly Hindman.
24 And it appeared to me that it was not as clear as I'd like
25 for it to be concerning these payments that Polly Hindman

1 had made on behalf of her half sister, Bette Riddle, with
2 respect to these funeral expenses. And I took the
3 deposition of the manager at Woodlawn so that he would
4 produce his records showing the payment for the funeral
5 expenses of Bette Riddle that were made by Polly Hindman.

6 Q All right. So you had reviewed the -- you had
7 reviewed the transcript prior to taking this deposition?

8 A I had the transcript of the trial on the merits, yes.

9 Q Okay. And in the deposition, did the manager confirm
10 what Ms. Hindman had said at the trial?

11 A Say it again.

12 Q In the deposition -- I used the wrong words. In the
13 deposition, did the manager confirm what Ms. Hindman had
14 testified to at the trial concerning the payment of
15 funeral expenses?

16 A Yes. He gave it more detail. And he had copies of
17 the actual documents, which I produced as exhibits.

18 Q All right. Was there any difficulty in obtaining
19 those documents?

20 A Well, they were -- Woodlawn required a subpoena and a
21 former deposition in order to produce the documents. They
22 would not produce them voluntarily.

23 Q All right. So, in other words, if you subpoenaed
24 them, they would produce them?

25 A Yes. That's right.

1 Q Now, based upon this information, did you, also, file
2 a motion for a new trial?

3 A I did.

4 Q And what was -- what was the allegations in the
5 motion for a new trial? And excuse me. I thought I had a
6 copy. And I know I do. But I just can't find it real
7 quick. But she can.

8 MR. WISE: The motion for the new trial.

9 (Pause.)

10 MR. WISE: It's on file at the Greenville Courthouse.

11 THE COURT: All right.

12 BY MR. WISE:

13 Q What was the basis of the motion?

14 A Well, I felt that an injustice had occurred and that
15 Polly Hindman was not guilty. And the basis of the motion
16 was the -- well, it was several things. I -- I would need
17 the motion to refresh my memory about all the grounds.

18 Q All right. But the one relevant -- did it primarily
19 deal with after-discovered evidence?

20 A Yes, it did.

21 Q All right. And what happened to that motion?

22 A Judge -- it came before Judge Miller and he denied
23 it.

24 Q Okay. Is that a copy of his order denying it?

25 A Yes. This is the order dated November the 8th, 2017,

1 issued by Judge Edward Miller.

2 MR. WISE: I don't have you a copy of this one. I'm
3 sorry.

4 (WHEREUPON, Applicant's Exhibit No. 11 was marked for
5 identification only.)

6 BY MR. WISE:

7 Q And do you -- from reviewing the order -- I know the
8 order speaks for itself. But can you tell us, generally,
9 why the Judge denied it?

10 A Well, he didn't go into the merits of it. He said
11 the motion was made out of time and that the -- that's,
12 basically, what he said. He really didn't rule on the
13 merits.

14 Q All right. He said, basically, that this evidence
15 had been known since 2012?

16 A Yes.

17 MR. WISE: Okay. Thank you.

18 Answer any questions the State may have.

19 THE COURT: All right. Cross-examination.

20 CROSS-EXAMINATION

21 BY MR. KEY:

22 Q Good morning -- or good afternoon, Mr. Gaddy.

23 So I believe you testified that you were retained?

24 A (There was no response.)

25 THE COURT: Counsel, I don't think he can hear.

1 You've got to get closer.

2 BY MR. KEY:

3 Q Mr. Gaddy, I believe you testified that you were
4 retained to represent Ms. Hindman in the restitution --
5 restitution and sentencing hearing?

6 A That's correct.

7 Q Okay. And during your representation, you moved
8 for -- you made a motion for a new trial?

9 A I did.

10 Q Okay. And that was denied?

11 A Yes.

12 Q Okay.

13 A I -- I think that -- I think I repeated the motion
14 really. And that -- that trial counsel, Mr. O'Connell,
15 had made that motion at the end of the trial. But to make
16 certain, I made it again.

17 Q Okay. And you, also, represented Ms. Hindman on
18 appeal?

19 A Yes.

20 Q Was -- what was the -- what was the resolution of the
21 appeal?

22 A We discontinued the appeal. And the -- the Court of
23 Appeals did not make a ruling either way.

24 Q So you withdrew the appeal?

25 A Sir?

1 Q You withdrew the appeal?

2 A I did.

3 Q Okay. And you deposed -- was it the -- who did you
4 depose to get those documents, the --

5 A The -- his -- his name is Wesley Matthew Jones --
6 James, J-A-M-E-S. And he was the manager of Woodlawn
7 Funeral Home.

8 Q Okay. Do those documents say what account the money
9 was paid from?

10 A Yes, they do.

11 Q Okay. And whose name was on the account?

12 A Well, the checks for the payment of the pre-funeral
13 expenses were from Polly Hindman. The contract itself,
14 the funeral -- the papers were for the benefit of a
15 funeral of Bette Riddle.

16 Q Okay. Were they from a SunTrust account? Do you
17 know that?

18 A Say it again.

19 Q Was -- the bank that paid the funeral home, was that
20 a SunTrust account, the bank?

21 A I'd have to look at the exhibits themselves to -- to
22 tell you. We've got the duplicate copies of the checks
23 here. And I can look at it right quick and try to come up
24 with that.

25 The Polly Hindman check -- I see one right here --

1 was on a SunTrust account.

2 Q Okay. Did Ms. Hindman have the SunTrust account set
3 up for VA benefits for Ms. Riddle to be paid into?

4 A Now, I don't -- I don't know about how VA benefits
5 were set up. I know that Ms. Hindman got VA benefits on
6 behalf of the -- on behalf of Beth Hindman -- I mean Bette
7 Riddle. But I don't know those particular details about
8 how she had things set up. I know that she returned all
9 the money to the VA.

10 Q Yes, sir. I believe at the restitution hearing, she
11 testified that she had two SunTrust accounts, one for just
12 the VA benefits and one for her own joint account.

13 A Yeah. I think she -- yeah. She testified to that.

14 Q In those documents, is there any way to tell which
15 account that payment would have come from?

16 A Well, you could do it by a lot of analysis. I mean,
17 I couldn't do it by sitting up here and not having advance
18 notice about that particular point. But I suppose if you
19 do enough analysis, you could tell.

20 MR. KEY: Okay. I beg the Court's indulgence.

21 (Pause.)

22 MR. KEY: I -- I have no further questions of this
23 witness.

24 THE COURT: Redirect?

25 MR. WISE: I have no questions on redirect.

1 THE COURT: All right. I have -- thank you,
2 Mr. Gaddy. I appreciate it.

3 You can stand down.

4 MR. WISE: And, with that, the Applicant rests, Your
5 Honor.

6 THE COURT: All right. Just take your time.

7 All right. The State's ready to proceed. Do you
8 need a break, or are you ready to go?

9 MR. KEY: I'm ready, if you are, Your Honor.

10 THE COURT: I am. You can call your witness.

11 MR. KEY: The State would call James O'Connell.

12 THE COURT: All right.

13 THE WITNESS: My right hand on the Bible?

14 THE CLERK: Raise your right hand. Left hand on the
15 Bible and raise your right hand.

16 WHEREUPON,

17 JAMES PATRICK O'CONNELL,

18 after first having been duly sworn, testified as follows:

19 THE CLERK: Thank you.

20 You may be seated.

21 And, please, state your full name for the record.

22 THE WITNESS: Okay. James Patrick O'Connell.

23 DIRECT EXAMINATION

24 BY MR. KEY:

25 Q Mr. O'Connell, how long have you been practicing law?

- 1 A I think it's over 40 years.
- 2 Q And what type of law do you, generally, practice?
- 3 A 70 percent Family Court.
- 4 Q Okay. What percent -- percentage of your practice do
5 you do criminal law?
- 6 A 10 to 15 percent.
- 7 Q Okay. How did you come to represent Ms. Hendmond in
8 this case?
- 9 A Ms. Polly Hindman?
- 10 Q Hindman. Sorry.
- 11 A I've known her and Bob 35 years.
- 12 Q Okay. And they came and retained you as their
13 counsel?
- 14 A Oh, after they had retained Steve Yacobi.
- 15 Q Okay. So you were not her first counsel --
- 16 A No, no.
- 17 Q -- in this case?
- 18 Okay. How often did you and Ms. Hindman meet to
19 prepare for this case?
- 20 A I would like to say, at least, once a month for over
21 two years for a minimum of maybe -- I'm going to say 50
22 times.
- 23 Q Okay. Were there ever any plea offers from the
24 State?
- 25 A Yes, there were.

1 Q Okay. Did you relay those offers to Ms. Hindman?

2 A There was one that occurred about a month or so
3 before we got notice of the first hearing. And it was
4 done by phone, which I didn't think was regular. And if I
5 can -- they wanted Polly to pay, I think, \$15,000
6 up-front, plead, and say she was guilty to the charge of
7 vulnerable adult. And then they wanted \$25,000 more to --
8 you know, for restitution.

9 Q Right. Okay. Did you relay that offer to
10 Ms. Hindman?

11 A Yes, I do. I do it by letter. There should be a
12 letter in the file.

13 Q What -- what was her response?

14 A She was always innocent. I believed her. And she
15 was innocent when she came to see me, innocent the whole
16 time we were doing the whole case.

17 Q Okay. Now, were you aware -- or did she tell you
18 that she had paid for these funeral expenses before trial
19 in preparation?

20 A Yes.

21 Q Okay. Now, what -- could you, generally, describe
22 what evidence the State had against Ms. Hindman in this
23 case?

24 A Well, first, let me go back. This is, actually,
25 also, part of a civil matter between Mr. Harvard Riddle

1 and Polly about this whole case.

2 I received discovery, I think, from the -- Attorney
3 Truluck, I think is her name, Truluck and Thomason. And
4 their paperwork is about that thick, about 500, 600 pages.
5 They, actually, had a copy of the -- all the bank
6 statements and everything from Polly and her husband, and
7 the information as to the -- the burial stuff. It's
8 called pre-need burial.

9 And then we got about a month before the hearing 680
10 something -- I'd say close to 700 pages of discovery from
11 the Solicitor, which my first thought was I had to go
12 ahead and ask for a continuance. Because there's no way
13 you can review 600, 700 pages. And in those pages, there
14 were, also, the documentation showing she had been to the
15 pre-need burial place and got it all set up for her
16 sister. So if that answers your question.

17 Q So the State provided that information to you through
18 discovery?

19 A Yeah. Six -- about -- I think we counted it up. It
20 was four or five pages less 700 pages..

21 Q Did you attempt to introduce that in Ms. Hindman's
22 trial --

23 A I don't -- oh, go ahead. Sorry.

24 Q -- those documents?

25 A No. Because the -- when the questioning was going

1 on, nobody objected to it. When they were talking about
2 the pre-need and she had done the burial and all the rest
3 of it, nobody objected. They didn't object to any of the
4 checks that, I think, Leisa Norris had written for Polly
5 or any of the testimony about the pre-need burial.

6 So, at that point in time, if no one's objecting,
7 I -- I -- you know, I don't have as much experience as
8 everybody us else does. But I don't want to confuse the
9 jury or make the jury sound like I'm trying to harp on
10 something.

11 Q So the testimony that was coming in about the funeral
12 payments, did you view that as beneficial to your client?

13 A Oh, yes. It was very beneficial. And I can tell you
14 the reason why. At closing, the Solicitor, actually,
15 tried and got through to introducing a -- when you pull
16 down the screen, a document showing that all Polly had
17 gotten was \$16,000 or -- more or less. And most of it was
18 for funeral expenses.

19 At first, I objected to it. But then the Judge said
20 it was okay to do because it was documentary. But that --
21 that just showed that Polly just got the funeral.

22 Thank you.

23 Q So the State's closing, actually, showed that
24 Ms. Hindman paid only -- had paid the funeral home
25 \$16,000?

1 A Their documentation showed Polly Hindman had
2 received -- I think it was right around 13,000, 14,000,
3 somewhere in that vicinity. And the rest were, like,
4 checks for mowing the grass and -- I think Bob had mowed
5 the grass and -- Bob Hindman had mowed the grass. And,
6 like, when you go get diapers and such from the Walmart
7 and stuff of that nature. And that's what it showed. I
8 think it should be in your file there.

9 Q So -- so all -- the testimony regarding that came in
10 through either direct or your cross-examination of
11 witnesses?

12 A Oh, yes.

13 Q Okay. Do you have a copy of the transcript up there?

14 A Yes. I have broken it down -- I received it. Just
15 tell me what page you want me to go to.

16 Q Okay. On Page 66.

17 A Okay.

18 Q I believe this is your cross-examination of Mary
19 Cervetti.

20 A Mary Ellen Cervetti, yes.

21 Q Okay. Mr. Wise earlier during his direct of
22 Ms. Hindman, he asked about this question on Lines 14
23 through 16.

24 A Do I need to respond to that?

25 Q Uh --

1 A Okay. I'll say, yes, he did.

2 Q Okay. What was your reasoning for asking that
3 question?

4 A There was a -- testimony that the -- let me go back.
5 The lady from the -- who used to be the FBI agent, but now
6 worked for BB&T -- had been doing it 20 years. She had
7 testified that two ladies came in the bank or said that
8 she had got a call about two ladies. I was trying to
9 bring out that as far as I knew, Polly just went one time.
10 She never went back to this bank to try to get anything.

11 All Polly did was -- they told her to change the name
12 on the -- one of the powers of attorney. And that's one
13 of the reasons we had three powers of attorney.

14 The first one was done because that's what she was
15 told to do. They went to the bank and they changed it
16 again. And then the third time, I think, it was because
17 they told her they didn't like it that way. And they just
18 took -- you, actually, can see where they, actually, just
19 took her name off one of them and just crossed it through.

20 MR. KEY: I beg the Court's indulgence.

21 (Pause.)

22 BY MR. KEY:

23 Q There's, also, an allegation been made that you
24 failed to cross-examine Leisa Norris to obtain information
25 that would have established Ms. Hindman's innocence. Did

1 Ms. -- did Ms. Norris testify at trial that she was
2 repaying Ms. Hindman for the funeral expenses?

3 A As -- as far as I know, she -- the reason I didn't
4 question her much was, number one, I believe you don't ask
5 the same question two or three times because you don't
6 beat a dead horse or let a jury get in their head
7 something. But, also, I found her testimony helpful to
8 Polly.

9 Q So after hearing her testimony on direct, you felt
10 that her testimony helped your client?

11 A That's correct.

12 Q Okay. And so you did not cross-examine her more
13 because she had already said what you needed her to say?

14 A Also, I believe that sometimes people get a little
15 bit carried away. And they might start saying something
16 you don't want them to say.

17 Q Okay. Ms. Hindman was the notary on all of these
18 powers of attorney; correct?

19 A As far as I know, yes.

20 Q Was she the notary on the first power of attorney
21 that was taken to the bank that listed her as the -- that
22 listed her as having the power of attorney?

23 A I -- I would say yes. Because I believe that it was
24 either her or Bob Hindman were, one or the other.

25 Q And so you were aware of all of these documents,

1 receipts that Ms. Hindman had paid to the funeral home?

2 A Yes.

3 Q Okay. And you decided not to introduce that evidence
4 because you felt testimony came in supporting your theory?

5 A Correct.

6 Q Okay. And just briefly, what was your defense
7 theory?

8 A Well, when I first got this case, there was,
9 actually, already two indictments listed. One was the --
10 back -- I know most people don't remember this. Back in
11 about 2015 or 2014, there was, actually, just a code
12 section that said about vulnerable adults. About two
13 months later, they issued another indictment -- or got
14 another indictment that had slightly different language.

15 The one we went to court on in 2016, actually, put
16 the new language in. Because in 2016, they changed the
17 law, more or less -- I hate to say it that way -- as to
18 notaries and powers of attorney. But the power of
19 attorney part, actually, made the power of attorney -- it
20 used to be if you gave a power of attorney, you were that
21 person.

22 But, now, under the new law, as far as the way I've
23 been able to read it and find out, you're not. You,
24 actually, have to do accountings. You've got to do a
25 whole bunch of other stuff you didn't have to do before

1 when you were a power of attorney.

2 So under that one, I believed that they were going
3 on -- after Polly for two reasons. One, vulnerable adult.
4 But, also, the use of the power of attorney maybe not by
5 Polly, but somebody she had -- I'm not going to use the
6 word conspired with, but had helped. And under that new
7 code section, if you help somebody, you're -- you could
8 get the same punishment.

9 Q Did you move for a directed verdict in this case?

10 A I think I moved at the end of the State's case, at
11 the end of our case. And then when the verdict came back
12 in -- I know most attorneys don't do this, but I do the
13 thirteenth juror. And when I said that, the -- I think
14 Judge Miller said, I take that as a -- you know, for a new
15 trial, and such. And he said, I take -- something to the
16 language that that takes care of all your motions, or
17 something of that nature, so.

18 So I believe I did it, yes.

19 Q Okay. On Page 84 of the transcript, one of the
20 allegations is you failed to move for a directed verdict
21 that the State had shown evidence that Ms. Hindman had
22 abused her power of attorney. On Page 84, Lines 17
23 through 19, did you move -- or make that motion for a
24 directed verdict?

25 A I made that motion. But prior to that, if you read

1 Lines 12 through 15, I asked for a directed verdict based
2 on that they never -- as far as I know, they didn't show
3 that Bette Miller -- Mid -- Riddle was -- was a vulnerable
4 adult.

5 And then the second part I said that they showed no
6 proof my client got any money out of this, that she did
7 anything untoward. She just got repaid for what she had
8 spent her money on.

9 Q So you -- you based your directed verdict on two
10 separate grounds?

11 A Yeah.

12 Q And the second ground was that they didn't show that
13 she had received any money at all, no benefit?

14 A No -- no benefits, right.

15 Q Right.

16 A Yes, sir.

17 Q Okay. Now, there's an allegation regarding, I
18 believe, Detective -- or Investigator Martin. Do you
19 recall the investigator's testimony? I believe it's
20 short.

21 A Very short, if I'm not mistaken.

22 Q Okay. Did he give any opinions in his testimony?

23 A It depends on what you mean by "opinions."

24 Q Okay. Do you recall what his testimony was about?

25 A In general, he said he had investigated based on

1 the -- the two attorneys from probate court -- not from,
2 but who were handling the probate court coming to him and
3 showing him all this documentation saying that Polly and
4 her sister had taken all this money from Bette Riddle.

5 And he had investigated. He went over it. He
6 checked it. And then he took all that -- his -- his
7 summation or his belief to the magistrate, who issued the
8 warrant.

9 Q Okay. Was -- during trial, did that testimony seem
10 harmful to your case?

11 A No. Because that's what the officer does. He -- he
12 investigates. He goes to the magistrate. The magistrate
13 thinks he has enough on prima facie. Then all they do is
14 they issue a warrant.

15 Q And did you see any reason to object to that?

16 A That's what he did. How can you object to it?

17 MR. KEY: No further questions.

18 THE COURT: Cross-examination.

19 CROSS-EXAMINATION

20 BY MR. WISE:

21 Q First of all, I'm going to give you the benefit of
22 reviewing this motion. Do you remember filing that for a
23 continuance?

24 A Yes. That's when we got all those pages.

25 MR. WISE: I'd like to introduce this as Applicant's

1 Exhibit -- I believe it's No. 8.

2 MR. KEY: No objection.

3 THE COURT: Is that Applicant's Exhibit No. 8 or 9?

4 THE COURT REPORTER: Applicant's Exhibit No. 12.

5 THE COURT: Applicant's Exhibit No. 12?

6 THE COURT REPORTER: Yes, sir.

7 THE COURT: And that's without objection; right?

8 MR. KEY: Yes, Your Honor.

9 (WHEREUPON, Applicant's Exhibit No. 12 was marked for
10 identification and admitted into evidence.)

11 BY MR. WISE:

12 Q So on the verge of trial, you got 678 pages of
13 discovery at the last minute?

14 A That's correct, Your Honor -- I mean Mr. Rauch [sic].

15 Q Is that correct?

16 A (There was no response.)

17 Q Is that correct?

18 A That's correct.

19 Q All right. Now, let's go back to Applicant's Exhibit
20 No. 1. Now, you met with Ms. Hindman on many occasions;
21 correct?

22 A Oh, quite a number of occasions.

23 Q And she gave you numerous documents concerning her
24 relationship with Bette Riddle?

25 A She was very helpful. She -- she's like a go-getter.

1 She gets everything you want.

2 Q All right. Do you recognize those documents as some
3 that she gave you?

4 A I recognize these. Because I think I have two copies
5 of everything.

6 Q You made a copy of what she gave you?

7 A No. I got a copy from the other attorneys in the
8 civil matter. And then at the last moment, we got copies
9 of almost -- I believe almost all the same stuff from
10 the -- the solicitor's office.

11 Q So the point is that what's in Applicant's Exhibit
12 No. 1, you had seen prior to trial?

13 A That's correct.

14 Q All right. And would the same, also, be true with
15 Applicant's Exhibit No. 2?

16 A Yeah. This is all what Polly brought me, and showed
17 me, and we went over, and we gave everybody else.

18 Q And the same would be true of Applicant's Exhibit
19 No. 3?

20 A This is where Polly showed me all the stuff she had
21 bought for Bette, like going to the grocery store.

22 Q Right?

23 A Yes.

24 Q And in -- in Applicant's Exhibit No. 3, she had
25 circled or highlighted certain entries for Bette, and the

1 rest of them were her stuff; is that correct?

2 A That's absolutely correct.

3 Q All right. Now, did you ever consider introducing
4 Applicant's Exhibit Nos. 1, 2, or 3 into evidence at the
5 trial?

6 A I considered it while it was being testified to. But
7 when nobody objected to what they were stating at the
8 hearing, I didn't want to do it then.

9 Q All right. Now, have you got the transcript in front
10 of you?

11 A I've got my part --

12 Q All right. If you'll turn to Page 41, during the
13 testimony of Leisa Norris.

14 A Okie dokie.

15 Q All right. And if you look at Line 14 -- excuse me,
16 Line 14. And who are those checks made payable to?

17 And she says, Polly Hindman.

18 Correct?

19 A That's correct.

20 Q All right. And how much are they for? And she's
21 referring to 6,000 -- a little over six -- about 6,700;
22 correct?

23 A (There was no response.)

24 Q Does she ever say in that sequence that those two
25 checks were for funeral expenses?

1 A Not at that time, no.

2 Q All right. Do you know of anywhere in there she said
3 they were for funeral expenses?

4 A Under -- well, I don't know, no. I'd say no.

5 Q All right. Now, you'll agree that this trial pretty
6 much boiled down to about \$12,000 or \$13,000 in funeral
7 expenses, and other incidental expenses?

8 A That's what the trial did, yes.

9 Q Right. I understand the restitution --

10 A The restitution --

11 Q -- hearing got out of hand. But that's another
12 story.

13 But this trial was down to about 12 -- about \$13,000?

14 A Correct.

15 Q All right. And, in fact, when you made a motion for
16 a directed verdict on Page 85, Ms. Harrison said at Line
17 16, I think we've had direct testimony she received over
18 \$12,000 or \$13,000 for funeral checks; correct?

19 A 85, Line 16 says, As far as his client getting money,
20 I think we had direct testimony of 12,000 to 13,000 in
21 funeral checks.

22 Q Correct.

23 All right. Then let's turn to --

24 A Except the Judge then says, That will be a question
25 of fact for the jury.

1 Q Correct.

2 Let's go to Page 135. All right. Line 18. This is
3 the closing argument of Ms. Harrison. All right.

4 Completely out of numerical sequence to Mrs. --

5 Ms. Hindman for about 13 grand for a funeral for which
6 there has been absolutely no evidence presented to you
7 today, other than her testimony there was such a funeral,
8 plot, burial, casket, marker that is in existence today.

9 Correct?

10 A That's what she says there.

11 Q So she argued that there was absolutely no evidence,
12 other than the word of Ms. Hindman?

13 A That's correct.

14 Q And you had evidence to refute that?

15 A And she, actually, showed in demonstrative evidence
16 when she put the thing showing the amounts on the board
17 and the Judge allowed the same thing. She showed that
18 there were payments made to the funeral home, and
19 everybody else.

20 Q There's no doubt that Ms. Harrison said there were
21 payments made to Ms. Hindman for about \$12,000?

22 A It's demonstrative evidence the Judge allowed in. As
23 a matter of fact, that's on Page 134, Lines 19 to the
24 bottom.

25 Q Page what?

1 A Page 134. And, actually, it starts a little bit
2 higher on Line 13. And she says, If you add those checks
3 together, if you believe they really went for a funeral,
4 it was a great funeral for about 13 grand. I'm putting
5 the checks together. I'm putting -- inputting all the
6 checks together that were written for Ms. Hindman. Pause.

7 I raised an objection because she put a -- like a --
8 what do you call it? -- a -- like, an accounting on the
9 board and showed it to the jury. And I objected. And the
10 Judge said, It's demonstrative.

11 Q Well, you'll -- you'll agree that Ms. Harrison was
12 being rather sarcastic there when she talks about it's a
13 great funeral for about 13 grand?

14 A I -- I don't want to opine on what another attorney
15 was doing at that time.

16 Q All right. But you had documentation that would have
17 clearly and unequivocally established that Ms. Hindman
18 paid for Ms. Riddle's funeral?

19 A Yes.

20 Q Did you ever talk to the people at the funeral home?

21 A No.

22 Q All right. Obviously, they would respond to a
23 subpoena?

24 A Yes.

25 Q All right. But you never tried to subpoena their

1 records to help establish that?

2 A No.

3 Q All right. Now, you -- I don't know if we can --
4 read this to refresh your memory about the detective, Tim
5 Martin, at the preliminary hearing.

6 A March 19th of 2015, I wrote Ms. Harrison, Sylvia
7 Harrison --

8 Q I -- I -- I don't need you to read it. I just need
9 you to refresh -- read it and refresh your memory. Does
10 that refresh your memory about the --

11 A It does.

12 Q -- preliminary hearing?

13 A About the preliminary hearing, yes.

14 Q All right. And at the preliminary hearing, did
15 Mr. Martin admit that he had copies of checks for the
16 funeral?

17 A Yes, he did.

18 Q What checks was he talking about there?

19 A Well, he didn't show them to us and we had not
20 received discovery yet. But he, also, stated that he had
21 no problems with the powers of attorney because the
22 probate court never said they were invalid.

23 Q Do you think having -- do you think -- by introducing
24 Ms. Hindman's check that she paid for the funeral with and
25 the check that she was reimbursed that was introduced, do

1 you think introducing Ms. Hindman's check would have
2 helped your defense?

3 A I -- it's one of those things. I'd like to say yes.
4 Now, in -- what? -- two years in hindsight, I don't know.
5 But I would like to say yes.

6 Q All right. And then refer to the closing argument,
7 138. At the bottom, Line 24, where the closing argument
8 was, And Ms. Hindman walked away with over 16 grand. And
9 she has not presented one shred of evidence to show that
10 she did not take that and put it in her checking account.

11 Correct?

12 A You said Line 134.

13 Q 138 to 139.

14 A Oh, okay.

15 Q Line 24 on 138.

16 A Well, she's, actually, saying -- they were talking
17 about a half a million dollars and 339. But that's
18 closing argument. Normally, you don't object to anything
19 in closing argument.

20 Q I'm not saying you should have objected to it. I'm
21 just saying, again, Ms. Harrison said there was no
22 evidence that a funeral was paid for with those checks.

23 A That's what she's saying. But --

24 Q Correct --

25 A -- she hadn't, actually--

1 Q And you actually -- well, you, actually, had
2 documents that could have refuted that?

3 A She had them, too. The Solicitor, actually, provided
4 me 700 -- almost 700 pages that was in their paperwork.

5 Q Whoa, whoa. So you're saying that the Solicitor had
6 what's in Exhibit Nos. 1, 2, and 3?

7 A As far as I know. When I got a big pile of them --
8 and I think Polly and I went through every one of them.
9 We found the same thing in there. They had all kinds of
10 bank accounts, checks from everybody. And, you know,
11 that's why I had to ask for a continuance. You can't go
12 through 700 pages.

13 Q So you're saying that when the Solicitor said there's
14 not a shred of evidence that she didn't put it in her
15 checking account, she had possession of evidence that
16 would have shown what it went for?

17 A I'm saying she didn't. Because they gave them to me.

18 Q As well as Ms. Hindman?

19 A Well, Ms. Hindman and I had them from the -- the
20 civil matter. We had gotten them from Paul Landis and
21 from -- I think her name is Thomason or Thompson,
22 something like that. And you should see how much -- I got
23 two boxes of documents. Polly spent a good three -- a
24 good month -- she kind of tabulated them and put them
25 together and showed me what bank accounts they were and

1 everything.

2 Q All right. And let's go to Page 82, your direct
3 examination of John T. Martin, the -- I believe that's Tim
4 Martin, the investigator. Are you there?

5 A Yep.

6 Q All right. At Line 10, the question was, I'm sorry.
7 Based on your criminal investigation of this case, your
8 review of the documents once you completed your
9 investigation, what did you do?

10 He says, I signed a warrant.

11 A He said warrants, plural.

12 Q Warrants. Excuse me.

13 All right. Is that not the equivalent of his saying,
14 in my opinion, she's guilty?

15 A That -- that's a question for law school. Because he
16 signed a warrant that takes it to the magistrate. He has
17 enough there to believe he has enough. So it's one of
18 those question, do I know what's in his head? No. But I
19 do know he said he had enough to present to the
20 magistrate.

21 Q All right. How was that probative of whether or not
22 Polly Hindman, actually, stole something?

23 A I don't think it's probative of anything. Because,
24 see, he just says he has enough. The problem is if you
25 objected to almost everything in the hearing, not only

1 does the jury not like you, you're going to be there --
2 you know, I'm not saying time has anything to do with it.
3 But you don't object to everything, especially an
4 argumentative question like that, whether it can be or
5 cannot be.

6 Q But, in essence, what he says is, in my opinion,
7 she's guilty?

8 A No. In essence, he's saying he had enough to take it
9 to the magistrate to get signed warrants --

10 Q And he signed a warrant?

11 A Signed, plural, yes.

12 Q Signed warrants. Now, when you made your motion for
13 a directed verdict, you never asked for a directed verdict
14 on the grounds that the State had not proven that
15 Ms. Hindman had, actually, used the power of attorney?

16 A The powers of attorney. That -- that's the problem
17 with the new law. The new law has about seven or eight
18 subsections.

19 Now, you can read them all as one continuous phrase,
20 sentence, clause, or whatever you want to, or you could
21 break them down to each individual one. And I think they,
22 actually, do have it broken down somewhat to that, so.

23 But the -- she was charged with -- I think if I
24 remember the language correctly, helping, or abetting, or
25 aiding, whatever term with the use of a power -- the

1 powers of attorney. It doesn't mean she had to use them.
2 But somehow or another, she did a power of attorney that
3 somebody else could have used.

4 Q So you thought she was indicted for aiding and
5 abetting?

6 A Well, the way that's written, my -- if you read it,
7 anybody could be charged.

8 Q Now, let me -- let me ask you if you recognize that
9 as the indictment from October of --

10 A Yeah. That's the indictment, yeah.

11 MR. WISE: I'd like to introduce this --

12 MR. KEY: I believe that's in the Judge's packet.

13 THE COURT: That's Applicant's Exhibit No. 13, Madam
14 Court Reporter?

15 THE COURT REPORTER: Yes, sir.

16 THE COURT: Without objection?

17 MR. KEY: Without objection.

18 THE COURT: All right. Applicant's Exhibit No. 13
19 without objection.

20 (WHEREUPON, Applicant's Exhibit No. 13 was marked for
21 identification and admitted into evidence.)

22 BY MR. WISE:

23 Q I'm handing you Applicant's Exhibit No. 13, which is
24 the indictment in this case. All right. Does it ever
25 allege that Bette [sic] Hindman aided and abetted Leisa

1 Norris in committing a misuse of a power of attorney?

2 A Well, you're going on what I said, aiding and
3 abetting. But it says this, That the Defendant did take
4 improper, unlawful, or unauthorized use of funds, assets,
5 property, or power of attorney of a vulnerable adult for
6 the proper advantage of that person or another person.

7 Q All right. Thank you.

8 Let me ask you this question, in the trial itself,
9 there was no testimony that Polly Hindman went into any
10 place and used the power of attorney to obtain a dime of
11 Bette Riddle's money?

12 A That's absolutely correct. She never used one of
13 those powers of attorney.

14 Q Correct.

15 A The only one I think she might have used in any way,
16 shape, or form is when they went to take Ms. Riddle to the
17 hospital because she wouldn't bathe and wash herself.
18 They wanted to commit her at that time.

19 Q A medical power of attorney?

20 A Yes.

21 Q And that involved no funds; correct?

22 A That's correct. And -- and she couldn't have. She
23 didn't have it on her.

24 Q So you'll agree that the evidence in this case -- and
25 I'm -- I'll concede that His Honor has to read it and draw

1 the conclusion, also. So I'm not assuming anything beyond
2 that.

3 That the evidence in this case does not show that she
4 went into any store, any bank, any financial institution,
5 or any person and used the power of attorney to cheat
6 Bette Riddle out of a dime?

7 A Polly Hindman's innocent. She didn't use any of
8 that. She didn't get any money for herself in this whole
9 thing. This is why -- you know, I don't know how juries
10 work or anything. I wish somebody would really find out.
11 But maybe I should have had just a Judge trial. Maybe it
12 would've been better with a Judge trial.

13 Q All right. Now, so you never asked for a directed
14 verdict on the grounds that Ms. Hindman did not use a
15 power of attorney?

16 A Nope, not specifically.

17 Q Correct.

18 That was a specific charge of the Judge on Page 143?

19 A That's right. When they made the charges, yes.

20 Q Okay. And the lady who testified for the bank -- let
21 me get her name. It's Mary Ellen Cervetti. She was not
22 the one that Ms. Hindman and her sister went to see in the
23 bank?

24 A I don't think they got the name of the person they
25 saw at the bank.

1 Q Excuse me?

2 A I don't believe they got the name of the person that
3 they went to see at the bank.

4 Q Let me see that letter.

5 A This?

6 Q No. The letter -- the letter I gave you a minute ago
7 to look at.

8 Did I take it back? Yes.

9 I hand you a letter of yours dated February 3rd,
10 2015, and ask you to identify that as your letter?

11 A 2015. Yep, that's my letter.

12 MR. WISE: I would like to introduce this one.

13 (Pause.)

14 MR. WISE: I'd like to move to introduce this one.

15 THE COURT: Any objection?

16 MR. KEY: No objection, Your Honor.

17 THE COURT: Without objection, Applicant's Exhibit
18 No. 14.

19 (WHEREUPON, Applicant's Exhibit No. 14 was marked for
20 identification and admitted into evidence.)

21 BY MR. WISE:

22 Q All right. Mr. O'Connell, if you would look at
23 paragraph C of that letter. Do you see it?

24 A Yes.

25 Q Does it identify the name of the person at the bank

1 that Ms. Hindman and her sister went to talk to?

2 A Yes. Back in 2015 when the letter was written, it
3 was Carrie Floyd.

4 Q Carrie Floyd.

5 Well, back if 2015 when the letter was written, did
6 you ever interview Carrie Floyd?

7 A No, I did not.

8 MR. WISE: Excuse me one minute, Your Honor.

9 (Pause.)

10 MR. WISE: Nothing further.

11 THE COURT: All right. Anything on redirect?

12 MR. KEY: Very briefly.

13 REDIRECT EXAMINATION

14 BY MR. KEY:

15 Q Mr. O'Connell, was there, actually, testimony -- let
16 me start over.

17 Was there evidence introduced that Ms. Hindman
18 attempted to abuse the power of attorney?

19 A No.

20 Q Did -- the first time they -- she and her sister went
21 to BB&T, she was on the power -- listed as the power of
22 attorney; correct?

23 A If I -- if my memory serves me, yes.

24 Q Okay. And Ms. Riddle's first name was spelled
25 B-E-T-T-Y on that document?

1 A Again, I -- yeah, yes. Let's say yes because
2 [inaudible].

3 Q Okay. It's -- I believe it's in the record. But Ms.
4 Callavari [sic] -- Cervelli [sic] testified that they
5 showed up with that document trying to withdraw a large
6 fund; correct?

7 A Not trying to withdraw. I believe the testimony said
8 something -- they were wanting to put it in a different
9 account to get it away from Mr. Riddle, who had already
10 had \$339,000 in his -- what -- what he had under him, so.

11 Q Well, to change it in -- from one account to another,
12 wouldn't you have to withdraw funds and then put them back
13 in another account?

14 A I guess if you take it step-by-step, you would have
15 to take it out of one and put it in another. When in
16 actuality, if you know anything about banking, all they
17 got to really do is redo that account page and move it to
18 another one. So they, actually, don't have to take the
19 funds from one account and move into another account.

20 Q So would that not be evidence that Ms. Hindman, at
21 least, attempted to abuse her power of attorney?

22 A No.

23 MR. KEY: Okay. No further questions.

24 MR. WISE: Just one question on redirect -- recross.

25 Excuse me.

RECROSS-EXAMINATION

1
2 BY MR. WISE:

3 Q Turn to Page 60 of the transcript.

4 A Okay.

5 Q Line 6.

6 A Okay.

7 Q And, actually, go down to Lines 8 and 9. What does
8 Ms. Calavarri [sic] say the purpose of the two women
9 coming into the bank was?

10 A On Line 8, it starts off with the word, That --

11 Q Well, go to the sentence at the end.

12 A Okay. And they wanted to have their names put on her
13 accounts.

14 Q And that was it?

15 A That was it. They didn't want to take any money from
16 her.

17 MR. WISE: All right. Thank you.

18 THE COURT: All right. Anything else?

19 MR. KEY: Nothing from the State, Your Honor.

20 THE COURT: I do have one question.

21 EXAMINATION

22 BY THE COURT:

23 Q I was looking in the transcript for that portion
24 where the Judge said he treated the -- the evidence as
25 demonstrative. What was being treated as demonstrative,

1 copies of checks, or what?

2 A Well, Your Honor, the lady -- what was her name?
3 What's the -- Sylvia Harrison.

4 Q Right.

5 A She got out one of those gizmos where you can blow it
6 up on the screen. And they pulled the screen down. And
7 she had written -- I think it was on yellow paper. And
8 she had put it on there. And it had the different numbers
9 and everything written on there where the actual term
10 came -- the amount came out to \$16,000 and something.

11 Q This was something that was handwritten by the
12 Prosecutor?

13 A Now, I'm trying to recall. But it was a form that
14 was on there. She tried to put it up. I objected to it
15 being demonstrative. And Judge Miller says -- well, I
16 said it was not legal -- or proper. Because it wasn't
17 offered during the hearing. And he said it's
18 demonstrative. So he let it go. It's a -- you know,
19 when they used to write out the stuff and put it on the
20 screen.

21 Q I understand that. But how did that relate to the --
22 to the funeral bills?

23 A The amounts were on there.

24 Q Just the written amounts of the funeral --

25 A Yeah. They had the funeral bills and whatever Polly

1 spent -- or got back for her -- going to the store, and
2 such like that.

3 Q All right.

4 A That's a good question. Because I -- I didn't see
5 any copy of that in any of the paperwork work we have.

6 THE COURT: All right. Anything else based on my
7 questions?

8 MR. SMITH: Not on that question --

9 MR. WISE: And as far as I know, it wasn't introduced
10 as an exhibit.

11 THE COURT: Okay.

12 MR. WISE: Or a Court's Exhibit even.

13 THE COURT: Okay. And I didn't see any. That
14 answers my question.

15 All right. Can you get down by yourself?

16 THE WITNESS: I will try, Your Honor.

17 Thank you very much.

18 THE COURT: Do you need a bailiff?

19 THE WITNESS: I go like this, see.

20 THE COURT: Do you all have any other witnesses?

21 MR. KEY: No, Your Honor.

22 THE COURT: Anything else from either side?

23 MR. WISE: Nothing further from the Applicant.

24 MR. SMITH: Nothing, Your Honor.

25 THE COURT: All right. Can I -- can I ask --

1 And, Mr. Rauch [sic], I know your schedule is pretty
2 busy. So can I -- is 45 days a good window?

3 MR. WISE: That -- that's more than enough.

4 THE COURT: 45 days, get me a proposed order from
5 both sides. Can you do that for me?

6 MR. WISE: I -- I will have to tell you on the
7 record, Your Honor, that we've done this before and you've
8 given us 45 days, or so. I went to a Family Court hearing
9 my last one and the Judge gave us 30 days. I went home
10 that day and started working on it. And it's a much
11 better order than waiting 45 days.

12 THE COURT: All right. But if you can get it to me
13 before 45 days. I'll give you that.

14 MR. SMITH: Well, we'll appreciate the extra 15 on
15 the end, Your Honor.

16 THE COURT: All right.

17 *****END OF TRANSCRIPT OF RECORD*****
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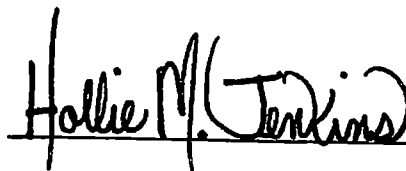
CERTIFICATE OF REPORTER

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 Common Pleas for Greenville County, South Carolina, on the 15th day of April, 2019.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

September 4, 2019



Hollie M. Jenkins, Court Reporter

My Commission Expires: 09/24/20

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF GENERAL SESSIONS
THIRTEENTH JUDICIAL CIRCUIT
C.A. NO.: 2015-GS-23-1563

State of South Carolina,
Plaintiff,

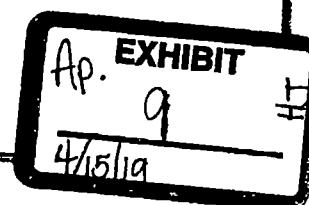
vs.

Polly McAbee Hindman,
Defendant.

 **COPY**

DEPOSITION OF
WESLEY MATTHEW JAMES

DATE TAKEN: August 16, 2017
TIME BEGAN: 10:02 a.m.
TIME ENDED: 11:19 a.m.
LOCATION: Woodlawn Funeral Home
1 Pine Knoll Drive
Greenville, South Carolina
REPORTED BY: Rusti Davis, Court Reporter
DEPOSITIONS AND..., INC.
P.O. Box 10268
Greenville, South Carolina 29601
864-235-3518



APPEARANCES

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CLIFFORD F. GADDY, JR., ESQUIRE
CLIFF GADDY LAW FIRM
408 North Church Street
Greenville, South Carolina 29601
864-250-5155
cfg126@yahoo.com
Attorney for Defendant.

ALSO PRESENT: Dana Brinkley

I N D E X

1			
2			Page
3	Stipulations		5
4	EXAMINATION BY:		
5	Mr. Gaddy		5
6	Certificate		36
7	Signature of Deponent		37
8			
9			
10			

E X H I B I T S

11			
12	Number	Description	Page
13	1	Notice of Deposition (2 pgs.)	5
14	2	Subpoena Duces Tecum (3 pgs.)	6
15	3A	9/26/1966 Contract for Purchase	10
16	3B	Installation Work Order No. 612558	10
17	3C	12/19/12 Woodlawn Memorial Park	10
18		Receipts for \$408.10 and \$5264.57	10
19	3D-I	11/29/2012 Durable Power of Attorney	10
20	3J-L	9/18/2012 Cemetery Interment Rights,	10
21		Merchandise and Services Purchase/	
22		Security Agreement	
23	3M	Installation Work Order No. 614709	10
24	4	6/23/2017 Initial Notification	22
25		(6 pgs.)	

1 5 6/23/2017 Statement of Funeral Goods 23
2 and Services Selected/Purchase
3 Agreement (4 pgs.)
4 6 12/18/2012 Application for Insurance 25
5 (5 pgs.)
6 7 12/18/2012 Guaranteed Price Preneed 28
7 Contract (3 pgs.)
8 8 Copy of Check to AML and American 31
9 Memorial Life Insurance Company
10 Documents (4 pgs.)
11
12
13
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19
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24 *All exhibits attached to transcript.
25

1 [It is hereby stipulated and agreed
2 by and among counsel for the respective
3 parties that this deposition is being
4 taken in accordance with the South
5 Carolina Rules of Civil Procedure, and
6 that the deponent does not waive reading
7 and signing of this deposition
8 transcript.]

9 - - -
10 [M. James Deposition Exhibit No. 1 was
11 marked.]

12 - - -
13 WESLEY MATTHEW JAMES, being duly
14 sworn, testified as follows:

15 - - -
16 MR. GADDY: Mr. James, I have some
17 statements that I'm making, and I waited
18 until you got here so the court reporter can
19 put my statements on the record. We are here
20 pursuant to a Notice of Deposition addressed
21 to the Person Designated by Woodlawn Memorial
22 Funeral Home to Testify As to Matters Known
23 Or Reasonably Available to the Organization
24 Concerning Records Described in a Subpoena
25 Attached Hereto, and this Notice of

1 Deposition was sent to and the Notice shows
2 that it went to Assistant Attorney General J.
3 Benjamin Aplin, spelled A-P-L-I-N.

4 The Notice was mailed on August 2, 2017,
5 and we have asked the court reporter to make
6 this Notice of Deposition to be an exhibit in
7 the record. The court reporter has now
8 labeled this Notice of Deposition as Exhibit
9 1.

10 Madam Court Reporter, we would also like
11 our Subpoena, which is a Subpoena Duces Tecum
12 in a Civil Case, to be entered into the
13 record. And so we'll ask that it be marked
14 Exhibit 2, and I will furnish you with a copy
15 of the Subpoena. I thought we had a copy in
16 here, but I don't see one. Anyway, we'll
17 give it to the court reporter so she can put
18 a label on it. You can put Exhibit 2 on that
19 Subpoena.

20 [Discussion off the record.]

21 [M. James Deposition Exhibit No. 2 was
22 marked.]

23 Q. [By Mr. Gaddy] Okay. Mr. James, by way
24 of further introductory remarks, I am Clifford
25 Gaddy, and I am attorney for Polly McAbee, spelled

1 capital M-C, capital A-B-E-E, Hindman, who is a
2 defendant in a case labeled or entitled, State of
3 South Carolina versus Polly McAbee Hindman.

4 I'm going to ask you a series of
5 questions. The questions will deal with the issues
6 as stated in our Subpoena and also in our Notice of
7 Deposition, which I believe you received a copy.
8 If my questions to you are not clear, let me know,
9 and I'll try to rephrase them. If there's anything
10 that you would like to discuss, and I don't know
11 that there will be, you can let me know, too. The
12 court reporter has sworn you in, so we will
13 proceed.

14 My first question is, would you give us
15 your name?

16 A. Wesley Matthew James.

17 Q. And would you give us an address? And
18 the address of our location will be fine.

19 A. 1 Pine Knoll Court, Greenville, South
20 Carolina 29 --

21 Q. Did you say 1 Pine Knoll Court?

22 A. Yes.

23 Q. As opposed to 1 Pine Knoll Drive?

24 A. Drive. Pardon me. Pardon me.

25 Q. So it's 1 Pine Knoll Drive?

1 A. Yes.

2 Q. Okay. Greenville, South Carolina, with
3 a ZIP of 29609?

4 A. Correct. Yes, sir.

5 Q. Okay. Now, are you employed by the
6 Woodlawn Memorial Funeral Home, or do you have
7 another employer that's not the Woodlawn Memorial
8 Funeral Home?

9 A. I am the general manager of Woodlawn
10 Memorial Park Funeral Home and Mackey Mortuary, and
11 I work between the two places, that is correct.

12 Q. So you are a general manager of both
13 Woodlawn and Mackey, just to make things
14 abbreviated?

15 A. Yes, sir.

16 Q. All right. Now, when did you become an
17 employee of Woodlawn approximately?

18 A. 2015.

19 Q. Okay. That's good enough.

20 A. Okay.

21 Q. So you were not an employee of Woodlawn
22 back in December of 2012 then?

23 A. No, sir, I was not.

24 Q. Do you have access to records of
25 Woodlawn that would relate to the sale or the

1 purchase of burial expenses to be paid in advance?

2 A. Yes, sir.

3 Q. Okay. Directing your attention to the
4 date of December 12, 2012. Do you have any records
5 of Woodlawn that were prepared during the course of
6 the business of Woodlawn pertaining to burial
7 expenses and funeral expenses that were paid in
8 advance for a person named Bette Riddle?

9 A. We do, yes, sir.

10 Q. Okay. Could you produce those papers
11 for us now?

12 A. Yes, sir. That envelope are your copies
13 of the cemetery purchase for her space, the burial
14 vault.

15 This information, these copies are for
16 you for her at-need, meaning the time of death,
17 when she died and her at-need arrangements, as well
18 as the 2012 preneed.

19 Q. Okay. Give me a few minutes to examine
20 them.

21 A. Sure. Pardon me.

22 Q. I'm going to present to you 13 pages and
23 ask if you just handed me these 13 pages and that I
24 -- you observed me to read them over?

25 A. Uh-huh. That is correct.

1 MR. GADDY: Okay. We'll ask that the
2 court reporter mark these 12 (phonetic) pages
3 as one exhibit, which will be Exhibit 3, and
4 then we will, as we refer to each page, we'll
5 ask that they be further labeled as 3A, 3B,
6 3C, so on, till we get through numbering or
7 identifying all 12 pages.

8 [Discussion off the record.]

9 [M. James Deposition Exhibit Nos. 3A
10 through 3M were marked.] .

11 Q. [By Mr. Gaddy] Mr. James, I am showing
12 you what has been labeled Exhibit 3A, and just for
13 convenience and to keep -- speed things up a little
14 bit, I'm going to look at the exhibit and say what
15 it is and ask you if I have stated it to be
16 correct.

17 Look at Exhibit 3A, it's a Contract For
18 Purchase. Would that be a fair description of
19 Exhibit 3A?

20 A. That would be correct. That was in 1966
21 for their purchase of the rights to the property
22 they own.

23 Q. Yes. It's dated September 26, 1966.

24 A. Yes.

25 Q. And there appears to be the signature of

1 Leonard Riddle on there. And on the second line of
2 Exhibit A, it reads, This contract, made this 26th
3 day of September 1966, between Woodlawn Memorial
4 Park, party of the first part, here now to call the
5 seller, and Leonard and/or Bette Riddle, party of
6 the second part, hereinafter called the buyer,
7 whose address is 108 Leyswood, spelled
8 L-E-Y-S-W-O-O-D, Drive. And it refers to Lot 204,
9 Section G, Graves 1, 2, 3, and half of 3. And it's
10 -- the amount on there is \$325.

11 Now, this is a contract to buy what, a
12 plot of land having this description of Lot 204?

13 A. That is correct.

14 Q. All right. I show you a paper, which
15 has Exhibit 3 label on the exhibit, and up at the
16 top of the page it says, Installation Work Order,
17 and for the property owner name, it's got Leonard
18 and Bette Riddle. Then it's got a purchaser name
19 of Polly Hindman with an address of Leyswood Road.
20 And it further says the installation location
21 description is Section G, Lot 204, and then it
22 looks like SP1. And the name on the memorial would
23 be Bette M. Riddle. Then it goes on to say, under
24 special instructions, please install 24 times 14 --
25 I guess that's 24 by 14, on 28 by 18, with leave,

1 WLV, for Riddle in Section G, Lot 204, SP1. It's
2 also got the note -- statement on there, the
3 purchaser notification, person to notify is Polly
4 Hindman.

5 What does this Exhibit 3B mean to you,
6 and what's the purpose of the creation of that
7 document?

8 A. That -- this document is just our
9 internal work order that, at the passing of Ms.
10 Riddle, of her memorial, her marker, that it was
11 purchased and installed.

12 Q. That's a work order for a marker?

13 A. A marker, a memorial, a --

14 Q. And a marker is the term that Woodlawn
15 uses to refer to some sort of tombstone or what?

16 A. That's exactly right, yes, sir.

17 Q. Okay. Thank you.

18 A. Yes.

19 Q. I'm now going to show you Exhibit 3C,
20 which has the printed words, Individual Cash
21 Receipt, and it's dated 12, dash, 19, dash, 12, and
22 it's got an account number. And it's got what
23 appears to be an amount of money, 408.10. Have I
24 described that accurately?

25 A. You did, yes, sir.

1 Q. Okay.

2 A. This is a cash receipt, or check.

3 Q. So does this document mean that Woodlawn
4 received, on 12/19/12, the amount of 408.10?

5 A. Yes, sir.

6 Q. And 12/19/12 is going to mean December
7 19th of the year 2012?

8 A. That is correct.

9 Q. Okay. It actually seems -- Exhibit 3C
10 actually appears to be two receipts, one for 408.10
11 and another one for \$5,264.57. Would that be
12 correct?

13 A. That is correct. There were two
14 payments made there.

15 Q. Now, what -- would you explain why
16 Woodlawn would be receiving \$408.10 and also
17 \$5,264.57?

18 A. Those refer to an actual agreement from
19 the date that you stated earlier, 12/19/2012, for
20 the contracts 94 -- 98412, 98512, in those two
21 amounts.

22 Q. Well, why are there two amounts instead
23 of just one, I suppose is what I'm interested in?

24 A. One was an agreement for -- I'd look on
25 there.

1 Q. The marker?

2 A. The marker and an additional one for her
3 vault, the burial container that was purchased for
4 her burial, and also the opening and closing of the
5 grave, if I'm not mistaken. So there was an
6 installation fee and the actual purchase of the
7 merchandise and the opening and closing.

8 Q. Thank you.

9 A. Yes, sir.

10 Q. I want to show you Exhibit 3D, 3E, 3F,
11 3G, 3H, and 3I, which appear to be a Durable Power
12 of Attorney by which Bette M. Riddle, as principal,
13 has appointed an attorney-in-fact, known as Leisa,
14 L-E-I-S-A, M., as in mother, Norris and/or Polly M.
15 Hindman, my true and lawful attorney-in-fact.

16 And it also appears to be a Healthcare
17 Power of Attorney. That's Exhibit 3H and 3I, where
18 it states, my attorney-in-fact is authorized at my
19 attorney-in-fact's discretion from time to time and
20 at any time to exercise the authority described
21 below relating to matters involving my healthcare.

22 Have I given an accurate description of
23 these two exhibits?

24 A. Yes, sir.

25 Q. I will now show you Exhibit 3J, which up

1 at the top has Woodlawn Memorial Park, and then
2 it's got printed, Cemetery Interment Rights,
3 Merchandise and Services Purchase/Security
4 Agreement. This Agreement Provides For Perpetual
5 Care. It also seems to be dated -- well, it reads,
6 This agreement is made this 18th day of December
7 2012, between the undersigned seller and Polly M.
8 Hindman for Bette M. Riddle, hereinafter called the
9 purchaser, and it goes on to give an address. And
10 it refers to this Section G, Lot 204, Space 1.

11 Have I fairly described Exhibit 3J?

12 A. Yes, sir, you have.

13 Q. And it looks to be a loan of some sort,
14 which says there is a cash price of \$5,264.57,
15 which is the same as the deferred payment price of
16 \$5,264.57. What is that document representing in
17 terms of Woodlawn?

18 A. This is actual notification of what we
19 talked about earlier in the receipt, the 5624.57
20 (phonetic), the 98512 and the 98514 (phonetic), of
21 her -- the memorial that was purchased and the
22 vault and her services here at Woodlawn for Ms.
23 Riddle.

24 Q. Okay. Now, so these documents that we
25 have reviewed -- this is a question, not a

1 statement.

2 My question is, does it appear that
3 Bette M. Hindman (phonetic) borrowed \$5,264.57 and
4 then also paid to Woodlawn that same amount?

5 A. No, she did not borrow. Those were if
6 she was preneeding and if there were terms to be
7 made, but that is a payment for the services.

8 Q. Okay. There's no loan involved but --

9 A. No, sir.

10 Q. But explain again what we're looking at
11 here in Exhibit 3J, and you can also go on to the
12 next exhibit, which refers to the marker.

13 A. Yes. This is an actual agreement where
14 there was one single payment made - she didn't set
15 up payments - of the 5264.57 and the additional
16 payment of the 408.410 (phonetic) for Contract
17 98412 for the services. One was for the marker,
18 and the other one is for the services with the
19 memorialization and the vault and opening and
20 closing and our recording fees.

21 Q. Okay.

22 A. Two single payments made.

23 Q. Okay. What I'm trying to get -- develop
24 further information is the receipt that shows that
25 Woodlawn received \$5,264.57 and 408.10 and, at the

Handwritten mark

1 same time, that there was a contract for that
2 amount.

3 Are the papers supposed to indicate that
4 Woodlawn was charging 5264.57 and 408.10 for the
5 items and the services, and then it got paid for
6 those items and services?

7 A. That is exactly right, yes, sir.

8 Q. Okay. Now, I'm looking at an exhibit,
9 3L, which I will present to you at the top there is
10 printed, Interment Order and Authorization. It's
11 got a contract number and interment number, and
12 then it refers to decedent as Riddle, Bette M., age
13 87, and she's female, and shows that the property
14 owner was Riddle, Leonard.

15 Have I described that fairly and
16 accurately?

17 A. Yes, sir, you have.

18 Q. Okay. Now --

19 A. And may I point out one item?

20 Q. Yes.

21 A. Remember, we just looked at, on the
22 other document, the 98512, that refers back to
23 their property that they had purchased, and she's
24 using those spaces via that contract that Ms.
25 Hindman made the purchase for.

1 Q. All right. I understand. There appears
2 to be, on this Exhibit 3L, the Interment Order and
3 Authorization, an interment fee of \$1,495 and a
4 total of \$1,495. How does that figure -- what is
5 the relationship of that figure to the other two
6 figures that we have been discussing?

7 A. May I get that, please?

8 Q. Yes.

9 A. Okay. Those are just documented through
10 here as far as the opening and closing. The 1495
11 for the opening and closing of the grave?

12 Q. Yeah.

13 A. And that's just related on there that
14 it's paid for.

15 Q. I'm not sure I follow that. I'm still
16 not -- I'm still not clear on how the interment fee
17 relates to the fees that were previously charged
18 and paid for.

19 A. The interment fee is the interment, as
20 far as the opening and closing of the grave --

21 Q. So would it be fair to consider that the
22 interment fee of 1495 is included in the fee of
23 \$5,264.57?

24 A. Yes, that is correct.

25 Q. Okay. Thank you.

1 A. And then --

2 Q. Thank you. I'm now looking at Exhibit
3 3M, as in mother, and it's a printed form at which
4 the top is Installation Work Order, and of course,
5 it's got the cemetery, which is Woodlawn. Property
6 owner is Riddle, Leonard and/or Bette, and it says,
7 Purchaser, Harvard Riddle. It's got a telephone
8 number, address, and so forth. And then special
9 instructions are, please inspect and install.

10 Have I recited that correctly?

11 A. Yes, sir, you have. That is correct.

12 Q. Now, how does the installation and work
13 order, which, incidentally, has a date on it of --
14 issue date of July 25, 2017 and an installation
15 date of July 26, 2017, how does that relate to the
16 payment received by Woodlawn of \$5,264.52
17 (phonetic)?

18 A. What you see there on that second
19 installation order is after death has occurred. We
20 know the exact date of death. That's part of the
21 memorial, the tombstone, the marker is ordered.
22 Once we receive it, it takes, as you stated,
23 several weeks to order it and it be prepared. Once
24 we receive it, we go install it onto her marker
25 that was already installed.

1 Q. So Exhibit 3M refers to the marker?

2 A. That's exactly right, the date of death
3 scroll.

4 Q. All right. The Installation Work Order,
5 which is Exhibit 3M, indicates that the purchaser
6 of that marker is Harvard Riddle. Now, earlier, we
7 saw papers, looking at the other exhibits, which
8 indicated that Bette Riddle -- no, excuse me, that
9 Bette Hindman -- excuse me, that Polly Hindman had
10 paid for a marker, but now this Exhibit 3M would
11 indicate that Harvard paid for that marker?

12 A. May I look --

13 Q. You can look at them.

14 A. Okay. The scroll, the -- what you're
15 seeing there, I would have to go back and dig
16 deeper into the file, that that was the Harvard
17 from the original owners of the marker, and that
18 was the scroll that was purchased, contract that's
19 related 908412 (phonetic), that was for the \$408
20 that was purchased for that additional scroll on
21 her marker.

22 Q. Okay. So it's not really a
23 contradiction then?

24 A. No, sir, not at all. It was just an
25 extra item that was purchased and placed on her

1 marker.

2 Q. Okay.

3 A. Can I (indicating)?

4 Q. Yes.

5 A. 98412 relates to -- I'm losing my track.

6 Q. You can have them all over there.

7 A. But I'm just -- my point is that these
8 two receipts both refer back to these two
9 contracts, the 98512 and the 98412, in those two
10 different amounts there.

11 Q. Okay. Now, the exhibits plural,
12 Exhibits 3, which we introduced into evidence, and
13 I believe they go through 3M, as in mother, they
14 all refer to -- all these documents refer to the
15 interment and markers, correct?

16 A. Yes, sir.

17 Q. Now, in addition to the interment and
18 markers, what other expenses are there associated
19 with the services of Woodlawn?

20 A. For Ms. Riddle?

21 Q. Go ahead.

22 A. There's a copy of the funeral, the
23 prearrangements that were made, as well as the day
24 of the service, the at-need conversion for her
25 actual day of the service.

1 Q. All right. Would you hand me those
2 documents, please?

3 A. Yes, sir. (Witness complies).

4 Q. You have handed me some papers or
5 documents, which are labeled at the top, Initial
6 Notification. That's capital I in Initial, capital
7 N in Notification. Another paper addressed to the
8 Care Center. Another paper on which there appears
9 Woodlawn Funeral Home. Another paper which appears
10 the phrase, Service Details. Another paper which
11 has the phrase, DHEC, D-H-E-C, and another paper
12 that says, DHEC South Carolina Certificate of Death
13 Worksheet.

14 Am I -- is my description of those pages
15 accurate?

16 A. Yes, sir, they are.

17 MR. GADDY: We'll offer them as an
18 exhibit, and we don't need all the pages
19 labeled, just -- we've got one, two, three,
20 four, five, six pages. We've got six pages
21 here, and they can all be labeled as one
22 exhibit of six pages.

23 [M. James Deposition Exhibit No. 4 was
24 marked.]

25 Q. [By Mr. Gaddy] I'm going to show you a

1 series of papers, which are a Statement of Funeral
2 Goods and Services Selected/Purchase Agreement.

3 And it seems to be three pages, in that it reads,
4 Part one of three parts, part two of three parts,
5 and part three of three parts, and then there's an
6 extra page, which is Services Agreement Terms and
7 Conditions, which must be the reverse side of
8 something?

9 A. Right. Yes, sir.

10 Q. And so have I made an accurate
11 description of those papers?

12 A. Yes, sir, you have.

13 MR. GADDY: We ask that they be marked
14 as an exhibit. That would be four papers all
15 together that will be an exhibit.

16 [M. James Deposition Exhibit No. 5 was
17 marked.]

18 Q. [By Mr. Gaddy] Now, directing your
19 attention to Exhibit 5, which is the Statement of
20 Funeral Goods and Services Selected/Purchase
21 Agreement. We find the figure on there \$5,973.70,
22 which appears to be the sum of services and
23 merchandise which were sold or delivered by
24 Woodlawn; is that correct?

25 A. Yes, sir, that is correct.

1 Q. Now, on Exhibit 5, there appears to be a
2 signature of H. Riddle with a date of 6/23/17.
3 What is the connection of this purchaser's name or
4 his initials and that date?

5 A. He is acknowledging the services
6 selected for Ms. Riddle.

7 Q. All right. Now, the figure \$5,973,
8 that's the cost of his services furnished on the
9 date of service, which is 06/23/2017?

10 A. That is correct.

11 Q. That figure is not quite the same as the
12 document's figures back in December 2012.

13 A. If I may?

14 Q. Yes. Please explain.

15 A. On page 2 of the agreement, since this
16 was a prearrangement, meaning that the services
17 were planned and paid for in advance, on page 2, we
18 document that the payment that we provided the
19 services for Ms. Riddle at the services that she
20 prearranged for, and we document that from the
21 ASSURANT Insurance, the American Memorial that she
22 prepurchased, and it reduces that total to the
23 \$6,573.70, for that's what the actual services
24 were. We revert back to her plan that was prepaid
25 for, and we make the adjustments for the

1 prearrangement, the differences there, and provide
2 the service at that prearranged price that we
3 agreed to. I apologize for confusion.

4 Q. I thank you for that explanation.

5 A. Yes, sir. I'm nervous, and I didn't
6 want to interrupt you when you were speaking
7 earlier.

8 Q. Mr. James, I'm going to show you five
9 pages, beginning with a page labeled, Application
10 for Insurance. And this five pages, with the first
11 one being Application for Insurance, and the second
12 one being Insurance-Funded Guaranteed Price
13 Preneed, that's P-R-E-N-E-E-D, Contract
14 Disclosures, and the next one being a page, which
15 has printed ASSURANT, A-S-S-U-R-A-N-T, Solutions,
16 American Memorial Life Insurance Company, and the
17 final page, Cash Advance/Third Party Expense
18 Worksheet.

19 Have I given an accurate label for those
20 papers that we have in hand?

21 A. Yes, sir, you have.

22 MR. GADDY: We'll ask that they be
23 marked as an exhibit, that's these five pages
24 be marked as an exhibit.

25 [M. James Deposition Exhibit No. 6 was

1 marked.]

2 Q. [By Mr. Gaddy] Okay. Showing you
3 Exhibit 6 and the page labeled, Application for
4 Insurance. There appears to be a funeral amount of
5 \$6,573.70 and also the phrase, initial face amount,
6 \$6,573.70, and an initial payment of \$6,573.70, and
7 it's signed Polly Hindman. Is that a correct
8 description of that document?

9 A. Yes, sir, it is.

10 Q. How does this Application for Insurance
11 relate to the purchase of funeral expenses back in
12 December 2012?

13 A. That's when the family came in, as we
14 mentioned earlier, to make prearrangements. They
15 paid for her funeral in advance. That's how it
16 relates to her services.

17 Q. Okay. By Polly Hindman signing this as
18 the owner, does that mean that she is the person
19 making the application for insurance?

20 A. She is the person that made the purchase
21 for Mrs. Riddle.

22 Q. She's the person that --

23 A. Yeah.

24 Q. -- paid for it; is that correct?

25 A. Yes, sir, you are correct.

1 Q. The page of Exhibit 6 which is labeled,
2 Insurance-Funded Guaranteed Price Preneed Contract
3 Disclosures, and there appears the final figure of
4 \$6,573.70, what does that document indicate?

5 A. That's an itemized list of the services
6 they selected back in -- at that time, the December
7 12th.

8 Q. Okay. Directing your attention over to
9 the page, ASSURANT Solutions, American Memorial
10 Life Insurance Company. And it has a date of
11 12/18/2012 and prepared for Bette Riddle. It says,
12 Single payment today \$6,573.70, and then for an
13 owner signature, it's got Polly Hindman, also with
14 a date of 12/18/2012.

15 Have I given a fair summarization of
16 that?

17 A. Yes, sir, you have.

18 Q. And finally, looking at the page, Cash
19 Advance/Third Party Expense Worksheet, it's got the
20 estimated cash advance/third party expenses of
21 \$98.70 and with a customer signature of Polly
22 Hindman. Is that correct?

23 A. Yes, sir, that is correct.

24 Q. How does the estimated cash
25 advance/third party expenses relate to funeral

1 expenses?

2 A. Cash advance, those are services that we
3 are not responsible for, that we can't control,
4 meaning that they set aside monies for her death
5 certificate that would be paid to South Carolina to
6 purchase her death certificates, and the other one,
7 it looks like they set aside some monies to
8 anticipate taxes or any other items that we could
9 not control the cost of.

10 Q. Okay. I'm looking at three pages, which
11 the first page has Control Contract No. 3004739 and
12 the phrase, in bold print, Guaranteed Price Preened
13 Contract, the second page, beginning with the
14 words, Purchaser's Death Before Beneficiary's
15 Death, with a signature of Polly Hindman, and a
16 page which, at the top, is ASSURANT Solutions, and
17 then it's -- in bold, it's got Death Benefit Quote.

18 Have I fairly described those papers?

19 A. Yes, sir, you have.

20 MR. GADDY: We'll ask they be marked as
21 an exhibit, and there will be three pages of
22 this exhibit.

23 [M. James Deposition Exhibit No. 7 was
24 marked.]

25 Q. [By Mr. Gaddy] Directing your attention

1 to the Guaranteed Price Preneed Contract, which is
2 the first page of Exhibit 7, it reads, under the
3 paragraph headed, financial arrangement -- no,
4 excuse me, financial agreement, The purchase price
5 of the services and merchandise is \$6,573.70 as of
6 the date of this contract, plus a \$20 filing fee,
7 payable to the South Carolina Department of
8 Consumer Affairs.

9 And then also in that paragraph it
10 reads, Purchaser will pay the purchase price to
11 provider, and it's checked, By paying the total
12 price in case, receipt of which is acknowledged.

13 Then in another paragraph it says, By
14 writing his or her initials, purchaser acknowledges
15 that his or her contract will be funded by
16 insurance policy number, which is blank, and then
17 the face amount of \$6,573.70 with American Memorial
18 Life Insurance Company.

19 And then there's another bold heading,
20 which says, Nature of agreement. By writing his or
21 her initials, purchaser chooses to make this
22 contract irrevocable, that is purchaser does not
23 have the right to revoke it. The parties have
24 caused this contract, which includes the provisions
25 in the attached pages, to be executed this 18th day

1 of December 2012.

2 Have I recited that correctly?

3 A. Yes, sir, you have.

4 Q. Looking at the second page, which begins
5 with the paragraph heading in bold, Purchaser's
6 Death Before Beneficiary's Death, and then under a
7 paragraph in bold reading, Disclosure, Polly
8 Hindman's signature appears?

9 A. That's correct.

10 Q. And she signed it on December 18, 2012.

11 And looking at the third page of this
12 exhibit, which is Exhibit 7, we find a Death
13 Benefit Quote. And it is stated on the paper, date
14 of birth, December 31, 1929; Date of Death, June
15 23, 2017, and it's for Bette M. Riddle. And it
16 says the contract amount was 6,574, with the policy
17 being 3-845216, in the amount of \$7,013. And it
18 reads, Death benefit available.

19 Have I read that accurately?

20 A. Yes, sir.

21 Q. The final set of documents begins with a
22 photocopy of a check, which appears to be a check
23 with the printed name of the account holder, Polly
24 Hindman, also the name R. L. Hindman, dated
25 December 20, 2012, and paid to the order of AML, in

1 the amount of \$6,573.70.

2 And have I described that fairly and
3 accurately?

4 A. Yes, sir, you have.

5 Q. The check also has the memo on the check
6 of funeral expenses, and it's signed by Polly
7 Hindman; is that correct?

8 A. Yes, sir, that is correct.

9 MR. GADDY: All right. We ask that
10 these four pages be labeled an exhibit.

11 [M. James Deposition Exhibit No. 8 was
12 marked.]

13 Q. [By Mr. Gaddy] All right. We've just
14 gone over the first page of Exhibit 8, which is
15 this check. Then looking at the second page of
16 Exhibit 8, there appears to be some sort of letter,
17 at the top of which is American Memorial Life
18 Insurance Company, and it apparently is addressed
19 to Bette M. Riddle and Polly M. Hindman, with a
20 date of December 27, 2012. It refers to a policy
21 number, 3-845216, with the insured being Bette M.
22 Riddle, and prearrangement with Woodlawn Memorial
23 Funeral Home.

24 Is that a fair summary of that letter?

25 A. Yes, sir, it is. Correct.

1 Q. Looking at page 3 of this exhibit, we
2 again find American Memorial Life Insurance Company
3 at the top of the page, and in bold there the
4 words, 'Benefit Summary for Bette M. Riddle. And
5 under the heading, policy owner information, it has
6 Polly M. Hindman, with a benefit information
7 reading, Contract amount \$6,706. And we have the
8 designated funeral home information heading of
9 Woodlawn Memorial Funeral Home, with the heading,
10 policy beneficiary information, primary, Polly M.
11 Hindman.

12 Have I correctly summarized that page?

13 A. Yes, sir, you have.

14 Q. And then there is a page, again, with
15 the words, American Memorial Life Insurance
16 Company, up at the top, and in bold there is the
17 phrase, Amendment. And then it reads, This
18 amendment is attached to and made a policy of
19 3-845216, issued on the life of Bette M. Riddle,
20 subject to all the provisions of the policy not
21 inconsistent therewith. And there appears to be a
22 signature over the word, President.

23 Have I fairly described that?

24 A. Yes, sir, you have.

25 MR. GADDY: Okay. Now, I want to go off

1 the record for just a minute.

2 [Discussion off the record.]

3 Q. [By Mr. Gaddy] In a discussion which
4 occurred off the record, questions were raised as
5 to why Harvard Riddle is shown on the forms as
6 paying an additional amount on a marker that had
7 previously -- that Woodlawn had previously received
8 payment back in 2012. And what was the reason that
9 Harvard Riddle paid an additional amount in June
10 2017 for the marker?

11 A. That is correct, for the actual date of
12 death scroll.

13 Q. Okay. So by adding the date of death,
14 there was an additional charge?

15 A. That's correct.

16 Q. All right. And my next question is,
17 based upon your review of the records of Woodlawn,
18 have you found that your records show that Polly
19 Hindman paid for the interment expenses and the
20 pre-burial expenses of Bette Riddle back in
21 December of 2012?

22 A. Yes, sir, that's correct.

23 MR. GADDY: All right. That completes
24 all of our questions, and we're at the end.

25 [Discussion off the record.]

1 MR. GADDY: Under the law pertaining to
2 depositions, a witness has the right to
3 review -- wait a minute. Back up.

4 This lady here, who is Ms. Davis, is a
5 court reporter. She has taken down every
6 statement that we have -- that I have made
7 and every answer that you have made. She's
8 going to type that up, and it's called a
9 transcript.

10 Under the law pertaining to depositions,
11 you have the right to read over that
12 deposition to determine if the court reporter
13 transcribed it accurately. That does not
14 mean you change your testimony; although, I
15 don't think there's any question about the
16 accuracy of what you said, but it means that,
17 if there's any typos or mistakes in
18 transcribing, that you would have the right
19 to correct that.

20 Now, that right is usually waived
21 because this lady does a very accurate job of
22 taking down everything, but you do have the
23 choice of getting the transcript in advance.

24 THE DEPONENT: I would like a -- I mean,
25 it would be for me to keep or --

1 MR. GADDY: What did he say?

2 MS. BRINKLEY: He wanted to know if it
3 would be for him to keep, if he would be able
4 to keep a copy of the transcript.

5 MR. GADDY: That's a different question.

6 THE DEPONENT: All right.

7 MR. GADDY: The question to you is about
8 the transcript. We'll get to the copy later.

9 THE DEPONENT: Pardon me.

10 MR. GADDY: So you still haven't
11 answered it.

12 THE DEPONENT: I would like to see it.

13 MR. GADDY: You would like to review it
14 first?

15 THE DEPONENT: Yes, sir.

16 MR. GADDY: All right. Okay. She will
17 get it to you.

18 THE DEPONENT: Knowing that I can't
19 change it, understood. I just --

20 MR. GADDY: She will get it to you.

21 [Discussion off the record.]

22 [Whereupon, at 11:19 a.m., the taking of
23 the deposition was concluded.]

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CERTIFICATE

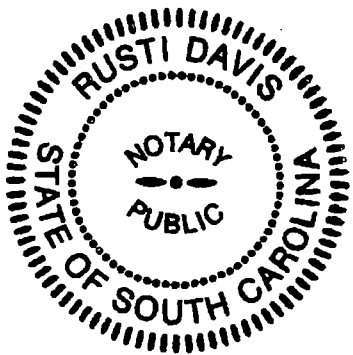
I, the undersigned, Rusti Davis, Notary Public in and for the State of South Carolina, do hereby certify that the foregoing deposition of **WESLEY MATTHEW JAMES** was taken on the 16th day of August, 2017;

That the within named deponent was sworn to tell the truth and that the foregoing is an accurate transcription of the testimony taken under oath;

That all exhibits entered herein are attached hereto and made a part of the deposition.

I further certify that I am neither counsel nor solicitor to any of the parties in said suit, nor interested in the event of the cause.

In Witness Whereof, I have hereunto set my hand and seal this 23rd day of August, 2017.



Rusti Davis

Rusti Davis
Notary Public for South Carolina
My Commission Expires 5/31/2027

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

) IN THE COURT OF COMMON PLEAS
) FOR THE THIRTEENTH JUDICIAL CIRCUIT

Polly M. Hindman,

Case No. 2018-CP-23-0088

)
) Applicant,

)
) v.

)
) **ORDER OF DISMISSAL**

)
) State of South Carolina,

)
) Respondent.

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CLERK OF COURT

This matter comes before this Court by way of an Application for Post-Conviction filed on November 6, 2018, by Polly M. Hindman (Applicant), wherein Applicant alleged that she is entitled to post-conviction relief based on constitutionally ineffective assistance of counsel. An evidentiary hearing was held on April 15, 2019, before the Honorable Alex Kinlaw, Jr., at the Greenville County Courthouse. Applicant was present and was represented by C. Rauch Wise, Esquire. Respondent was represented by Assistant Attorney General Taylor Z. Smith of the South Carolina Attorney General's Office. At the hearing, testimony was taken from Applicant, James P. O'Connell, Esquire, and Clifford F. Gaddy, Jr., Esquire. Following the hearing, this Court took the matter under advisement and requested proposed orders from both parties.

Following a thorough review of the record in its entirety and the testimony and evidence presented at the evidentiary hearing, this Court finds Applicant has failed to meet her requisite burden of establishing any constitutional violations and denies this application with prejudice.

PROCEDURAL HISTORY

Applicant is not presently incarcerated. During its October of 2016 term, the Greenville County Grand Jury indicted Applicant for the exploitation of a vulnerable adult (2015-GS-23-001563). James P. O'Connell, Esquire (Counsel), represented Applicant on these charges at her trial and Clifton F. Gaddy, Jr., Esquire, represented Applicant at her sentencing hearing and her

restitution hearing. Assistant Solicitors Sylvia P. Harrison and Julia V. Hendricks of the Thirteenth Circuit Solicitor's Office prosecuted the case on behalf of the State. On December 14, 2016, Applicant appeared before the Honorable Edward W. Miller and a jury and was convicted as indicted after a jury trial. Judge Miller deferred sentencing until after the conclusion of the restitution hearing so that he could take into account the outcome of the restitution hearing. On February 17, 2017, Applicant appeared before Judge Miller again for the restitution hearing and the sentencing hearing, at which time Judge Miller sentenced Applicant to five years' incarceration, provided that upon her completion of ninety days of the Home Incarceration Program, the balance would be suspended to five years' probation, twenty days of public service, random drug and alcohol testing, and ordered that Applicant pay restitution in the amount of \$88,000.

On March 15, 2017, Mr. Gaddy filed a Notice of Appeal on behalf of Applicant, and subsequently perfected the appeal. On July 2, 2018, Mr. Gaddy moved to dismiss the appeal. He reaffirmed that Applicant wished to dismiss the appeal in a letter filed with the Court of Appeals on August 6, 2018, and Applicant filed an affidavit with the Court of Appeals confirming the same on August 23, 2018. The Court of Appeals dismissed the appeal in Order filed on August 29, 2018. The Remittitur was sent on September 28, 2018.

CURRENT PROCEEDING

On November 6, 2018, Applicant filed an Application for Post-Conviction Relief, in which she made the following allegations:

1. Ineffective Assistance of Counsel.
 - a. Counsel failed to properly prepare for trial.
 - b. Counsel failed to call witnesses.
 - c. Counsel failed to introduce evidence.
 - d. Counsel failed to cross-examine Leisa Norris.

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Respondent filed its Return and Motion for More Definite Statement on March 29, 2019.

~~On or around April 10, 2019, Applicant submitted to Respondent an Amended Application for~~

Post-Conviction Relief,¹ in which she made the following allegations:

1. Ineffective Assistance of Counsel.
 - e. Counsel failed to properly prepare for trial.
 - f. Counsel failed to call witnesses.
 - g. Counsel failed to introduce evidence.
 - h. Counsel failed to cross-examine Leisa Norris.
 - i. Counsel failed to move for a directed verdict.
 - j. Counsel failed to object to inadmissible testimony

At the start of the evidentiary hearing, Respondent requested that Applicant specify for the record the grounds upon which Applicant would move forward at the hearing. Applicant specified that she would be moving forward at the hearing solely upon the grounds in the Amended Application. Because these are the only grounds for relief upon which Applicant proceeded at the evidentiary hearing, all other grounds are deemed to be waived and will not be addressed in this Order.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has thoroughly reviewed the record in its entirety, including all of the items admitted into evidence at the evidentiary hearing. Additionally, this Court heard the testimony presented at the evidentiary hearing and was able to observe the witnesses, which allowed the Court to scrutinize the credibility of all witnesses presented. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (1985).

Applicant, like all other defendants, has a right to the assistance of effective counsel as provided by the Sixth Amendment to the United States Constitution. U.S. Const. amend. VI;

¹ Although this document has never been filed, Respondent has interpreted and accepted it as an amendment to the original Application.



Strickland v. Washington, 466 U.S. 668 (1984); Lomax v. State, 379 S.C. 93, 665 S.E.2d 164 (2008). Applicant has the burden of proving the allegations in his post-conviction relief action, and when alleging that trial counsel was constitutionally ineffective, he 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. at 686

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland, 466 U.S. 668. First, 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 the attorney provided representation within the range of competence required in criminal cases. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). "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). 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 Petitioner 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.

The standards do not establish mechanical rules; the ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged. A court need not first determine whether counsel's performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies. If it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, that course should be


followed. Strickland, 466 U.S. 668. Moreover, Strickland does not require a finding of ~~ineffectiveness merely for deviation from some rigid rule of representation. Rather, Strickland~~ requires the post-conviction relief applicant to prove "counsel made errors so serious that counsel was not functioning as the 'counsel' guaranteed the defendant by the Sixth Amendment." Id. at 697. Therefore, the function of the post-conviction relief court is to determine if "in light of all the circumstances, the identified acts or omissions were outside the wide range of professional competent assistance" required of a criminal defense attorney." Id. at 690.

Based on this standard set forth above, this Court finds that Applicant has failed to meet her requisite burden of establishing any constitutional ineffectiveness of counsel as to any of her various allegations. Each allegation is addressed fully below.

Counsel failed to properly prepare for trial. Counsel failed to call witnesses. Counsel failed to introduce evidence.

A summation of these allegations is that Applicant was alleging that Counsel did not adequately prepare for her trial, that Counsel failed to call the director of the funeral home at which the victim purchased a pre-planned funeral as a witness to testify that Applicant paid for the funeral on the victim's behalf, and that Counsel failed to introduce documents show that Applicant did pay for the victim's funeral.

At the PCR hearing, Applicant testified that she had made certain payments on behalf of the victim, her half-sister and that she was being reimbursed for those expenses when she received two checks totaling \$12,832.86 drawn off of the victim's bank account. Applicant testified that one of those payments included pre-planned burial expenses that would have covered the victim's burial costs after her death, and Applicant testified that she made this payment at the victim's request. Applicant testified that she had paid for other services on the



victim's behalf, and that she was also being reimbursed for those services, such as landscaping around the victim's home, when she received the aforementioned checks. Applicant testified that the victim also gave her extra money for helping the victim conduct her affairs. Applicant testified that she provided documentation to Counsel before trial that proved that she had paid for the victim's pre-planned burial expenses and these other services, but that Counsel did not introduce them into evidence at her trial. Applicant did testify at her trial about these funeral expenses, although Counsel did not attempt to move the documents regarding the victim's pre-planned funeral expenses into evidence at trial. She presented these documents at her evidentiary hearing, and they were admitted without objection as Applicant's Exhibit 1.

Applicant also testified that she did not take part in the illegal drafting of any Powers of Attorney or Wills, or the forging of the victim's signature thereupon. Applicant moved certain documents into evidence without objection at the PCR hearing, such as the victim's birth certificate and marriage certificate, which give the victim's first name as "Betty," as evidence that this indicated the legal spelling of the victim's first name, which was sometimes spelled by the victim and others as "Bette." At Applicant's trial, the State used the variation in spelling of the victim's first name in the Powers of Attorney as evidence that the documents were not prepared by the victim, but by Applicant and Applicant's sister, Leisa Norris. Applicant testified that she did not go to a bank and attempt to withdraw money from the victim's bank accounts using a power of attorney.

Mr. Gaddy testified that he deposed the funeral director, and that the funeral director confirmed that Applicant had paid for the pre-planned funeral expenses for the victim and confirmed the amount. He testified that the funeral home's burial "preneeds" contract was with the victim and for her benefit, but that Applicant paid for these services. He testified that he used this deposition as evidence at Applicant's restitution and sentencing hearings. He presented the



deposition of the funeral director, which was admitted without objection as Applicant's Exhibit 9, and the exhibits from that deposition, which were admitted without objection as Applicant's Exhibit 10. Mr. Gaddy testified that he tried to subpoena Woodlawn, the funeral home at which the victim's burial preneeds were paid, in an attempt to confirm aspects of Applicant's defense, but that Woodlawn would not turn over these records without a deposition and subpoena, and that Judge Miller denied his motion for a new trial based on the fact that those records were not yet available to the Applicant. Mr. Gaddy presented Judge Miller's order denying a new trial for Applicant on the basis that Applicant knew of the existence of Woodlawn's records since 2012. This order was admitted into evidence as Applicant's Exhibit 11 without objection. He testified that he believes that Counsel had already moved for a new trial.

Counsel testified that he has been practicing law for over forty years, with seventy percent of that practice being in the field of family law and ten to fifteen percent being in the field of criminal law. He testified that he was hired as Applicant's defense attorney and that he was not the first attorney to represent Applicant in the matter. He testified that he met with Applicant about fifty times during the course of her case. He testified that the State made multiple plea offers to Applicant and offered a deal that included a restitution payment of approximately \$50,000.00, but that Applicant declined the offer and always maintained her innocence. He testified that that he sent a letter in February of 2015 that identified the person at the victim's bank with whom Applicant allegedly spoke, and this letter was admitted into evidence without objection as Applicant's Exhibit 14. He testified that he received discovery from another attorney named Trulock and received an additional six to seven hundred pages of discovery immediately before trial. He testified that he had already seen all of these documents because Applicant had already shown him the documents. He testified that the documents from the funeral home showed that Applicant had paid approximately \$14,000 in funeral preneeds

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expenses on Applicant's behalf. He testified that he did not believe that it was necessary for Applicant's case that he introduce the receipts and documents showing Applicant's payments on behalf of the victim, including those admitted as Applicant's Exhibit 1, since witnesses were already testifying as to the fact that the checks made payable to Applicant from the victim were reimbursements for expenses that Applicant had paid on the victim's behalf. He testified that the jury at Applicant's trial did hear testimony that these checks from the victim to Applicant were reimbursements for expenses that Applicant had paid on the victim's behalf. He testified that he did not object when the solicitor made a comment in closing that there was no evidence because he does not usually object during closing arguments, but he testified that he believes that the solicitor also had the receipts showing that Applicant had paid for the victim's preneeds.

"Counsel's concern is the faithful representation of the interest of his client and such representation frequently involves highly practical considerations as well as specialized knowledge of the law." Tollett v. Henderson, 411 U.S. 258, 267-68 (1973). "Although counsel should conduct a reasonable investigation into potential defenses, Strickland does not impose a constitutional requirement that counsel uncover every scrap of evidence that could conceivably help their client." Tucker, 350 F.3d at 442 (quoting Green v. French, 143 F.3d 865, 892 (4th Cir. 1998)). "In any ineffectiveness case, a particular decision not to investigate must be directly assessed for reasonableness in all the circumstances, applying a heavy measure of deference to counsel's judgements." Strickland, 466 U.S. at 691; Wiggins v. Smith, 539 U.S. 510, 521-22 (2003).

This Court finds that Counsel conducted adequate preparation for trial. Counsel met with Applicant a significant number of times before trial, around fifty times. Counsel reviewed the evidence in the case and discussed the relevant documents with Applicant. Counsel's investigation was done with enough thoroughness that he was able to identify the most important



pieces of evidence in Applicant's case and the issues upon which Applicant's case would turn. Applicant has failed to demonstrate at the evidentiary hearing how any additional preparation on the part of Counsel would have benefitted her at trial. This Court finds that, since Applicant testified at her trial that she did not attempt to withdraw money from the victim's bank using a power of attorney, Applicant was not prejudiced by Counsel's not introducing testimony from the bank employee identified in Applicant's Exhibit 14 while relying upon his cross-examination of the bank employee used as a witness by the State. Applicant has failed to meet her burden in establishing the ineffectiveness of Counsel as to the allegation that Counsel failed to adequately prepare for trial since she has shown neither deficiency nor prejudice in Counsel's performance. As such, this allegation is denied and dismissed with prejudice.

This Court finds that Counsel was not ineffective for failing to call as a witness the funeral director. The funeral home director's testimony during Mr. Gaddy's deposition of him was that Applicant had paid for the pre-planned funeral expenses of the victim. It was not necessary for Counsel to call this witness at trial, who presumably would have offered the same testimony as he did in the deposition, because this evidence was already before the jury during Applicant's trial. Applicant testified in her trial that she had made these pre-planned funeral payments on the victim's behalf and at the victim's request and that certain checks made payable to her from the victim's bank accounts were meant to reimburse her for her payments to the funeral home. Applicant's husband, Robert Hindman, testified at trial that Applicant did not get any extra money from the checks drawn off of the victim's account because Applicant was merely being reimbursed for her payment of the victim's preneeds burial expenses. The testimony from the funeral director on this point would have been cumulative testimony. Likewise, this Court finds that Counsel was not ineffective for failing to introduce the funeral home documents and receipts. Testimony that Applicant had paid for the victim's preneeds

burial expenses and was being reimbursed for it had already been introduced at Applicant's trial, and the introduction of these documents and receipts would have been cumulative. The solicitor, in her closing argument at Applicant's trial, commented that Applicant "had not presented one shred of evidence to show . . . that she did not take [money] and put it in her checking account", and then comments that the evidence shows that the checks that Applicant alleges were used to reimburse her were deposited into Applicant's bank account. This Court finds that the solicitor's comment was that the checks that Applicant alleges were reimbursements were deposited into Applicant's bank account, and did not misstate the evidence that the checks had been so deposited due to the fact that Applicant is alleging that the checks were reimbursing her for payments that she made out of her own bank account. As such, this comment was not objectionable as an improper comment on or misstatement of the record at trial. Applicant has failed to meet her burden in establishing the ineffectiveness of counsel as to these allegations since she has shown neither deficiency nor prejudice in Counsel's performance. As such, these allegations are denied and dismissed with prejudice.

Counsel failed to cross-examine Leisa Norris.

Applicant alleged that Counsel did not sufficiently cross-examine Leisa Norris, Applicant's sister, at Applicant's trial. She alleged that Ms. Norris would likely have presented favorable testimony for her if she has been properly cross-examined. This Court finds that Counsel was not constitutionally ineffective for failing to sufficiently cross-examine Ms. Norris. The transcript from Applicant's trial shows that Counsel did cross-examine Ms. Norris. Applicant did not present Ms. Norris as a witness at the evidentiary hearing, and has only speculated as to the possibility that Ms. Norris would have provided testimony favorable to Applicant had Counsel asked different or additional questions. Since Applicant has failed to show how different or additional questions from Counsel would have produced favorable

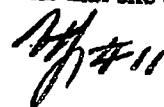
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testimony from Ms. Norris, Applicant has failed to meet her burden of proof and failed to demonstrate that there was any prejudice in Counsel's performance as it related to his cross-examination of Ms. Norris. As such, this allegation is denied and dismissed with prejudice.

Counsel failed to move for a directed verdict.

In her amended application, Applicant alleged that Counsel was ineffective for failing to move for a directed verdict on the ground that there was no evidence that Applicant had ever improperly used a Power of Attorney. Although Applicant did not specifically mention this allegation during her testimony at the PCR hearing, she did testify as to the extent of her involvement with the victim's Powers of Attorney. At trial, and at the PCR hearing, Applicant denied that she improperly used the victim's Powers of Attorney for her own benefit and denied that she went to the victim's bank to try to withdraw funds using a power of attorney.

Counsel testified that he did move for a directed verdict during Applicant's trial, and that he believed his motion to have addressed the supposed lack of evidence as to Applicant's improper use of the victim's Powers of Attorney. This Court finds that Counsel was not constitutionally ineffective for failing to move for a directed verdict on the ground that there was no evidence that Applicant had improperly used a power of attorney. After the close of the State's case at trial, Counsel moved for a directed verdict on the ground that, *inter alia*, there was no proof "that [Applicant] got any money, got any goods or materials out of this, or anything . . ." Trial Tr. 84. The State responded that there had been testimony presented that Applicant received money "for funeral checks." *Id.* at 85. At the close of the Applicant's case at trial, Counsel then moved for a directed verdict on the ground that the State had "prove[n], in a sense, I guess, that the notaries weren't done properly. I don't see them proving anything other than - in taking of any money, or anything of that nature from her." Trial Tr. 129. Counsel's directed verdict motions covered the substance of Applicant's assertions that she did not improperly use a



power of attorney. Applicant has failed to meet her burden of proof and failed to demonstrate that there was any deficiency in Counsel's performance in regards to his directed verdict motions or that there was any resulting prejudice to Applicant. As such, this allegation is denied and dismissed with prejudice.

Counsel failed to object to inadmissible testimony.

Although Applicant alleges that Investigator Martin gave improper opinion testimony at Applicant's trial, Applicant did not provide supporting testimony as to this allegation at her PCR hearing. Counsel testified that he did not object to the testimony given by Investigator Martin at Applicant's trial because he did not feel that any portion of the witness's testimony was objectionable or harmful to Applicant's defense. This Court finds that Counsel was not constitutionally ineffective for failing to object to inadmissible opinion testimony from Investigator Martin. Applicant has failed to provide any evidence that any portion of the witness's testimony was inadmissible opinion testimony, and Counsel provided a reasonable and competent explanation for why he did not make any objections to Investigator Martin's testimony on the grounds that the witness was providing inadmissible opinion testimony. As such, Applicant has failed to meet her burden in establishing the ineffectiveness of counsel as to this allegation since she has shown neither deficiency nor prejudice in Counsel's performance. This allegation is denied and dismissed with prejudice.

CONCLUSION

Based on all the foregoing, this Court finds Applicant has not established any other constitutional violations or deprivations that would require this Court to grant her application for post-conviction relief. Therefore, this application for post-conviction relief is denied and dismissed with prejudice.

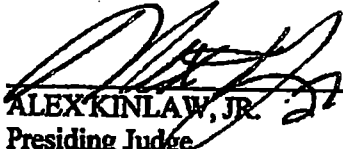
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This Court notes Applicant must file and serve a notice of appeal within thirty days from the receipt of this Order by counsel of record to secure the appropriate appellate review. See Rule 203 and 243, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an applicant has a right to an appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides if the applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a Notice of Appeal on the Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. That this application for post-conviction relief is denied and dismissed with prejudice.

AND IT IS SO ORDERED this 19th day of July, 2019.


ALEX KINLAW, JR.
Presiding Judge
Thirteenth Judicial Circuit

Cress, Mc, South Carolina

Copy mailed to
Attorney General/Ranchise
on 7, 23, 2019.

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

IN THE COURT OF COMMON PLEAS

Polly McAbee Hindman,)
)
Applicant,)

-vs-)

2018-CP-23-005668

The State,)
)
Respondent.)

Motion to Alter or Amend Judgment

Pursuant to Rule 59 of the South Carolina Rules of Civil Procedures, Polly McAbee Hindman, the Applicant herein, hereby moves this Court to Alter or Amend the Judgment entered in this case in the following particulars:

1. This Court failed to consider that the failure of trial counsel to subpoena a representative of the funeral home and the documents establishing that Polly Hindman did not improperly take the money for her personal use, made this case a matter that turned on the credibility of Polly Hindman. The Court failed to consider that the State made this a credibility case when in their closing argument when the assistant solicitor argued “And Ms. Hindman walked away with over 16 grand. And she has not presented one shred of evidence to show you that she did not take that and put it in her checking account.” Tr. at 138, 124 to 139, 12.

This Court stated “This Court finds that the solicitor’s comment was that the checks that Applicant alleges were reimbursements were deposited into Applicant’s bank account, and did not misstate the evidence that the checks had been so deposited due to the fact that Applicant is alleging that the checks were reimbursing her for payments that she made out of her own bank account.” Order at 10. Applicant has never contended that the closing argument of the state was

not in keeping with the fact shown at the trial. The point of the Applicant is that with the testimony of Wesley M. James, the facts are conclusively established that in fact Ms. Hindman was a properly reimbursed for the funeral expense of Bette Riddle. The evidence trial counsel failed to introduce would have precluded the State from arguing that Ms. Hindman was stealing the money from Betty Riddle. The testimony and documents would have prevented the State from arguing that Ms. Hindman "has not presented one shred of evidence to show you that she did not take that and put it in her checking account." Tr. at 138, 124 to 139, 12. In fact, the evidence trial counsel failed to introduce is so conclusive the trial judge would have been required to direct a verdict as the funeral expenses.

In *Peter v. State*, 844 So.2d 699 (Fla. Dist. Ct. App. 2003) the Florida court was faced with the failure of the trial attorney to call alibi witnesses. As to the argument that the alibi witnesses would merely be cumulative, the Court said "While the state asserts that the proposed witnesses' testimony would have been cumulative to appellant's own alibi testimony, the testimony if a witness should not be excluded as cumulative if doing so reduces the case to a credibility contest between the victim and the defendant." *Id.* at 700. The same rule is applicable to this case. This Court should alter or amend the Order to reflect that the failure to call the representative of the funeral home or to introduce the documents Mr. Hindman had was prejudicial to Ms. Hindman and order a new trial.

2. The Court erred in concluding that the testimony of the funeral director and the supporting documents were merely cumulative to the testimony of Polly Hindman. Order at 9. The testimony of the funeral director was totally independent of the testimony of Ms. Hindman. He was verifying the documents on file at the funeral home. This testimony was not cumulative.

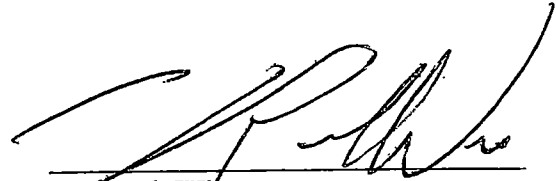
Even if the testimony were cumulative, that does not preclude this Court from finding that the failure to call the witness was prejudicial. In *Grier v. State*, 299 S.C. 321, 384 S.E.2d 722 (1989) the South Carolina Supreme Court held counsel ineffective for failing to call alibi witnesses even though the alibi witnesses testimony was cumulative to the testimony of the defendant. This Court should alter or amend the Order to reflect the failure to call a representative of the funeral home was prejudicial to Ms. Hindman and order a new trial.

3. The Court erred in failing to recognize that the trial attorney was cross-examined by the attorney for the applicant in his failure to object to the overview testimony of John T. Martin and therefore testimony was presented as to this issue. Specifically, trial counsel was asked about the questioning of Officer Martin on page 82 of the transcript at lines 10-13 as being inadmissible opinion testimony. Furthermore, counsel for applicant questioned trial counsel about the over testimony of Officer Martin being objectionable as ll he testified to was an overall summary of the case and he did not impart any new information to the jury. The use of such overview testimony has been found to be objectionable by several courts. *United States v. Flores-De-Jesus*, 569 F.3d 8, 18 (1st Cir. 2009) (“In our view, there is no meaningful difference between the endorsement of credibility offered by the government's overview witness and the endorsement offered by the vouching prosecutor.”) *United States v. Etienne*, 772 F.3d 907, 914 (1st Cir. 2014) (“The overview witness commonly goes on to testify about a defendant's specific role in the charged conspiracy. In other words, far from providing an ‘overview’ of the case, the witness actually testifies that the defendant is guilty of the crime charged.”) Here trial counsel impermissibly allowed Officer Martin to in essence tell the jury Ms. Hindman and her sister were guilty based upon his investigation. This Court should alter or amend the Order and hold the

failure to object to the testimony of Officer Martin was prejudicial to Ms. Hindman and order a new trial.

For the foregoing reasons, this Court should alter or amend the previous Order and grant Polly Hindman a new trial.

July 30, 2019



C. Rauch Wise
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Rauchwise@gmail.com
S. C. Bar № 06188
Attorney for Applicant.

twenty days of public service, and ordered that Applicant undergo random drug and alcohol testing and pay restitution in the amount of \$88,000.00.

On March 15, 2017, Gaddy filed a Notice of Appeal on Applicant's behalf, and subsequently perfected the appeal. On July 2, 2018, Gaddy moved to dismiss the appeal. He reaffirmed in a letter to the Court of Appeals filed on August 6, 2018, that Applicant wished that the appeal would be dismissed. Applicant filed an affidavit with the Court of Appeals on August 23, 2018, confirming her agreement with Gaddy's representation. The Court of Appeals dismissed the appeal. State v. Hindman, S.C. Ct. App. Order dated August 29, 2018. The Remittitur was sent on September 28, 2018.

An evidentiary hearing was held in this matter on April 15, 2019, before this Court, which then denied the Application for Post-Conviction Relief with prejudice in an Order of Dismissal issued on July 19, 2019. Applicant's Motion to Alter or Amend Judgement followed.

II.

As to the first ground presented the Motion, Applicant argues that the Court erred in misunderstanding the nature of her argument about the materiality of the testimony of the director of the funeral home that handled the victim's final services. Applicant contends that she is not disputing that some of the checks made payable to her from the victim's account were deposited into Applicant's bank account, and that she has consistently maintained that some of these checks were meant to reimburse her for burial expenses that she had prepaid on the victim's behalf. Rather, Applicant contends that her argument is that the testimony of the funeral director would have precluded the solicitor from arguing in closing that there was no evidence that Applicant was stealing money from the victim. During closing argument, the solicitor argued that the checks

drawn off the victim's account and made payable to Applicant were illegitimate, and pointed to the checks that Applicant alleged were reimbursements for the victim's yard care and dentist appointments and gifts from the victim to Applicant, as well as the checks that were supposedly reimbursements for the victim's burial expenses. The solicitor argued that the evidence at trial demonstrated that Applicant had abused a power of attorney in an attempt to access the victim's funds and that she had inappropriately contributed to the drafting of a deed of the victim's home. The solicitor also argued that, even if the jury found credible Applicant's defense that some of the checks made payable to her from the victim's account were reimbursements for her pre-payment of the victim's funeral expenses, it could nevertheless find Applicant guilty due to her complicity in her sister's stealing money from the victim. Applicant cites Peter v. State, 844 So.2d 699 (Fla. Dist. Ct. App. 2003), in support of her argument that her trial counsel's decision not to call the funeral director as a witness reduced her "case to a credibility contest between the victim and the defendant." Id. at 700. In this case, however, Applicant and her husband testified that some of the victim's checks to her were reimbursements for Applicant's prepayment of the victim's funeral expenses. Applicant's husband's testimony provided corroboration to Applicant's defense, thereby distinguishing this case from the victim-defendant credibility challenge identified in Peter. Furthermore, there was evidence that Applicant was guilty of the charged offense due to her participation in the creation and use of a power of attorney and a deed. The funeral director's testimony would not have provided any rebuttal evidence as to the prosecution's case that Applicant was guilty of the indicted offense through her actions with regard to the power of attorney and deed. The Court should not alter or amend the order based upon Applicant's first claim. To the extent that any alteration would be helpful, it would be for the Court to specifically

find that the evidence at trial could have supported Applicant's conviction based upon her actions with regard to the power of attorney and the deed, and that the funeral director's testimony would not have been helpful to Applicant with respect to those specific actions.

As to Applicant's second ground, she argues that the Court erred in concluding that the funeral director's testimony and supporting documents would have been merely cumulative to Applicant's testimony at trial. Cumulative evidence is "additional evidence of the same kind to the same point." State v. Funderburke, 251 S.C. 536, 540, 164 S.E.2d 309, 311 (1968) (citing McCabe v. Sloan, 184 S.C. 158, 191 S.E. 905 (1937); Johnston v. Belk-McKnight Co. of Newberry, 188 S.C. 149, 198 S.E. 395 (1938)). Applicant and her husband testified at trial that she did not steal from Applicant, but that she was being reimbursed by the victim. The funeral director testified that Applicant had pre-paid for funeral expenses for the victim. The funeral director's testimony and the supporting documents would have been cumulative.

Applicant also contends that, even if the director's testimony and the other documents are merely cumulative, argues that her trial counsel was nevertheless deficient in failing to call the director as a witness, citing Grier v. State, 299 S.C. 321, 384 S.E.2d 722 (1989), *overruled by* Glover v. State, 318 S.C. 496, 458 S.E.2d 538 (1995). Grier is distinguishable from the case at bar since it involved an alibi defense, and the credibility of the alibi defense was crucial to Grier's case. Grier at 324, 684 S.E.2d at 724. An alibi defense is of no use to a defendant if it does not establish that it would have been physically impossible for the accused to have committed the crime. State v. Robbins, 275 S.C. 373, 271 S.E.2d 319 (1980). In contrast, Applicant's defense was not based on the theory of alibi. Further, Grier testified at his trial that he was wearing brown clothing on the night of the robbery, whereas an eyewitness testified that the robber was wearing

grey clothing. In this present case, both Applicant and her husband testified that the checks made payable to her from the victim were reimbursements to her. Grier did not have the assistance of corroborative testimony at his trial on the color of his clothing on the night of the robbery, whereas Applicant's husband provided corroborating testimony at her trial that she had not taken funds inappropriately from the victim. As such, Applicant's need for corroborative testimony was not as essential as Grier's. Applicant has failed to demonstrate that Applicant's trial counsel was deficient in not calling the funeral home director as a witness because his testimony would have been cumulative. Even if his testimony would not merely have been cumulative, his testimony would not have been as essential to Applicant's defense as was the potential witness's in Grier. Applicant is not entitled to an alteration or amendment of the order on the basis of her second ground.

For her third ground, Applicant argues that the Court erred in finding that Applicant did not provide testimony in support of her allegation that her trial counsel was deficient in not objecting to an investigator's testimony that he sought a warrant for Applicant's arrest, and in finding that the investigator's testimony was not prejudicial to Applicant. Applicant argues here that the Court did not consider her questioning of her trial counsel at the PCR hearing. On the contrary, the Court acknowledged that Applicant's trial counsel testified as to this issue at the PCR hearing, and the Court was also correct that Applicant did not specifically address this issue while testifying on her own behalf. While being cross-examined by Applicant at the PCR hearing, Applicant's trial counsel testified that Investigator John T. Martin testified at Applicant's trial that he signed warrants for Applicant's arrest and presented it to a magistrate judge based upon his investigation of the case. Applicant's trial counsel disagreed with Applicant's assertion that Investigator Martin's testimony was equivalent to the witness's saying that Applicant was guilty.

Instead, trial counsel testified that that the investigator's testimony showed merely that he believed he had had enough evidence to acquire an arrest warrant. Applicant's trial counsel also testified that he did not object to the testimony because he believed that to do so would have run the risk that the jury would have turned against the defense in fatigue from objections. See Stokes v. State, 308 S.C. 546, 548, 419 S.E.2d 778, 779 (1992) (upholding a PCR court's denial of relief when trial counsel articulated a valid reason for employing a certain strategy) (citing Whitehead v. State, 308 S.C. 119, 417 S.E.2d 529 (1992)).

Investigator Martin testified in Applicant's trial that he presented an arrest warrant to a magistrate judge for signing after he met with probate attorneys to review documents in their possession, attended the victim's probate hearing, and reviewed additional evidence. The investigator identified documents admitted into evidence at Applicant's trial as some of those upon which he based his decision to seek an arrest warrant for Applicant. The investigator did not give any details about his belief as to the scope of Applicant's participation in the criminal offenses for which she was tried, or compare the roles that Applicant or her sister played in the crimes. Rather, the investigator explained generally how he came to seek an arrest warrant. His testimony constituted a description of the course of his investigation and events he had personally witnessed or in which he had participated, which is distinguishable from the testimony supplied by a government witness in United States v. Flores-De-Jesus, 569 F.3d 8, 27 (1st Cir. 2009) (finding that the witness's testimony about the names and roles of conspiracy members, a demonstrative chart, and estimates of the amount of drugs sold was improperly based on hearsay), a case cited by Applicant in the Motion to Alter or Amend Judgement. Applicant also cites United States v. Etienne, 772 F.3d 907 (1st Cir. 2014), in support of her argument that Investigator Martin

essentially testified that she was guilty of the charged offense. In Etienne, the government's witness testified as to his personal actions during the course of the investigation, and his testimony was not based upon hearsay, leaving the court to find that the witness's testimony was not improper. Id. at 915-16. In fact, the court in Etienne cited the proposition that a government witness's testimony may be helpful "when based on his personal knowledge and limited to a description of his activities" in providing background information and explaining the origin of the witness's involvement with the investigation. Id. at 914 (citing United States v. Goosby, 523 F.3d 632 (6th Cir. 2008); United States v. Rosado-Perez, 605 F.3d 48 (5th Cir. 2010)). Applicant has failed to demonstrate that Applicant's trial counsel was deficient in not objecting to Investigator Martin's testimony as to his investigation and pursuit of an arrest warrant and that she suffered any prejudice due to the jury's hearing the testimony. Applicant is not entitled to an alteration or amendment of the order on the basis of this third ground.

III.

Applicant's Motion to Alter or Amend Judgement is based on three grounds. For the reasons stated herein, Applicant's motion should be denied.

WHEREFORE, having made its Return to the Motion to Alter or Amend Judgement, Respondent respectfully requests that the Court deny the Motion and the relief requested by Applicant therein.

Respectfully submitted,

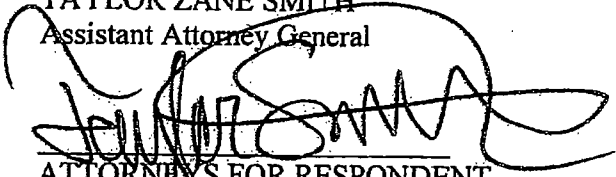
ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

TAYLOR ZANE SMITH
Assistant Attorney General

BY:



ATTORNEYS FOR RESPONDENT
Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-3737

October 29, 2019

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

Polly M. Hindman,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE THIRTEENTH JUDICIAL CIRCUIT

Case No. 2018-CP-23-5668

**ORDER DENYING APPLICANT'S
MOTION TO ALTER OR AMEND**

FILED
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This matter comes before this Court by way of an application for post-conviction relief filed on November 6, 2018, by Polly M. Hindman (Applicant). The State (Respondent) filed its return on March 29, 2019. On May 9, 2019. An evidentiary hearing in the matter was held before the undersigned on April 15, 2019, at the Greenville County Courthouse. Applicant was present at represented by Clarence Rauch Wise, Esquire, and Respondent was represented by Assistant Attorneys General Samuel Leonard Key and Taylor Zane Smith of the South Carolina Attorney General's Office. At the hearing, this Court heard testimony from Applicant, James P. O'Connell, Esquire, and Clifford F. Gaddy, Jr., Esquire. After the hearing, this Court found Applicant failed to establish any constitutional deprivations that entitle her to the grant of post-conviction relief and denied her application in an Order of Dismissal issued on July 19, 2019.

On August 9, 2019, Applicant filed a motion to alter or amend the judgment, pursuant to Rule 59(e), SCRPC. Respondent filed a return to the motion to alter or amend on October 31, 2019. After reviewing the record, including the evidence admitted at the PCR hearing, the records from the Greenville County Clerk of Court regarding Applicant's convictions, the transcript from Applicant's trial, the application for post-conviction relief, Respondent's return to the application for post-conviction relief, the records from the South Carolina Department of

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1 of 8

Corrections, the records from Applicant's direct appeal, Applicant's motion to alter or amend the judgment, Respondent's return to the motion to alter or amend the judgment, and the transcript from Applicant's PCR hearing, this Court denies Applicant's motion to alter or amend the judgment, pursuant to Rule 59(e), SCRCF, and reaffirms that Applicant has failed to demonstrate that she is entitled to post-conviction relief.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

In her motion to alter or amend the judgment, Applicant argues this Court should alter or amend its Order of Dismissal because (1) this Court erred in misunderstanding the nature of her argument about the materiality of the testimony of the director of the funeral home that conducted the victim's funeral services, (2) this Court erred in concluding that the funeral director's testimony and the supporting documents would have been merely cumulative to Applicant's testimony at trial, and that the funeral director should have been called as a witness at trial even if his testimony was cumulative, (3) and this Court erred in finding that Applicant did not provide testimony in support of her allegation that trial counsel was deficient in not objecting to an investigator's testimony that he sought a warrant for Applicant's arrest and in finding that the investigator's testimony was not prejudicial to Applicant. Applicant's motion is denied for the reasons provided hereafter.

Applicant's argument that this Court erred in misunderstanding the nature of her argument about the materiality of the testimony of the director of the funeral home that conducted the victim's funeral services.

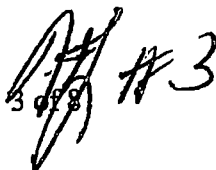
First, Applicant argues that this Court erred in misunderstanding the nature of her argument about the materiality of the testimony of the director of the funeral home that handled the victim's final services. Applicant contends that she is not disputing that some of the checks made payable to her from the victim's account were deposited into Applicant's bank account, and that she has consistently maintained that some of these checks were meant to reimburse her

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for burial expenses that she had prepaid on the victim's behalf. Rather, Applicant contends that her argument is that the testimony of the funeral director would have precluded the solicitor from arguing in closing that there was no evidence that Applicant was stealing money from the victim.

During closing argument at trial, the State argued that the checks drawn off the victim's account and made payable to Applicant were illegitimate, and pointed to the checks that Applicant alleged were reimbursements for the expense of the victim's yard care and dentist appointments and gifts from the victim to Applicant, as well as the checks that were supposedly reimbursements for the victim's burial expenses. The State argued that the evidence demonstrated that Applicant had abused a power of attorney in an attempt to access the victim's funds and that she had inappropriately contributed to the drafting of a deed of the victim's home. The State also argued that, even if the jury found credible Applicant's defense that some of the checks made payable to her from the victim's account were reimbursements for her pre-payment of the victim's funeral expenses, it could nevertheless find Applicant guilty due to her complicity in her sister's stealing money from the victim.

Applicant cites Peter v. State, 844 So.2d 699 (Fla. Dist. Ct. App. 2003), in support of her argument that trial counsel's decision not to call the funeral director as a witness reduced her "case to a credibility contest between the victim and the defendant." Id. at 700. In this case, however, Applicant and her husband testified that some of the victim's checks to her were reimbursements for Applicant's prepayment of the victim's funeral expenses. Applicant's husband's testimony corroborated Applicant's defense, thereby distinguishing this case from the victim-defendant credibility challenge identified in Peter. Furthermore, there was evidence that Applicant was guilty of the charged offense due to her participation in the creation and use of a power of attorney and a deed. The funeral director's testimony would not have provided any

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rebuttal evidence to the State's argument that Applicant was guilty of the indicted offense through her actions with regard to the power of attorney and deed.

This Court finds that the evidence at trial could have supported Applicant's conviction based upon her actions with regard to the power of attorney and the deed, and that the funeral director's testimony would not have been helpful to Applicant with respect to those specific acts and arguments from the State. This Court made detailed findings of fact and conclusions of law in its Order of Dismissal with respect to the allegations raised by Applicant, and Applicant has not shown any reason for this Court alter or amend them in her favor based upon her first argument.

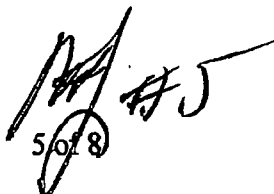
Applicant's argument that this Court erred in concluding that the funeral director's testimony and the supporting documents would have been merely cumulative to Applicant's testimony at trial, and that the funeral director should have been called as a witness at trial even if his testimony was cumulative.

Second, Applicant argues that this Court erred in concluding that the funeral director's testimony and supporting documents would have been merely cumulative to Applicant's testimony at trial. Cumulative evidence is "additional evidence of the same kind to the same point." State v. Funderburke, 251 S.C. 536, 540, 164 S.E.2d 309, 311 (1968) (citing McCabe v. Sloan, 184 S.C. 158, 191 S.E. 905 (1937); Johnston v. Belk-McKnight Co. of Newberry, 188 S.C. 149, 198 S.E. 395 (1938)). Applicant and her husband testified at trial that she did not steal from the victim; instead, they testified that Applicant was being reimbursed by the victim. The funeral director testified during the deposition that Applicant had pre-paid for funeral expenses for the victim. The funeral director's testimony and the supporting documents would have been cumulative.

Applicant also contends that, even if the director's testimony and the other documents are merely cumulative, trial counsel was nevertheless deficient in failing to call the director as a



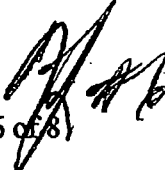
witness, citing Grier v. State, 299 S.C. 321, 384 S.E.2d 722 (1989), overruled by Glover v. State, 318 S.C. 496, 458 S.E.2d 538 (1995). Grier is distinguishable from the case at bar since that case involved an alibi defense, and the credibility of the alibi defense was crucial to Grier's case. Grier, at 324, 684 S.E.2d at 724. An alibi defense is of no use to a defendant if it does not establish that it would have been physically impossible for the accused to have committed the crime. State v. Robbins, 275 S.C. 373, 271 S.E.2d 319 (1980). In contrast, Applicant's defense was not based on the theory of alibi. Further, Grier testified at his trial that he was wearing brown clothing on the night of the robbery, whereas an eyewitness testified that the robber was wearing grey clothing. In this present case, both Applicant and her husband testified that the checks made payable to her from the victim were reimbursements. Grier did not have the assistance of corroborative testimony at his trial on the color of his clothing on the night of the robbery, whereas Applicant's husband provided corroborating testimony at her trial that she had not taken funds inappropriately from the victim. As such, Applicant's need for corroborative testimony was not essential as it was for Grier. Applicant has failed to demonstrate that trial counsel was deficient in not calling the funeral home director as a witness because his testimony would have been cumulative. Even if his testimony would not merely have been cumulative, his testimony would not have been essential to Applicant's defense as was the potential witness's testimony during Grier's trial. Applicant has failed to demonstrate that there is a reasonable likelihood that the outcome of her trial would have been different had the funeral director testified. See Edwards v. State, 392 S.C. 449, 459, 710 S.E.2d 60, 66 (2011) (noting that the South Carolina Supreme Court had "previously held where evidence produced during PCR proceedings is cumulative to or does not otherwise aid evidence introduced at trial, no prejudice

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results from counsel's failure to bring it forward.") (citations omitted). Applicant is not entitled to an alteration or amendment of the order on the basis of her second ground.

Applicant's argument that this Court erred in finding that Applicant did not provide testimony in support of her allegation that trial counsel was deficient in not objecting to an investigator's testimony that he sought a warrant for Applicant's arrest and in finding that the investigator's testimony was not prejudicial to Applicant.

Third, Applicant argues that this Court erred in finding that Applicant did not provide testimony in support of her allegation that trial counsel was deficient in not objecting to an investigator's testimony that he sought a warrant for Applicant's arrest, and in finding that the investigator's testimony was not prejudicial to Applicant. Applicant argues here that this Court did not consider PCR counsel's questioning of her trial counsel at the PCR hearing. On the contrary, this Court acknowledged that trial counsel testified as to this issue at the PCR hearing, and this Court was also correct that Applicant did not specifically address this issue while testifying on her own behalf. While being cross-examined by Applicant at the PCR hearing, trial counsel testified that Investigator John T. Martin testified at trial that he signed warrants for Applicant's arrest and presented them to a magistrate judge based upon his investigation of the case. Trial counsel disagreed with Applicant's assertion that Investigator Martin's testimony was equivalent to the witness's saying that Applicant was guilty. Instead, trial counsel testified that the investigator's testimony showed merely that he believed he had had enough evidence to secure an arrest warrant. Applicant's trial counsel also testified that he did not object to the testimony because he believed that to do so would have run the risk that the jury would have turned against the defense in fatigue from objections, which demonstrated that trial counsel had a valid and strategic reason for his not objecting to the testimony. See Stokes v. State, 308 S.C. 546, 548, 419 S.E.2d 778, 779 (1992) (upholding a PCR court's denial of relief when trial


6 of 8

counsel articulated a valid reason for employing a certain strategy) (citing Whitehead v. State, 308 S.C. 119, 417 S.E.2d 529 (1992)).

Investigator Martin testified at trial that he presented an arrest warrant to a magistrate judge for signing after he met with probate attorneys to review documents in their possession, attended the victim's probate hearing, and reviewed additional evidence. The investigator identified documents admitted into evidence at trial as some of those upon which he based his decision to seek an arrest warrant for Applicant. The investigator did not give any details about his belief as to the scope of Applicant's participation in the criminal offenses for which she was tried, or compare the roles that Applicant or her sister played in the crimes. Rather, the investigator explained generally the reasons for which he sought an arrest warrant. His testimony constituted a description of the course of his investigation and events he had personally witnessed or in which he had participated. The investigator's testimony is distinguishable from the testimony supplied by a government witness in United States v. Flores-De-Jesus, 569 F.3d 8, 27 (1st Cir. 2009) (finding that the witness's testimony about the names and roles of conspiracy members, a demonstrative chart, and estimates of the amount of drugs sold was improperly based on hearsay), a case cited in Applicant's motion. Applicant also cites United States v. Etienne, 772 F.3d 907 (1st Cir. 2014), in support of her argument that the investigator essentially testified that Applicant was guilty of the charged offense. In Etienne, the government's witness testified as to his personal actions during the course of the investigation, and his testimony was not based upon hearsay, leaving the court to find that the witness's testimony was not improper. Id. at 915-16. In fact, the court in Etienne cited the proposition that a government witness's testimony may be helpful "when based on his personal knowledge and limited to a description of his activities" in providing background information and explaining the origin of the witness's involvement with

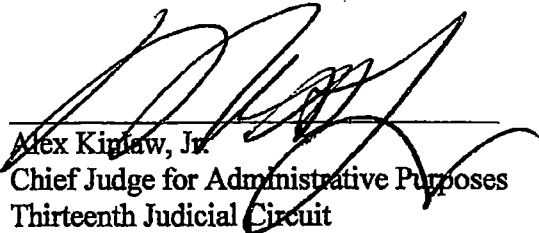
A handwritten signature and initials, possibly "JH" or "JH 7", written in black ink.

the investigation. Id. at 914 (citing United States v. Goosby, 523 F.3d 632 (6th Cir. 2008); United States v. Rosado-Perez, 605 F.3d 48 (5th Cir. 2010)). Applicant has failed to demonstrate that trial counsel was deficient in not objecting to the investigator's testimony about his investigation and pursuit of an arrest warrant, and that Applicant suffered any prejudice from trial counsel's not objecting. Applicant is not entitled to an alteration or amendment of the order on the basis of this third ground.

CONCLUSION

Based on all the foregoing, this Court finds Applicant has not established any constitutional violations or deprivations that would require this Court to grant her application for post-conviction relief. After reviewing the record and considering the parties' arguments, this Court finds Applicant has not shown any reason for this Court to alter or amend its judgment. This Court's denial of Applicant's application for post-conviction relief is reaffirmed.

AND IT IS SO ORDERED this 25th day of March, 2020.


Alex Kiplaw, Jr.
Chief Judge for Administrative Purposes
Thirteenth Judicial Circuit

Cullen, South Carolina

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Attorney General / R. Wise
on 4 11 2020

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

RECEIVED

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas
Alex Kinlaw, Jr., Circuit Court Judge

APR 27 2020

S.C. SUPREME COURT

Case No 2018-CP-23-05668

The State,Respondent,


v.

Polly McAbee HindmanAppellant.

NOTICE OF INTENT TO APPEAL

Polly McAbee Hindman appeals the Honorable Alex Kinlaw, Jr.'s Order Denying Applicants Motion To Alter/Amend filed April 1, 2020 and Order of Dismissal filed July 23, 2019. Appellant received notice on April 17, 2020.

April 23rd, 2020



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