

IN THE APPELLATE COURT OF THE STATE OF CALIFORNIA  
IN AND FOR THE FIRST APPELLATE DISTRICT

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THE PEOPLE OF THE STATE OF CALIFORNIA, )  
 )  
 ) PLAINTIFF, )  
 )  
 ) vs. )  
 )  
 ) HAROLD DANIEL SCHULTZ, )  
 )  
 ) DEFENDANT. )

COPY

COA NO. 125019

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TRANSCRIPT ON APPEAL  
REPORTER'S TRANSCRIPT OF PROCEEDINGS

VOLUME 19

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NAPA, CALIFORNIA  
MONDAY, MARCH 23, 2009  
8:30 A.M.

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REPORTED BY:

DONA M. COBLE, RPR  
CSR NO. 12295

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NAPA COUNTY OFFICIAL REPORTERS  
1111 THIRD STREET, SUITE 217  
NAPA, CALIFORNIA 94559-3001  
(707) 299-1191

SUPERIOR COURT OF CALIFORNIA

COUNTY OF NAPA

THE HONORABLE DIANE M. PRICE, JUDGE

--oOo--

THE PEOPLE OF THE STATE OF CALIFORNIA, )  
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 PLAINTIFF, )  
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 VS. )  
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 HAROLD DANIEL SCHULTZ, )  
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 DEFENDANT. )

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NO. CR138779

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FOR THE DEFENSE:

NONE OFFERED.

2 --oOo--

3 P R O C E E D I N G S

4 THE COURT: People vs. Harold Daniel Schultz

5 MR. MAUTNER: Michael Mautner for the People.

6 MR. MCENTEE: Jim McEntee for Mr. Schultz.

7 THE COURT: Are we ready to proceed with trial?

8 MR. MCENTEE: Yes.

9 MR. MAUTNER: Yes, Your Honor, the People are.

10 Counsel have arrived at certain stipulations that I'll first  
11 present to the Court for the record.

12 MR. MCENTEE: Mike, do you have a copy of that?

13 MR. MAUTNER: Yes.

14 THE COURT: I've been presented with a one-page  
15 signed stipulation on eight points. The Court will receive  
16 the stipulation.

17 Are there any other preliminary motions?

18 MR. MAUTNER: None other than previously submitted.

19 THE COURT: Is there a witness exclusion order?

20 MR. MCENTEE: Yes, please.

21 MR. MAUTNER: Yes. Jane Hinshaw will be my request  
22 for the investigating officer, and I'm not sure who else is  
23 in the room if they are witnesses or not.

24 THE COURT: Are there any defense witnesses in the  
25 courtroom?

26 MR. MCENTEE: No, Your Honor.

27 THE COURT: Well, I will issue a witness exclusion  
28 order. Any witnesses are ordered to remain in the hallway

1 until after they've completed their testimony and they're  
2 excused from further testimony.

3 A brief opening statement would be helpful for the  
4 Court to understand what the issues are.

5 MR. MAUTNER: Your Honor, that is a case in which a  
6 homeowner and a contractor, the defendant, entered into a  
7 \$45,000 contract for a kitchen remodel addition to the home  
8 on 191 Chelsea in the Westwood area of Napa, and there's also  
9 to be a bathroom repair as part of that.

10 The admission of the contract into evidence has  
11 been stipulated to, and that's People Exhibit No. 1 that I  
12 will proffer at present.

13 The contract was signed on December the 15th. It  
14 included an up-front payment of \$10,000. The contract itself  
15 spells out the California state law regarding a 10 percent  
16 cap on down payments which is the essence of Count 4 of the  
17 information.

18 The defendant began work, and the People's evidence  
19 will show, sometime after December 15th, nearly a month  
20 later. He did approximately 66 hours of labor in total  
21 between January 17th and March the 11th of 2006. The only  
22 thing that was complete was a subfloor for the addition to  
23 the home that was planned. There was considerable demolition  
24 of other parts of the property, the photographic evidence  
25 will demonstrate.

26 The defendant took three further payments during  
27 the course of this time. And when questioned about the  
28 progress of work, the People's evidence will show essentially



1 he stormed off and said he was going to sue the elderly  
2 victim for breach of contract. And then at that point she  
3 was afraid of him and didn't want him on her property anymore  
4 as a result of that. And, basically, there was never any  
5 accounting made of what use, if any, was made of the monies  
6 that were entrusted to the defendant as part of the procedure  
7 of doing this particular labor and the absence of an  
8 accounting and the minimal work.

9 Experts retained by the Contractors State Licensing  
10 Board and a prior contractor who had worked on a part of the  
11 project previous to the defendant's part of it would both be  
12 testifying that the value of the work done was minimal.  
13 Somewhere between 1,200 and 5,500 dollars. There was never  
14 any effort made after the relationship broke down for  
15 repayment of that money. There was very little evidence --  
16 in fact, there was no evidence that the defendant used the  
17 money to provide materials. He did provide a certain amount  
18 of materials for the subflooring.

19 The work that was done in the bathroom, which was  
20 incomplete and substandard, the materials were procured --  
21 part of the materials wound up being procured by the victim's  
22 family and coming out of her pocket separately from the  
23 monies entrusted to the defendant for the purposes of  
24 completing the project.

25 The defendant is a member of the extended family of  
26 the victim in this case. He is a brother of the victim's  
27 daughter's ex-husband and that was part of the reason for  
28 bringing him on. And after two or three months of work, the

1 defendant did this small amount of work under the contract,  
2 left the place a wreck, stormed off, and kept the money  
3 diverting it to his own pocket and not performing the work  
4 which is one of the essential elements of Count 3 of the  
5 information, the diversion of construction funds.

6 I think that that's basically the case in a  
7 nutshell.

8 THE COURT: Mr. McEntee.

9 MR. MCENTEE: Your Honor, the facts will show that  
10 Mr. Schultz accepted money in exchange for his promise to  
11 perform construction work on the homeowner's premises. He's  
12 charged with several counts of theft, so the evidence will be  
13 that whatever happened later when he accepted the money, he  
14 did not have the specific intent to steal it or carry it  
15 away. Those counts are going to fail.

16 The evidence further is going to show that this was  
17 a dispute between the homeowner and Mr. Schultz over the  
18 progress of the work. There'll be evidence, as Mr. Mautner  
19 has conceded, that the homeowner is the one who breached the  
20 contract. This is really a civil dispute. It doesn't belong  
21 in the criminal court.

22 The evidence further is going to show that  
23 Mr. Schultz did work beyond what was called for in the  
24 contract with the homeowner such as termite repairs and other  
25 things that bring the value of the work up from what the  
26 Government's witnesses have estimated it to be

27 The evidence is going to show further that this  
28 \$5,000 estimate of their experts is low. That he actually

1 did quite a bit more work, valuable work than that, so really  
2 what you're left with is a dispute about how much this work  
3 is worth.

4           There won't be a dispute I think about who breached  
5 the contract. The dispute really comes down to whether  
6 Mr. Schultz was entitled to keep the money that he and the  
7 homeowner signed the contract for. There's going to be a  
8 doubt as to whether or not this amounted to Mr. Schultz  
9 withholding the funds that were given to him to provide  
10 construction services.

11           And lastly, he's charged in Count 4 with accepting  
12 an excessive down payment of more than \$1,000 which is all  
13 that the law allows.

14           The evidence is going to show that the homeowner,  
15 Mrs. Petree, knew of this limit. Agreed that it could be  
16 exceeded because she needed the work done promptly since the  
17 bank that she borrowed money for was threatening to cancel  
18 the loan that she had taken out. So Mr. Schultz had to begin  
19 in an expeditious fashion. He ordered the concrete and the  
20 other materials that were necessary for him to pour the  
21 footings, and he did that promptly.

22           So Mrs. Petree not only knew about this limit from  
23 her experience before Mr. Schultz came on the job -- it was  
24 spelled out to her in the contract she signed -- she  
25 effectively waived that condition and encouraged or at least  
26 permitted Mr. Schultz to engage in the work in spite of that  
27 condition. So because of that he should be found not guilty  
28 as well of Count 4.

1 Just to sum up, this is a civil dispute between two  
2 parties. It doesn't belong here in the criminal courts.

3 Submitted.

4 THE COURT: Thank you.

5 MR. MAUTNER: Your Honor, I'd like the record to be  
6 clear. There was no concession about who breached the  
7 contract, and I think that's a collateral matter in any  
8 event.

9 THE COURT: Okay. I will receive People's Exhibit  
10 1 pursuant to the stipulation, and you may call your first  
11 witness Mr. Mautner.

12 MR. MAUTNER: Just for the record, People's Exhibit  
13 1A is also, I believe, attached to People's Exhibit 1. It's  
14 the scope of work attachment.

15 THE COURT: Yes. The Exhibit 1 is the contractor  
16 agreement. Exhibit 1A is the scope of work attached.

17 (People's Exhibits 1 and 1A were marked for  
18 identification and received into evidence.)

19 MR. MAUTNER: The People's first witness is Luella  
20 Petree.

21 - - -

22 LUELLEA PETREE,

23 a witness called by the People, who, being first duly  
24 administered an oath to tell the truth, the whole truth, and  
25 nothing but the truth, was examined and testified as follows:

26 THE WITNESS: Yes, I do.

27 THE JUDICIAL ASSISTANT: Thank you. Please have a  
28 seat over there.

1 THE BAILIFF: Right this way. Come all around and  
2 have a seat and talk in the microphone, please.

3 THE COURT: Would you like to move your seat up  
4 next to the witness. On the other side so I can see witness.

5 Please state and spell your first and last name.

6 THE WITNESS: Luella, L-u-e-l-l-a, Petree,  
7 P-e-t-r-e-e.

8 THE COURT: Thank you, Ms. Petree. And you are  
9 accompanied by a victim advocate; is that correct?

10 THE WITNESS: Yes, that's correct.

11 THE COURT: And she's sitting right next to you.  
12 She understands that she can't talk to you or have any  
13 communications at all during your testimony, okay?

14 THE WITNESS: She's just here for moral support,  
15 and I stumble sometimes and fall.

16 THE COURT: Could you please pull the microphone up  
17 close to you so we can all hear you in the courtroom.

18 You may begin.

19 DIRECT EXAMINATION

20 BY MR. MAUTNER:

21 Q. Good morning, Ms. Petree.

22 A. Good morning.

23 Q. Can you tell the Court how old you are?

24 A. I'm 79, and I'll be 80 in September of this year.

25 Q. And where do you live?

26 A. 191 Chelsea Avenue, Napa.

27 Q. And do you see anyone in the courtroom here today  
28 in front of you that you knew before this case started?

1 A. Before the case?

2 Q. Yes.

3 A. Daniel.

4 Q. When you say "Daniel," can you describe where he's  
5 sitting and what he's wearing for the record?

6 MR. MCENTEE: We stipulate that this is  
7 Mr. Schultz, and she identified him as Mr. Schultz.

8 THE WITNESS: Daniel Schultz. He has a different  
9 first name, but I can't remember it.

10 BY MR. MAUTNER:

11 Q. How do you know the person you call Danny?

12 A. My former son-in-law is married to his sister. We  
13 had barbeques and things together as a blended family.

14 Q. Okay. And did you at some point enter into a  
15 contract with Danny?

16 A. Yes, I did.

17 Q. And what was the purpose of that contract?

18 A. I had a contractor do some remodeling for me,  
19 someone else, and he was very, very busy. And Daniel came to  
20 me and asked me if he could do the remodel, and so I  
21 contacted the other man and he graciously stepped aside, and  
22 he said, yes, that would be fine. So Daniel was going to do  
23 the remodel in a cut-down fashion.

24 Q. When you say "cut-down fashion," what was the  
25 original plan for remodeling?

26 A. The original plan was the full length of my  
27 kitchen. I believe it was 18 by 12, and we cut that 18 in  
28 half to be 9 by 12 off the back door of my kitchen and that

1 would include the kitchen also being remodeled and an add-on.

2 Q. All right. I'm going to show you what's been  
3 marked People's Exhibit 12 for identification. I first have  
4 to show it to Danny's lawyer, which I'm doing now.

5 If I may approach?

6 THE COURT: You may.

7 BY MR. MAUTNER:

8 Q. Do you recognize People's Exhibit 12, Mrs. Petree?

9 A. (No immediate response.)

10 Q. Do you recognize it? That's all you need to answer  
11 right now.

12 A. Yes.

13 Q. And what is it?

14 A. It's a mark -- plans marked for an addition on my  
15 property.

16 Q. And who did these plans for you if you recall?

17 A. No. Unless it was Dennis. I don't know.

18 Q. Okay. You said that the plan you described was cut  
19 back when Mr. Schultz came on board as your contractor.

20 A. M-hm. He showed it to me once, and it had a line  
21 like ink or pencil cutting the total width back in half.

22 Q. When you say he showed it to you, what do you mean  
23 by it?

24 A. A picture like that with a line across it.

25 Q. Okay. A picture like People's Exhibit 12?

26 A. Yes, uh-huh.

27 Q. Okay. You saw that at some point?

28 A. Yeah. I don't remember him bringing it a lot. I

1 saw it one time. I didn't look inside, but I just remember  
2 seeing a pencil line to cut it back in half. I do remember  
3 that.

4 Q. And why was the project reduced in scope? Why the  
5 cut-back?

6 A. I'm thinking. I have no answer except that's the  
7 way he offered it to me. The hole had already been dug out  
8 for the full width of the room.

9 Q. Let me ask you about that. Who was the prior  
10 contractor that you mentioned had been working on project?

11 A. Dennis Dunne of Dunne-Right Remodeling in Napa  
12 here.

13 Q. And what work had he gotten done before the  
14 defendant came on the project?

15 A. His company put windows on my house, but it was  
16 unrelated to the kitchen remodel.

17 Q. What, if anything, related to the kitchen remodel  
18 did Dunne-Right Construction do for you?

19 A. His crew came out and did all the digging of the  
20 foundation, the full width of the kitchen, a full 12 feet  
21 out.

22 Q. I know this is more than three years ago. Do you  
23 remember -- Do you recall approximately when they did that  
24 work? What part of the year did Dunne-Right dig the  
25 foundation?

26 A. Oh, boy. I'm not sure. I couldn't be really clear  
27 on that.

28 Q. Okay. Do you recall signing the contract



1 approximately -- signing the contract with the defendant  
2 approximately December 15th of 2005?

3 A. Yes. Yes, I do.

4 Q. Okay. At that time you gave him some money, right?

5 A. M-hm.

6 Q. You have to say "yes" or "no."

7 A. Yes. Yes, sir.

8 Q. What monies did you give him?

9 A. He asked me for \$10,000 as a retainer, and I gave  
10 it to him.

11 Q. And when you say "a retainer," like what do you  
12 mean by that?

13 A. That's what he told me I had to pay him to get it  
14 started.

15 Q. All right. Was there any agreement between the two  
16 of you about purchasing materials for the work?

17 A. Verbally, yes.

18 Q. What was that?

19 A. Well, I remember one thing. Danny brought over a  
20 couple of big tiles that he had borrowed from Home Depot.  
21 They were granite or something real pretty, and he said he  
22 would put it on the kitchen floor. And if it raised the  
23 price a little above of what we agreed on, that he would take  
24 less salary so I could have a really pretty floor and still  
25 have those two tiles at home.

26 Q. With respect to the original \$10,000 payment, what  
27 was your understanding of what he was supposed to do with  
28 that money?

1 A. Buy materials.

2 Q. All right. And in the first month of work from  
3 December through to January did he bring materials to your  
4 home to the site of the work?

5 A. The only thing I saw come in was when he started  
6 after he had done the foundation on some cement pouring but  
7 no materials at that time, no.

8 Q. But he did the cement pour.

9 A. Yeah. He had a truck come, and he built some  
10 forms, and he had some lumber that he brought in to build the  
11 forms with.

12 Q. Okay. What was he supposed to do in your  
13 understanding about permits?

14 A. Permits?

15 Q. Yes, building permits.

16 A. Well, I figured he had them.

17 Q. Had you already seen building permits procured by  
18 the previous contractor?

19 A. Yes.

20 Q. Did he -- did you have any understanding with him  
21 when the job was cut in size about getting permits for that?

22 A. I didn't think there was anything I needed to do,  
23 so I didn't.

24 Q. Okay. Was he supposed to do something about a  
25 garden window?

26 A. Yes. He was going to remove the window that was in  
27 my kitchen and install that window in its place since he cut  
28 the thing in half. Otherwise that wall would have been gone,

1 but that wall was going to stay. And I bought that window  
2 and had it storage, and he was going to install it.

3 Q. What, if anything, was he supposed to do about  
4 doors and a pocket door.

5 A. There was -- I had asked him for a pocket door for  
6 my kitchen into my living room. Because it's hard to close  
7 the kitchen off with the door swing, because my kitchen is so  
8 little, so I just took the door off its hinge and it's open  
9 there, and he was going to put a pocket door in the wall, and  
10 I could shut the kitchen off if I needed to.

11 Q. Did you already have a --

12 A. No, sir.

13 Q. You got to wait for me to finish the question.  
14 It's part of the game.

15 A. Oh, I'm sorry.

16 Q. Did he ever buy a pocket door?

17 A. Not to my knowledge.

18 Q. Did he install one?

19 A. No. No, sir.

20 Q. What was he supposed to do, if anything, with  
21 respect to the cabinets and countertops in your kitchen?

22 A. He said he had gone down to Home Depot and talked  
23 with the men there in the cabinet department. And I went  
24 down there later and talked to them, and they showed me a  
25 picture of some stuff that he had talked with them about for  
26 cabinets along the wall.

27 Q. Okay. Were was any cabinetry or countertop  
28 material ever procured?

1 A. No, sir.

2 Q. Did he ever actually do any cabinetry or countertop  
3 work in your kitchen?

4 A. No, sir.

5 Q. Was he supposed to do anything with respect to a  
6 cook stove and a dishwasher?

7 A. He had told me he was going to replace the sink. I  
8 purchased that. I have that at home still. He was going to  
9 replace the sink and put a dishwasher in. And what was the  
10 other item?

11 Q. A cook stove.

12 A. Oh, I purchased that. I have a new stove in there.

13 Q. When you say you "purchased that," did you do it  
14 directly, or did he do it with your money?

15 A. No. He wasn't involved in that at all. About a  
16 year after he'd left, I finally went down and got a stove and  
17 had them deliver it.

18 Q. So he never installed a cook stove or dishwasher.

19 A. No. No, sir.

20 Q. If and what about -- was he supposed to do, if  
21 anything, with respect to a washer and dryer?

22 A. I had talked about it. A stack washer and dryer in  
23 addition of the kitchen to be installed, yes.

24 Q. Okay. Did he ever do anything about that?

25 A. No, sir.

26 Q. How about a stainless steel sink? Was he supposed  
27 to do anything about that?

28 A. I had no solid memory of a stainless steel sink.

1 We had talked but nothing written down.

2 Q. All right. Did he ever procure a sink for the  
3 kitchen remodel?

4 A. No, sir. I had a friend come and bring me one. I  
5 have it in a box at home.

6 Q. Was he supposed to install a tub and bathroom  
7 window in your bathroom?

8 A. Yes.

9 Q. Did he install a tub?

10 A. We'd purchased it. He opened the bathroom wall and  
11 took out the old tub and broke a bunch of tiles and threw  
12 them on the ground that were lining that thing and then he  
13 put one in. You want me to explain the taking out of it?

14 Q. Yes.

15 A. Okay. He put one in that we had purchased. It was  
16 a tub with big tile walls around it, and he opened the wall  
17 and put it in there. And my son-in-law came home and asked  
18 him if he had replaced the plumbing under there, because the  
19 house was like 40 years old, and asked if he had replaced the  
20 pipes, and Daniel said, no, he hadn't. So my son-in-law  
21 asked him to take the tub out, set it on the deck thing that  
22 was sitting there. And so then my son-in-law went under the  
23 house and put some -- he went down and bought pipes and  
24 installed the pipes there.

25 Q. Okay. To your knowledge did Mr. Schultz use any of  
26 the money you had given him for any of these materials that  
27 you described?

28 A. No. We bought the materials. He didn't.

1 Q. Was Mr. Schultz supposed to remove construction  
2 debris from the site?

3 A. Well, I would have hoped, yes.

4 Q. Did he do that?

5 A. No.

6 Q. When -- let me get there. Do you recall making a  
7 second payment to Mr. Schultz?

8 A. Yes. He brought me a binder piece of paper, clear  
9 just sheet, and he put a big X on it, and he dated it I think  
10 January something. And then two weeks later another date up  
11 here and down here another date. Four different dates. Each  
12 one two weeks apart with the -- asking the demand of a check  
13 for \$8,750 on the first square and the second one and the  
14 third one and the fourth one.

15 Q. Okay. I'm going to show you what's been marked as  
16 People's Exhibit No. 27. Right now I'm showing it to  
17 Mr. McEntee. And now I'm showing it to you, and I'm going to  
18 ask if you recognize it.

19 A. Yes. Yes. That's the paper he gave me.

20 Q. So is that the exhibit what you've just been  
21 describing?

22 A. Yes.

23 Q. All right. Thank you.

24 THE COURT: What exhibit is that?

25 MR. MAUTNER: It's 27.

26 BY MR. MAUTNER:

27 Q. So according to Exhibit 27, he wanted more money on  
28 January 19, 2006, and you gave him a check, correct?

1 A. Yes. I gave him each one he asked for.

2 Q. Do you recall -- by that date it's almost a month  
3 since signing the contract -- how much, if any, work had been  
4 done?

5 A. Just the cement was poured in forms out in the back  
6 off my back door.

7 Q. All right. Now, also on Exhibit 27 it says the  
8 next check was going to be due about February 2nd, and you  
9 paid about January 31st. Does that sound familiar?

10 A. Yeah. My memory is not really clear on those  
11 dates, but I think I'd given him two checks, and he requested  
12 the third one on a Saturday, March 11th.

13 Q. Okay. Do you recall how much, if any, work got  
14 done between the second check that you just described and the  
15 third one?

16 A. Would that have been when he was putting the  
17 bathtub in --

18 MR. MCENTEE: Objection. It's nonresponsive.

19 THE COURT: Sustained.

20 BY MR. MAUTNER:

21 Q. The answer is you don't recall?

22 A. I'm not clear on the dates, no.

23 Q. Okay. Did Mr. Schultz ever suggest to you setting  
24 up a joint account to deposit these monies into?

25 A. A joint account? I don't recall anything like  
26 that.

27 Q. He never did that, right?

28 A. Not that I remember.

1 Q. And was he aware of how your project was being  
2 financed?

3 A. Yeah.

4 Q. How was he aware?

5 A. Because he's shirt-tail family.

6 MR. MCENTEE: Objection. Hearsay and foundation.

7 THE COURT: I'll sustain it as lack of foundation.

8 BY MR. MAUTNER:

9 Q. When you entered into the contract with Mr.  
10 Schultz, did you explain to him how it was being financed?

11 A. He knew I had a reverse mortgage.

12 Q. Okay. And there was no -- but the contract called  
13 for you simply to pay him installment checks, correct?

14 A. Yes. Yes.

15 Q. And that's what you did, correct?

16 A. Yes.

17 Q. When you gave him the second check, did he tell you  
18 anything about how much work he had finished?

19 A. We didn't discuss it. I was home. He was out. He  
20 addressed some dry rot on the outside of the house.

21 Q. How did he address the dry rot on the outside of  
22 the house?

23 A. Under the living room windows, I didn't go out, but  
24 he pulled some boards and did some dry rot there. And then  
25 at the front corner of the house where the drainpipe comes  
26 down he found some dry rot there. And I didn't go out, but  
27 he told me he did dry rot work there.

28 Q. All right. I'm going to start showing you some



1 pictures and see if you recognize them. I'm showing Exhibit  
2 No. 2 to Mr. McEntee, and I'm going to take the walk to show  
3 it to you.

4 What is Exhibit No. 2 a picture of, Mrs. Petree?

5 A. That's the back of my house.

6 Q. And --

7 A. The board up high is over the bathroom where he put  
8 the tub in and didn't get the wall back on. And that's the  
9 kitchen window. That would be a garden window when it was  
10 put in.

11 Q. As long as you're pointing to it, why don't you  
12 hold it up for the Judge so she can see it.

13 A. Okay.

14 Q. Did Mr. Schultz do the patching up by putting these  
15 boards on here?

16 A. He put the big one on top. And I came out and  
17 found some others -- because the wind was blowing through the  
18 tarp paper and my bathroom was awful cold, I found some  
19 boards on the ground and got my hammer and nailed them the  
20 best I could.

21 Q. You're referring to these three small boards -- you  
22 got to wait for me to finish the question. You're referring  
23 to these three small boards under the big boards. You nailed  
24 those in yourself?

25 A. I nailed those in myself.

26 Q. When did you do that?

27 A. I couldn't be sure, but probably a couple weeks  
28 after he left and we started picking up tiles. There were a

1 lot more tiles on the ground that had come out of the  
2 bathroom.

3 Q. What demolition work did the defendant do on the  
4 bathroom? You just described a lot of tiles that had come  
5 out.

6 A. Oh, the old bathtub had tiles on the walls, ceramic  
7 tiles, and the floor, and he removed the ceramic tiles and  
8 then slid in the one that got its own tiles built into it.  
9 It just slides in with the tub on it. They're not ceramic.

10 Q. Something else. And he left all the old tiles out  
11 in the backyard.

12 A. Yes, sir.

13 Q. Okay. In roughly the area of the midsection of  
14 People's Exhibit No. 2.

15 A. Well, it was dug down a lot farther. We had to  
16 finally fill it in, see, beside that wooden deck thing. He  
17 dug out clear past the kitchen window. The original remodel  
18 went over beyond that. My son-in-law helped a lot and got a  
19 lot of those tiles.

20 Q. Well, did you do that before or after the defendant  
21 left the job?

22 A. After he left.

23 Q. All right. Let's talk about that for a minute. Do  
24 you remember what date the defendant left the job?

25 A. March 11th.

26 Q. Why do you remember?

27 A. I haven't a clue except I just know it was March  
28 11th. I had an auto accident. I was a little upset over

1 things, and I totaled my car, and so that all happened.

2 Q. Around the same time?

3 A. Yes, uh-huh.

4 Q. Okay. Did the defendant work on the project that  
5 day, the 11th of March?

6 A. M-hm, yes, sir.

7 Q. And how much work did he do that day?

8 A. He brought a young man with him, and he put the  
9 bathtub in. My son-in-law said remove it, and he did. And  
10 my son-in-law did some new pipes under there, and Daniel and  
11 this other young man that he had with him put the tub back  
12 in. And it had boards about six inches wide on the floor  
13 there where everything was ripped up, and they had a space  
14 like that. And when I went into the bathroom and looked, I  
15 could see the ground underneath the bathtub about that wide.  
16 And the wind was blowing in there. And it didn't look like  
17 it had enough wood under it that I could have filled the tub  
18 and gotten in it. I was afraid it might break.

19 Q. Did the defendant work a full day that day?

20 A. Yes, he did.

21 Q. Do you remember that specifically?

22 A. Yes. It was 10:15 in the evening that he was at my  
23 front door and demanded another check.

24 Q. Was that unusual that he worked a full day?

25 A. Yeah, it wasn't -- yeah, because he lived out of  
26 town. So, yeah, he didn't stay real late usually.

27 Q. Do you know about how often he was there? Can you  
28 estimate during that two-month period how often he was

1 actually on the site?

2 MR. MCENTEE: Objection. It calls for  
3 speculation.

4 THE COURT: Overruled.

5 THE WITNESS: He had one week that he had to work  
6 up where he lived, and he asked about that, and that was  
7 fine, so he wasn't there one full week. Other than that  
8 usually a few hours. He just kind of came and went. I gave  
9 him keys to my home because he was somebody I really knew I  
10 thought.

11 Q. Did he ever bring -- other than this young man that  
12 you say he brought on March 11th, did he have anybody else  
13 working on the site?

14 A. Not that I met, no.

15 Q. Did he introduce you to any subcontractors?

16 A. No. He brought an inspector friend one time, and  
17 they sat outside and talked. I'm not sure why he had them  
18 there. It was maybe an hour.

19 Q. You said March 11th that he demanded more money.  
20 Were you supposed to pay him some more money by that date?

21 A. It was the date, yes, that was written on that  
22 paper, and I wrote the check out, and I put it on my mantel.  
23 And then that was Saturday night, and it was 10:15 in the  
24 evening, and he had been working all day on the tub. Still a  
25 mess, you know. The wash basin got full of plastic from the  
26 walls when he sawed it, and I got -- he just rinsed it down.  
27 I would have put a towel in there, but he didn't. It filled  
28 up, and he it still hasn't done the drain in my basin.

1 Q. So about 10:15 in the evening he was ready to  
2 leave.

3 A. Yes. He stopped at my front door, and I was  
4 sitting in the living room, and he said -- I think he said I  
5 needed to get another check. I don't recall, but I think it  
6 was whoever his wife was. He said I needed another check and  
7 I said I can't give -- I have the check, but I can't give you  
8 it until we have a meeting.

9 Q. Okay. Now, let me stop you there. Why did you say  
10 that to him at that particular moment? He'd been working all  
11 day, right?

12 A. Yeah, I felt we needed to get things straight as to  
13 why I kept paying him and nothing was getting done.

14 Q. You wanted a meeting.

15 A. Yes. And I asked him to have a meeting with my  
16 daughter who lives with me and cosigned the contract.

17 Q. Why did your daughter cosigned the contract?

18 A. I'm not sure. I asked her or he asked.

19 Q. Okay.

20 A. I'm not certain about that.

21 Q. What was your daughter's role in the project?

22 A. She lives there. She oversaw things. Part of the  
23 family, too.

24 Q. Okay. What's her name?

25 A. Robin Simmons.

26 Q. All right. You wanted a meeting between the  
27 defendant and you and Robin, correct?

28 A. And Raymond who lives there.

1 Q. And you told the defendant that?

2 A. Yes. I told him I wanted him to meet with Robin  
3 and my granddaughter.

4 Q. Do you need some more water?

5 A. I think I swallowed water in the wrong place. I'm  
6 sorry.

7 Q. When you told the defendant that you wanted that  
8 meeting to happen, where in your home were you situated?

9 A. I was standing between the mantel and the front  
10 door.

11 Q. And where was the defendant standing?

12 A. Standing in front of the front door, it was still  
13 closed.

14 Q. How big is that space?

15 A. Oh, not a big living room. It's a Westwood house.  
16 Maybe 14 by 15, something like that.

17 Q. And what was the defendant's reactions when you  
18 told him you weren't going to give him the check?

19 A. Let's see. He said I had to give it to him. Oh, I  
20 need a meeting. We need to have a meeting and talk about  
21 this.

22 Q. What was his reaction?

23 A. He said -- oh, I asked him if he could come back  
24 tomorrow morning, which would have been Sunday morning, and  
25 meet with my daughter and my granddaughter and myself and  
26 Raymond, my daughter's significant other. And he said, "No,  
27 we're not going to have a meeting. You violated the  
28 contract. I'll see you in court."

1 Q. And what tone of voice did he use?

2 A. Just stated it. I'm not coming back. I'm not  
3 having a meeting. You violated the contract.

4 Q. Did he appear to be angry?

5 A. Hard to say. I don't know his moods that much.

6 Q. Okay. Were you concerned about his statement?

7 A. Yeah, kind of. He had my door key, and I sent my  
8 daughter to go get it from him.

9 Q. When did you do that?

10 A. That night.

11 Q. Why?

12 A. I guess I was -- he was kind of upset, and I just  
13 didn't want to be having him able to come in. I went out and  
14 got the key. I'd left him another key outside in case he was  
15 ever in town and needed to use the bathroom. I told him  
16 since he was family I'd leave the key out front, and I went  
17 out and got that key. I guess I was a little afraid.

18 Q. Did he do anything in this discussion specifically  
19 that scared you?

20 A. Just that he'd see me in court. I violated the  
21 contract, and that was kind of strange.

22 Q. Did it scare you?

23 MR. MCENTEE: Objection, leading.

24 THE COURT: Sustain.

25 THE WITNESS: I was uncomfortable.

26 MR. MAUTNER: Okay.

27 THE WITNESS: Otherwise I wouldn't have grabbed the  
28 keys and sent --

1 MR. MCENTEE: Your Honor, I ask that be stricken.  
2 It's nonresponsive.

3 THE COURT: I'm not going to strike the answer  
4 because she modified it and responded.

5 BY MR. MAUTNER:

6 Q. Did the defendant ever come back to your home after  
7 the 11th of March?

8 A. Not that I know of.

9 Q. Did he have any tools or belongings that he left  
10 there on the 11th of March?

11 A. I never saw him bring much in. I don't know.  
12 Everything was in the bed of his truck, and he kept that out  
13 front.

14 Q. Okay. He told you on March 11th he was going to  
15 sue you.

16 A. M-hm.

17 MR. MCENTEE: Objection. It misstates the  
18 testimony, and it's leading.

19 THE COURT: Sustained.

20 THE WITNESS: Yes.

21 THE COURT: Excuse me, Ms. Petree. Wait until  
22 there's a question asked.

23 THE WITNESS: Sorry.

24 BY MR. MAUTNER:

25 Q. I think you testified you said or he said he would  
26 see you in court?

27 A. Yes.

28 Q. Okay. Did he ever give you formal notice of



1 cancellation of the contract?

2 A. I don't know what that is.

3 Q. Did you ever get a paper from him saying you were  
4 in violation of the contract and that he would see you in  
5 court?

6 A. I don't remember a paper. He phoned several times.

7 Q. How soon after the 11th did he phone?

8 A. Just a few days, I believe. He phoned several  
9 times and modified it. I taped them and turned them into  
10 you.

11 Q. Did you converse with him when he phoned?

12 A. No, not the first time. I was kind of scared.

13 Q. What about the first phone conversation scared you?

14 A. I don't recall specifically, but he was kind of  
15 upset.

16 Q. And how many other calls were there if you  
17 remember?

18 A. Five or six.

19 Q. And did you respond to any of them?

20 A. No.

21 Q. Okay. After March the 11th, did you ever contact  
22 him?

23 A. I think he asked me to write something. That's not  
24 really clear, but I think I did.

25 Q. I'm going to show you what's been marked People's  
26 Exhibit 18 for identification, and now I'm going to show it  
27 to you.

28 A. Somebody asked me to write it.

1 MR. MCENTEE: Objection.

2 BY MR. MAUTNER:

3 Q. There's no question. Don't speak unless there's a  
4 question.

5 Mrs. Petree, you'd had a note. Look at Exhibit No.  
6 18. Do you recognize it?

7 A. Yes, I do.

8 Q. What is it?

9 A. It's a letter to Dan.

10 Q. Did you send the defendant that letter?

11 A. Yes. Yes, sir, I did.

12 Q. How did you send it to him?

13 A. In an envelope.

14 Q. Did you deposit it in the US Mail?

15 A. Yes.

16 Q. And do you recall to what address it was sent?

17 A. Probably up in Ukiah.

18 Q. Wherever he lived at that time?

19 A. Yeah.

20 Q. Okay. Do you remember if the phone call from him  
21 came before or after you sent the letter?

22 A. I'm sure before.

23 Q. Which was before?

24 A. The phone calls.

25 Q. Okay. And why did you send him the letter? What  
26 was your purpose?

27 A. I'm not real clear, but I think I was -- maybe my  
28 daughter told me I needed to. I don't remember. I'm not

1 sure.

2 Q. Okay. Did you still want to have the meeting with  
3 him after this? After he left and you got the keys back, did  
4 you still want to have that meeting and talk about finishing  
5 the project?

6 A. I'm not sure how I felt then. I felt violated.

7 Q. Okay. Does the letter, People's Exhibit 18,  
8 reflect your sentiments at that time, or does it refresh your  
9 recollection as to what they were?

10 A. I don't think I would have been comfortable with  
11 him back.

12 Q. Okay. Did you want to give him a chance to finish  
13 the job?

14 A. I don't think I thought he would do it.

15 Q. All right. When you gave the checks to the  
16 defendant, did you trust him?

17 A. Yes.

18 Q. Trust him to do what with the money?

19 A. Remodel my kitchen and do the build-on.

20 Q. Do you recall any agreement with him about how much  
21 of the total contract price was supposed to be for materials?

22 A. No. I don't remember any split-down. He just told  
23 me verbally what he was going to do and didn't show me plans,  
24 but he showed me a photograph album of some work he had done.

25 Q. Okay. Did you give him the plans that you had  
26 already had from before?

27 A. I'm not sure. It's really fuzzy in my mind about  
28 where the contract -- I mean, the plans came from, because it

1 seems like it was somebody else's remarks on the center  
2 cutback.

3 Q. Did he return the plans to you after quitting the  
4 job?

5 A. I don't remember getting anything after he quit,  
6 no.

7 Q. Okay. Let's take a look at a few more pictures,  
8 Mrs. Petree. I'm showing defense counsel what's been marked  
9 People's Exhibit 4, I think. Actually I think it's a 3.  
10 It's between 2 and 4 in my stack. What's People's Exhibit  
11 No. 3 a picture of, Mrs. Petree?

12 A. This is out my back door. This track was all torn  
13 up so you can't hardly get through the door if I pulled hard.  
14 And this is the subflooring that was to have been the remodel  
15 of the add-on kitchen.

16 Q. And did the defendant finish the subfloor?

17 A. He nailed the subfloor on, yes.

18 Q. Do you recall if there was an inspection before  
19 that or not?

20 A. I don't know but probably not because there was no  
21 exits to the outside.

22 MR. MCENTEE: Objection. This is speculation.  
23 It's nonresponsive.

24 THE COURT: Sustained.

25 BY MR. MAUTNER:

26 Q. I'm going to show you a sequence of photographs,  
27 Mrs. Petree. Exhibits 4, 5 and 6 that I'm now showing  
28 defense counsel.

1 Mrs. Petree, what is Exhibit 4 a picture of? If  
2 you could hold it up so the Court can see.

3 A. It was raining and this was bare wood, so my  
4 son-in-law had thrown a tarp over it. And this is the back  
5 of my house, the garage. And this is the door into the  
6 kitchen, the sliding door. And this is the kitchen window.  
7 And the wall was all pulled out there, too, and the bathroom  
8 is beyond it. And this is a step thing that he made so I  
9 could get out and feed my cats.

10 Q. What is a step?

11 A. This place right here. And this little thing to  
12 hang onto when I got down it.

13 Q. Okay.

14 A. It's a subflooring. It was to have been the  
15 addition.

16 Q. This little -- what you've pointed to on the  
17 left-hand side of the photo, what did the defendant call that  
18 if anything?

19 A. A railing.

20 Q. All right. Was that part of what he was supposed  
21 to make in terms of making the addition?

22 A. Oh, no. He just put it there because I had to go  
23 down that big step, and I don't walk real well. I stumble a  
24 little. So he put that up there like a railing so I could  
25 hold it when I step down.

26 Q. I'm going to show you People's Exhibit 5 and ask  
27 you to look at the right-hand side. You previously described  
28 the boards that you nailed into the bathroom wall. Exhibit 5

1 shows something underneath those boards. What is that?

2 A. Tar paper.

3 Q. Okay. And why was that there when that picture was  
4 taken?

5 A. Well, it kept the wind out of the house because it  
6 was wide open there. You could see under the house. But the  
7 wind blew it and tore it so you could see under.

8 Q. Before the defendant started working on the project  
9 was there outside walling there?

10 A. Oh, yes. Yes.

11 Q. Okay. What did the defendant do to all that  
12 walling?

13 A. Well, as he pulled it off, he just threw it down in  
14 here and then we stacked it. Raymond lives there. We  
15 stacked it back towards the fence away from the house more.

16 Q. And who wound up hauling it all off if you recall?

17 A. My son-in-law.

18 Q. Okay.

19 THE COURT: When were these photographs taken?

20 THE WITNESS: Probably a month after he'd left.

21 THE COURT: Okay.

22 MR. MAUTNER:

23 Q. There are several sets of photographs. I think  
24 another witness will explain when exactly People's 2, 3, --  
25 or 3, 4, and 5 were taken.

26 Mrs. Petree, I'm next going to show you Exhibits  
27 15, 16, and 17.

28 Mrs. Petree, I'm going to show you what defense

1 counsel has looked at and is marked People's Exhibit 15.

2 What does that depict?

3 A. This is the inside of my bathroom. The tub  
4 enclosure is here. And then this is something that -- this  
5 wood framing above the tub when Daniel pulled everything out,  
6 my son-in-law has since put Sheetrock over that.

7 Q. I'm going to have you take a look at Exhibit 16.  
8 Exhibit 16 looks a little familiar like other pictures we've  
9 seen. What's depicted in Exhibit 16.

10 A. That's before a lot of this stuff got picked up;  
11 that's where it's thrown all down in the backyard.

12 Q. Okay.

13 A. Yeah. That's the hole for the bathtub addition and  
14 the deck to go over the kitchen.

15 Q. Is that about how it looked after the defendant  
16 left the job?

17 A. Yes.

18 Q. How about Exhibit 17? What's depicted in that pair  
19 of photographs?

20 A. Well, I'm not sure where the dirt came from. I  
21 guess from digging out. That's looking at the back of the  
22 house again. The deck is here into the kitchen. The  
23 bathroom wall. I had -- I hadn't put the other boards on  
24 yet.

25 Q. So that's the backyard before some repairs that you  
26 made were done, correct?

27 A. Yeah.

28 Q. Okay. You've described those repairs in other

1 photographs that you've seen today.

2 A. My family did that.

3 Q. Okay. Do you know who took these pictures?

4 A. Erin (phonetic). She took most of them. My  
5 granddaughter. Robin's daughter.

6 Q. Do you know approximately when she did that?

7 A. Real early on.

8 Q. Okay. Is the notation accurate that's on these  
9 three exhibits, or looking at it does it refresh your  
10 recollection about when the photos were taken?

11 A. Yes.

12 Q. And when were the photos taken?

13 A. This is March 15th. And as I said, it's still like  
14 this. That's inside my bathroom.

15 Q. It's not still like that now, right?

16 A. Well, the basin doesn't drain, and I can't use the  
17 bathtub because it's too cold. I just go in the kitchen and  
18 wash.

19 Q. Other than the patch up that you've described and  
20 shown in these photos, have you been able to finish any of  
21 this work or at least get it repaired?

22 A. No, sir.

23 Q. Why not?

24 A. I haven't any money left.

25 Q. All right. Before the defendant came on the job  
26 and Mr. Dunne was doing work, I think you said he did some  
27 replacement of windows for you.

28 A. Yes, sir.



1 Q. Okay. Was that part -- what was the reason for  
2 that?

3 A. That was required by the reverse mortgage people.  
4 That the roof had to be replaced. Windows had to be  
5 replaced. The remodel was not demanded. That was something  
6 I wanted done.

7 Q. All right. Do you know why the bank wanted the  
8 windows replaced?

9 A. Because they gave me a reverse mortgage and they  
10 had an interest in the house, and there had to be no dry rot  
11 in it. No termites. Nothing. It had to be brought up to  
12 code.

13 Q. Okay. When you ended the relationship with  
14 Dunne-Right, what did you do with that previous contract?

15 A. Because Daniel was family and he came and asked if  
16 he could do it. Dennis was very busy trying to fit my small  
17 remodel in with the rest of the work he was scheduled to do.  
18 So I asked Dennis, told him I had a relative that wanted to  
19 do it and he was a contractor. And I had given Dennis a  
20 thousand dollars to sign up to get started, and so Dennis  
21 gave me his blessing and surprised me and returned the  
22 thousand dollars to me.

23 Q. Did you have a particular timetable that you had  
24 wanted Mr. Dunne to be able to have the work done --

25 A. I didn't know about a timetable. I just hired him.  
26 He did a good job on the windows, and so I thought he would  
27 do a good job in the kitchen.

28 Q. Okay. When you made the agreement with the

1 defendant, was he supposed to have the work done by a  
2 particular time?

3 A. Yes, sir. He gave me two days, a starting date and  
4 an ending date.

5 Q. Was that important to you?

6 A. Well, yeah. My whole kitchen I took everything out  
7 of it and put it in boxes in a spare room and dragged my  
8 microwave in the living room and cooked there. So it was  
9 kind of important to have it done in two months.

10 Q. Was it?

11 A. No, sir.

12 MR. MAUTNER: I've no further questions at this  
13 time.

14 THE COURT: Okay. Why don't we take a recess now.  
15 We'll reconvene at 10 minutes after ten.

16 MR. MAUTNER: Thank you, Your Honor.

17 (Recess taken.)

18 THE BAILIFF: Remain seated and come to order. Court is now  
19 in session.

20 THE COURT: Mr. McEntee. Cross-examination.

21 MR. MCENTEE: Thank you.

22 CROSS-EXAMINATION

23 BY MR. MCENTEE:

24 Q. Mrs. Petree, you testified that Mr. Dunne was the  
25 one that excavated the foundation --

26 A. Yes.

27 Q. -- on your room addition; is that right?

28 A. Yes.

1 Q. He did that in the summer of 2006?

2 A. I'm not certain of the date, but I'm sure you're  
3 right.

4 Q. Okay. And there was -- I beg your pardon. I  
5 should have said 2005; is that correct?

6 A. Yes.

7 Q. Okay. So he did this some months before  
8 Mr. Schultz came on the project; isn't that right?

9 A. Yes.

10 Q. So the excavation just sat there all that time --

11 A. Yes.

12 Q. -- is that right?

13 THE COURT: Mrs. Petree, one of the rules of  
14 testifying is that you need to wait until after the question  
15 is completed. Our court reporter can't take two people  
16 talking at the same time, so you need to wait until the  
17 question is asked and then you can respond, okay?

18 THE WITNESS: Thank you.

19 BY MR. MCENTEE:

20 Q. That's okay. I do it all the time.

21 Mr. Dunne replaced some windows at your home at  
22 about the time he dug the foundation; isn't that right?

23 A. Prior. He did the windows first.

24 Q. I see. How many windows did he do?

25 MR. MAUTNER: I'm going to object to relevance.

26 THE COURT: What is the relevance?

27 THE WITNESS: I believe --

28 THE COURT: Excuse me, let me rule on the

1 objection.

2 MR. MCENTEE: There's going to be a dispute about  
3 the value of the work that Mr. Schultz performed. I'm going  
4 to attempt to show that relative to work Mr. Dunne performed  
5 and the price he charged for doing that work,  
6 Mr. Schultz's -- the value of Mr. Schultz's work and the  
7 money he charged to perform it was reasonable.

8 THE COURT: I'm not sure how directly relevant it  
9 is, but I'll allow it. You can answer it.

10 BY MR. MCENTEE:

11 Q. How much did Mr. Dunne charge you for replacing the  
12 several windows that he replaced?

13 A. I don't have that for sure, but it might have been  
14 9,000.

15 Q. He replaced three windows?

16 A. Oh, no. No. I believe seven.

17 Q. Why did you decide to scale back your project?

18 A. The kitchen project?

19 Q. Well, you had originally planned on a room addition  
20 that was twice the size of the one that Mr. Schultz undertook  
21 for you; isn't that right?

22 A. Yes.

23 Q. And --

24 A. Not twice, one and a half.

25 Q. Why did you decide to make that room addition that  
26 Mr. Schultz began smaller than the one that Mr. Dunne had  
27 started?

28 A. Because Daniel presented me with a picture with

1 just doing it out there for 45,000 and then I figured that it  
2 would work. I could work with it.

3 Q. The \$45,000 in the contract that you signed with  
4 Mr. Schultz included not just the room addition but a kitchen  
5 remodel and a bathroom remodel too; isn't that right?

6 A. Yes.

7 Q. Now, you remember that Mr. Schultz had delivered to  
8 the job site lumber to construct forms with, correct?

9 A. Yes. I'm sure he had to have brought that through  
10 the gate.

11 Q. Well, he made -- he constructed a cement footing  
12 and a stem wall; isn't that right?

13 A. "Stem wall," what's that?

14 Q. Well, he constructed a cement foundation for the  
15 room that was --

16 A. Yes.

17 Q. -- to go on top?

18 A. Yes. He built the forms.

19 Q. He built forms, and he poured cement, correct?

20 A. Yes.

21 Q. And he laid down a structure to build the floor on;  
22 isn't that right?

23 A. A subfloor.

24 Q. Right. He put down floor joists and a subfloor,  
25 correct?

26 A. Yes.

27 Q. And before doing that he performed some termite  
28 work; isn't that right?

1 A. Yes.

2 Q. What was the extent of the termite work he  
3 performed?

4 A. As near as I know under my big living room windows  
5 out front something under those windows he did. Then at the  
6 front corner of the house on the driveway side and something  
7 back inside the kitchen and underlayment of the existing  
8 kitchen floor he went under there and kind of tore some wood  
9 up there and I guess replaced it, so.

10 Q. So he repaired the substructure of your home,  
11 cleaned up the termite damage to the substructure of the  
12 home; is that right?

13 A. In three little places, yes.

14 Q. And made repairs to the subfloor at a certain  
15 place; isn't that right?

16 A. In the kitchen.

17 Q. Was the termite work part of the contract he signed  
18 with you in December of 2005?

19 A. I couldn't tell you.

20 Q. You've said it several times your memory of this  
21 event isn't very good; isn't that right?

22 A. Well, I can remember it, but he kind of left the  
23 kitchen floor sort of bad.

24 Q. Would it be fair to say that your memory of the  
25 details of what happened on your remodeling project is not  
26 good?

27 A. That wouldn't be fair to say, no. I can remember  
28 it.

1 Q. Mr. Schultz also repaired gutters around the edge  
2 of the roof of your home; isn't that right?

3 A. Yes. He replaced one across the patio.

4 Q. Now, it's also true, isn't it, that the contract  
5 you signed with Mr. Schultz called for a certain payment  
6 schedule; isn't that correct?

7 A. I don't recall it in the contract. I recall it on  
8 the piece of binder paper that he gave me that you saw  
9 earlier.

10 MR. MCENTEE: Your Honor, may I approach so I can  
11 show the witness Government's Exhibit Number 1?

12 THE COURT: You may.

13 MR. MCENTEE: Thank you.

14 BY MR. MCENTEE:

15 Q. Mrs. Petree, I'm going to show you the exhibit  
16 that's marked for identification at as People's Number 1?

17 A. Yes. I have a copy of this with me.

18 Q. Okay. So you recognize that?

19 A. M-hm, I do.

20 Q. All right. Now, let me take that back from you for  
21 just a second. We can share it because I want to ask you  
22 some questions about it. On the first page of this contract  
23 under what's noted as Article 4, which is entitled *Progress*  
24 *Payments*, is a payment schedule; isn't that right?

25 A. Yeah. That looks like that was on the binder  
26 paper.

27 Q. The payment schedule called for a down payment of  
28 \$10,000, right?

1 A. Correct.

2 Q. And then bi-weekly payments of \$8,750?

3 A. That's what I testified to earlier, yes.

4 Q. All right. And then the bi-weekly payments were  
5 due on January 13th, January 27th --

6 A. If that's what's marked on my paper with a cross on  
7 it, that's correct.

8 Q. Okay. But actually you paid Mr. Schultz later  
9 these progress payments than what the contract had called  
10 for; isn't that right?

11 A. I'm not sure about that, but I can only pay him  
12 when he came down from northeastern California and came to my  
13 house because he wasn't there very often.

14 MR. MCENTEE: Okay. May I approach the witness  
15 again, Your Honor?

16 THE COURT: You may.

17 BY MR. MCENTEE:

18 Q. I'm going to show you something you mentioned in  
19 your testimony on direct from the District Attorney. This is  
20 a handwritten --

21 A. Yes.

22 Q. -- grid. Do you recognize that?

23 A. Yes. Daniel did that.

24 MR. MAUTNER: Is the witness referring to Exhibit  
25 Number 27?

26 MR. MCENTEE: Yes.

27 BY MR. MCENTEE:

28 Q. This is Government's Number 27. This is entitled



1 payment scheduled -- payment schedule required --

2 A. M-hm.

3 Q. -- is that right?

4 A. Yes.

5 Q. And the first payment you actually made was on  
6 January 19th; isn't that correct?

7 A. I have no recognition. I gave them to him when he  
8 asked for them.

9 Q. Does this refresh your memory at all when the  
10 payments were made?

11 A. Yeah. I wrote the checks and dated them with  
12 whatever is printed here.

13 Q. All right. So the first payment you made to  
14 Mr. Schultz was on January 19th, correct?

15 A. Apparently from here. I couldn't be sure. Okay.

16 Q. Okay. Maybe Mr. Mautner has the exhibit with the  
17 canceled checks on it. I'm going to show you People's Number  
18 10 to see if it refreshes your memory.

19 A. Okay.

20 Q. This is a copy of your check; isn't it?

21 A. Yes.

22 Q. This is the check you wrote to Mr. Schultz; is that  
23 right?

24 A. Yes.

25 Q. The date you wrote the check was January 20, 2006,  
26 isn't that correct?

27 A. Is that what the paper called for?

28 Q. Let me just ask you: Isn't that the date on the

1 check?

2 A. That's the date on the check.

3 Q. Okay. Does that refresh your memory about when you  
4 wrote the check to Mr. Schultz?

5 A. Obviously I wrote it on the 20th and dated it the  
6 20th.

7 Q. So the question then is: Isn't it true that the  
8 first payment you made to Mr. Schultz, January 20th, was a  
9 week later than what the contract had called for?

10 A. Doesn't it say 1/19?

11 Q. Well, let me show you the contract.

12 A. Oh, I didn't pull out the contract. I did what he  
13 asked me to do. He gave me this paper and wrote down these  
14 dates for me to pay him and that's exactly what I did.

15 Q. Okay. Mrs. Petree, what I'm asking you is this --

16 MR. MAUTNER: I'm going to object. The witness is  
17 being asked to analyze evidence.

18 THE WITNESS: I didn't work off of the contract.

19 THE COURT: Mrs. Petree, wait until we deal with  
20 this objection.

21 What's the basis of your objection?

22 MR. MAUTNER: Essentially he's asking for an  
23 opinion or conclusion from two pieces of evidence. She's  
24 testified when she thought she was supposed to pay, and the  
25 contract is already in evidence.

26 THE COURT: I'll overrule the objection.

27 MR. MCENTEE: I'll try it one more time.

28 THE COURT: I think you need to use these to

1 refresh her memory. If her memory isn't refreshed, then  
2 that's that.

3 MR. MCENTEE: That's what I'm going to do.

4 BY MR. MCENTEE:

5 Q. Mrs. Petree, let me try this. The contract, which  
6 is People's Number 1, under Article 4, specifies a payment  
7 schedule; do you see that?

8 A. That was never pointed out to me. I didn't look at  
9 the contract, but he asked me to do it this way. And he's  
10 the man that was getting the money. Why would I go back into  
11 a contract like this. I'm an old lady. I followed what he  
12 asked me to do.

13 Q. Okay. You didn't really read the contract.

14 A. Oh, I read it. And I got a little upset with the  
15 down payment because I realized it was wrong.

16 Q. You said you "realized the down payment was wrong."

17 A. Yes.

18 Q. You realized that when you were signing the  
19 contract?

20 A. Not when I was signing it, no.

21 Q. When did you realize the down payment was wrong?

22 A. When the trouble started.

23 Q. So that was sometime in March?

24 A. I couldn't tell you.

25 Q. The contract with Mr. Schultz that you signed  
26 states that the down payment is not to be more than a  
27 thousand dollars, correct?

28 A. Correct.

1 Q. You read that?

2 A. I didn't know that.

3 Q. So you didn't read that when you signed the  
4 contract with Mr. Schultz?

5 A. I trusted him. He handed me the paper and asked  
6 me --

7 Q. You trusted him, so you didn't read the contract  
8 between you and Mr. Schultz?

9 A. I looked at it, but I'm an old lady. I didn't  
10 understand what all these words were.

11 Q. Did you ask Mr. Schultz to explain the things in  
12 the contract?

13 A. No, sir. He's family. I didn't ask him anything.  
14 I trusted him.

15 Q. So you just signed the contract?

16 A. I signed the contract.

17 Q. Did you have a contract with Mr. Dunne?

18 A. Yes, sir.

19 Q. And did you understand the contract he asked you to  
20 sign?

21 A. He asked me to give him a thousand dollars, and I  
22 did.

23 Q. My question is: Did you understand the contract?

24 A. As near as a person like me can understand these  
25 things, and I trusted him too.

26 Q. Isn't it true that you were anxious for Mr. Schultz  
27 to resume work on your remodel and room addition project when  
28 he signed the contract with you in December of '05?

1 MR. MAUTNER: Objection, vague as to time.

2 MR. MCENTEE: In December of '05.

3 THE COURT: Overruled.

4 BY MR. MCENTEE:

5 Q. You were anxious that the project resume; isn't  
6 that right?

7 A. The project was going on but because he was in our  
8 family and needed work I pulled Dennis' crew off of it.

9 Q. Well, I thought you said Dennis couldn't continue  
10 working because he had other obligations; isn't that true?

11 A. I said he couldn't continue. His boys were digging  
12 the hole at the time that Danny approached me and asked for  
13 the work, and I like him. He was part of our group always at  
14 parties and barbeques, and I thought I should go ahead. So I  
15 asked Dennis, and he said it was all right, and so I hired  
16 Danny.

17 Q. Mrs. Petree, Mr. Dunne began excavating your  
18 project back in the summer of 2005; isn't that right?

19 A. I couldn't tell you. I don't know.

20 Q. And Mr. Schultz took over the project in December  
21 of 2005; isn't that right?

22 A. I guess if that's what you have as a date down.

23 Q. And Mr. Dunne came to you in the summer of 2005 and  
24 said he couldn't finish your project in a timely fashion  
25 because of all the work he had.

26 A. He did not say anything of the sort. He sent his  
27 crew out and removed a huge big pond in my backyard, solid  
28 cement with bricks. His crew was working on that. There was

1 never a contract for it. He just came out and did it, and I  
2 paid him 2,000 for that. That's what his crew was doing  
3 because it was getting in the way of the remodel. The big  
4 pond was.

5 Q. Why did Mr. Dunne leave your job?

6 A. Because I asked him. I had family that wanted to  
7 do it and would he object if I hired the family.

8 Q. So it had nothing to do -- Mr. Dunne leaving your  
9 project had nothing to do with his other work commitments?

10 A. I have no clue because I don't live with him. I  
11 don't know what work commitment, but he removed the big pond.  
12 His boys were out there for weeks doing that. It was not a  
13 little fish pond. It was huge, about 15 feet across.

14 Q. So what happened now, according to you, is that  
15 Mr. Dunne began your project. He did some excavation work  
16 and then you went to him and said I have somebody else to do  
17 the job who's family. I'd like you to quit the job and would  
18 it be all right with him.

19 A. I asked him if it was all right, and he said, yes.  
20 And then he brought me back the thousand I had given him. I  
21 didn't expect that.

22 Q. You knew from the contract you signed with  
23 Mr. Dunne that the down payment on home improvement contracts  
24 was supposed to be limited to a thousand dollars.

25 A. I found that out later. I didn't know it at the  
26 time.

27 MR. MAUTNER: Objection. He's misstating the  
28 law.

1 MR. MCENTEE: I'm asking --

2 THE COURT: Overruled.

3 BY MR. MCENTEE:

4 Q. I'm asking you: Didn't you know when you signed  
5 the contract with Mr. Dunne that the down payment on a home  
6 improvement project was limited to a thousand dollars?

7 A. That's correct.

8 Q. Or 10 percent, whatever is less?

9 A. Yes. That's what I learned later.

10 Q. But you knew it when you signed the contract with  
11 Mr. Dunne, didn't you?

12 A. (No audible response.)

13 Q. You knew it then; isn't that right?

14 A. I don't know that I discussed that was what  
15 everybody has to do. I don't know.

16 Q. Isn't it true that in December of 2005 when  
17 Mr. Schultz began working on your project you were so anxious  
18 that he begin that you asked him to take a down payment of  
19 \$20,000?

20 A. No. That's not true at all.

21 Q. You were anxious, though, in December of 2005 that  
22 Mr. Schultz take over the project and keep working on the  
23 project; isn't that right?

24 A. I can't say I was anxious. I was giving him a  
25 break because he was family and he asked for the job.

26 Q. Well, isn't it true that the bank from which you  
27 had taken out the loan to accomplish this work was pressing  
28 you to get it finished?

1           A.    That is totally not true.  It's a reverse mortgage  
2 on my home.  They required I put a new roof on the house.  
3 That dry rot was addressed.  They did not ask for a remodel.  
4 That was my idea.

5           Q.    Well, they loaned you \$45,000.

6           A.    They did not loan me \$45,000.  It's a reverse  
7 mortgage.  There was 200,000 there.

8           Q.    There was \$200,000?

9           A.    Originally.  And I paid off what I owed on my  
10 house.  I still owed quite a lot on my house.  I paid that  
11 off and then the reverse mortgage people kept the rest of the  
12 money.  And so I began to think it would be nice to have a  
13 kitchen remodel after I addressed everything they required.  
14 They required dry rot, new roof, painting of the outside of  
15 the building.  There were several things in the reverse  
16 mortgage, but it had nothing to do with a kitchen remodel.

17          Q.    So before you could get your reverse mortgage you  
18 had to accomplish this termite work, gutter repair, and other  
19 things before --

20          A.    Not before.  I already had it, but I had a paper  
21 that I get those things done and report that I did that.

22          Q.    All right.  How much money was left to you after  
23 the money you paid Mr. Schultz to continue your remodeling  
24 project?

25          A.    I think around -- I'm not sure because it sits in a  
26 pool back there and you just draw it into your account.  But  
27 possibly 30-, 40,000.  I don't recall.

28          Q.    Why did you not use some of that money to finish



1 the project?

2 A. That's a question that I don't understand. I paid  
3 him what he asked for, and he wasn't doing hardly anything.

4 Q. Well, the question is: According to you  
5 Mr. Schultz walked off the job and left all this work undone;  
6 isn't that right?

7 A. Absolutely.

8 Q. And he left your home in a state of disrepair?

9 A. You've seen the pictures. You know that's true.

10 Q. So the question is: If you had perhaps as much as  
11 \$40,000 left available to you, why didn't you use that money  
12 to fix what was wrong with your house?

13 A. I thought I was doing that when I hired him until  
14 he walked of the job, and that money was not put there to  
15 rebuild my house. It was put there to keep me in my home  
16 until I pass away. That's all I get. So I have to have that  
17 something behind to pay the taxes and the insurance on the  
18 house, which is 6,000 a year. I have to have that much.  
19 I've got enough left now that I can live two years and then I  
20 got no more to pay taxes on it.

21 Q. When Mr. Schultz -- shortly after Mr. Schultz was  
22 given the down payment by you it began raining; isn't that  
23 correct?

24 A. Yeah, uh-huh. I gave him a week off and he worked  
25 up in his home. I said that's all right. I had marked that  
26 all down.

27 Q. And it rained off and on throughout January and  
28 February of 2006.

1           A.    Not like it has this time, but there was some rain.  
2    We had some good days.

3           Q.    So much of the delay in Mr. Schultz accomplishing  
4    your project was due to the weather; isn't that right?

5           A.    I have no clue.  There were good days.  When he  
6    wasn't there, I understood he had other jobs up at home.

7           Q.    When Mr. Schultz -- when you declined to give  
8    Mr. Schultz his third progress payment, you testified that at  
9    that point you were not comfortable with him coming back;  
10   isn't that right?

11          A.    Yeah.  I asked him to come back the next day and  
12   have a meeting with my daughter and my granddaughter, my  
13   son-in-law and myself.

14          Q.    But you testified on direct that you weren't  
15   comfortable with him coming back.  That is a true statement;  
16   isn't it?

17          A.    That was after he walked out and said -- he said  
18   he'd see me in court, and I was not comfortable with him.

19          Q.    You also testified you weren't sure you wanted him  
20   back; isn't that right?

21          A.    I didn't think he was coming back so I don't -- I  
22   never had much thoughts except he walked out and said he see  
23   me in court and that he was through.

24          Q.    Well, it is true, isn't it, that at that time you  
25   didn't want him to come back on your project, correct?

26                MR. MAUTNER:  Objection.  Vague as to what time.

27                THE COURT:  Sustained.

28                THE WITNESS:  I --

1 THE COURT: Excuse me. Wait until you are asked  
2 another question.

3 BY MR. MCENTEE:

4 Q. After Mr. Schultz -- you declined to give  
5 Mr. Schultz his progress payment on March 11th and he walked  
6 out. At that point you would not have permitted him to come  
7 back; isn't that right?

8 A. That is not true. I did not decline that check. I  
9 picked it up in my hand and I said before I pay you -- Robin  
10 cosigned with me -- I want you to come back tomorrow in my  
11 home and we'll meet with Robin, Raymond, myself, and my  
12 granddaughter after a meeting with us. He said, I'm not  
13 coming back. You violated your contract, and I'll see you in  
14 court. And that's was March 11th at 10:15 at night, Saturday  
15 night.

16 Q. Understood. And after that point you would not  
17 have permitted him to come back and resume work; isn't that  
18 right?

19 A. I wouldn't have thought he would think of doing it  
20 because he was very angry when he left and called me several  
21 times on the phone with uncomfortable messages, so I didn't  
22 think he was wanting to come back.

23 Q. The question is: You would not have permitted him  
24 to come back?

25 A. I'm not sure. If we had a meeting, it may have  
26 gone another way.

27 Q. Now, in the Government's Exhibit Number 3, a  
28 picture of the sliding doors, I notice several bags of cat

1 litter. At the time you had many --

2 A. No. They were empty containers.

3 Q. Okay. But it's true, isn't it, that you were  
4 caring for some two dozen cats at the time this project was  
5 going on?

6 MR. MAUTNER: I'm going to object to the  
7 relevance.

8 THE WITNESS: I've --

9 THE COURT: Excuse me, Mrs. Petree. Whenever  
10 there's an objection by a lawyer, I'm going to ask you not to  
11 respond until I rule on the objection, okay?

12 THE WITNESS: All right. Thank you.

13 THE COURT: And the question was what?

14 MR. MCENTEE: Well, I asked about the number of  
15 cats that were on the property at the time. It's going to go  
16 to the working conditions that were present.

17 THE COURT: I'll overrule the objection. You can  
18 answer the question. And the question was how many cats?

19 BY MR. MCENTEE:

20 Q. How many cats were on the property?

21 A. I've got nine cats.

22 Q. Okay. And they were all free to roam around in the  
23 backyard where the work was going on.

24 A. No.

25 Q. You kept them in the house?

26 A. I keep my kitties in.

27 Q. Okay. Didn't you testify on direct that the  
28 handrailing Mr. Schultz constructed for you was so you could

1 go outside and down from the deck in order to the feed cats  
2 out there?

3 A. I guess I did let them out sometimes, because I  
4 would have been feeding them outside. Most of them are in.

5 Q. But you fed them outside.

6 A. I've got a little mother out back, and she's eats  
7 outside.

8 MR. MCENTEE: I don't have any more questions.

9 Thank you, Mrs. Petree.

10 THE WITNESS: Yes, sir.

11 THE COURT: Redirect.

12 REDIRECT EXAMINATION

13 BY MR. MAUTNER:

14 Q. The payments that you made to Mr. Schultz, did you  
15 make them to him in person?

16 A. Yes, sir.

17 Q. Okay. So you don't remember the exact dates he was  
18 there, correct?

19 A. No. I had a little book with all that marked down  
20 when he couldn't come and stuff, but I can't find it.

21 Q. He didn't give you an address of where to mail  
22 something on a specific date, did he?

23 A. No, sir.

24 Q. All right. So you only gave him payment when he  
25 was physically present on your property?

26 A. Yes, sir.

27 Q. Okay. And that was sporadic during these two  
28 months, was it not?

1 A. Yes.

2 MR. MCENTEE: Objection, leading.

3 THE COURT: Sustained. The answer is stricken.

4 BY MR. MAUTNER:

5 Q. Can you describe for the Court how often he was  
6 there between December and March?

7 MR. MCENTEE: Your Honor, I'm going to object. I  
8 think this is calling for speculation.

9 THE COURT: Let's find out if she has any memory  
10 and what she bases that on.

11 THE WITNESS: Everything -- every time he was there  
12 he was pulled into the driveway, and we had cameras on at  
13 that time, so that could be found out by the tapes that we  
14 turned in to you. He never was there without his truck, and  
15 he never pulled it in the back. He just left it out in the  
16 front driveway with a camera on it.

17 Q. Okay. In the contract you wanted the project  
18 substantially finished by February 28, 2006, correct?

19 A. That was the date he gave me, and I was very happy  
20 with it. That was two months, and it seemed like a simple  
21 remodel that could be done that way.

22 Q. All right. Did you have a conversation with him  
23 between February 28th and March 11th about the lack of  
24 progress on the job?

25 A. No. I just understood that weather was inclement a  
26 few times and he had things to do up in his other town. I  
27 got a little concerned when March came and it wasn't --  
28 nothing was done yet.

1 Q. When you said "nothing was done," what do you mean?

2 A. I pulled everything out of my kitchen cupboards  
3 myself, boxed it up, and took it in another room and stored  
4 it, food and everything, canned goods, and then I got a cart  
5 and I put my microwave on it and rolled it into the living  
6 room.

7 MR. MCENTEE: Your Honor, I object. It's a  
8 narrative and nonresponsive.

9 THE COURT: Sustained.

10 BY MR. MAUTNER:

11 Q. The replacement windows that you said Mr. Dunne  
12 did, was that part of the termite work?

13 A. It was required by the reverse mortgage people at  
14 Wells Fargo.

15 Q. All right. You testified on cross that the  
16 defendant told you he needed work; isn't that correct?

17 MR. MCENTEE: Objection. That misstates the  
18 testimony.

19 THE COURT: Excuse me. Mrs. Petree, just a  
20 minute.

21 MR. MCENTEE: Misstates the testimony and it's  
22 leading.

23 THE COURT: Well, I don't remember if it misstates  
24 the testimony but it is leading so rephrase the question.

25 BY MR. MAUTNER:

26 Q. You've stated the defendant approached you about  
27 the job?

28 A. Yes, sir.

1 Q. Do you know -- did he tell you why he wanted the  
2 job?

3 A. No. He just said he'd like to do it. He was a  
4 contractor.

5 Q. The defendant lived out of town during this period.  
6 Did he tell you where he was staying when he was working on  
7 your property?

8 MR. MCENTEE: Objection. Relevance.

9 THE WITNESS: I never asked.

10 THE COURT: Overruled.

11 BY MR. MAUTNER:

12 Q. Does he have family in your neighborhood?

13 A. At that time they lived out at Cuttings Wharf and  
14 Daniel stayed out there quite often with them.

15 Q. Okay. When you sent the defendant the letter that  
16 we looked at earlier, People's Exhibit 18, what was the  
17 purpose of doing that?

18 A. I don't remember if I was asked to do it, but I  
19 didn't want to see the family fly apart.

20 Q. Okay. Were you giving him -- what did you -- what  
21 opportunity, if any, did you want to present the defendant by  
22 sending that letter?

23 MR. MCENTEE: Objection, leading.

24 THE COURT: Sustained.

25 BY MR. MAUTNER:

26 Q. Did you write the letter yourself?

27 A. Yes, sir.

28 Q. Why did you write the letter?



1 MR. MCENTEE: No.

2 THE COURT: Exhibits 15, 16, 17, and 18 are  
3 received.

4 (People's Exhibits Nos. 15, 16, 17, and 18 were  
5 received into evidence.)

6 THE COURT: What about Exhibit 27, the payment  
7 schedule required?

8 MR. MAUTNER. Counsel had that last. I'm not sure  
9 where it went.

10 MR. MCENTEE: It may be up on the witness stand.

11 THE COURT: Yes, I think it is.

12 Mr. Bailiff, would you return the exhibits to  
13 counsel.

14 MR. MAUTNER: And Exhibits 2 and 3.

15 THE COURT: Are you offering 27?

16 MR. MAUTNER: Yes.

17 THE COURT: Any objection?

18 MR. MCENTEE: No.

19 THE COURT: Exhibit 27 is received. And any  
20 objections to 2 and 3?

21 MR. MCENTEE: No.

22 (People's Exhibit Nos. 2, 3, and 27 were received  
23 into evidence.)

24 THE COURT: What about Exhibit 10, the copy of the  
25 check?

26 MR. MAUTNER: Given stipulations, I'm not sure that  
27 we need them.

28 THE COURT: Okay.

1 MR. MCENTEE: I think there's information on 10  
2 that exceeds the stipulation, so I'd move it into evidence.

3 THE COURT: The stipulation simply indicates when  
4 the checks were deposited. It doesn't indicate when they  
5 were written.

6 MR. MAUTNER: I see. No objection. I'd proffer 10  
7 and 11.

8 THE COURT: Okay. I think we've showed her 11, but  
9 I'll receive it if there's no objection.

10 MR. MCENTEE: No.

11 THE COURT: Okay. We'll receive Exhibits 10 and 11  
12 as well.

13 (People's Exhibits Nos. 10 and 11 were received  
14 into evidence.)

15 THE COURT: I think that covers it. Then you're  
16 reserving on the photographs, Exhibits 4, 5, and 6?

17 MR. MAUTNER: Yes.

18 THE COURT: Okay. You may call your next witness.

19 MR. MAUTNER: The next witness Robin Caton.

20 - - -

21 ROBIN CATON,

22 a witness called by the People, who, being first duly  
23 administered an oath to tell the truth, the whole truth, and  
24 nothing but the truth, was examined and testified as follows:

25 THE WITNESS: I do.

26 THE JUDICIAL ASSISTANT: Thank you. Please be  
27 seated.

28 THE COURT: Please state and spell your first and

1 last names.

2 THE WITNESS: Robin, R-o-b-i-n. Caton, C-a-t-o-n.

3 THE COURT: And is it R-o-b-i-n?

4 THE WITNESS: I-n, yes.

5 THE COURT: Thank you.

6 You may begin.

7 DIRECT EXAMINATION

8 BY MR. MAUTNER:

9 Q. Who do you work for?

10 A. I'm an investigator for the Contractors State  
11 Licensing Board.

12 Q. And how long have you been doing that?

13 A. About 23 years.

14 Q. And what's your training and experience as an  
15 investigator for Contractor's State Licensing Board or your  
16 training specifically?

17 A. Well, 23 years ago we had to take classes, and we  
18 would go out with other investigators to see how they  
19 performed their investigations and then we were kind of let  
20 loose and were able to do our own cases.

21 Q. You've been working continuously in that field for  
22 the last 23 years?

23 A. Yes.

24 Q. Did you take a complaint with respect to 191  
25 Chelsea Avenue in the City of Napa?

26 A. Yes.

27 Q. Let me ask you generally. In investigating  
28 complaints from consumers about contractors is an accounting

1 ever an issue?

2 A. Yes.

3 MR. MCENTEE: Objection. Relevance.

4 THE COURT: Overruled.

5 BY MR. MAUTNER:

6 Q. What is meant in the contractor and contractee  
7 construction context by "an accounting"?

8 A. What is meant? Is that what you said?

9 Q. Yes. What is meant by that?

10 A. To me it means my going through --

11 MR. MCENTEE: Your Honor, excuse me. Objection.  
12 Relevance. What this particular individual's opinion of  
13 something is not relevant.

14 MR. MAUTNER: This question is foundation.

15 THE COURT: I suspect it's laying a foundation for  
16 her expertise, so I'll overrule it.

17 THE WITNESS: For myself, I receive all the  
18 documents pertaining to the complaint, which is contracts,  
19 change orders, checks, receipts, everything pertaining to the  
20 complaint, and I write in my report listing everything that I  
21 have. And when I interview the homeowner, then we go over  
22 all the documents together. For the contractors board for  
23 our laws, the Business & Professions Code, one of the  
24 sections say that the money paid and the work performed  
25 should be about even so in case something happens no one is,  
26 you know, out money. So those are the kind of things that  
27 you look for.

28 Q. What kind of things do you look for when you

1 interview the contractor in respect to an accounting?

2 A. I ask for documentation on what the money was spent  
3 on. I ask about payment schedules. I focus quite a bit on  
4 money because that tends to be where a lot of problems arise.

5 Q. And what, if anything, in most circumstances do  
6 contractors present you with by way of proof in an  
7 accounting?

8 A. Receipts on what they spent their money on so I can  
9 tell that the money they've received actually went for the  
10 project. Also, you know, looking at the work that has been  
11 performed. I'm not a contractor, but I've been doing this a  
12 long time. And if I need an opinion about the progress of  
13 the work, then I hire one of the contractors board experts to  
14 give me an opinion about the, say, the quality of the work,  
15 the quantity of the work, that sort of thing.

16 Q. Did you do that in respect to 191 Chelsea here in  
17 Napa?

18 A. Yes.

19 Q. Did you interview the homeowner Mrs. Petree?

20 A. Yes.

21 Q. And did you interview the defendant?

22 A. I interviewed him by phone.

23 Q. Okay. So you wouldn't recognize him if you saw him  
24 here today?

25 A. No.

26 Q. Okay. How did you know who you were talking to on  
27 the phone?

28 A. I called the phone number that Mrs. Petree gave me

1 for him, and he answered the phone. And I asked if this was  
2 Mr. Schultz, and he said yes. And I identified myself and  
3 asked him some questions about the project.

4 Q. And approximately when did you do this?

5 A. The same day that I interviewed her on my way home.

6 Q. Do you recall when that was?

7 A. It was in 2006. I believe September or so of 2006.

8 Q. Okay. And how would you describe the defendant's  
9 demeanor on the telephone?

10 A. As I recall, when I approached him, I was concerned  
11 about the amount of fee that she had spent with reference to  
12 how much work had been performed. So I called and I said you  
13 know you're going -- it's looking like you received too much  
14 money and need receipts showing what you've spent the money  
15 on because it doesn't look like you've done much. And he was  
16 a little defensive. And we, you know, our voices were  
17 raised. And I gave him my fax number and said, you know, I'm  
18 happy to get your evidence because that's, you know, part of  
19 making my case. I don't have a case if he was able to show  
20 that, you know, he spent the money on the project, but I  
21 never got anything.

22 Q. Okay. Had you seen the project site personally  
23 before you called the defendant?

24 A. Yes.

25 Q. So you were familiar with what work had been done.

26 A. Yes.

27 Q. Had your expert already given an opinion to you  
28 before you called the defendant?

1           A.    No.  I had been out there first, which is usually  
2   how we do it so I know what to ask him to look for, and I had  
3   seen no work had been done in the kitchen, no kitchen  
4   remodel.  There had been a small framing done for the  
5   addition and then a little bit of work in the bathroom and a  
6   bunch of stuff had been left undone.

7           Q.    Did you specifically ask the defendant for an  
8   accounting?

9           A.    Yes.

10          Q.    Did he ever give you one?

11          A.    No.

12          Q.    How many opportunities if more than one did you  
13   give him to make that accounting?

14          A.    I called a couple of times and said, you know, I'm  
15   going to do administrative against his license and also  
16   looking at criminal for receiving money and not doing work  
17   and I got nothing.

18          Q.    In your experience are form contracts standard in  
19   the construction industry?

20          A.    Yes.

21          Q.    Okay.  Are they often a subject of dispute when you  
22   investigate complaints by consumers?

23                MR. MCENTEE:  Objection.  Relevance.

24                THE COURT:  Relevance?

25                MR. MAUTNER:  I want to find out about the  
26   witness's experience with this opinion about this particular  
27   contract.  That's foundational.

28                THE COURT:  I'll allow it.