

ORIGINAL

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

On Writ of Certiorari
To the Court of Appeals

Appeal From Colleton County
Perry M. Buckner, Circuit Court Judge

RECEIVED

AUG 22 2011

S.C. Supreme Court

THE STATE,

LAWRENCE PHILLIPS,

vs.

Petitioner,

Respondent.

APPENDIX

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

The State,

Respondent,

v.

Lawrence Phillips,

Appellant.

Appeal From Colleton County
Perry M. Buckner, Circuit Court Judge

Opinion No. 4833
Heard April 5, 2011 – Filed May 25, 2011

AFFIRMED IN PART, REVERSED IN PART, AND REMANDED

Appellate Defenders M. Celia Robinson and Breen
Stevens, both of Columbia, for Appellant.

Attorney General Alan Wilson, Chief Deputy
Attorney General John W. McIntosh, Assistant
Deputy Attorney General Salley W. Elliott, and
Assistant Attorney General Deborah R.J. Shupe, all
of Columbia; and Solicitor Issac McDuffie Stone, III,
of Beaufort, for Respondent.

CURETON, A.J.: Lawrence Phillips appeals his conviction and sentence for second-degree arson, arguing the trial court erred in refusing to direct a verdict of acquittal and in sentencing him to life imprisonment without the possibility of parole (LWOP). We affirm the refusal to direct a verdict but reverse the LWOP sentence and remand for resentencing.

FACTS

Phillips lived in a double-wide mobile home he rented from James Cook. On September 14, 2007, Phillips packed his belongings in his car and drove away. Within minutes, the mobile home burned.

Phillips was indicted and tried for second-degree arson. The State notified him it intended to seek a sentence of LWOP based upon a 1979 conviction from South Carolina for "burning" and a 1985 conviction from Florida for second-degree burglary. Phillips had pled guilty to the 1979 offense and received a youthful offender sentence. Prior to trial, Phillips moved to "disqualify" the State's LWOP notice. He argued that neither of the listed offenses was a serious or a most serious offense for sentence enhancement purposes. The State submitted a copy of the 1979 indictment, which stated Phillips burned "a building, the property of Laurens County School District #56." The trial court determined the 1979 conviction for burning contained the same elements as second-degree arson, a serious offense. Furthermore, the trial court found the 1985 second-degree burglary conviction from Florida constituted a serious offense. Accordingly, the trial court did not preclude the State from pursuing an LWOP sentence.

Phillips was tried in July 2008. Lori Joslin, Phillips's next-door neighbor, recalled that at approximately 7:00 a.m. on September 14, 2007, Phillips visited her to retrieve a rifle she had stored for him and to leave a lawnmower at her home. According to Joslin, Phillips stated he was leaving town and wondered aloud how his house would look in flames. Joslin watched as Phillips packed many of his personal belongings into his car and left. She did not believe he intended to return. Within thirty minutes after their conversation, Joslin looked out her window and saw flames and smoke coming from Phillips's home. Joslin called 911 and reported the fire.

Emergency personnel arrived and extinguished the fire. A paramedic who responded to the call testified he found two fires inside the home. The South Carolina Law Enforcement Division (SLED) investigated the fires and determined they had been intentionally set, originating in the living room and the master bedroom.

Phillips's sister, Rhonda Wilson, testified she went to her brother's house on the day it burned to feed his animals. She added that Phillips regularly asked her to feed his animals when he went out of town. Wilson testified that when she arrived, the fire had been extinguished, but she found her brother's pit bull, rabbits, and quail at the house. While there, Wilson retrieved their father's golf clubs, a rake, a shovel, a garden hose, and some gas cans.

Phillips moved the trial court to direct a verdict in his favor, arguing that because he left the house without intending to return, the house did not qualify as a dwelling. According to Phillips, arson in the third degree, rather than in the second degree, was the appropriate charge because the house was an unoccupied building instead of a dwelling. The trial court denied the motion and submitted the issue to the jury. However, the trial court charged the jury on both second-degree and third-degree arson.

Shortly after beginning deliberations, the jury sent the trial court a note asking for the definition of reasonable doubt and whether someone must actually live in a house for it to be considered a dwelling. The trial court provided the jury with a written copy of the jury charge. The jury returned a verdict of guilty of second-degree arson. Based upon the 1979 and 1985 convictions for burning and second-degree burglary, respectively, the trial court sentenced Phillips to LWOP. This appeal followed.

STANDARD OF REVIEW

"In criminal cases, the appellate court sits to review errors of law only." State v. Baccus, 367 S.C. 41, 48, 625 S.E.2d 216, 220 (2006). Thus, an appellate court is bound by the trial court's factual findings unless they are clearly erroneous. Id.

LAW/ANALYSIS

I. Directed Verdict on the Charge of Second-Degree Arson

Phillips first argues the trial court erred in refusing to direct a verdict on the charge of second-degree arson. He contends that when he departed from the home, it no longer qualified as a dwelling house. We disagree.

A. Directed Verdict

"A defendant is entitled to a directed verdict when the State fails to present evidence of the offense charged." State v. Heath, 370 S.C. 326, 329, 635 S.E.2d 18, 19 (2006). A trial court considering a motion for directed verdict is concerned with the existence or nonexistence of evidence, not with its weight. State v. Weston, 367 S.C. 279, 292, 625 S.E.2d 641, 648 (2006). When reviewing the denial of a directed verdict, the appellate court views the evidence and all reasonable inferences in the light most favorable to the State. Id. An appellate court may reverse the trial court's denial of a directed verdict motion only if no evidence supports the trial court's ruling. State v. Gaster, 349 S.C. 545, 555, 564 S.E.2d 87, 92 (2002). If any direct evidence or substantial circumstantial evidence reasonably tends to prove the guilt of the accused, this court must find the case was properly submitted to the jury. Weston, 367 S.C. at 292-93, 625 S.E.2d at 648.

B. Arson Statutes

In 2007, the South Carolina Code defined second-degree arson as follows:

A person who wilfully and maliciously causes an explosion, sets fire to, burns, or causes to be burned or aids, counsels, or procures the burning that results in damage to a dwelling house, church or place of worship, a public or private school facility, a manufacturing plant or warehouse, a building where business is conducted, an institutional facility, or any

structure designed for human occupancy to include local and municipal buildings, whether the property of himself or another, is guilty of arson in the second degree

S.C. Code Ann. § 16-11-110(B) (Supp. 2007).

For the purposes of the arson and burglary statutes, a "dwelling house" is "any house, outhouse, apartment, building, erection, shed or box in which there sleeps a proprietor, tenant, watchman, clerk, laborer or person who lodges there with a view to the protection of property." S.C. Code Ann. § 16-11-10 (2003). In addition, "all houses, outhouses, buildings, sheds and erections which are within two hundred yards of [any dwelling house] and are appurtenant to it" constitute parcels of the dwelling house. Id.

We affirm the trial court's refusal to direct a verdict of acquittal on the charge of second-degree arson because the evidence adduced at trial required that the issue be submitted to the jury. Phillips contends his abandonment of the mobile home prior to Joslin's observing the fire changed its status as a dwelling. This argument is meritless. In State v. Glenn, Glenn and her husband purchased and lived in a mobile home until her husband died. 297 S.C. 29, 30, 374 S.E.2d 671, 671 (1988). After holding a wake for her husband in the mobile home, Glenn learned the home might be repossessed. Id. at 30-31, 374 S.E.2d at 671. She announced to family members that the home would burn before she allowed it to be repossessed. Id. at 31, 374 S.E.2d at 671. A few days after the funeral, Glenn stopped by the home and retrieved her Bible; shortly thereafter, a witness found the home in flames. Id. at 31, 374 S.E.2d at 671-72. Glenn was tried for second-degree arson and sought a directed verdict based on her contention the mobile home was not a "dwelling" because no one lived there at the time of the fire. Id. at 31, 374 S.E.2d at 672. Our supreme court affirmed the denial of a directed verdict, holding that despite Glenn's departure and removal of her belongings, "ample evidence existed that . . . Glenn did not vacate her mobile home but left with the intention of returning." Id. at 32, 374 S.E.2d at 672.

In the case at bar, Phillips avers he "left" the mobile home on the morning of the fire, intending never to return. He retrieved his gun from

Joslin's care and loaded his car with most of his belongings. However, he left his lawnmower with Joslin, his father's golf clubs in his mobile home, and several live animals at his home. Phillips's leaving his lawnmower with Joslin was an ambiguous act that could support either Phillips's abandonment of the home or his intent to return.¹ Leaving his father's golf clubs and his rake, shovel, garden hose, and gas cans in the mobile home would suggest Phillips intended to return only if he valued those items. Certainly, his sister did; she retrieved them after the fire. However, Phillips's leaving his dog, rabbits, and quail at the mobile home is evidence he intended to return as he had done often before. Wilson testified her brother regularly asked her to feed his animals when he went out of town, and she went to his house the day of the fire to feed them.

Viewed together, this evidence supports a finding that Phillips "left with the intention of returning," certainly to care for his animals and possibly to resume living in the home. See id. Consequently, the trial court did not err in refusing to direct a verdict of acquittal on the issue of second-degree arson.

II. LWOP

Phillips next argues the trial court erred in sentencing him to LWOP based upon his 1979 conviction.

A. Sentence Enhancement

In South Carolina, a trial court must sentence a person convicted of a serious offense to LWOP if he has two or more prior convictions for: "(1) a serious offense; (2) a most serious offense; (3) a federal or out-of-state offense that would be classified as a serious offense or most serious offense under this section; or (4) any combination of the offenses listed in items (1),

¹ The record is notably bereft of evidence Phillips took steps to vacate the property permanently. For example, no evidence indicates Phillips removed furniture from the home, discontinued any utilities to the mobile home, secured another dwelling for himself, provided a forwarding address to the post office, or notified his landlord of his intent to vacate the property.

(2), and (3) above." S.C. Code Ann. § 17-25-45(B) (Supp. 2010). A "serious" offense is "any offense which is punishable by a maximum term of imprisonment for thirty years or more which is not referenced in subsection (C)(1)." S.C. Code Ann. § 17-25-45(C)(2) (Supp. 2010). Second-degree arson is listed as a serious offense. Id. Third-degree arson is not. Id.

In seeking an LWOP sentence based upon section 17-25-45, the State bears the burden of establishing the defendant's prior convictions for serious or most serious offenses. State v. Johnson, 350 S.C. 543, 547-48, 567 S.E.2d 486, 488 (Ct. App. 2002). When a prior conviction is for an offense not contemplated by section 17-25-45, the trial court should examine the elements of the offense and determine whether they are equivalent to any current offenses classified as "serious" or "most serious." State v. Washington, 338 S.C. 392, 397-98, 526 S.E.2d 709, 711 (2000).

B. Burning and Second-Degree Arson

In 1979, the South Carolina Code contained a provision addressing the offense of burning:

Any person who (a) wilfully and maliciously sets fire to or burns or causes to be burned or (b) aids, counsels or procures the burning of:

(1) Any barn, stable, garage, or other building, whether the property of himself or of another, not a parcel of a dwelling house;

(2) Any shop, storehouse, warehouse, factory, mill or other building, whether the property of himself or of another; or

(3) Any church, meetinghouse, courthouse, workhouse, school, jail or other public building or public bridge;

Shall, upon conviction thereof, be sentenced to the Penitentiary for not less than one nor more than ten years.

S.C. Code Ann. § 16-11-120 (1976) (repealed 1982).

This court's opinion in In Re Terrence M., 317 S.C. 212, 214 n.1, 452 S.E.2d 626, 627 n.1 (Ct. App. 1994), explained how the General Assembly restructured the arson statutes in 1982:

Prior to the 1982 Act, South Carolina had two arson statutes relating to buildings: (1) S.C. Code Ann. § 16-11-110 (1976) (later amended), which made it unlawful to wilfully and maliciously set fire to a dwelling house or associated building; and (2) S.C. Code Ann. § 16-11-120 (1976) (repealed), which made it unlawful to wilfully and maliciously set fire to other kinds of buildings. These statutes did not describe the offense in terms of degrees of arson.

The 1982 Act amended § 16-11-110 to set forth three degrees of arson. The 1982 Act added the offense of first degree arson under § 16-11-110(A) and recodified the earlier version of § 16-11-110 as second degree arson under § 16-11-110(B) with the same punishment of two to twenty years. It repealed § 16-11-120 but essentially recodified it as § 16-11-110(C) (third degree arson) with the same punishment of one to ten years. The distinguishing difference between subsections (B) and (C) is whether the building was a "dwelling house" or associated building, this being the same distinguishing difference that existed between the former version of § 16-11-110 and the repealed version of § 16-11-120.

In 2007, the South Carolina Code continued to define arson in terms of three degrees. First-degree arson resulted, "either directly or indirectly, in death or serious bodily injury to a person" and mandated a sentence of between ten and thirty years' imprisonment. S.C. Code Ann. § 16-11-110(A) (Supp. 2007). Second-degree arson applied to buildings "designed for human occupancy," including dwellings:

A person who wilfully and maliciously causes an explosion, sets fire to, burns, or causes to be burned or aids, counsels, or procures the burning that results in damage to a dwelling house, church or place of worship, a public or private school facility, a manufacturing plant or warehouse, a building where business is conducted, an institutional facility, or any structure designed for human occupancy to include local and municipal buildings, whether the property of himself or another, is guilty of arson in the second degree

§ 16-11-110(B). A conviction of second-degree arson carried a sentence of five to twenty-five years' imprisonment. Id. Third-degree arson addressed "damage to a building or structure other than those specified in subsection (A) or (B)." S.C. Code Ann. § 16-11-110(C) (Supp. 2007). The sentence for third-degree arson was from one to ten years' imprisonment. Id.

We reverse the trial court's determination that Phillips's 1979 conviction for burning contains the same elements as the 2007 second-degree arson statute and therefore qualifies as a serious offense for sentence-enhancement purposes. See Washington, 338 S.C. at 397-98, 526 S.E.2d at 711 (requiring a court considering sentence enhancement based upon an archaic offense not listed in section 17-25-45 to compare the elements with modern offenses). The 1982 restructuring of the arson statutes resulted in the repeal of the former burning statute, but the offense of burning was effectively revived as third-degree arson. Terrence M., 317 S.C. at 214 n.1, 452 S.E.2d at 627 n.1. However, by 2007, some of the elements of third-degree arson had been elevated to second-degree arson. Other elements remained in third-degree arson only. We find the State failed to prove

Phillips was convicted of those elements belonging to second-degree arson. See Johnson, 350 S.C. at 547-48, 567 S.E.2d at 488 (placing on the State the burden of establishing convictions used for sentence enhancement purposes).

In 1979, Phillips was convicted of "burning," in which a person (1) willfully and maliciously (2) sets fire to (3) any building other than a dwelling, including schools and publicly owned buildings. See § 16-11-120. In 2007, all three degrees of arson included the first two elements of the offense, willful and malicious burning. S.C. Code Ann. § 16-11-110 (Supp. 2007). However, the third element, identifying the type of building burned, had changed. The statute in effect in 1979 distinguished between dwellings and non-dwellings and established a lighter penalty for offenses against non-dwellings, including places of business. § 16-11-120. By 2007, schools, churches, businesses, and any other "structure designed for human occupancy" received the same protection as dwellings under the second-degree arson statute. § 16-11-110(B). Consequently, due to the broadened scope of the second-degree arson statute, a conviction for burning a building owned by the local school district could qualify as a serious offense analogous to second-degree arson, but only if the affected building were one designed for human occupancy.

The State contends the term "public or private school facility" contained in the 2007 version of section 16-11-110(B) is sufficiently broad to encompass any building owned by a school district. Although the applicable statutes do not define this term, we find the plain meaning instructive. Webster's dictionary defines a "facility" as "a building . . . that facilitates or makes possible some activity." Webster's New World College Dictionary 508 (4th ed. 2008). A "public or private school facility," then, is a building that makes possible public or private education. It does not necessarily include every structure a school district may own. At Phillips's sentencing, the State presented only the 1979 indictment in support of its request for an LWOP sentence. In doing so, it failed to present evidence that the building Phillips burned in 1979 was a school facility. See Johnson, 350 S.C. at 547-48, 567 S.E.2d at 488 (noting the State bears the burden of establishing convictions used for sentence enhancement purposes).

Having determined the State failed to prove Phillips burned a school facility, this court next addresses whether the State proved Phillips's 1979 conviction was for burning a "structure designed for human occupancy." The 1979 indictment states Phillips burned "a building, the property of Laurens County School District #56." In addition to schools and office buildings, school districts may own structures such as storage sheds, garages for school vehicles, and abandoned buildings located on district-owned property slated for future development. While schools and office buildings clearly are designed for human occupancy, the same cannot be said for sheds, garages, and abandoned buildings. Again, the evidence in the record does not indicate which type of building Phillips burned to merit the 1979 conviction. Consequently, we must find the State did not bear its burden of proof, and the trial court erred in holding Phillips's 1979 conviction was for a serious offense.

CONCLUSION

We conclude the mobile home in which Phillips lived qualified as a dwelling under the applicable law. Consequently, we affirm the trial court's refusal to direct a verdict of acquittal as to second-degree arson.

Additionally, we find the State failed to establish Phillips's 1979 conviction was for a serious offense such as second-degree arson. Therefore, we reverse the trial court's imposition of a sentence of LWOP and remand for resentencing. Accordingly, the decision of the trial court is

AFFIRMED IN PART, REVERSED IN PART, AND REMANDED.

FEW, C.J., and KONDUROS, J., concur.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal From Colleton County
Perry M. Buckner Circuit Court Judge

THE STATE.

Respondent.

vs.

LAWRENCE PHILLIPS,

Appellant.

RESPONDENT'S PETITION FOR REHEARING

By Opinion filed May 25, 2011, the panel affirmed in part, reversed in part, and remanded this matter to the circuit court for re-sentencing. The panel affirmed the circuit court denial of Appellant's directed verdict motion, but reversed Appellant's life without parole sentence, finding the circuit court erroneously determined Appellant's 1979 burning conviction was a serious offense for purposes of imposing a life without parole sentence. Pursuant to Rule 221, SCACR, Respondent State of South Carolina moves for reconsideration of the portion of the Opinion reversing Appellant's sentence and remanding for re-sentencing, and submits the panel misconstrued S.C. Code §16-11-110(B) (2003) (second degree arson) in finding the circuit court erroneously determined Appellant's 1979 burning conviction was a serious offense for sentence enhancement purposes.

"All rules of statutory construction are subservient to the one that the legislative intent must prevail if it can be reasonably discovered in the language used, and that language

must be construed in the light of the intended purpose of the statute.” State v. Branham, 2011 WL 780675, 4 (S.C.App., filed March 2, 2011) (*quoting* State v. Sweat, 386 S.C. 339, 350, 688 S.E.2d 569, 575 [2010]). Absent ambiguity, the court will look to the plain meaning of the words used to determine their effect. City of Rock Hill v. Harris, 391 S.C. 149, 705 S.E.2d 53, 55 (2011). In interpreting a statute, the court will give words their plain and ordinary meaning, and will not resort to forced construction that would limit or expand the statute. Branham at 4.

As enacted in 1982, §16-11-110(B) (second degree arson) applied only to dwellings and adjoining buildings. In 2002, the legislature amended §16-11-110(B) to include:

... a dwelling house, church or place of worship, **a public or private school facility**, a manufacturing plant or warehouse, a building where business is conducted, an institutional facility, **or** any structure designed for human occupancy to include local and municipal buildings

(emphasis added). The panel correctly found this broadened the scope of second degree arson, but then interpreted the statutory language as restricting second degree arson to buildings “designed for human occupancy.” Based on that restriction, the panel concluded “a conviction for burning a building owned by the local school district could qualify as a serious offense analogous to second-degree arson, **but only if** the affected building were one designed for human occupancy.” (emphasis added).

In construing S.C. Code §16-11-110(B) to apply only to buildings “designed for human occupancy,” the panel imposed a limitation contrary to the plain language of the statute. Initially, the conjunction “or” before “any structure designed for human occupancy” clearly indicates the legislative intent to create a separate class of buildings encompassed within the statute - those designed for human occupancy.

This intent is further exemplified by inclusion of manufacturing "warehouses" in the list of structures covered by the statute. A warehouse is "a usually large building for the storage of goods or merchandise." Webster's II New Riverside Dictionary 762 (Revised Ed. 1996). Thus, by definition, a warehouse is **not** designed for human occupancy, but burning one constitutes second degree arson under §16-11-100(B).

In the face of its focus on the "designed for human occupancy" language, the panel indicated abandoned buildings would **not** be covered under the statute. A building clearly can be designed for human occupancy even if it is abandoned, and as such, would be included under the plain language of §16-11-110(B).

The panel's restrictive interpretation of public or private school "facilities" is also contrary to the statute. Applying the "facilities" definition utilized by the panel, virtually any building owned by a school district, regardless of whether it is designed for human occupancy, in some way facilitates the district's ability to provide education to its students. By way of example, a building housing a utility plant utilized by the school district facilitates education activities, but burning it would not constitute second degree arson under the panel's analysis because it is not designed for human occupancy. Similarly, maintenance sheds and school vehicle garages facilitate educational activities, but are excluded from §16-11-110(B) by the panel's restrictive interpretation of school "facilities." The legislature's use of the word "facilities" indicates an intent to broaden the statute's scope in connection with public or private schools.

The 1979 burning indictment at issue in this case stated Appellant burned "a building, the property of Laurens County School District #56." (Supp. ROA, p. 2). Buildings owned by school districts are generally used as schools, offices, maintenance or storage, all of which

facilitate the districts' educational activities. Therefore, the circuit court properly found Appellant's 1979 burning conviction comparable to a second degree arson conviction under §16-11-110(B), and as such, it constituted a serious offense for purposes of sentence enhancement.

WHEREFORE, Respondent State of South Carolina respectfully requests that the panel reconsider its reversal of Appellant's life without parole sentence, and affirm the sentence as imposed by the circuit court.

Respectfully submitted,
ALAN WILSON
Attorney General

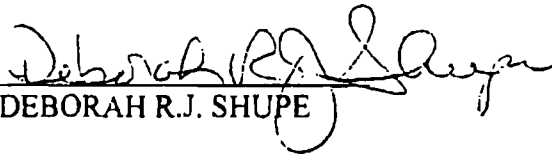
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June 8, 2011

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal From Colleton County
Perry M. Buckner Circuit Court Judge

THE STATE.

Respondent,

vs.

LAWRENCE PHILLIPS.

Appellant.

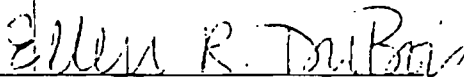
PROOF OF SERVICE

I, Ellen R. DuBois, certify that I served Respondent's Petition for Rehearing on Appellant by depositing a copy in the United States mail, postage prepaid, addressed to:

Breen Stevens
Assistant Appellate Defender
SC Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
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I further certify that all parties required by Rule to be served have been served.

This 8th day of June, 2011.


ELLEN R. DUBOIS
Legal Assistant

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The South Carolina Court of Appeals

The State,

Respondent,

v.

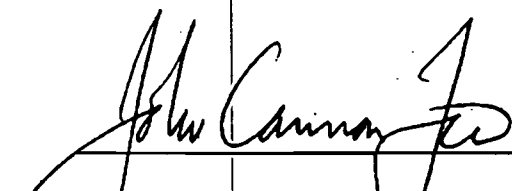
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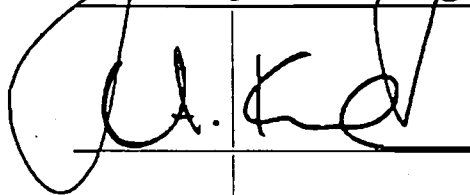
Appellant.

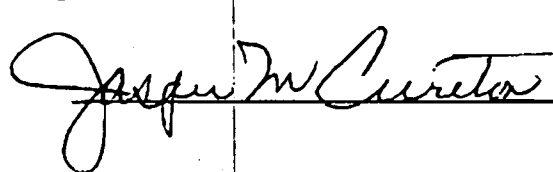
The Honorable Perry M. Buckner
Colleton County
Trial Court Case No. 2007-GS-15-0858

ORDER DENYING PETITION FOR REHEARING

PER CURIAM: After a careful consideration of the Petition for Rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded and hence, there is no basis for granting a rehearing. It is, therefore, ordered that the Petition for Rehearing be denied.


C. J.


J.


A. J.

Columbia, South Carolina

cc: Appellate Defender M. Celia Robinson
Assistant Attorney General Deborah R. J. Shupe
Issac Stone, Esquire

FILED

August 4, 2011

184351

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM COLLETON COUNTY

Perry M. Buckner, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

LAWRENCE PHILLIPS,

APPELLANT

SUPPLEMENTAL RECORD ON APPEAL

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**** COURT'S EXHIBIT #4 IS BEING TRANSPORTED TO THE COURT OF APPEALS**-**

79-DA-20-210
The State of South Carolina

County of LAURENS

COURT OF GENERAL SESSIONS

AUGUST

Term, 19 79

THE STATE

VS.

LAWRENCE CARROL PHILLIPS

INDICTMENT FOR

VIOLATION SECTION 16-11-120

business
William T. Jones Solicitor

True Bill 8-6-79

M. J. Reynolds
Foreman of Grand Jury

McCAW PRINTERS, 2610 DEVINE ST., COLUMBIA, S. C. 29205

I Hereby Appear In My Own Proper Person, Waive Grand
~~jury~~ Action and Plead Guilty To The Within Indictment.

William T. Jones Laurence C. Phillips

SOLICITOR

AUG 7, 1979

The sentence of the Court is that

Laurence C. Phillips
be confined with the State Board of Corrections, 4.0.0.
for a period of 24 to 36 months (16) years
with credit for any presentence jail time) or
10-15-81

Laurence C. Phillips
Docketing Judge

Aug 13, 1979

A TRUE COPY OF ORIGINAL

Lynn W. Lancaster

Lynn W. Lancaster
Laurens County, SC & GS

The State of South Carolina**INDICTMENT FOR**County of Laurens**VIOLATION SECTION 16-11-120**

At a Court of General Sessions, convened on the 6th day of August,
19 79, the Grand Jurors of Laurens County present upon their oath:

That LAWRENCE CARROL PHILLIPS

did in Laurens County on or about the 18th day of May,
19 79,

wilfully, unlawfully and maliciously set fire to and burned and caused
to be burned and aided, counseled and procured the burning of a build-
ing, the property of Laurens County School District #56

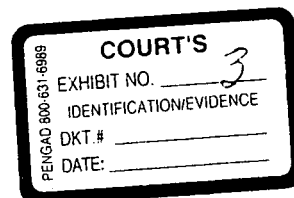
Against the peace and dignity of the State, and contrary to the statute in that behalf made.

DEFINITION OF

? Reasonable ~~doubt~~ Doubt (WRITTEN)

Dwelling House MUST Someone
(ACCUSED) ACTUALLY HAVE TO LIVE
THERE?

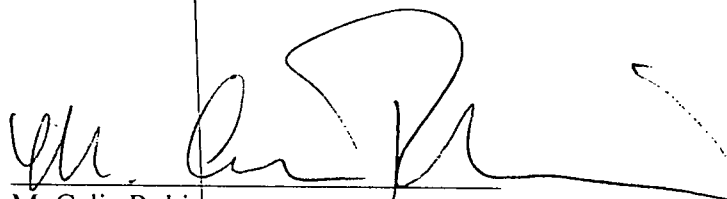
George L. Benton 7-23-08
George L. Benton



CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Supplemental Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability, with the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

April 8, 2010

A handwritten signature in black ink, appearing to read 'M. Celia Robinson', written over a horizontal line.

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18435

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM COLLETON COUNTY

Perry M. Buckner, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

LAWRENCE PHILLIPS,

APPELLANT

SUPPLEMENTAL RECORD ON APPEAL II

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Attorneys for Respondent

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STATE OF SOUTH CAROLINA)

IN THE COURT OF GENERAL SESSIONS

COUNTY OF COLLETON)

Indictment No. 2007-GS-15-0858

~~100~~ #2

THE STATE,)

AMENDED NOTICE OF INTENTION TO
SEEK LIFE IMPRISONMENT SENTENCE

vs.)

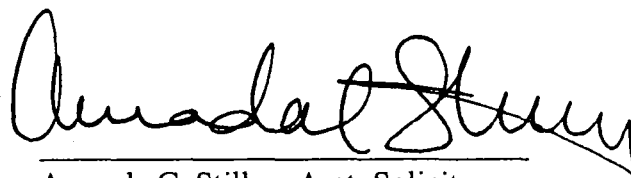
LAWRENCE C.W. PHILLIPS,)
defendant.)

2008 MAY 12 AM 9:05
COLLETON COUNTY
GENERAL SESSIONS COURT

TO: Lawrence C.W. Phillips, Defendant, and his attorney of record, David Matthews.

YOU WILL PLEASE TAKE NOTICE, that the Solicitor's Office intends to seek a life imprisonment sentence pursuant to Section 17-25-45(B), S.C. Code of Laws 1976, as amended, upon the basis that you have two or more prior convictions for:

1. a serious offense [to wit: 1985 Conviction for Burglary 2nd Degree; 1979 Conviction for "Burning" under 16-11-120];
2. a most serious offense [to wit: n/a];
3. a federal or out-of-state offense that would be classified as a serious or most serious offense under this section [to wit: Florida 1985 Conviction for Burglary 2nd Degree];
4. any combination of the offenses listed in items (1), (2) and (3) above.



Amanda C. Stilley, Asst. Solicitor
14th Judicial Circuit

Walterboro, South Carolina

May 12, 2008

COPY

PROOF OF SERVICE

SERVED P/S	DATE 5-12-08	PLACE Colleton County Jail
SERVED ON (PRINT NAME) Lawrence C.W. Phillips		MANNER OF SERVICE in person
SERVED BY (PRINT NAME) Anthony Koger		TITLE Deputy

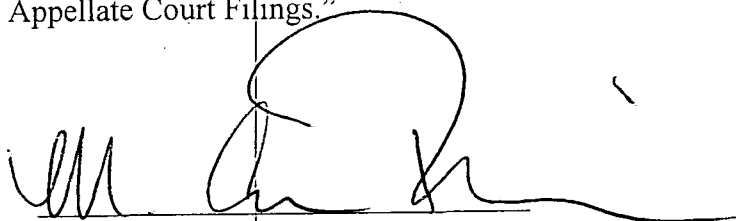
DECLARATION OF SERVER

I certify that the forgoing information contained in the Proof of Service is true and correct.	
Executed on	<u>Anthony Koger</u> SIGNATURE OF SERVER
	ADDRESS OF SERVER CC SO

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Supplemental Record on Appeal II contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability, with the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

May 12, 2010

A handwritten signature in black ink, appearing to read 'M. Celia Robinson', written over a horizontal line.

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184351

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM COLLETON COUNTY

Perry M. Buckner, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

LAWRENCE PHILLIPS,

APPELLANT

RECORD ON APPEAL

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STATE OF SOUTH CAROLINA) COURT OF GENERAL SESSIONS
COUNTY OF COLLETON) FOURTEENTH JUDICIAL CIRCUIT
INDICTMENT NO: 2007-GS-15-858

STATE OF SOUTH CAROLINA)
VS.)
LAWRENCE PHILLIPS,)
DEFENDANT.)

JURY TRIAL

VOLUME 1 OF 3

held before the Honorable Perry M. Buckner
Mia Perron, Circuit Court Reporter, 9th Judicial Circuit
in the Colleton County Courthouse
Walterboro, South Carolina
on Monday, July 21, 2008, Commencing at 2:24 p.m.

SUSAN "MIA" PERRON, CCR, CVR-CM
Circuit Court Reporter - 14th Judicial Circuit
Post Office Box 2865
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1-706-231-6028

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1 I need to see counsel, in the first case, in
2 chambers.

3 [Whereupon, an off-the-record conference is held
4 in chambers]

5 [Whereupon, a recess is taken from 3:42 p.m. to
6 4:01 p.m.]

7 - - - - -

8 JURY VOIR DIRE

9 THE COURT: The State is ready to proceed?

10 MR. THORNTON: The State is ready, Judge.

11 THE COURT: Is the defendant ready to proceed?

12 MR. MATTHEWS: Yes, Your Honor.

13 THE COURT: Call your case, solicitor.

14 MS. STILLEY: Your Honor, the State calls the
15 matter of State vs. Lawrence Phillips, indictment 2007-
16 GS-15-0858.

17 May I approach, Your Honor?

18 THE COURT: You may.

19 [Whereupon, Ms. Stilley proffers documents to
20 the Court]

21 THE COURT: Ladies and gentlemen of my jury
22 panel, please give me your attention. The State has
23 called for trial the matter of the State of South
24 Carolina vs. Lawrence Phillips. Mr. Phillips is
25 charged by this piece of paper, which I hold in my

1 trial?

2 MR. CHISOLM: No, sir. It wouldn't at all.

3 THE COURT: Thank you very much, Mr. Chisolm.
4 You may be seated.

5 [Whereupon, Mr. Chisolm complies]

6 THE COURT: Any additional voir dire from the
7 defendant?

8 MR. MATTHEWS: No, sir, Your Honor.

9 THE COURT: From the State?

10 MR. THORNTON: None, Your Honor.

11 - - - - -

12 STRIKING OF THE JURY

13 THE COURT: All right, counsel. We've now
14 reached the historic part in Colleton County where we
15 are going to select the jury for the first time by
16 computer. I remind you, from meeting with you in
17 chambers, that the strikes are ten and five, ten for
18 the defendant and five for the State. We will be
19 drawing two alternate jurors. The strikes are two and
20 one on each alternate juror, ten and five on the jury.

21 Is that correct? From the State of South
22 Carolina?

23 MR. THORNTON: Correct, Your Honor.

24 THE COURT: Correct from the defendant?

25 MR. MATTHEWS: Yes, sir.

1 defendant?

2 MR. MATTHEWS: Please excuse the juror from the
3 trial of this case.

4 THE CLERK OF COURT: Please have a seat back
5 with the panel.

6 [Whereupon, Ms. Brown returns to the audience]

7 THE CLERK OF COURT: Number 83, Jennifer Todd-
8 Kofrom.

9 [Whereupon, Ms. Todd-Kofrom comes forward]

10 THE CLERK OF COURT: What say ye for the State?

11 MS. STILLEY: Please present this juror.

12 THE CLERK OF COURT: What say you for the
13 defendant?

14 MR. MATTHEWS: Please swear the juror.

15 THE CLERK OF COURT: Please have a seat in the
16 jury box.

17 [Whereupon, Ms. Todd-Kofrom is seated in the
18 jury box as an alternate juror]

19 THE COURT: Counsel approach.

20 [Whereupon, an off-the-record bench conference
21 is held]

22 THE COURT: Are there any matters of law
23 pertaining to the selection of the jury that need to be
24 decided before the jury is sworn? From the State of
25 South Carolina?

1 MS. STILLEY: None, Your Honor.

2 THE COURT: From the defendant?

3 MR. MATTHEWS: No, sir.

4 THE COURT: Very well.

5 Ladies and gentlemen of the jury, and my
6 alternate jurors, let me tell you that we're not going
7 to begin the trial until in the morning. But I do need
8 you to do a little work, because I want you to know
9 where to go and what to do. And the work I want you to
10 do: you're going to be going with Deputy Winnfield
11 Simmons, this gentleman right here, and he is going to
12 take you to your jury room.

13 What I want you to do in the jury room is I want
14 you to quickly, amongst yourselves, elect a foreperson
15 of the jury. Let me tell you the duties of the
16 foreperson. The foreperson can be any of the twelve of
17 you. Now, my alternate jurors -- sir, and ma'am,
18 you're just as important as a member of the jury.
19 You'll be with the jury at all times throughout the
20 trial of the case. If a member of the jury becomes ill
21 or for some legal reason cannot continue to serve, you
22 would take their place on the jury. But you're not
23 eligible to be foreperson, because you're not on the
24 jury at this time.

25 The duties of the foreperson are simple, ladies
MIA PERRON, CCR, CVR-CM

1 THE COURT: From the defendant?

2 MR. MATTHEWS: No, sir.

3 THE COURT: Madam Court Reporter, it will be
4 Court's Exhibit Number 1, without objection.

5 [Whereupon, Court's Exhibit Number 1 is marked
6 by the court reporter]

7 - - - - -

8 MOTION TO AMEND

9 THE COURT: Also outside the presence of the
10 jury, the State had a motion to amend the indictment in
11 this case. Is that motion opposed, Mr. Matthews?

12 MR. MATTHEWS: Could I take a look just real
13 quick? I don't think so. I just want to remind myself
14 of what the new indictment says. What's the --

15 [Whereupon, Mr. Matthews and Ms. Stilley confer]

16 MR. MATTHEWS: No objection.

17 THE COURT: Put it on the record, Ms. Stilley,
18 how you wish to amend. I understand there is no
19 objection.

20 MS. STILLEY: Your Honor, it's really on the
21 face of the indictment. It says County of Richland.
22 If you would strike through that and write County of
23 Colleton. It's only on the face.

24 MR. MATTHEWS: Clearly, it's a Scribner's error,
25 Your Honor. No objection to that.

State vs. Phillips
Jury Trial - Volume 1 of 3
July 21, 2008

1 THE COURT: Without objection, so ordered.

2 I will let you write on it and put your initials
3 on it to reflect --

4 MS. STILLEY: May I approach?

5 THE COURT: You may.

6 MS. STILLEY: Thank you, Your Honor.

7 [Whereupon, Ms. Stilley reviews documents]

8 THE COURT: Thank you.

9 MS. STILLEY: Thank you, Your Honor.

10 THE COURT: Let the record reflect that she has
11 written County of Colleton on the face of the
12 indictment -- it already was on the inside -- and she
13 has placed her initials, A.C.S., on the cover of the
14 indictment, without objection.

15 - - - - -

16 RULINGS

17 FOR OFF-THE-RECORD BENCH CONFERENCES

18 THE COURT: Now, I called counsel to the bench
19 during the selection of the jury for the purpose of
20 advising them that their answers to me concerning
21 whether or not there were any objections pertaining to
22 the selection of the jury, before the jury was sworn,
23 would be final. They both advised me at the bench they
24 understood that, and they've told me there are no
25 Batson motions. That decision is final.

MIA PERRON, CCR, CVR-CM

State vs. Phillips
Jury Trial - Volume 1 of 3
July 21, 2008

1 They also agreed that even though I'm not going
2 to swear the jury until 9:30 in the morning, because of
3 the hour, and letting the rest of the jury go. They
4 also agreed that they would both waive any defect in
5 letting the jury go ahead and elect a foreperson
6 tonight in the jury room, even though I'm not going to
7 swear them until 9:30 in the morning.

8 Is that correct from the State of South
9 Carolina?

10 MS. STILLEY: That is correct, Your Honor.

11 THE COURT: Correct from the defendant?

12 MR. MATTHEWS: Yes, sir.

13 THE COURT: Very well.

14 Now, I believe there was one other pre-trial
15 motion. And I have that now, and you're going to
16 provide documents to my law clerk which concerns the
17 fact that the State has put the defendant on notice
18 that the punishment in this case, because of his prior
19 record in the State's view, could warrant the
20 imposition of a sentence of life imprisonment without
21 any possibility of parole. I recognize that motion is
22 opposed. I am going to go through the booklet that was
23 given to me, just prior to the start of commencement of
24 trial, to determine how I'm going to rule on that
25 motion.

State vs. Phillips
Jury Trial - Volume 1 of 3
July 21, 2008

1 Both of you agree that the notice has been
2 given, if it's proper, and it will be a matter for the
3 Court to determine and take up. Which that is not
4 going to be mentioned during the course of the trial,
5 because sentencing is a matter for the Court. However,
6 I will look over it and give you my ruling, because
7 I'll be working on it tonight.

8 Any other pretrial motions from the State of
9 South Carolina?

10 MS. STILLEY: None, Your Honor.

11 THE COURT: From the defendant?

12 MR. MATTHEWS: No, sir.

13 THE COURT: Bring us the jury, please,
14 Winnfield.

15 [Off the record momentarily]

16 THE COURT: All right. Let's come to order.
17 The jury is entering.

18 [Whereupon, the jury enters the courtroom at
19 5:06 p.m.]

20 THE COURT: Mr. Benton, if you will come take
21 the foreperson's seat down here at the end. The rest
22 of you can sit anywhere you want to, and my alternates
23 sit on the end.

24 Ma'am, if you would slide down one more for me,
25 please, so people don't have to crawl over you.

MIA PERRON, CCR, CVR-CM

State vs. Phillips
Jury Trial - Volume 1 of 3
July 21, 2008

1 Everyone else remain seated while the jury is
2 leaving.

3 [Whereupon, the jury exits the courtroom at 5:11
4 p.m.]

5 THE COURT: Please be seated.

6 Are there any matters that need to be taken up
7 outside the presence of the jury, from the State of
8 South Carolina, before we adjourn this trial for the
9 evening?

10 MS. STILLEY: None, Your Honor.

11 THE COURT: From the defendant?

12 MR. MATTHEWS: No, Your Honor.

13 THE COURT: Very well. I'll expect you both to
14 be prepared for opening statement in the morning at
15 9:30. I'm going to start promptly at 9:30. I'll swear
16 the jury at that time.

17 Ms. Stilley, I'll be going through the packet
18 that you gave me. If I need to hear argument on the
19 record I'll let you know, concerning your motion which
20 I have not ruled on in this case.

21 I want to thank you.

22 [Off the record momentarily]

23 THE COURT: If you would, counsel, please be
24 present at 9:30 in the morning, and I'll be with you at
25 that time. As to this case, this Court stands

STATE OF SOUTH CAROLINA
COUNTY OF COLLETON

) COURT OF GENERAL SESSIONS
) FOURTEENTH JUDICIAL CIRCUIT
) INDICTMENT NO: 2007-GS-15-858

STATE OF SOUTH CAROLINA
VS.
LAWRENCE PHILLIPS,
DEFENDANT.

)
)
)
)
)
)
)
)
)
)
)

JURY TRIAL

VOLUME 2 OF 3

held before the Honorable Perry M. Buckner
Mia Perron, Circuit Court Reporter, 9th Judicial Circuit
in the Colleton County Courthouse
Walterboro, South Carolina
on Tuesday, July 22, 2008, Commencing at 9:35 a.m.

SUSAN "MIA" PERRON, CCR, CVR-CM
Circuit Court Reporter - 14th Judicial Circuit
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1-706-231-6028

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FORM C-100 - LASER REPORTERS PAPER & MFG. CO. 800-626-6313

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MIA PERRON, CCR, CVR-CM

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MIA PERRON, CCR, CVR-CM

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MIA PERRON, CCR, CVR-CM

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MARKED/ADMITTED

Court's

Court's Exhibit Number 2
[SLED chain of custody]

113

MIA PERRON, CCR, CVR-CM

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PROCEEDINGS

[Whereupon, State's Exhibit Numbers 1 through 58
are marked by the court reporter]

THE COURT: I'm ready to move. I'll hear
arguments on the motions later. You can be heard on
the motion. I have looked at it last night. But as
soon as Adam gets back, I'm going to bring the jury in,
swear them, and let's get started.

Who is going to do the opening statement? Ms.
Stilley?

MR. THORNTON: Ms. Stilley will do that.

Your Honor, I've just handed Mr. Matthews a
stack of photographs that I plan on -- or Ms. Stilley
will be introducing as evidence. They're already --

THE COURT: Pre-marked?

MR. THORNTON: It's already got --

THE COURT: Ms. Stilley, so that you know --
because some judges do it different. But please
remember to do it correctly. Mr. Matthews, listen
carefully, because you already know these rules. But
since Ms. Stilley has not tried a case with me: when
you are going to introduce an exhibit, you don't show
it to the jury beforehand. If you want to ask the
witness anything, you take it up and ask the witness,
can you identify this document. Yes, I can. All

State vs. Phillips
Jury Trial - Volume 2 of 2
July 22, 2008

1 right. Then you show it to opposing counsel,
2 eventhough it's pre-marked, give me the opportunity to
3 ask if there is any objection. If he says not, then
4 you say, Your Honor, I would like to offer this as
5 State's Exhibit Number, whatever the pre-mark is, at
6 this time. And I will say, it is in evidence. If no
7 objection, without objection. You may then publish the
8 exhibit to the jury. Do you understand?

9 MS. STILLEY: Yes, Your Honor.

10 THE COURT: Don't publish -- now, if you want to
11 use something for demonstrative purposes, that you are
12 not going to put into evidence -- which means it isn't
13 going in the jury room during their deliberations --
14 then you come and say, I want to use this for a
15 demonstrative, Judge, so that I give opposing counsel
16 an opportunity before you show it to the jury to object
17 to the exhibit, just as I'll expect him to use the same
18 courtesy towards you during the trial. Do you
19 understand?

20 MS. STILLEY: Yes, Your Honor.

21 I do have a concern. We were going to ask for a
22 small break in the court to get the Star Board set up.
23 We're going to be using that. And we have copies of
24 the photographs that have already been marked by --

25 THE COURT: Once they are in evidence and you've

1 followed the proper procedure, then you can use the
2 Star Board. But you don't turn it on until after
3 you've properly offered it and I've given counsel a
4 chance to object. No publishing of any kind to the
5 jury, of an exhibit, until it is in evidence or the
6 Court has allowed you to use it for demonstrative
7 purposes. Do you understand?

8 MS. STILLEY: Yes, Your Honor. We have a lot of
9 them, so I didn't know if there was a manner in which
10 we could move many into evidence --

11 THE COURT: What are you suggesting?

12 MS. STILLEY: Well, they're already pre-marked.
13 So I don't know if I could hand like the thirty
14 photographs, that the first witness is going to testify
15 to, ask him if he can identify them --

16 THE COURT: Is one witness going to identify all
17 of them?

18 MS. STILLEY: Two witnesses will be identifying
19 about fifty --

20 THE COURT: You can hand as many at a time as
21 you want, but don't have the witness discuss it until
22 they're either admitted into evidence, and I've given
23 Mr. Matthews an opportunity to be heard. Do you
24 understand?

25 MS. STILLEY: Okay.

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1 THE COURT: Okay. Anything else from the State
2 before I bring the jury?

3 MR. THORNTON: No, sir.

4 MS. STILLEY: No, sir.

5 THE COURT: Mr. Matthews, anything from the
6 defendant before I bring the jury?

7 MR. MATTHEWS: For the -- for everybody's
8 information, most of these -- I've seen all of these.
9 Most of them I don't -- I'm not going to have a problem
10 with. This particular one is a report --

11 THE COURT: I don't know which one you're --

12 MR. THORNTON: That's a sketch.

13 THE COURT: -- talking about, Mr. Matthews. And
14 I'm not going to stop right now and argue over an
15 exhibit.

16 Bring me the jury.

17 [Whereupon, the jury enters the courtroom at
18 9:36 a.m.]

19 THE COURT: Good morning, ladies and gentlemen.

20 MR. THORNTON: Your Honor, may we approach?

21 [Whereupon, an off-the-record bench conference
22 is held]

23 THE COURT: Mr. Foreman, and ladies and
24 gentlemen of the jury, we ran into a couple of legal
25 matters this morning that ran us -- but the purpose of

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1 my taking those up is to try to shorten the time that
2 your presence might be required here. And I'm allowing
3 the lawyers now to leave the courtroom briefly, for a
4 couple of seconds, in order to instruct people outside
5 of the courtroom as to my ruling on certain matters of
6 law.

7 I want to thank each and every one of you for
8 being on time this morning. I do try to run on time so
9 I can get you home in a timely fashion. And I want to
10 thank you for your service on the jury.

11 When they come back in the courtroom -- or when
12 Mr. Thornton comes back into the courtroom -- the first
13 thing we are going to do this morning is I'm going to
14 have the clerk swear you. And I told you you would be
15 taking an oath. I'll be talking to you, in just a
16 couple of moments, about that oath that you're going to
17 take.

18 I'm going to give you a little overview so that
19 you'll have, hopefully, a better understanding of
20 what's happening in the trial as the case unfolds,
21 because I like for you to know what's going on. I know
22 many of you may have some preconceived ideas about
23 trials, from things such as television or a movie. But
24 I can assure you, ladies and gentlemen, that we don't
25 follow the television procedure in an actual trial. We

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1 do things in a certain order to try to be certain that
2 we are fair to both parties, and that people have an
3 opportunity to be heard, and that they can confront
4 whatever evidence is presented in the case. So that's
5 the reason we follow certain orders, and that's the
6 reason we do it the way we do it, and I want you to
7 understand that.

8 Mr. Thornton, are you ready?

9 MR. THORNTON: Yes, sir. The State is ready.

10 THE COURT: Is the defendant now ready to
11 proceed?

12 MR. MATTHEWS: Yes, sir.

13 THE COURT: Madam Clerk, if you would, please,
14 would you swear the jury.

15 THE CLERK OF COURT: Ladies and gentlemen of the
16 jury, please stand and raise your right hand.

17 [Whereupon, the jury is duly sworn by the clerk
18 of court]

19 THE CLERK OF COURT: Thank you. You may be
20 seated.

21 THE COURT: All right. Let the record reflect
22 that I, at the bench, granted a mutual request to both
23 sides for sequestration. And the defendant and the
24 case manager are allowed to remain in the courtroom,
25 and the lawyers are responsible for their own witnesses

1 insofar as instructing them concerning my order of
2 sequestration.

3 Have I accurately stated what occurred at the
4 bench insofar as counsel for the State is concerned?

5 MR. THORNTON: Yes, Your Honor.

6 THE COURT: Insofar as counsel for the defendant
7 is concerned?

8 MR. MATTHEWS: Yes, Your Honor.

9 THE COURT: Very well.

10 Now, ladies and gentlemen of the jury, before we
11 began this trial, I want to tell you that this trial
12 probably is going to be different from what many of you
13 probably expect. You know, most people do not have the
14 opportunity, ladies and gentlemen, to attend an actual
15 court session as each of you are doing right now. And
16 most people think, from watching television or going to
17 a movie or reading in a book, that trials are always
18 full of high drama and intense action, and riveting and
19 entertaining circumstances -- such programs as Cold
20 Case and CSI and things of that nature -- which are
21 bombarded on the public. While all of those things,
22 ladies and gentlemen, may be true at times, a trial, an
23 actual trial, is not for entertainment.

24 An actual trial is a fundamental part of our
25 democracy. It is a search for the truth, in an effort

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1 to make sure that justice is done between the parties
2 before the Court. Searching for the truth and making
3 sure that justice is done is often slow, it is often
4 deliberate, it is often repetitive, the exact opposite
5 of what you may have seen on television or read in a
6 book or seen in a movie.

7 This courtroom, ladies and gentlemen -- you
8 heard me talking about how proud we were of the
9 renovation -- is a place of honor. It is dedicated to
10 the protection and the preservation of citizens' rights
11 through what many people call the greatest justice
12 system in the entire world. The attorneys appearing
13 before you, ladies and gentlemen, are advocates for the
14 parties they represent, both for the State of South
15 Carolina and the defendant. But first and foremost the
16 attorneys are officers of this Court, and, as officers
17 of this Court, they are sworn to uphold the integrity
18 and the fairness of our judicial system and to help
19 you, ladies and gentlemen of the jury, in a search for
20 the truth.

21 You should expect the attorneys to be
22 professional, you should expect the attorneys to be
23 competent, you should expect the attorneys to be
24 prepared, and, above all, you should expect the
25 attorneys to be courteous and ethical in the

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1 representation of their clients' interest.

2 I remind you that each of you just took an oath
3 from the clerk of court. In that oath you said, and
4 you swore or you affirmed, that you would try this case
5 and that you, as jurors, would reach a fair and a just
6 verdict. So ladies and gentlemen of the jury, now you
7 have taken an oath, just like the attorneys and I have,
8 and you are also, as jurors, expected to be
9 professional, you are also expected to be reasonable
10 and to be ethical in the discharge of your duties as
11 jurors.

12 Before we begin this trial, I want each of you
13 to know that I thank you for accepting what I believe
14 is to be an extremely important responsibility of jury
15 service. Winston Churchill once said, ladies and
16 gentlemen, that jury service is the greatest duty one
17 can give one's country during peace time. Without you,
18 ladies and gentlemen of the jury, justice can never be
19 accomplished in the courtroom. I thank you for your
20 contribution today, as jurors, to our justice system.
21 We appreciate your willingness to serve and contribute,
22 as jurors, to our system.

23 Now, ladies and gentlemen, and Mr. Foreman, I
24 hold in my hand what I told you was the indictment.
25 The case we are about to start trying, ladies and

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1 gentlemen, is the case of the State of South Carolina
2 vs. Lawrence Phillips, who is the defendant. The
3 defendant is charged by this piece of paper, which we
4 call an indictment, filed in this Court. He is charged
5 with the crime of arson second degree. The elements of
6 arson second degree -- and there are certain elements,
7 ladies and gentlemen, of each criminal offense. I will
8 explain to you later in my charge to you on the law,
9 which comes at the end of the case. After you've heard
10 all the evidence and after you've heard the closing
11 arguments of the attorneys, I will explain to you the
12 law, including the elements of arson second degree.

13 You should understand now that this indictment
14 that I hold in my hand, ladies and gentlemen, is simply
15 the charge by which the case is brought into this
16 court, the Court of General Sessions, and that it is
17 not in any sense evidence of any of the allegations
18 that it contains.

19 Now, the defendant has pled not guilty to this
20 indictment. The State of South Carolina therefore has
21 the burden of proving each of the essential elements of
22 the offense of arson second degree beyond a reasonable
23 doubt, and it will be your duty, ladies and gentlemen
24 of the jury, to decide whether or not the State has met
25 that burden. It is your solemn responsibility, ladies

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1 and gentlemen, to determine as jurors the guilt or the
2 innocence of the defendant. And your verdict, ladies
3 and gentlemen of the jury, must be based solely on the
4 evidence as it is presented to you in this trial, and
5 on the law as I instruct it to you to be during the
6 trial, and in my charge to you on the law at the
7 conclusion of the trial.

8 Now, in just a minute the assistant solicitor,
9 Ms. Stilley, will make what is called an opening
10 statement, in which she will explain to you the issues
11 in this case, or at least what she contends, as an
12 advocate for the State of South Carolina, to be the
13 issues in this case. Following that opening statement,
14 the attorney for the defendant, Mr. Matthews, will make
15 an opening statement.

16 Now, I want to tell you right now I want you to
17 listen to my attorneys. They have worked hard to
18 prepare their case for their perspective clients, so I
19 want you to listen carefully to them. But what they
20 tell you in opening statement or in their closing
21 argument to you is not evidence in this case. The
22 attorneys are advocates for the parties that they
23 represent, and they will be doing their best for their
24 client. They've prepared and worked hard for this case
25 today, but what they tell you is not evidence in this

1 case. It is only their contention, in the opening
2 statement, as to what the issues are.

3 You, ladies and gentlemen of the jury, must
4 decide the case solely upon evidence introduced in this
5 courtroom. What, then, is evidence if it isn't what
6 the attorneys tell you? Evidence, ladies and
7 gentlemen, may take many forms. It may be the
8 testimony of a witness who will take this witness
9 stand. You'll notice it's located on the side of the
10 courtroom in closest proximity to you, the jury.
11 That's so you can listen to the witnesses, you can
12 observe the witnesses, you can pay close attention to
13 the witnesses. So evidence may be sworn testimony from
14 the witness stand or it may be something which we call
15 an exhibit, something like a photograph or a model or
16 some -- a piece of paper. As to any such exhibit,
17 before you see it, ladies and gentlemen, you will hear
18 me say, as the gatekeeper -- one of my duties as a
19 trial judge is to determine the admissibility of
20 evidence. You'll hear me say as to any exhibit, it is
21 in evidence, before you see it because it will not be
22 published to you until I have ruled that it is
23 permitted for you to see it. So if you hear me say an
24 exhibit is in evidence, that means it will be available
25 to you in your jury room during your deliberations.

1 Another form of evidence other than sworn testimony
2 from the witness stand.

3 Evidence may also take the form of a
4 stipulation. That's where the parties have an
5 understanding, an agreement -- it will be published to
6 you during the trial -- as to some fact in the trial.
7 So there may be, or there may not be -- I don't know
8 yet. I have not heard any evidence in this case, just
9 as you have not. And that is by intentional design,
10 ladies and gentlemen, so that each of us will have an
11 open mind.

12 So evidence may take many forms, ladies and
13 gentlemen. It may be testimony from the witness stand,
14 it may be some exhibit which may be introduced into
15 evidence -- you'll hear me say it's in evidence -- or
16 it may be by some stipulation between the parties or
17 their respective counsel.

18 Now, that is what you make your decision on,
19 ladies and gentlemen of the jury; and that is,
20 evidence. And in the consideration of evidence you
21 should remember always that under the constitution of
22 the state of South Carolina, you and you alone, the
23 members of this jury, are the sole judges of the facts
24 in this case based on evidence introduced during the
25 trial of the case.

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1 The same law that makes you, the jury, the sole
2 judges of the facts in the case make me the sole judge
3 of the law. I cannot invade your province and tell
4 you, suggest to you, or even comment to you, about what
5 the facts are in this case. And you, ladies and
6 gentlemen of the jury, should not invade my province
7 and differ with me about what the law is in this case.
8 Everything that I say during the course of this trial
9 is taken down --

10 I actually have two court reporters, since we
11 have Becky also with us now. But Mia Perron is my
12 assigned court reporter. And Becky will soon be with
13 me without Mia. But she's learning, so we actually
14 have two.

15 But everything I say during the course of this
16 trial is being taken down by my court reporter. And if
17 I make a mistake as to the law in this case to the
18 detriment of either party, the parties can appeal the
19 case to an appellate court. And if they agree in the
20 appellate court that I've made a mistake on the law,
21 they'll send it back for a new trial. So don't you,
22 ladies and gentlemen of the jury, worry about whether
23 or not I've told you the law correctly. That is
24 somebody else's worry. That is not your concern. Your
25 job is to take the law as I give it to you and apply it

1 to the facts, from the evidence as you find the facts
2 to be, based on evidence introduced during the trial of
3 the case. And that means witnesses from the witness
4 stand, any exhibits introduced into evidence, or any
5 stipulations. And after doing that, ladies and
6 gentlemen, at the conclusion of the trial you, as a
7 jury, will then render a verdict, a true and just
8 verdict, under that solemn oath that each of you just
9 took from the Clerk of Court of Colleton County.

10 Now, from time to time during the course of this
11 trial -- I have no idea -- my law clerks ask me this
12 sometimes when they first start, how many cases have
13 you tried, how many counties have you held court in.
14 I've got a somewhat idea about how many counties. I
15 have no idea how many cases I've tried now as both a
16 lawyer and a judge. But if this trial is like the many
17 others that I've participated in, you may hear one of
18 the lawyers say something like, Your Honor, I believe
19 we have a question of law or matter of law we would
20 like to discuss with you, or, Your Honor, may we
21 approach the bench, or I myself might find it necessary
22 to excuse you from the courtroom, ladies and gentlemen
23 of the jury, ask you to step to your jury room for a
24 little while while the attorneys and I discuss a matter
25 of law. Now, the reason for this is because just what

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1 I've just been talking to you about; that is, you are
2 the sole judges of the facts in this case, and I'm the
3 sole judge of the law. Sometimes when I'm discussing a
4 matter of law with the attorneys, by necessity I have
5 to make a comment to the attorneys about the facts in
6 the case in order to rule whether or not a particular
7 piece of law applies to this case or not. Now, the
8 practice in this state -- because I'm not supposed to
9 make any comment to you, the jury, about what the facts
10 are. So the practice is either to take it up at the
11 bench, outside of your earshot, or to ask you to step
12 to your jury room so that you will not be influenced by
13 anything that I might say or do in ruling on whether or
14 not a particular piece of law applies to this case or
15 not.

16 And in that connection, let me tell you again,
17 and emphasize to you, that you, ladies and gentlemen of
18 the jury, and you alone, are the sole judges of the
19 facts in this matter. And if you should gather from
20 anything that I might say or do during the course of
21 this trial that I have any opinion as to the facts in
22 this case, please erase that from your mind, because
23 you, ladies and gentlemen, are the sole judges of the
24 facts in this case.

25 Now, how do you go about determining what the

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1 true facts are? Because you now know you're the sole
2 judges of the facts, how do you determine what they
3 are, other than basing it on the evidence? Well,
4 ladies and gentlemen of the jury, out of necessity you
5 will have to determine or pass upon the credibility,
6 which simply means the believability, of the witnesses
7 who will take the witness stand during the trial of
8 this case.

9 It will be my responsibility as the presiding
10 judge to rule, as a matter of law, as to whether
11 certain testimony is admissible or not. But once I
12 have allowed the testimony or the exhibit to be
13 introduced into evidence, whether or not you believe
14 the testimony or the exhibit is solely a matter for
15 you, the jury, to determine. You are the sole judges
16 of the believability or credibility of the evidence
17 that's going to be introduced during the trial of this
18 case. And in passing upon that credibility or
19 believability, ladies and gentlemen, of the witnesses
20 who will testify, or any evidence introduced, you have
21 the right as a jury to take into consideration the
22 interest of any witness; the bias, if any, of any
23 witness; the prejudice, if any, of any witness; the
24 opportunity for the witness to have observed the
25 matters and things about which he or she may testify.

1 And you may even consider the demeanor or the
2 appearance of the witness, while the witness is on the
3 witness stand, in making your decision as to the
4 believability or credibility of the witnesses who will
5 testify during the trial of this case. Anything that
6 is in evidence, ladies and gentlemen of the jury, you
7 have the right, as the jury, to consider in ruling upon
8 the believability of the evidence.

9 And that means -- Mr. Foreman and ladies and
10 gentlemen of the jury, that means that it is your duty
11 under your sworn oath, which you took from the clerk of
12 court just a moment ago, to pay close attention to the
13 witnesses. Don't let your thoughts wander so that at
14 the conclusion of the trial, if you have listened to
15 the witnesses, you will be in a position -- after the
16 closing arguments of the attorneys and receiving my
17 charge on the law by the Court, you, as a jury, as a
18 group, as a body, will be in a position to determine
19 from listening to the evidence what the true facts are
20 and apply the law as I give it to you at the end to the
21 facts as you find them to be, as jurors, and thus
22 render that true and that just verdict.

23 Now, you must not consider anything that you may
24 have read or heard about this case outside of this
25 courtroom, whether before or during this trial. And

1 until this case is submitted to you under my
2 instructions at the conclusion of the trial, you must
3 not discuss it with anyone, not even a member of your
4 own family, and after I submit it to you at the
5 conclusion of the trial, you must discuss it only in
6 your jury room with your fellow jurors.

7 It is important, ladies and gentlemen of the
8 jury, that each of you, as I told you at the outset,
9 keep an open mind and not decide the case until the
10 entire matter has been submitted to you under my
11 instructions at the conclusion of the case.

12 Now, it will be your added duty, Mr. Foreman, to
13 preside in the jury room, just like the chairperson of
14 a committee will preside in a committee meeting, to see
15 that each and every member of my jury has a full and
16 fair opportunity to voice their opinions in the jury
17 room once deliberations begin. It will also be your
18 duty to write the jury's verdict. Now, I'm going to
19 give you a verdict form at the conclusion of my charge,
20 which I told you you will sign and date. And I'll show
21 you how to fill it out. I'll explain that in my
22 charge.

23 Before you leave the courtroom, my law clerk
24 back here is going to be holding this piece of paper,
25 this indictment. I would want you to conform whatever

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1 you write on that verdict form, on this indictment,
2 where it says verdict. He will be bringing this to you
3 after the trial to make sure you don't leave without
4 signing the indictment and the verdict form. You will
5 not have the indictment with you in your jury room, you
6 will just have the verdict form, but after you publish
7 your verdict I'll ask you to sign this indictment. My
8 law clerk, Adam Yount, will be coming to you to get you
9 to do that at the conclusion of the trial.

10 Now, I do not -- ladies and gentlemen, I want to
11 make sure of a couple of housekeeping matters before we
12 start. I always tell my juries this, because I'm a
13 victim of that. I've shot a shotgun all my life,
14 ladies and gentlemen, and I haven't worn the proper ear
15 protection so I don't hear like I should. That's why
16 we've got microphones in this courtroom. But it's very
17 important that each of you hear, so if at any time you
18 can't hear -- and you'll notice I've got a microphone
19 on the witness stand for my jury. If you can't hear,
20 you let me know, because all I have to do is nod to
21 Pat. She's got the controls right behind her. We can
22 turn it up for you. So if at any time you can't hear,
23 raise your hand for me. I'll be watching all fourteen
24 of you throughout the trial of the case. And it's most
25 important that you be able to hear.

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1 Also, in the event that I tell you something is
2 in evidence and you can't see the exhibit, simply raise
3 your hand for me. I want my jurors to be able to hear
4 and to see at all times throughout the trial of the
5 case.

6 Now, Mr. Foreman, we do not allow jurors
7 normally to ask questions here in the courtroom. If at
8 any time a member of the jury has a question, here is
9 the procedure we have to follow: if you are not
10 already in your jury room, you will retire to your jury
11 room. You, as the foreman, will write the question on
12 a piece of paper and give it to my bailiff. He will
13 bring it out to me. I will then rule as a matter of
14 law whether or not the question can or cannot be
15 answered, just as I would any question asked by either
16 one of the attorneys during the trial of the case.
17 I've tried it both ways, ladies and gentlemen. I ask
18 that you do not take written notes. You're probably
19 wondering why. You see I've got a pen in my hand, and
20 I've got a notebook up here. I'm a note-taker. But I
21 ask that you do not take notes. Why? Because I've
22 found that if a juror takes written notes and makes a
23 mistake in the written notes, the notes can be harmful
24 rather than helpful in your jury room once
25 deliberations begin. The time-tested system is for

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1 each of you to listen and listen carefully.

2 Now, we do have the ability, ladies and
3 gentlemen -- if you're worried about memory, we have an
4 audio recording which we can play back the entire
5 testimony, if you so desire, of any witness' testimony
6 during the trial of the case. But if you listen and
7 listen carefully you will be in a position to
8 determine, as I told you, at the conclusion of the case
9 after my charge on the law, what the true facts are and
10 apply it to the law as I give it to you at the
11 conclusion of the case and thus render a true and a
12 just verdict.

13 Now, we do not allow cell phones or beepers
14 while you're on jury duty or in your jury room. You're
15 probably wondering why we are so strict about that. It
16 is not just the noise interference. I'm required to
17 confiscate them if they go off. I don't want anybody's
18 cell phone or beeper. But it amazes me how many people
19 in this world now have to have a cell phone. It's like
20 we can't go anywhere without it. The reason that we're
21 so strict about that is not just noise. In a county
22 other than Colleton, a jury went out to deliberate a
23 verdict. And they were discussing a medical issue and
24 one of the jurors said, well, you know, my brother is a
25 doctor; I'll just call him on my cell phone and ask his

1 opinion about that. Obviously, that's improper, ladies
2 and gentlemen. You must decide a case solely upon
3 evidence introduced during the trial of the case when
4 both sides are present with the right of cross-
5 examination. So, please, if you have a cell phone or
6 beeper, leave it home. It's not permitted while you're
7 on jury duty or in your jury room.

8 Now, ladies and gentlemen, I do not intend that
9 you should construe what I've just told you about the
10 order in which we do things as a charge on the law,
11 because I'll charge you the law at the conclusion of
12 the case. What I've just told you is not a charge on
13 the law. This has been merely an attempt on my part to
14 try to briefly explain some of the procedure that we
15 use in the courtroom so that you'll be able to follow,
16 as jurors, during the trial of the case -- you'll
17 notice we do things in order. The State goes first.
18 The State has the burden of proof. The State will
19 present its case. We do things in a certain order
20 because of the rules that we have, and I wanted you to
21 understand that. Hopefully you'll have a better
22 understanding now of what may be happening in the trial
23 from time to time.

24 Nevertheless, in order to preserve everyone's
25 rights, I'll give the parties an opportunity to take

1 exception or objection to anything I have said.

2 Any exceptions or objections from the State of
3 South Carolina?

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

5 THE COURT: From the defendant?

6 MR. MATTHEWS: No, sir.

7 THE COURT: Very well.

8 Ladies and gentlemen, I ask that you give the
9 attorneys your careful consideration. We will now
10 begin the trial of the case.

11 Ms. Stilley.

12 MS. STILLEY: Thank you, Your Honor. May it
13 please the Court.

14 THE COURT: Yes, ma'am.

15 MS. STILLEY: Mr. Matthews.

16 - - - - -

17 OPENING STATEMENT

18 MS. STILLEY: Good morning, ladies and
19 gentlemen.

20 This is a case about arson -- that's why we're
21 here today -- and specifically with that man, Lawrence
22 Phillips, being charged with arson in the second
23 degree, specifically, for burning down the house he was
24 living in last September, 609 Fourth Street, here in
25 Walterboro.

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1 Now, in order to convict Mr. Phillips of arson
2 in the second degree, the deputy solicitor, Sean
3 Thornton, and myself have the burden to prove to you,
4 as the judge already mentioned, beyond a reasonable
5 doubt, that it was that man that burned down that
6 house, and that he did it on purpose, and it resulted
7 in damage.

8 Now, you're going to hear a lot of evidence
9 today -- a lot of evidence -- and I urge you to pay
10 close attention to it. First, you're going to hear
11 from a former neighbor of Mr. Phillips named Lori
12 Joslin. She's going to talk about not only what she
13 saw Mr. Phillips doing that evening and the morning
14 before that fire was set, early in the morning on
15 September 14th, but she's also going to discuss what
16 Mr. Phillips actually said to her before that fire
17 occurred. Next, you're going to hear from and see a
18 lot of photographs of the Colleton County Fire and
19 Rescue department as they worked to put out that fire.
20 Next, you're going to hear from a fire investigation
21 specialist, who is going to try and help us all
22 understand a little bit more about fire, and how it
23 works, and how it occurred on that date last September.
24 And, finally, you're going to hear from some
25 individuals that are close to Mr. Phillips himself.

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1 Now, as the judge already mentioned, nothing
2 that I can say to you, or any of the attorneys here
3 today can say to you, can be considered evidence. So I
4 really encourage you to pay close attention to all the
5 witnesses up here and to the many photographs and
6 exhibits that we're going to show to you throughout the
7 course of this trial. And all the time keep in mind,
8 while you're reviewing this information and all of the
9 details, that we have to prove to you that Mr. Phillips
10 set the fire that caused the house to burn down, and
11 that he did it on purpose.

12 Now, I'm not urging you to leave your common
13 sense at the door and think in a manner any differently
14 than you always would when you're analyzing a
15 situation. In fact, I encourage you to use your common
16 sense today. There is going to be a lot of details as
17 I mentioned, a lot of photographs. Just bear with us,
18 pay attention, and if you have any questions, like the
19 judge said, please ask the Court.

20 And, finally, although this is hopefully going
21 to be a relatively fast trial -- and I know that's what
22 y'all are hoping for -- it's a very important one or
23 none of us would be here today. So please pay close
24 attention to not only what the witnesses are going to
25 show you in all these photographs, but also the judge's

1 instruction so that at the end of this trial, at the
2 end of this case, you may render a true verdict. Thank
3 you.

4 THE COURT: Mr. Matthews.

5 MR. MATTHEWS: Thank you, Your Honor.

6 - - - - -

7 OPENING STATEMENT

8 MR. MATTHEWS: Mr. Foreman, ladies and gentlemen
9 of the jury, I'm David Matthews, as I told y'all
10 earlier. We at the public defender's office are
11 fortunate enough --

12 THE COURT: Just a moment. Counsel approach.

13 [Whereupon, an off-the-record bench conference
14 is held]

15 THE COURT: Counsel, you may come around so you
16 can review any demonstrative exhibit that is being
17 shown to the jury.

18 [Whereupon, Ms. Stilley complies]

19 THE COURT: And you may now bring it over to the
20 jury.

21 MR. MATTHEWS: As I said, I'm David Matthews.
22 And John Henderson, who is clerking with the public
23 defender's office over the summer, and Stacey Bazzle,
24 who's also helping out with this, we are pleased to
25 represent Mr. Phillips, who is on trial here.

1 Ms. Stilley told you something about what the
2 State expects to prove. And that's what opening
3 statement is for is to give you sort of a road map of
4 where we're supposed to be, where you're supposed to
5 end up, where you can look at it as the State writing a
6 check and at the end you figure out whether or not they
7 cashed that or covered it.

8 One of the things that the State also has to
9 prove in an arson second degree, as opposed to an arson
10 third degree, is whether or not it was a dwelling. A
11 house is a building, unless somebody lives in it. And
12 one of the things in the codes says a dwelling house,
13 as defined in burglary, arson, other criminal offenses,
14 with respect to crimes of arson, and through all
15 criminal offenses which are constituted or aggravated
16 by being committed in a dwelling house.

17 And any number of things can be a house. If you
18 are a -- it even says, for example, a box can be a
19 house. Well, how can a box be a house? One of the
20 things the State has to prove is is the building, a
21 mobile home, whatever it is, is it something -- is
22 there someone who lodges there with a view to
23 protection of the property.

24 Ladies and gentlemen of the jury, I do not
25 believe that the State is going to be able to prove

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1 that. But listen carefully, as Ms. Stilley has told
2 you, and as the Court has told you. Although we have
3 all worked hard in this case, the only thing that is
4 evidence is what comes from that chair, plus exhibits.

5 Can you not see this?

6 JUROR: It's all right. Thank you.

7 MR. MATTHEWS: Okay. Is there anyone who can't
8 see that, can't read that? I --

9 THE COURT: Just raise your hand for me, ladies
10 and gentlemen, if you can't see or hear.

11 Proceed, counsel.

12 MR. MATTHEWS: Thank you, Your Honor.

13 So we'll be hearing a lot of different
14 testimony. But unless each and every element of the
15 crime that Mr. Phillips is charged with is proven by
16 the State beyond a reasonable doubt, then you can't
17 find him guilty. I do not believe when all of the
18 evidence is considered that they will prove that Mr.
19 Phillips burned down a house with the intent to live in
20 the house. I think that that's going to be a problem
21 from start to finish, whatever else the State may
22 prove. And you're going to hear a ton of witnesses on
23 whether or not the house was burned intentionally,
24 whether or not Mr. Phillips did it. It could have been
25 somebody else. Don't know. We'll see what the

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1 evidence shows on that. However -- or whether it was
2 an electrical fire. I don't know. Listen carefully to
3 the evidence. But in the end of it, the only thing
4 that really matters is that.

5 Thank you, Your Honor.

6 THE COURT: Call your first witness.

7 MR. THORNTON: Your Honor, the State calls Lori
8 Joslin to the stand. Mr. Griffith has gone to retrieve
9 her from our office.

10 THE COURT: Very well.

11 [Whereupon, Ms. Joslin enters the courtroom]

12 THE CLERK OF COURT: Ms. Joslin, please come
13 forward and be sworn.

14 [Whereupon, Ms. Joslin is duly sworn by the
15 clerk of court]

16 THE CLERK OF COURT: Please have a seat on the
17 witness stand, and then state your full name for the
18 record.

19 [Whereupon, Ms. Joslin takes the witness stand]

20 THE COURT: How are you doing?

21 THE WITNESS: Fine, sir.

22 THE COURT: Make yourself comfortable. Pull
23 that microphone over to you. It will adjust. I want
24 you to speak as close -- it is going to amplify your
25 voice.

1 THE WITNESS: Okay.

2 THE COURT: I want you to speak up so that that
3 lady at the end of the jury box down there can hear you
4 when you speak.

5 I want you to begin by stating your full name
6 and spelling your last name for the court reporter.
7 Can you do that for me?

8 THE WITNESS: I will, sir.

9 THE COURT: Thank you. Speak up.

10 THE WITNESS: Lori Elaine Joslin. Last name is
11 spelled J-O-S-L-I-N.

12 THE COURT: Thank you, Ms. Joslin.

13 Your witness, counsel.

14 MR. THORNTON: Thank you, Judge.

15 - - - - -

16 LORI E. JOSLIN,

17 Having Been First Duly Sworn,

18 was Examined and Testified as Follows:

19 DIRECT EXAMINATION

20 BY MR. THORNTON:

21 Q. Ms. Joslin, where do you live?

22 A. I live, right now, in Dudley, Massachusetts.

23 Q. All right. And did you live there on or about
24 September the 14th of 2007?

25 A. No, I did not.

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1 Q. Where did you live at that time, ma'am?

2 A. I lived at 418 Foxfield Road in Walterboro,
3 South Carolina.

4 Q. All right. And in what county is that in?

5 A. That is in Colleton County.

6 Q. Okay. And what type of home was it that you
7 lived in?

8 A. A mobile home.

9 Q. Okay. Do you know the man seated right there
10 next to David Matthews?

11 A. I do.

12 Q. All right. The defendant in this case, do you
13 know what his name is?

14 A. Yes, I do, sir.

15 Q. All right. What is it?

16 A. Lawrence Phillips.

17 Q. How do you know Mr. Phillips?

18 A. Mr. Phillips was my neighbor.

19 Q. All right. And did -- where was he at in
20 relation to your trailer?

21 A. He resided behind me in a trailer owned by our
22 landlord.

23 MR. MATTHEWS: Objection, Your Honor. May we
24 approach?

25 THE COURT: Counsel approach.

1 [Whereupon, an off-the-record bench conference
2 is held]

3 Q. [Mr. Thornton] Let me ask you a question. Can
4 you tell me who Mr. James Cook is?

5 A. Mr. James Cook was my landlord.

6 Q. All right. Did you ever have any conversations
7 at all with the defendant, Mr. Phillips, about James Cook?

8 A. Yes, I did, sir.

9 Q. All right. And what kinds of conversations did
10 you have?

11 A. We discussed Mr. Cook doing repairs on Mr.
12 Phillips' home, as well as our own.

13 Q. All right. And did Mr. Phillips ever tell you
14 or ever give you any indication of why Mr. Cook would be
15 doing repairs on his home?

16 A. He was the landlord.

17 Q. So it is your understanding, then, that Mr. Cook
18 was your landlord, and Mr. Phillips' landlord, and owned
19 both trailers?

20 A. Yes, sir.

21 Q. Did you see Mr. Phillips in the morning of
22 September 14th, 2007?

23 A. Yes, I did, sir.

24 Q. And where did you see him at?

25 A. He was at my home.

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1 Q. Okay. And did he have any discussion with you
2 at that time?

3 A. He did.

4 Q. All right. Do you remember about what time it
5 was?

6 A. Approximately 7:00 a.m.

7 Q. All right. And what was the conversation you
8 had with him?

9 A. He had come to my home and asked me for a rifle,
10 that he had asked us to hold onto for him, and stating
11 that he was going to be leaving town for a little while.

12 Q. All right. And did you give him whatever rifle
13 that he had asked you to hold for him?

14 A. Yes, I did, sir.

15 Q. Did he say anything else?

16 A. As he was leaving, he said he was leaving town
17 and how -- what his house would look like up in flames.

18 Q. So he made a comment to you, wondered what his
19 house would look like up in flames?

20 A. Yes, sir.

21 Q. Did you see him anymore that day?

22 A. I did.

23 Q. All right. What did you see him doing?

24 A. He was moving items from his home into his
25 vehicle. And he had also brought a mower over to our

1 home.

2 Q. A mower?

3 A. A mower. A lawnmower.

4 Q. And what types of items was he moving from his
5 trailer into a vehicle?

6 A. It was household items, I believe they were just
7 personal items, into his vehicle.

8 Q. Did you notice anything else unusual after you
9 saw him moving his belongings into his car?

10 A. He had left shortly afterwards. After he had
11 packed up his car and that, he had left shortly
12 afterwards.

13 Q. Did you see anything else?

14 A. Well, I had looked out my back kitchen window
15 and seen flames and smoke coming from the back of his
16 home.

17 Q. All right. And did you do anything after you
18 saw that?

19 A. Called 911.

20 Q. Okay. So just to sum up what you've said: the
21 defendant, Mr. Phillips, on the morning of the 14th of
22 September, 2007, came over to your house, told you he was
23 leaving town?

24 A. Yes, sir.

25 Q. Told you wonder what his house would look like

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1 going up in flames?

2 A. Yes, sir.

3 Q. Or something to that effect.

4 He then leaves? Packs up his car, and then you
5 see a fire break out shortly thereafter?

6 A. I did, sir.

7 Q. All right. How long did all this take, you
8 think, roughly?

9 A. Approximately thirty minutes.

10 Q. So within probably thirty minutes of him telling
11 you what his house would look like going up in flames, it
12 went up in flames?

13 A. It did.

14 Q. After he packed his car with his stuff?

15 A. Yes, sir.

16 MR. THORNTON: Your Honor, the Court's
17 indulgence for one moment, please.

18 [Whereupon, Mr. Thornton and Ms. Stilley confer]

19 MR. THORNTON: I have no further questions at
20 this time, Your Honor.

21 Ms. Joslin, please answer any questions Mr.
22 Matthews has for you.

23 THE WITNESS: Yes, sir.

24 THE COURT: Cross-examination.

25

- - -

CROSS-EXAMINATION

BY MR. MATTHEWS:

Q. Ms. Joslin, he had -- had he normally taken pretty good care of the property around there? Cut the grass and maintained it okay?

A. To my knowledge, yes.

Q. And he had cut, in fact, the neighbor's grass sometimes also, as well?

A. I'm not sure of that.

Q. Okay. He gave you his lawnmower?

A. He did.

Q. Okay. And I believe that you had indicated to the police that he had said, I'm leaving and I'm not coming back; is that correct?

A. Yes.

Q. Okay. And it was clear to you that he was not coming back?

A. By him packing up his car, yes.

Q. And giving you his mower, and telling you that he wasn't coming back?

A. Yes, sir.

Q. Okay. Had he had any enemies in the area?

A. I'm not sure of that.

Q. I mean, crack dealers or anything like that giving him a tough time?

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1 A. He had said that, but I didn't witness that
2 myself.

3 MR. MATTHEWS: I don't have anything further,
4 Your Honor.

5 THE COURT: Redirect?

6 MR. THORNTON: None, Your Honor.

7 THE COURT: As to this witness, solicitor, may
8 she be excused?

9 MR. THORNTON: Your Honor, I only ask her to be
10 excused back to our office. She won't be leaving until
11 this afternoon. And I am going to ask that she
12 remember my instructions not to discuss her testimony,
13 because I may have to re-call her later.

14 THE COURT: Very well.

15 Bearing in mind that we're going to ask you to
16 remain in the office, where you were, subject to the
17 instructions that you've been given from me to Mr.
18 Thornton directly to you. Do you understand?

19 THE WITNESS: Yes, sir.

20 THE COURT: You may step down from the witness
21 stand at this time. Thank you very much.

22 [Whereupon, the witness is excused and exits the
23 courtroom]

24 THE COURT: Call your next witness.

25 MS. STILLEY: Your Honor, the State calls Brian
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1 Rowe.

2 [Whereupon, Mr. Rowe enters the courtroom]

3 THE CLERK OF COURT: Please come forward and be
4 sworn.

5 Place your left hand on the Bible, and raise
6 your right hand.

7 [Whereupon, Mr. Rowe is duly sworn by the clerk
8 of court]

9 THE CLERK OF COURT: Have a seat on the witness
10 stand. State your full name for the record.

11 THE COURT: How are you doing?

12 THE WITNESS: Good morning.

13 THE COURT: Have a seat, make yourself
14 comfortable, and pull that microphone over and adjust
15 it. It's going to amplify your voice so my jurors down
16 on the end -- I need you to speak up in the microphone
17 so that the jury can hear you.

18 Begin by stating your full name, spelling your
19 last name for the court reporter, if you would, please,
20 sir.

21 THE WITNESS: My name is Brian Wayne Rowe.
22 R-O-W-E.

23 THE COURT: Your witness, counsel.

24 MS. STILLEY: Thank you, Your Honor.

25 - - -

BRIAN W. ROWE,

Having Been First Duly Sworn,
was Examined and Testified as Follows:

DIRECT EXAMINATION

BY MS. STILLEY:

Q. Mr. Rowe, could you please state your position.

A. I'm an engineer-paramedic [phonetic].

Q. And who do you work for?

A. Colleton County Fire and Rescue.

Q. And were you in that position last September
14th of 2007?

A. I was.

Q. Could you please state your involvement with a
house fire that occurred early that morning at 609 Fourth
Street here in Walterboro?

A. That morning I was actually on an ambulance that
was the first to arrive at the scene of the fire. My
partner and I, being first on scene, determined there was
nobody inside the structure, went ahead and packed out,
and were the first crew that made entry into the fire.

Q. Okay. And when you say that you made entry, how
did you get into the house?

A. We went to the front of the residence, noticed
that there was fire issuing from the roof at the front of
the house, and forced the front door, making entry through

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1 the front door of the residence.

2 Q. Okay. And what did you do once you made entry?

3 A. Once we made entry, we determined that even
4 though the fire was issuing from the top of the residence,
5 the smoke was still very thick inside, which limits our
6 visibility. The smoke had actually banked down to a
7 level, and the heat had banked down to a level, that we
8 were forced to the group. We couldn't stand up in that
9 environment, obviously, so we crawled towards the source
10 of the heat, trying to get to the seat of the fire.
11 That's where we're trained to go to get the fire put out.

12 Q. So you were following typical procedures to put
13 out this fire?

14 A. Correct.

15 Q. And what did y'all do once you were down on the
16 floor? Did you have hoses?

17 A. We did. We take our hose in with us, and we
18 follow what is typically called a search pattern. It's
19 very easy to get disoriented because, as I stated, you
20 can't see.

21 Q. Okay.

22 A. So we tend to stay to a wall, bringing the hose
23 line with us, and going towards the source of heat, which
24 we can feel it on us.

25 Q. And in this situation early that morning, what

1 did you notice about the source of heat, if any, in this
2 house?

3 A. It was very intense. It was a very hot fire.
4 And typically when you pull up on a structure fire where
5 you have fire emitting from the roof, that's -- acts much
6 like a chimney, allowing the heat to escape; whereas we
7 noticed that morning it was a very, very hot fire.

8 Q. Okay. And you mentioned you came through the
9 front door. Was there just one source of heat?

10 A. No. And, in fact, we made entry, started
11 following to the left and we realized there was fire, in
12 addition, to the right of us. It was a much smaller fire,
13 and it was in check there. We felt safe bypassing that
14 and going ahead and attacking the bulk of the fire.

15 Q. So there were two sources that you --

16 A. Correct.

17 Q. -- determined upon entering?

18 A. Correct.

19 Q. Okay. You went in with hoses, and you began to
20 put out the main source of the fire. When you left that
21 house, did you notice any gas cans?

22 A. Yes.

23 Q. And where did you see these?

24 A. Immediately outside the front door.

25 Q. Did you do anything with those gas cans?

1 A. We removed them from the area.

2 Q. And where did you put them?

3 A. I just moved it from the porch area, down away
4 from the entry to the structure.

5 MS. STILLEY: Just a moment's indulgence, Your
6 Honor.

7 [Whereupon, Ms. Stilley and Mr. Thornton confer]

8 Q. [Ms. Stilley] Just to clarify, Mr. Rowe: you
9 mentioned there were two sources of heat, and you
10 mentioned the fire. Does this mean there were two
11 separate fires?

12 A. Yes, there were.

13 Q. And this was evident to you when you entered the
14 house?

15 A. Yes. We went through the bulk of the fire that,
16 like I stated, was to the left. But to the right, at a
17 distance from our point of entry, we could see smoke
18 issuing. And we thought it was possibly an extension or
19 whatever but, in fact, there was another fire over here.

20 MS. STILLEY: Your Honor, I have no further
21 questions.

22 If you would answer any questions Mr. Matthews
23 has for you, Mr. Rowe.

24 MR. MATTHEWS: May it please the Court?

25 THE COURT: Cross-examination.

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CROSS-EXAMINATION

BY MR. MATTHEWS:

Q. Mr. Rowe, what time did you get the call?

A. I believe the call came, ballpark area, zero seven.

Q. Seven o'clock?

A. Correct.

Q. Okay. Based on the fire -- you've responded to a lot of fires?

A. Twenty-five years' worth.

Q. How long had that fire been burning?

A. It had been burning for a significant amount of time before -- it should have already vented through the roof.

Q. Okay.

MR. MATTHEWS: I don't have anything further, Your Honor.

THE COURT: Redirect?

MS. STILLEY: None, Your Honor.

THE COURT: As to this witness, may he be excused?

MS. STILLEY: Yes, Your Honor.

THE COURT: Any objection to this witness being excused, Mr. Matthews?

MR. MATTHEWS: No objection, Your Honor.

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1 THE COURT: Mr. Rowe, you may step down from the
2 witness stand, and you are excused from the courtroom.
3 You may leave at this time.

4 [Whereupon, the witness is excused and exits the
5 courtroom]

6 THE COURT: Mr. Foreman, and ladies and
7 gentlemen of the jury, I'm going to take my one and
8 only mid-morning break at this time. During this
9 break, ladies and gentlemen, the clerk will be coming
10 in, or someone for the clerk, and taking a lunch order
11 for you so we can have your lunch prepared for you and
12 brought in to serve for you at lunch.

13 Please do not discuss the case during the break.
14 You have not heard all the evidence in the case.

15 If I have any smokers on the jury, and you want
16 to smoke, my bailiffs will take you outside the
17 courtroom -- smoking is not permitted inside the
18 courtroom -- if that need arises during the break.

19 I'll be right back with you as quick as I can.
20 So you'll have a chance to stretch your legs, use the
21 restroom, get a lunch order, and we'll continue with
22 the trial of the case. You may retire to your jury
23 room at this time.

24 [Whereupon, the jury exits the courtroom at
25 10:32 a.m.]

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1 THE COURT: All right. Counsel, we'll take a
2 break. I suggest that during the break you get
3 together and what should have been done prior to trial,
4 even though you pre-marked exhibits -- if there's an
5 objection let me hear from it now, outside the presence
6 of the jury, so we can move forward after the break.

7 We'll take ten minutes.

8 [Whereupon, a recess is taken from 10:32 a.m. to
9 10:57 a.m.]

10 THE COURT: Is the State ready to proceed?

11 MS. STILLEY: Yes, Your Honor.

12 THE COURT: You've got the board in the position
13 you want it now, Mr. Thornton?

14 MR. THORNTON: It is, Your Honor. It will only
15 take about thirty seconds to -- I just didn't want
16 anything on the screen, so I've left it down until --
17 and I'll take care of that while she's --

18 THE COURT: Mr. Matthews, is that blocking your
19 view of anybody?

20 MR. MATTHEWS: No. No, sir. I just wanted to
21 see. Maybe we have a chance now while the jury is not
22 here if they could show me what's up, and I could save
23 the jury some time if I could see the exhibits they
24 want --

25 THE COURT: My understanding is it's the same
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1 exhibits that you've already reviewed.

2 MS. STILLEY: It's the same ones.

3 MR. THORNTON: It's just for publishing --

4 THE COURT: I'm not allowing them to show
5 anything that you haven't seen, Mr. Matthews -- I can
6 promise you that -- just like you're not going to walk
7 over there on a board and hand the jury something that
8 they haven't seen. Do you understand?

9 MR. MATTHEWS: Yes, sir.

10 THE COURT: Very well.

11 If you would bring us the jury, please. I can't
12 see. Have I got a bailiff back there?

13 MR. THORNTON: I'm sorry, Judge. I didn't mean
14 to block your view.

15 [Whereupon, the jury enters the courtroom at
16 10:58 a.m.]

17 THE COURT: All right. Mr. Foreman, ladies and
18 gentlemen of the jury, we will now continue with the
19 testimony in the trial of this case.

20 Counsel, you may call your next witness.

21 MS. STILLEY: Thank you, Your Honor. The State
22 calls Scott Feather.

23 [Whereupon, Mr. Feather enters the courtroom]

24 THE CLERK OF COURT: Please come forward and be
25 sworn.

1 Please come place your left hand on the Bible,
2 and raise your right.

3 [Whereupon, Mr. Feather is duly sworn by the
4 clerk of court]

5 THE CLERK OF COURT: Please have a seat on the
6 witness stand, and state your full name for the record.

7 [Whereupon, Mr. Feather takes the witness stand]

8 THE COURT: How are you doing?

9 THE WITNESS: Good.

10 THE COURT: Have a seat, and be comfortable.
11 Pull that microphone down. It's going to amplify your
12 voice. I want you to speak up so my last jurors down
13 there on the end of the row can hear you.

14 And if you will begin by stating your full name
15 and spelling your last name for the court reporter.

16 THE WITNESS: All right. Scott Michael Feather.
17 F-E-A-T-H-E-R.

18 THE COURT: Very good.

19 Your witness, counsel.

20 MS. STILLEY: Thank you, Your Honor.

21 - - -
22 - - -
23 - - -
24 - - -
25 - - -

1 SCOTT M. FEATHER,
2 Having Been First Duly Sworn,
3 was Examined and Testified as Follows:

4 DIRECT EXAMINATION

5 BY MS. STILLEY:

6 Q. Mr. Feather, what is your position?

7 A. I'm a lieutenant with Colleton County Fire and
8 Rescue.

9 Q. And were you in that same position and working
10 for Colleton County last September 14th of 2007?

11 A. On that fire last September I was an engineer,
12 which was a step below, but I was --

13 Q. So you've been promoted?

14 A. -- I was still a fireman, basically.

15 Q. Okay. Could you state what training you've gone
16 through and about approximately how long you've been
17 fighting fires here in Colleton County?

18 A. Since June of '01, I've been with Colleton
19 County. I've got a background in air force fire
20 protection, I've been through the D.O.D. Fire Academy, and
21 I'm up to what they call a fire officer one training.

22 Q. Okay.

23 A. It's above -- a little bit above a fire-fighter
24 training.

25 Q. So you've been fighting fires here in Colleton

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1 County since 2001?

2 A. Yes.

3 Q. Okay. And could you please state your
4 involvement with a fire at 609 Fourth Street last
5 September 14th?

6 A. I was on duty, getting ready to get off that
7 morning, and we got toned out for the fire, and I
8 responded a tanker to the scene because that area doesn't
9 have any hydrants.

10 Q. Okay. Now, you got toned out?

11 A. Yeah. They -- when they call 911, the
12 dispatchers set off our pagers, and it sends a tone out
13 and --

14 Q. Okay. What time exactly were you toned out? Do
15 you remember?

16 A. Around 7:00 a.m.

17 Q. Okay. So you were with a -- basically, a water
18 truck?

19 A. Yes.

20 Q. And when did you arrive at the scene?

21 A. I believe it was eight or nine minutes later.

22 Q. And what did you do when you actually got there?

23 A. Positioned my truck behind another fire truck,
24 and put all my fire gear on, and put an air pack on, and
25 went up to the second handline or hose line, and went up

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1 to the door.

2 Q. Okay. And how -- so you arrived eight minutes
3 after you got the call shortly after 7:00 a.m. How far
4 involved was this fire?

5 A. I remember there was a lot of fire -- if you
6 were looking at the front door, there was a lot of fire to
7 the left, and there was a lot of really dark smoke coming
8 in the doorway, the front doorway.

9 Q. Okay. So fire was already visible outside of
10 the house?

11 A. Yeah. You could see it in the windows, and I
12 believe from the back side of the structure.

13 Q. Did you actually go into the house?

14 A. On the second handline I did.

15 Q. The second -- can you explain that, please?

16 A. Well, the first crew had two or three guys on
17 that handline. And they went in and went toward the fire,
18 toward the left. And myself and another guy were on the
19 second handline, to back them up, and we went in to the
20 left. And it was almost zero visibility inside, and we
21 couldn't see anything.

22 Q. Okay. And when -- you're going to have to
23 clarify this for me. A handline is a hose?

24 A. Yeah. It's a glorified garden hose.

25 Q. Okay. So when you went in, you mentioned the

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1 visibility was very low. Why did you first go to the
2 left?

3 A. Because that's where the fire was at. From the
4 outside we could see where the bulk of the fire was
5 located, so we try to go in and put the fire out.

6 Q. Did you notice any other fire when you entered
7 the house?

8 A. Not initially. Once we had the fire knocked
9 down and we were checking for extension, making sure the
10 fire hadn't traveled up into the attic or anywhere else,
11 we started going around the living room and found a door
12 that was shut. And we knew the door had been shut through
13 the whole fire because of where the smoke line on the wall
14 was down -- really down low. We opened that door, and we
15 saw another area that had been tried to be burned.

16 Q. So you only discovered the second one after you
17 put out the first fire?

18 A. Yes.

19 Q. Okay. And then I assume you proceeded to put
20 out the second fire?

21 A. It was pretty much smouldering.

22 Q. Okay. What did you do then?

23 A. I notified the battalion chief on duty, and told
24 him about the second area, and then I think he went ahead
25 and notified SLED after that.

1 MS. STILLEY: One moment's indulgence, Your
2 Honor.

3 [Whereupon, Ms. Stilley reviews documents]

4 MS. STILLEY: I have no further questions for
5 you, but if you wouldn't mind answering any Mr.
6 Matthews has.

7 THE WITNESS: Okay.

8 MS. STILLEY: Thank you.

9 THE COURT: Cross-examination.

10 MR. MATTHEWS: Just a moment, Your Honor.

11 THE COURT: Yes, sir.

12 [Whereupon, Mr. Matthews and Mr. Phillips
13 confer]

14 MR. MATTHEWS: No questions, Your Honor.

15 THE COURT: As to this witness, solicitor?

16 MS. STILLEY: He may be excused.

17 THE COURT: Any objection, Mr. Matthews?

18 MR. MATTHEWS: None, Your Honor.

19 THE COURT: You may step down, Mr. Feather, and
20 you are excused --

21 THE WITNESS: Thank you.

22 THE COURT: -- from the courtroom. You may
23 leave at this time.

24 [Whereupon, the witness is excused and exits the
25 courtroom]

1 THE COURT: Call your next witness.

2 MS. STILLEY: Your Honor, the State calls Daniel
3 Barb.

4 [Whereupon, Mr. Barb enters the courtroom]

5 THE CLERK OF COURT: Mr. Barb, please come
6 forward to be sworn. Come forward.

7 Place your left hand on the Bible, and raise
8 your right. Right here.

9 [Whereupon, Mr. Barb is duly sworn by the clerk
10 of court]

11 THE CLERK OF COURT: Please have a seat on the
12 witness stand, and state your full name for the record.

13 [Whereupon, Mr. Barb takes the witness stand]

14 THE COURT: Have a seat for me. How are you
15 doing? Pull that microphone down. It's going to
16 amplify your voice. You can adjust it. Make it as
17 close to you as you need. But I need you to speak up
18 so those last jurors on the end down there can hear you
19 at the end of the box.

20 If you would begin, please, by stating your full
21 name and spelling your last name for the court
22 reporter. Speak up for me.

23 THE WITNESS: Daniel Anthony Barb. B-A-R-B.

24 THE COURT: Your witness, counsel.

25 MS. STILLEY: Thank you, Your Honor.

DANIEL BARB,

Having Been First Duly Sworn,

was Examined and Testified as Follows:

DIRECT EXAMINATION

BY MS. STILLEY:

Q. Mr. Barb, what is your position?

A. Battalion chief of the Colleton County Fire Department.

Q. And how long have you been in that position with Colleton County?

A. Three years.

Q. So you were in that same position last September 14th of 2007?

A. Yes.

Q. Mr. Barb, I'm going to hand you some documents. Can you identify these documents?

A. Yes.

Q. And what are they?

A. This is a picture of a house on fire that I responded to on that date.

Q. Could you just flip through all of them, please, and just let me know if you can recognize --

A. Yes.

Q. Did you take those photographs?

A. Yes.

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1 Q. Are they a truthful and accurate representation
2 of the scene as you saw it on September 14th, 2007?

3 A. Yes.

4 THE COURT: What numbers, counsel?

5 MS. STILLEY: Your Honor, I believe they are
6 40 -- pardon me one moment. 45 through 58. They are
7 marked as State's Exhibit for identification.

8 THE COURT: Pre-marked 45 through 58?

9 MS. STILLEY: Yes, Your Honor.

10 THE COURT: And you are offering them?

11 MS. STILLEY: Yes, sir.

12 THE COURT: Show them to counsel.

13 [Whereupon, Ms. Stilley proffers documents to
14 Mr. Matthews]

15 [Whereupon, Mr. Matthews reviews documents]

16 MR. MATTHEWS: No objection, Your Honor.

17 MS. STILLEY: Your Honor, the State moves that
18 these be admitted into evidence.

19 THE COURT: Ladies and gentlemen of the jury,
20 State's Exhibits 45 through 58 --

21 Is that right, counsel?

22 MS. STILLEY: Yes, Your Honor.

23 THE COURT: -- will be admitted into evidence
24 without objection. 45 through 58 in evidence.

25 [Whereupon, State's Exhibit Numbers 45, 46, 47,

1 48, 49, 50, 51, 52, 53, 54, 55, 56, 57 and 58 are
2 admitted into evidence by the Court]

3 THE COURT: You may now publish to the jury.

4 [Whereupon, Ms. Stilley and Mr. Thornton confer]

5 MS. STILLEY: Your Honor, I would like to ask
6 Mr. Barb if he could come down. We're going to go
7 through these exhibits on the Star Board.

8 THE COURT: Madam Clerk, would you get the
9 portable microphone.

10 Mr. Barb, when you step down, you're going to
11 have your back to my court reporter. She needs to see
12 you. That's why she is seated below you. In fact, I
13 have two court reporters today. I'm going to hand you
14 a portable microphone. Hold it close up and speak into
15 it. It's going to amplify your voice, because you're
16 going to be up at the board with the exhibits.

17 Counsel, I'm going to ask you to speak up so
18 that the court reporters can hear you, if you're going
19 all the way over to the board.

20 Ladies and gentlemen of the jury, if you cannot
21 see or hear, please raise your hands for me.

22 You may step down.

23 Madam Clerk, would you give Mr. Barb a
24 microphone.

25 [Whereupon, the clerk of court complies]

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1 THE COURT: Can you see, Mr. Matthews?

2 MR. MATTHEWS: Yes, sir.

3 Q. [Ms. Stilley] Mr. Barb, could you please
4 explain what this is?

5 THE COURT: What number, counsel?

6 MS. STILLEY: Your Honor, this is State's
7 Exhibit 45.

8 THE COURT: Very well.

9 Mr. Barb, if you'll get on the other side, look
10 back toward my court reporters, and hold that mike
11 close, if you would.

12 A. This is a photograph of the early stage of the
13 fire, shortly after I arrived.

14 Q. [Ms. Stilley] And is that 609 Fourth Street
15 here in Walterboro?

16 A. Yes.

17 Q. State's Exhibit 46. Would you please state what
18 this is.

19 A. Same address, same fire. Still in the front
20 yard here.

21 Q. This is State's Exhibit 47. Could you please
22 state what this view is.

23 A. Same address, same fire, looking at the left
24 side of the residence from the street.

25 Q. State's Exhibit 48?

1 A. Same address, same fire, at a different angle
2 from the last picture.

3 Q. State's Exhibit 49?

4 A. This is the same address, same fire, from the
5 rear of the home.

6 Q. State's Exhibit 50?

7 A. From the front yard.

8 Q. State's Exhibit 51?

9 A. This is the same address, same fire, from the
10 rear.

11 And all these pictures were taken in the first
12 few minutes of my arrival.

13 Q. State's Exhibit 52?

14 A. Same address, same fire, from the rear.

15 Q. State's Exhibit 53?

16 A. Same address, same fire, looking in a window.

17 Q. Do you remember which window?

18 A. No.

19 Q. State's Exhibit 54. Can you explain what this
20 is?

21 A. This is after the main body of the fire was
22 knocked down or extinguished from the crews. And the
23 interior of this photo was taken from the front yard.

24 Q. So the main fire you're saying occurred at this
25 end of the house?

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1 A. The main body of the fire when we arrived was at
2 this end of the house.

3 Q. And this is the view looking at the house from
4 the street?

5 A. Yes.

6 Q. State's Exhibit 55?

7 A. I did not take this picture, but this is from
8 the -- let me explain something really quick. From the
9 front of the house -- in fire service we identify a
10 building by A, B, C, or D. If you're looking at a house
11 from a street, it's an A side. Going to your left, B, the
12 left side, D -- C, the rear; D, the right side. From this
13 angle here, this is the B side of the house. From the
14 street, left-hand side of the house.

15 Q. And is that you?

16 A. And that's me in that picture.

17 Q. State's Exhibit 56. Could you please tell me
18 what these firefighters are doing?

19 A. At this point at the fire, the body of the fire
20 has been knocked down, the flames have been extinguished,
21 the fan has been placed in the front of the residence
22 where the door is, to push the smoke and heat out so the
23 firefighters can get in there and further extinguish the
24 fire.

25 Q. State's Exhibit 57. Can you please state which
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1 part of the house this is?

2 A. This is the front of the house, the A side,
3 looking directly at the porch.

4 Q. And did you personally view these gas cans?

5 A. Yes.

6 Q. And they were in that same position while you
7 were there?

8 A. When I first noticed them, yes.

9 Q. Okay. And what is this firefighter doing?

10 THE COURT: Give the exhibit number for the
11 record.

12 MS. STILLEY: Beg your pardon.

13 Q. [Ms. Stilley] State's Exhibit 58.

14 A. This firefighter is extinguishing the fire from
15 the outside of the house. It appears to be in the eaves
16 of the house.

17 MS. STILLEY: And you can take the stand again,
18 Mr. Barb.

19 [Whereupon, the witness complies]

20 MS. STILLEY: A moment's indulgence, Your Honor.

21 Q. [Ms. Stilley] Mr. Barb, when you arrived and
22 were noticing the fire as you were walking around taking
23 your photographs, did you notice anything about where the
24 fire was located in this house?

25 A. Yes.

1 Q. What did you notice?

2 A. I noticed that the main body of the fire was, as
3 I described earlier, the -- as we identify the house, the
4 C -- B side of the house is where the main body of the
5 fire was, identified by the amount of fire.

6 Q. So you mentioned the main body. Was there
7 another fire, to your vision, on the outside of the house?

8 A. No.

9 MS. STILLEY: Okay. No further questions, Your
10 Honor.

11 If you would please answer anything Mr. Matthews
12 has for you.

13 Do I need to --

14 THE COURT: Those can be given to the jury.
15 They are in evidence.

16 [Whereupon, Ms. Stilley proffers documents to
17 the jury]

18 THE COURT: Cross-examination.

19 MR. MATTHEWS: Yes, Your Honor. Just one
20 moment.

21 [Whereupon, Mr. Matthews and Mr. Phillips
22 confer]

23 MR. MATTHEWS: No questions of this witness,
24 Your Honor.

25 THE COURT: As to this witness?

1 MS. STILLEY: We would ask that he be excused,
2 please.

3 THE COURT: Any objection to this witness being
4 excused?

5 MR. MATTHEWS: No, sir.

6 THE COURT: Mr. Barb, you may step down from the
7 witness stand, and you are excused from the courtroom.
8 Thank you very much.

9 [Whereupon, the witness is excused and exits the
10 courtroom]

11 THE COURT: Call your next witness.

12 MS. STILLEY: Your Honor, may we approach,
13 please?

14 THE COURT: Counsel approach.

15 [Whereupon, an off-the-record bench conference
16 is held]

17 MS. STILLEY: Your Honor, the State calls
18 Sterling Seals.

19 The CLERK OF COURT: Come forward and be sworn.

20 [Whereupon, Mr. Seals complies]

21 THE CLERK OF COURT: Put your left hand on the
22 Bible, and raise your right hand.

23 [Whereupon, Mr. Seals is duly sworn by the clerk
24 of court]

25 THE CLERK OF COURT: Please have a seat on the

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1 witness stand.

2 [Whereupon, Mr. Seals takes the witness stand]

3 THE CLERK OF COURT: State your full name for
4 the record.

5 THE COURT: Good morning.

6 THE WITNESS: How are you doing, Your Honor?

7 THE COURT: Make yourself comfortable. Put that
8 down there. Pull that microphone, and pull the chair
9 up, and make yourself comfortable. Speak up for me.

10 State your full name and spell your last name
11 for the court reporter.

12 THE WITNESS: My name is Sterling A. Seals. My
13 last name is spelled S-E-A-L-S. I'm a special agent
14 with the South Carolina Law Enforcement Division.

15 MS. STILLEY: Thank you, Agent Seals.

16 - - - - -

17 STERLING A. SEALS,

18 Having Been First Duly Sworn,
19 was Examined and Testified as Follows:

20 DIRECT EXAMINATION

21 BY MS. STILLEY:

22 Q. What is your exact position with SLED?

23 A. I'm assigned to the arson bomb unit.

24 Q. And how long have you worked there?

25 A. Worked there two years.

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1 Q. And do you have any type of education that
2 prepares you for this position?

3 A. Yes. I've had over 132 hours of direct fire-
4 training experience that I've gained over the last two
5 years. I graduated from the South Carolina Fire Academy
6 Arson Investigator course, as well as the Juvenile Fire
7 Center course, and numerous what they call certified fire
8 investigator training courses, different things for
9 collecting evidence, documentation, as well as other on-
10 the-job training with highly experienced investigators.

11 Q. Okay. Agent Fields, what exactly is your
12 position with the agent -- or with the arson and bomb unit
13 at SLED? Could you describe that a bit further, what you
14 do there?

15 A. Well, let me first explain: SLED's overall
16 mission is to provide assistance to local authorities with
17 particular kinds of crimes where they need particular
18 types of investigative help or assistance. I belong to
19 the arson bomb unit and my job is to do an origin-and-
20 cause investigation of a fire, or a post-blast bomb
21 detonation. What that means is if there's a fire, the
22 fire department or the local law enforcement agencies can
23 call us in and make a request, and then myself or other
24 members of my unit will come in, gather information and
25 data, and determine the origin of the fire and give a

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1 cause as to what started that fire.

2 Q. Thank you.

3 MS. STILLEY: A moment's indulgence, Your Honor.
4 [Whereupon, Ms. Stilley and Mr. Thornton confer]

5 Q. [Ms. Stilley] So, Agent Fields, let me get this
6 correct. Your education and your on-the-job experience,
7 both with SLED and prior to that, it's all prepared you to
8 be specifically an investigator that specializes in arson?

9 A. That's correct.

10 MS. STILLEY: Your Honor, the State would move
11 that Mr. Seals be qualified as an expert in the field
12 of arson investigation.

13 THE COURT: Any objection as to qualifications?

14 MR. MATTHEWS: Probably not, Your Honor.

15 However, I would like an opportunity to ask him
16 a few questions.

17 THE COURT: You may cross-examine as to
18 qualification, counsel.

19 MR. MATTHEWS: Thank you, Your Honor.

20 VOIR DIRE EXAMINATION

21 BY MR. MATTHEWS:

22 Q. Agent Seals, you've been in the arson and bomb
23 unit for two years?

24 A. That's correct.

25 Q. Okay. And starting -- so you would have been,

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1 at the time of this investigating, having done that one
2 year?

3 A. Approximately thirteen months.

4 Q. Thirteen months? Okay. A year and a month.

5 All right. And you indicate a hundred and --
6 did you receive your fire training -- did you receive all
7 of that prior to your getting the job, or did you get that
8 after you were assigned to the post?

9 A. I received my fire investigator training after
10 being assigned as an agent with the South Carolina Law
11 Enforcement Division.

12 Q. Okay. And approximately how many times have you
13 been qualified as a court expert?

14 A. This is the first.

15 MR. MATTHEWS: Nothing further, Your Honor.

16 THE COURT: Any objection?

17 MR. MATTHEWS: No, sir.

18 THE COURT: Ladies and gentlemen of the jury,
19 you are about to hear the testimony of a witness who
20 claims to have special knowledge, skill, training, or
21 experience or education in the field of arson
22 investigation. Normally, ladies and gentlemen, the law
23 does not permit people to get on the witness stand and
24 give opinion testimony or conclusion testimony. An
25 exception to that opinion rule is for those experts we

1 call expert witnesses, witnesses who claim to have
2 special knowledge, skill, training, or experience or
3 education in some field will be permitted if qualified,
4 as a matter of law, by the Court in this case -- the
5 witness is qualified without objection -- are permitted
6 to give an opinion as an expert into matters in which
7 they claim to be so-skilled.

8 In determining the weight to be given to such
9 expert opinion, you should consider the qualifications
10 and the credibility or believability of the expert and
11 the reasons given for his opinion. You are not bound
12 by any expert opinion. You give it the weight, if any,
13 to which you as a jury deem it should be entitled.

14 The witness is qualified without objection. You
15 may proceed, counsel.

16 MS. STILLEY: Thank you, Your Honor.

17 CONTINUED DIRECT EXAMINATION

18 BY MR. STILLEY:

19 Q. Agent Seals, could you please state your
20 involvement, initial involvement, with the fire at 609
21 Fourth Street here in Walterboro last September?

22 A. On September 14th, my lieutenant at the time,
23 Charles Glivens [phonetic], contacted me and he advised
24 that the Colleton County Fire and Rescue Department had
25 requested SLED's assistance. At that time, then I

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1 responded to 609 Fourth Street. I met with the local
2 authorities. And after obtaining a signed search warrant,
3 then I began my -- began my scene examination.

4 Q. Thank you. Agent Seals, I'm going to hand you
5 some documents.

6 MS. STILLEY: Your Honor, I'm handing the
7 witness State's Exhibit -- or marked for identification
8 1 through 44.

9 THE COURT: 1 through 44.

10 Q. [Ms. Stilley] Do you recognize these
11 photographs, Agent Seals?

12 A. Yes, I do.

13 Q. Did you take those photographs?

14 A. Yes, I did.

15 Q. And are they a truthful and accurate
16 representation of the scene you saw on September 14th,
17 2007?

18 A. They are.

19 Q. Thank you.

20 THE COURT: Are they all photographs, counsel?

21 MS. STILLEY: No, Your Honor. Number 44 --

22 THE COURT: Do you want to ask him about the
23 ones that aren't?

24 Q. [Ms. Stilley] Do you recognize the first
25 exhibit, or the document before you, marked Number 1?

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1 A. The -- should I show the jury?

2 Q. Do you recognize that?

3 A. Yes, I do.

4 Q. And did you prepare that document?

5 A. Yes, I did.

6 Q. And was it through your investigation that you
7 determined the victim was James Cook?

8 A. Yes. Through my investigation, yes.

9 Q. And, now, for the document marked 44, could you
10 explain what that is?

11 A. This is a scene diagram that I prepared.

12 Q. Okay. And you prepared that based on your
13 investigation in this matter?

14 A. This diagram was only prepared after all data
15 was collected and I had ample time to look through all
16 information that I gathered through my investigation.

17 Q. Thank you.

18 [Whereupon, Ms. Stilley proffers documents to
19 Mr. Matthews]

20 [Whereupon, Mr. Matthews reviews documents]

21 MR. MATTHEWS: Your Honor, for reasons that I
22 have already mentioned and we discussed, I would object
23 to 1 and 44. Otherwise, no objection.

24 THE COURT: All right. I'll put my reasoning on
25 the record.

1 There is an objection to State's Exhibits 1 and
2 44. No other objection to the other exhibits; is that
3 correct?

4 MR. MATTHEWS: That's correct, sir.

5 THE COURT: As to State's 1 and 44, the
6 objection is overruled. 1 and 44 admitted into
7 evidence over objection. The balance of the exhibits
8 are admitted into evidence without objection.

9 Which I assume would be 2 through 43; is that
10 correct, counsel?

11 MS. STILLEY: Yes, Your Honor.

12 MR. MATTHEWS: Yes, Your Honor.

13 THE COURT: Very well.

14 [Whereupon, State's Exhibit Numbers 1, 2, 3, 4,
15 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19,
16 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33,
17 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44 are admitted
18 into evidence by the Court]

19 THE COURT: You may publish to the jury,
20 counsel.

21 MS. STILLEY: Your Honor, I would ask that this
22 witness come off the witness stand to testify in front
23 of the Star Board, please.

24 THE COURT: All right. Madam Clerk, would you
25 give him the portable mike.

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1 Counsel, you may come around. And, counsel,
2 please stand back so the jury can see the board.

3 Please speak closely to that mike so it will
4 pick you up, please, Mr. Seals.

5 Can everyone see? Please use exhibit numbers
6 for the record. Mr. Matthews, can you see?

7 MR. MATTHEWS: Yes, Your Honor.

8 THE COURT: Very well.

9 Q. [Ms. Stilley] Agent Seals, could you please
10 identify what this is?

11 A. This is a SLED photo card. Any time that I
12 begin my scene photographs, the first photograph -- I use
13 this photo card -- identifies where I'm at, what time, and
14 if I have a victim, and then labeled as a fire
15 investigation. Everything I go to is obviously a fire
16 investigation.

17 MS. STILLEY: Ladies and gentlemen, this is
18 State's Exhibit Number 1.

19 Q. [Ms. Stilley] State's Exhibit Number 2. Could
20 you please explain what this is?

21 A. This photograph here is of the front of the
22 residence. This is exactly the way the residence was, the
23 condition that it was in upon my arrival. It was already
24 secured by yellow-colored area tape. You can also see
25 here, in the corner of the photograph, this is the

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1 position the gas-tank containers were in upon my arrival.

2 Q. Agent Seals, just for our knowledge, was the
3 fire completely put out when you arrived?

4 A. The fire was extinguished by the time that I
5 arrived.

6 Q. Is that your typical protocol?

7 A. That is for my own safety. And be able to
8 gather any evidence or to do the documentation properly,
9 the fire does have to be extinguished.

10 Q. State's Exhibit Number 3. Would you please
11 explain this photograph, Agent Seals.

12 A. This is the left side of the mobile home. This
13 was a double-wide mobile home. Any time that I do my
14 scene examination, as you saw from the first photograph,
15 I'm going to start at the front and I'm going to work my
16 way around, noting the damage. And by this point, I'm on
17 the left side of the house noting the fire damage and also
18 noting the electrical panel and the meter base for the
19 residence.

20 Q. Agent Seals, why is it -- why is this photograph
21 important based on the electrical panel here on the
22 outside of the house?

23 A. During any scene examination, you have to look
24 at anything that could be an area of origin, which is
25 basically where a fire starts. And then you also want to

1 look, if you have a specific area of origin, at what
2 ignited that fire. Obviously, anyone wants to know about
3 electrical. This being the main breaker panel, I mean, if
4 you lift this up -- and later photographs will show it, --
5 you can shut off the entire power.

6 Q. State's Exhibit Number 4?

7 A. You can shut off the entire power to the
8 structure from this panel right here. And this is the
9 meter base.

10 What I know from looking at this photograph and
11 when I saw it initially is that the actual meter itself is
12 missing. And anyone knows that if you have a meter,
13 that's what allows it to spin and count how many hours of
14 electricity you're receiving. I noticed from this there
15 was no meter base, and there obviously was no obvious fire
16 damage coming from either the main breaker panel of the
17 meter base itself.

18 Q. And the lack of fire damage to an electrical
19 meter out here, or lack thereof, this entire area,
20 indicates to you what?

21 A. By looking at this right here, I would have no
22 reason at this point to believe that this was an area of
23 origin for this fire.

24 Q. State's Exhibit 5. Could you please explain
25 what this is?

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1 A. This portion right here, again, is the left side
2 of the house or the mobile home. I have continued on to
3 the rear and now I'm looking into the rear and the left
4 side of the mobile home.

5 Q. State's Exhibit 6?

6 A. This is a more close-up shot of the living room
7 area of the mobile home and obviously showing the damage
8 more closely around the window that would have been at the
9 living room.

10 Q. Now, can you go ahead and tell us why is this
11 area more damaged than the other areas along the floor of
12 the back in this house?

13 A. At this point, I could not make any kind of
14 determination of why that was. Because any time we go to
15 an investigation, it's not to be presumptive. I'm not to
16 begin looking for something and then make my case. I look
17 at everything on the outside, taking note of it, and
18 notice more specifically, once I get inside of a
19 structure, comparing that damage which I saw on the
20 outside with what I'm seeing on the inside.

21 Q. State's Exhibit 7. Could you please explain
22 what this is?

23 A. This would be the right side of the mobile home.
24 And as you can see from the photograph, the only damage
25 that you see is what we call soot or smoke damage, and

1 it's just coming out from the eaves of the mobile home.

2 Q. State's Exhibit 8. Could you please explain
3 this photograph?

4 A. At this point, I have completed my exterior
5 examination. I've come all the way around the mobile
6 home. And, again, you can see more closely the two red-
7 in-color gas containers in the position of where they were
8 when I arrived at the scene.

9 Q. State's Exhibit 9. Could you please explain
10 what this is?

11 A. This is the front porch of the mobile home.

12 Q. State's Exhibit 10: is this the main door that
13 we just saw on State's Exhibit 9?

14 A. The previous photograph showed the entrance onto
15 the front porch. If you had gone through that opening,
16 walk up these stairs, the second photograph is actually
17 this doorframe before you enter the mobile home.

18 Q. Again, State's Exhibit 10. So this is the front
19 door you just indicated?

20 A. That's correct.

21 Q. This is where you made entry into the house?

22 A. This is where I initiated my interior scene
23 examination.

24 Q. State's Exhibit 11. Could you please state what
25 this is?

1 A. This is the -- what I identified as the den area
2 of the mobile home. And the only reason I identify it as
3 a den is in my own personal house when I was a kid, the
4 den had the fireplace, the living room did not. So I
5 identified this room as the den. But I'm entering the
6 den, as I identified it, in the mobile home.

7 Q. And that's the first room you walked into from
8 the front door?

9 A. That's correct.

10 Q. Could you please explain the amount of damage on
11 this side of the room versus the amount of damage on this
12 side of the room?

13 A. To a fire investigator, everything that we see
14 means something. We call it reading the scene. The first
15 thing that I see in this room is that the floor is in
16 relatively good condition. You can actually still see the
17 carpet. This line right here is what we call a line of
18 demarcation. And all that means is when a fire builds up,
19 the soot builds up and collects and pushes farther down
20 and that soot will collect on the walls. And that's why
21 you see this line right here.

22 Over here on the left, you're looking at the
23 living-room area of the mobile home. And you can see,
24 obviously, compared to the den, there's extensive fire
25 damage in this portion of the mobile home.

1 Q. State's Exhibit 12. Could you please explain
2 which room this is?

3 A. This, again, is the den. All I did on this
4 photograph is when you look at the previous one, just
5 looking as you walked in, just looking straight at it, I
6 went to the living room and turned back around and now
7 you're looking back out the front door.

8 Q. And, again, this is the line that you just
9 discussed?

10 A. Yes. That's what we call a line of demarcation.
11 And that's just created by the -- as the fire is building
12 up in other parts of the house it begins to push its way
13 down, and it creates that line on the wall how far it's
14 come down.

15 Q. Okay. So the fact that there is no fire around
16 this electrical outlet means the fire never reached that
17 low?

18 A. Actually, this is not fire damage at all. We
19 would not consider this fire damage. This is just soot on
20 the wall. This right here where you can see the charring
21 of the wood-support beams, and obviously what you can see
22 here, which is the kitchen, I mean, that's what we
23 consider the fire damage.

24 Q. State's Exhibit 13?

25 A. Again, I'm standing in the den, but now I'm

1 facing -- this is the entrance into the kitchen, and the
2 living room would be back over here.

3 Q. State's Exhibit 14. Could you please state
4 where you are in the house at this point?

5 A. When originally I was standing in the den with
6 the other photographs, this is the master bedroom. I have
7 just stepped into the master bedroom, and this is looking
8 at -- this would actually be the right -- if you were
9 facing the mobile home, this would be the right wall.

10 This is looking back out the front, back out
11 toward the front on the front porch.

12 And then this is the photograph of the items as
13 they were when I initiated my scene examination.

14 Q. State's Exhibit 15. Would you please state what
15 this is?

16 A. This, again, is also another picture from
17 another angle. I've just moved to a different part of the
18 master bedroom to get a better view, for the photograph,
19 of all the items that are in the room. Again, you can see
20 here a wall outlet here. You have another wall outlet
21 here. There's nothing plugged into them, and there's no
22 damage whatsoever. If you had a fire that was to come
23 from one of these wall outlets, then you would see what we
24 call a V pattern coming from this outlet, or this outlet
25 on this wall, coming to a point. But in this photograph

1 you can see all the fire damage is down here on the floor.

2 Q. State's Exhibit 16. Could you please explain
3 what this doorway is?

4 A. This is actually the door that goes into the
5 master bedroom. And this right here is the den. What's
6 important about this photograph is that you can see --
7 this is only what we call white soot. There's no fire
8 damage whatsoever. If fire had come into this room from
9 the other parts of the house, then you would have fire
10 damage up here around that part of the door or around the
11 sides of the door or on the bottom. You can see there's
12 no damage, fire damage, on the carpet, anywhere around the
13 doorframe, and nothing above here. What's very important
14 is there's no fire damage up here. And this is all just
15 soot. You can't even see the main body of the fire damage
16 from this photograph because it's more down here toward
17 the bottom of the photograph.

18 Q. So the fire that began in the den, that you
19 showed us, did not spread into this room?

20 A. That's correct.

21 Q. Okay. State's Exhibit 17. Would you please
22 explain what these two doorways are.

23 A. Again, this is another photograph of the master
24 bedroom. You can see there's this power cord right here
25 in the middle of the floor. But you can see this is the

1 male receptacle of the power cord. It's not plugged into
2 anything. Here's another wall outlet, obviously no
3 damage, and this is the master bathroom. And there's only
4 light soot that's collected inside of there. There's no
5 fire damage.

6 Q. State's Exhibit 18: Agent Seals, what is this?

7 A. Again, this is another view from the master
8 bedroom. Now, all I've done from the three previous
9 photographs to now is stand in each corner of the room to
10 give you a full perspective of the room. As you can see
11 here, we call these irregular burn patterns, and these
12 irregular burn patterns are of concern because they're
13 usually indicative of an ignitable liquid that causes that
14 kind of pattern.

15 Q. So in order to create this, somebody burns -- or
16 somebody poured something that then burned?

17 A. At this point, like I said, because this is not
18 the completion of the scene examination, I would not come
19 to that conclusion. It's just an indicator to be
20 concerned with. And I did eventually come back to this
21 room to examine it more closely because of that.

22 Q. Okay. State's Exhibit 19. Would you please
23 explain what this -- what area of the house this is.

24 A. This is a view of the master bath while standing
25 in the master bedroom.

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1 Q. And why is this photograph important in the lack
2 of damage?

3 A. There's only very light soot that's collected in
4 here. There's no obvious fire damage whatsoever in this
5 room, and so it would be ruled out as an area of origin.

6 Q. State's Exhibit 20: and where are we now?

7 A. I have now exited the master bedroom, walked
8 through the den, and now I'm in the doorway of the
9 kitchen.

10 Q. State's Exhibit 21. Would you please tell us
11 where we're standing and what we are looking at.

12 A. Now I have walked through the kitchen, and I'm
13 facing back of the doorway of where the previous shot was
14 photographed.

15 Q. Okay. So this is the den back in here?

16 A. This is the den. In the previous photograph, I
17 was standing in this location.

18 Q. Okay. State's -- pardon me.

19 [Off the record momentarily]

20 Q. [Ms. Stilley] State's Exhibit 23-A. Would you
21 please tell us what this is.

22 A. This is standing -- the previous photograph I
23 was in the kitchen facing back toward the den. Now all
24 I've done is do about a forty-five degree turn, and I'm
25 facing the utility room. I identified the utility room

1 just because that's where the washer and dryer would have
2 been stored.

3 And then at the bottom of the photograph, this
4 is the main breaker panel for the interior portion of the
5 structure.

6 Q. And that was contained in the doorway to the
7 other room?

8 A. I know it's difficult to interpret what you're
9 seeing here. But this was a wall and around this wall
10 this breaker panel was situated in -- like a typical-style
11 home, inside the wall, and because of the fire damage the
12 breaker panel just fell forward into the fire debris.

13 Q. State's Exhibit 23-B. And what is this a view
14 of now, Agent Seals?

15 A. Now all I've done is continued all the way to
16 the rear of the utility room, looking back toward the
17 kitchen. As I described to you, the wall is on this side.
18 You can see a portion of it here. This is the other side
19 of it -- gypsum board, drywall -- and then a better view
20 of the breaker panel.

21 What's important about this, if you're examining
22 the breaker panel, is that, yes, the internal parts are --
23 are [phonetic] been destroyed by fire. But they're
24 plastic. The copper wiring that goes in here is in
25 relatively good condition, considering the fire.

1 Everything in here obviously was exposed to fire, and got
2 fire damage, and changed accordingly. As you can see,
3 this is the refrigerator. And it shows the same amount of
4 damage in relation to the breaker panel. But if a fire
5 was to originate around this panel, all of this wall where
6 it was situated would have been consumed by fire. And
7 you'll see through later photographs a much greater amount
8 of fire damage, and what I mean by that, more in
9 particular.

10 MS. STILLEY: And this is another closeup,
11 State's Exhibit 24, Your Honor.

12 Q. [Ms. Stilley] This is located at the same
13 breaker box?

14 A. That's correct. It's just along the other side
15 of it. The other one was on the opposite side, and now
16 I've just switched to get a better photograph of the other
17 side.

18 Q. State's Exhibit 25. And what are we looking
19 into now?

20 A. This actually is the additional bedroom. This
21 mobile home had two bedrooms. This was the additional
22 bedroom. This would have been the left-rear corner of the
23 mobile home. The floor, you know, has some fire debris on
24 it. But there's no real extensive burn damage in here
25 whatsoever. A lots of soot. You can actually see the

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1 lightbulb over here.

2 Again, when we're looking at things to rule out:
3 let's say that this light fixture had initiated the fire.
4 Then there would be very heavy damage here, if not a hole
5 through the roof, and there definitely would not be a
6 lightbulb.

7 Q. State's Exhibit 26. Agent Seals, can you tell
8 us which part of the house we're looking at now?

9 A. This photograph was taken from me standing in
10 the utility room. And you're looking at what I identified
11 as the living room. There are some of the other members
12 of the Colleton County Fire and Rescue Department, who
13 described the main body of the fire. This is the area
14 where they were talking about. And you can see what I was
15 referring to as an extensive amount of fire damage. You
16 can see actually the holes are burned all the way through
17 the floor, and you have no ceiling whatsoever in the
18 living room.

19 Q. And did that indicate anything to you about the
20 source of the fire at this point, just seeing how badly
21 the burn -- this particular part of the house was burned
22 out?

23 A. Fire damage of this significance, and because
24 the floor has been burned away and the ceiling, then this
25 would be an area that a fire investigator would determine

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1 is a good likelihood of an area of origin and it needs to
2 be examined more closely. And that is what I did.

3 Q. State's Exhibit 27. Could you explain which
4 part of the house this is, Agent Seals?

5 A. As you probably have seen from my photographs in
6 the past, I like to get different views. Now I have just
7 crossed over that hole that you saw, and now I'm looking
8 back toward the utility room.

9 And, again, so you don't have to worry about the
10 breaker panels. Again, that breaker panel you've seen
11 before would have been in this section of the mobile home
12 right there. As you can see, you've got drywall. You've
13 even got wood studs where you can actually see the true
14 color of the wood. If the fire had originated there, that
15 would not be there. You would see damage like you see,
16 obviously, in this room right here.

17 Q. State's Exhibit 28. And what part of the floor
18 are you looking at in this one, Agent Seals?

19 A. This is the center-most section of the living
20 room floor.

21 Q. State's Exhibit 29. Could you explain what this
22 is?

23 A. What I've shown here, this is the living-room
24 floor. This would be the rear wall. And this wall is the
25 wall that's shared between the living room and the den.

1 And what's important about this photograph is that it
2 shows the main body of the fire was here in the center of
3 this room right here. This wall, even though it shows
4 some damage, is still intact, and so is this wall right
5 here.

6 This damage right here is caused by the fire
7 department. Any time they put a fire out, they do an
8 overhaul. They make sure there's no fire still burning
9 inside the building. They don't want it to rekindle.
10 This damage is explained by that. That's how that was
11 created, that hole, was because they pulled it down. But
12 what it also shows is if the fire had started in say this
13 corner or along this wall, then this portion would be
14 burned away. But as you can see here, the fire has
15 clearly extensively damaged the floor, and then later on
16 the walls became affected.

17 Q. Okay. State's Exhibit 30. Could you explain
18 which part of the house we're looking at?

19 A. Once an interior scene examination is concluded,
20 as far as looking for possible areas of origin -- and it's
21 a normal practice for us to remove fire debris to get a
22 better look of what you're seeing on the floor, what's
23 there.

24 At this point, fire debris has been removed from
25 the living room, the main hallway, the kitchen. And you

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1 can see back into the den. We're looking for indications
2 of irregular burn patterns. You don't see any here
3 through the kitchen or the hallway, but then as you get in
4 here in the living room you have an irregular burn pattern
5 in the center of the floor. And there was no outlets,
6 there was no appliances, in this area of that floor.

7 Q. Now, when you mentioned that fire debris was
8 moved, what are you -- what do you mean by fire debris?

9 A. Any time things burn, then they're classified as
10 fire debris. If this whole entertainment center will
11 burn, it's going to change its shape. Instead of a
12 television and a counter, now it's part of the -- like
13 this stuff right here. It's just parts of the gypsum
14 board or drywall. And now this is fire debris. So these
15 same type of materials were in the center. And they've
16 just been removed.

17 Q. So you are referring to other parts of the house
18 that have burned. That's what you consider fire debris?

19 A. Fire debris is just when items that do burn --
20 and they're on -- they're laying on the floor. They're
21 just classified as fire debris.

22 Q. Okay. Just wanted to get that clear. Thank
23 you.

24 State's Exhibit 31. Can you please describe
25 what this is?

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1 A. This is another photograph showing that the
2 living-room floor has been cleared. This item right here,
3 this is the remains of a fake Christmas tree. That's what
4 all these wires are. So you got the rings of a fake
5 Christmas tree.

6 And then this right here was very, very heavy.
7 We call it fall-down. If you have say a counter or a
8 shelf and it falls down during a fire, it can protect
9 areas. And that's what this did, and that's why it
10 stopped up to this point. Because all this is just floor
11 and carpet. When you get to this point, you've got
12 whatever materials fell down at that point.

13 Q. Okay. State's Exhibit 32. Can you explain what
14 this is, please?

15 A. At this point I have determined that this room
16 is the area of origin, the living room. I use a piece of
17 equipment, it's just a tool, sometimes called a hydrogen-
18 carbon detector, or a combustive gas detector. It looks
19 like a box with a wand on it. And it's like a sniffer.
20 And it's a presumptive test. It just gives me an
21 indication is there a possibility that ignitable liquid
22 was present.

23 In this area where the carpet padding was
24 protected by the fall-down you saw in the previous
25 photograph, I did get a positive reading with my equipment

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1 here. So I took a sample of the carpet and the padding
2 and the fire debris, placed it in this bag, using gloves
3 while I collect it -- not to contaminate it -- and then
4 the items were labeled, and they were sealed in this bag.

5 Q. And why are your gloves taken off and left
6 there?

7 A. It's just a practice of mine that after every
8 time I collect a piece of evidence I just use a new set of
9 gloves so there'll be no confusion of contaminating, if I
10 take this piece of evidence from this location and go
11 somewhere else; that maybe I had collected it and
12 contaminated it by using the same gloves. So I just take
13 them off. It shows where was I going in the photographs.
14 Those are gloves that are used to collect that evidence.

15 Q. State's Exhibit 33. Agent Seals, can you
16 explain what this view is?

17 A. This photograph is now back in the master
18 bedroom. It was the second point of origin that I
19 believed was inside the mobile home. Now that the fire
20 debris has been removed, you can see the irregular-shaped
21 burn patterns all along here. Again, I used the
22 combustible gas detector. I got positive readings all in
23 this location. And I collected samples, in a triangular
24 shape, from each point. And, again, the gloves indicate
25 that every sample was collected with a different set of

1 gloves. Each sample was collected in its location and
2 then placed in this bag and labeled and sealed.

3 Q. Okay. So you're back in the master bedroom at
4 this point. And you have determined this is a second
5 cause of origin in this house?

6 A. That's correct.

7 Q. And you determined that this did not spread from
8 the other part of the fire?

9 A. That is correct. This fire damage is limited to
10 the very center-most section of this room on the floor.
11 You can see here's your wall outlet, here's a wall outlet
12 here. If you were in this corner, there may be another
13 one over here. There are a traditional wall outlet in
14 each corner. This fire is clearly in the center of the
15 room.

16 And the reason that this fire would not have
17 spread as rapidly as the living-room fire was, one, how
18 much ignitable liquid, if there was ignitable liquid. And
19 at this point, I would not make that determination until
20 the items are analyzed. But if you knew that about any
21 liquid poured in here -- and this window was only broken
22 out during the overhaul by the fire department. If the
23 door was closed -- and it was closed -- and the fire
24 department arrived --

25 The fire needs oxygen to breathe. If it doesn't

1 have any oxygen, it'll just -- it'll just burn itself
2 down. If you've ever taken a candle and put a glass on
3 top of it, it'll fill up with smoke and you'll see the
4 flame go down. If you take that glass off, then that fire
5 would come right back. That's why they had a lot of smoke
6 in here, when they came in here, is because this fire
7 burned itself out because it didn't have enough oxygen.
8 And that's why it didn't burn at the rate as the other
9 room did. And it -- the living room had a more open area,
10 more oxygen to give it. A fire can burn itself through
11 the living room -- through the roof, and vent, and then it
12 gets all the oxygen it needs. And that's what was
13 apparent in the living room.

14 Q. And, again, I see three different sets of peeled
15 gloves. And can I assume that these are because you used
16 three different sets of gloves for the same reasoning as
17 the photographs we looked at?

18 A. That's correct.

19 Q. To prevent cross-contamination of samples?

20 A. That's correct.

21 Q. State's Exhibit 34. Can you explain what this
22 is, please, Agent Seals?

23 A. This is a more close-up photograph that will
24 really give you an indication of what we call irregular
25 burn pattern, right here, which is indicative of an

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1 ignitable liquid poured and ignited. You can see here by
2 the cutaway, the carpet padding, that the wood underneath
3 it is fine. This fire did not come from underneath the
4 mobile home, it did not come from anything on -- from the
5 ceiling. It truly was on the surface of the carpet.

6 Q. So fire typically doesn't burn in wavy patterns
7 like this on a floor?

8 A. No.

9 Q. And to get this sample in this bag, you
10 scratched up some of this -- what is this? carpet padding?

11 A. I took the carpet, as well as the padding below.

12 Q. Okay.

13 A. And to explain why this would be in this pattern
14 is say you took like a can of paint, and you threw it on
15 the floor, and how it would go out all in that direction.
16 It's not going to be like in a square. It's not going to
17 be in perfect shape. That's why if you poured something
18 on the floor, it would all go in this pattern -- and if
19 you had a fire and it was ignited, an area so close would
20 not be burned -- is because it's quickly burning the fuel.
21 And that's why it gives this pattern.

22 Q. Move to State's Exhibit 35. Agent Seals, can
23 you explain to me what this is?

24 A. This is a two-and-a-half gallon red gasoline
25 container that was located at the front of the mobile

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1 home -- and I photographed it where it sits -- and then,
2 obviously, the evidence bag that I was going to place it
3 into.

4 Q. Okay. You know, before, we had seen two red gas
5 cans. Why are both of them not in this picture?

6 A. Well, with something like the gas cans, it's --
7 for an evidence technician's point of view, it's what can
8 you get from it: one, can you determine if there's fuel
9 inside it; and then possibly a print. The only container
10 that was usable for this type of item was this paper bag.
11 And the other gasoline container was a five-gallon. I
12 don't have anything to hold -- to hold something that big.
13 What I can get from this container is the prints, and then
14 that there's ignitable liquid. And that's why this one
15 was -- this one was selected and placed in the bag.

16 Q. And just to clarify: this is in the same
17 position that you found it in?

18 A. That's correct.

19 Q. And then you placed it in that paper bag?

20 A. That's correct.

21 Q. State's Exhibit 36. Can you please explain what
22 this is?

23 A. The previous photograph just showed where it was
24 in the evidence bag that I placed it in. Now you can see
25 sort of the red glow and yellow tip. The fact that the

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1 gas container is now in the bag, and again, a new set of
2 gloves has been used to collect that.

3 Q. Okay. State's Exhibit 37. And are we back
4 outside the house now?

5 A. Yes.

6 Q. Agent Seals, could you explain what exactly
7 we're looking at?

8 A. In order to be as thorough as possible, when you
9 finish the interior scene examination, anything of concern
10 a fire investigator is going to go back and look at again.
11 And this is the external main-breaker panel on the outside
12 of the mobile home. It's where the second photograph you
13 saw. All I've done here now is lift up the panel to
14 examine the inside of the main-breaker panel. There is no
15 obvious fire damage inside here; there's no obvious signs
16 of malfunction.

17 What is notable is these three wires here, this
18 one, this one, and this one, are not -- are not the
19 original wires that were put in by the power company.
20 These three wires are that come to this conduit. These
21 were added later by an unknown person.

22 Q. What does this fire indicate to you -- or what
23 does this picture, pardon me, indicate to you about the
24 possibility that this fire was caused by the electrical
25 wires that were added?

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1 A. It's clear that there was no fire whatsoever
2 inside of this panel. And if fire had been originated
3 from the inside of the residences through some type of
4 electrical arc, which an electrical arc is that if you
5 have a malfunctioning in a wiring, it's going to shoot it
6 out, electrical charge, that can cause things to ignite.
7 But in that happening, a lot of times the breaker panel
8 will show damage because the energy is going back through
9 the lines. But I can't get into that too much, because
10 I'm not an electrical engineer.

11 Q. But you have determined there's no damage to
12 this unit?

13 A. That's correct.

14 Q. State's Exhibit 38. Can you explain? It looks
15 like a close-up maybe of the same thing.

16 A. This is a close-up. This is to show how
17 these -- this line, this line, and this one -- were added
18 on later, by someone else, to bypass the power system.

19 Q. But, again, no damage?

20 A. No damage.

21 Q. State's Exhibit 39. Can you explain what we are
22 looking at here?

23 A. The previous photograph, that main-breaker
24 ground was on the wood board. This is it right here. And
25 this is following the line. All I did was to just ensure

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1 that there was no fire damage to that line, where did it
2 go. And then this photograph is all I've done is moved
3 slightly to the left, looked under the mobile home, to see
4 where this line goes. And then I followed it the full
5 length of the mobile home to its source.

6 Q. Okay. State's Exhibit 40. Can you explain what
7 we're looking at here?

8 A. That meter -- that main-breaker panel would be
9 on the left. It ran under the mobile home, came under
10 this section right here. And you can see there is no fire
11 damage over here of any noteworthiness. It ran along the
12 ledge of the mobile home and on the ground. It's straight
13 under here. One thing I can determine by the fire damage
14 I see here is if the fire was to originate at this point,
15 from say that cable, then this portion of the mobile home
16 would be gone and you would have fire damage not only on
17 the inside, but on the outside as well. And you don't.
18 You have fire damage just on the inside, and this portion
19 of the mobile home is fine. And the cable continued to
20 run along the edge of the mobile home along the rear.

21 Q. State's Exhibit 41. Agent Seals, can you
22 explain what we're looking at?

23 A. Again, this is just the three cables continuing
24 along underneath the mobile home as I followed it. And
25 this is just the underpinning. I pulled it up to keep

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1 examining it.

2 Q. Okay. And these cables appeared intact to you?

3 A. That's correct.

4 Q. This is -- State's Exhibit 42, Agent Seals, is
5 the other end of the house, I would assume?

6 A. This right here would be the left-rear corner of
7 the mobile home. And, again, you can still see the line
8 heading toward the property on the right side.

9 Q. So it's leaving the house at this point?

10 A. That's correct.

11 Q. This is State's Exhibit 43. Can you explain --
12 is this another breaker panel on the house?

13 A. No. This panel -- as you saw in the previous
14 photograph, those lines ran through that conduit, and they
15 ran to the property located to the right. I followed
16 those lines where they went. This meter base and panel
17 were located to the property to the right. These wires
18 came up in here. As you can see this right here, this is
19 those additional wires; not supplied by the power company,
20 but by the lines you saw previously. But there is no fire
21 damage inside of this breaker panel, and there's no damage
22 whatsoever to the meter base.

23 Q. Okay. Agent Seals, what is this?

24 A. After I had collected all my data, all my
25 photographs, gathered all the information from the local

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1 authorities, the fire department, then I generate a final-
2 scene diagram with all the information. This is a
3 representation of the mobile home. This is the front, the
4 left, you have your meter base, your breaker panel that
5 we've been talking about, you have the rear, and the right
6 side. And this is the front porch.

7 Each of these numbers, 1, 2, 3, 4, and 5,
8 they're evidence samples that were collected. 1, 2, and 3
9 are the carpet padding and the fire debris collected from
10 the master bedroom. Sample number 4 is the photograph you
11 saw of the carpet padding and the fire debris sample
12 collected from the living room. And then number 5 is the
13 two-and-a-half gallon container, gasoline container, that
14 was found on the front porch originally, but, when I
15 arrived, on the front corner of the residence.

16 Q. And you took these samples in these exact
17 locations -- I refer to numbers 1, 2, 3, and 4 up here --
18 based on the readings from your hydrocarbon detector? Or
19 was there another indication that caused you to try to get
20 samples from those areas?

21 A. In each of these rooms -- this is the master
22 bedroom, and this is the living room -- obviously had
23 extensive fire damage. You had the irregular burn
24 pattern. There was a strong odor of gasoline. And the
25 tool that I used also gave a reading of the possibility of

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1 ignitable liquid. All of those things considered is why
2 those samples were collected.

3 MS. STILLEY: Okay. Your Honor, may I have a
4 moment, please?

5 THE COURT: You may.

6 [Whereupon, Ms. Stilley and Mr. Thornton confer]

7 MS. STILLEY: Your Honor, may I approach?

8 THE COURT: You may. Counsel?

9 [Whereupon, an off-the-record bench conference
10 is held]

11 THE COURT: Stay right here with me on the
12 witness stand.

13 Mr. Foreman, and ladies and gentlemen of the
14 jury, I need to take up a quick matter of law. It
15 won't take long. Probably just a couple of minutes.

16 Please do not discuss the case. I'm going to
17 ask you to step to your jury room, and I'll be back
18 with you in just a moment. Please do not discuss the
19 case. You may retire to your jury room.

20 [Whereupon, the jury exits the courtroom at
21 12:01 p.m.]

22 MR. THORNTON: Your Honor, with the Court's
23 permission, can he come down to open this up?

24 THE COURT: You don't need the witness to do
25 this now? You want to show it to counsel?

1 MR. THORNTON: Yes, sir.

2 THE COURT: I'm going to let the witness -- he's
3 in the middle of examination. The witness stays on the
4 witness stand.

5 Let the record reflect counsel approached the
6 bench. They have some exhibits that they did not want
7 to have to pull out of the box in the presence of the
8 jury, that they intend to offer with this witness, so
9 that Mr. Matthews could examine these exhibits so that
10 I could rule on them in front of the jury.

11 I took this break. While we are on this break,
12 I want to make the record of what occurred in chambers.
13 Mr. Matthews objected to Exhibits 1 and 44. Exhibit 1
14 is the cover sheet of this witness, Mr. Sterling Seals.
15 By cover sheet, it means the document that he opened
16 his file with. The objection was because on that sheet
17 the words victim with the name James Cook, I believe --

18 Is that right?

19 THE WITNESS: Yes, Your Honor.

20 THE COURT: -- on that Exhibit 1.

21 That was the objection, that the word victim --
22 there had already been testimony in this case from the
23 first witness, Lori Joslin, concerning Mr. Cook being
24 the victim. I overruled that objection.

25 As to 44, there was an objection to the sketch

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1 that is Exhibit 44 prepared by the witness, Sterling
2 Seals. I overruled that objection because I felt he
3 was qualified -- if qualified as an expert, which he
4 was, in arson investigation, he was entitled to publish
5 his sketch of where he took the samples of different
6 material from the location of the fire and what he did
7 with it. And I thought it would help assist the trier
8 of fact, the jury, in understanding the testimony of
9 the witness.

10 I therefore overrule that objection, and they
11 are admitted into evidence. Let there be a record of
12 the objections.

13 You may proceed, counsel.

14 [Off the record momentarily]

15 MR. THORNTON: Let's get these pre-marked.

16 [Whereupon, State's Exhibit Number 59, carpet
17 sample, is marked by the court reporter]

18 [Whereupon State's Exhibit Number 60, carpet
19 sample, is marked by the court reporter]

20 [Whereupon, State's Exhibit Number 61, carpet
21 sample, is marked by the court reporter]

22 [Whereupon, State's Exhibit Number 62, carpet
23 sample, is marked by the court reporter]

24 [Whereupon, State's Exhibit Number 63, gas can,
25 is marked by the court reporter]

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1 THE COURT: All right. Now, has Mr. Matthews
2 had an opportunity to review all of these exhibits that
3 are going to be offered now?

4 MR. MATTHEWS: I have, Your Honor, and I don't
5 have any objection to them.

6 THE COURT: All right. Now, they are going to
7 be numbers what?

8 MR. THORNTON: 59, 60, 61, 62, and 63. Am I
9 correct?

10 THE COURT: 59 through 63, Madam Court Reporter?

11 THE COURT REPORTER: Yes, sir.

12 THE COURT: All right.

13 [Off the record momentarily]

14 THE COURT: Are we ready to proceed now?

15 MR. THORNTON: I believe we are, Your Honor.

16 Just for the Court's information, I know Mr.
17 Matthews has already been shown the chain of custody.
18 Pursuant to the case law, we have this agent, who it is
19 my understanding will testify that it was sealed in the
20 bag when he turned it in to SLED. There are evidence
21 custodians named in here that would have touched the
22 outside bag but not broken the seal. The analyst will
23 be -- is here, and he will testify that he broke the
24 seal. In other words, I don't have every person on the
25 report here. I have the people who broke the seal and

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1 will testify that it remain unchained. I'm just
2 putting the Court on notice of that.

3 THE COURT: And you're going to put the chain
4 document into evidence?

5 MR. THORNTON: If required to by Mr. Matthews.

6 THE COURT: Well, Mr. Matthews says he has no
7 objection, in light of what you've told him as an
8 officer of the Court. But so there is a record of the
9 chain document, are you going to put it in as a Court's
10 exhibit?

11 MR. THORNTON: We can put it in as a Court's
12 exhibit, Judge. Be happy to.

13 THE COURT: Without objection. Court's Exhibit
14 Number 2, without objection.

15 [Whereupon, Court's Exhibit Number 2, SLED chain
16 of custody document, is marked by the court reporter]

17 THE COURT: Are we ready to proceed?

18 MR. THORNTON: Yes. I just -- I wanted to put
19 it on the record, Judge, at the appropriate time --

20 THE COURT: Hold on a second, and let him have a
21 chance to look at it again before I --

22 [Off the record momentarily]

23 THE COURT: All right. Put it on the record.

24 MR. THORNTON: Yes, sir.

25 Mr. Matthews, Your Honor, asked me to make sure

1 that we put on the record -- although the Court is
2 already aware of what the rule of law is -- that not
3 every person who touches the evidence in a chain of
4 custody has to appear and testify, so long as there are
5 no holes. Which is why we have made a Court's Exhibit
6 of the chain of custody in this case and --

7 THE COURT: Which is Court's Exhibit Number 2
8 now; correct?

9 MR. THORNTON: Yes, sir, Court's Exhibit Number
10 2.

11 And, Your Honor, I handed him a copy of the case
12 that kind of set that precedent, which was by the
13 Honorable Judge Few in the case of the State versus I
14 believe it's Carla Taylor --

15 MS. STILLEY: Taylor.

16 MR. THORNTON: -- and all the progeny after
17 that, Your Honor, where that has been the law now in
18 South Carolina. I just wanted to --

19 THE COURT: Very well.

20 MR. THORNTON: -- put that on the record.

21 THE COURT: Is there anything further from the
22 State before I bring the jury?

23 MR. THORNTON: No, sir.

24 MS. STILLEY: No, sir.

25 THE COURT: From the defendant before I bring

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1 the jury?

2 MR. MATTHEWS: No, Your Honor.

3 THE COURT: Bring us the jury, please.

4 [Whereupon, the jury enters the courtroom at
5 12:13 p.m.]

6 THE COURT: Thank you, Mr. Foreman and ladies
7 and gentlemen of the jury. We will now continue with
8 testimony in the trial of this case.

9 Direct examination, solicitor.

10 MS. STILLEY: Thank you, Your Honor.

11 CONTINUED DIRECT EXAMINATION

12 BY MS. STILLEY:

13 Q. Agent Seals, I'm going to show you some things
14 marked as -- marked for identification as State's 59, 60,
15 61, 62, and 63. Could you please look at these and tell
16 me if you can identify them?

17 THE COURT: Step back so the jury can see the
18 witness, counsel.

19 A. This is the --

20 Q. [Ms. Stilley] Do you just recognize those?

21 A. Yes. I recognize all of these.

22 Q. Okay. And you recognize these because you
23 personally took these --

24 A. Yes.

25 Q. -- from the house --

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1 A. Yes.

2 Q. -- at 609 Ford Street on September 14th?

3 A. That is correct.

4 Q. Okay. And when you took these, did you place
5 them into these sealed bags there at the scene?

6 A. I did seal them at the scene.

7 [Whereupon, Ms. Stilley proffers exhibits to Mr.
8 Matthews]

9 [Whereupon, Mr. Matthews reviews documents]

10 MR. MATTHEWS: Yes. Without objection.

11 MS. STILLEY: Your Honor, the State moves that
12 these be admitted into evidence as State's Exhibits 59,
13 60, 61, 62, and 63.

14 THE COURT: Any objection, Mr. Matthews?

15 MR. MATTHEWS: No, sir.

16 THE COURT: Ladies and gentlemen of the jury,
17 State's Exhibits 59, 60, 61, 62, and 63 will be
18 admitted into evidence without objection.

19 [Whereupon, State's Exhibit Number 59, carpet
20 sample, is admitted into evidence by the Court]

21 [Whereupon, State's Exhibit Number 60, carpet
22 sample, is admitted into evidence by the Court]

23 [Whereupon, State's Exhibit Number 61, carpet
24 sample, is admitted into evidence by the Court]

25 [Whereupon, State's Exhibit Number 62, carpet

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1 sample, is admitted into evidence by the Court]

2 [Whereupon, State's Exhibit Number 63, gas can,
3 is admitted into evidence by the Court]

4 THE COURT: You may now publish to the jury.
5 But step back, counsel, so they can see the witness.

6 Q. [Ms. Stilley] Agent Seals, could you remove 59,
7 please, and show it to the jury and explain what it is?

8 THE COURT: The red tag on it is the number.

9 A. This evidence sample right here is evidence
10 sample number 1. This sample was collected from the
11 master bedroom. And this sample actually is carpet and
12 carpet padding from that room.

13 Q. [Ms. Stilley] Okay. Could you please remove
14 60, State's Exhibit 60, and identify that to the jury,
15 please.

16 A. This is also collected from the master bedroom.
17 It's carpet and carpet padding. And it's labeled as
18 sample number 2.

19 Q. Okay. And could you please remove and identify
20 State's Exhibit 61?

21 A. 61 is evidence sample number 4, and this is
22 carpet and carpet padding collected from the living room
23 from 609 Fourth Street.

24 Q. Okay. And could you please do the same with
25 State's Exhibit 62?

1 A. 62 is carpet and carpet padding collected from
2 the master bedroom, and it's labeled sample number 3.

3 Q. Okay. And then I believe we have one down on
4 the floor. If you could remove it, as well. It is dirty.
5 Take it out of the bag and show it to the jury and let
6 them know what that is.

7 A. This is the two-and-a-half gallon gas container
8 that was collected at the front-right corner of the mobile
9 home. And it is labeled sample number 5.

10 Q. Thank you.
11 Now, you collected these at the scene; am I
12 correct?

13 A. That is correct.

14 Q. You sealed them --

15 THE COURT: Just a moment, counsel. Let him sit
16 down.

17 MS. STILLEY: I'm sorry.

18 THE COURT: Pull that microphone down and be
19 comfortable.

20 THE WITNESS: Okay.

21 THE COURT: Proceed.

22 Q. [Ms. Stilley] You collected these at the scene
23 and went ahead and placed them into the sealed bags?

24 A. That's correct.

25 Q. And you transported these to SLED, in Columbia,
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1 yourself?

2 A. I did.

3 Q. And they were still sealed when you turned them
4 in?

5 A. Yes.

6 MS. STILLEY: A moment's indulgence.

7 [Whereupon, Ms. Stilley and Mr. Thornton confer]

8 Q. [Ms. Stilley] Agent Seals, you picked these up
9 after processing at SLED?

10 A. That's correct.

11 Q. And on State's Exhibit 63, the gas can, why did
12 you submit that to SLED?

13 A. I submitted the gas can to check for latent
14 prints, for fingerprints, as well as to check the internal
15 contents to see if there was the presence of any ignitable
16 liquids.

17 Q. Were any latent prints found?

18 A. There was no identifiable prints. They called
19 it no value. They were not able to recover any.

20 Q. Okay.

21 MS. STILLEY: Your Honor, I have no further
22 questions for Agent Seals at this time. I would ask
23 that he answer any questions that Mr. Matthews might
24 have for him. But may be subject to recall, please.

25 THE COURT: Very well. Cross-examination.

1 MR. MATTHEWS: Thank you, Your Honor.

2 CROSS-EXAMINATION

3 BY MR. MATTHEWS:

4 Q. Agent Seals, when you talk about the front of
5 that, that would be the -- the front of the mobile home,
6 that would be the part of the mobile home that might be
7 referred to as A; would that be correct?

8 A. In my investigations I do not label the front of
9 the mobile home, or any structure, A, B, C, or D. Fire
10 departments do that. But, yes, A would be the front of
11 the mobile home.

12 Q. Okay. Why would you suppose fire departments do
13 that?

14 A. That's just the standard practice of fire
15 departments. It's to be able to quickly identify. If
16 they told their guys to go to the A-B corner, they can
17 quickly go to that side.

18 Q. Okay. It makes it easier for everybody to
19 understand what you're talking about; right?

20 A. That's correct.

21 Q. All right. You -- was the electric box hot when
22 you got there? Was there juice running to it?

23 A. Which electrical panel are you referring to? the
24 inside, or the outside?

25 Q. Inside, or the outside.

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1 A. There was cables running to the main-breaker
2 panel.

3 Q. I mean, were the cables active? Was there
4 electricity running through them?

5 A. The power company had secured the power prior to
6 my arrival.

7 Q. By secured, you mean make sure that it was off?

8 A. They made sure by cutting the overhead feed.
9 The mobile homes, they received their power from obviously
10 a transmitter down the road. They made sure that it was
11 cut prior to my scene examination. So at my time, there
12 was no power supply to it.

13 Q. Okay. But there's no question that was an
14 illegal hookup; right?

15 A. It's not my determination whether it was legal
16 or not. They were an addition to the original power
17 company's putting in the meter base and the breaker panel.

18 Q. Okay. If there was no meter, there was no way
19 to judge how much electricity was going to the place?

20 A. I'm not an electrician. I wouldn't be able to
21 give that information.

22 [Whereupon, Mr. Matthews and Mr. Phillips
23 confer]

24 MR. MATTHEWS: No further questions.

25 THE COURT: Redirect.

1 MS. STILLEY: Your Honor, we have none at this
2 time.

3 THE COURT: Very well. You may step down from
4 the witness stand.

5 [Whereupon, the witness is excused and remains
6 in the courtroom]

7 [Off the record momentarily]

8 THE COURT: Call your next witness.

9 MS. STILLEY: Your Honor, the State calls John
10 Roberts.

11 [Whereupon, Mr. Roberts enters the courtroom]

12 THE CLERK OF COURT: Mr. Roberts, would you
13 please come forward and be sworn.

14 [Whereupon, Mr. Roberts complies]

15 THE CLERK OF COURT: Put your left hand on the
16 Bible, and raise your right.

17 [Whereupon, Mr. Roberts is duly sworn by the
18 clerk of court]

19 THE CLERK OF COURT: Please have a seat on the
20 witness stand, and state your name for the record.

21 [Whereupon, Mr. Roberts takes the witness stand]

22 THE COURT: Good afternoon.

23 THE WITNESS: Good afternoon.

24 THE COURT: Make yourself comfortable. Pull
25 that microphone down to you. You can pull the chair

1 up, and the microphone will adjust up and down. It's
2 going to amplify your voice so the jury can hear you.
3 Please speak up for me.

4 Begin by stating your full name and spelling
5 your last name for the court reporter.

6 THE WITNESS: Yes, sir. My name is John Gray
7 Dodd Roberts. R-O-B-E-R-T-S.

8 THE COURT: Your witness, counsel.

9 MS. STILLEY: Thank you, Your Honor.

10 - - - - -

11 JOHN G. ROBERTS,

12 Having Been First Duly Sworn,
13 was Examined and Testified as Follows:

14 DIRECT EXAMINATION

15 BY MS. STILLEY:

16 Q. Mr. Roberts, what is your position?

17 A. I'm a forensic scientist with the South Carolina
18 Law Enforcement Division.

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

20 A. It'll be four years in February.

21 Q. And did you go through any special education or
22 training to attain this position?

23 A. Yes, ma'am. I have a bachelor's degree in
24 chemistry. And when I got my job at SLED, I went through
25 the in-house training programs for gunshot residue,

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1 bullet-hole analysis, and arson or fire debris
2 investigation.

3 Q. Okay. And you received -- you're going to see
4 some evidence below you on the floor, and it is marked as
5 State's Exhibits 59, 60, 61, 62, and 63. Special Agent
6 Sterling Seals, with SLED, dropped those off to your
7 laboratory on September 17th, 2007. Were they sealed when
8 you received those items?

9 A. Yes, ma'am.

10 Q. And you opened those items?

11 A. Yes, ma'am.

12 Q. So your specific training in the field of
13 forensic analysis was your prior education and your
14 bachelor's in chemistry, or was --

15 A. Yes, ma'am.

16 Q. Okay.

17 A. My bachelor of science in chemistry.

18 And in addition to that, I've gone through the
19 in-house training --

20 Q. Your in-house training.

21 A. -- at SLED --

22 Q. -- at SLED --

23 A. -- for gunshot residue, bullet-hole analysis,
24 and arson --

25 Q. Okay.

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1 A. -- or fire debris investigation.

2 Q. And those three specialty fields are what labels
3 you as a forensic specialist?

4 A. It labels me as a specialist in those three
5 fields. Yes, ma'am.

6 Q. Okay.

7 MS. STILLEY: Your Honor, we would move that Mr.
8 Roberts be qualified as an expert in the field of arson
9 forensic analysis. Your Honor, I apologize.

10 THE COURT: Okay. Any objection as to
11 qualifications?

12 MR. MATTHEWS: No objection, Your Honor.

13 THE COURT: Ladies and gentlemen of the jury,
14 recalling my earlier instruction to you concerning
15 expert testimony, the witness is qualified without
16 objection.

17 You may proceed, counsel.

18 MS. STILLEY: Thank you.

19 Q. [Ms. Stilley] Mr. Roberts, as I was saying:
20 when you received those samples, they were still sealed in
21 the packaging that Agent Seals had prepared?

22 A. Yes, ma'am.

23 Q. And you received those on September 17th, 2007?

24 A. I actually opened it on the 24th of September.

25 Q. Okay. And you opened those sealed packages.

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1 Did you do any testing on those packages?

2 A. Yes, ma'am. What we do for fire-debris analysis
3 is we put a carbon strip inside the samples, and reseal
4 them, and we heat them up. This makes the vapors that are
5 present or may be present on the samples to heat off and
6 deposit themselves on the carbon strip. After sixteen
7 hours in a hot oven, we pull them out, we rinse the carbon
8 strips off with a solvent, and then we run it on an
9 instrument and based on the pattern that we get off of
10 that instrument, we can call it negative, we can call it
11 positive for gas, positive for heavy petroleum distillate,
12 or any other kind of ignitable liquid.

13 Q. Okay. So these vapors that you talk about that
14 are coming off, that's the heavy petroleum or gasoline
15 that you're seeking?

16 A. Yes, ma'am.

17 Q. Okay. Could you please remove what's marked as
18 State's Exhibit 59. It's one of these clear packages up
19 here.

20 THE COURT: The red sticker.

21 MS. STILLEY: Red sticker. Yes, sir.

22 Q. [Ms. Stilley] Could you please explain what
23 that contains and what you found, if anything, after
24 testing?

25 A. This is a fire-debris sample. It looks like

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1 carpet padding, burned carpet padding, and burned carpet.
2 It's marked with my initials, and it's also marked with my
3 trace-lab evidence label. Marked it as inventory number
4 1. It's a K-Pac bag. It's a specialty bag that's made to
5 contain fire-debris evidence. It doesn't have any kind of
6 contaminants that may heat off on the carbon strip that we
7 use, so we prefer that people use this or a can. And in
8 this case, I got four bags and a plastic gas can. But
9 this is item number 1, and in this one I found gas.

10 Q. And your vapor test tells you that it is
11 gasoline as opposed to you mentioned you could also find
12 heavy petroleum?

13 A. Yes, ma'am. This was definitely gas. It wasn't
14 a heavy petroleum distillate, and it wasn't a medium. It
15 was gas.

16 Q. Okay. Thank you, Mr. Roberts.

17 Could you please remove another item -- you can
18 just sit that down -- that's marked as State's Exhibit 60.

19 A. State's Exhibit 60 is also burnt carpet and
20 burnt carpet padding. I've marked it with my initials and
21 my evidence label, as well.

22 Q. Okay. And did you test this sample in the same
23 manner as the other sample?

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

25 Q. What were the result of that test?

1 A. This was negative --

2 Q. Which --

3 A. -- for ignitable liquids.

4 Q. Okay. So you found neither gasoline nor heavy
5 petroleum --

6 A. That's correct.

7 Q. -- on that --

8 A. Yes, ma'am.

9 Q. -- particular sample?

10 A. Yes, ma'am. On this sample.

11 Q. Okay. Could you please sit that down and pick
12 up State's Exhibit 61.

13 A. 61 is also a K-Pac bag containing burned carpet
14 padding. It has my initials. It also has my evidence
15 label on this one. I ran this one in the same manner as I
16 did the previous two, and this was also negative for
17 ignitable liquids.

18 Q. Okay. And could you pick up the final bag, Mr.
19 Roberts. I believe that's State's Exhibit 62.

20 A. Yes, ma'am.

21 Q. And explain to the Court what that is.

22 A. State's Exhibit 62 is also a K-Pac bag, as the
23 previous three were. I've labeled this one as item 4. My
24 initials are on it. It is burned carpet padding and
25 carpet. I ran this one in the same manner that I did the

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1 previous three, and this was also negative for ignitable
2 liquids.

3 Q. Okay. Thank you.

4 And, last, could you please pick up the bag that
5 is behind those boxes, please, sir, and remove the items
6 from the inside -- it's marked State's Exhibit 63 -- and
7 explain what that is.

8 A. This that has been marked State's 63 is in the
9 package that it was in when I got it. What I did with
10 this one, instead of heating the whole gasoline can up in
11 my oven, what I did was pour an amount of the solvent that
12 we use to extract the chemicals from the C-strip into
13 here, swish it around, and then pour it into a tube and
14 run that the way that I would run a solvent from the
15 previous four bags. This takes up too much room to put in
16 my oven. And that's the easiest way to do it. And in
17 this case, I found gasoline in this container, as well.

18 Q. Okay. So just to recap: you found gasoline in
19 the red container, and you found gasoline on the first
20 carpet sample?

21 A. That is correct.

22 MS. STILLEY: Just a moment, Your Honor.

23 [Ms. Stilley and Mr. Thornton confer]

24 MS. STILLEY: Your Honor, I have no further
25 questions for this witness.

1 If you would please answer anything that
2 Mr. Matthews has for you, I would appreciate it,
3 Mr. Roberts.

4 THE COURT: Cross-examination

5 CROSS-EXAMINATION

6 BY MR. MATTHEWS:

7 Q. Officer -- Agent Roberts, is there -- did you
8 have any tests, or do any tests, to determine whether the
9 gas that was in the gas can that you found was the same
10 gas that was on the one out of the four that you actually
11 were able to find gas? The carpet samples.

12 A. No, sir.

13 Q. Okay. So there was gas in the gas can?

14 A. Yes, sir.

15 Q. Okay. And one out of the four sections of
16 carpet also had gas on it?

17 A. Yes, sir.

18 Q. Do you have -- do you have any way to know, or
19 do you know, whether where -- the carpet sample where the
20 gas was found, did that look like that contributed to the
21 major part of the fire?

22 A. I don't have any idea.

23 MR. MATTHEWS: No further questions, Your Honor.

24 THE COURT: Redirect?

25 MS. STILLEY: None, Your Honor.

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1 THE COURT: As to this witness?

2 MS. STILLEY: We would ask that he please be
3 excused.

4 THE COURT: Any objection to this witness being
5 excused, Mr. Matthews?

6 MR. MATTHEWS: No, sir.

7 THE COURT: Mr. Roberts, you may step down, and
8 you are excused from the courtroom and the trial of
9 this case.

10 THE WITNESS: Thank you.

11 [Whereupon, Mr. Roberts is excused and exits the
12 courtroom]

13 THE COURT: Call your next witness.

14 MS. STILLEY: The State re-calls Agent Sterling
15 Seals, with SLED.

16 THE COURT: Mr. Seals, if you will come back and
17 take the witness stand. And I remind you you are still
18 under oath.

19 MR. SEALS: Yes, Your Honor.

20 [Whereupon, Mr. Seals re-takes the witness
21 stand]

22 THE COURT: Proceed.

23 MS. STILLEY: Thank you.

24

25

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State vs. Phillips
Jury Trial - Volume 2 of 2
July 22, 2008

1 STERLING A. SEALS,

2 Having Been Previously Sworn,

3 was Examined and Testified as Follows:

4 DIRECT EXAMINATION

5 BY MS. STILLEY:

6 Q. Agent Seals, after reviewing the evidence and
7 receiving the report back from the SLED lab, what
8 conclusions can you draw about the incident at 609 Fourth
9 Street last September 14th?

10 A. All the evidence and all the collections data
11 that I did led me to believe that this fire was
12 incendiary, or intentional. And there was a couple of
13 different reasons why. One, obviously, the positive
14 sample of gasoline that was recovered from the master
15 bedroom. The second one, and would have been enough in
16 itself, was there was two separate points of origin. It
17 was clearly identifiable that the master bedroom was an
18 area where fire was started completely separate from the
19 second which was in the living room. Two separate fires
20 in an area where all accidental causes could be
21 eliminated, in and of itself, regardless of the positive
22 gas sample, would still have been deemed an intentionally
23 set fire.

24 The reason and the explanation that I have that
25 one of the four samples would come back positive for

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1 gasoline is that the tool that is used to determined where
2 to collect a sample holds in the vapors of the possible
3 presence of ignitable liquid. So if you're off just a
4 little bit left or right or center, you can miss that area
5 where the sample is the heaviest. Also, when you burn any
6 kind of ignitable liquid, during the process of fire
7 gasoline, kerosene, whatever, is consumed and so the
8 detector can pick up the presence of the vapors. But what
9 is still left in the carpet, carpet padding, or wood, can
10 be consumed during the process of fire.

11 Even if none of the sample came back, the fire
12 would have still been deemed, by my self, as being an
13 intentionally set fire because all accidental causes could
14 be ruled out and because the fire was in two separate
15 portions of the mobile home.

16 Q. So Agent Seals, in conclusion, in your expert
17 opinion what was the cause of these two fires?

18 A. I believe that an ignitable liquid was poured on
19 the floor in the living room and in the master bedroom and
20 then an open flame was applied to that ignitable liquid,
21 thus creating a fire at two separate points, and the fire
22 spread throughout the rest of the mobile home.

23 MS. STILLEY: Thank you, Your Honor. I have no
24 further questioning.

25 THE COURT: Cross-examination.

1 MR. MATTHEWS: One moment, Your Honor.

2 [Whereupon, Mr. Matthews and Mr. Phillips
3 confer]

4 MR. MATTHEWS: No further questions.

5 MR. THORNTON: May we approach, Your Honor?

6 THE COURT: Counsel approach. Wait a minute.

7 As to this witness, he is going to remain with
8 us, is he not?

9 MR. THORNTON: He will remain, Your Honor.

10 THE COURT: You may step down, Mr. Seals, and
11 remain in the courtroom with us.

12 [Whereupon, Mr. Seals is excused and remains in
13 the courtroom]

14 THE COURT: Counsel approach.

15 [Whereupon, an off-the-record bench conference
16 is held]

17 THE COURT: Mr. Foreman, and ladies and
18 gentlemen of the jury, I am going to stop at this point
19 in the trial and let you have your delicious lunch. It
20 will be here in approximately ten or fifteen minutes.

21 Over the lunch break, please don't discuss the
22 case with anybody or amongst yourselves. And as I told
23 you yesterday, if somebody tries to discuss it with
24 you, just tell them -- I know that people can be
25 curious. Just say, I'm on the jury; the judge asked me

1 not to talk about it. And if that person persists in
2 trying to talk to you about it, get their name, give it
3 to me. I'll handle that problem for you, ladies and
4 gentlemen. I promise you that person won't bother you
5 anymore.

6 I hope each of you have a pleasant lunch. We're
7 going to take -- I've got to take up a couple of
8 matters. We are going to be working after you're gone,
9 so we're going to probably take until at least two
10 o'clock. So you've got plenty of time, because your
11 lunch has not arrived yet. It will be arriving
12 shortly.

13 Talk about the weather, talk about sports, talk
14 about anything else, but don't talk about this case.

15 If I've got a smoker, during lunch the bailiffs
16 will take you outside and let you smoke outside the
17 building, if I have any smokers. Do I have any smokers
18 on the jury? Okay. Got a couple. I understand that
19 bad habit. But they'll even take you outside.

20 Thank you very much. You may retire to your
21 jury room at this time.

22 [Whereupon, the jury exits the courtroom at
23 12:38 p.m.]

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MOTION TO SEEK LIFE WITHOUT PAROLE

THE COURT: Let the record reflect the jury is absent.

Now, at the beginning of the trial -- and I'm going to allow counsel to be heard briefly, orally, although I have reviewed this pretty thoroughly last night and this morning -- there was a dispute, which Mr. Matthews objected to concerning the prior record of the defendant, as to whether or not his prior record could be used for the State to seek a sentence of life imprisonment without the possibility of parole under the repeat offender statute. And I hold in my hand a notice of motion and motion to -- the notice of motion, along with a notice of intention to seek life imprisonment, which is signed by the solicitor, dated May 12th, 2008.

In this notice it states that the solicitor's office intends to seek a life imprisonment sentence, pursuant to South Carolina Code Section 17-25-45[b], upon the basis that there are two or more prior convictions for a serious offense. The State opines in its notice that there is a 1985 conviction for burglary second degree, a 1979 conviction for burning, and a -- the conviction in 1985 was an out-of-state conviction, in Florida, for burglary second. And the State opines,

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1 also, that there was a prior conviction for
2 housebreaking. And based on this, the State argues
3 that this Court should rule that that is a proper
4 predicate, if you will, to impose the sentence, now
5 that proper notice has been given under the statute 17-
6 25-45[b], for the State to seek life imprisonment
7 without parole.

8 Mr. Matthews, I understand -- have I outlined
9 the issue, solicitor, as far as the State is concerned?

10 MR. THORNTON: Yes, Your Honor.

11 THE COURT: All right. Mr. Matthews, I will be
12 happy to hear you. I understand you oppose the State's
13 intention.

14 MR. MATTHEWS: I do, Your Honor.

15 As to the 1979 conviction, the face of the
16 indictment says that he got a YOA sentence, which means
17 it was not a violent crime --

18 THE COURT: Let's don't do that, Mr. Matthews.
19 Refer to the offense and --

20 MR. MATTHEWS: Oh. I'm sorry.

21 Your Honor, of the three offenses there, the
22 oldest one, 1979, refers to a burning, a burning of a
23 building, owned by the school. On the face of the
24 indictment it's very clear that if we even need to --
25 going back obviously a very, very long time on these.

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1 THE COURT: Well, we're talking about code
2 section 16-11-120 for the conviction for burning,
3 aren't we, Mr. Matthews?

4 MR. MATTHEWS: Yes, sir.

5 THE COURT: And the record will reflect that
6 that code section says a person who willfully and
7 maliciously sets fire or burns or causes to be burned
8 or aids, counsels, or procures the burning of a public
9 building, is the essence of that offense. Is that
10 right?

11 MR. MATTHEWS: That's correct, Your Honor.

12 The sentence on the face of it that Mr. Phillips
13 received as I guess a sixteen-year-old was a Youthful
14 Offender Act sentence, which means obviously since --
15 you can't get Youthful Offender Act for a violent
16 crime. And since arson first and second degree are
17 classified as violent crimes, obviously he must have
18 been convicted, if he was convicted, of third-degree,
19 which is not one of the serious --

20 THE COURT: Mr. Matthews, you know and I do,
21 there was no classification for violent crimes in 1979.

22 MR. MATTHEWS: Well, Your Honor, and that's
23 really sort of the problem with all these things. The
24 law has changed so much over the course of time on
25 these, including prior breaking and entering and all of

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1 that. These are -- the nearest one is twenty-two,
2 twenty-three years ago. Your Honor, I would contend
3 that these -- actually, when you get right down to it,
4 these ought to even perhaps be jury issues, since the
5 sentence is so greatly different as a result of that.
6 The nearest one is twenty-three years, and then there's
7 twenty-five years, and before that -- all of these
8 things predated the LWOP statute. Your Honor, just
9 it's hard to imagine that on the basis of faded
10 indictments, that these should be the basis for giving
11 a man life without parole and just -- I would object to
12 the use of that.

13 THE COURT: Mr. Matthews, isn't it true that I
14 should look not to the sentence but to the elements of
15 the offense in order to try to determine whether or not
16 the State is entitled to seek life imprisonment without
17 the possibility of parole? You invited me to look at
18 the sentence, which is the back end. But isn't the
19 issue the elements themselves?

20 MR. MATTHEWS: It is, Your Honor. In this case,
21 the sentence is -- the earliest, at least, the sentence
22 can be used to go back and take a look at what the
23 underlying offense must have been.

24 But, again, this is the State's burden of proof,
25 and I just don't think the State has met that burden of

1 proof. And this -- obviously, it's something that
2 could be --

3 Anyway, Your Honor, that's what I would ask the
4 Court to look at, and I would object.

5 THE COURT: All right. Well, let me look at the
6 statute.

7 [Whereupon, the Court reviews documents]

8 THE COURT: The statute says: notwithstanding
9 any other provision of law except in cases the death
10 penalty for a capital case is imposed. Upon a
11 conviction for a serious offense, as defined by this
12 section, a person must be sentenced to a term of
13 imprisonment for life without the possibility of parole
14 if that person has two or more prior convictions for,
15 one, a serious offense; or, two, a most serious
16 offense; three, a federal or out-of-state offense that
17 would be classified as a serious offense or most
18 serious offense under this section; or, four, any
19 combination of the offenses listed in items one, two,
20 and three above. And then it goes on, in C, to define
21 serious and most serious, which has also been changed
22 in the -- Section C has been amended in the 2007
23 supplement.

24 It's clear that Mr. Phillips had a prior
25 conviction, regardless of time, for the offense of

1 burning, which is in our code section 16-11-120. The
2 State argues here that the arson second degree -- which
3 is a serious offense, per code section 17-25-45, and
4 which is currently section 16-11-110[b]. The State
5 argues that this Court should compare the defendant's
6 prior conviction with burning with the current serious
7 offense of arson in the second degree.

8 I believe, in looking at the elements -- I've
9 looked at the definition under 16-11-110[b], and I've
10 looked at the definition under 16-11-120, and I believe
11 that the previous burning offense does contain the same
12 legal elements as arson in the second degree, which the
13 repeat offender statute has declared as a serious
14 offense. Therefore, I rule that it should be
15 considered a serious offense for purposes of life
16 without parole sentencing.

17 Next, the State argues that there is a prior
18 conviction by Mr. Phillips of a housebreaking, which is
19 not burglary. This is 16-11-320. Every person who
20 shall break and enter or who shall break with intent to
21 enter in the daytime any dwelling house or other house,
22 or who shall break and enter -- or shall break with
23 intent to enter in the nighttime any house, the
24 breaking and entering of which would not constitute
25 burglary, with the intent to commit a felony or other

1 crime of a lesser grade shall be held guilty of a
2 felony and punishable at discretion of the Court.

3 The current offense of burglary second degree,
4 which is classified as a serious offense per 17-25-45,
5 says a person is guilty of burglary in the second
6 degree if the person enters a dwelling without consent
7 and with the intent to commit a crime therein.

8 I've looked at the defendant's prior conviction
9 for housebreaking, which is not burglary, with the
10 current serious offense of burglary in the second
11 degree. Although I believe that the elements are very
12 similar, I think that in this case I am reluctant to
13 use this as -- since he was convicted of housebreaking,
14 which was not burglary -- although I do think it
15 contains the same legal elements as burglary in the
16 second degree, which the repeat offender statute has
17 declared a serious offense but, because it was an
18 enumerated offense, I decline to use it in this case.

19 That leaves us, then, with the out-of-state
20 conviction. And I have looked carefully at the
21 Florida's statutes -- and I want to put it on there
22 there's a prior 1985 conviction in Florida for burglary
23 of a dwelling -- Florida statute numbers 810.02(1) and
24 810.02(3).

25 810.02(1) says: burglary means entering or

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1 remaining in a structure or a conveyance with the
2 intent to commit offense therein unless the premises
3 are, at the time, open to the public or the defendant
4 is licensed or invited to enter or remain.

5 Florida statute 810.02(3) says: if the offender
6 does not make an assault or battery, or is not armed or
7 does not arm himself with a dangerous weapon or
8 explosive during the course of committing an offense,
9 and the structure or conveyance entered is a dwelling
10 and -- or there is a human being in the structure or
11 conveyance at the time the offender entered or remained
12 in the structure or conveyance, the burglary is a
13 felony in the second degree.

14 The current statute in South Carolina of
15 burglary second degree, which is a serious offense per
16 17-25-45, says: a person is guilty of a burglary in
17 the second degree if a person enters a dwelling without
18 consent and with the intent to commit a crime therein.

19 I have compared the elements of the defendant's
20 prior convictions in Florida for burglary of a dwelling
21 with the current elements of the serious offense
22 enumerated in our statute in South Carolina of burglary
23 in the second degree. I believe that the elements of
24 the prior burglary of a dwelling offense does follow
25 the elements of our law in South Carolina for the

1 offense of burglary in the second degree, which the
2 repeat offender statute has declared a serious offense;
3 therefore, it should be considered a serious offense
4 for LWOP or life without parole purposes.

5 And, therefore, I place you on notice, Mr.
6 Matthews and solicitor, that the State has complied
7 with 17-25-45(b) insofar as the notice requirement and,
8 therefore, it is my interpretation under the argument
9 that the appropriate sentence could be, if convicted,
10 an imposition of the sentence of life imprisonment
11 without any possibility of parole. I wanted to make
12 that clear on the record as to my ruling, and the
13 reasons why.

14 Now, we will adjourn at this point for lunch.
15 I'm going to give you a little extra time, if you need
16 it during the lunch break, because lunch is going --
17 I've had it brought in to y'all, as well, hopefully for
18 my court reporters, as well.

19 Did y'all fill out an order, Mia?

20 THE COURT REPORTER: Yes, sir.

21 THE COURT: Good.

22 We will start back at approximately 2:00 to 2:15
23 this afternoon. Thank you. This court stands
24 adjourned.

25 MR. THORNTON: Thank you, Your Honor.

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1 MS. STILLEY: Thank you, Your Honor.

2 [Whereupon, a recess is taken from 12:57 p.m. to
3 2:17 p.m.]

4 THE COURT: Yes, sir, solicitor.

5 MR. THORNTON: Your Honor, out of an abundance
6 of caution: I had previously talked to Mr. Matthews
7 about this particular matter, and I reminded him that I
8 was about to call a couple of witnesses. And, in
9 essence, Judge, just for the Court's information, I
10 wanted to make sure that the Court would be in
11 agreement with me. I knew Mr. Matthews would have an
12 objection. And, Your Honor, this is a case where once
13 I ring the bell it's going to be rung, and I did not
14 want to do that without getting some feedback from the
15 Court. And I know --

16 THE COURT: Hold on a second. I know you've
17 told Mr. Matthews. Tell me the substance of what you
18 intend to do.

19 MR. THORNTON: Yes, sir. I'm going to call
20 Rhonda Wilson, who is the sister of the defendant, and
21 ask her -- I will get some background information
22 first, establishing who she is. The pertinent question
23 I'm going to ask her is about a phone conversation she
24 had with a Ms. Hughey, who is the last witness that I
25 would call, if necessary. In that phone conversation

1 with Ms. Hughey, she told that the defendant in this
2 case, her brother, had admitted that he had burned the
3 trailer down. My feeling, based on my talks with Ms.
4 Wilson, are that Ms. Wilson will deny making that
5 statement. If she does deny it, then -- and asking her
6 about her prior statement, Judge, would be under
7 613(a). If she denies the content of the statement, I
8 think that under 613(b) I can --

9 THE COURT: Extrinsic evidence --

10 MR. THORNTON: -- introduce extrinsic evidence,
11 meaning --

12 THE COURT: -- is admissible.

13 MR. THORNTON: -- I will bring Jessica Hughey
14 up, who will say that she did, in fact, tell her that
15 the defendant made that statement to her.

16 I believe it does not fall under the hearsay
17 rules because it's a statement made by the defendant,
18 and I'm actually questioning the person who made the
19 statement first.

20 THE COURT: Well, you recognize if she admits
21 that -- making the prior statement, extrinsic evidence
22 is not admissible?

23 MR. THORNTON: Yes, Your Honor. It's my
24 understanding that I can --

25 THE COURT: Is this a written statement, or just

1 an oral one?

2 MR. THORNTON: It was a phone conversation to
3 what I guess would be best deemed either an ex-
4 girlfriend or a very good female friend of the
5 defendant.

6 And, Your Honor, just so I get the correct
7 information from the Court or guidelines from the
8 Court, my understanding of the rule is that I can ask
9 her the specifics of the conversation. In other words,
10 she has to either admit or deny the specifics of it,
11 not just that she had a conversation.

12 THE COURT: Well, you can ask her whether or not
13 there was a conversation and then was there a statement
14 given concerning the defendant's activities in regards
15 to this date. If she says not, then you may be willing
16 -- or may be able to admit extrinsic evidence. If she
17 tells you, yeah, there was a statement, and this is
18 what it is -- if she tells you what the statement is,
19 that's the end of the matter.

20 MR. THORNTON: Yes, sir. My understanding is if
21 I were to ask her --

22 THE COURT: But wait a minute, now. You believe
23 you know what the answer is. We don't know that yet.
24 She may tell you, yes, he gave me a statement, and that
25 statement did not say anything about his culpability.

1 MR. THORNTON: Judge, I'll just ask the Court
2 for guidance, because it's my understanding even if she
3 admits that she made the statement but denies what the
4 contents are -- in other words, that he burned down the
5 trailer -- then I can then introduce extrinsic
6 evidence.

7 THE COURT: That's correct, if there is
8 extrinsic evidence of a prior inconsistent statement.

9 Mr. Matthews, do you want to be heard on that?

10 MR. MATTHEWS: I do, Your Honor.

11 I think probably we're skipping a step here, as
12 I -- and I understand Mr. Thornton has argued this. He
13 indicates he's argued this, and won on appeal and
14 everything, in a murder case. My only thought is that
15 if -- the step we're skipping is that if you ask Ms.
16 Wilson did your brother tell you he did it, then you're
17 trying to impeach with something that she's told to
18 another person. It's a whole extra layer of hearsay.
19 Because at this point -- you know, at this point you're
20 not -- you don't have a court reporter, it's not a
21 deposition, it's not these other things. You're asking
22 about not the conversation that took place between
23 Rhonda Wilson and her brother but the conversation that
24 took place to yet another person. And so it's an extra
25 layer of hearsay, Your Honor. That's what -- that's my

1 problem with it. If Mr. Thornton asks Rhonda Wilson,
2 didn't your brother tell you he did it, and she says,
3 no, he never said that --

4 THE COURT: Well, the other witness I assume,
5 Mr. Matthews, is just going to say that this first
6 witness did, in fact, make this statement, from what I
7 understand from Mr. Thornton.

8 MR. MATTHEWS: Yes, Your Honor.

9 THE COURT: We're still talking about a
10 statement made by the first witness.

11 MR. MATTHEWS: But with an extra step in there.
12 You're asking not the conversation. In order to get
13 the truth of the matter, which is that he admitted to
14 doing this, and it goes to the truth of the matter,
15 which is did you do this. Obviously there can't be
16 anything more central to the case than, did you do
17 this. Instead of asking questions about the
18 confession, if there is one itself you're asking,
19 didn't you repeat the hearsay that somebody else told
20 you to somebody else. And then you're having the
21 impeachment witness come up there on double hearsay.
22 Not did Ms. Hughey -- not did Mr. Phillips tell Ms.
23 Hughey that she did it -- that he did it, but did Ms.
24 Hughey hear from Rhonda Wilson that Lawrence Phillips
25 told her.

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1 THE COURT: That can't be the rule because your
2 defendant has the constitution right, your client, to
3 remain silent. So it would never apply, if it worked
4 the way you envision it, because your client would
5 never be forced or required to take the witness stand
6 in a criminal case.

7 The rule says in examining a witness concerning
8 a prior statement made by the witness, whether it's
9 written or not -- an oral statement or a written
10 statement -- the statement need not be shown nor its
11 contents disclosed to the witness, but on request you
12 can -- the same shall be shown or disclosed to opposing
13 counsel. In this case you already know what the
14 statement contains, or allegedly, from what we are
15 being told by the solicitor.

16 Normally, we don't allow another witness -- or
17 extrinsic evidence of a prior inconsistent statement by
18 a witness. It's normally not admissible unless the
19 witness is advised of the substance of the statement,
20 the time and place it was allegedly made, and the
21 person to whom it was made, and is given the
22 opportunity to explain or deny the statement. Which I
23 assume will be done, if the rule is followed, which is
24 in 613(b). If a witness does not admit that he or she
25 has made the prior inconsistent statement, then

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1 extrinsic evidence of such statement is admissible.
2 However, if the witness admits making the prior
3 statement, then extrinsic evidence is not admissible.
4 And this provision does not apply to the admission of a
5 party opponent, as defined in 801(d)(2).

6 Now, we are talking about, as an exception to
7 the hearsay rule, an admission against interest, also,
8 to a layperson. So this is not custodial
9 interrogation. This is not a situation in which
10 Miranda applies. We're talking about lay witnesses.

11 Now, I don't know what's going to happen,
12 because y'all are what-iffing everything to death here,
13 what -- I think this witness is going to do this, I
14 think this, give me an advisory ruling. Y'all know I
15 can't do that, because I've got to listen to it. But I
16 want you to be very certain, when you elicit, that you
17 look at the rule and follow the rule. Otherwise, I'm
18 not going to permit it. Do you understand that?

19 MR. THORNTON: Yes, sir.

20 THE COURT: Do you understand that, Mr.
21 Matthews?

22 MR. MATTHEWS: Yes, sir.

23 THE COURT: And I'll certainly give you the
24 chance -- you've already noted an objection for the
25 record. If you don't want to repeat it -- do you want

1 to repeat it in the presence of the jury?

2 MR. MATTHEWS: I would like to make it
3 continuing, if the Court will allow me to, so --

4 THE COURT: Well, there is no such thing as a
5 continuing objection. But you've made it for the
6 record --

7 MR. MATTHEWS: Yes, sir.

8 THE COURT: -- and you are preserved on the
9 grounds you've stated.

10 MR. MATTHEWS: Thank you, Your Honor.

11 And I had one other matter just --

12 THE COURT: And that's for purposes of being
13 contemporaneous with the time he elicits it.

14 MR. MATTHEWS: Yes, sir.

15 THE COURT: All right.

16 MR. MATTHEWS: I have one other brief matter,
17 Your Honor. I just wanted, again, to revisit
18 something. I know the Court has already ruled. I just
19 want to state things for the record -- I'll be very
20 brief -- and that's on the prior burning of a school.
21 The face of the indictment on that, Your Honor, says
22 that the property owned by the school board. It
23 doesn't say a school. And so that -- and because that
24 particular indictment for the burning, which is one of
25 the predicate offenses for life without parole, says it

1 was property owned by the school board but it doesn't
2 say that it was a school. And as a result, Your Honor,
3 I would say that it does not state with -- specifically
4 enough, particularly in light of the sentence that he
5 got was a youthful offender. It does not state
6 specifically enough that a school was burned; only
7 property owned by a school, which is not necessarily
8 the same thing. It could be investment property, it
9 could be -- it could be anything. It just doesn't say
10 on the indictment.

11 THE COURT: Well, of course, I've ruled on that
12 now. And I understand that you think you still have
13 the opportunity after I've ruled to raise something
14 else which I didn't have the benefit of hearing before
15 I ruled, which you do not. That's the purpose of
16 inviting argument ahead of time, before the Court
17 rules. But let me look at it, just to see if there's
18 anything in there that would cause me to change my
19 mind.

20 [Whereupon, the Court reviews documents]

21 THE COURT: I've looked at the definition of
22 arson second degree, which I compared to the previous
23 conviction for burning. And regardless of that
24 argument, I decline to change my ruling.

25 I point out to you, counsel, that arson second

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1 degree says: a person who willfully and maliciously
2 causes an explosion, sets fire to, burns or causes to
3 be burned, or aids, counsel, or procures the burning
4 that results in damage to a dwelling house, church,
5 place of worship, public or private school facility, a
6 manufacturing plant or warehouse, a building where
7 business is conducted, an institutional facility, or
8 any structure designed for human occupancy, to include
9 local and municipal buildings, whether the property of
10 himself or another, is guilty of arson second degree.
11

12 The previous indictment from Laurens County
13 says: willfully, unlawfully, and maliciously set fire
14 to and burned and caused to be burned, and aided,
15 counseled, or procured the burning of a building, the
16 property of Laurens County School District Number 56.
17 I decline to change my ruling.

18 Anything further from the State before I bring
19 the jury?

20 MR. THORNTON: Nothing from the State, Your
21 Honor.

22 THE COURT: From the defendant before I bring
23 the jury?

24 MR. MATTHEWS: No, sir.

25 THE COURT: Very well. Bring us the jury,
please.

MIA PERRON, CCR, CVR-CM

1 [Whereupon, the jury enters the courtroom at
2 2:28 p.m.]

3 THE COURT: Mr. Foreman, ladies and gentlemen of
4 the jury, we will now continue with the testimony in
5 the trial of this case.

6 Counsel, you may call your next witness.

7 MR. THORNTON: The State calls Rhonda Wilson to
8 the stand.

9 [Whereupon, Ms. Wilson enters the courtroom]

10 THE CLERK OF COURT: Please come forward to be
11 sworn.

12 [Whereupon, Ms. Wilson is duly sworn by the
13 clerk of court]

14 THE CLERK OF COURT: Have a seat on the witness
15 stand, and state your full name for the record.

16 [Whereupon, Ms. Wilson takes the witness stand]

17 THE COURT: How are you doing?

18 THE WITNESS: Fine.

19 THE COURT: Pull that microphone, in front of
20 you, over to you. I want you to speak up and speak
21 into that microphone. It's going to amplify your voice
22 so the jury can hear you.

23 Begin by stating your full name and spelling
24 your last name for the court reporter.

25 THE WITNESS: Rhonda Phillips Wilson. W-I-L-S-

1 O-N.

2 THE COURT: Speak up for me, now, please, Ms.
3 Wilson.

4 Your witness, counsel.

5 MR. THORNTON: Thank you, Your Honor.
6
7 - - - - -

8 RHONDA P. WILSON,
9 Having Been First Duly Sworn,
10 was Examined and Testified as Follows:

11 DIRECT EXAMINATION

12 BY MR. THORNTON:

13 Q. Ms. Wilson, do you know the defendant in this
14 case, Lawrence Phillips?

15 A. Yes. That's my oldest brother.

16 Q. That's your brother?

17 A. [Indicates affirmatively]

18 Q. Where do you live, Ms. Wilson?

19 A. 313 Enterprise Street in Walterboro.

20 Q. Okay. In September of 2007, did you have
21 occasion -- specifically September the 14th, 2007,
22 sometime in the afternoon, did you have any occasion to go
23 to your brother's house?

24 A. Yeah. I went, after his house had been on fire,
25 to feed his animals.

Q. All right. You went to feed his animals.

MIA PERRON, CCR, CVR-CM

1 What kinds of animals were there when you got
2 there?

3 A. Pit bull, rabbits, quails.

4 Q. And you said that the house had burned or was on
5 fire. Was it already -- the fire already extinguished by
6 the time you got there?

7 A. Yes.

8 Q. All right. Did you take anything with you when
9 you left?

10 A. I took some -- a rake and shovel, gas cans,
11 garden hose. Little things that I seen that was still
12 able to be used.

13 Q. Did you take anything else? Photographs, golf
14 clubs, anything like that?

15 A. Yeah. I got my father's golf clubs. Couldn't
16 find any pictures.

17 Q. All that was left -- where was that at? Was it
18 inside or outside? Where was it located?

19 A. The golf clubs was on the porch. All of it was
20 pretty much inside, except the gas can and the hose was
21 outside.

22 Q. And how did you know to go feed these animals?

23 A. Because either he would come by and ask me to go
24 and feed them or he would call me and tell me to go feed
25 them when he was going out of town, which he did that

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1 regular.

2 Q. When you say he, you mean your brother?
3 A. Yes, sir.

4 Q. The defendant, Lawrence Phillips?
5 A. Yes, sir.

6 Q. Do you know who Jessica Hughey is?

7 A. He had lived with her for a while.

8 Q. And when you say he, again, we're talking about
9 Lawrence Phillips?

10 A. Yes, sir.

11 Q. And did you at some point, sometime in about
12 April of this year, March or April of this year, call
13 Jessica Hughey and talk to her?

14 A. Yes, sir.

15 THE COURT: Just a moment.

16 MR. MATTHEWS: Your Honor, just renew my earlier
17 objection.

18 THE COURT: I told you that as to the grounds
19 you've stated earlier it was made as if made at the
20 time it was elicited. Any additional grounds?

21 MR. MATTHEWS: It would be the same.

22 THE COURT: Very well. Proceed.

23 MR. THORNTON: Thank you, Judge.

24 THE COURT: Careful, counsel, to comply with the
25 ruling --

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1 MR. THORNTON: Yes, sir.

2 THE COURT: -- my earlier ruling.

3 Q. [Mr. Thornton] On or about April of this year,
4 did you have a conversation with Jessica Hughey by phone?

5 A. Yes, sir.

6 Q. Did you talk to her about your brother?

7 A. Yes, sir. I asked her to come -- he wanted her
8 to come see him, visit him.

9 Q. Did you also tell her that he had told you --

10 MR. MATTHEWS: Your Honor, that's leading, in
11 addition to my earlier objection.

12 THE COURT: Sustained.

13 MR. THORNTON: Your Honor, may I approach?

14 THE COURT: You may.

15 [Whereupon, an off-the-record bench conference
16 is held]

17 THE COURT: Objection is sustained.

18 Q. [Mr. Thornton] Ms. Wilson, did you tell Ms.
19 Hughey that your brother had given any indication of his
20 culpability about burning down the house?

21 A. What does that mean? That he did it?

22 Q. That would be one way to look at it.

23 A. No.

24 Q. You did not tell her that?

25 A. He's never told me that he done it.

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1 MR. THORNTON: Your Honor, the Court's
2 indulgence for one moment.

3 [Whereupon, Mr. Thornton and Ms. Stilley confer]

4 MR. THORNTON: Your Honor, I don't have any
5 further questions for this witness.

6 Ma'am, if you would please answer any questions
7 Mr. Matthews has for you.

8 THE COURT: Cross-examination.

9 MR. MATTHEWS: One moment, Your Honor.

10 [Whereupon, Mr. Matthews and Mr. Phillips
11 confer]

12 MR. MATTHEWS: No questions, Your Honor.

13 THE COURT: As to this witness, solicitor?

14 MR. THORNTON: Ask that she be excused, Your
15 Honor.

16 THE COURT: Any objection, Your Honor?

17 MR. MATTHEWS: I would prefer that she stays
18 around, depending on what the next witness testifies
19 to. I would like her to be available, depending on --

20 THE COURT: Do you have her under subpoena?

21 MR. MATTHEWS: Yes. I believe yes.

22 THE COURT: Ma'am, I ask you to step down from
23 the witness stand and remain in the room where you were
24 prior to coming in the courtroom until released by the
25 Court. You may step down at this time.

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1 MR. THORNTON: I'll have Mr. Griffith take her
2 back --

3 THE COURT: Mr. Griffith, if you would take her
4 back to where she's located.

5 [Whereupon, the witness is excused and exits the
6 courtroom]

7 THE COURT: Call your next witness, counsel.

8 MR. THORNTON: The State calls Jessica Hughey,
9 Your Honor.

10 THE COURT: Jessica Hughey.

11 [Whereupon, Ms. Hughey enters the courtroom]

12 THE CLERK OF COURT: Please come forward to be
13 sworn.

14 Please raise your right hand and put your left
15 hand on the Bible.

16 [Whereupon, Ms. Hughey is duly sworn by the
17 clerk of court]

18 THE CLERK OF COURT: Have a seat on the witness
19 stand. State your full name for the record.

20 [Whereupon, Ms. Hughey takes the witness stand]

21 THE COURT: Sit right there for me. Be
22 comfortable. Pull that microphone up to you. You can
23 adjust the chair and the microphone.

24 Please state your full name, and spell your last
25 name for the court reporter.

1 THE WITNESS: Jessica Lee Hughey. H-U-G-H-E-Y.

2 THE COURT: Speak up just a little bit for me.
3 Your witness, counsel.

4 MR. THORNTON: Thank you, Judge.
5

6 - - - - -

7 JESSICA L. HUGHEY,
8 Having Been First Duly Sworn,
9 was Examined and Testified as Follows:

DIRECT EXAMINATION

10 BY MR. THORNTON:

11 Q. Ms. Hughey, where do you live?

12 A. I live at 211 Sweetheart Lane in Walterboro.

13 Q. All right. Do you know the defendant in this
14 case, Lawrence Phillips?

15 A. Yes, I do.

16 Q. How do you know him, ma'am?

17 A. We were friends at one time.

18 Q. And do you know his sister?

19 A. Yes, I do.

20 Q. And do you know what her name is?

21 A. Rhonda.

22 Q. Okay. And have you -- in March or April of this
23 year, did you have a telephone conversation with Rhonda?

24 A. Yes, I did.

25 MR. MATTHEWS: Your Honor, I would just object

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1 on the same basis.

2 THE COURT: Very well. And for the reasons I
3 stated earlier, the objection is overruled at this
4 point.

5 Proceed.

6 MR. THORNTON: Thank you, Judge.

7 Q. [Mr. Thornton] I forget the last question. I
8 think I asked you did you have a conversation, a phone
9 conversation, with Rhonda Wilson.

10 A. Yes, I did.

11 Q. All right. And without yet going into any
12 detail, what was that conversation about?

13 A. It was about her brother wanting to see me and
14 that, in return, that he had -- he had stated to her that
15 he had set the fire of the trailer.

16 Q. All right, ma'am. And is that the statement
17 that she made to you on or about March or April of this
18 year?

19 A. Yes, it is.

20 Q. Was that in a phone conversation?

21 A. Yes, it was.

22 Q. So in essence she told you that her brother had
23 admitted to her that he did, in fact, burn the house down?

24 A. Yes, she did.

25 MR. THORNTON: All right. I don't have any

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1 further questions at this time. Please answer any
2 questions Mr. Matthews may have.

3 THE COURT: Cross-examination.

4 MR. MATTHEWS: Thank you, Your Honor.

5 CROSS-EXAMINATION

6 BY MR. MATTHEWS:

7 Q. Ms. Hughey, you were more than friends with Mr.
8 Phillips, weren't you? Weren't y'all lovers?

9 A. No, we were not.

10 Q. You were not lovers? And it didn't end badly?

11 A. No, it did not.

12 Q. Okay. Who is your landlord?

13 A. Right now? Jim Cook.

14 Q. Jim Cook?

15 A. Uh-huh. [Indicates affirmatively]

16 Q. Okay. That's James Cook?

17 A. Yes.

18 Q. Okay. And he owns a bunch of trailers and
19 stuff?

20 A. Yes.

21 Q. All right. How long has he been your landlord?

22 A. Almost three years.

23 Q. Ms. Hughey, you have a couple of dogs that Mr.
24 Phillips gave you?

25 A. Yes, I do.

MIA PERRON, CCR, CVR-CM

1 Q. Okay. You also have some jewelry that Mr.
2 Phillips gave you?

3 A. I have one necklace, yes.

4 Q. And a diamond ring?

5 A. No.

6 MR. MATTHEWS: Nothing further, Your Honor.

7 THE COURT: Redirect?

8 MR. THORNTON: None, Your Honor. Ask that the
9 witness be excused.

10 THE COURT: Any objection, Mr. Matthews?

11 MR. MATTHEWS: None, Your Honor.

12 THE COURT: You may step down from the witness
13 stand, and you are excused from the courtroom.

14 THE WITNESS: Thank you.

15 [Whereupon, Ms. Hughey is excused and exits the
16 courtroom]

17 THE COURT: Call your next witness.

18 MR. THORNTON: Your Honor, at this time the
19 State rests.

20 THE COURT: Are there any matters of law that I
21 need to take up at this time?

22 MR. MATTHEWS: Yes, sir.

23 THE COURT: Mr. Foreman, and ladies and
24 gentlemen of the jury, I ask if you would please retire
25 to your jury room. I need to take up a matter of law.

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1 Please do not discuss the case. I'll be back with you
2 in just one moment.

3 [Whereupon, the jury exits the courtroom at
4 2:44 p.m.]

5 THE COURT: Yes, sir, Mr. Matthews. Happy to
6 hear from you.

7 - - - - -

8 MOTION FOR A DIRECTED VERDICT

9 MR. MATTHEWS: Thank you, Your Honor.

10 Your Honor, I would move to dismiss this case in
11 that the evidence taken in the light most favorable,
12 particularly as to second degree burglary, has not been
13 shown by the State. In order to convict somebody of
14 second degree arson, there has to be a burning of a
15 dwelling. The evidence, the uncontradicted evidence in
16 there, is that Mr. Phillips, if he did this -- and
17 there is evidence, I suggest, that perhaps the State,
18 if the jury believes it, they could believe that he did
19 set this fire. However, there is no indication that he
20 had any intent to return to dwell in that place, which
21 would make it third degree instead of second degree.
22 The dwelling statute, 16-11-10, says that a person who
23 lodges in a place with a view to protect the property
24 is -- that's what a dwelling is. A box can be a
25 dwelling, as far as that goes. I don't want to get

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1 into my closing argument. But, Your Honor, there is no
2 indication at all that Mr. Phillips intended to dwell
3 in this place. If he did this, if he did this, he did
4 not do it with an intent to live there anymore, which
5 makes it the burning of a structure, which would be
6 third degree and not second degree since he would be
7 the resident.

8 The statute does provide, the arson statute,
9 that you are -- you can be convicted of arson if you
10 burn your own place. However, the State can't have it
11 both ways. If he burned this down, he didn't do it
12 with the intent to continue to dwell there. And I
13 would ask Your Honor that as to the charge of second
14 degree arson, that the Court direct a verdict of not
15 guilty, allow the Court -- the jury to consider third
16 degree.

17 THE COURT: Solicitor, happy to hear from the
18 State.

19 MR. THORNTON: Your Honor, with all due respect,
20 I ask the Court to deny that motion to dismiss. I
21 think the State has presented evidence that covers
22 every element of the offense if the evidence is taken
23 in the light most favorable to the State. There's
24 clearly evidence that he was living there at the time.
25 His next-door neighbor saw him removing personal items.

1 His sister said that that was his place, that he still
2 had animals there, there were golf clubs there.

3 I don't think a defendant can empty out his
4 place of abode. Whether he owns it or not -- ownership
5 is not really relevant in this case. I don't think
6 that the law allows for a defendant to empty out his
7 place of abode, set it on fire, and then claim it's not
8 an arson second because he didn't have the intent to
9 return. Clearly, that morning he lived there when he
10 set it on fire. And --

11 THE COURT: There were --

12 MR. THORNTON: I'm sorry, Judge.

13 THE COURT: In the light most favorable to the
14 non-moving party -- and which Mr. Matthews knows that I
15 have to take the evidence at this stage -- and given
16 the standard for the directed verdict stage, I
17 respectfully deny your motion, Mr. Matthews. There are
18 other ways for you to present that issue, as a matter
19 of fact for the jury, in requesting that a lesser
20 included offense be charged. But I'm looking at the
21 existence or non existence of evidence, and not its
22 weight, at this stage. And clearly there is evidence
23 from which the jury could logically deduce and infer
24 that this was a dwelling, from what's been presented by
25 the State. Your motion for a directed verdict is

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1 respectfully denied.

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DEFENDANT'S RIGHTS

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THE COURT: Mr. Matthews, I'll give you a moment with your client, because we have reached the stage now where your client -- of course, and you can present evidence. And I want to make sure you've had a moment with him before you come up and be sworn by the clerk.

MR. MATTHEWS: Your Honor, I know he -- okay. Thank you, Your Honor.

[Whereupon, Mr. Matthews and Mr. Phillips confer]

THE COURT: Come around, please, and be sworn by the clerk.

[Whereupon, Mr. Phillips complies]

THE COURT: Madam Clerk, would you swear the defendant, please.

THE CLERK OF COURT: Yes, sir.

Please raise your right hand.

[Whereupon, Mr. Phillips is duly sworn by the clerk of court]

THE COURT: Put your hand down, and speak into that microphone for me.

State your full name for the record.

MR. PHILLIPS: Lawrence Carroll Lee [phonetic]

1 Phillips.

2 THE COURT: Mr. Phillips, at this time I am
3 going to explain to you certain of your rights. If you
4 do not understand anything that I say, let me know. If
5 you want me to explain anything in further detail,
6 please let me know. Do you understand?

7 MR. PHILLIPS: Yes, sir.

8 THE COURT: All right. We have now reached the
9 stage of the trial where you may present your defense.
10 You have the right to testify in your own behalf.
11 However, no one can make you testify. In the event you
12 have a criminal record of conviction for any crime or
13 conviction involving dishonesty or false statement or
14 for any crime punishable by imprisonment of more than
15 one year and this Court determines as a matter of law
16 that the probative value of admitting this evidence
17 outweighs its prejudicial effect to you, the solicitor
18 would be able to introduce this record on cross-
19 examination, for impeachment purposes, to attack your
20 credibility or your believability.

21 If you elect not to take the witness stand, I
22 will charge the jury that they are not to give the fact
23 that you did not testify any consideration whatsoever
24 and there is to be absolutely no prejudice to you
25 because you did not testify.

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1 The decision as to whether or not you testify
2 will be left entirely up to you. You may talk with
3 your attorney, but the ultimate decision as to whether
4 or not you testify in the trial of this case will be
5 left entirely up to you.

6 Do you understand what I have just told you?

7 MR. PHILLIPS: Yes, sir, I do.

8 THE COURT: Very well.

9 Mr. Matthews, do you and your client need
10 additional time to talk, or do you feel your client is
11 ready to make a decision?

12 MR. MATTHEWS: He indicates he would like to
13 talk to me.

14 THE COURT: Very well. I'll give you a moment
15 to speak with your client.

16 [Whereupon, Mr. Matthews and Mr. Phillips
17 confer]

18 THE COURT: Mr. Matthews, if you and your client
19 will come back up. I remind you, Mr. Matthews, as you
20 already know, your client is still under oath. Mr.
21 Phillips, you're under oath, been sworn by the clerk.

22 I have given you an opportunity now to talk with
23 your attorney while the jury is outside of the
24 courtroom. Have you made a decision as to whether or
25 not you wish to testify in the trial of this case?

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1 MR. PHILLIPS: I'll take the advice of my
2 attorney and --

3 THE COURT: Well, it's not -- you can listen to
4 his advice --

5 MR. PHILLIPS: Yes, sir, Your Honor.

6 THE COURT: -- but it's your decision, not your
7 attorney's.

8 MR. PHILLIPS: This is my decision.

9 THE COURT: Have you made a decision?

10 MR. PHILLIPS: Yes, sir.

11 THE COURT: And is it your decision?

12 MR. PHILLIPS: Yes, sir.

13 THE COURT: And what is your decision as to
14 whether or not you wish to testify?

15 MR. PHILLIPS: Not take the stand, sir.

16 THE COURT: You are not going to testify?

17 MR. PHILLIPS: No, sir.

18 THE COURT: And that is completely your
19 decision? Nobody forced you into that?

20 MR. PHILLIPS: No, sir.

21 THE COURT: All right. Thank you very much.
22 You may return to your seat.

23 [Whereupon, Mr. Phillips complies]

24 THE COURT: Mr. Matthews, how many witnesses
25 does the defendant intend to introduce at this time?

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1 MR. MATTHEWS: No witnesses, Your Honor.

2

3 RENEWED MOTION FOR A DIRECTED VERDICT

4 MR. MATTHEWS: And we would move to renew our
5 motion for a directed verdict.

6 THE COURT: All right. On the same grounds that
7 -- on the same grounds you made at the close of the --

8 MR. MATTHEWS: Yes, sir.

9 THE COURT: -- State's case, which is now --
10 Just so you'll know, there is a case that I
11 pulled up while I was talking to you. You might want
12 to look at it. State vs. Glenn.

13 MR. MATTHEWS: I've seen it, Your Honor, I --
14 and I know what it says.

15 THE COURT: 374 S.E.2nd 671.

16 MR. MATTHEWS: I know.

17 THE COURT: And --

18 MR. MATTHEWS: I've seen the decision. I had
19 actually given a copy of it to the solicitor's office
20 months ago.

21 THE COURT: Yes, sir. I thought you would. And
22 I wanted to make sure, and for the reasons I enunciated
23 earlier concerning the evidence produced by the State.

24 Now, I'm in a little bit of a pickle. It's
25 three o'clock, and I normally would push a little bit

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1 because we could probably get it to the jury by about
2 4:30, 4:15, 4:30, by the time you both did arguments
3 and I did my charge. However, I don't like to give
4 juries cases this late in the day. The reason for
5 that, so that Mr. Phillips knows, is because I've found
6 that when you give a jury a case that late, they are
7 more interested in how late it is and being here late
8 than they are in going over the evidence. I would much
9 rather them start afresh, so my intention would be to
10 do closing argument and charge first thing in the
11 morning.

12 Of course, Mr. Matthews, because you have
13 elected not to present any evidence -- or I'm assuming
14 you will rest in the presence in the jury, as you've
15 told me as an officer of the Court, you will have final
16 argument in this case.

17 Who is going to argue for the State of South
18 Carolina?

19 MR. THORNTON: I'll be doing closing, Your
20 Honor.

21 THE COURT: Mr. Matthews, you will have final
22 argument.

23 Solicitor, how long do you think you need to
24 argue in the morning?

25 MR. THORNTON: Never more than twenty minutes,
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1 Judge.

2 THE COURT: Mr. Matthews, can you complete your
3 argument in twenty minutes?

4 MR. MATTHEWS: I hope so. I expect that I will
5 be able to.

6 THE COURT: All right. My charge will probably
7 last at least twenty, if not twenty-five, minutes. So
8 my intention would be to call the jury back. I will
9 ask you if you would like to present any evidence. You
10 will rest, which eliminates the need for any reply
11 testimony since this defendant is not putting up any
12 evidence.

13 You can then release witnesses that you've got
14 on hold, solicitor, in light of that fact.

15 I would request that you both submit to me this
16 afternoon any requests you have to charge, because I'll
17 be working on the charge. And my law clerk will be
18 showing you a verdict form, and we would resume and
19 complete this trial promptly at 9:30 a.m. in the
20 morning.

21 Do you understand, solicitor?

22 MR. THORNTON: The State understands, Judge.
23 Thank you, sir.

24 THE COURT: Do you understand, Mr. Matthews?

25 MR. MATTHEWS: Yes, sir.

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1 THE COURT: To give you time to prepare your
2 argument.

3 MR. MATTHEWS: I do, Your Honor.

4 THE COURT: Very well.

5 All right. Ma'am, if you would bring me the
6 jury, please.

7 [Whereupon, the jury enters the courtroom at
8 2:55 p.m.]

9 THE COURT: Mr. Foreman, and ladies and
10 gentlemen of the jury, you have now heard the evidence
11 from the State of South Carolina. We will now hear
12 from the defendant. Mr. Matthews?

13 MR. MATTHEWS: The defense rests, Your Honor.

14 THE COURT: Very well. Ladies and gentlemen,
15 you've now heard all of the evidence in this case but
16 you have not heard the closing arguments of the
17 attorneys or received my charge on the law. Because
18 that would take some time, rather than submit the case
19 to you at this time, we will conclude the trial first
20 thing in the morning with closing arguments and my
21 charge on the law.

22 Over the overnight recess I ask, as I have told
23 you throughout the trial, don't discuss the case with
24 anybody. If they try to talk to you, just say you
25 can't talk about it. Don't discuss it amongst

1 yourselves, don't read the newspaper, watch television,
2 or listen to the radio about this. I ask that you be
3 back in your jury room promptly before 9:30 in the
4 morning. We will conclude this trial in the morning.
5 So please be here on time so we can start on time. We
6 will start, hopefully, at 9:30 in the morning.

7 I want to thank you for your patience today,
8 during the course of this trial, in your jury service
9 and I look forward to seeing each and every one of you
10 in the morning.

11 If any of you need a work excuse from serving on
12 the jury this week --

13 Vicki, in the general sessions office?

14 THE CLERK OF COURT: Yes, sir.

15 THE COURT: When you leave, if you need a work
16 excuse for your employer, if you'll go downstairs and
17 there will be a sign downstairs in the clerk's office
18 that says general sessions. If you'll go in that door,
19 there will be a person in there that will provide you
20 with a work excuse from serving on the jury this week.

21 Thank you very much. You are now excused for
22 the balance of today. Please be in your jury room
23 prior to 9:30 a.m. in the morning. Thank you.

24 Everyone else remain seated while the jury is
25 leaving.

1 [Whereupon, the jury exits the courtroom at
2 2:58 p.m.]

3 THE COURT: I'm going to need to see counsel in
4 chambers concerning the verdict form and request to
5 charge. So if you have any, I want to hear from you.

6 I'll put a set, Madam Court Reporter, on the
7 record prior to starting in the morning, because I'm
8 going to have a charge conference with the lawyers at
9 this time.

10 For purposes of in the morning, so you'll know,
11 the State will argue first. They will have twenty
12 minutes. And then Mr. Matthews will argue. He'll have
13 twenty minutes. I will put the verdict form and the
14 charge -- the results of our charge conference this
15 afternoon on the record in the morning.

16 Anything further on the record outside the
17 presence of the jury, from the State, before we adjourn
18 for the evening?

19 MR. THORNTON: Not as to this case, Your Honor.

20 THE COURT: Anything else on the record from the
21 defendant?

22 MR. MATTHEWS: No, sir.

23 THE COURT: All right. I'll see both of you in
24 chambers.

25 [JURY TRIAL ADJOURNS AT 3:00 P.M.]

C E R T I F I C A T E

STATE OF SOUTH CAROLINA
COUNTY OF COLLETON

I, the undersigned Mia Perron, Circuit Court Reporter for the 14th Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of the jury trial held before the Honorable Perry M. Buckner, on Tuesday, July 22, 2008.

I do further certify that I am neither kin nor counsel to any of the parties and have no interest in the outcome of this action.

Dated this 10th day of October, 2008.

Mia Perron
Mia Perron, CCR, CVR-CM
Circuit Court Reporter
14th Judicial Circuit

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STATE OF SOUTH CAROLINA) COURT OF GENERAL SESSIONS
) FOURTEENTH JUDICIAL CIRCUIT
 COUNTY OF COLLETON) INDICTMENT NO: 2007-GS-15-858

STATE OF SOUTH CAROLINA)
)
 VS.)
)
 LAWRENCE PHILLIPS,)
)
 DEFENDANT.)
 _____)

JURY TRIAL

VOLUME 3 OF 3

held before the Honorable Perry M. Buckner
 Mia Perron, Circuit Court Reporter, 9th Judicial Circuit
 in the Colleton County Courthouse
 Walterboro, South Carolina
 on Wednesday, July 23, 2008, Commencing at 10:12 a.m.

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PROCEEDINGS

1
2 THE COURT: All right. I want you both to know
3 before you argue that it's my intention now to charge
4 16-11-10, which is the definition, for purposes of
5 arson and burglary. And I'm going to include that in
6 my charge. I'm charging both second and third degree
7 arson. Under second degree arson, I'm going to find
8 that the State must prove beyond a reasonable doubt
9 that the property which was burned was a dwelling
10 house, a church or other place of worship, a public or
11 private school facility, a manufacturing plant, a
12 warehouse, a building where business is conducted, an
13 institutional facility, or any structure designed for
14 human occupancy, including local and municipal
15 buildings. A dwelling house, which has been the law in
16 this state for many years, is a building in which a
17 person ordinarily sleeps. So I'll be charging both.

18 Mr. Matthews, so that there is a record of our
19 discussion, I am not ruling that you cannot argue that
20 this is not a dwelling house.

21 [Off the record momentarily]

22 THE COURT: But I am warning both of you, now,
23 in your closing argument, that I don't want anybody
24 misleading the jury that they look at just one or the
25 other, because you both know what my charge is going to

1 contain. And I expect you to give the jury -- I've
2 already told them I'm the sole judge of the law. And
3 you're free to argue that. But don't mislead them by
4 telling them that's the sole thing they have to look
5 at, since you've both been over my entire charge with
6 me. Okay?

7 Do you understand my ruling, Mr. Thornton?

8 MR. THORNTON: The State understands, Your
9 Honor.

10 THE COURT: Do you understand my ruling, Mr.
11 Matthews?

12 MR. MATTHEWS: I do, Your Honor.

13 THE COURT: Very good.

14 All right. Mr. Matthews has final argument
15 because he didn't put up any evidence. And both of you
16 tell me you can do it within twenty minutes.

17 [Off the record momentarily]

18 THE COURT: Anything further from the State
19 before I bring the jury?

20 MR. THORNTON: Nothing from the State, Judge.

21 THE COURT: You have first argument, Mr.
22 Thornton.

23 MR. THORNTON: Yes, sir.

24 THE COURT: Anything further from the defendant
25 before I bring the jury? Mr. Matthews?

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1 MR. MATTHEWS: I'm sorry, Your Honor.

2 THE COURT: Anything further from the defendant
3 before I bring the jury?

4 MR. MATTHEWS: No, sir.

5 THE COURT: Very well.

6 Yes, ma'am. If you would bring us the jury,
7 please. I don't want people --

8 Both of you have seen the amended verdict form,
9 have you not?

10 MR. THORNTON: I have, Your Honor.

11 THE COURT: Any objection?

12 MR. THORNTON: No objection from the State..

13 THE COURT: Mr. Matthews, you've --

14 MR. MATTHEWS: No, sir.

15 THE COURT: Any objection?

16 MR. MATTHEWS: No, sir.

17 THE COURT: Very well.

18 [Whereupon, the jury enters the courtroom at
19 10:12 a.m.]

20 THE COURT: Mr. Foreman, and ladies and
21 gentlemen of the jury, I know you were all sitting back
22 there saying, now, Judge Buckner told us to be here at
23 9:30 and here it is 10:15, and what is he doing. Just
24 so you know: I, of course, have state-wide
25 jurisdiction, and I had an emergency hearing this

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1 morning in a case, a murder case, involving Hampton
2 County. I had a number of people here. In fact, the
3 last lawyer just walking out of the courtroom here had
4 two different defendants. And it was a bond setting,
5 ladies and gentlemen, that was very emotional,
6 involving a family. I want you to know I hadn't
7 forgotten about y'all, but sometimes I -- they told me
8 that hearing would take fifteen minutes. Well, y'all
9 know fifteen turns into thirty. And you're trying to
10 make sure that you get all the facts.

11 So I wanted you to understand what we were
12 doing. I did not mean to delay you unnecessarily, but
13 it was important that I have that hearing because I had
14 ordered that we would have that hearing at a previous
15 term of court if the case were not tried by this past
16 term of court in Hampton. So that's why. Hampton came
17 to Colleton this morning, ladies and gentlemen. And I
18 apologize for that delay.

19 Now, ladies and gentlemen, I told you yesterday
20 you heard the evidence in the case. You are now going
21 to hear the final arguments of the attorneys, followed
22 by my charge to you on the law. I ask, ladies and
23 gentlemen, that you listen carefully to the attorneys
24 and their arguments. And depending on the time when
25 they finish, I'll probably give you a quick break, let

1 you use the restroom before we begin charging the law,
2 because I want you to listen to that carefully so
3 you'll have everything before you begin your
4 deliberations.

5 The first argument is going to be from the State
6 of South Carolina, then followed by an argument by
7 counsel for the defendant. Please give the attorneys
8 your attention.

9 Mr. Thornton.

10 MR. THORNTON: Thank you, Judge. May it please
11 the Court.

12 THE COURT: Yes, sir.

13 MR. THORNTON: Mr. Matthews.

14 - - - - -

15 CLOSING ARGUMENT

16 MR. THORNTON: Good morning, y'all. September
17 the 14th, 2007. Y'all have heard that date over and
18 over again. Your job here is to determine what
19 happened that day, and who did it. You know, we can
20 complicate it with a lot of things which we have to do
21 under the law. The judge is going to talk to you about
22 the law. And let me tell you right now: whatever I
23 tell you about what the law is, or whatever Mr.
24 Matthews may get up here and tell you what the law is,
25 is completely secondary to the judge.

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1 The judge told you in the beginning of this case
2 he is the judge of the law, you are the judge of the
3 facts. So if anything I tell you about what the law
4 is, or what I think he's going to charge you at the
5 end, or if Mr. Matthews says anything, and that
6 disagrees with what the judge says, you have to go with
7 what the judge says because he is the judge of the law.

8 What happened September the 14th, 2007, 609
9 Fourth Street in Walterboro? It's very simple, y'all.
10 What happened was Lawrence Philips burned down the
11 trailer he was living in. He poured gas into it, he
12 set it on fire, after he moved all of his stuff out of
13 it. Or at least most of it. His sister came up and
14 testified and told you a few things, which I'll get
15 into in a minute. That's what happened. And sometimes
16 it is as simple as it looks. Sometimes it is that
17 clear-cut. It isn't always, but sometimes it is.

18 What have you got in this case? We're going to
19 look real quick at a diagram that's in evidence. The
20 evidence is what -- if you'll remember what the judge
21 told you, was anything that is said from the stand, any
22 exhibits that we have that are entered. You're going
23 to have those with you in the jury room. I would
24 invite you to look at those, because that's what the
25 evidence in this case is.

1 Now, one of the things that was in evidence is
2 this diagram done by our SLED agent, Agent Seals.

3 THE COURT: You can come around.

4 MR. THORNTON: Thank you, Your Honor.

5 What does this diagram show you? Two separate
6 fires. Why is that significant?

7 And, again, you remember Ms. Stilley got up here
8 and she told you -- and we don't want you to leave your
9 common sense at the door just because you're deciding
10 issues in a case and facts in a case. We want you to
11 use your common sense.

12 What does it tell you if there are two separate
13 fires going at the same time separated by a door?
14 Well, our expert witness told you it's because they're
15 two separate fires. In other words, one fire didn't
16 spread to the other part of the house. How likely do
17 you think it is that two fires simultaneously started
18 for no reason if they didn't have a little help from
19 Lawrence Phillips?

20 What else do we have in this case? You've got
21 sites one, two, three, and four where the, as the
22 evidence showed you yesterday, samples of carpet and
23 carpet fiber were taken. Now, the agent testified that
24 at all four locations his -- I think he called it a
25 carbon or hydrocarbon detector that detects vapors of
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1 ignitable liquids. He hit a presumptive positive in
2 these locations. And on location number one he had a
3 positive hit, the SLED analyst came and told you, for
4 gasoline.

5 So gasoline we can say was definitely poured
6 here. And this had a burn pattern. So you've got two
7 separate fires separated by a door. We know that they
8 didn't spread one to another. You have irregular burn
9 patterns, indicating somebody poured an ignitable
10 liquid in both places. Both places had presumptive
11 tests for vapors for an ignitable liquid. And we got a
12 positive on gas on the master-bedroom fire.

13 That's what you have just with the fire itself,
14 if you had nothing else. Okay? Clearly, that's an
15 arson. You've got pictures of all of the electrical
16 box, all the outlets in the rooms. He ran the wires
17 from where they were put into the panel where he was
18 siphoning electricity, it appears, from somebody else.
19 There's no evidence as to who it was, as the agent told
20 you. But clearly those were added lines. But they
21 were checked. The meter was checked. The line was
22 checked all the way under the trailer to the other
23 house. There was no evidence -- there's pictures of it
24 that are in evidence. There's no evidence that this is
25 an electrical fire. Everything points to the contrary.

1 What did the agent tell you when he got up
2 yesterday? If he had nothing other than the two
3 separate fires and the burn patterns, it would be an
4 arson. Because that's not how natural or accidental
5 fires get started, not two at the same time, not with
6 irregular burn patterns, and not with gasoline present
7 at one location for sure and vapors from gas or an
8 ignitable liquid present in both locations.

9 So that's what you have with the fire itself.

10 Is that all that you have in this case?

11 Absolutely not. What else have you got? Lori Joslin
12 came down here from Connecticut. Used to be his next-
13 door neighbor. Told you that's where he lived,
14 Lawrence Phillips lived there, saw him all the time.
15 Came over and got a gun back, I believe she testified,
16 that he had loaned her. What did he say when he left?
17 Wonder how that would look going up in flames. I guess
18 we found out what it looked like going up in flames,
19 because we've got pictures of it.

20 So he says, wonder what that would look like
21 going up in flames. He walks over to his house. What
22 did he see then? He's moving all of his stuff from his
23 house to his car. Moving all of his stuff out. What
24 does that sound like? What did he -- what else did he
25 tell you? Do you remember what else he said? I'm

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1 leaving town. I'm leaving town; wonder what the house
2 would look like going up in flames. And she sees him
3 moving all of his stuff into his car. And then a few
4 minutes after that, she said sometimes around thirty
5 minutes or so, she sees fire coming out of the trailer.
6 I don't know how much more clear-cut it can be, y'all.

7 Is that all we have in this case? No, that's
8 not all we have in this case. What else do we have?
9 You've got the defendant's sister talking about a
10 statement. Now, she denied it on the stand. If you'll
11 remember, she got up and said, what, that he did it?
12 No, he didn't say that. Jessica Hughey came up.

13 And y'all are here to determine who is credible
14 and who isn't. The judge will talk to you about that,
15 who -- you know, who do you believe and who do you not
16 believe; what reason might somebody have to not tell
17 the truth; those types of things; what was their
18 demeanor on the stand.

19 So was Jessica Hughey credible when she came up
20 and sat on the stand and said, that's what Rhonda, his
21 sister, told me, that he admitted to her that he did
22 it? Or was his sister the credible one when she said,
23 what, that he did it; no, he didn't say that. Which
24 one was credible? Because if you believe Jessica
25 Hughey, not only do you have a definite arson with two

1 different fires separated by a door, vapors at both
2 locations, gas at one location, no other accidental
3 source, everything else ruled out, you also have the
4 defendant right before the fire starts saying, wonder
5 what it would look like going up in flames. You also
6 have him moving his stuff out right before the fire
7 gets started. And if you believe Jessica Hughey, you
8 have him admitting to his sister that he did it.

9 Now, you might ask yourself, well, why would
10 Rhonda Wilson, his sister, tell somebody that? Well,
11 don't you remember when she got up on the stand, they
12 were good friends. And Mr. Matthews asked her, well,
13 weren't y'all boyfriend and girlfriend, don't you have
14 jewelry from him, or don't you have -- and she said,
15 no, they weren't boyfriend and girlfriend; yes, they
16 were friends; yes, she had -- he had given her a gold
17 necklace. So might that be the kind of person that a
18 sister might confide in if she was talking about that?
19 And, again, y'all have to determine who was credible
20 and who wasn't. That's your job.

21 Okay. The judge, again, is going to talk to you
22 about the law. And the charge on the law can be very
23 extensive, and in this case there's going to be several
24 things charged. One of them is what Mr. Matthews told
25 you in the opening. Remember in his opening he brought
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1 the little board out here and talked about dwelling
2 house and what it was? And that, as far as I can tell,
3 is a correct statement of what the definition of a
4 dwelling house is.

5 But that's not the only thing that's going to be
6 charged. But let's go through it. With respect to the
7 crimes of arson and to all criminal offenses a dwelling
8 house -- I'm paraphrasing -- is any house, outhouse,
9 apartment building, erection, shed, or box, in which
10 there sleeps a person.

11 All I can ask of y'all is common sense. Is the
12 mobile home that he's living in, does it fit one of
13 those? That's a factual issue that y'all have to
14 decide. Okay? Does a mobile home fit within a person
15 who -- within a shed, a box, a house, an outhouse, or
16 an apartment building? What did all the witnesses --
17 his own sister testified that's where he lived. Now,
18 granted, he didn't live there after he set fire to it
19 and burned it down. But is that what we're here about?
20 You know, what we are here about is him burning down
21 his house, the house that he lived in.

22 And that's not the only part. See, the problem
23 with that is that's just one part. The other part is
24 the arson in the second degree statute, which says a
25 person who willfully and maliciously causes an

1 explosion, sets fire to, burns, or causes to be burned
2 -- and it goes on to talk about, or somebody who aids
3 or counsels, meaning helps, somebody to do that -- to a
4 dwelling house, which is what that definition covers, a
5 church, a place of worship, public or private school
6 facility, a manufacturing plant, a warehouse, a
7 building where business is conducted, an institutional
8 facility or any structure designed for human occupancy,
9 to include local and municipal buildings. Any
10 structure designed for human occupancy. So if you find
11 that a mobile home is a dwelling house -- and this
12 statute goes on to say, I apologize, that that person
13 would be guilty of arson in the second degree.

14 If you find that a mobile home where somebody
15 sleeps is a dwelling house, and you find that he burned
16 it down, he's guilty of arson in the second degree.
17 But if for some reason you decided that you didn't
18 think it was a dwelling house but you found that it was
19 a structure designed for human occupancy: one of the
20 other definitions that the judge may give you is, a
21 place where a person normally sleeps. That's an arson
22 second.

23 The judge may also charge you on the lesser
24 included offense of arson in the third degree, which is
25 some other building other than that. But that's not

1 what we are here about today, y'all. He burned down a
2 trailer that he lived in. He poured gas in the floor,
3 he lit it on fire, and he told somebody he was going to
4 do it. He did it, and then he admitted doing it
5 afterwards. Short of a videotape of him doing it, I
6 don't know what else the State could give you in this
7 case, y'all.

8 And I realize this is a very serious matter. As
9 jurors, it's a serious thing and you should take it
10 very seriously. But sometimes it really is that clear-
11 cut. Sometimes it is exactly what it looks like. He
12 said, what's it going to look like up in flames. He
13 set it on fire. Moved all of his stuff out and then he
14 admitted that he did it, to his sister, later. That's
15 what this case is about.

16 What Mr. Matthews may talk to you about is,
17 well, the time doesn't add up. You remember everybody
18 said around seven o'clock. And he asked one of the
19 firefighters up here, well, it was already well
20 underway when we got there. What did Lori Joslin
21 testify to? Did she say it was at 6:58 or 6:59? She
22 said it was around seven o'clock in the morning. What
23 did the firefighters say when they got on the stand?
24 It was sometime a little after 7:00, and we got there
25 about ten minutes after we were toned out, I think is

1 the word that was used. When she called -- Lori Joslin
2 said she called 911 -- she could already see the fire;
3 correct? Isn't that what she testified to? So it was
4 already involved by the time she called them. So does
5 it make sense that when they got there he would say it
6 was already well underway? Absolutely, because she
7 could see fire coming out of the trailer when she
8 called. That's why she made the phone call to 911.

9 So I don't want you to concentrate on tiny
10 little details and lose the big picture. Okay? Look
11 at everything. Don't just look at what I've, you know,
12 asked you to look at. I've tried to tell you about
13 everything I could remember. And don't just look at
14 what Mr. Matthews asks you to look at. Look at
15 everything -- what in this case makes sense -- based on
16 all the witnesses that testified, based on all the
17 exhibits that you see. That's all I'm asking you to do
18 is look at everything. Look at all the law as the
19 judge charges you, not what I tell you and not what Mr.
20 Matthews tells you.

21 Lastly, y'all, I'll tell you this. A lot of
22 times I think people get confused about the reasonable
23 doubt and what that means. And His Honor is going to
24 give you a charge about what reasonable doubt is. A
25 reasonable doubt doesn't mean beyond any possible

1 shadow of a doubt. That's not what the definition is.
2 It's beyond any reasonable doubt. And the short -- and
3 the long and the short of it is -- and, again, if I say
4 anything that disagrees with the judge, please do what
5 the judge says.

6 But the long and the short of it is are you
7 firmly convinced the defendant is guilty. If you are,
8 then find him guilty. If you think he burned the house
9 down and you think it's a dwelling or fits somewhere
10 else in that statute, a structure designed for human
11 occupancy, if you think -- if you are firmly convinced
12 that he did that, and we've given you that evidence,
13 find him guilty. That's all the State can ask you to
14 do.

15 I don't know what Mr. Matthews is going to talk
16 to you about now. I would imagine it's maybe about the
17 time issue, maybe about whether or not this is a
18 dwelling house or whether his client had an intent to
19 return. You know what? The long and the short of it
20 is he burned it down, he set it on fire, he said he was
21 going to do it, he did it, and he admitted doing it,
22 and that's what this case is about. He burned down the
23 trailer he lived in. It's as simple as that.

24 I would ask you to go back to your jury room,
25 review all of the evidence in this case, all the

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1 samples, the photographs, the diagram, the testimony,
2 and come back with the only true verdict in this case,
3 which is guilty of arson in the second degree. Thank
4 you.

5 MR. MATTHEWS: May it please the Court.

6 THE COURT: Mr. Matthews.

7 MR. MATTHEWS: Mr. Thornton, Ms. Stilley.
8 - - - - -

9 CLOSING ARGUMENT

10 MR. MATTHEWS: Mr. Foreman, ladies and gentlemen
11 of the jury, you have had a chance to review a lot of
12 different evidence, a lot of different testimony from
13 the stand, and let's go through that a little bit at a
14 time.

15 Lori Joslin testified that she lived behind Mr.
16 Lawrence [sic] and that at approximately 7:00 a.m. he
17 stopped by to get his gun. Now, Mr. Thornton is right.
18 I am concerned about the time frame, because obviously
19 there's not time. And it's not just a little bit of
20 difference. She says that he appeared at about seven
21 o'clock, moved stuff in and out of the house, and then
22 left, and then at seven o'clock stated she saw the
23 house up in flames. Obviously, that can't be true. Is
24 it a minor difference, or is it a major difference?
25 That's for you to decide. But it's certainly something

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1 that is not -- it's important.

2 Now, there are a couple of things that Mr.
3 Thornton left out when he talked about Ms. Joslin's
4 testimony. One of the things that she did not say on
5 direct examination but she did say on cross-examination
6 is she said that Mr. Phillips told her, I'm leaving and
7 I'm not coming back. Now, that is -- that's an
8 important statement. And, also, what else? That she
9 left -- she got his lawnmower. Now, one of the things
10 that is -- one of the things that's missing --

11 And let me pull this up. I don't have the high-
12 tech gadgets that the State does here, I'm afraid.

13 [Off the record momentarily]

14 MR. MATTHEWS: what the State has to prove in
15 this case is each and every element. And you can't
16 just take some of the elements in this case. Can you
17 see this? Okay. This is the arson statute. There are
18 two degrees of arson, which the Court I believe will
19 allow you to consider in this. One, a person who
20 willfully and maliciously causes an explosion, sets
21 fire to, burns, a dwelling house, church, place of
22 worship, public or private school facility, a
23 manufacturing plant or warehouse, a building where
24 business is conducted, an institutional facility, or
25 any structure designed for human occupancy, to include

1 local and municipal buildings.

2 Okay. Clearly, some of these things do not
3 apply. Clearly -- and if you don't find that it's any
4 of those particular things, then you go on to the arson
5 third degree: a person who willfully and maliciously
6 causes damage to a building or structure other than
7 those specified in subsection A or B -- those specific
8 things that are listed -- is guilty, whether the
9 property of himself or another, is guilty of arson in
10 the third degree.

11 That's the difference. And really from the very
12 beginning, that's been the biggest issue. Now, I'm not
13 -- there are a couple of things that the State has not
14 proven in this case. Some of the things that don't
15 make any sense: you haven't heard any reason why Mr.
16 Phillips would do this. Does anybody hear any motive
17 at all as to why he would have done this? I didn't
18 recall hearing anything from the stand as to why he did
19 it. I think that there is the possibility that
20 somebody else may have --

21 I think it's pretty clear, and I think the State
22 has proven beyond a reasonable doubt, that this was
23 an intentionally-set fire. I have considered the
24 possibility that this may have been an electrical fire.
25 But there wasn't even legal power to the place.

1 Remember we saw in this stack of photographs that
2 you'll have to consider, you'll see that picture of a
3 box that was set up, there was no meter to it. Was
4 this a legal dwelling place? Was it a place where
5 somebody was supposed to live? There wasn't legal
6 power to it. Whoever hooked it up -- and we didn't
7 hear that.

8 The victim in this case is listed as James Cook.
9 James Cook owned, but did not live in, the building.
10 Now, what happens if you burn down a building that
11 somebody else lives in? If you burn down a building
12 that somebody else lives in, well, that's second degree
13 arson. If you burn down a building that nobody lives
14 in -- so for example Mr. Cook, even though he owned the
15 trailer, he could have committed second degree arson
16 because Mr. Phillips was living there. But Mr. Cook
17 was not living there. If he is the victim -- and I
18 think you'll have an exhibit going back, introduced by
19 the State, that says he was the victim. Now, either he
20 was or he wasn't. If Mr. Phillips did not burn this
21 down, then he would be the victim, and obviously you
22 should acquit him. If you don't believe that he set
23 this fire, obviously you should acquit him. But if you
24 believe he did, then the victim is Mr. Cook.

25 And as to Mr. Cook, it's just a way to make

1 money. That's all it is. With illegal power, with no
2 meter box, with nothing. And I don't know why you
3 would wire that. Either you don't know somebody is
4 supposed to be living there, maybe -- I don't know.
5 Maybe -- figure out what reasons why somebody would do
6 that. Why would somebody wire the meter box? Not to
7 pay electric? Okay. That's one reason.

8 A residence can be something as simple -- a
9 dwelling can be something as simple as a box as long as
10 somebody intends to be there. So that's -- sometimes
11 the intent of somebody to be in a place depends not on
12 the character of the thing but on the intent of the
13 people staying there. Otherwise, why would you have
14 under -- the dwelling house statute specifically
15 designed to apply to both burglary and arson cases?

16 A dwelling is anything: a house, out house,
17 apartment, building, erection, shed, or a box, in which
18 sleeps a person who lodges there with a view to
19 protection of the property. If you've got somebody
20 living out on the street and they live in a box, and
21 they leave and somebody comes and burns their box down,
22 well, then, that's arson second degree. However, if
23 somebody who's living in the box finally gets -- he has
24 a shelter to go to or something and he says, I'm sick
25 of this, I'm burning this down, that box is just a box.

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1 In any event, it's very specifically designed
2 here to talk about this. Clearly under the arson
3 second degree statute, some of them clearly do not
4 apply, in my opinion. And, again, this is ultimately
5 -- this part is your decision to make. Is it a
6 dwelling house? Well, we see what dwelling house --
7 that's specifically designed here to talk about a
8 person who lodges there with a view to protection of
9 the property. Once you abandon the intent to continue
10 to defend the property, it's no longer a dwelling
11 house, according to the statute as I read it, with a
12 view to protection of it. Again, Mr. Cook could have
13 committed that; Mr. Phillips could not.

14 A church: clearly, it's not a church. There
15 has been no showing, no attempt to show, that it's a
16 church or a place of worship. Is it a public or
17 private school? Clearly, it's not. Is it a
18 manufacturing plant or a warehouse? Clearly, it's not.
19 A building where business is conducted: no showing of
20 that. Clearly, it can't be. An institutional
21 facility: clearly, it can't be. Any structure
22 designed for human occupancy: Perhaps that's possible.
23 To include, though -- it says further: to include
24 municipal buildings, whether the property -- local or
25 municipal buildings. Okay. So why would you have this

1 dwelling house and something for human occupancy?
2 That's ultimately for you to decide. A dwelling is
3 further designed as a place where somebody normally
4 sleeps.

5 I would submit that a building that doesn't have
6 legal power can be a dwelling, as long as somebody
7 intends for it to be, but it can't be a building
8 designed for human occupancy. You don't have legal
9 power.

10 In any event, ultimately, if you believe that
11 the evidence indicates that Mr. Phillips set this
12 intentional fire, which I believe the State has proved
13 it was, most of the elements are there. But you only
14 need one element to be missing. If one element is
15 missing, it's like having a glass of water and somebody
16 puts a couple of drops of gas in it. Would you drink
17 it? That's reasonable doubt, a doubt that will cause a
18 reasonable person to hesitate to act. So you've got a
19 glass of water that is pure, it's right from the creek,
20 it's cold, ice cold, and you put two or three drops of
21 gas in it. Would you drink it?

22 There are some additional little things. But
23 ultimately, ladies and gentlemen, either Mr. Phillips
24 didn't set this fire, or he did and he's guilty of
25 third degree but not second degree arson. Please

1 consider carefully the judge's charges on the law and
2 render a verdict that is just and true. And remember
3 that in spite of the fact -- the solicitor's office
4 says it's up to you to decide what happened. That's
5 not really it. It's up to you to decide what the State
6 has proven. Please take -- this is a very, very
7 serious case. I would ask you all to give it your very
8 serious attention. Thank you.

9 THE COURT: Mr. Foreman, before I begin my
10 charge, if any member of the jury or my alternate
11 jurors would like a break for just a couple of minutes
12 before I begin so you can use the restroom, stretch
13 your legs, let me know and I'll take it right now
14 before we begin the charge. The charge will last about
15 twenty minutes to twenty-five minutes, something like
16 that. Anybody need a break? Everybody okay?
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CHARGE OF THE COURT

THE COURT: Ladies and gentlemen, it is now my duty to charge you the law that applies to this case.

The State, as I told you at the outset, has charged the defendant, Lawrence Phillips, with one count of arson in the second degree in indictment number 2007-GS-15-0858. I am holding the indictment right now in my hand.

I remind you, ladies and gentlemen, that the fact that the defendant was arrested, charged, and indicted in this case is not evidence in this case, nor does it create any presumption or inference of guilt. This document I hold in my hand is simply the formal written instrument by which the case is brought into court. It contains the charge made against the defendant.

Now, the defendant has pled not guilty to this indictment, and that plea of not guilty puts the burden on the State of South Carolina to prove the defendant guilty beyond a reasonable doubt. A person charged with committing a criminal offense is never required, in South Carolina, to prove himself or herself innocent.

I charge you, ladies and gentlemen, that it is an important rule of the law that the defendant in a
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1 criminal trial, no matter what the seriousness of the
2 charge may be, will always be presumed to be innocent
3 of the crime for which the indictment was issued unless
4 guilt has been proven by evidence satisfying you of
5 that guilt beyond a reasonable doubt. The presumption
6 of innocence, ladies and gentlemen, is not just a legal
7 theory, and it does not end when you begin your
8 deliberations but it accompanies the defendant
9 throughout the trial until you, the jury, reach a
10 verdict of guilt based on evidence satisfying you of
11 that guilt beyond a reasonable doubt. It is not just a
12 legal phrase, the presumption of innocence. It is a
13 substantial right to which every defendant is entitled
14 unless you, the jury, are satisfied from the evidence
15 of the defendant's guilt beyond a reasonable doubt.

16 What is a reasonable doubt in the law? A
17 reasonable doubt is the kind of doubt that would cause
18 a reasonable person to hesitate to act. The State has
19 the burden of proving the defendant guilty beyond a
20 reasonable doubt. Some of you may have served as a
21 juror in civil court where you were told it was only
22 like -- or only necessary to prove that a fact is more
23 likely true than not true. We call that by the greater
24 weight or the preponderance of the evidence. In a
25 criminal case, the State's proof must be more than

1 that. It must be beyond a reasonable doubt. Proof
2 beyond a reasonable doubt is proof that leaves you
3 firmly convinced of the defendant's guilt.

4 There are very few things in this world, ladies
5 and gentlemen, that we know with absolute certainty.
6 And in criminal cases the law does not require proof
7 that overcomes every possible doubt. If based on your
8 consideration of the evidence, you, as a jury, are
9 firmly convinced that the defendant is guilty of the
10 crime charged, you must find the defendant guilty. If,
11 on the other hand, you think there is a real
12 possibility that the defendant is not guilty, you must
13 give the defendant the benefit of the doubt and find
14 the defendant not guilty.

15 I remind you that during this trial, ladies and
16 gentlemen, you and I have had certain duties to
17 perform. As the trial judge, it has been my
18 responsibility to preside over the trial of the case.
19 I also have the duty to rule on the admissibility of
20 the evidence offered during this trial. You are,
21 ladies and gentlemen of the jury, to consider only the
22 competent evidence before you. If there was any
23 testimony ordered stricken from the record in this case
24 during this trial, you must disregard that testimony.
25 You are to consider only the testimony or evidence

1 which has been presented from this witness stand, any
2 exhibits which have been introduced into evidence
3 during the trial of the case and, if any, stipulations
4 of counsel or the parties which may have occurred
5 during the trial of the case.

6 I have the additional duty as the presiding
7 judge, now, to charge you, the jury, the law that
8 applies to this case. As the presiding judge, I am the
9 sole judge of the law of this case, and it is your duty
10 as jurors to accept and to apply the law exactly as I
11 now state it to you. If any of you already have any
12 ideas in your mind as to what the law is, or any of you
13 have an opinion as to what you feel the law ought to be
14 and it does not agree with what I now tell you the law
15 is, you must abandon any preconceived ideas that you
16 may have, because you took an oath at the beginning of
17 this trial in which you swore to accept and apply the
18 law exactly as I now state it to you. In every case
19 tried in this courtroom before a jury, the jury becomes
20 the sole and the exclusive judge of the facts in this
21 case. A trial judge such as myself cannot comment on,
22 intimate, or make any statement whatsoever to a trial
23 jury such as yourselves about the facts in a case.

24 Since you, ladies and gentlemen, the jury, are
25 the sole judges of the facts in this case, you are not

1 to infer from anything that I might have said during
2 the progress of this trial that I have any opinion
3 whatsoever about the facts of this case. The law does
4 not allow me to have an opinion about the facts in this
5 case. This, ladies and gentlemen, the facts of this
6 case, is a matter solely for you, the jury, to
7 determine.

8 As jurors it is your duty to determine the
9 effect, the value, the weight, and the truth of any
10 evidence that's been presented during the trial of this
11 case. Now, like many things in the law, there are two
12 types of evidence which are generally presented during
13 a trial. And as I said, like many things in the law,
14 we have names for those two general types of evidence.
15 We call the two general types of evidence direct
16 evidence and circumstantial evidence. Direct evidence
17 is the testimony of a person who claims to have actual
18 knowledge of a fact, such as an eyewitness to an event.
19 Direct evidence is evidence which immediately
20 establishes collateral facts -- I mean, immediately
21 establishes not collateral facts, but the main fact to
22 be proved. That's direct evidence. Circumstantial
23 evidence, as contrasted with direct evidence, is proof
24 of a chain of facts and circumstances indicating the
25 existence of a fact. Circumstantial evidence is

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evidence which immediately establishes collateral facts from which the main fact may or may not be inferred. Circumstantial evidence, ladies and gentlemen of the jury, is based on inference and not on personal knowledge or personal observation. The law makes absolutely no distinction between the weight or the value to be given to either direct evidence or circumstantial evidence, nor is a greater degree of certainty required of circumstantial evidence than of direct evidence.

You, ladies and gentlemen of the jury, should weigh all the evidence in this case. After weighing all the evidence, both direct and circumstantial in this case, if you are not convinced of the guilt of the defendant beyond a reasonable doubt, you must find the defendant not guilty. On the other hand, after weighing and hearing all of the evidence in this case, if you are convinced of the guilt of the defendant beyond a reasonable doubt, you must find the defendant guilty.

Necessarily, you as a jury must determine the credibility of the witnesses who have testified in this case. I told you at the beginning credibility simply means believability. It becomes your duty as jurors to analyze, to evaluate, the evidence and determine which

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1 evidence convinces you of its truth. In determining
2 the believability of the witnesses who have testified
3 in this case, you may believe one witness over several,
4 or several witnesses over one. You may believe a part
5 of the testimony of a witness and reject the remaining
6 part of the testimony of that same witness. You may
7 believe the testimony of a witness in its entirety, or
8 you may reject the testimony of a witness in its
9 entirety. You may consider whether any witness has
10 exhibited to you any interest in the outcome of this
11 case, any bias, any prejudice, or other motive in this
12 case. You may also consider in determining the
13 believability or credibility of the witnesses the
14 appearance and manner of the witness, while the witness
15 was on the witness stand, in judging credibility or
16 believability.

17 Now, I told you during the trial that the rules
18 of evidence ordinarily do not permit witnesses to get
19 on this witness stand, take an oath, and testify to
20 opinions or conclusions. An exception to this opinion
21 rule that we have in evidence exists for witnesses we
22 call expert witnesses. A witness who by education,
23 training, and experience has become or claims to have
24 become an expert in some art, science, profession, or
25 calling, may state an opinion as to relevant and

1 material matters in which the witness claims to be an
2 expert and may also state the reasons for their expert
3 opinion. You should consider any expert opinion
4 received in evidence during the trial of this case and,
5 just like any other evidence, give it the weight you as
6 a jury think it deserves. If you decide that the
7 opinion of an expert is not based on sufficient
8 education and experience -- or experience, or if you
9 conclude that the reasons given in support of the
10 opinion are not sound or that the opinion is outweighed
11 by other evidence, you may disregard the opinion
12 entirely. An expert witness' opinion is to be given no
13 greater weight than that of other witnesses simply
14 because the witness is an expert.

15 I charge you, ladies and gentlemen, and
16 emphasize, that the fact that the defendant did not
17 testify in this case is not a factor to be considered
18 by you in any way in your deliberations and in your
19 consideration on the question of the guilt or innocence
20 of the defendant. It must not be considered by you in
21 any manner whatsoever. A defendant has the
22 constitutional right to remain silent, and the
23 assertion of this constitutional right must not be
24 considered by you, the jury, during your deliberations.
25 It should not be discussed in your jury room. I repeat

1 that under the oath which each of you took, you are to
2 draw no conclusion whatsoever from the fact that the
3 defendant in this case did not testify. The burden of
4 proof, as I have stated to you, is on the State of
5 South Carolina. The defendant is not required to prove
6 his innocence. The burden of proof remains on the
7 State to prove guilt beyond a reasonable doubt.

8 Now, in order to establish criminal liability or
9 criminal responsibility, criminal intent is required
10 for most crimes. For example, it is the mental state,
11 criminal intent. It may be required to be proven by
12 the State for any particular type of crime. It might
13 be some criminal purpose or intent or knowledge or
14 recklessness or, in some cases, even criminal
15 negligence. Those are just examples of criminal
16 intent. Criminal intent must be proven by the State
17 beyond a reasonable doubt. Criminal intent is always a
18 matter that must be determined by the jury, from the
19 facts and circumstances surrounding the situation,
20 based on evidence introduced during the trial of the
21 case. There is no way, ladies and gentlemen, to prove
22 intent to a mathematical certainty. There is no way,
23 ladies and gentlemen, that medical science can dissect
24 a person's brain and determine what that person had in
25 mind. So the law says, ladies and gentlemen, that

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1 criminal intent may be inferred from the circumstances
2 shown to have existed, based on evidence introduced
3 during the trial of the case. This is how, ladies and
4 gentlemen, you, as a jury, make a determination of
5 whether or not any element in a crime requiring
6 criminal intent exists, ladies and gentlemen. It is
7 not necessary, ladies and gentlemen, to establish
8 criminal intent by positive or direct evidence, but
9 intent may be established by inference in the same way
10 as any other fact: by taking into consideration the
11 acts of the parties and all the facts and circumstances
12 of the case, based on evidence introduced during the
13 trial of the case. Criminal intent is a mental state,
14 a conscious wrongdoing. It is up to you, ladies and
15 gentlemen of the jury, to determine what the defendant
16 intended to do based on the circumstances shown to have
17 existed from evidence introduced during the trial of
18 the case. Criminal intent can arise from an action or
19 a failure to act. It may arise from negligence,
20 recklessness, or an indifference to duty, or the
21 consequences considered by law to be the equivalent of
22 criminal intent.

23 I charge you, ladies and gentlemen, the
24 defendant in this case is charged in the indictment
25 with the offense of second degree arson. In order to

1 prove second degree arson, the State must first prove
2 beyond a reasonable doubt that the defendant willfully
3 and maliciously caused an explosion, set fire to,
4 burned, caused to be burned, aided, counseled, or
5 procured the burning of certain properties. Willfully,
6 ladies and gentlemen, means that it was not done by
7 accident but was done knowingly or intentionally. It
8 must be shown that the burning was by the willful act
9 of some person and not as a result of a natural or
10 accidental cause. Maliciously means with hatred, ill
11 will, or hostility towards another person. A person
12 who intentionally does a wrongful act without legal
13 justification or excuse does the act maliciously.

14 A malicious burning is an act done with a
15 condition of mind that shows a heart bent on mischief,
16 showing a design to do an intentional wrong act towards
17 another or towards the public without any legal
18 justification or excuse. This malice need not be
19 express malice but may be inferred, as I explained to
20 you earlier. Burning means an actual combustion of
21 some portion or a piece of property. It is not
22 necessary, ladies and gentlemen of the jury, that the
23 property be consumed or totally destroyed. Charring of
24 the material of which the property is constructed, or
25 even a change in the fiber or composition of the

1 structure, is required for a burning. Singeing,
2 smoking -- singeing, smoking, blistering, scorching, or
3 discoloring by the heat, however, is not enough to
4 constitute a burning.

5 Next the State must prove for arson second
6 degree, beyond a reasonable doubt, that the property
7 which was burned was a dwelling house, a church or
8 other place of worship, a public or private school
9 facility, a manufacturing plant or warehouse, a
10 building where business is conducted, an institutional
11 facility, or any structure designed for human
12 occupancy, including local and municipal buildings.
13 With respect to the charge of arson, which is
14 constituted or aggravated by being committed in a
15 dwelling house, any house, out house, apartment,
16 building, erection, shed or box in which there sleeps a
17 proprietor, tenant, watchman, clerk, laborer, or person
18 who lodges there with a view to the protection of
19 property, shall be deemed a dwelling house. A dwelling
20 house is a building in which a person ordinarily
21 sleeps.

22 Included within the charge of second degree
23 arson is the lesser included offense of third degree
24 arson. Third degree arson includes all of the elements
25 of second degree arson except that the property must be

1 a railway car, a ship, boat, or other water craft, an
2 aircraft, an automobile, or other motor vehicle or
3 other personal property, and cannot be any of the
4 property which would make the offense second degree
5 arson. In addition, for third degree arson the State
6 must prove beyond a reasonable doubt that the defendant
7 intended to destroy or damage the property. If you
8 should determine that the defendant is not guilty of
9 the offense of second degree arson, then you would be
10 permitted to consider the lesser included offense of
11 third degree arson, which I will explain to you on your
12 verdict form.

13 Now, ladies and gentlemen of the jury, I have
14 now charged you on the law in order to help guide you
15 to a fair and a just verdict in this case. You are the
16 judges of the facts in this case and based on your
17 determination of the facts and on the law as I have
18 just charged it to you to be, and explained it to you,
19 you will soon go to your jury room and begin your
20 deliberations.

21 You have been selected, ladies and gentlemen, as
22 fair and impartial jurors. You are sworn, in that oath
23 which each of you just took a while back by the clerk,
24 to fairly and impartially try and determine the facts
25 of this case and, when you comply with your oath to do

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1 so, no one -- no one -- can criticize your verdict.
2 You are to decide this case based solely on the
3 evidence presented during the trial of this case. You
4 will have the exhibits with you in your jury room which
5 were introduced into evidence during the trial of this
6 case.

7 Ladies and gentlemen of the jury, you must
8 decide this case in this proceeding without any bias as
9 jurors, without any prejudice as jurors, towards either
10 party involved in this case, either the State of South
11 Carolina or the defendant. You cannot allow yourself
12 to be governed by prejudice for or against any person.
13 You can't allow yourself to be governed by public
14 opinion or by any other arbitrary factor, such as
15 emotion, which is not in evidence in this case. Both
16 the defendant and the State of South Carolina, ladies
17 and gentlemen, have the right to expect that each of
18 you as jurors will carefully and impartially consider
19 all of the evidence in this case and that you will
20 follow the law as I have just instructed it to you to
21 be in reaching your verdict in this case.

22 Mr. Foreman, I told you I would prepare a
23 verdict form for you. Pay absolutely no attention to
24 the order in which I wrote the forms of verdict. I
25 obviously had to write one before the other, and the

1 order has no significance whatsoever. I have placed at
2 the top of this verdict form a caption. It says State
3 of South Carolina, County of Colleton, the State of
4 South Carolina versus Lawrence Phillips, the defendant,
5 and then I put in the Court of General Sessions, which
6 means criminal court, I put the indictment number,
7 2007-GS-15-0858, and I put the words verdict.

8 Under question one under that caption I put the
9 words, we, the jury, by unanimous consent, find the
10 defendant, Lawrence Phillips, and number one, the first
11 form of verdict under number one, is guilty of arson in
12 the second degree. If that be your form of verdict,
13 Mr. Foreman, you would check for the jury on the line
14 beside that form of verdict. Under the words, we, the
15 jury, by unanimous consent find the defendant, Lawrence
16 Phillips, the second form of verdict, under question
17 one, is not guilty of arson in the second degree. If
18 that be your form of verdict, Mr. Foreman, you would
19 check on the line beside that form of verdict.

20 I have placed instructions under those two forms
21 of verdict, on the verdict form for you, in
22 parenthesis. Under guilty of arson in the second
23 degree, in parenthesis I have put for you, only if you
24 have chosen this verdict, please stop your
25 deliberations. So if your verdict is guilty of arson

1 in the second degree, you would stop your
2 deliberations, you would sign your name as foreperson
3 on the line where it says foreperson, and then you
4 would put in today's date, which is July the 23rd,
5 2008.

6 Under the second form of verdict under number
7 one, not guilty of arson in the second degree, I have
8 placed instructions in parenthesis: if you have chosen
9 this verdict, please move on to question number two.
10 So if you find the defendant not guilty of arson in the
11 second degree, you would then move to question two.
12 Question two says: as to the lesser included offense
13 of arson in the third degree, we, the jury, by
14 unanimous consent, find the defendant, Lawrence
15 Phillips -- and the first form of verdict under
16 question two is guilty. That would be of arson in the
17 third degree. IF that be your form of verdict, Mr.
18 Foreman, you would have checked not guilty for arson in
19 the second degree; you would check guilty under
20 question two. The second form of verdict under
21 question two, as to the lesser included offense of
22 arson in the third degree, we, the jury, by unanimous
23 consent, find the defendant, Lawrence Phillips, not
24 guilty. You would check on the line beside that form
25 of verdict, if that be your verdict as to question two.

1 Then you would -- after you have filled out
2 question two, if you have found the defendant not
3 guilty under question one, you would then sign your
4 name as foreperson and fill in today's date.

5 At the bottom of the verdict form I have put the
6 instructions that when you have reached a verdict in
7 this case by marking or checking the appropriate line
8 or lines, and you've certified the finding by your
9 signature, Mr. Foreman, and you have dated it, you
10 would then knock on your jury room door, inform the
11 bailiff that you've reached a verdict, and we would
12 then receive you back into the courtroom to publish
13 your verdict.

14 And you will remember, Mr. Foreman, that I don't
15 want you to leave until -- once you fill out the
16 verdict form, I'm going to also want you to put the
17 same words on the indictment, which my law clerk will
18 be bringing to you before you leave, following your
19 deliberations so that you make a record on both pieces
20 of paper for the Court.

21 Now, ladies and gentlemen of the jury, your
22 verdict must be unanimous; that is, it must be the
23 verdict of each and every one of you. All twelve of
24 you must agree on a verdict.

25 Now, at this time, ladies and gentlemen, I am
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1 going to ask you to step to your jury room. I do not
2 want you to begin your deliberations, because it may be
3 necessary for me to bring you back into the courtroom
4 for some brief additional instructions. When it is
5 time for you to begin your deliberations, I will have
6 the bailiff bring to you the verdict form that I've
7 instructed you about, along with all the exhibits which
8 have been introduced into evidence during the trial of
9 the case, and I'll have the bailiff inform you that you
10 may then commence your deliberations.

11 I ask at this time if you would retire to your
12 jury room.

13 Alternate jurors, please remain in the jury box.

14 [Whereupon, the jury exits the courtroom at
15 11:08 a.m., with the alternate jurors remaining in the
16 courtroom]

17 THE COURT: First of all, on behalf of Colleton
18 County and this Court, I want to thank you for your
19 service in this case. No one became ill or for some
20 reason could not continue to serve, so this concludes
21 your service in the trial of this case.

22 Now, I'm going to tell you that the rest of the
23 jury is going to be walking through that door in just a
24 moment because we're going to -- I tell you, we try to
25 get as much done as we can. So you're going to get a

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1 little break. And I know you ordered your lunch, and
2 I'm going to see that you get that when it arrives, but
3 it's not to get here until twelve o'clock. So I'll
4 take care of that for you, because I'm still going to
5 serve you lunch. I want to thank you for your service.
6 I'm going to ask you if you'll have a seat back out in
7 the courtroom. You don't have -- you can go take a
8 break for a few minutes, but be back on this side of
9 the courtroom at 11:30, which is approximately twenty
10 minutes from now, at which time we will be selecting a
11 jury in the next case for trial.

12 Thank you very much. Do either one of you have
13 any belongings in the jury room? You got everything
14 out. If you need a work excuse, you know where to go
15 downstairs in the general sessions office or the
16 clerk's office. We'll be happy to provide it. Thank
17 you so much.

18 I watched both of you throughout the trial. And
19 all a judge can do is ask that a juror listen, and both
20 of you did that, and I thank you for that service.

21 You may leave at this time and be back in the
22 courtroom at 11:30. Please do not return to the jury
23 room.

24 [Whereupon, the alternate jurors are excused and
25 exit the courtroom at 11:11 a.m.]

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1 THE COURT: Any exceptions or additions to the
2 charge from the State of South Carolina?

3 MR. THORNTON: None from the State, Judge.

4 THE COURT: Any exceptions or additions to the
5 charge from the defendant?

6 MR. MATTHEWS: No, sir.

7 THE COURT: I would ask that counsel come
8 forward with my court reporter, certify on the record
9 you are satisfied the court reporter has all the
10 exhibits and that you have no objection to the bailiff
11 taking the verdict form and all the exhibits into the
12 jury and the bailiff informing the jury they may now
13 commence their deliberations.

14 [Off the record momentarily]

15 THE COURT: All right. First, from the State of
16 South Carolina, are you satisfied the court reporter
17 has all the exhibits?

18 MR. THORNTON: The State is satisfied, Judge.

19 THE COURT: Do you have any objection to the
20 bailiff taking the verdict form and all the exhibits
21 into the jury and the bailiff telling the jury they may
22 now commence their deliberations?

23 MR. THORNTON: No objection, Your Honor.

24 THE COURT: Mr. Matthews, are you satisfied that
25 the court reporter has all the exhibits?

1 MR. MATTHEWS: Yes, sir.

2 THE COURT: Do you have any objection to the
3 bailiff taking all the exhibits and the verdict form
4 into the jury and the bailiff informing the jury they
5 may now commence their deliberations?

6 MR. MATTHEWS: I have no objection.

7 THE COURT: Very well.

8 [Whereupon, exhibits and verdict form go out to
9 the jury at 11:17 a.m.]

10 [Whereupon, a recess is taken from 11:17 a.m. to
11 11:54 a.m.]

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13 NOTE FROM THE JURY

14 [Whereupon, Mr. Phillips enters the courtroom at
15 11:56 a.m.]

16 THE COURT: All right. Let the record reflect
17 that counsel for the State, and the defendant and his
18 counsel, are present.

19 A couple of minutes ago -- it's about 12:00
20 noon. A couple of minutes ago I received a message
21 from the jury, signed by the foreman, saying,
22 definition of reasonable doubt, written, with a
23 question mark, and then dwelling house; must someone
24 [accused] actually have to live there, question mark;
25 signed George Benton, 7/23/08, and it has his signature

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1 printed and then signed.

2 I've shown this to counsel and am repeating it
3 so that Mr. Phillips is aware of their note.

4 Any objection from the State in making this a
5 Court's Exhibit?

6 MR. THORNTON: No objection, Judge.

7 THE COURT: From the defendant?

8 MR. MATTHEWS: None, Your Honor.

9 [Whereupon, Court's Exhibit Number 3, note from
10 the jury, is marked by the court reporter]

11 THE COURT: Counsel has advised me at the bench
12 that they have no objection to my giving a written copy
13 of my entire charge to the jury. I need to make sure
14 nothing is written on it.

15 [Whereupon, the Court reviews documents]

16 THE COURT: Counsel approach.

17 [Whereupon, an off-the-record bench conference
18 is held]

19 THE COURT: Back on the record.

20 I have looked over my charge, conferred with
21 counsel at the bench, and I'm going to give them all of
22 my charge, which is pages 1 through 11, except for the
23 bottom of 11 beginning with forms of verdict. Which on
24 12 it says, explain forms of verdict, and make sure
25 attorneys check to be sure all exhibits are accounted

1 for, all of which was done. But the attorneys agree
2 that we don't need to send the bottom of 11 in writing,
3 or 12.

4 And with that, I have looked at it and there's
5 nothing else written on my charge other than the typed
6 portion, which I've actually read into the record
7 earlier. Both attorneys advise me that is satisfactory
8 for them.

9 Is that correct from the State?

10 MR. THORNTON: That is correct, Judge.

11 THE COURT: Correct from the defendant?

12 MR. MATTHEWS: Yes, sir.

13 THE COURT: Finally, I have prepared a note
14 which will accompany that portion of my written charge
15 back to the jury. The note is on a yellow piece of
16 paper, which will be signed by me, which states:
17 enclosed is my entire jury charge, which includes the
18 definitions of reasonable doubt and dwelling house;
19 signed, Perry M. Buckner, presiding judge.

20 It is my understanding that neither the State or
21 the defendant have any objection to my including the
22 cover note, along with my written charge to the jury,
23 in response to their question, which is now Court's
24 Exhibit Number 3.

25 Is that correct from the State?

1 MR. THORNTON: That's correct from the State,
2 Judge.

3 THE COURT: Is that correct from the defendant?

4 MR. MATTHEWS: That is correct, Your Honor.

5 THE COURT: All right. As soon as Adam prints
6 it out -- I have signed the cover note -- I'll have the
7 bailiff take my cover note and the portion of the
8 charge that you agreed to back to the jury and have the
9 jury continue with their deliberations.

10 [Off the record momentarily]

11 THE COURT: All right. Mr. Padgett, in light of
12 counsel's agreement, I'm giving you pages 1 through --
13 should be 11. Yes. 1 through all the way to the
14 bottom of 11, and my cover note. Tell the jury to keep
15 that, bring it back. We'll make that a Court's Exhibit
16 at the conclusion of the case so there's a record of
17 what the jury was given in response to their written
18 question. So that yellow piece of paper and the
19 written instructions need to be brought back with the
20 exhibits. Do you understand?

21 THE BAILIFF: Yes, sir.

22 THE COURT: Thank you, sir.

23 [Whereupon, written Charge of the Court and
24 Judge's note out to the jury at 12:04 p.m.]

25 THE COURT: Anything else on the record

1 concerning the question? From the State?

2 MR. THORNTON: Nothing from the State, Judge.

3 THE COURT: From the defendant?

4 MR. MATTHEWS: No, sir.

5 THE COURT: Very well.

6 [Whereupon, a recess is taken from 12:01 p.m. to
7 1:07 p.m.]

8 THE COURT: Counsel, I understand from the
9 bailiffs that the jury has reached a verdict. Anything
10 from the State before we publish the verdict?

11 MR. THORNTON: Nothing from the State, Judge.

12 THE COURT: From the defendant?

13 MR. MATTHEWS: No, sir.

14 THE COURT: The one thing I do want to make sure
15 is a part of the record is I received a tremendous
16 packet of materials in order to rule on the motion
17 concerning whether or not life without imprisonment was
18 applicable in this case. And I don't know that we made
19 that -- that would be the previous record, the out-of-
20 state conviction. I put my reasons on the record, but
21 I didn't put the materials that I reviewed. And in the
22 event that that issue comes up, I want to make sure.
23 Was that packet ever given to the court reporter?

24 MS. STILLEY: No, Your Honor.

25 THE COURT: It was not. Adam, go get it. I'm

1 going to make it a Court's Exhibit so there will be a
2 record of what I reviewed.

3 Now, Mr. Matthews, you have everything? These
4 are the indictments, the notice to seek life without
5 parole, your motion to disqualify the notice, and there
6 is also some case law in here. It's a packet. You've
7 seen all this, but I'm going to make it a Court's
8 Exhibit. This would be Number 4, Court's Exhibit
9 Number 4.

10 Any objection from the State?

11 MR. THORNTON: None from the State, Judge.

12 THE COURT: From the defendant?

13 MR. MATTHEWS: No, sir.

14 THE COURT: Very well.

15 [Whereupon, Court's Exhibit Number 4, packet
16 from counsel, is marked by the court reporter]

17 THE COURT: All right. Would you bring us the
18 jury, please, ma'am.

19 [Whereupon, the jury enters the courtroom at
20 1:16 p.m.]

21

22

23

24

25

- - -

- - -

VERDICT

THE CLERK OF COURT: Mr. Foreman, have you reached a verdict?

THE FOREMAN: Yes, we have.

THE COURT: You may publish the verdict.

THE CLERK OF COURT: Indictment number 2007-GS-15-858, the State of South Carolina versus Lawrence Phillips, by unanimous consent, find the defendant, Lawrence Phillips, guilty of arson in the second degree, signed by foreperson George L. Benton.

If this is your verdict, please raise your right hand.

[Whereupon, jurors comply]

THE CLERK OF COURT: Thank you.

THE COURT: Let the record reflect twelve hands were raised in response to the clerk's question.

Mr. Matthews, anything from the defendant before I excuse the jury?

MR. MATTHEWS: Just post-trial motions, Your Honor.

THE COURT: But nothing for the jury?

MR. MATTHEWS: No, sir.

THE COURT: Very well.

Now, Mr. Benton, and ladies and gentlemen of the jury, I want to thank you for your service. I'm happy

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1 to tell you that this concludes your service for the
2 week, so I'm going to be sending you back to your jobs
3 and your homes. The next case that we had has resulted
4 in a change of plea, and I've taken the plea now, so I
5 have excused the rest of the jury. I am now excusing
6 you. On behalf of Colleton County and this Court, I
7 want to thank you for your service this week.

8 Now, sentencing in this case is going to take
9 place in just a couple of moments, and I invite you --
10 if you would like to, you can stay in the jury box or
11 if you want to have a seat in the courtroom, we would
12 be happy -- it's a public proceeding. We're happy for
13 you to stay, but if you would like to leave you may do
14 so.

15 If you need a work excuse, as I told you during
16 the trial, if you'll go downstairs and go in the office
17 marked general sessions in the clerk's office, they'll
18 be happy to give you a work excuse for serving on the
19 jury this week.

20 I want you to know that I watched each of you
21 throughout the trial. All a judge can ask of a jury is
22 that you listen and listen carefully, and each of you
23 did that throughout the trial so I want to thank you
24 for your service in this case.

25 Now, I want to make sure, Mr. Benton: my law

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1 clerk is going to bring you the indictment, and he's
2 going to be stepping down here, so you can stay right
3 where you are and use that as a table to write on and
4 he'll show you -- because you'll be putting the same
5 verdict on the indictment as you did on the verdict
6 form.

7 However, I want to make sure that you sent back
8 with the exhibits, when you came back, my note to you
9 which I'm going to make a Court's Exhibit right now,
10 along with my copy of the charge. Is that back with
11 the exhibits? All right.

12 I'm now -- counsel, per our earlier agreement,
13 I'm making my note, which you agreed to for the jury,
14 along with the portion of the charge that you agreed to
15 to be sent to the jury, I am now making that Court's
16 Exhibit Number 5 in this case. The jury has returned
17 it with their verdict.

18 Any objections from the State?

19 MR. THORNTON: None from the State, Judge.

20 THE COURT: From the defendant?

21 MR. MATTHEWS: No, sir.

22 THE COURT: Very well.

23 [Whereupon, Court's Exhibit Number 5, note from
24 judge to jury, is marked by the court reporter]

25 THE COURT: Now, ladies and gentlemen, I'm happy
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1 to tell you -- because if you listened to my
2 qualifications on Monday, you know you are now exempt
3 from jury duty for three years as a result of your
4 serving this week, should you want to claim your
5 exemption. So this concludes your service. For those
6 of you that would like to leave, you can go out by this
7 door. If you would like to stay for sentencing in this
8 case, I would be happy for you to do so and you can
9 leave following sentencing, because we're going to give
10 them a little break, hopefully, for lunch. I know you
11 have had your lunch, but some of my people may not have
12 had a chance to -- do that after we finish sentence in
13 this case.

14 Thank you for your service. You may leave the
15 courtroom at this time, or remain with us.

16 THE COURT: Solicitor, you and Mr. Matthews and
17 Mr. Phillips come around for sentencing. Please
18 prepare a sentence sheet.

19 MR. THORNTON: Yes, Your Honor. I need about
20 two minutes, Judge. We are preparing a sentencing
21 sheet now.

22 [Off the record momentarily]

23 MR. THORNTON: May I approach, Judge?

24 THE COURT: You may.

25 MR. THORNTON: Your Honor, I'm handing you the

1 sentence sheet that we have prepared in this case. I
2 have shown it to Mr. Matthews.

3 THE COURT: Very well.
4 - - - -

5 POST TRIAL MOTIONS

6 Mr. Matthews, happy to hear any post-verdict
7 motions at this time that you would like to make on
8 behalf of the defendant.

9 MR. MATTHEWS: Thank you, Your Honor.

10 Your Honor, I ask, for a number of reasons, that
11 the verdict be set aside and a directed verdict of
12 acquittal notwithstanding the verdict, in light of
13 evidence that should not have been admitted, and also
14 for the other reasons that I have already said: that
15 this should, as a matter of law, have been third degree
16 arson and not second degree. I've made my arguments
17 already on the record, and I would renew them at this
18 time.

19 THE COURT: All right. As I recall, your motion
20 for directed verdict at the close of the State's case
21 at the close of the evidence was on the insufficiency
22 of the evidence, not on evidence that you objected to
23 that should not have been admitted.

24 So that the record is clear: since you are
25 moving for a new trial on those same grounds that you
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1 made earlier, that motion is respectfully denied as it
2 was at the close of the State's case and all the
3 evidence, because you protected your client by making
4 it at the appropriate time on those grounds.

5 MR. MATTHEWS: Thank you, Your Honor.

6 THE COURT: Anything further, Mr. Matthews?

7 MR. MATTHEWS: No, sir.

8 - - - - -

9 SENTENCING

10 THE COURT: If you and your client would come
11 around for sentencing.

12 [Whereupon, Mr. Matthews and Mr. Phillips
13 comply]

14 THE COURT: Mr. Thornton, I think it would be
15 appropriate, since the jury was not aware -- and Mr.
16 Phillips did not testify in this case. And I want to
17 make them aware. If you would now tell the jury the
18 defendant's prior record.

19 MR. THORNTON: I will, Your Honor. If I could
20 grab the Court's Exhibit --

21 THE COURT: Yes, sir.

22 MR. THORNTON: -- that I think lists it.

23 Your Honor, the defendant's record includes
24 three offenses, that were discussed outside the
25 presence of the jury, as far as the sentencing matter,
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1 Judge. I'll go through those now. We have a nineteen
2 -- basically, Judge, he's got a criminal record dating
3 back to the late '70s. He has a 1979 indictment and
4 conviction for burning; he has a 1982 conviction for
5 housebreaking; he has a nineteen -- a conviction out of
6 Florida, which was also for another burglary, which I
7 believe under Florida law was a burglary second, Your
8 Honor.

9 His entire record, Judge, is as follows: he has
10 a disorderly conduct conviction from 1979, already
11 referenced; 1979 burning a building other than a
12 dwelling conviction; he has a grand larceny conviction
13 from 1982; he has another 1982 conviction, which I've
14 already referenced to the Court as a housebreaking; he
15 has a 1983 conviction for escape; he has a 1985
16 conviction for grand larceny of a motor vehicle; he has
17 a 1989 conviction for receiving stolen goods; he has a
18 1990 conviction for destroying jail property; another
19 conviction for escape in 1990; and a resisting arrest
20 conviction in 1990. Also, in 1990 he has a charge and
21 conviction for convicted felon and possession of a
22 weapon. He has a 1990 conviction for temporary use of
23 vehicle without permission, destroying jail property.
24 Another escape charge, and another arresting arrest
25 charge. 1992, grand larceny; 1992, housebreaking;

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1 1992, receiving stolen goods. Those are all South
2 Carolina cases, Judge.

3 He has a Florida record, which includes the
4 burglary second. And I believe he has North Carolina
5 convictions, as well, Judge, which are 1996 possession
6 of marijuana up to one ounce -- or excuse me -- up to
7 half an ounce; carrying a concealed weapon, and
8 possession of drug paraphernalia.

9 THE COURT: Very well.

10 All right. Mr. Matthews, I'll be happy now --
11 I'm certainly very familiar with the facts from
12 listening to the evidence in this case, and I clearly
13 believe there was sufficient evidence to support the
14 jury's verdict. I have denied your motion for new
15 trial at post-verdict, as well as motion for directed
16 verdict at the close of the State's case and at the
17 close of all the evidence.

18 As you know, Mr. Matthews, obviously I've ruled
19 on an issue concerning your client, and I probably
20 should inform the jury because it was done outside of
21 their presence, and before I hear from you, so that
22 they will understand.

23 We have a statute in South Carolina, ladies and
24 gentlemen -- this is a matter I took up that was
25 opposed in this case as a matter of law. In that

1 statute it says, notwithstanding any other provision of
2 law in the State of South Carolina, upon a conviction
3 for a serious offense -- and arson second degree is a
4 serious offense -- a person must be sentenced to a term
5 of life imprisonment without the possibility of parole
6 if that person has two or more prior convictions for a
7 serious offense or a most serious offense, or a federal
8 or out-of-state offense that would be classified as a
9 serious offense or most serious offense, or any
10 combination of the offenses that are listed in those
11 first three, meaning serious, most serious, or federal,
12 or out-of-state offense, that would be classified as
13 serious or most serious.

14 This statute requires me to look at out-of-state
15 offenses that would be classified as a serious offense
16 or most serious offense. It doesn't have any
17 jurisdictional limit. Sometimes we have, in the law.
18 He had a prior 1985 conviction in Florida for burglary
19 of a dwelling, and I reviewed the Florida statutes and
20 I put those on the record as to what burglary means,
21 and I decided that that offense was -- had the same
22 elements as our current offense of burglary second
23 degree, which is a serious offense. So I compared the
24 elements of his prior convictions in Florida, as well
25 as one of his convictions in South Carolina, which was
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1 for burning. I determined that both of those offenses
2 would be serious offenses and, therefore, if the jury
3 chose to convict Mr. Phillips of the offense of arson
4 in the second degree, he would face a sentence of life
5 imprisonment without any possibility of parole because
6 of his prior record, which I wanted you to be aware of
7 in light of our statute by the legislature.

8 So you now know what the matter of law is that
9 was taken up during the trial of the case.

10 Mr. Matthews, now that I have informed those
11 members of the jury that have elected to remain, I am
12 happy to hear from you in mitigation.

13 MR. MATTHEWS: Your Honor, as I mentioned
14 before, the defense vehemently disagrees -- obviously,
15 the Court has ruled -- that the 1979 statute for the
16 offense of burning when he was sixteen years old in
17 Florida, or maybe possibly seventeen at the time of
18 conviction, should be considered. That would leave him
19 with one prior serious offense and would mean that the
20 range would be up to twenty-five years.

21 THE COURT: Actually, I believe the -- it was an
22 offense of burning. I thought it was a South Carolina
23 offense of burning, not a Florida.

24 MR. MATTHEWS: Is it a -- okay, South Carolina.

25 THE COURT: The Florida offense, Mr. Matthews,

1 was one I just pointed out to the jury. It was a 1985
2 conviction in Florida for burglary of a dwelling. And
3 I compared the South Carolina offense of burning to the
4 current offense of arson second degree, which is what
5 the jury got the elements of, and I determined that the
6 offense of burning was a person who willfully and
7 maliciously sets fire to or burns or causes to be
8 burned or aids, counsels, or procures the burning of a
9 public building. And I looked at it in connection with
10 arson second degree, which it says willfully and
11 maliciously sets fire to, burns, or causes to be
12 burned, or aids, counsel, or procures the burning that
13 results in damage to a public or private school, is
14 guilty of arson in the second degree, and I determined
15 that the elements were the same and therefore I
16 classified the prior offense as serious, and,
17 therefore, with the combination of how I interpreted
18 the prior offense from Florida in 1985 -- because there
19 is no limit under the statute, by time, your client, in
20 my opinion, if convicted, faced the possibility,
21 according to our statute, of life imprisonment without
22 parole.

23 MR. MATTHEWS: Your Honor, this most recent
24 conviction is thirteen years ago; his most recent
25 serious conviction is twenty-three years ago. However,
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1 as I understand the law, once the Court has decided
2 that he has two prior serious offenses, and the
3 solicitor's office has offered to seek life without
4 parole, I don't know --

5 THE COURT: Which they did in this case. And
6 the jury doesn't know that, either, that the
7 solicitor's office sent you a notice seeking --
8 declaring their intention that if he were convicted, to
9 seek the penalty of life imprisonment without any
10 possibility of parole because of his prior record.

11 MR. MATTHEWS: So there really isn't anything
12 more to say, Your Honor. I don't think there's any
13 discretion at this point. Obviously, Mr. Phillips has
14 pled not guilty. He has never indicated that he has
15 done this. He's been convicted of it. I've certainly
16 made my argument that it should have been third degree.
17 But, obviously, that's not what the jury has ruled so
18 there really isn't anything more to say, Your Honor.

19 THE COURT: Very well.

20 Anything from the State?

21 MR. THORNTON: Nothing from the State, Judge.

22 THE COURT: Mr. Phillips, is there anything you
23 want to tell the Court before sentencing?

24 MR. PHILLIPS: I just wish I could have had the
25 time and looked every one of the jurors in the eye and

1 actually defend myself, which I don't feel I had the
2 opportunity. Nor do I feel justice --

3 THE COURT: Mr. Phillips --

4 MR. PHILLIPS: -- has been done today.

5 THE COURT: -- you look at me. You don't
6 address them, you're addressing me.

7 MR. PHILLIPS: Yes, sir.

8 THE COURT: Anything else you want to say?

9 MR. PHILLIPS: The same follows with you, sir.

10 THE COURT: Very well.

11 On indictment 2007-GS-15-0858, the State versus
12 Lawrence Phillips, the sentence of this Court is
13 defendant is committed to the State Department of
14 Corrections for life imprisonment without any
15 possibility of parole. The indictment has been signed.

16 Ladies and gentlemen of the jury, I want to
17 thank you very much for your service this week. I
18 appreciate very much your service. I hope that this
19 has been an educational experience for each of you.
20 And I want you all to know that without people willing
21 to serve on a jury, justice can never be accomplished
22 in a courtroom. I thank you for giving us of your
23 time, and leaving your families and your jobs, to serve
24 on the jury, and I appreciate that very much.

25 We will be sending you a meager check at the
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1 address that you gave us for your jury service. So
2 your check is in the mail. I know you've heard that
3 before. But we appreciate your service very much.
4 Thank you very much. You are now excused for the
5 balance of the week.

6 [Whereupon, the jury is excused and exits the
7 courtroom at 2:29 p.m.]

8 THE COURT: All right. Counsel, I want to thank
9 you for your hard work and your diligent efforts on
10 behalf of your respective clients in this case. As to
11 this case, this matter now stands adjourned.

12 [JURY TRIAL CONCLUDES AT 1:27 P.M.]

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State vs. Phillips
Jury Trial - Volume 3 of 3
July 23, 2008

C E R T I F I C A T E

STATE OF SOUTH CAROLINA
COUNTY OF COLLETON

I, the undersigned Mia Perron, Circuit Court Reporter for the 14th Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of the jury trial held before the Honorable Perry M. Buckner, on July 23, 2004.

I do further certify that I am neither kin nor counsel to any of the parties and have no interest in the outcome of this action.

Dated this 10th day of October, 2008.

Mia Perron
Mia Perron, CCR, CVR-CM
Circuit Court Reporter
14th Judicial Circuit

MIA PERRON, CCR, CVR-CM

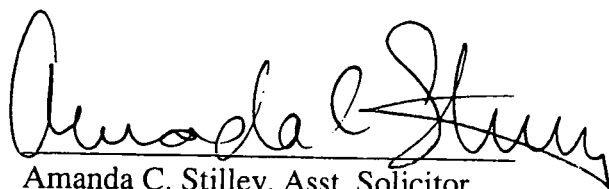
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STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
COUNTY OF COLLETON	)	Indictment No. 2007-GS-15-0858
	)	
THE STATE,	)	NOTICE OF INTENTION TO SEEK LIFE
vs.	)	IMPRISONMENT SENTENCE
	)	
LAWRENCE C.W. PHILLIPS,	)	
defendant.	)	

TO: Lawrence C.W. Phillips, Defendant, and his attorney of record, David Matthews.

YOU WILL PLEASE TAKE NOTICE, that the Solicitor's Office intends to seek a life imprisonment sentence pursuant to Section 17-25-45(B), S.C. Code of Laws 1976, as amended upon the basis that you have two or more prior convictions for:

1. a serious offense [to wit: 1979 Conviction for "Burning" under 16-11-120];
2. a most serious offense [to wit: n/a];
3. a federal or out-of-state offense that would be classified as a serious or most serious offense under this section [to wit: Florida 1985 Conviction for Burglary 2nd Degree];
4. any combination of the offenses listed in items (1), (2) and (3) above.


Amanda C. Stilley, Asst. Solicitor
14th Judicial Circuit

Walterboro, South Carolina

May 8, 2008

COPY

COLLETON COUNTY
GENERAL SESSIONS COURT
2008 MAY 8 AM 9:42

STATE OF SOUTH CAROLINA)
)
 COUNTY OF COLLETON)

IN THE COURT OF GENERAL SESSIONS
 Indictment No. 07-GS-15-0858

The State of South Carolina)

-vs-)

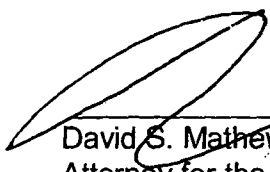
LAWRENCE C. W. PHILLIPS,)

Defendant)

MOTION TO DISQUALIFY LIFE IMPRISONMENT NOTICE

COMES NOW the Defendant, Lawrence Phillips, by and through his undersigned attorney of record below, and, in the event that the Defendant is convicted under the above-referenced indictment of a serious offense, moves for an Order Disqualifying the Life Imprisonment Notice, and as grounds therefore alleges:

- 1) The State cannot meet its burden of proving that each of the offenses of which the State alleges the Defendant has been convicted, and which are alleged by the State to be predicate offenses is a serious or most serious offense under the terms of the Statute.
- 2) At least one of the offenses was allegedly committed by the Defendant when he was less than 18 years of age, and allowing it to be used as a predicate offense (in the event that the State is able to prove the offense itself is a predicate offense), would constitute cruel and unusual punishment under the United States Constitution.
- 3) At least one of the alleged predicate offenses is alleged to have occurred prior to the enactment of the enhancement statute and may constitute an ex post facto law in violation of the United States and South Carolina Constitutions.
- 4) Due Process under the United States and South Carolina Constitutions require a bifurcated trial, and a finding by a jury, beyond a reasonable doubt, that the Defendant has been convicted of prior predicate crimes, in the event that the Defendant is first convicted of a serious or most serious crime in the above-referenced indictment.


 David S. Mathews, Deputy Public Defender
 Attorney for the Defendant
 115 Benson Street
 Walterboro, SC 29488

Walterboro, South Carolina

May 12, 2008

COLLETON COUNTY
 GENERAL SESSIONS COURT
 2008 MAY 13 PM 1:41

WITNESSES

Stallings
R. Carter/CCSNOV - 9 AM 11:01
COLLETT COUNTY
GENERAL SESSIONS COURT

ARREST WARRANT NUMBER

J770416

Arrested on: 9/17/2007

ACTION OF GRAND JURY

true bill

Patsy L. Crosby

Foreperson of Grand Jury
Date:

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2007-GS-15-0858

The State of South Carolina

County of Richland

COURT OF GENERAL SESSIONS

NOVEMBER TERM 2007

THE STATE

vs.

LAWRENCE PHILLIPS

Indictment for

ARSON 2ND

SG Code: 16-11-110(B)

CDR Code: 2551

Class FEL-B(V)

After being fully advised as to my
legal rights, I hereby waive presentment
to the Grand Jury.

Defendant

I
hereby appear in my own proper person and plead
guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

Patsy L. Crosby

STATE OF SOUTH CAROLINA)
COUNTY OF COLLETON)

INDICTMENT

2007-GS-15-0858

At a Court of General Sessions, convened on November 5, 2007 the Grand Jurors of Colleton County present upon their oath:

ARSON 2ND

That Lawrence Phillips did in Colleton County on or about September 14, 2007, wilfully and maliciously attempt to cause an explosion, set fire to, burn or cause to be burned a dwelling house, to wit: 609 Fourth Street, Walterboro, SC. All in violation of SC Code of Laws § 16-11-110.

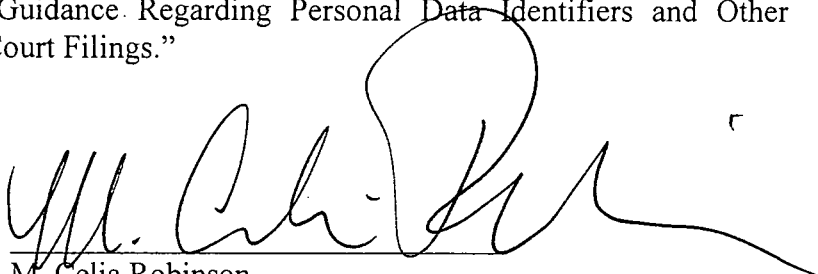
Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


Isaac M. Stone, III, SOLICITOR

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability, with the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

January 28th, 2010

A handwritten signature in dark ink, appearing to read 'M. Celia Robinson', is written over a horizontal line.

M. Celia Robinson
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
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STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Colleton County

Perry M. Buckner, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

LAWRENCE PHILLIPS,

APPELLANT

FINAL BRIEF OF APPELLANT

M. CELIA ROBINSON
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STATEMENT OF ISSUES ON APPEAL

1. Did the trial judge err in denying the defense motion for directed verdict as to the charge of second degree arson?
2. Did the trial judge err in sentencing appellant to life without the possibility of parole where his prior convictions did not qualify for enhancement under the statute?

STATEMENT OF THE CASE

Lawrence Phillips, appellant, was indicted by the Colleton County Grand Jury for Arson in the second degree. On July 21, 2008, appellant proceeded to trial before the Honorable Perry M. Buckner and a jury. Upon the jury's returning a verdict of guilty of second degree arson, Judge Buckner sentenced appellant to life in prison without the possibility of parole.

ARGUMENT

- I. The trial judge erred in denying the defense motion for directed verdict as to the charge of second degree arson.

The State presented evidence indicating that, on September 14, 2007, the trailer appellant had been living in was intentionally set on fire. Appellant's former neighbor, Lori Joslin, testified that, on that morning, appellant came to her mobile home. She testified, "He had come to my home and asked me for a rifle that he had asked us to hold onto for him, and stating that he was going to be leaving town for a little while." (R. p. 55). Ms. Joslin testified that appellant indicated, "I'm leaving and I'm not coming back." (R. p. 58). She testified that it was clear to her that appellant was leaving without any intention of returning because he gave away his lawn mower, packed up his belongings, and because he unambiguously told her he was not coming back. (R. p. 58). Ms. Joslin testified that appellant had told her he was leaving town because he was being threatened by crack dealers. (R. p. 59).

Ms. Joslin testified that, that morning, appellant said that he was leaving town and he wondered what his house would look like in flames. (R. p. 55, lines 16-17). Appellant's former neighbor testified, "He was moving items from his home into his vehicle. And he had also brought a mower over to our home." (R. p. 56). Joslin testified that after he retrieved his rifle, gave her his lawnmower, and packed up his car, appellant left. (R. p. 56). She testified that shortly after appellant left, she saw a fire break out in the trailer appellant had vacated. (R. p. 57).

South Carolina Code Section 16-11-110(B) provides in pertinent part: "Any person who (a) willfully and maliciously causes an explosion, sets fire to, or burns, or causes to

be burned or (b) aids, counsels or procures the burning of any dwelling house ... shall be deemed guilty of arson in the second degree." Section 16-11-10 defines a dwelling house for purposes of this arson statute and burglary statutes as "a place in which there sleeps a ... person who lodges there with a view to the protection of property."

In the 1979 case of State v. Ferebee, 273 S.C. 403, 257 S.E.2d 154 (1979) the Supreme Court held that a vacant apartment unit, abandoned a week prior by former tenants, was not a dwelling house for purposes of the burglary statute. Id. at 405, 257 S.E.2d at 155. The court found Section 16-11-10 required the apartment have an identifiable occupant sleeping or residing therein to so qualify and that while the temporary absence of occupants will not prevent a residence from becoming the subject of a burglary, it required that the occupant leave with the purpose of returning in order for the apartment to be considered a dwelling. Id. There is no indication in the Ferebee decision that the amount of time the building had been abandoned was critical - - the Court's ruling was based on the fact that the building was abandoned and not on how long it had been abandoned.

In applying Ferebee to an arson case, the Supreme Court in State v. Glenn, 297 S.C. 29, 374 S.E.2d 671 (1988) determined, where the occupant had left over \$10,000 worth of personal possessions in a mobile home and had returned to the mobile home on numerous occasions to gather some possessions, that there was sufficient evidence she did not vacate the home but left with the intention of returning. Id. at 32, 374 S.E.2d at 672. Accordingly, the court found the trial court did not err in failing to direct a verdict on the second degree arson charge based on Glenn's argument that the home did not constitute a dwelling house under Section 16-11-110. Id. Thus, "the test of whether a

building is a dwelling house turns on whether the occupant has left with the intention to return." Id.

Recently, in State v. Evans, 376 S.C. 421, 656 S.E.2d 782 (Ct.App. 2008). the Court of Appeals held that, in Evans, "there is sufficient evidence of the Shaws' intent to return to the mountain property. As noted by Mr. Shaw, they visited the home about once every two weeks or month, the utilities were all on in the home, and it was "ready to be lived in." They had previously been "living in [the home] off and on," and the only reason the Shaws had not been staying overnight in the home the last three years was his wife's current medical condition prevented them from doing so. Accordingly, the court found no error in the trial court's denial of Glenn's motion for directed verdict on the first degree burglary charge.

Here, the trial judge erred in denying the defense motion for directed verdict as to the charge of second degree arson. (R. p. 179-181). Even when taken in the light most favorable to the State, the State's evidence established that appellant had abandoned his former dwelling with no intention of returning. As in Ferebee, this was a vacant building, formerly occupied but abandoned shortly before the fire by its former tenant. It was, therefore, not a dwelling house for purposes of the arson statute. As in Ferebee, "Under the facts of the present case, there was clearly no occupant or inhabitant against whom the offense could have been committed. The former tenant had permanently abandoned the premises without the intention of returning. Nor can we agree with the trial judge's rationale that the offense was committed against the owner of the apartment building. There is no evidence indicating that the owner ever occupied or intended to occupy or dwell in the apartment." Ferebee, 273 S.C. at 406, 257 S.E.2d at 155.

The State could not and did not dispute the fact that the building was abandoned by its former tenant, appellant. Different from Glenn, there was no evidence that there was anything of value left inside the building and no evidence that appellant had manifested an intent to return to the property for the purpose of lodging there with a view to the protection of property. Instead, the evidence uniformly and overwhelmingly established that appellant was abandoning this trailer for good. The State's evidence indicated that appellant packed up his belongings, gave away his lawn mower, set the building on fire, and left.

Different from Evans, there was no evidence that appellant habitually lived in this trailer off and on. Also different from Evans, this was not a vacation home which was maintained and ready to be lived in by residents who came and went. Instead, the State's evidence established that appellant lived in this run-down building, without basic utilities until the day of the fire. On that date, the jury found that appellant not only manifested his intent not to return to lodge in the trailer by leaving with his possessions; the jury found that he set the building afire - - thereby rendering the building uninhabitable. It is the view of the South Carolina Supreme Court that Section 16-11-10 requires that a building have an identifiable occupant sleeping or residing therein for it to qualify as a dwelling house. Ferebee, 273 S.C. at 405, 257 S.E.2d at 155. Here, the effectively undisputed fact that the trailer was an abandoned rental unit when it was set afire mandated that the trial judge grant the motion for a directed verdict on the charge of second degree arson.

The State presented picture after picture of the burned building and evidence suggesting that appellant intentionally set the building on fire. The evidence upon which

the jury based its finding that appellant deliberately set the building on fire should have been taken as clear and indisputable proof that appellant was abandoning this building with no intention of ever lodging there again. As trial counsel argued, if appellant had been living in a box and someone set it on fire, that person would be guilty of second degree arson. However, had appellant been living in a box and then he decided that he would no longer live in that box and he set the box on fire, he would certainly not be guilty of second degree arson. This building was something more than a box; however, the principle holds. When appellant manifested his clear and certain intention not to again lodge in this building with the purpose of protecting the property, the building ceased to be a dwelling and became merely a building. This set of circumstances did not exonerate appellant of wrongdoing - - the jury found that he intentionally set a building on fire. However, the evidence presented established at most that appellant was guilty of third degree arson and not second degree arson where the building he burned was not a dwelling place when he burned it.

The State's decision to charge appellant with second degree arson and the trial judge's denial of the motion for a directed verdict under these circumstances thwarted the legislature's intent in codifying the arson statute with instruction that it be read in combination with the statutory definition of a dwelling. Like the burglary statute and like any criminal offenses which are constituted or aggravated by being committed in a dwelling house, the second degree arson statute defines an offense against habitation and not an offense against property. Therefore, the legislature very carefully and specifically chose to define the higher degree of arson carrying a more severe punishment for only those persons who burn a building when there is the slightest chance that a person may

reasonably be injured because trapped inside a burning building. The legislature particularly required that the charge of second degree arson be leveled only against those persons who burn a dwelling. The appellate court decisions have established as a matter of law that where a building was formerly occupied but it has been abandoned by the occupant with no intention of returning to lodge in the building with the purpose of protecting the property, the building is a building but it is not a dwelling. Therefore, here, the trial judge erred as a matter of law in denying the motion for a directed verdict on the charge of second degree arson.

A case should be submitted to the jury only if there is any direct evidence or any substantial circumstantial evidence that reasonably tends to prove the guilt of the accused or from which guilt may be fairly and logically deduced. State v. Dantonio, 376 S.C. 594, 603, 658 S.E.2d 337, 342 (Ct.App. 2008). A directed verdict motion should be granted when the evidence presented merely raises a suspicion of guilt. State v. Frazier, 375 S.C. 575, 583, 654 S.E.2d 280, 284 (S.C. 2007). "Suspicion" implies a belief or opinion as to guilt based upon facts or circumstances which do not amount to proof. State v. Lollis, 343 S.C. 580, 541 S.E.2d 254 (2001); State v. Cherry, 361 S.C. 588, 594, 606 S.E.2d 475, 478 (S.C. 2004). The trial court should grant directed verdict motion where jury would be speculating as to guilt of accused. State v. Buckmon, 347 S.C. 316, 555 S.E.2d 402 (2001).

Here, while the evidence supported a finding that appellant burned a building, there was no direct or any substantial circumstantial evidence that reasonably tended to prove appellant guilty of burning a dwelling. Therefore, the trial judge should have directed a verdict on the charge of second degree arson so that appellant could be convicted and

sentenced for the crime the jury's verdict would indicate he actually committed - - arson in the third degree.

- II. The trial judge erred in sentencing appellant to life without the possibility of parole where his prior convictions did not qualify for enhancement under the statute.

Prior to trial, the State served notice upon appellant and his counsel that it intended to seek a sentence of life in prison without the possibility for parole according to S.C. Code Ann. Section 17-25-45 (B). That section provides, "(B) Notwithstanding any other provision of law, except in cases in which the death penalty is imposed, upon a conviction for a serious offense as defined by this section, a person must be sentenced to a term of imprisonment for life without the possibility of parole if that person has two or more prior convictions for: (1) a serious offense. Second degree arson and second degree burglary are included as qualifying serious offenses. Here, the State's motion was based on the allegation that appellant had two or more prior convictions for a serious offense. The State's notice indicated that appellant had a 1983 conviction for second degree burglary, a 1979 conviction for burning, a 1985 Florida conviction for second degree burglary, and a prior conviction for housebreaking.

Counsel for appellant objected to his being subject to an LWOP sentence on the basis of his prior convictions. Counsel noted that the recidivist statute is targeted against habitual offenders but that appellant's most recent conviction was over twenty years old. Counsel further argued that appellant's prior conviction for "burning" was being interpreted by the State to reference a prior burning of a school. However, counsel for appellant argued that the face of the prior indictment for which appellant was given a

youthful offender sentence indicated that appellant was charged not with burning a school building but with burning "a building owned by the school board." Therefore, counsel argued, the prior indictment was insufficient to establish that the prior burning conviction constituted a conviction for second degree arson so as to qualify as a serious offense sufficient for enhancement. (R. p. 165).

The judge refused to qualify the prior conviction for housebreaking as a serious offense for enhancement purposes. However, the judge found that appellant's prior conviction for "burning" qualified as the same offense as second degree arson so that it qualified as a serious offense. (R. p. 153; 167). The judge noted that second degree arson would include damage to a local or municipal building and that the prior indictment for "the burning of a building, the property of Laurens County School District Number 56" would constitute second degree arson. The judge noted that his ruling "leaves us with the out of state conviction." The trial judge found that, based upon the Florida conviction for second degree burglary and his prior South Carolina conviction for "burning" appellant would be sentenced to life in prison without the possibility of parole if convicted.

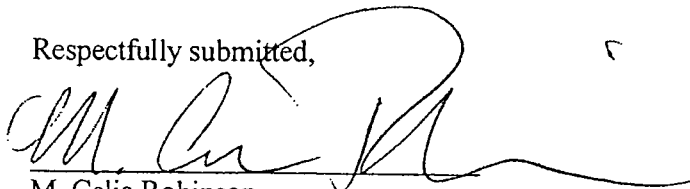
The trial judge erred in finding that appellant had two qualifying prior convictions for a serious offense so that he was eligible for an LWOP sentence. Particularly in this case, where appellant's most recent conviction was over twenty years old, the trial judge erred in construing the former youthful offender conviction for burning a building owned by a school board as constituting the burning of a school or a municipal building. The trial judge should have found that the prior indictment was insufficient on its face to establish that appellant's prior youthful offender conviction was for a qualifying serious offense. The trial judge should have refused to sentence appellant to life in prison

without the possibility of parole upon his conviction for setting an abandoned trailer on fire.

CONCLUSION

For all the forgoing reasons, appellant's conviction and sentence should be reversed.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read 'M. Celia Robinson', written over a horizontal line.

M. Celia Robinson
Appellate Defender

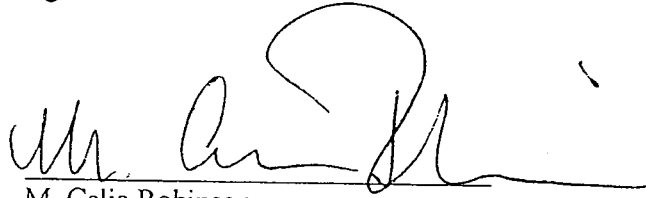
ATTORNEY FOR APPELLANT.

This 8th day of April, 2010.

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Final brief of Appellant complies with Rule 211(b), SCACR, and the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

April 8, 2010

A handwritten signature in black ink, appearing to read 'M. Celia Robinson', written over a horizontal line.

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STATE OF SOUTH CAROLINA

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THE STATE,

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CERTIFICATE OF SERVICE

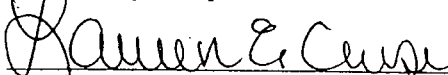
The undersigned attorney hereby certifies that a true copy of the Final Brief of Appellant in the above referenced case has been served upon Deborah R.J. Shupe, Esquire, at the Rembert Dennis Building, Room 519, 1000 Assembly Street, Columbia, South Carolina 29201, this 8th day of April, 2010.


M. Celia Robinson

Appellate Defender

ATTORNEY FOR APPELLANT.

SUBSCRIBED AND SWORN TO before me
this 8th day of April, 2010.

 (L.S.)
Notary Public for South Carolina

My Commission Expires: August 23, 2014.

Final Brief of Respondent

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STATEMENT OF ISSUES ON APPEAL

I.

The circuit court properly submitted the second degree arson charge to the jury because the mobile home constituted a "dwelling" for purposes of the arson statute.

II.

The circuit court properly sentenced Appellant to life without parole after determining he had two prior convictions for serious offenses.

STATEMENT OF THE CASE

Respondent concurs with Appellant's procedural Statement of the Case.

STATEMENT OF FACTS

The Colleton County Grand Jury indicted Appellant Lawrence Phillips ("Phillips") on one count of second degree arson arising from the September 14, 2007, burning of a mobile home on Foxfield Road in Walterboro, South Carolina. In May 2008, the State notified Phillips it intended to seek a life without parole ("LWOP") sentence based on a 1979 South Carolina conviction for "Burning," and a 1985 Florida conviction for second degree burglary. (Amended Notice of Intention to Seek Life Imprisonment Sentence dated May 12, 2008; Record on Appeal [R.], Supp. R. II. p. 1). Phillips filed a written objection to the State's notice. (Motion to Disqualify Life Imprisonment Notice dated May 12, 2008; R., p. 264).

The matter was called for a jury trial on July 21, 2008, before the Honorable Perry M. Buckner, Circuit Court Judge. Lori Joslin ("Joslin") testified Phillips lived in the mobile home that burned, and she was his neighbor. Early on the morning of September 14, 2007, Phillips brought a lawnmower to her home and picked up a rifle she was holding for him. He told Joslin he was leaving town for a little while, and asked what his home "would look like up in flames." She subsequently saw him putting personal items from the mobile home into his car. Approximately thirty minutes later, she saw flames and smoke coming out of Phillips' mobile home. (Trial Transcript [TT], Vol. 2, pp. 40-45; R., pp. 52-57).

Brian Rowe ("Rowe") testified he was one of the first responders to the scene, and there were two sources of the fire inside the mobile home. Rowe also found gas cans just outside the front door. Based on his experience as a firefighter, Rowe stated the fire "had been burning for a significant amount of time" before fire crews arrived at the scene. (TT, Vol. 2, pp. 49-53; R., pp. 61-65).

Sterling Seals ("Seals") of the South Carolina Law Enforcement Division was qualified as an expert in arson investigations, and testified the mobile home fire was intentionally started. After eliminating possible accidental causes, he determined an ignitable liquid, probably gasoline, was poured on the floor in the living room and the master bedroom, and then set on fire. (TT, Vol. 2, pp. 73-78, 82-83, 86-90, 92-96, 98-100, 104-109, 132-133; R., pp. 85-90, 94-95, 98-102, 104-108, 110-112, 116-121, 144-145).

During the State's case, the circuit court heard Phillips' Motion to Disqualify Life Imprisonment Notice. Phillips contended his 1979 "Burning" conviction was not a violent crime since he received a Youthful Offender Act sentence, but acknowledged there were no "violent" crime classifications in 1979. He further acknowledged the court had to look at the elements of the offense rather than the sentence received. (TT, Vol. 2, pp. 136-140; R., pp. 148-152).

After comparing the "burning" statute in effect in 1979 with the current arson statute, the circuit court found both statutes contained the same legal elements, and ruled the 1979 conviction should be considered for purposes of LWOP sentencing. The court further ruled the Florida burglary statute under which Phillips was convicted in 1985 followed the elements of South Carolina's second degree burglary statute, and therefore, the 1985 conviction should also be considered. (TT, Vol 2, pp. 140-144; R., pp. 152-156).

Phillips sister, Rhonda Wilson ("Wilson") testified she went to Phillips' mobile home the day of the fire to feed his animals. She stated Phillips called her about feeding the animals whenever he was going out of town. She arrived after the fire, and took some personal items, including their father's golf clubs that were on the porch. (TT, Vol. 2, pp. 155-157; R., pp. 168-170).

At the conclusion of the State's case, Phillips moved for a directed verdict, asserting there was no evidence he intended to return to the mobile home after he left the morning of the fire, and therefore, the mobile home was not a "dwelling" for purposes of the second degree arson statute. The circuit court denied the motion, finding there was evidence from which the jury could find the mobile home was a dwelling, but indicated Phillips could request a jury charge on third degree arson. (TT, Vol. 2, pp. 166-169; R., pp. 179-182).

During closing arguments, Phillips argued the mobile home was not a dwelling at the time of the fire because he abandoned it that morning with no intent to return, and if the jury found he intentionally set the fire, he could only be guilty of third degree arson. (TT, Vol. 3, pp. 21-28; R., pp. 213-220). The court then instructed the jury on the elements of both second and third degree arson. (TT, Vol. 3, pp. 38-41; R., pp. 230-233).

During deliberations, the jury asked whether someone had to live in a place for it to be a dwelling house. By agreement of the parties, the court sent the jury copies of the written charge on the definition of dwelling house. (TT, Vol. 3, pp. 49-52; R., pp. 241-244).

The jury convicted Phillips of second degree arson, and the circuit court sentenced him to LWOP. (TT, Vol. 3, pp. 55-67; R., pp. 247-259). This appeal followed.

ARGUMENT

I. The circuit court properly submitted the second degree arson charge to the jury because the mobile home was a “dwelling” for purposes of the arson statute.

Phillips contends the State’s evidence established he abandoned the mobile home with no intent to return, and therefore, the circuit court erred in denying his motion for a directed verdict as to the second degree arson charge. Continuing his circular logic, he asserts he could only be guilty of third degree burglary since “the building he burned was not a dwelling place when he burned it.” (Brief of Appellant, p. 9) (emphasis in original).

When considering a motion for a directed verdict, a trial court is concerned only with the existence of evidence, not its weight. State v. Venters, 300 S.C. 260, 387 S.E.2d 270, 272 (1990); State v. Odems, ____ S.C. ____, ____ S.E.2d ____ (Ct. App. 2009) (2009 WL 3068089 at *2). Granting a defense motion for directed verdict of acquittal is proper only “if there is a failure of competent evidence tending to prove the charge.” Rule 19(a), SCRCrimP; State v. Jenkins, 278 S.C. 219, 294 S.E.2d 44, 46 (1982). A trial court must submit the case to the jury if any direct or substantial circumstantial evidence has been presented that reasonably tends to prove the defendant's guilt, or from which his guilt may be fairly and logically deduced. State v. Ballington, 346 S.C. 262, 551 S.E.2d 280, 285 (Ct. App. 2001).

Second degree arson includes the wilful and malicious burning of a dwelling house. S.C. Code §16-11-110(B) (2003). For purposes of arson, a “dwelling house” is “any house, outhouse, apartment, building, erection, shed or box in which there sleeps a proprietor, tenant, watchman, clerk, laborer or person who lodges there with a view to the protection of property.” S.C. Code §16-11-10 (2003). “[T]he test of whether a building is a dwelling

house turns on whether the occupant has left with the intention to return,” and “temporary absence from a ‘dwelling’ is irrelevant.”” State v. Evans, 376 S.C. 421, 656 S.E.2d 782, 784 (Ct. App. 2008) (*quoting* State v. Glenn, 297 S.C. 29, 374 S.E.2d 671 [1988] and State v. White, 349 S.C. 33, 562 S.E.2d 305 [2002])).

In this case, it is undisputed the mobile home was intended to be a dwelling, and Phillips lived there for some period of time prior to, and including, the day of the fire. In addition, while he removed certain personal property from the mobile home the morning of the fire, Phillips’ sister testified his animals, specifically a pit bull, rabbits and quail, his father’s golf clubs and other personal items, were still at the mobile home after the fire. (TT, Vol. 2, pp. 156-157; R., pp. 169-170). Therefore, at a minimum, even if Phillips’ abandonment argument has any validity, and the State contends it does not, it was a question of fact for the jury whether he completely abandoned the mobile home before the fire, and denial of the directed verdict motion was proper on that basis alone.

Further, Phillips’ neighbor testified she saw flames at the mobile home within thirty minutes after Phillips stated he was leaving and wondered what his house would look like in flames. (TT, Vol. 2, pp. 43-45; R., pp. 55-57). The evidence established the fire was burning “a significant amount of time” before firefighters arrived. (TT, Vol. 2, pp. 52-53; R., pp. 64-65). Thus, even assuming Phillips did “abandon” the mobile home, it was a question of fact whether he set the fire before he did leave.

In any event, Phillips’ reliance on State v. Ferebee, 273 S.C. 403, 257 S.E.2d 154 (1979), Glenn, *supra*, and Evans, *supra*, as support for his contention the mobile home was not a “dwelling” for purposes of the arson statute is misplaced. None of those cases involved an abandonment claim by a person who lived in the structure at issue, moved personal items

out, and then immediately set it on fire. In this case, however, Phillips resided in the mobile home, and the evidence indicated he moved personal belongings out with the specific intent to save them from the fire he had either already started, or started immediately thereafter.

Taken to its logical conclusion, Phillips' contention regarding abandonment turns S.C. Code §16-11-10 on its head. If Phillips prevails, all the resident of a "dwelling" need do to avoid criminal liability for burning down his residence is simply remove some personal belongings from it, and then tell someone he intends to leave the premises before (or immediately after) he starts the fire. Such a ludicrous result is contrary to any interpretation of the statutory language, and therefore, must be rejected. *See Lancaster County Bar Ass'n v. South Carolina Com'n on Indigent Defense*, 380 S.C. 219, 670 S.E.2d 371, 373 (2008) (when construing a statute, court will reject an interpretation leading to an absurd result the legislature could not have been intended).

It was virtually undisputed Phillips intentionally set fire to the mobile home. There was overwhelming evidence tending to support his guilt, and the circuit court's denial of the directed verdict motion should be affirmed.¹

¹Significantly, Phillips argued abandonment to the jury, and the circuit court submitted both second and third degree arson as possible verdicts. (TT, Vol. 3, pp. 21-28, 40-41; R., pp. 213-220, 232-233). In convicting Phillips of second degree arson, the jury clearly recognized the fallacy of his abandonment argument and rejected it.

II. The circuit court properly sentenced Appellant to life without parole after determining he had two prior convictions for serious offenses

Phillips also contends the circuit court erred in considering his 1979 "Burning" conviction for purposes of imposing a LWOP sentence. Specifically, he asserts the indictment underlying the 1979 conviction was insufficient to establish it was for a serious offense as required by the LWOP statute.² This assertion completely ignores applicable statutory language, the plain language of the indictment at issue, and existing case law.

Upon conviction of a "serious offense" as defined by statute, a person must be sentenced to LWOP if the person has two or more prior convictions for a serious offense, a most serious offense, a federal or out-of-state offense that would be classified as a serious or most serious offense, or any combination of such offenses. S.C. Code §17-25-45(B) (2003). Second degree arson and second degree burglary are "serious offenses." S.C. Code §17-25-45(C)(1) (2003).

Prior to 1982, South Carolina had two arson statutes: S.C. Code §16-11-110 (1976) and S.C. Code §16-11-120 (1976). Section 16-11-110 dealt with the wilful and malicious burning of any dwelling house or any adjoining structures, and §16-11-120 dealt with the wilful and malicious burning of other types of structures, including schools or other public buildings.

In 1982, the Legislature amended §16-11-110 to include three degrees of arson, and repealed §16-11-120. *See* Act No. 449, § 4, 1982 S.C. Acts 2526 (eff. June 9, 1982). Under

² Phillips does not contest the circuit court's use of the 1985 Florida burglary conviction. *See* S.C. Code §17-25-45 (2003) (federal or out-of-state offenses comparable to state offenses may be used for LWOP purposes); *cf. State v. Zulfur*, 345 S.C. 258, 547 S.E.2d 885, 887 (Ct. App. 2001) (plain language of burglary statute permits enhancement based on prior out-of-state convictions).

§16-11-110(B), the wilful and malicious burning of “a dwelling house, church or place of worship, a public or private school facility, a manufacturing plant or warehouse, a building where business is conducted, an institutional facility, or any structure designed for human occupancy to include local and municipal buildings,” constitutes second degree arson. (Emphasis added). Thus, the offense previously codified as “burning” in §16-11-120 is re-codified as, and the legal equivalent of, second degree arson in §16-11-110(B).³ Cf. State v. Washington, 338 S.C. 392, 526 S.E.2d 709, 711 (2000) (common law burglary is the legal equivalent of first degree burglary as codified in 1985, and pre-1985 common law burglary conviction would constitute a “most serious” offense for LWOP purposes).

The 1979 indictment against Phillips states:

That Lawrence Carrol Phillips did in Laurens County on or about the 18th day of May, 1979, wilfully, unlawfully and maliciously set fire to and burned and caused to be burned and aided, counseled and procured the burning of a building, the property of Laurens County School District #56.

(Indictment No. 79-GS-20-216; Supp R. pp. 1). On its face, the indictment charged Phillips with burning a building owned by the Laurens County School District, which would constitute a public school facility and/or a municipal building - conduct that now constitutes second degree arson under §16-11-110(B).⁴ Therefore, the circuit court properly determined the 1979 conviction qualified as a “serious offense” under §17-25-45(C), and it could be used

³Section 16-11-110(A) provides that first degree arson is the wilful and malicious burning of any building, structure or property set forth in §§16-11-110(B) and (C), which results in death or serious bodily injury to a person.

⁴Phillips attempts to distinguish his prior burning conviction as a “youthful offender conviction.” There is no such distinction in the LWOP statute, however, and his prolific criminal record since 1979 makes it abundantly clear the judicial system’s attempt to give him the benefit of the doubt in 1979 was undeserved and unappreciated. (TT, Vol. 3, pp. 61-62; R., pp. 253-254).

as a basis for imposing a LWOP sentence upon Phillips' conviction on the charge of second degree arson.

CONCLUSION

Based on the foregoing, Respondent respectfully submits that Appellant's conviction and sentence should be affirmed.

Respectfully submitted,

HENRY DARGAN McMASTER
Attorney General

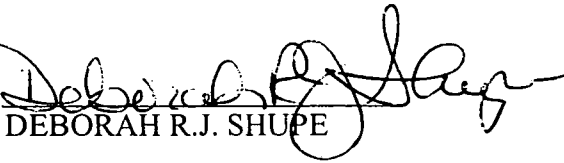
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ATTORNEYS FOR RESPONDENT

June 28, 2010

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal From Colleton County
The Honorable Perry M. Buckner, Circuit Court Judge

THE STATE,

Respondent,

vs.

LAWRENCE PHILLIPS,

Appellant.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR, and the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

HENRY DARGAN McMASTER
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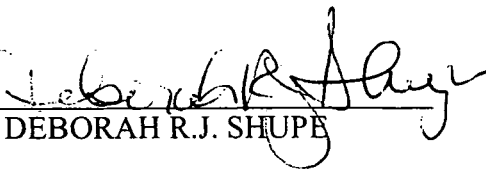
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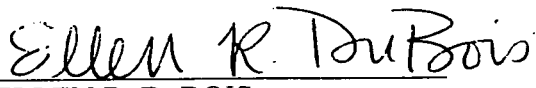
PROOF OF SERVICE

I, Ellen R. DuBois, certify that I served the Final Brief of Respondent on Appellant by depositing two copies in the United States mail, postage prepaid, addressed to:

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I further certify that all parties required by Rule to be served have been served.

This 28th day of June, 2010.


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