

VOLUME I OF III

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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Nov 22 2024

SC Court of Appeals

Appeal from Charleston County

Honorable Deadra L. Jefferson, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

TOYA DANIELLE STEWARD,

APPELLANT

APPELLATE CASE NO. 2024-000331

RECORD ON APPEAL

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STATE OF SOUTH CAROLINA	) COURT OF GENERAL SESSIONS
	)
COUNTY OF CHARLESTON	) Case No.: 2023GS1003323,
	) 2023GS1003324
	)
State of South Carolina,	)
	)
vs.	)
	)
Toya Danielle Steward,	)
	)
Defendant.	) February 26, 2024
	)

TRANSCRIPT OF TRIAL - DAY 1 OF 5

BEFORE THE HONORABLE DEADRA L. JEFFERSON
Circuit Court Judge, and a jury

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E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>MK'D</u>	<u>ADM</u>
GOVERNMENT			
S-1	Map - Charleston	8	
S-2	Map - West Ashley	8	
S-3	Map - Zoomed in	8	
S-4	Intersection - Street view	8	
S-5	House - Front	8	
S-6	DVD - Dan Heiterer	8	
S-7	Photo - Jason in yard	8	
S-8	House - post fire	8	
S-9	Photo - Front bedroom window	8	
S-10	Photo - House side	8	
S-11	Exterior rear	8	
S-12	Exterior rear	8	
S-13	Back porch	8	
S-14	Side view	8	
S-15	Cars	8	
S-16	Defendant's car	8	
S-17	Placard 1	8	
S-18	Placard 2	8	
S-19	Placard 2 zoomed	8	
S-20	House layout	8	
S-21	Service meter	8	

E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>MK'D</u>	<u>ADM</u>
	GOVERNMENT		
S-22	Living room	8	
S-23	Living room window	8	
S-24	Hallway entry	8	
S-25	Kitchen	8	
S-26	Kitchen to dining room	8	
S-27	Kitchen to garage	8	
S-28	Garage entry	8	
S-29	Garage window	8	
S-30	Garage room	8	
S-31	Garage circuit breaker	8	
S-32	Circuit breaker	8	
S-33	Garage pour pattern	8	
S-34	Placard 4	8	
S-35	Garage window w/ car	8	
S-36	Garage ceiling	8	
S-37	Laundry room	8	
S-38	Hallway	8	
S-39	Bathroom	8	
S-40	Master Placard 1	8	
S-41	Master pour pattern	8	

E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>MK'D</u>	<u>ADM</u>
	GOVERNMENT		
S-42	Hallway placard	8	
S-43	Hallway floor	8	
S-44	Chris's room	8	
S-45	Chris's closet	8	
S-46	Jason's room	8	
S-47	Jason's windows	8	
S-48	Jason's wall	8	
S-49	daytime photo	8	
S-50	Recycle can	8	
S-51	Photo - anklet	8	
S-52	Anklet	8	
S-53A	Bedroom carpet sample	8	
S-53B	Test sample	8	
S-54A	Hallway floor sample	8	
S-54B	Test sample	8	
S-55A	Fire debris placard 3	8	
S-55B	Test sample	8	
S-56A	Fire debris placard 4	8	
S-56B	Test sample	8	
S-57	Car - side view	8	

E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>MK'D</u>	<u>ADM</u>
GOVERNMENT			
S-58	Driver's seat	8	
S-59	Center console	8	
S-60	Social security card	8	
S-61	Registration	8	
S-62	Back seat	8	
S-63	Trunk	8	
S-64	Floor boards	8	
S-65	Photo - floor mat	8	
S-66	Floor mat test sample	8	
S-67	SLED report	8	
S-68	Call log	8	
S-69	SMS messages	8	
S-70	MMS messages	8	
S-70A	Photo - House message	8	
S-70B	Instagram post	8	
S-70C	Screenshot - Messages	8	
S-71	GPS location	8	
S-72	Plug-in Status	8	
S-73	Activity report	8	
S-74	Timeline	8	

E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>MK'D</u>	<u>ADM</u>
	GOVERNMENT		
S-75	Prelim report	8	
S-76	Audio statements	8	
S-77	Email	8	
S-78	Travel map	8	
S-79	Jail calls	8	
S-80	Voicemail 12	8	
S-81	Voicemail 13	8	
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S-85	Detective Interview	8	
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S-87	Burned room	8	

P R O C E E D I N G S

(Proceedings begin on the 26th day of
February 2024, at 4:22 p.m.)

(State Exhibit Nos. 1 through 87 were pre-marked
for identification.)

MS. SAVAS: Yes, Your Honor.

The state initially had an offer on
September 24, 2020, where we were going to do a
negotiated 15 to 20 years on all charges. They
then re-extended an offer on February 22, 2023,
for the burglary second nonviolent, arson second,
dismissed the attempted murder, for a negotiated
18 years, at one point.

There was also discussions of it being
straight-up. Most recently, that was rejected on
April 4, I believe.

THE COURT: Was it rejected on the record?

MS. SAVAS: On an email, Judge, from the --

THE COURT: It needs to be rejected on the
record for PCR purposes.

MS. SAVAS: Yes, Your Honor.

There was also another --

THE COURT: You said on April 24 of what
year?

MS. SAVAS: That was April 4, 2023, via email

1 from defense.

2 There was subsequently an offer just now on
3 January -- I think it was 24th or 26th. I can
4 pull it up on my computer to pleas straight up to
5 the burglary second nonviolent, arson second, and
6 dismiss the attempted murder, where the state
7 would not have a negotiated sentence as part of
8 that. But the defendant could plea straight up,
9 Your Honor.

10 **THE COURT:** Have you had an adequate
11 opportunity to discuss that with your client?

12 **MR. D'ANGELO:** I have, Your Honor.

13 **THE COURT:** Okay.

14 I need to deal with both of those for PCR
15 purposes.

16 **MR. D'ANGELO:** Certainly.

17 **THE COURT:** Ma'am, stand and raise your right
18 hand to be sworn.

19 (The defendant is first duly sworn.)

20 **THE DEFENDANT:** I do.

21 **THE COURT:** Please make sure nobody comes in
22 that door for me while we're doing this. I
23 appreciate it.

24 Is she --

25 **MS. SAVAS:** My investigator may be outside

1 the door.

2 THE COURT: I need -- he won't be able to
3 come in while we're doing this. I can't run the
4 risk that the jury will hear what we're talking
5 about when they bring them upstairs?

6 MS. SAVAS: Yes, Your Honor.

7 THE COURT: Let's see here. Bear with me
8 just one moment. I need to deal with this in
9 twofold fashion.

10 Mr. D'Angelo, did you communicate the
11 February 22, 2023, offer to your client?

12 MR. D'ANGELO: I did, Your Honor.

13 THE COURT: And do you believe she understood
14 your conversation?

15 MR. D'ANGELO: I do.

16 THE COURT: And did she wish to accept or
17 reject that offer?

18 MR. D'ANGELO: To reject.

19 THE COURT: And was that with or against your
20 advice?

21 MR. D'ANGELO: I -- I fully explained it.
22 And the decision was hers, Your Honor.

23 THE COURT: Okay.

24 And ma'am, state your full name for the
25 record.

Court Remarks to Defendant

1 **THE DEFENDANT:** Toya Daniel Steward.

2 **THE COURT:** And Ms. Steward, is that accurate
3 that Mr. D'Angelo did in fact fully explain to you
4 the offer from February 22, 2023?

5 **THE DEFENDANT:** Yes, Your Honor.

6 **THE COURT:** And did you wish to accept or
7 reject that offer?

8 **THE DEFENDANT:** Reject, Your Honor.

9 **THE COURT:** And did you did it -- do that
10 freely and voluntarily and of your own will?

11 **THE DEFENDANT:** Yes, ma'am.

12 **THE COURT:** Were you under any duress?

13 **THE DEFENDANT:** No, I was not.

14 **THE COURT:** Were you suffering from any
15 mental disabilities or under the influence of any
16 drugs or alcohol?

17 **THE DEFENDANT:** No, ma'am.

18 **THE COURT:** Did you understand your
19 conversations with him?

20 **THE DEFENDANT:** Yes, Your Honor.

21 **THE COURT:** And Mr. D'Angelo, did you fully
22 explain the state's offer from January 24, 2024,
23 to your client?

24 **MR. D'ANGELO:** I did, Your Honor.

25 **THE COURT:** And do you believe she understood

1 your conversation?

2 MR. D'ANGELO: She did.

3 THE COURT: Did you --

4 And ma'am, is it correct that Mr. D'Angelo
5 explained to you this -- the additional offer from
6 2024?

7 THE DEFENDANT: Yes, Your Honor.

8 THE COURT: And is it correct that you
9 understood your conversations with him?

10 THE DEFENDANT: Yes, Your Honor.

11 THE COURT: And did you wish to accept or
12 reject that offer?

13 THE DEFENDANT: Reject, Your Honor.

14 THE COURT: And was that with or against your
15 advice, Mr. D'Angelo?

16 MR. D'ANGELO: Again, Your Honor, I fully
17 explained. And we had a full conversation. And
18 it was her decision.

19 THE COURT: And ma'am, did you do that freely
20 and voluntarily and of your own will?

21 THE DEFENDANT: Yes, Your Honor.

22 THE COURT: Was anyone forcing you to reject
23 the offer?

24 THE DEFENDANT: No, Your Honor.

25 THE COURT: And were you suffering -- are you

Court Remarks to Defendant

1 suffering from any mental disabilities or under
2 the influence of any drugs or alcohol?

3 **THE DEFENDANT:** No, Your Honor.

4 **THE COURT:** Okay.

5 You can take your seat.

6 Is the jury ready outside?

7 **THE CLERK:** (Inaudible).

8 **THE COURT:** Oh, yeah. I thought you already
9 had them up here. No, no. Yeah. I fully
10 contemplated them having already been upstairs.

11 **THE CLERK:** Okay.

12 **MS. SAVAS:** Your Honor, is it okay if I bring
13 my investigator in?

14 **THE COURT:** Yes.

15 **MS. SAVAS:** Thank, Judge.

16 **THE COURT:** I thought they were already up
17 here. I apologize. Burglary first degree is not
18 a ten-year maximum. Burglary first degree carries
19 a life sentence. It's burglary first degree.
20 She's indicted on burglary in the first degree.

21 **MR. D'ANGELO:** Your Honor?

22 **THE COURT:** Yes, sir.

23 **MR. D'ANGELO:** She's indicted on burglary
24 second.

25 **THE COURT:** So this is inaccurate. Then it

1 carries 15. That don't carry 10. So she was
2 not -- she was indicted on burglary second degree
3 nonviolent?

4 **MR. D'ANGELO:** Yes, Your Honor.

5 **MS. SAVAS:** Sorry, Your Honor. I was
6 outside.

7 **THE COURT:** What's the maximum penalty for
8 burglary second non-violent?

9 **MR. D'ANGELO:** Ten years, Your Honor.

10 **THE COURT:** Is arson a most serious and
11 violent?

12 **MR. D'ANGELO:** It's a serious and violent.
13 The range is 3 to 25, Your Honor. Three is
14 suspendable.

15 **THE COURT:** Uh-huh.
16 You said that it is suspendable?

17 **MR. D'ANGELO:** Yes, Your Honor.

18 **THE COURT:** Does your client wish to have a
19 formal arraignment?

20 **MR. D'ANGELO:** Yes, Your Honor.

21 **THE COURT:** Madam clerk, are you ready to do
22 that when the jury comes upstairs?

23 **MS. SAVAS:** Your Honor, may I just one minute
24 to get our stuff. You -- we had walked in all at
25 the same time. And I'm sorry to be disturbing. I

1 just don't want to interrupt the Court with
2 everyone coming in and out.

3 (Pause in proceeding.)

4 MR. D'ANGELO: Your Honor, if I may. There
5 was an error. In the pretrial brief that I
6 submitted, in our witness list, I had spelled the
7 last name of one of our potential witnesses
8 incorrectly. I have a updated copy of that,
9 Your Honor, if you'd like.

10 THE COURT: What witness's name is spelled
11 incorrectly?

12 MR. D'ANGELO: Crystal Dalsing, Your Honor.
13 I had put an "i" instead of an "l." And I
14 apologize. I printed one out for, Your Honor.
15 And I must have forgotten to bring it with me.
16 But again --

17 THE COURT: What -- how was the last name
18 spelled?

19 MR. D'ANGELO: D-a-l-s-i-n-g.

20 THE COURT: Thank you.

21 What other witnesses' names incorrectly
22 spelled?

23 MR. D'ANGELO: That was it, Your Honor.

24 THE COURT: Okay. Thank you.

25 Does the State intend to call all of these

1 witnesses?

2 **MS. SAVAS:** Yes.

3 **THE COURT:** I need to have a realistic
4 number. Because we don't have the luxury of going
5 into next week. I have another term of court.

6 **MS. SAVAS:** No, Judge. I -- I anticipate the
7 trial, hopefully, being three days. Your Honor,
8 we do have everyone on the witness list. But my
9 current number amount at the moment is 12.

10 **THE COURT:** And do you plan to call all three
11 of these witnesses, Mr. D'Angelo?

12 **MR. D'ANGELO:** Unfortunately, Your Honor, at
13 this time, I -- I just can't quite say.

14 **THE COURT:** Worst-case scenario. I need to
15 know for scheduling purposes.

16 **MR. D'ANGELO:** Worst-case, yes, Your Honor.

17 **THE COURT:** Have y'all had the exhibits
18 premarked?

19 **MS. SAVAS:** Yes, Your Honor. I do. My
20 investigator is bringing over the other exhibits,
21 the physical.

22 **THE COURT:** I need the list. And so does the
23 court reporter.

24 **MS. SAVAS:** Yes, Your Honor. I have lists
25 for everyone.

1 **THE COURT:** Have you been provided with a
2 copy of the wit -- of the exhibit list,
3 Mr. D'Angelo.

4 **MR. D'ANGELO:** Not yet, Your Honor. But I
5 believe Ms. Savas is giving that as we're
6 speaking.

7 **MS. SAVAS:** May I approach, Your Honor?

8 **THE COURT:** Yes, ma'am. Thank you.

9 Do you have a copy of the list, Mr. D'Angelo?

10 **MR. D'ANGELO:** Yes, Your Honor. I do. Thank
11 you.

12 **THE COURT:** You're welcome.

13 **MS. SAVAS:** And just for the record, Your
14 Honor, everything on the exhibit list has been
15 provided as part of Rule 5 to the defense.

16 **THE COURT:** Are they not upstairs yet?

17 **THE CLERK:** They should be on their way.
18 (Inaudible).

19 **THE COURT:** You're gonna need these for the
20 formal arraignment.

21 **THE CLERK:** Okay.

22 **MR. D'ANGELO:** And Your Honor, when you have
23 a moment, there was one, I guess, pretrial in a
24 way. It's just in regards to the indictments.
25 Ms. Savas and I have talked about this. We were

1 seeking it out -- I'm not sure if Your Honor has a
2 copy of them in front of you.

3 **THE COURT:** I have them. But if you want to
4 avoid that, you may want to forego the formal
5 arraignment. I'm at a loss as to what practical
6 purpose it serves. If you want certain language
7 redacted, I'm really the best person suited to
8 read that.

9 **MR. D'ANGELO:** What we were hoping was to
10 redact the AK names on there. As -- if you can
11 look at them, Your Honor, you can see --

12 **THE COURT:** She only reads the body of the
13 indictment.

14 **MR. D'ANGELO:** Okay.

15 So that won't be read?

16 **THE COURT:** I don't think that's --
17 Madam clerk, you would read her name correct.

18 **THE CLERK:** Yes. And then --

19 **THE COURT:** Which name?

20 **THE CLERK:** I believe on some of the
21 indictments, they have the victim's name. Is that
22 what you're talking about?

23 **MR. D'ANGELO:** No.

24 So under -- after her name, it's AKA and
25 there's a number of names. She was married

1 previously. If you look at them, the --

2 **THE COURT:** I --

3 **MR. D'ANGELO:** -- number --

4 **THE COURT:** -- think it's necessary to read
5 those names. Because somebody may know her by a
6 different name.

7 **MR. D'ANGELO:** Well, what I would say, Your
8 Honor, if you look, a number of them are actually
9 typos.

10 **THE COURT:** Let me see.

11 **MR. D'ANGELO:** I think they're errors, you
12 can tell, and misspellings.

13 **THE COURT:** Oh, I see where it is now. I
14 don't need it.

15 **MR. D'ANGELO:** Not -- certainly not by the
16 state, just how it was entered into the system.

17 **MS. SAVAS:** Only a couple are. There's only
18 two.

19 **THE COURT:** What other names is she known by?

20 **MS. SAVAS:** Yes, Your Honor. One moment. I
21 can pull it up.

22 **THE COURT:** Actually, they're only going to
23 read the State versus Toya Daniel Steward; is that
24 correct?

25 **THE CLERK:** That's correct.

1 **THE COURT:** So I think it's a non-issue.

2 **MR. D'ANGELO:** Then, I just wanted to make
3 sure. Thank you, Your Honor.

4 **THE COURT:** Uh-huh.

5 It does not appear there's any other language
6 within the body of the indictment that would have
7 any affect on.

8 (The jury venire enters at 4:42 p.m.)

9 **THE BAILIFF:** They're all here, Your Honor.

10 **THE COURT:** Thank you.

11 Ladies and gentlemen, we're going to select a
12 jury for the cases of the State of South Carolina
13 versus Toya Danielle Steward.

14 Does Ms. Steward wish to have a formula
15 arraignment, Mr. D'Angelo?

16 **MR. D'ANGELO:** She does, Your Honor.

17 **THE COURT:** If she would stand.

18 And madam clerk, you may proceed when you're
19 ready.

20 **THE CLERK:** Case No. 2023GS1003323, also Case
21 No. 2023GS1003324, and 2023GS1003325, State of
22 South Carolina versus Toya Danielle Steward.

23 If you answer to that name, please raise your
24 right hand.

25 (The defendant raises her hand.)

Jury Qualification

1 **THE CLERK:** You may put it down.

2 You stand indicted by the name Toya Danielle
3 Steward for arson, that in Charleston County,
4 South Carolina, on or about February 8, 2020, the
5 defendant Toya Danielle Steward did willfully and
6 maliciously cause an explosion, set fire to, burn,
7 or cause to be burned, counsels, procures a
8 burning that results in the damage to a dwelling
9 house, church or place of worship, public or
10 private school facility, manufacturing plant or
11 warehouse, building where business is conducted,
12 institutional facility, or structure designed for
13 human occupancy including local and municipal
14 buildings, whether the property of the person or
15 another; in violation of Section 16-11-110(B) of
16 South Carolina.

17 As to the charge burglary, that in Charleston
18 County or -- on or about February 8, 2020, the
19 defendant Toya Danielle Steward did enter the
20 dwelling of Frank Fitzgerald Simmons and Jason
21 Christopher Simmons without consent and with the
22 intent to commit a crime therein in violation of
23 Section 16-11-312(A) of South Carolina Code of
24 Laws.

25 And as to the charge of attempted murder,

1 that in Charleston County, South Carolina, on or
2 about February 9, 2020, the defendant Toya
3 Danielle Steward did with intent kill and malice
4 afterthought, attempt to kill Jason Christopher
5 Simmons. This is in violation of Section 16-329
6 of South Carolina Code of Laws.

7 How say you? Are you guilty or not guilty?

8 **THE DEFENDANT:** Not guilty.

9 **THE CLERK:** How will you be tried?

10 **THE DEFENDANT:** By a jury of my peers.

11 **THE CLERK:** May they send you a true
12 deliverance.

13 **THE COURT:** You may be seated.

14 Ladies and gentlemen, we're gonna go through
15 a process that is called voir dire, which is
16 simply a legal term meaning that I'm going to ask
17 you some questions, so that the attorneys can more
18 effectively exercise their peremptory challenges
19 in jury selection. If a question applies to you,
20 please stand. And then a loud and clear voice,
21 tell me your name, your juror number, and answer
22 to the question if applicable, and remain standing
23 until I have completed questioning you.

24 If counsel for the state will introduce
25 themselves, who will be assisting them in the

Jury Qualification

1 trial of this case, and also give us the names of
2 the lawyers in your office.

3 And Mr. D'Angelo, if you would provide us
4 with the same information, and have your client
5 stand and face the panel. You may proceed.

6 **MS. SAVAS:** Thank you, Your Honor.

7 **THE COURT:** You're welcome.

8 **MS. SAVAS:** May it please the Court.

9 **THE COURT:** Yes, ma'am.

10 **MS. SAVAS:** I'm Nina Savas. I'm a managing
11 assistant solicitor here at Charleston County for
12 the Ninth Circuit. I worked for the elected
13 solicitor, Scarlett Wilson. This is Ms.
14 Katherine Fries. She is my second chair in this
15 case. She is also an assistant solicitor. With
16 us is the case agent in this matter from the
17 Charleston County Sheriff's Office, Sergeant
18 Brittany Cheek. I will also have alongside me my
19 investigator John Glenn in our office as well.

20 In our office here in Charleston County, the
21 various attorneys are the following: Marian
22 Askins, Jessica Baldwin, Kelly Barber, Elliott
23 Barrow, Sara Bosworth, Cassidy Brewer, Ashley
24 Brown, Sherita Cannon, Daniel Cooper, Kelsey
25 Davis, Timmy Finch, Jason Finley, Lauren Frierson,

1 Catherine Grease, Jewel Girion, Joseph Guerrero,
2 Mallory Haliena, Amy Harrell, Nicholas Harris,
3 Durham Hill, Tiffany Izer, Stephanie Linder,
4 Daniel Martin, Denton Matthews, Andrew McAlister,
5 John Mullin, Nella Namlick, Jordan Norvell, and
6 Anna Outen, Charlie Patrick, Hunt Russell, Chad
7 Simpson, Tyler Whitaker, Len Ziegler.

8 And in our Berkeley County Office --

9 Did you -- would you like me to go to
10 Berkeley County, Judge, or is this --

11 **THE COURT:** Sure.

12 **MS. SAVAS:** -- okay?

13 We have Jessica Agnostic, Shonda Baggett,
14 Cassandra Valenberg, Deneta Brown, Adam Carr, Lisa
15 Davey, Ben Dennis, Kayla Donato, Bridget Driggers,
16 Jessica Floyd, Tammy Gentry, Fern Gibson, Michelle
17 Hart, Amber Hormel, Rachel Janowski, Tracy Judy,
18 Cornelius Junius, Jamie Kaiser Haskey, Mary Lurch,
19 Olivia Lynch, Wilton McNeely, Trayvon Middleton,
20 Alison Mills, Covohy Morris, Christie Murphy,
21 Shayne Musgrave, Alex Meyers, Lauren Newberry,
22 John Newlin, Debbie Orr, April Rebell, Julie
23 Rochester, Thomas -- Thomas Ralston, Michael
24 Seacrest, Amanda Shelley, (inaudible) Zarbor
25 Kamilla Szymczynska-Sas, LaTonya Williams, David

Jury Qualification

1 Young, Nick Young, and Chief Deputy Jennifer
2 Shealy and Chief Deputy Anne Williams.

3 **THE COURT:** Mr. D'Angelo.

4 **MR. D'ANGELO:** Thank you, Your Honor.

5 **THE COURT:** You're welcome.

6 **MR. D'ANGELO:** Good afternoon, y'all. My
7 name is Nick D'Angelo. With me is Toya Steward.

8 **MS. BLAZER:** And I'm Cameron Blazer.

9 **MR. D'ANGELO:** The attorneys in my office are
10 Rachel Aurora, Karen Barker, Cameron Blazer,
11 Kaitlin Cornwell-Goulooze, Taylor Currin, Brendan
12 Daniels, Rodney Davis, Helen Dovell, Megan
13 Ehrlich, Mary Ford, Patrick Goodwyn, Christopher
14 Hamilton, Douglas Henley. Renate Hohman, Jason
15 King, John Kozelski, Benjamin Lewis, Lindsey
16 Luthringer, Benjamin Mack, Katherine Mangan, Karla
17 Martinez, Amanda Monaco, Martha Kent Runey, Claire
18 Shumeister, Ted Smith, Kelly Solar, Cassandra
19 Woosley, and Jeff Yungman, in addition to Jason
20 Bythy, Julie Shivers, Sam Sjogren, Astasia
21 Williams Burls, Lawrence Long, Keisha White, and
22 Taylor Espes.

23 **THE COURT:** Thank you.

24 Again, ladies and gentlemen, if a question
25 applies to you, please stand. And in a loud and

1 clear voice, tell me your name, your juror number
2 and answer to the question if applicable, and
3 remain standing until I've completed questioning
4 you.

5 Is there any member of the panel related by
6 blood or marriage to or have a close personal or
7 social relationship with Toya Danielle Steward,
8 Frank Fitzgerald Simmons, or Jason Christopher
9 Simmons? If so, please stand at this time.

10 (No audible response.)

11 **THE COURT:** The following are a list of
12 potential witnesses in this case. I would ask
13 that you listen carefully. Almarintha Carter,
14 Destiny Brees, Barbara Wright, Daniel Heiterer,
15 H-e-i-t-e-r-e-r, Deputy Britney Cheeks, Deputy
16 Paul Kerr, Detective Carl Muirfield, Detective
17 John M. Valerio, Herschel McElroy, Paul McManigal,
18 Delmar Powell, Jason Riley, all of the Charleston
19 County Sheriff's Office; Melissa High, Charleston
20 County Detention Center; Joe Graham, SLED K-9
21 Unit; Lori Watts, Hue Tang, Vera Martinez, Bethany
22 Davidson, Doris Yarborough, Victoria DeLoach,
23 Bailey Haines, Lisa Chapman, all of the South
24 Carolina Law Enforcement Division.

25 Captain Kevin Berkel, Captain Brian Drew,

Jury Qualification

1 Captain Christopher Savage, Captain Michael
2 Brinson, Battalion Chief Robert Looney, Engineer
3 Trevor Barnhill, Engineer Cade Malone, Engineer
4 Christopher Bill Petrovich, Firefighter David
5 Shank, Firefighter Lauren McDaniel, Firefighter
6 Joshua Allen, and Patrick English, all of the St.
7 Andrews Fire Department, as well as Kevin Krause
8 and Joshua Riley, both of the St. Andrews Fire
9 Department and Chief Larry Hood, as well as Daniel
10 Arthur, Christopher -- Crystal Dalsing,
11 D-a-l-s-i-n-g, and Detective Brita Sinke,
12 S-i-n-k-e.

13 Is there any member of the panel related by
14 blood or marriage to any of the people that I've
15 just listed? Or does anyone have a close personal
16 or social relationship with any of these
17 individuals? If so, please stand at this time.
18 (No audible response.)

19 **THE COURT:** Has any member of the panel ever
20 been represented by any of the attorneys in this
21 case or any of the lawyers in their offices? If
22 so, please stand at this time.

23 Yes, sir. Tell me your name and your juror
24 number.

25 **POTENTIAL JUROR:** Alexander Romanelli, 244.

1 **THE COURT:** And which office was it, sir?

2 **POTENTIAL JUROR:** It was Nicholas D'Angelo.

3 **THE COURT:** Okay.

4 How long ago, sir?

5 **POTENTIAL JUROR:** Two years. Two or three.

6 **THE COURT:** As a result of this experience,
7 do you feel that you can remain fair and impartial
8 and render a fair and impartial decision in this
9 case, based solely on the evidence as it will be
10 presented and on the law as the court will
11 instruct?

12 **POTENTIAL JUROR:** Yes, ma'am.

13 **THE COURT:** Thank you, sir. You may take
14 your seat.

15 Is there any member of the panel related by
16 blood or marriage to or have a close personal or
17 social relationship with any of the attorneys
18 involved in this case, any of the lawyers and
19 their offices, or any person employed in any
20 capacity whatsoever in their offices? If so,
21 please stand at this time.

22 Yes, sir. Tell me your name and juror
23 number.

24 **POTENTIAL JUROR:** Alexander Aycock, 11.

25 **THE COURT:** And who is it?

Jury Qualification

1 **POTENTIAL JUROR:** Sorry? Social --

2 **THE COURT:** No. That's okay.

3 **POTENTIAL JUROR:** Social friend of Lawyer
4 Catherine Fries.

5 **THE COURT:** And how would you characterize
6 that? How often would you say you see her?

7 **POTENTIAL JUROR:** Routinely month to month.
8 Friends with their husband?

9 **THE COURT:** So how often would you say you
10 see her a month?

11 **POTENTIAL JUROR:** Once or twice a month.

12 **THE COURT:** And would you characterize that
13 as a social acquaintance?

14 **POTENTIAL JUROR:** Yes. Social acquaintance.

15 **THE COURT:** Okay.

16 As a result of this experience, do you feel
17 that you can remain fair and impartial and render
18 a fair and impartial decision in this case, based
19 solely on the evidence as it will be presented and
20 on the law as the Court will instruct?

21 **POTENTIAL JUROR:** Yes, ma'am.

22 **THE COURT:** Thank you, sir. You may take
23 your seat.

24 Does any member of the panel have any
25 personal knowledge of the alleged facts and

1 circumstances in this case? If so, please stand
2 at this time.

3 (No audible response.)

4 **THE COURT:** Has any member of the panel read,
5 watched, or listened to any media accounts about
6 this case if there have been any? That would
7 include anything in the newspaper, radio,
8 television or on the Internet? If so, please
9 stand at this time.

10 (No audible response.)

11 **THE COURT:** Has any member of the panel
12 formed or expressed an opinion about any issue or
13 matter involved in this case? If so, please
14 stand.

15 (No audible response.)

16 **THE COURT:** Does any member of the panel --
17 is there any member of the panel aware of any bias
18 or prejudice toward either the state or the
19 defense in this case? If so, please stand at this
20 time.

21 (No audible response.)

22 **THE COURT:** Is there any member of the panel
23 who is a member of the grand jury which issued the
24 indictments in this case? If so, please stand at
25 this time.

Jury Qualification

1 (No audible response.)

2 **THE COURT:** Is there any member of the panel
3 who is a member of or contributor to any group
4 which has as its primary concern -- and I
5 apologize.

6 Is there any member of the panel who is a
7 member of or contributor to any group which has as
8 its primary concern the promotion of law
9 enforcement or victims' rights? These groups
10 would include but are not limited to Mothers
11 Against Drunk Driving, Students Against Drunk
12 Driving, Citizens Against Violent Crime, People
13 Against Rape, Parents in Power to Save Teens, the
14 Fraternal Order of Police, the Police Benevolent
15 Association, Blue Lives Matter, or any other type
16 community watch group. If so, please stand at
17 this time.

18 (No audible response.)

19 **THE COURT:** Is there any member of the panel
20 who has a moral, philosophical, or religious
21 opposition to sitting in judgment of a fellow
22 human being? If so, please stand at this time.

23 (No audible response.)

24 **THE COURT:** Is there any member of the panel
25 who has an immediate family member who is employed

1 in law enforcement? If so, please stand at this
2 time.

3 If you would tell me your name and your juror
4 number and which member of your family it is and
5 which agency?

6 **POTENTIAL JUROR:** 17. My brother is a
7 federal agent from Homeland Security with the
8 United States Border Patrol.

9 **THE COURT:** If you would remain standing for
10 me.

11 And yes, ma'am.

12 **POTENTIAL JUROR:** 254. My son is a police
13 officer.

14 **THE COURT:** With what agency, ma'am?

15 **POTENTIAL JUROR:** Isle of Palm.

16 **THE COURT:** Okay.

17 **POTENTIAL JUROR:** (Inaudible) with the
18 sheriff's office.

19 **THE COURT:** I'm sorry. Please repeat that.

20 **POTENTIAL JUROR:** And he's (inaudible) with
21 the sheriff's office.

22 **THE COURT:** And next to you, yes, ma'am.

23 **POTENTIAL JUROR:** 180. And I have a nephew
24 who is a police officer.

25 **THE COURT:** And if you would tell me your

Jury Qualification

1 name as well, please.

2 **POTENTIAL JUROR:** Anne Marie.

3 **THE COURT:** And what agency is he with?

4 **POTENTIAL JUROR:** New York City Police
5 Department.

6 **THE COURT:** Okay.

7 And No. 254, if you would tell me your name
8 for the record, please.

9 **POTENTIAL JUROR:** Kimberly Santulli.

10 **THE COURT:** And No. 17 as well, your name for
11 the record, ma'am.

12 **POTENTIAL JUROR:** Oh, Kristin Barfield.

13 **THE COURT:** Okay.

14 As a result of these -- oh, I'm sorry.

15 Yes, ma'am, in the vest.

16 **POTENTIAL JUROR:** No. 46, Rebecca Cafiero. I
17 don't know if it counts, but my dad is a retired
18 probation officer and former member of the
19 sheriff's department.

20 **THE COURT:** And what county?

21 **POTENTIAL JUROR:** Trion.

22 **THE COURT:** That's North Carolina or Georgia?

23 **POTENTIAL JUROR:** Georgia.

24 **THE COURT:** Okay.

25 And yes, ma'am.

1 **POTENTIAL JUROR:** Yes. Sandra Doucet, 81
2 jury. My brother is a retired North Charleston
3 (inaudible). He was retired SWAT. And then he
4 moved to the airport. And he's retired from
5 there.

6 **THE COURT:** Yes, sir, in the back. Tell me
7 your name.

8 **POTENTIAL JUROR:** I could not hear, but I
9 thought I heard the name Daniel Martin. And I'm
10 certain we attend church together.

11 **THE COURT:** Okay.

12 He is an assistant solicitor. Are you
13 speaking of junior or senior? Are you speaking
14 of --

15 **POTENTIAL JUROR:** I'm speaking of both junior
16 and senior.

17 **THE COURT:** Tell me your name and juror
18 number.

19 **POTENTIAL JUROR:** Lee Bennett, Jury No. 24.

20 **THE COURT:** So you're a member of Emmanuel?

21 **POTENTIAL JUROR:** Yes, ma'am.

22 **THE COURT:** If you would remain standing for
23 me. Okay.

24 Yes, sir.

25 **POTENTIAL JUROR:** Sorry. Yeah.

Jury Qualification

1 **THE COURT:** That's okay.

2 **POTENTIAL JUROR:** No. 11.

3 **THE COURT:** Yes, sir.

4 **POTENTIAL JUROR:** My uncle (inaudible)
5 retired Greenville County police officer.

6 **THE COURT:** Tell me what relationship that
7 was again.

8 **POTENTIAL JUROR:** My uncle.

9 **THE COURT:** And what county -- what state is
10 that in?

11 **POTENTIAL JUROR:** South Carolina.

12 **THE COURT:** And you said he's a retired --

13 **POTENTIAL JUROR:** Greenville --

14 **THE COURT:** Greenville.

15 **POTENTIAL JUROR:** -- County. Yes, ma'am.

16 **THE COURT:** Okay.

17 As a result of these experiences, do you all
18 feel that you can remain fair and impartial and
19 render a fair and impartial decision in this case,
20 based solely on the evidence as it will be
21 presented and on the law as the Court will
22 instruct? If your answer is yes, please take your
23 seat.

24 Let the record reflect that all answered yes
25 with the exception of 254.

1 Is that correct, ma'am? You'll be excused
2 from the trial this case only. You may take your
3 seat.

4 Is there any member of the panel who has an
5 immediate family member who is employed with the
6 fire department? If so, please stand at this
7 time.

8 Sir, if you would tell me your name and juror
9 number.

10 **POTENTIAL JUROR:** Brian King, Juror No. 145.

11 **THE COURT:** And which member of your family
12 that?

13 **POTENTIAL JUROR:** Allen King. He's my
14 brother. City of Charleston fire captain.

15 **THE COURT:** Yes, ma'am.

16 **POTENTIAL JUROR:** Juror No. 46, Rebecca
17 Cafiero. My husband is retired Mt. Pleasant Fire
18 Department.

19 **THE COURT:** As a result of these experiences,
20 do you both feel that you can remain fair and
21 impartial and render a fair and impartial decision
22 in this case, based solely on the evidence as it
23 will be presented and on the law as the court will
24 instruct? If your answer is yes, please take your
25 seat.

Jury Qualification

1 Let the record reflect that both answered
2 Yes.

3 Is there any member of the panel or a member
4 of your immediate family been the victim of a
5 violent crime? If so, please stand at this time.
6 (No audible response.)

7 **THE COURT:** Does any member of the panel know
8 of any reason whatsoever why he or she should not
9 serve as a juror in this case, with particular
10 emphasis being placed on your ability to be fair
11 and impartial to both the state and the defense?
12 If so, please stand at this time.
13 (No audible response.)

14 **THE COURT:** Is there any member of the panel
15 who lives in the vicinity of [REDACTED] Avenue in
16 Charleston? If so, please stand at this time.
17 (No audible response.)

18 **THE COURT:** Any additional questions from the
19 state?

20 **MS. SAVAS:** Yes, Your Honor.

21 **THE COURT:** Just give me a number and I'll
22 tell you why.

23 **MS. SAVAS:** No. 9, Judge.

24 **THE COURT:** No. 9 is very misleading. And if
25 you read their mission statement, that is not what

1 they stand for.

2 **MS. SAVAS:** Well, Your Honor, for the record,
3 I believe the Court --

4 **THE COURT:** I didn't ask for argument. But I
5 did plan to restate it, and I appreciate the
6 reminder.

7 Is there any member of the panel who is a
8 member of any organizations which seek to -- to
9 reform police agencies or otherwise? If so,
10 please stand at this time.

11 Yes, sir. Tell me your name and your juror
12 number.

13 **POTENTIAL JUROR:** Phillip (inaudible), 57.
14 I'm a member of the Democratic Socialists of
15 South Carolina. And they do have a police reform
16 abolitionist group. I've never like met them
17 personally. But that does exist.

18 **THE COURT:** Okay.

19 As a result of this experience, do you feel
20 that you can remain fair and impartial and render
21 a fair and impartial decision in this case, based
22 solely on the evidence as it will be presented and
23 on the law as the Court will instruct?

24 **POTENTIAL JUROR:** I do.

25 **THE COURT:** Thank you, sir.

Jury Qualification

1 Is there any member of the panel who has had
2 what they would characterize as a bad experience
3 with law enforcement such that it would affect
4 your ability to be fair and impartial to both the
5 state and the defense? If so, please stand at
6 this time.

7 (No audible response.)

8 **THE COURT:** Are there any additional
9 questions from state?

10 **MS. SAVAS:** No. 7, Your Honor.

11 **THE COURT:** I already asked that question
12 just now.

13 **MS. SAVAS:** Thank you, Judge.

14 **THE COURT:** No worries. And that's usually a
15 part of my usual colloquy, but I skipped over it.
16 I apologize.

17 **MS. SAVAS:** Thank you, Judge.

18 **THE COURT:** Any additional questions from the
19 defense?

20 **MR. D'ANGELO:** Yes, Your Honor. I would
21 request Question 3.

22 **THE COURT:** No. 3, you would have found out
23 in roll call.

24 **MR. D'ANGELO:** Question 9.

25 **THE COURT:** Question 9 deals with the facts,

1 and it's not appropriate pursuant to 14-7-1020.

2 **MR. D'ANGELO:** And Question 10, Your Honor.

3 **THE COURT:** Question No. 10 likewise deals
4 with the facts, and would not be appropriate and
5 would not be within the ambit of 14-7-1020.

6 Strikes are 10 and 5. Do we need one or two
7 alternates from the state?

8 **MS. SAVAS:** The state would request two,
9 please, Your Honor.

10 **MR. D'ANGELO:** I join in that.

11 **THE COURT:** We're all on the same page. I
12 just wanted to ask. Strikes will be one and two
13 for each party.

14 I would ask that you give the clerk your
15 attention. Ladies and gentlemen, we appreciate
16 your patience. I know it is beyond five o'clock.
17 And we apologize. We're operating under a new
18 system, which is like moving into a new house.
19 You know, you don't know the closets don't work
20 until you like start till you live in the house.
21 And then you think, "I should have made this
22 closet like five times bigger. I should have put
23 my bathroom in a whole nother place."

24 We have started a new system to deal with our
25 backlog, which requires the court to do what are

Jury Qualification

1 called status conferences in the morning. That's
2 why you-all had to come in the evening -- I mean,
3 the afternoon. And there's nobody to cover them
4 for me. I have to do them. And we usually aren't
5 done with those till about 12:30. And they
6 started about 9:15, 9:30. So I just want you-all
7 to understand. We didn't just sort of randomly
8 ask you-all to come at two o'clock. And we really
9 do value your time. And I know it's beyond five
10 o'clock. And we really again appreciate your
11 patience.

12 The clerk is creating what are called "strike
13 sheets," where your names are listed randomly.
14 Because we're in such a compact space, if your
15 name is called, I would ask that you stand in
16 place where you are until we either seat or excuse
17 you as a juror in the trial of this case.

18 And as soon as we're done with that, I'll let
19 the balance of the panel go. I'll give some brief
20 instructions to those who are selected. And you
21 likewise will be free to go for the evening until
22 we begin the trial in the morning.

23 And I would ask that you give the clerk your
24 attention when she's ready.

25 **MS. SAVAS:** Your Honor, may -- I just have a

1 brief question --

2 **THE COURT:** Sure.

3 **MS. SAVAS:** -- on a -- on a juror that I just
4 want to double-check something on.

5 **THE COURT:** Sure.

6 **MS. SAVAS:** May we approach?

7 **THE COURT:** Yeah.

8 We can pass those down for you.

9 (Sidebar conference is held off the record.)

10 **THE COURT:** All right.

11 State ready to proceed?

12 **MS. SAVAS:** Yes, Your Honor. Thank you.

13 **THE COURT:** You're welcome.

14 Defense ready to proceed?

15 **MR. D'ANGELO:** Yes, Your Honor.

16 **THE COURT:** Ladies and gentlemen, again,
17 please give the clerk your attention. If your
18 name is called, please stand in place and we will
19 seat or excuse you as a juror. And we appreciate
20 your patience.

21 **THE CLERK:** Juror No. 36.

22 What say you for the state?

23 **MS. SAVAS:** Beg the indulgence.

24 Please present this juror.

25 **THE CLERK:** What say you for the defendant?

Jury Selection

1 **MR. D'ANGELO:** Please seat this juror.

2 **THE CLERK:** Sir, you've been selected in the
3 trial of this case. Please grab all of your
4 belongings. And you'll walk over to the jury box.

5 Juror No. 31.

6 What say you for the state?

7 **MS. SAVAS:** Please present this juror.

8 **THE CLERK:** What say you for the defendant?

9 **MR. D'ANGELO:** Please excuse this juror.

10 **THE CLERK:** Sir, you can have a seat. You
11 have been excused from this case.

12 Juror No. 88.

13 What say you for the state?

14 **MS. SAVAS:** Please present this juror.

15 **THE CLERK:** What say you for the defendant?

16 **MR. D'ANGELO:** Please seat this juror.

17 **THE CLERK:** Sir, you've been selected in this
18 case. You may have a seat in the jury box.

19 Juror No. 90.

20 What say you for the state?

21 **MS. SAVAS:** Please present this juror.

22 **THE CLERK:** What say you for the defendant?

23 **MR. D'ANGELO:** Please seat this juror.

24 **THE CLERK:** Ma'am, you've been selected in
25 this case. You can have a seat in the jury box.

1 Juror No. 177.
2 What say you for the state? 177.
3 **MS. SAVAS:** 170 -- oh, sorry. Sorry.
4 **THE CLERK:** It's okay.
5 What say you for the state?
6 **MS. SAVAS:** Please present this juror.
7 **THE CLERK:** What say you for the defendant?
8 **MR. D'ANGELO:** Please seat this juror.
9 **THE CLERK:** Sir, you've been selected in this
10 trial of the case. You can have seat in the jury
11 box.
12 Juror No. 258.
13 What say you for the state?
14 **MS. SAVAS:** Please present this juror.
15 **THE CLERK:** What say you for the defendant?
16 **MR. D'ANGELO:** Please excuse this juror.
17 **THE CLERK:** Sir, you have been excused. You
18 can have a seat.
19 Juror No. 159.
20 What say you for the state?
21 **MS. SAVAS:** Please present this juror.
22 **THE CLERK:** What say you for the defendant?
23 **MR. D'ANGELO:** Please excuse this juror.
24 **THE CLERK:** Sir, you've been excused. You
25 can have a seat.

Jury Selection

1 Juror No. 81.

2 What say you for the state?

3 **MS. SAVAS:** Please excuse this juror.

4 **THE CLERK:** Ma'am, you've been excused. You
5 can have a seat.

6 Juror No. 24.

7 What say you for the state?

8 **MS. SAVAS:** Please present this juror.

9 **THE CLERK:** What say you for the defendant?

10 **MR. D'ANGELO:** Please seat this juror.

11 **THE CLERK:** Sir, you've been selected in the
12 trial in this case. You can have a seat in the
13 jury box.

14 Juror No. 141.

15 What say you for the state?

16 **MS. SAVAS:** Please present this juror.

17 **THE CLERK:** What say you for the defendant?

18 **MR. D'ANGELO:** Please seat this juror.

19 **THE CLERK:** Ma'am, you've been selected. You
20 can have a seat in the jury box.

21 Juror No. 251.

22 What say you for the state?

23 **MS. SAVAS:** Please present this juror.

24 **THE CLERK:** What say you for the defendant?

25 **MR. D'ANGELO:** Please excuse this juror.

1 **THE CLERK:** Sir, you've been excused. You
2 can have a seat.
3 Juror No. 183.
4 What say you for the state?
5 **MS. SAVAS:** Please present this juror.
6 **THE CLERK:** What say you for the defendant?
7 **MR. D'ANGELO:** Please excuse this juror.
8 **THE CLERK:** Sir, you've been excused. You
9 can please have a seat.
10 Defendant has exhausted five out of 10
11 strikes.
12 Juror No. 277.
13 What say you for the state?
14 **MS. SAVAS:** Please present this juror.
15 **THE CLERK:** What say you for the defendant?
16 **MR. D'ANGELO:** Please seat this juror.
17 **THE CLERK:** Ma'am, you've been selected in
18 the trial of this case. You can have a seat in
19 the jury box.
20 Juror No. 84.
21 What say you for the state?
22 **MS. SAVAS:** Please present this juror.
23 **THE CLERK:** What say you for the defendant?
24 **MR. D'ANGELO:** Please seat this juror.
25 **THE CLERK:** Ma'am, you've been selected. You

Jury Selection

1 can have a seat in the jury box.

2 Juror No. 171.

3 What say you for the state?

4 **MS. SAVAS:** Please present this juror.

5 **THE CLERK:** What say you for the defendant?

6 **MR. D'ANGELO:** Please seat this juror.

7 **THE CLERK:** Sir, you've been selected. You

8 can have a seat in the jury box.

9 Juror No. 43.

10 What say you for the state?

11 **MS. SAVAS:** Please present this juror.

12 **THE CLERK:** What say you for the defendant?

13 **MR. D'ANGELO:** Please seat this juror.

14 **THE CLERK:** Ma'am, you've been selected. You

15 can have a seat in the jury box.

16 Juror No. 46.

17 What say you for the state?

18 **MS. SAVAS:** Please present this juror.

19 **THE CLERK:** What say you for the defendant?

20 **MR. D'ANGELO:** Please excuse this juror.

21 **THE CLERK:** Ma'am, you've been excused. You

22 can have a seat.

23 Juror No. 290.

24 What say you for the state?

25 **MS. SAVAS:** Please present this juror.

1 **THE CLERK:** What say you for the defendant?

2 **MR. D'ANGELO:** Please seat this juror.

3 **THE CLERK:** Sir, you've been selected. You
4 can have a seat in the jury box.

5 Juror No. 97.

6 What say you for the state?

7 **MS. SAVAS:** Please present this juror.

8 **THE CLERK:** What say you for the defendant?

9 **MR. D'ANGELO:** Please seat this juror.

10 **THE CLERK:** You've been selected. You can
11 have a seat in the jury box.

12 **THE COURT:** Two alternates. Strikes are one
13 and two for each alternate.

14 **THE CLERK:** Striking for the first alternate.
15 Juror No. 295.

16 What say you for the state?

17 **MS. SAVAS:** Please present the juror as an
18 alternate.

19 **THE CLERK:** What say you for the defendant?

20 **MR. D'ANGELO:** Please excuse this juror.

21 **THE CLERK:** Sir, you've been excused. You
22 can have a seat.

23 Defendant has his Alternate 1 strike.

24 Juror No. 180.

25 What say you for the state?

Jury Selection

1 **MS. SAVAS:** Please present her as the
2 alternate.

3 **THE CLERK:** What say you for the defendant?

4 **MR. D'ANGELO:** Please excuse this juror.

5 **THE CLERK:** Ma'am, you have been excused.
6 You can have a seat.

7 Defendant has exhausted all strikes.

8 Juror No. 153.

9 What say you for the state?

10 **MS. SAVAS:** Please excuse this juror.

11 **THE CLERK:** Sir, you have been excuse. You
12 can please have a seat.

13 State has exhausted all strikes.

14 Juror No. 6.

15 Any challenges by the state?

16 **MS. SAVAS:** No.

17 **THE CLERK:** Any challenged by the defendant?

18 **MR. D'ANGELO:** No.

19 **THE CLERK:** Ma'am, you have been selected.
20 You can have a seat in the jury box.

21 Now striking for second alternate.

22 Juror No. 244.

23 What say you for the state?

24 **MS. SAVAS:** Please excuse this juror.

25 **THE CLERK:** Sir, you have been excused. You

1 can please have a seat.

2 State has exhausted all strikes.

3 Juror No. 17.

4 Any challenges by the state?

5 **MS. SAVAS:** No.

6 **THE CLERK:** What say you for the defendant?

7 **MR. D'ANGELO:** Please excuse this juror.

8 **THE CLERK:** Ma'am, you have been excused.

9 You can please have a seat.

10 Juror No. 132.

11 Any challenges by the state?

12 **MS. SAVAS:** No.

13 **THE CLERK:** What say you for the defendant?

14 **MR. D'ANGELO:** Please seat this juror.

15 **THE CLERK:** Ma'am, you have been selected.

16 You can have a seat in the jury box.

17 **THE COURT:** Any motions regarding the

18 selection of the jury from the state?

19 **MS. SAVAS:** (No audible response.)

20 **THE COURT:** From the state?

21 **MS. SAVAS:** Your Honor -- yes, Your Honor.

22 **THE COURT:** Is it a Batson motion?

23 **MS. SAVAS:** Yes, Your Honor.

24 **THE COURT:** Okay.

25 I need you to take this panel into the jury

Motion - Batson

1 room. I'm going to need all the other members of
2 the panel to step into the hallway for me for a
3 moment, please.

4 (The jury panel exits the courtroom at 5:26 p.m.)

5 (The jury venire exits the courtroom at 5:26 p.m.)

6 **THE COURT:** What is the motion?

7 **MS. SAVAS:** Sorry, Your Honor. At this time,
8 Your Honor, the state would like to make a Batson
9 motion against the defense in selection of the
10 jury members.

11 Your Honor, it come to the state's attention
12 in going down the strikes from the defense during
13 the initial panel selection, they struck all white
14 males from the jury panel at this time.

15 **THE COURT:** Starting with No. 30, what was
16 the basis of the strike?

17 **MR. D'ANGELO:** TSA officer, I believe, was a
18 relative, or he was a TSA officer, Your Honor.

19 **THE COURT:** 258.

20 **MR. D'ANGELO:** I made a note the way he was
21 looking in the jury qual room, looked like he just
22 did not want to be there.

23 **THE COURT:** 159.

24 **MR. D'ANGELO:** Works in insurance. As this
25 case involves burning down a home, I could see

1 someone working in that field having strong
2 feelings of -- of -- about that.

3 **THE COURT:** No. 251.

4 **MR. D'ANGELO:** I felt that he struggled with
5 English, Your Honor. We couldn't understand him.
6 It seemed that he struggled with English. It did
7 not seem he was born in America. I think he was
8 born in Algeria, Your Honor.

9 **THE COURT:** No. 183?

10 **MR. D'ANGELO:** I'm sorry, Your Honor.

11 **THE COURT:** 183.

12 We -- we both fell -- Ms. -- Ms. Blazer just
13 felt like he was giving us kind of a menacing look
14 as he was standing there, Your Honor.

15 **THE COURT:** 46.

16 **MR. D'ANGELO:** Law enforcement ties.

17 **THE COURT:** 46. I'm sorry. I didn't mean to
18 say 146

19 **MR. D'ANGELO:** Correct, Your Honor. 46.

20 **THE COURT:** 295.

21 And they didn't strike all white males. They
22 struck a white female as well for the alternate.

23 **MS. SAVAS:** Yes, Your Honor.

24 **THE COURT:** So you look at the entirety of
25 it, not just the --

1 Yes, sir.

2 MR. D'ANGELO: Based on my life experiences,
3 looked like a bro to me, Your Honor.

4 THE COURT: Looked like a what now?

5 MR. D'ANGELO: A bro.

6 THE COURT: Okay.

7 And I really don't have a clue what it is he
8 does for a living. We just -- he just said M&A
9 and there was no ask -- there -- there was no
10 clarity sought as to what he did for a living. So
11 I don't know what that abbreviation stands for.

12 And 180.

13 MR. D'ANGELO: Son's in law enforcement, Your
14 Honor.

15 THE COURT: And No. 17.

16 MR. D'ANGELO: Son's in Homeland Security,
17 Your Honor. Brother. Excuse me. Sorry,
18 Your Honor.

19 THE COURT: All right.

20 The burden is yours, Ms. Savas.

21 MS. SAVAS: Your Honor, as the state had
22 mentioned, they had struck all white
23 individuals --

24 THE COURT: And he's given me race-neutral
25 reasons.

1 **MS. SAVAS:** Yes, Your Honor.

2 **THE COURT:** So it's your burden to show me
3 that as pretext and not race-neutral reasons.

4 **MS. SAVAS:** Your Honor, as far as the -- with
5 the person that struggled with English, No. 251,
6 it was not disqualified. And he remains there at
7 the time of the jury qualifications.

8 **THE COURT:** He never stood up and told me he
9 had a struggle with English. But apparently
10 you-all observed that during roll call. And he
11 certainly can use that as a basis for a peremptory
12 strike.

13 **MS. SAVAS:** It is unclear as to Juror 183
14 what "giving the defense a look" means, Your
15 Honor.

16 **THE COURT:** I don't think they have to be
17 more specific than that. If their gut tells them
18 that, same way as if your gut tells you that,
19 they're entitled to. It's race-neutral.

20 **MS. SAVAS:** And same with Juror No. 295, Your
21 Honor. Just he didn't like the way he looked
22 because he looked like a white male. "Bro" is a
23 slang term for being a white male.

24 **THE COURT:** That's not what he said. He said
25 he looked like a bro. He did not say white male

1 bro. He said he looked like a bro to me.

2 **MS. SAVAS:** It's the state's position the
3 slang for "bro" means a white male.

4 **THE COURT:** He's entitled to it. They're all
5 race-neutral reasons. The burden is yours. You
6 failed to establish that -- you failed to
7 establish pretext. You failed to establish that
8 the reasons given by Mr. D'Angelo are anything
9 other than race- and gender-neutral.

10 His reasons do not have to be specific,
11 legitimate or persuasive. He only has to prove to
12 the Court that his basis for striking them was
13 race- and gender-neutral. Again, the ultimate
14 burden lies with the state as they are the
15 challenging party. And there's been no showing
16 that similar jurors were seated, which is
17 generally how pretext is established. So the
18 motion is denied.

19 Anything else before we bring back in the
20 jury so I can let them go home?

21 **MS. SAVAS:** No, Your Honor. Thank you.

22 **THE COURT:** You're welcome.

23 Please bring in the balance of the panel.

24 Any exceptions or challenges to motions
25 regarding selection of the jury from the state --

1 I mean, from the defense.

2 **MR. D'ANGELO:** No, Your Honor.

3 (The jury venire enters the courtroom at
4 5:32 p.m.)

5 **THE COURT:** Thank you.

6 Ladies and gentlemen, we appreciate your
7 patience. You're excused for the remainder of the
8 day. Please call the jury information line after
9 six o'clock this evening for further instructions
10 regarding your jury service. You've been very
11 patient. And the court extends its profound
12 thanks to you. Have a wonderful rest of the
13 evening. You're excused.

14 I meant tomorrow evening. I'm sorry. I'm
15 having a long day. Yeah. Call tomorrow after
16 six, not tonight after six. I apologize.
17 (The jury venire exits the courtroom at 5:33 p.m.)

18 **THE COURT:** Please bring in the rest of the
19 panel so they can be sworn.

20 Any exceptions to the panel being sworn from
21 state?

22 **MS. SAVAS:** No, Your Honor.

23 **THE COURT:** From the defense?

24 **MR. D'ANGELO:** None, Your Honor.

25 (The jury panel enters the courtroom at 5:34 p.m.)

Court Remarks to Jury

1 **THE COURT:** Ladies and gentlemen, please
2 stand and raise your right hand so that the clerk
3 can administer the oath to you.

4 **THE CLERK:** Do you swear or affirm that you
5 shall well and truly try and true deliverance make
6 between the State of South Carolina and the
7 defendant at the bar whom you shall have in charge
8 and a true verdict render according to the
9 evidence and the law so help you God? Please
10 indicate by saying "I do."

11 (Each juror responds.)

12 **THE CLERK:** If you have accepted this oath,
13 please be seated. If you have not accepted this
14 oath, please remain standing.

15 (Each juror responds.)

16 **THE COURT:** Okay.

17 Ladies and gentlemen, you've been selected
18 for the case of the State of South Carolina versus
19 Steward. Y'all have had a long day. I'm going to
20 excuse you for the remainder of the afternoon. I
21 think they have probably made -- I guess we're
22 into the evening now, aren't we, since it's 5:36?

23 They're parking next door tomorrow, right?

24 **THE BAILIFF:** Yes, Your Honor.

25 **THE COURT:** Okay.

1 Arrangements have been made for you-all to
2 park next door tomorrow. So the bailiffs will go
3 over that with you and how that works. They will
4 also go through with you how you're to reenter the
5 building in the morning. We'll resume at 9:30.

6 During this break, it is essential that you
7 do not read, watch, or listen to any media
8 accounts about this case, if there are any; that
9 you not do any independent research of any type on
10 the internet. You have been selected as the fact
11 finders in this case, which means it is essential
12 that you maintain your impartiality until you've
13 heard all the evidence, in this case, the party's
14 closing arguments, and the court's instructions on
15 the law.

16 Also, please don't have any interaction with
17 anyone in or about the courthouse. Again, we
18 would not want an innocent conversation to be
19 observed and misinterpreted. And if you also
20 would refrain from making any comments regarding
21 your social -- your service on any social
22 networking sites. You would be amazed the people
23 that troll the internet all day long and are very
24 happy to call us and let us know what you've said,
25 and along with sending screenshots.

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1 So I would ask that you refrain from making
2 any comments. I know people make innocent
3 comments. But they can be so very easily
4 misinterpreted. So I would ask that you refrain
5 from that as well.

6 Trying to think if there's anything I'm
7 leaving out. I don't think there is. But as soon
8 as you-all return in the morning, we'll resume at
9 9:30 with the Court's opening instructions, as
10 well as opening argument and we -- and witnesses.
11 I hope you'll have a great evening. We'll see you
12 in the morning at 9:30. And the bailiffs will
13 give you further instructions.

14 (The jury panel exits the courtroom at 5:38 p.m.)

15 **THE COURT:** You may be seated.

16 All right. I would assume y'all have agreed
17 to sequester the witnesses?

18 **MS. SAVAS:** Yes, Your Honor. The state
19 consents to the motion, with the exception of our
20 two victims, Jason and Frank Simmons and our case
21 agent.

22 **THE COURT:** Well, I think we-all know by
23 statute, they can't be excluded. So I think
24 that's a moot issue.

25 **MS. SAVAS:** And our case agent Sergeant

1 Cheek.

2 **THE COURT:** And I think they recognize that
3 as well.

4 What was the number of the person that you
5 said had been prosecuted by your office,
6 Ms. Savas, at the bench conference?

7 **MS. SAVAS:** 244, Your Honor. I struck him
8 when he came up.

9 **THE COURT:** 244. Bear with me just a moment
10 on that. (Pause.)

11 He was an alternate. He was not in the main
12 panel.

13 So -- but just to recap what was said at the
14 bench, Ms. Savas indicated that her office had
15 prosecuted him. She wanted him struck for cause.
16 My finding was that there was no basis to strike
17 him for cause and he could be -- they could
18 exercise a peremptory challenge in striking him,
19 which apparently, they did. Person having been
20 prosecuted, as long as they're qualified for
21 service, is not a basis for disqualification, only
22 for a peremptory challenge.

23 And what I also shared with counsel at the
24 bench was it was within the knowledge of the
25 solicitor's office who they had prosecuted and I

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1 was not going to ask that question in voir dire.
2 Because it can be extremely embarrassing to a
3 potential juror as well as not being contemplated
4 by the statute on voir dire.

5 All right. Now is the state gonna introduce
6 any *Lyle* evidence? Or do they intend to try to
7 seek any -- to admit any *Lyle* evidence?

8 **MS. SAVAS:** Unless the defense opens the
9 door, Your Honor, based off of testimony,
10 cross-examinations, or their own witnesses --

11 **THE COURT:** So the answer is "no"; is that
12 correct?

13 **MS. SAVAS:** Not at the moment, Your Honor.

14 **THE COURT:** Anything that deals with these
15 cell phones times or otherwise, I'm not making any
16 decisions in limine on evidence at all. I have to
17 hear evidence in this context. I don't know what
18 the witnesses are gonna testify to. And I do not
19 find it a particularly good use of time for people
20 to say what they might say. When they get on the
21 stand, they always say something different.

22 So until and at such time that you seek to
23 introduce the evidence, I'm not ruling on it. I
24 would instruct you-all, however, and I'm referring
25 to the motions to suppress the *Cellebrite* location

1 times; motions in limine restricting reference to
2 the defendant's call and text volume.

3 Bear with me just one second. I'm looking
4 for another motion I thought I had with me.
5 (Pause.)

6 I would instruct you that you're not to go
7 into it. You would instruct the -- ask the Court
8 or bring to the Court's attention that you have a
9 matter of law or will take the matter up in
10 camera. I'll hear the testimony, at which time
11 I'll hear any argument if necessary. It serves
12 two purposes. It creates a proffer and preserves
13 the record. And at that time, I will have a
14 better understanding of exactly what the factual
15 postures are of the case such that the Court can
16 make an informed decision.

17 Ms. Savas, didn't you have a pretrial motion?

18 **MS. SAVAS:** It was the defense's motion for
19 spoliation.

20 **THE COURT:** No, no. You had a motion, I
21 thought.

22 **MS. SAVAS:** I submitted a response this
23 morning. I -- I had a motion to -- in limine to
24 not bring up reference to the pregnancy of their
25 potential --

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1 **THE COURT:** Yeah. I knew there was -- yeah,
2 but I don't know. Where's it at?

3 **MS. SAVAS:** I could provide you with a
4 couple.

5 **THE COURT:** Oh, I have one. I just am trying
6 to figure out whether I accidentally stapled it to
7 something else. Or if I left it up here
8 somewhere. Because I was reading before I went
9 downstairs.

10 **MS. FRIES:** It was from the last page of my
11 trial brief, Judge. It was a short line on
12 page 12.

13 **THE COURT:** I already had had it -- I already
14 separated it out. I'm just trying to figure out
15 what I did with it.

16 But that falls under the same category, not
17 dealing with that till I know if it's relevant.
18 And it might be. I have no idea.

19 **MS. SAVAS:** The state would just be --

20 **THE COURT:** You'd have to do the same thing.

21 **MS. SAVAS:** For opening statements with
22 defense.

23 **THE COURT:** Can't go into any of it, anything
24 that the Court has not ruled on.

25 **MR. D'ANGELO:** Obviously, Your Honor.

1 **THE COURT:** Uh-huh.

2 That's what it was. My clerk told me. I
3 knew I hadn't -- I have so much paper. It's all
4 starting to look the same. We were talking about
5 it, and she showed it to me. But yeah, I do have
6 that, okay, which was a part of your pretrial
7 brief.

8 Now, does the state -- and -- and I was given
9 a whole stack of -- of recorded statements.

10 Where are those at? Because we need to give
11 those back to her.

12 I need to know exactly the following things:
13 If there are any jail calls, I need a redacted
14 piece of media that tells me exactly what
15 statements you're -- you would be seeking to
16 introduce. And have you also provided that to
17 Mr. D'Angelo?

18 **MS. SAVAS:** Your Honor, those are the
19 timestamps already redacted versions of just the
20 portion of the calls.

21 **THE COURT:** Which -- which one -- which DVD
22 is --

23 **MS. SAVAS:** Any of them up there? All of --

24 **THE COURT:** Well, I've got a bunch of things
25 that aren't related to the jail. I have

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1 voicemail, I have voicemail, I have voicemail, and
2 I have video from Dan Heiterer. So on -- and then
3 on the back of here there is --

4 **MS. SAVAS:** Two jail call discs.

5 **THE COURT:** Detective interview. Jail calls.
6 And flanks -- Defendant Frank Simmons, jail call
7 with female. So these two DVDs you've given me or
8 CDs -- whatever they are, whatever the media would
9 be. I'm sorry. Those are the redacted statements
10 you would be seeking to use against Ms. Steward?

11 **MS. SAVAS:** Yes, Your Honor. They have a
12 portion where it declares the pin -- the pin where
13 she signs in. That. And then it skips to the
14 exact portions in which we wish to play.

15 **THE COURT:** And how long are those portions?
16 And how -- well, first, let's start -- we need to
17 have these marked in some way. Do you have these
18 on your list?

19 **MS. SAVAS:** Yes, Your Honor.

20 **THE COURT:** What numbers are they? Because
21 they're not marked on these discs?

22 **MS. SAVAS:** Yes, Your Honor. The jail calls
23 with Frank Simmons is No. 7- -- is No. 79.

24 **THE COURT:** Need to put a sticky on there
25 that says 79.

1 **MS. SAVAS:** And the female is No. 83.

2 **THE COURT:** And how long is 79?

3 **MS. SAVAS:** Your Honor, they're -- they're
4 actually brief.

5 **THE COURT:** Just give me an estimate.

6 **MS. SAVAS:** Maybe a minute and a half.

7 **THE COURT:** For both? On each of them?

8 **MS. SAVAS:** Yes, Your Honor. There's
9 different clips in No. 79 where it jumps
10 throughout the conversation. So we just have a
11 few snippets, so we don't include unnecessary
12 things.

13 **THE COURT:** Uh-huh.

14 **MS. SAVAS:** So probably just a couple of
15 minutes --

16 **THE COURT:** Okay.

17 **MS. SAVAS:** -- for both of them, Your Honor.

18 **THE COURT:** Okay.

19 Is there going to be any exception to the
20 jail calls?

21 **MR. D'ANGELO:** I mean, there would be, Your
22 Honor. I haven't heard --

23 **THE COURT:** I need to know what they are.

24 **MR. D'ANGELO:** Well, I'll just state, I
25 haven't heard what specific clips --

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1 **THE COURT:** You don't have the redacted DVDs?

2 **MR. D'ANGELO:** I -- I don't, Your Honor.

3 **MS. SAVAS:** I -- I haven't -- not given them
4 to them yet, Your Honor.

5 **THE COURT:** You need to go ahead and give
6 them to them.

7 **MS. SAVAS:** Yes, Your Honor. We -- we plan
8 on doing that.

9 **THE COURT:** I mean, like when?

10 **MS. SAVAS:** I can do it this evening or first
11 thing in the morning.

12 **THE COURT:** I think you need to give them to
13 them as soon as possible.

14 **MS. SAVAS:** Yes, Your Honor. That's --
15 that's not an issue.

16 **THE COURT:** Is there going to be an issue to
17 the -- if you have an objection, are you saying
18 your objection would be to the contents?

19 **MR. D'ANGELO:** Certainly, Your Honor.

20 **THE COURT:** But you don't have any other
21 objection?

22 **MR. D'ANGELO:** No, Your Honor.

23 **THE COURT:** Okay.

24 So then, you need to listen to those, so we
25 can see if that's gonna be an issue.

1 **MR. D'ANGELO:** Yes, ma'am.

2 **THE COURT:** And then --

3 **MS. SAVAS:** And for --

4 **THE COURT:** -- is there a reason you gave me
5 an interview with Frank and Jason Simmons?

6 **MS. SAVAS:** Yes, Your Honor.

7 And for clarity on that topic, the state did
8 provide all the jail calls in Rule 5. But we will
9 give them the snippets.

10 **THE COURT:** Yeah. I think they need to know
11 specifically what you're --

12 **MS. SAVAS:** Yes, Your Honor.

13 **THE COURT:** -- seeking to introduce.

14 **MS. SAVAS:** Absolutely.

15 **THE COURT:** Uh-huh.

16 **MS. SAVAS:** The statements with Frank and
17 Jason Simmons is the victim's statement that was
18 audio-recorded by the case agent.

19 **THE COURT:** That's not gonna come into
20 evidence. Seriously.

21 **MS. SAVAS:** Presented through the victims.

22 **THE COURT:** Yeah. But they get to say what
23 they're gonna say. And it's gonna be subject to
24 cross-examination. If they want to use them to
25 refresh their memory, that's fine. But you don't

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1 get to play recorded interviews. Doesn't work
2 that way. That's hearsay. I assume you're gonna
3 call them as witnesses, right?

4 **MS. SAVAS:** Yes, Your Honor.

5 **THE COURT:** If you want to use this DVD to
6 refresh their memory, that's fine. But that's
7 about the extent --

8 **MS. SAVAS:** Yes, Your Honor. That would be
9 the --

10 **THE COURT:** -- to which you're gonna be able
11 to --

12 **MS. SAVAS:** -- point of it, Your Honor, if
13 they -- on the stand.

14 **THE COURT:** Yeah. I assume that's what you
15 were talking about. So I don't really need those.

16 **MS. SAVAS:** Okay.

17 **THE COURT:** Yeah. I mean, you want it back?

18 **MS. SAVAS:** That's fine. We -- we just
19 provided you with everything.

20 **THE COURT:** I appreciate it.

21 **MS. SAVAS:** Yes, ma'am.

22 **THE COURT:** Yeah. I just don't want to get
23 confused or misplace or -- there you go.

24 So I -- I would -- I would expect the rules
25 to be followed. You would have to give them the

1 ability to, you know, be able to answer the
2 question or not, and then if they need to refresh
3 their memory.

4 But I would assume you would have them
5 refresh their memory before court that we wouldn't
6 be spending time with them, listening to something
7 that the jury can't hear. It just creates an
8 issue with the jury. Because then they think your
9 keeping something from them. And then I gotta go
10 through explaining the rules of evidence and
11 common parlance, and it just I don't think suits
12 anybody's purpose, particularly.

13 All right. So that then leaves us with, I
14 have a disc "Detective Interview with Defendant."
15 And then I have -- what are these that are marked
16 voicemail? What is -- what is that?

17 **MS. SAVAS:** Your Honor, those are voicemail
18 recordings from the -- from the defendant to the
19 victim. We initially asked for those to be
20 stipulated. Defense indicated they could. And
21 then they said last night that they no longer can
22 stipulate to that. But those are recorded
23 voicemails from the day of the incident to the
24 victim from the defendant.

25 **THE COURT:** And what do they say? Why would

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1 they be relevant?

2 **MS. SAVAS:** Because she says she's at his
3 house. And she makes statements indicating that
4 she's committing the crime in that moment. And --

5 **THE COURT:** So you're saying they're
6 admissions against interest?

7 **MS. SAVAS:** Yes, Your Honor. It's also part
8 of the motive of this crime. There's a lot of
9 messages and phone calls, which is why the defense
10 made that motion. She makes contemporaneously --
11 while she's breaking into the house and setting
12 the fire, she is calling and texting --

13 **THE COURT:** Those aren't *Lyle*. Those res
14 gestae.

15 **MS. SAVAS:** Yes.

16 **THE COURT:** If in fact you can establish the
17 foundation --

18 **MS. SAVAS:** Yes.

19 **THE COURT:** -- or the timeframe. And they
20 might be considered -- well, they would be
21 admissions against interest. They could be
22 excited utterances.

23 **MS. SAVAS:** Yes.

24 **THE COURT:** But more likely, statements
25 against interest. But you're gonna have to

1 establish the foundation for the timeframe. I
2 assume there are timestamps. Most voice
3 recordings do have those. But I have Voicemail SD
4 12A, 13A, and 14A. So what are they marked on
5 your list as?

6 **MS. SAVAS:** The same thing, Your Honor. They
7 are Nos. 80, 81, and 82.

8 **THE COURT:** Okay.

9 Slow down for me.

10 **MS. SAVAS:** Sorry.

11 **THE COURT:** So what number is 12A?

12 **MS. SAVAS:** 12A is No. 80.

13 **THE COURT:** Okay.

14 And what number is 13A?

15 **MS. SAVAS:** 81.

16 **THE COURT:** And what number is 14A?

17 **MS. SAVAS:** 82?

18 **THE COURT:** And I assume you already have
19 these Mr. D'Angelo?

20 **MR. D'ANGELO:** I do, Your Honor.

21 **THE COURT:** Okay.

22 And so this is the -- this is what you were
23 referring to as Lyle?

24 **MR. D'ANGELO:** Not -- not specifically, Your
25 Honor. If she can establish the foundation and

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1 she -- they can establish it's her voice, the
2 foundation for the recognition of her voice and in
3 close proximity, or within the nexus of these
4 alleged events, you should prepare yourself that
5 they're going to come in as res gestae, excited
6 utterances, etc, etc, etc.

7 MR. D'ANGELO: I would agree. If they can
8 lay that foundation, I would agree, Your Honor.

9 THE COURT: And so I assume we might need to
10 do that in camera. It shouldn't take long. Just
11 out of an abundance of caution.

12 MS. SAVAS: Yes.

13 THE COURT: Which witness would you'd be
14 seeking to admit those to the victim?

15 MS. SAVAS: The victim himself, Frank
16 Simmons.

17 THE COURT: Okay.

18 Now, are there any statements post Miranda
19 that the state is seeking to introduce against
20 Ms. Steward?

21 MS. SAVAS: Your Honor, the defendant was not
22 given Miranda. It is the state's position that it
23 was --

24 THE COURT: I got that part.

25 MS. SAVAS: Yes.

1 **THE COURT:** But I'm asking very specific -- I
2 told you, I read everything before we get started.

3 **MS. SAVAS:** No, Your Honor. There was --

4 **THE COURT:** So I'm not confused. I just need
5 to know: Are there any statements made post
6 Miranda?

7 **MS. SAVAS:** No, Your Honor.

8 **THE COURT:** Okay.

9 So then that takes us to the interview that
10 took place at her house, correct?

11 **MS. SAVAS:** Yes, Your Honor.

12 **THE COURT:** And so was it recorded?

13 **MS. SAVAS:** Yes, Your Honor.

14 **THE COURT:** And which disc is that on?

15 **MS. SAVAS:** It's the one that says Audio with
16 Defendant and Detective. It'd be Detective
17 Muirheid.'

18 **THE COURT:** So that is detective interview
19 with defendant?

20 **MS. SAVAS:** Yes, Your Honor. And --

21 **THE COURT:** And what number is that?

22 **MS. SAVAS:** Yes, Your Honor. That is...

23 (Pause.)

24 Your Honor, we're gonna make that No. 85.
25 I'm sorry. On this draft exhibit sheet, it did

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1 not have that.

2 THE COURT: That's fine. So that'll be 85?

3 MS. SAVAS: Yes, Your Honor.

4 THE COURT: And you have a copy of that
5 correct, Mr. D'Angelo?

6 MR. D'ANGELO: I do, Your Honor.

7 THE COURT: And as I understand it, your
8 objection is that your client was in custody and
9 should not have been questioned? Although I'm not
10 certain I agree with that. When she was asked to
11 go to the police station. She said she wanted to
12 stay at her house and have this discussion. But I
13 need to listen to the tape before I can make any
14 decisions about it.

15 MR. D'ANGELO: Thank you, Your Honor.

16 THE COURT: And we'll take that up in camera
17 as well.

18 MR. D'ANGELO: Your Honor, I also --

19 THE COURT: Uh-huh.

20 MR. D'ANGELO: -- if it's aid to the Court
21 and I can give the prosecutor a copy, I had a
22 transcription done of that interview, if the Court
23 would like to copy if it would -- if it would aid
24 at all.

25 THE COURT: I'm gonna listen to it.

1 **MR. D'ANGELO:** Sure.

2 **THE COURT:** How long is it? Again, I can't
3 remember.

4 **MR. D'ANGELO:** Forty-eight minutes, if I
5 remember correct.

6 **THE COURT:** Yeah.

7 **MR. D'ANGELO:** Forty-five. Something like
8 that, Your Honor.

9 **THE COURT:** Are you seeking to introduce all
10 of it, Ms. Savas, or just portions of it?

11 **MS. SAVAS:** Potentially portions, Your Honor.
12 It's really --

13 **THE COURT:** Have you prepared a redacted
14 portion of the portions you would -- I know that
15 was redundant --

16 **MS. SAVAS:** I understand what you're saying.

17 **THE COURT:** -- or redacted -- the redacted --

18 **MS. SAVAS:** No.

19 **THE COURT:** -- statements if they were to
20 come in?

21 **MS. SAVAS:** Your Honor, no. Because I am
22 going to -- I do not initially plan to admit it
23 into evidence unless it is necessary for me to do
24 so.

25 **THE COURT:** So you just want to elicit from

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1 him what was said?

2 **MS. SAVAS:** What was that, yes, Your Honor.

3 **THE COURT:** Tell me what you want to elicit
4 from him that was said.

5 **MS. SAVAS:** Yes, Your Honor. One moment.

6 (Pause.)

7 Your Honor, the main points we intend to
8 elicit through Detective Muirheid is her giving
9 her phone number, her acknowledgement of knowing
10 the victims, her acknowledgement of knowing where
11 they lived and going to that house that day and
12 the address --

13 **THE COURT:** Is there any real question -- I
14 mean, she was dating him. Are you saying that
15 she's gonna say she doesn't know where he lived?

16 **MS. SAVAS:** No, Your Honor. I -- I need it
17 to come in that she knows where that they lived.

18 **THE COURT:** But is it --

19 **MS. SAVAS:** -- and that she went there.

20 **THE COURT:** But is it contested that she knew
21 where they lived?

22 **MS. SAVAS:** I need someone to put it into
23 evidence, Your Honor, that she knows where they
24 lived. It's her statement. Otherwise, defense
25 can argue that she didn't know.

1 **THE COURT:** I don't think they're going to
2 argue that --

3 **MS. SAVAS:** If they say it wasn't her -- you
4 know, Your Honor, it's very clear --

5 **THE COURT:** I don't think in good faith they
6 can argue that she doesn't know where they lived.
7 I -- I don't -- and Mr. D'Angelo's shaking his
8 head that that's not an issue. They dated as far
9 as everything I can read. And she wanted her
10 stuff back out of the house, right?

11 **MS. SAVAS:** Yes, Your Honor. Is it -- then
12 if it is not an issue, then it should be let in
13 through the detective that --

14 **THE COURT:** Maybe y'all can --

15 **MS. SAVAS:** -- she did say that.

16 **THE COURT:** I don't know.

17 **MS. SAVAS:** It -- it's one of those things,
18 Judge, I never know what defense says in closing.
19 And I want to make sure I have all my, you know,
20 T's crossed and I's dotted. And this was a
21 statement she made that I believe can come in in
22 its entirety.

23 **THE COURT:** I don't know. I gotta think
24 about that.

25 **MS. SAVAS:** Yes, Judge.

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1 **THE COURT:** Uh-huh.

2 **MS. SAVAS:** Also that --

3 **THE COURT:** What else did you want to elicit
4 from him?

5 **MS. SAVAS:** That the relationship status that
6 they broke up that morning that goes to motive.

7 **THE COURT:** And what else?

8 **MS. SAVAS:** That the dialogue about the
9 Instagram, and that -- what her Instagram handle
10 is, and that she felt that the victim was cheating
11 on her, her timeline of being at that house.

12 **THE COURT:** So tell me why she shouldn't have
13 been Mirandized, why these statements weren't,
14 why -- why she wasn't being questioned to
15 inculcate herself? Because they had already had
16 his version of what happened. So when they went
17 there, they weren't just going to talk about what
18 happened during your day, they were going there to
19 get some inculpatory information. So why didn't
20 they just go ahead and mirandize her when she said
21 she didn't want to leave her house?

22 **MS. SAVAS:** Your Honor, at the point when
23 they dispatched Detective Muirheid out to go to
24 that house, the scene was an ongoing
25 investigation. They did not have all the

1 information at the same time. There was different
2 arrival times of the fire investigators, the K-9,
3 the conversations --

4 **THE COURT:** Let's just isolate it to what the
5 Simmons fellow said. He said she was bugging him.
6 He told her to leave him alone. My words, not
7 theirs.

8 **MS. SAVAS:** Sure.

9 **THE COURT:** And he thought he heard her in
10 his house, he heard -- he heard a substance. He
11 had to run through a blaze. And a victim said,
12 "Somebody set my house on fire." And you mean to
13 me they didn't go over there to find out if that
14 was true or not.

15 **MS. SAVAS:** At this point, Your Honor, the
16 investigators looked at her as a person of
17 interest, not necessarily a suspect. They did not
18 have enough to arrest her. They did not call
19 Detective Muirheid out to arrest her.

20 **THE COURT:** But that's why you investigate,
21 right? And why you talk to somebody to -- and
22 call -- to see if they're telling you the truth.
23 And potentially -- potentially, there's
24 inculpatory information. And so why didn't they
25 Mirandize her.

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1 **MS. SAVAS:** That is not necessary. Per
2 the -- you know, the case law, they both need to,
3 one, be in custody; and two, it needs to be --

4 **THE COURT:** She says she was in --

5 **MS. SAVAS:** -- an interrogation.

6 **THE COURT:** -- custody. They had her
7 barricaded in her house and she couldn't leave.
8 They had an officer at the door. And they -- and
9 they had an officer in her, I guess, common living
10 space of her home.

11 **MS. SAVAS:** Your Honor, the officers will
12 testify that that is not accurate representation.
13 They did not have her detained. She was not in
14 handcuffs. She was not tied down. She was not
15 physically restrained. She was never told she was
16 not allowed to leave --

17 **THE COURT:** She doesn't have to be.
18 Emotionally you can feel like I can't -- I'm stuck
19 here and I can't leave my house.

20 **MS. SAVAS:** And I --

21 **THE COURT:** I'm playing devil's advocate.

22 **MS. SAVAS:** Yes, Your Honor.

23 **THE COURT:** Because that's what they say in
24 their response.

25 **MS. SAVAS:** And that would be up to a

1 reasonable person. And I believe that would be
2 elicited. I have a case agent who can testify to
3 how he was. He says he was the only person --

4 **THE COURT:** That's based on what she
5 perceived, not what he perceived.

6 **MS. SAVAS:** But it isn't accurate. There
7 were not multiple officers standing over her
8 during that time. There was one --

9 **THE COURT:** She didn't say that.

10 **MS. SAVAS:** -- officer.

11 **THE COURT:** She says there was one in her
12 house and there was one at the door. And she felt
13 like she couldn't leave her house. But of course,
14 they did offer her --

15 **MS. SAVAS:** They asked her to go, and she
16 said no.

17 **THE COURT:** Well, they offered her the
18 ability to go to the --

19 **MS. SAVAS:** So --

20 **THE COURT:** -- station.

21 **MS. SAVAS:** If they --

22 **THE COURT:** And she said, "No, I'd rather do
23 this" --

24 **MS. SAVAS:** Right.

25 **THE COURT:** -- "at my house."

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1 **MS. SAVAS:** And if they wanted to take her,
2 they would have. But they did not have enough at
3 that time to arrest her.

4 **THE COURT:** Which she --

5 **MS. SAVAS:** There's no point in holding her
6 hostage --

7 **THE COURT:** Which still, then -- that's not a
8 good argument. Because if they didn't have enough
9 to hold her, that means they were seeking what
10 would be inculpatory to hold her. I just -- I'm
11 just trying to figure out --

12 **MS. SAVAS:** Yes, Your Honor.

13 **THE COURT:** -- at that point, they were
14 seeking information about this incident that they
15 knew potentially could inculcate her and would
16 form the basis of charging her. So yeah, I'm
17 just --

18 **MS. SAVAS:** They would call it a, you know,
19 consensual conversation. She invited them in.
20 She agreed to test -- to speak with them. She
21 agreed on that recording to let them record. She
22 said multiple times that she wanted to talk to
23 him. Not only that, she gave a lot of
24 information. It's 48 minutes. Because she talked
25 freely and at length in a detail. Not at the

1 interrogation. It was non-interrogation.
2 Detective Muirheid could actually not quite get in
3 many words to her --

4 **THE COURT:** Uh-huh.

5 **MS. SAVAS:** -- because she began to interrupt
6 her, speak over her, give him a lot of
7 information. Because she was trying to justify
8 her actions that day and explain herself away.

9 **THE COURT:** Okay.

10 **MS. SAVAS:** Your Honor --

11 **THE COURT:** So let me interrupt.

12 **MS. SAVAS:** Yes, ma'am.

13 **THE COURT:** So what else would you be
14 eliciting from him? You said phone number that
15 she knew the Simmons, she knew where they lived --

16 **MS. SAVAS:** Uh-huh.

17 **THE COURT:** -- the timeline, relationship
18 status, her Instagram name --

19 **MS. SAVAS:** Uh-huh.

20 **THE COURT:** -- that he was cheating on her.
21 What else would you be seeking to elicit from her?

22 **MS. SAVAS:** She saw the two victims' cars in
23 the driveway; that she knew that Chris was home,
24 or at least believed Chris was home. Because
25 Frank told her so. She admits to banging on the

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1 door --

2 **THE COURT:** And I assume when you say
3 "Chris," that's Jason Christopher.

4 **MS. SAVAS:** No, ma'am. I'm sorry. That is
5 Frank's son. They also live with his 16-year-old
6 son named Chris.

7 **THE COURT:** Okay.

8 **MS. SAVAS:** While she was at the house, she
9 was messaging Frank. And Frank told her to leave
10 because his son was there.

11 **THE COURT:** Okay.

12 **MS. SAVAS:** So she does make statements
13 acknowledging that she was told and believe that
14 the son was present in the home at the time of the
15 fire.

16 **THE COURT:** Okay.

17 **MS. SAVAS:** She admits to being there
18 multiple times that day. She admits that she was
19 mad at the victim. This is motive, Your Honor.
20 She admits to calling and texting the victim
21 nonstop that day, again motive. And she admits to
22 buying him specific items like golf clubs and a
23 washer and dryer, again, towards motive. And it
24 corroborates the victim's testimony and -- and
25 things at the scene.

1 Again, Your Honor, I don't anticipate -- I --

2 **THE COURT:** Do you have any objection to the
3 phone number coming in, Mr. D'Angelo?

4 **MR. D'ANGELO:** No, Your Honor.

5 **THE COURT:** That she knew the defendants.

6 **MR. D'ANGELO:** No, Your Honor.

7 **THE COURT:** That she knew where they lived?

8 **MR. D'ANGELO:** No, Your Honor.

9 **THE COURT:** To the timeline she provided
10 about her whereabouts?

11 **MR. D'ANGELO:** Potentially, Your Honor. I
12 think I would have to -- I would have to hear --

13 **THE COURT:** Their relation -- have you not
14 listened to the disc?

15 **MR. D'ANGELO:** Oh, oh, oh, I've listened to
16 it, Your Honor. Again, just --

17 **THE COURT:** So he would be bound to simply
18 repeat what she said on this disc?

19 **MR. D'ANGELO:** Correct.

20 **THE COURT:** So does she say -- have a
21 timeline on this disc, her timeline of where she
22 was that day?

23 **MR. D'ANGELO:** She does, Your Honor.

24 **THE COURT:** Do you have any objection to
25 that?

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1 MR. D'ANGELO: I -- I would.

2 THE COURT: Okay.

3 Relationship status?

4 MR. D'ANGELO: No objection.

5 THE COURT: Her Instagram name?

6 MR. D'ANGELO: No objection.

7 THE COURT: That he was cheating on her?

8 MR. D'ANGELO: No objection.

9 THE COURT: That she saw the cars in the

10 driveway.

11 MR. D'ANGELO: No objection.

12 THE COURT: That she believed that Chris was

13 home?

14 MR. D'ANGELO: I -- brief moment, Your Honor.

15 THE COURT: Uh-huh.

16 MR. D'ANGELO: And I'd say, Your Honor, in

17 regards to knowing that the cars were in the

18 driveway in regards to knowing that his son comes

19 in, those -- those things are going to depend on

20 ultimately what Your Honor rules in regards to

21 phone. So I'm asking without me ruling. So I

22 need you to --

23 MR. D'ANGELO: Then -- then yes, Your Honor.

24 I would object.

25 THE COURT: To which one? The cars in the

1 driveway or him being home?

2 MR. D'ANGELO: Both, Your Honor.

3 THE COURT: Her and the two of them messaging
4 one another?

5 MR. D'ANGELO: As long as it's not as to
6 quantity, Your Honor. Again, simply stating that
7 they messaged that day, I have no objection.

8 THE COURT: I don't know. What did she say
9 on the text? How many -- I mean, on this
10 recording. How many times did she say they'd been
11 messaging each other?

12 MR. D'ANGELO: I don't believe she says a
13 specific number.

14 THE COURT: Ms. Savas, what is on the tape
15 regarding -- you said that Frank messaged her and
16 multiple times she was mad that they were calling
17 and texting one another. Was there a specificity
18 in the interview regarding any particular number?

19 MS. SAVAS: I don't think she gives
20 specificity. But she did say multiple times. She
21 had called him constantly throughout the day and
22 messaged him throughout the day.

23 THE COURT: Does she say constantly or did
24 she say multiple times?

25 MS. SAVAS: I would --

1 **MR. D'ANGELO:** I don't necessarily --

2 **MS. SAVAS:** -- have to get into the
3 transcript, Judge.

4 **THE COURT:** We need to know exactly what he
5 would testify to, so I can see if Mr. D'Angelo has
6 an objection.

7 **MS. SAVAS:** I would have to pull all of her
8 statements regarding that, Judge. I was going to
9 be making a generalized statement.

10 **THE COURT:** So what would the generalized
11 statement be?

12 **MS. SAVAS:** That it was nonstop throughout
13 the day? And for the court's frame --

14 **THE COURT:** I think that if you're going to
15 try to introduce what she said, it can't be
16 generalized. It has to be specifically what she
17 said. That's the only way you can elicit it from
18 him. He can't paraphrase what she told him. If
19 it comes in, he has to say specifically what she
20 said. So it's either multiple -- nonstop is a
21 characterization, depending on how people feel.

22 Some people call each other 50 times a day.
23 For me, three times would be too many. Actually,
24 two times would be too many. One time would be
25 too many for me if it's not an emergency. Because

1 I'm working. I'm busy. So that is a subjective
2 interpretation.

3 **MS. SAVAS:** So when she's giving the
4 statement, it's throughout her statement when
5 she's going over the timeline that she says, "And
6 I was still talking -- you know, I was still
7 messaging him or calling him."

8 **THE COURT:** Well, then -- then he would only
9 be able to testify to exactly what she said. He
10 cannot characterize it as nonstop. He can't
11 characterize it as multiple. If she made a
12 statement, it has to be specifically what she said
13 to him. So if she said I was -- we were going
14 back and forth or what -- I don't know what the
15 terminology or the verbiage would be.

16 **MS. SAVAS:** She just said back and forth at
17 one point.

18 **THE COURT:** Then you need to have your
19 officer listen to the tape so that he can
20 specify -- if it comes in, that he can say exactly
21 what she said. Because he can't paraphrase it.
22 He can't quantify it. He can't say what he
23 thinks. You know, it would have to be exactly
24 what she said to him.

25 **MS. SAVAS:** She did say at one point as well.

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1 She was calling every five minutes. "I've been
2 calling his phone." Because she was mad.

3 So she I guess I could make reference to
4 every time she says the word "call" or "message."
5 And then make --

6 **THE COURT:** No. You have to determine
7 exactly what the testimony is you want to elicit
8 from the witness based on the statement. But he
9 can't paraphrase what -- what somebody said. It
10 has to be exactly what was said.. So you will have
11 to make that decision about how you would want to
12 elicit that testimony so I can determine if
13 Mr. D'Angelo has an exception to it.

14 Do you have any exception, Mr. D'Angelo, to
15 her talking about the items she purchased for him,
16 which would be the washer and dryer, I think, and
17 was it golf clubs somebody said?

18 **MS. SAVAS:** Golf clubs. She also made
19 mention of a laptop.

20 **THE COURT:** Do you have any objection to
21 that, Mr. D'Angelo?

22 **MR. D'ANGELO:** No, Your Honor.

23 **THE COURT:** Okay.

24 So, so far, there would be no objection to
25 the following testimony being elicited based on

1 his conversation with her: Phone number, that she
2 knew the defendants, that she knew the location of
3 their residence, that -- the relationship status,
4 the name she used on Instagram, that he was
5 cheating on her, and the items that she purchased
6 and that she wanted them back. Everything else is
7 in contention. And I'm gonna have to listen to
8 it.

9 MR. D'ANGELO: And I would just add,
10 Your Honor, every single one of those things,
11 again, that I'm --

12 THE COURT: Some of those things really are
13 investigatory in nature. Her phone number and all
14 that stuff, you and I both know they can ask her
15 what her phone number is.

16 MR. D'ANGELO: Certainly.

17 THE COURT: And where she lives and where
18 they live and stuff like that. Some of this stuff
19 would not necessarily be inculpatory, including
20 their relationship status. I don't think there's
21 really any contention about that. Her Insta- --
22 which name she used on Instagram.

23 MR. D'ANGELO: I agree, Your Honor. And all
24 of those things, Frank Simmons would be able to
25 testify to all of those things. You -- you --

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1 **THE COURT:** Yeah. But her saying it and
2 confirming it is a whole different thing. She
3 could come back later and say, "That really wasn't
4 my name. Somebody made that account up. I have
5 no idea who that is." Yeah.

6 **MS. SAVAS:** And there would be a few other
7 points, Your Honor. I didn't know if you wanted
8 an all-inclusive list.

9 **THE COURT:** I do. I want an all-inclusive
10 list.

11 **MS. SAVAS:** So I want to -- I would add as
12 regarding Instagram that she found out about --

13 **THE COURT:** This other person?

14 **MS. SAVAS:** Yes, Your Honor.

15 **THE COURT:** Uh-huh.

16 **MS. SAVAS:** Through Instagram.

17 **THE COURT:** You don't have that person
18 testify. She's on the subpoena list. What does
19 that mean? Does that mean you can't find her?
20 Does that mean she's gonna show up? Or --

21 **MS. SAVAS:** I just --

22 **THE COURT:** Why can't you just have her
23 testify about what she found, having a
24 conversation with -- and, you know --

25 **MS. SAVAS:** I -- I don't think at this time,

1 Your Honor, I need to make that judgment call --

2 THE COURT: Instagram. Well, yeah.

3 MS. SAVAS: -- for trial strategy purposes,
4 Your Honor.

5 THE COURT: And that is true. But for
6 evidentiary reasons, you're gonna have to figure
7 out what you're gonna do.

8 MS. SAVAS: That's fine.

9 THE COURT: Yeah.

10 MS. SAVAS: That she still admits it, Your
11 Honor. The defendant herself admits --

12 THE COURT: I don't know if she was in
13 custody. And I haven't made that decision.

14 MS. SAVAS: Yes, Your Honor.

15 THE COURT: And I haven't listened to the
16 tape. And I haven't heard from the officer. So I
17 don't know.

18 MS. SAVAS: Also that she parked behind
19 Frank's car in the driveway when she arrived that
20 morning; that she banged on the side door of the
21 house.

22 THE COURT: I think they're gonna object all
23 that.

24 All right. And what else?

25 MS. SAVAS: And she commented on Frank's

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1 Instagram, but then he blocked her that day.

2 THE COURT: I would assume you subpoenaed
3 that.

4 MS. SAVAS: Subpoena? I have records of that
5 in the phone dump, Your Honor.

6 THE COURT: I would assume if she sent him an
7 IG message, it should be on his telephone.

8 MS. SAVAS: It's on a Instagram, Your Honor.
9 I have --

10 THE COURT: So that's why I said I assume --

11 MS. SAVAS: -- that she sent to him --

12 THE COURT: -- that you got it through --

13 MS. SAVAS: I have in the cell phone records,
14 Your Honor.

15 THE COURT: Whose cell phone records are you
16 referring to?

17 MS. SAVAS: The defendant's. She sent that
18 to him.

19 THE COURT: I got that. But if she sent it
20 to him, it should be on his phone. And you
21 should --

22 MS. SAVAS: Your Honor, he doesn't have that
23 phone anymore. It was four years ago. Instagram
24 doesn't keep everything.

25 THE COURT: Yeah. But if you had subpoenaed

1 it within a reasonable time, they would've had it.
2 So you're telling me you didn't ever make an
3 effort to get it from IG?

4 **MS. SAVAS:** I did not subpoena Instagram, no,
5 Your Honor. Not when I had all the other evidence
6 directly from her phone and her --

7 **THE COURT:** I got that. But they're
8 objecting about the phone. So you know, a plan B
9 is always appropriate. Although I don't know if
10 there's any basis to that objection. But we'll
11 get there.

12 Now what else would you be seeking to elicit
13 from the officer regarding statements she made?

14 **MS. SAVAS:** That she admits to being there
15 multiple times that day as part of her timeline;
16 she admits to driving back by the house after the
17 fire around 5 p.m., after Frank called her about
18 the fire; and that she admits that she was mad at
19 Frank. Multiple times, at least 10 times, she
20 made mention to her being upset.

21 **THE COURT:** Is there any real contention that
22 she wasn't upset with him, Mr. D'Angelo?

23 **MR. D'ANGELO:** No, Your Honor.

24 **THE COURT:** Is there any exception to those
25 statements coming in?

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1 **MR. D'ANGELO:** The statement that she was mad
2 at him?

3 **THE COURT:** Uh-huh.

4 **MR. D'ANGELO:** No, Your Honor.

5 **THE COURT:** All right.

6 Now there's a motion to exclude evidence
7 based on spoliation. What evidence do you have
8 that the state directly and deliberately destroyed
9 evidence?

10 **MS. BLAZER:** Your Honor, it's a two-part
11 issue --

12 **THE COURT:** The fact that it not being
13 available is not a basis of spoliation. Your
14 client had her phone. She should have kept it.
15 You could have done your own dump, whether it was
16 operable or not. We know that there's enough IT
17 available that they could have dumped that phone,
18 whether it could be -- work -- whether it was
19 working, operable, or however the state of it was.

20 **MS. BLAZER:** And she had that phone returned
21 to her at a time that she had an attorney, an
22 attorney certainly would have told her that phone
23 was returned to her 11 days after her arrest. She
24 didn't have -- get assigned a public defender
25 until March.

1 **THE COURT:** I don't think that's what's
2 dispositive. Your client was wise enough to
3 invoke. I think she should have been wise enough
4 to hold on to evidence. And she knew that they
5 were going to -- if they -- if she -- she was
6 clearly on notice that they wanted that phone to
7 get evidence against her. And the fact that she
8 got rid of it, disposed of it, or whatever, does
9 not make sense to me.

10 It would seem to me she would have held on to
11 it, operable or not, until such time that she got
12 a lawyer. Because she clearly knew she was
13 entitled to one. Because she invoked her right to
14 one. I'm listening.

15 **MS. BLAZER:** I hear you. And if I could go
16 back in time, I would agree with you that the --
17 the -- the more cautious approach would have been
18 to hold on to it.

19 I would say, however, that in my -- it's been
20 my experience that the Charleston County Sheriff's
21 Office does not return property that is in
22 evidence while the case is still pending.
23 Ms. Steward called and asked for the phone to be
24 returned.

25 Detective Sinke, I believe now Cheek,

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1 authorized its release to her. And I believe that
2 she probably believed that it was safe to do so
3 because there was a copy of the phone that had
4 been --

5 **THE COURT:** That makes absolutely no sense to
6 me. I have every phone I've ever owned --

7 **MS. BLAZER:** No, no, no.

8 **THE COURT:** -- including my (inaudible)
9 phones. Because, one, I don't want anybody
10 getting into it. Not that there's anything
11 specific on there, probably could care less,
12 probably my grocery list, or some phone numbers I
13 really don't care about anymore. But nonetheless,
14 that doesn't make sense to me.

15 **MS. BLAZER:** I wasn't speaking about --

16 **THE COURT:** Yeah.

17 **MS. BLAZER:** -- Ms. Steward's perspective. I
18 was actually speaking about Detective Cheek's
19 perspective. Because when Detective Cheek's --

20 **THE COURT:** That -- their perspective right
21 now is not what's -- what's definitive to me. She
22 had a phone. They returned it to her. She
23 disposed of it. It --

24 **MS. BLAZER:** It was inoperable.

25 **THE COURT:** Doesn't matter. They can still

1 get stuff off of it.

2 MS. BLAZER: She owed money on it. She
3 needed a phone.

4 THE COURT: So she owed money on it. So then
5 what happened with it?

6 MS. BLAZER: So she took it back to Verizon.
7 It was in an inoperable fashion. They charged her
8 \$200 for -- to -- to -- for the early return.
9 They took that iPhone. And then she purchased a
10 monthly payment plan for a replacement phone. So
11 she paid money for the fact that this inoperable
12 phone was being returned early to Verizon.

13 THE COURT: Yeah. But she could have
14 gotten --

15 MS. BLAZER: Well, she wouldn't have got --
16 she would have -- she was paid more money than
17 \$200.

18 THE COURT: Because she didn't have
19 insurance?

20 MS. BLAZER: Correct. And, Your Honor --

21 THE COURT: So she made no attempts to get
22 the phone repaired?

23 MS. BLAZER: That is my understanding.

24 THE COURT: And she made no attempts to see
25 if all the stuff was saved to the cloud.

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1 **MS. BLAZER:** I believe there actually was
2 the -- the -- what we know from the phone dump
3 that we received is that there was an iCloud
4 backup.

5 **THE COURT:** Okay.

6 **MS. BLAZER:** But it was back in January. So
7 she was able to restore to -- for her purposes, to
8 a functional phone from an iCloud backup.

9 **THE COURT:** It's my understanding that that's
10 the only backup you have with an Apple phone. And
11 it does not just restore your contacts, it
12 restores everything.

13 **MS. BLAZER:** Yep.

14 **THE COURT:** It automatically backs up your
15 pictures, your contacts, your music, everything.

16 **MS. BLAZER:** Most things.

17 **THE COURT:** So that if you ever lose your
18 password, and you've done it like whatever the
19 limit is, I think it's eight times, you have to do
20 a hard reset. They cannot do anything for you.
21 So those phones automatically backup everything to
22 the cloud so that when you do the hard reset, it
23 gives you all your information back. So it would
24 have given you all your text messages, your
25 pictures, whatever messenger services you use.

1 So that is what confuses me. Because even if
2 the phone was inoperable. When she got a new one
3 11 days later, that would have been in the window
4 for backup. So she would have gotten everything
5 back on her phone that she would have had on her
6 old phone.

7 **MS. BLAZER:** And Your Honor, I can bring an
8 expert to testify about the iPhone backup issue.
9 But I believe it's not accurate to say that it
10 backs up every day. It backs up --

11 **THE COURT:** I didn't say every day.

12 **MS. BLAZER:** Right.

13 **THE COURT:** There's a window of time that it
14 backs up for you.

15 **MS. BLAZER:** And based on what we know, we
16 believe that it backed up at the end of January --

17 **THE COURT:** Okay.

18 **MS. BLAZER:** -- about 10 days before all of
19 this. And all -- the basis that I have for saying
20 that is that that is what the Cellebrite report
21 we've been given says is the last iPhone backup in
22 the phone that they take on February 8. So
23 that's -- I'm coming up with that backup date from
24 the Cellebrite data that's been given to us. It's
25 not a -- it -- it's -- you know, it's not a

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1 randomly-chosen date.

2 **THE COURT:** But I guess my concern is what is
3 evidence? You know, for a spoliation situation,
4 you have to prove they deliberately did something.
5 In other words, that they surreptitiously or
6 nefariously did it for the purpose of deleting it
7 deliberately, not that in the regular course of
8 business, they only keep it for a certain amount
9 of time. And once it's evaluated or analyzed that
10 they get rid of it. That's not the way spoliation
11 works.

12 **MS. BLAZER:** Your Honor, I certainly agree
13 that --

14 **THE COURT:** And it's your burden, not theirs.

15 **MS. BLAZER:** Totally agree. And I'm trying
16 to put my hands on my motion. The -- my reading
17 of the spoliation case law, and I'm happy to go
18 with and -- and revise it, is that the loss need
19 not have been intentional for the loss to be
20 adversely influential to state. And in this
21 situation --

22 **THE COURT:** That's about jury charge. That's
23 not --

24 **MS. BLAZER:** You're right.

25 **THE COURT:** -- about (inaudible) evidence.

1 **MS. BLAZER:** Absolutely true. You're right.

2 And here --

3 **THE COURT:** That goes to the thoroughness of
4 their investigation otherwise, which I assume
5 you'd question them about. But you're talking
6 about excluded stuff. That's a whole different
7 standard.

8 **MS. BLAZER:** You're right, Judge. And I
9 guess -- I'm trying to imagine an analogy that
10 would help -- help me --

11 **THE COURT:** I would imagine they wish they
12 still had it too. Because they've got new
13 technology now.

14 **MS. BLAZER:** You've got it.

15 **THE COURT:** They could have done a whole lot
16 more with that information.

17 **MS. BLAZER:** But it's -- it's sort of like if
18 you -- if you arrested a person after an assault,
19 and you took -- you took their clothes off of
20 them, and you put them in the jail, and you -- and
21 you let them out of jail, and you gave back their
22 clothes. And the clothes had some bloodstains on
23 him. But you gave the clothes back. It's not the
24 burden of the person accused to maintain the shirt
25 that has a spot of blood. It was the job of the

1 law enforcement agency to do that. And so if
2 they're later going to say, "Oh, well, we took --
3 we took a little sample of that -- of your shirt.
4 And we went ahead and tested it. Don't worry.
5 Trust us. We got the testing right" --

6 **THE COURT:** That's different. Not analogous.
7 They didn't tell her that. They didn't make any
8 such assurances, nor would they do so with DNA.

9 **MS. BLAZER:** Well, I think they -- I mean,
10 that's my point actually. Because I think they --
11 she did believe and have reason to believe.
12 Because it was --

13 **THE COURT:** What reason did she have to
14 believe?

15 **MS. BLAZER:** That they took her -- she gave
16 them her password. They asked her for her
17 password, and she gave it to them.

18 **THE COURT:** Uh-huh.

19 **MS. BLAZER:** So she has every reason to
20 believe when she gives them their --

21 **THE COURT:** Well, they were going to break
22 her password anyway. They got -- they got --

23 **MS. BLAZER:** Right. But -- but you're asking
24 me why did she believe it. The reason she
25 believed it is they asked her for it. And she

1 gave it them.

2 **THE COURT:** Uh-huh.

3 **MS. BLAZER:** She said, "Yeah. Here's my
4 password. You can get in my phone." And so she
5 has every reason to believe that if they needed
6 it, they copied it. And in fact, they did copy
7 it. They just didn't save the copy. They didn't
8 save the copy.

9 **THE COURT:** I got that. But that's far from
10 your burden on spoliation. That's about the
11 thoroughness of their investigation.

12 **MS. BLAZER:** Oh, and I agree.

13 **THE COURT:** And I assume they have somebody
14 that's -- that's analyzed this Cellebrite data,
15 and is gonna have to have some reference to the
16 download to be able to testify about it.

17 **MS. BLAZER:** Oh, I -- now, there, we agree.

18 **THE COURT:** And yeah. I mean, I --

19 **MS. BLAZER:** And they don't.

20 **THE COURT:** And you're right. She has no
21 onus of burden. But when you start talking about
22 the state destroying stuff, in terms of excluding
23 evidence, you'd have to prove to me there's
24 some -- there was some nefarious posture, that
25 they did it deliberately. The fact that during

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1 the course -- and I don't know what the -- what
2 the procedure was or what their SOP was at the
3 time. I don't know whether it was that they only
4 kept it for a certain amount of time and then got
5 rid of it. I have no idea. And I haven't heard
6 any testimony.

7 **MS. BLAZER:** Right.

8 **THE COURT:** But I doubt very seriously,
9 unless you can show me that somehow there is some
10 nefarious purpose, in -- in this -- in -- in
11 destroying this, because I have not heard that it
12 was destroyed yet, that it would be excluded.

13 And to take that point a little further, the
14 fact that you want to analyze this evidence does
15 not excuse your client's responsibility in having
16 disposed of her phone. She knew she had criminal
17 charges pending. She knew one of the main egests
18 of some of these charges was a communication that
19 went back and forth between her and these
20 individuals. And it would seem common sense to me
21 that if she knew to invoke her right to counsel,
22 she understood the importance of what was on that
23 phone.

24 And it all -- it cuts both ways. I don't
25 know -- I need to hear the testimony of -- and

1 who's going to be testifying about the download of
2 the phone? Because we know that one person
3 downloads it, they can't analyze it. Then the
4 next person analyzes it.

5 **MS. SAVAS:** It's all by Paul McManigal.

6 **THE COURT:** So he did everything? He
7 downloaded it and he analyzed it.

8 **MS. SAVAS:** Yes, Your Honor.

9 **THE COURT:** And what is Mr. McManigal going
10 to tell me about what happened to these records,
11 this download, this beta download?

12 **MS. SAVAS:** Yes, Your Honor. The way he
13 explains it is, they get the phone. He used the
14 PIN code, then used Graykey. From that point, it
15 then creates a UDFR, I believe it's called, file.

16 **THE COURT:** Uh-huh.

17 **MS. SAVAS:** It then gets put into Cellebrite,
18 which is the reader.

19 **THE COURT:** Exactly.

20 **MS. SAVAS:** When that gets created, at that
21 time, he then deletes the binary data because
22 there's not enough storage capacity. So it's at
23 the same time. So he actually doesn't keep it for
24 a certain amount of days. He deletes it as soon
25 as he creates it into the readable file. He has

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1 explained to us that it is a mirror image.

2 **THE COURT:** Uh-huh.

3 **MS. SAVAS:** And so it's -- there's no need to
4 keep the binary data. Because the phone was
5 already put in --

6 **THE COURT:** Cellebrite.

7 **MS. SAVAS:** And abstracted. Yes, Your Honor.
8 So if --

9 **THE COURT:** Do y'all have the Cellebrite
10 records?

11 **MS. BLAZER:** Your Honor, we do. And I
12 will --

13 **THE COURT:** Is there any reason an expert
14 can't look at the Cellebrite records?

15 **MS. BLAZER:** Yes. We've had our expert look
16 at it. A Cellebrite Analysis Report, which is
17 created out of Cellebrite Physical Analyzer, is
18 not a mirror image of the phone. It is not. And
19 I believe when I question Mr. McManigal, he's
20 going to concede that.

21 **THE COURT:** Yeah. But that sounds like
22 that's their procedure though, and a reasonable
23 one.

24 **MS. BLAZER:** I don't think it's a reasonable
25 procedure at all. And I'll tell you why --

1 **THE COURT:** Well, then, you need to take it
2 up with the police. And if they -- if they don't
3 have the storage capacity for the binary data, I
4 just -- without -- and it's getting late. And I'm
5 probably a little hungry. And I'm probably
6 testing my capacity to listen at this point, which
7 is probably unfair to y'all. And I apologize.

8 You're gonna have to meet your burden of
9 proof for me to exclude --

10 **MS. BLAZER:** Understood.

11 **THE COURT:** -- the cell phone data. And it's
12 unlikely I'm gonna do that. You have the
13 Cellebrite data and you have somebody to analyze
14 it. This may go to the thoroughness of their
15 investigation. It may well go to you
16 cross-examining him. But it's unlikely that I'm
17 always --

18 **MS. BLAZER:** Understood.

19 **THE COURT:** But you know, I always -- you
20 know, after I get some nourishment, and I listen,
21 and I read, we'll see.

22 **MS. BLAZER:** Well, and Your Honor, I'm -- I
23 am prepared, if you, at the appropriate time, when
24 the -- when the issue of admission of the phone
25 data comes up at trial had -- were we to have done

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1 this pretrial, I'm prepared to have Ms. Steward
2 testify limitedly in camera as to the
3 circumstances of the return of the phone.

4 **THE COURT:** Oh, I see what you're saying.
5 I'm sorry. I needed to process what you --

6 **MS. BLAZER:** I understand.

7 **THE COURT:** I apologize. But there seemed to
8 be a lot of cases, and again, I'm -- I'm gonna
9 look at it again in the morning, once I've had a
10 little bit of rest. But the case law, both from
11 the Supreme Court and the Court of Appeals, says
12 that the state does not have an absolute duty to
13 preserve potentially useful evidence that might
14 exonerate a defendant.

15 To establish a violation, the defendant must
16 demonstrate that the state destroyed the evidence
17 in bad faith, or that the evidence possesses
18 exculpatory value apparent before the evidence was
19 destroyed, which is basically what I said, a
20 nefarious purpose, and that the defendant cannot
21 obtain other evidence of comparable value by other
22 means.

23 Yeah. Supreme Court has said that unless a
24 criminal defendant can show bad faith on the part
25 of the police, failure to preserve potentially

1 useful evidence does not constitute a violation of
2 due process. Which translated means there's no
3 basis for me to exclude the evidence.

4 But I do think if you want to cross-examine
5 them about, you know, why didn't you retain this
6 -- I'm trying to think of what other avenue you
7 would -- you know, the only thing that was turned
8 over to us was this Cellebrite analysis. All of
9 that, I think, is fair game, in terms of the
10 thoroughness of their investigation. But under
11 what you-all told me right now, there would not be
12 basis for spoliation charge or to exclude it.
13 When I say "charge," I mean instruction to the
14 jury.

15 But like I said, once I've had some
16 nourishment, I'll think about it some more. And
17 then, once I have the benefit of the testimony,
18 I'll be in a better position to make a
19 more-informed decision.

20 Now, those are the only two things that
21 really were in contention, right, the Cellebrite
22 data, the spoliation requests -- I mean, motion,
23 and then the motion to suppress her statements,
24 which I will need to hear Detective Muirheid's
25 testimony.

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1 Now I have a plea in the morning at 9:30 with
2 Mr. Smith, Mr. Acevedo. I assume he's in town and
3 he will show up. It should take me about 10
4 minutes. Hopefully, they will have the -- the
5 documentation for me so that we can take care of
6 that.

7 And then would we be ready to go forward in
8 the morning? Which witness -- how many witnesses
9 down are we talking about in any of this stuff
10 we've been talking about? And I'm sorry for the
11 generalization.

12 **MS. SAVAS:** Oh, no. That's fine. The
13 Cellebrite date is gonna be the last witnesses.

14 **THE COURT:** So we've got time for me to --

15 **MS. SAVAS:** We've have plenty of time.

16 **THE COURT:** Okay.

17 **MS. SAVAS:** As well as Detective Muirheid is
18 going to be one of my last witnesses, so --

19 **THE COURT:** I appreciate that. That's gonna
20 give me more time to --

21 **MS. SAVAS:** Judge --

22 **THE COURT:** So who would your first
23 witnesses --

24 **MS. SAVAS:** -- probably --

25 **THE COURT:** Be?

1 **MS. SAVAS:** -- not today, not tomorrow, the
2 day after tomorrow. And also Mr. McManigal is
3 teaching at -- what is it? -- MUSC, tomorrow?
4 He's -- he's available if we need him. He'd
5 prefer not. But I don't have any specific -- I --
6 and I don't have anyone bringing that information
7 out prior to him either, Judge.

8 **THE COURT:** Perfect.

9 Now, tell me. You said you had about 12
10 witnesses. But I have a list of 40. How many
11 people from this list will you not be calling?
12 Are you -- I assume you're calling Frank and Jason
13 Simmons?

14 **MS. SAVAS:** Yes, Your Honor.

15 **THE COURT:** Almarintha Carter, who's that?

16 **MS. SAVAS:** She's the homeowner, Judge.

17 **THE COURT:** Are you calling her?

18 **MS. SAVAS:** Your Honor, the state would
19 prefer not to give a exact at this point for trial
20 strategy to the defense. But it would be 12
21 witnesses.

22 **THE COURT:** I need to know for administrative
23 purposes how many witnesses you're calling, so
24 that I know my time management.

25 **MS. SAVAS:** Yes, ma'am.

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1 **THE COURT:** Because I promised this jury. I
2 need to make sure this case will get to the jury
3 on Friday morning with closing argument and
4 instruction. And this is purely selfish. But
5 I've spent my last night at midnight at this
6 courthouse on a Friday night with a jury.

7 **MS. SAVAS:** I understand. And Berkeley
8 before, right?

9 **THE COURT:** That is correct. I've done it
10 every week since June, pretty much of 2023. And
11 I'm -- I'm worn out.

12 **MS. SAVAS:** Judge, to help you out --

13 **THE COURT:** Uh-huh.

14 **MS. SAVAS:** -- and for all of us.

15 **THE COURT:** I just need to know the number,
16 round number of what we're dealing with.

17 **MS. SAVAS:** I have exactly 12 on my witness
18 list.

19 **THE COURT:** Okay.

20 **MS. SAVAS:** I would anticipate -- because I
21 think there will be long days when I go into the
22 fire clips. It's detailed information. I would
23 prefer for all our brains to do the cell phone the
24 day after the fire, depending upon the Court's
25 schedule, how many days we can do this. But they

1 would not be back to back.

2 THE COURT: Well, I just -- I just need to
3 know for scheduling purposes, how many witnesses
4 I'm dealing with. And then, do you plan to call
5 Crystal Dalsing and Detective Sinke? Is it
6 pronounced Sinke?

7 MS. SAVAS: Sinke.

8 THE COURT: Sinke.

9 MS. SAVAS: That's -- that's Sergeant Cheek.

10 THE COURT: So was that a duplicate?

11 MS. SAVAS: Yes.

12 MR. D'ANGELO: Yes, Your Honor. So when I
13 put her on my list --

14 THE COURT: So what is her name?

15 MS. SAVAS: Sergeant Brittany Cheek. She's
16 my case agent right now.

17 THE COURT: So she -- her name is not Sinke?
18 Is her name changed, then?

19 MS. SAVAS: Yes, Your Honor. It's formerly
20 Sinke. And now --

21 THE COURT: So then I can remove that, then.
22 Okay. That's what the S would stand for.

23 And then we'll deal with whether Ms. Steward
24 would be testifying. And does she have any -- at
25 the appropriate time, do we -- does she have any

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1 criminal history --

2 MS. SAVAS: Yes.

3 THE COURT: -- that her lawyers would need to
4 talk to her about before they make an informed
5 decision about her testifying?

6 MS. SAVAS: Yes, Your Honor. And the
7 state --

8 THE COURT: And what would that be?

9 MS. SAVAS: Yes, sir. And the state also
10 filed a --

11 THE COURT: Oh, I see. But these are old.
12 Did you give them 10 days' notice of your intent
13 to try to use these?

14 MS. SAVAS: Yes, Your Honor. I filed that
15 back in -- I don't know.

16 THE COURT: And I'd still have to engage in
17 the balancing whether it it's --

18 MS. SAVAS: I filed it last month, I think,
19 Judge, or earlier -- few weeks ago. Yes, I have
20 given more than 10-day notice.

21 THE COURT: These fraudulent checks, I
22 assume, were in magistrate's court?

23 MS. SAVAS: One moment, Your Honor. (Pause.)

24 THE COURT: I would think, looking at this
25 list right now, the only thing probably probative

1 would be the 2001 obtaining goods under false
2 pretenses.

3 **MS. SAVAS:** There's also a false information,
4 Your Honor, to law enforcement.

5 **THE COURT:** When was that? Because that's
6 not on this list?

7 **MS. SAVAS:** In 2001.

8 **THE COURT:** That's more than 10 years though.

9 **MS. SAVAS:** And I provided --

10 **THE COURT:** Did you give them notice?

11 **MS. SAVAS:** Yes, Your Honor.

12 **THE COURT:** But these '93, '96, '97, I'm
13 doubtful about those.

14 **MS. SAVAS:** I believe those would fall under
15 crimes of dishonesty, the fraudulent checks, Your
16 Honor.

17 **THE COURT:** I don't know. You'd have to
18 prove that there was some theft involved, not
19 simply that -- that -- and -- that there was fraud
20 involved with the uttering of the check. And it's
21 a long time ago. That's almost 20 years ago.

22 **MS. SAVAS:** I gave notice, Your Honor.

23 **THE COURT:** Yeah. But the -- I still have to
24 engage in the balancing of how remote it is and
25 how relevant it is. And at some point, all of

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1 this is gonna get cumulative, and it's gonna cause
2 a problem in the record. So I'm gonna limit you,
3 I'm just telling you in advance, to what would be
4 the most probative on truthfulness.

5 Obtaining goods by false -- false pretenses
6 involves honesty. False information involves
7 dishonesty. I don't know about the financial
8 transaction card fraud. I'd have to see if that
9 involves a theft or not, pursuant to the current
10 precedent. And then I would engage in the
11 balancing. So I'm not telling you right now
12 what's going to come in or what's not. But I'm --
13 am putting you on notice that these, like 93 --

14 **MS. SAVAS:** There's financial identity frauds
15 as well, Your Honor.

16 **THE COURT:** I don't have -- what year was the
17 financial identity fraud?

18 **MS. SAVAS:** 2004.

19 **THE COURT:** Okay.

20 Because I didn't have this on that list
21 either. So I would need more information about
22 each of these, whether they -- you know, what
23 exactly the underlying facts were.

24 And did y'all receive written notice of their
25 intent to use these to impeach her credibility?

1 **MR. D'ANGELO:** Yes, Your Honor.

2 **THE COURT:** And I'm just getting this out in
3 the open now so y'all can have an informed
4 discussion with her about it before I can hear
5 argument and make any kind of decision about it.

6 **MS. SAVAS:** Your Honor?

7 **THE COURT:** Yes, ma'am.

8 **MS. SAVAS:** It was also put in a state's
9 brief on page six under Subsection C about her
10 prior record under 609 for the Court's reference
11 to --

12 **THE COURT:** Yeah. That's where we got it
13 from. But the page we have only has the '93
14 fraudulent check times 10; '96 fraud check; '97
15 violation of check laws; 2001 financial
16 transaction card fraud times three; 2001
17 obtaining, I would assume, goods by false
18 pretenses. And then the other two you just gave
19 me which is false information in '01 and financial
20 identity fraud in '04. But the list did not have
21 that on there.

22 **MS. SAVAS:** It's on the next page, Judge,
23 page seven. It continues to the next page four,
24 2004.

25 **THE COURT:** Yeah. I'd need to know more

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1 information about these financial identity things
2 before I could, as well as obtaining goods by
3 false pretenses. But we've got time. All right.
4 But you-all know that this is -- okay. But she's
5 had no record since '09?

6 **MS. SAVAS:** She has in 2015, a violation of
7 probation.

8 **THE COURT:** Yeah. But that wouldn't come in.

9 **MS. SAVAS:** And then this charge in 2020.

10 **THE COURT:** Her probation violation wouldn't
11 come in.

12 **MS. SAVAS:** No, I was just giving you a full
13 record.

14 **THE COURT:** Yeah. And I appreciate that.
15 I -- I don't want to diminish what you told me.
16 And then, this charge in 2020. Okay.

17 All right. Is there anything else we need to
18 talk about before we-all go get us some
19 nourishment, from the state?

20 And who is Ms. Dalsing, Mr. D'Angelo? Is
21 that an eyewitness, fact witness?

22 **MR. D'ANGELO:** I apologize, Your Honor. I
23 didn't hear what you --

24 **THE COURT:** Crystal Dalsing, what -- what
25 would she be testifying to? Is she a fact

1 witness? What is she?

2 MR. D'ANGELO: She's the owner of the -- the
3 vehicle that was burned up in the fire, Your
4 Honor.

5 THE COURT: That was in the driveway or
6 something?

7 MR. D'ANGELO: Yes, Your Honor.

8 THE COURT: And how is she related to anyone
9 that's involved in this case?

10 MR. D'ANGELO: But she is a former girlfriend
11 of Frank Simmons, Your Honor.

12 THE COURT: And so she's just gonna testify
13 she owned the car? I would assume she was there
14 if that's -- if she -- is this the person that was
15 on IG? No. Frank Simmons.

16 MS. SAVAS: It's a different --

17 MR. D'ANGELO: It's another woman, Your
18 Honor.

19 THE COURT: Who's the gentleman that was
20 purportedly involved with Ms. Steward? Was it
21 Frank or Jason?

22 MS. SAVAS: Frank.

23 MR. D'ANGELO: Frank.

24 THE COURT: Okay.

25 So there was a woman at the house on that day

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1 such that her car was burned up?

2 **MR. D'ANGELO:** No, Your Honor. They had
3 joint title on the car.

4 **THE COURT:** Oh. So she was not there?

5 **MR. D'ANGELO:** No, Your Honor.

6 **THE COURT:** Okay.

7 And for what purpose would you be calling
8 her?

9 **MR. D'ANGELO:** I -- I can't say that, Your
10 Honor. It will depend on the state's case.

11 **THE COURT:** All right.

12 Is there anything else we need to take up
13 before we resume in the morning, from the state?

14 **MS. SAVAS:** No, Your Honor.

15 **THE COURT:** From the defense?

16 **MR. D'ANGELO:** Nothing further, Your Honor.

17 **THE COURT:** All right, guys. Go get
18 something to eat. I'll see you at 9:30 in the
19 morning.

20 **MR. D'ANGELO:** All right. Thanks.

21 **THE COURT:** I need you-all to get here before
22 I do the plea. So that -- have you pre-marked all
23 these things, Ms. Savas?

24 **MS. SAVAS:** Yes, Your Honor.

25 **THE COURT:** Do you have them ready for the

1 court reporter pre-marked along -- that match this
2 list that you gave us?

3 MS. SAVAS: The pre-marked -- oh, yeah. I
4 gave her one. Yes, Judge.

5 THE COURT: And -- okay.

6 MS. SAVAS: Except for 85, which may or may
7 not be coming in.

8 THE COURT: And -- and one more question. I
9 apologize --

10 MS. SAVAS: Yes, Judge.

11 THE COURT: -- I wanted to ask. Do you-all
12 object to any of these? Well, I guess I need to
13 ask that differently. Are there any exhibits that
14 you-all have consented to coming in?

15 Mr. D'Angelo?

16 MR. D'ANGELO: So Your Honor, I just got the
17 witness list.

18 THE COURT: Why don't you look over it this
19 evening, so you can let me know in the morning
20 which ones --

21 MR. D'ANGELO: Sure.

22 THE COURT: -- you agree to? And the ones
23 you agree to, we can go ahead and have those
24 marked and admitted and get those out of the way.
25 And then we'll deal with the ones that are

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1 actually contested.

2 **MR. D'ANGELO:** Certainly, I'll take a look at
3 that tonight.

4 **MS. SAVAS:** We do have a stipulation as well,
5 Your Honor, with chain of custody for the fire
6 debris items.

7 **THE COURT:** And what number is that?

8 **MS. SAVAS:** Those --

9 **THE COURT:** Are you going to have those
10 marked as exhibits or do you simply want to
11 publish them?

12 **MS. SAVAS:** I have them marked. I would just
13 like to publish. But it doesn't matter.

14 **THE COURT:** Do you want to just mark them for
15 ID? What numbers are they?

16 **MS. SAVAS:** They are number -- the number is
17 53 all the way to 56.

18 **THE COURT:** Okay.

19 **MS. SAVAS:** For both the A's and B's.

20 **THE COURT:** I gotcha.

21 **MS. SAVAS:** Because they --

22 **THE COURT:** Those are the -- those are the
23 chain from SLED and everything else?

24 **MS. SAVAS:** Yeah.

25 **THE COURT:** So does she -- do y'all want to

1 mark those or do y'all want to just have her
2 publish them?

3 MS. SAVAS: I have them pre-marked as
4 exhibits already at this point.

5 THE COURT: No. I'm just asking --

6 MS. SAVAS: Oh.

7 THE COURT: -- whether -- are you going to
8 publish -- are you going to admit them -- I'm
9 sorry. Do you want to admit them as evidence and
10 publish them? Or did you just want to mark them
11 as ID and publish them?

12 MS. SAVAS: I have them marked as state's
13 exhibits already, not ID.

14 THE COURT: Okay.

15 MS. SAVAS: And then, I was just gonna do the
16 stipulation at that time, and then just seek to
17 admit without objection, or by stipulation. I
18 don't know. How would the Court prefer?

19 THE COURT: Normally, stipulations are simply
20 published at the end of your case --

21 MS. SAVAS: Right.

22 THE COURT: -- or at the beginning of your
23 case, however you want to do them.

24 But y'all need to get on the same page about
25 what your stipulations are. And then you can

1 decide whether you want to mark them as exhibits
2 or whether you just want to mark them as ID and
3 publish them.

4 **MS. SAVAS:** You're talking about the
5 stipulation paper itself?

6 **THE COURT:** Yes.

7 **MS. SAVAS:** I'm sorry. I'm so tired too.

8 **THE COURT:** That's okay. I understand.

9 **MS. SAVAS:** I gave them a copy of it. I do
10 not have it marked as anything.

11 **THE COURT:** Oh, okay.

12 **MS. SAVAS:** I figured we can deal with that.
13 I'm sorry.

14 **THE COURT:** No, not at all.

15 **MS. SAVAS:** I just have one page of
16 stipulation. And it encompass all five exhibits,
17 in which they stipulate to the chain of custody.

18 **THE COURT:** So what y'all need to decide is
19 whether you just want to publish the stipulation
20 without it being marked at all. You don't have to
21 have it reduced to writing. You can simply agree
22 on the language and publish it. And then I would
23 instruct the jury during instructions that a
24 stipulation is an agreement and it requires no
25 further proof.

1 **MR. D'ANGELO:** Okay.

2 **THE COURT:** So y'all can talk about it and
3 decide --

4 **MS. SAVAS:** Okay.

5 **THE COURT:** -- how you want to do it.

6 **MS. SAVAS:** Sorry. I was all --

7 **THE COURT:** And normally, ma'am, I would take
8 you into custody because your bond has already
9 been called. Your bondsman has no further
10 obligation. Once a case is called their
11 obligation has ended. So if you don't show up, I
12 don't have any ability to estreat anything from
13 them.

14 However, because of the late hour, I'm going
15 to allow you to go home. However, I'm going to
16 instruct you, and I need you to listen carefully,
17 that if you fail to appear, I will issue a bench
18 warrant for your arrest. The case will go forward
19 in your absence. You will be tried in your
20 absence. And if convicted, the Court will
21 sentence you in your absence.

22 And again, an additional warrant will be
23 issued for your arrest. At which time when you're
24 taken into custody, you will be sentenced. Do you
25 understand?

Motions

1 **THE DEFENDANT:** Yes, Your Honor.

2 **THE COURT:** Okay.

3 Thank you very much.

4 See you-all in the morning, 9:30.

5 **MS. SAVAS:** Thank you, Your Honor.

6 **MR. D'ANGELO:** Your Honor, you'd like us here
7 a little before 9:30?

8 **THE COURT:** Yeah. Just so y'all can get
9 those exhibits in order for the court reporter.
10 That really is helpful to her.

11 **MR. D'ANGELO:** Sure.

12 **THE COURT:** And then I like I said, I've got
13 to do that plea with Mr. Smith, which only -- if
14 it takes 10 minutes, I'll be surprised.
15 Hopefully, I mean, if his client's on time and we
16 have all the paperwork. Okay.

17 All right, guys. Have a good night. I'll
18 see you in the morning.

19 (The Court recesses for the day at 6:40 p.m.)
20
21
22
23
24
25

CERTIFICATE

1
2 I, the undersigned, Teresa B. Johnson, Official
3 Court Reporter, do hereby certify that I transcribed
4 the electronic recording of the remote hearing in this
5 matter; and that the foregoing is a true transcript of
6 said electronic recording.

7 I do further certify that I am not a relative,
8 employee, attorney, or counsel of any of the parties
9 connected with the action, nor am I financially
10 interested in the action.

11
12 Dated: 5/22/2024

13
14 /s/Teresa B. Johnson

15 Teresa B. Johnson

16 Official Court Reporter
17
18
19
20
21
22
23
24
25

STATE OF SOUTH CAROLINA	)	COURT OF GENERAL SESSIONS
	)	
COUNTY OF CHARLESTON	)	Case No.: 2023GS1003323,
	)	2023GS1003324
	)	
State of South Carolina,	)	
	)	
vs.	)	
	)	
Toya Danielle Steward,	)	
	)	
Defendant.	)	February 27, 2024
	)	

TRANSCRIPT OF TRIAL - DAY 2 OF 5

BEFORE THE HONORABLE DEADRA L. JEFFERSON
Circuit Court Judge, and a jury

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E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>MK'D</u>	<u>ADM</u>
GOVERNMENT			
S-1	Map - Charleston		140
S-2	Map - West Ashley		140
S-3	Map - Zoomed in		140
S-4	Intersection - Street view		140
S-5	House - Front		140
S-6	DVD - Dan Heiterer		140
S-7	Photo - Jason in yard		140
S-8	House - post fire		140
S-9	Photo - Front bedroom window		140
S-10	Photo - House side		140
S-11	Exterior rear		140
S-12	Exterior rear		140
S-13	Back porch		140
S-14	Side view		140
S-15	Cars		140
S-16	Defendant's car		140
S-17	Placard 1		140
S-18	Placard 2		140
S-19	Placard 2 zoomed		140
S-20	House layout		140
S-21	Service meter		140

E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>MK'D</u>	<u>ADM</u>
GOVERNMENT			
S-22	Living room		140
S-23	Living room window		140
S-24	Hallway entry		140
S-25	Kitchen		140
S-26	Kitchen to dining room		140
S-27	Kitchen to garage		140
S-28	Garage entry		140
S-29	Garage window		140
S-30	Garage room		140
S-31	Garage circuit breaker		140
S-32	Circuit breaker		140
S-33	Garage pour pattern		140
S-34	Placard 4		140
S-35	Garage window w/ car		140
S-36	Garage ceiling		140
S-37	Laundry room		140
S-38	Hallway		140
S-39	Bathroom		140
S-40	Master Placard 1		140
S-41	Master pour pattern		140

E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>MK'D</u>	<u>ADM</u>
GOVERNMENT			
S-42	Hallway placard		140
S-43	Hallway floor		140
S-44	Chris's room		140
S-45	Chris's closet		140
S-46	Jason's room		140
S-47	Jason's windows		140
S-48	Jason's wall		140
S-49	daytime photo		140
S-50	Recycle can		140
S-51	Photo - anklet		140
S-52	Anklet		140
S-53A	Bedroom carpet sample		140
S-53B	Test sample		140
S-54A	Hallway floor sample		140
S-54B	Test sample		140
S-55A	Fire debris placard 3		140
S-55B	Test sample		140
S-56A	Fire debris placard 4		140
S-56B	Test sample		140
S-57	Car - side view		140

E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>MK'D</u>	<u>ADM</u>
	GOVERNMENT		
S-58	Driver's seat		140
S-59	Center console		140
S-60	Social security card		140
S-61	Registration		140
S-62	Back seat		140
S-63	Trunk		140
S-64	Floor boards		140
S-65	Photo - floor mat		140
S-66	Floor mat test sample		140
S-67	SLED report		140
S-86	Stipulation #1		140
S-87	Photo	319	319

P R O C E E D I N G S

(Proceedings begin on the 27th day of
February 2024, at 9:49 a.m.)

THE COURT: Y'all didn't have any exhibits to
pre-mark with the court reporter?

MS. SAVAS: Your Honor, we have --

THE COURT: Because you-all need to make sure
you're using the same system she's using.

MS. SAVAS: I -- we did discuss about
marking -- I already pre-marked state's exhibits.
And we have items that we have agreed with --
defense has agreed on to admit. Did you want me
to re -- put different stickers on it? It
wasn't --

THE COURT: No. I just need you to make sure
she sees what you have to make sure you're doing
it the way she's accustomed to doing it, so that
we're all on the same page.

(Pause in proceeding.)

MS. SAVAS: Okay.

Yes, Your Honor.

THE COURT: All right.

Mr. D'Angelo, are there any exhibits on the
state's list that you've agreed to?

MR. D'ANGELO: Yes, Your Honor. So as

1 Ms. Savas and I had discussed, 1 through No. 67
2 and then --

3 THE COURT: Wait. Let me -- let me -- 1
4 through 67, you've agreed to coming in without
5 objection? 'Is that what you're telling me?

6 MR. D'ANGELO: Yes, Your Honor.

7 THE COURT: Okay.

8 Wait one second.

9 MR. D'ANGELO: Uh-huh. And then there's one
10 more.

11 THE COURT: Okay.

12 And then what was the other one?

13 MR. D'ANGELO: And then Exhibit 86 is
14 Stipulation 1.

15 THE COURT: Now, I don't have an 86. So that
16 stipulation, you said?

17 MR. D'ANGELO: One, Your Honor.

18 THE COURT: And do y'all plan to admit that?

19 MR. D'ANGELO: The state does, yes,
20 Your Honor.

21 MS. SAVAS: Yes, Your Honor.

22 THE COURT: So you've agreed to that?

23 MR. D'ANGELO: Yes, Your Honor.

24 THE COURT: Okay.

25 And is that a chain stipulation?

1 **MR. D'ANGELO:** Correct.

2 **THE COURT:** And are there any other exhibits
3 you've agreed to coming in without objection?

4 **MR. D'ANGELO:** No, Your Honor.

5 **THE COURT:** Okay.

6 So without objection, 1 through 86 will be
7 marked and admitted.

8 **MS. SAVAS:** One through --

9 **THE COURT:** I'm sorry. I said the wrong
10 number. 1 through 67. I apologize.

11 **MR. D'ANGELO:** Yes.

12 **THE COURT:** I stand corrected.

13 **MR. D'ANGELO:** Yes.

14 **THE COURT:** One through 67 will come in
15 without objection. And No. 86 will come in
16 without objection. Everything else will be marked
17 for ID at this point. Correct? Is that accurate?

18 **MR. D'ANGELO:** That's accurate.

19 **THE COURT:** Is that accurate, Ms. Savas?

20 **MS. SAVAS:** Yes, Your Honor.

21 (State Exhibit Nos. 1 through 67, and 86 is
22 admitted into the record.)

23 **THE COURT:** Okay.

24 Do we have notepads and everything for the
25 jury in their seats already?

1 No. 170 is the foreperson. So bring him in
2 last.

3 **THE BAILIFF:** Yes, Your Honor.

4 **MS. SAVAS:** Your Honor?

5 **THE COURT:** Yes.

6 **MS. SAVAS:** We do have a couple of matters to
7 address with the Court before the jury comes in?

8 **THE COURT:** Which are?

9 **MS. SAVAS:** Yes, Judge.

10 **THE COURT:** Do they really need to be
11 addressed before we begin opening instruction and
12 opening argument?

13 **MS. SAVAS:** Yes, Judge.

14 **THE COURT:** Uh-huh. I'm listening.

15 **MS. SAVAS:** The state was just made aware
16 from defense that they sent over just now a zip
17 drive of information they received from their
18 expert from two years ago regarding a different --
19 the defendant's cellphone. We contend that this
20 would be a violation of reciprocal discovery if
21 they are to use this --

22 **THE COURT:** I don't understand what you're
23 saying. They sent over what? And who did they
24 send it to?

25 **MS. SAVAS:** Ms. Blazer --

1 **THE COURT:** "Sent over," I don't understand
2 what that term means.

3 **MS. SAVAS:** Ms. Blazer just sent me an
4 email --

5 **THE COURT:** Uh-huh.

6 **MS. SAVAS:** -- with a zip drive worth of
7 information from Verizon Wireless that they
8 received from their expert two years ago. I do
9 not know the contents. Because I just got it
10 emailed to me.

11 **THE COURT:** Uh-huh.

12 **MS. SAVAS:** The state would just respectfully
13 request the Court not allow them to go into this
14 in their case in chief or refer to it. It's --

15 **THE COURT:** Their case in chief is a while
16 away, right? So is this really germane to our
17 discussion right now of opening arguments, opening
18 instruction, and your presentation of your case.

19 **MS. SAVAS:** It is for the record --

20 **THE COURT:** I don't know what it is for the
21 record. They may decide they don't want to do
22 anything. They may sit right there and not
23 introduce anything.

24 **MS. SAVAS:** Yes, Your Honor. We spoke in
25 motion arguments yesterday regarding the cell

1 phone and experts. And they failed to mention
2 that, disclose it to the Court or the state that
3 they had documents showing phone calls were made
4 on February 7, I believe. It's a cell phone bill
5 from Verizon. I asked them multiple times to
6 disclose any and all documents from their expert.
7 Mr. D'Angelo said that he would. I asked in our
8 evidence --

9 **THE COURT:** I don't think this is a good use
10 of our time until such time that they actually
11 seek to introduce the evidence.'

12 **MS. SAVAS:** Yes, Your Honor.

13 **THE COURT:** Which is a few days away.

14 **MS. SAVAS:** Yes, Your Honor.

15 **THE COURT:** That gives you enough time to
16 review it and determine if in fact what you're
17 concerned about is an actual concern or if it is
18 not. You may well have a duplication of the same
19 information. I'm not certain. But I'll address
20 it when it's appropriate, but I don't think this
21 is the time to address it.

22 **MS. SAVAS:** Yes, Your Honor.

23 **THE COURT:** So I would suggest you take the
24 time to review what they've submitted to you. And
25 at the time they actually seek to introduce it,

1 then we'll deal with whether you actually have any
2 objections to what they're seeking to elicit from
3 their expert.

4 **MS. SAVAS:** Yes, Your Honor.

5 Also, one of our first witnesses we call does
6 have a prior record that the state will disclose
7 to the defense. But we do not think that anything
8 will be able to be brought out in court.

9 **THE COURT:** Who is that witness?

10 **MS. SAVAS:** Our victim, Jason Simmons.

11 **THE COURT:** What is his record?

12 **MS. SAVAS:** Yes, Your Honor. He has a prior
13 drug conviction from -- he has a possession of
14 consume liquor on 2013.

15 **THE COURT:** How old was he? Is that like
16 open container?

17 **MS. SAVAS:** I think so.

18 **THE COURT:** So that's not relevant.

19 **MS. SAVAS:** Correct.

20 He also has a prior possession of cocaine
21 from 2007.

22 **THE COURT:** It's not dispositive on
23 truthfulness.

24 **MS. SAVAS:** Correct.

25 He has a resisting arrest in 2008.

Opening Instruction to Jury

1 **THE COURT:** Unless there's some case law,
2 that wouldn't be dispositive either.

3 **MS. SAVAS:** He has a possession of cocaine
4 second offense from 2008 as well.

5 **THE COURT:** I -- I'm not -- I would assume
6 there's nothing you-all would be seeking out of
7 that list to impeach his credibility, correct?

8 **MR. D'ANGELO:** No, Your Honor.

9 **THE COURT:** All right.
10 So that's a nonissue, then, correct? Are we
11 ready to proceed?

12 **MS. SAVAS:** Yes, Your Honor.

13 **THE COURT:** Is the defense ready to proceed.

14 **MR. D'ANGELO:** Yes, Your Honor. Thank you.

15 **THE COURT:** All right. "

16 Please bring in the jury.

17 **THE BAILIFF:** Yes, Your Honor.

18 (The jury enters the courtroom at 10:01 a.m.)

19 **THE BAILIFF:** All jurors are present,
20 Your Honor.

21 **THE COURT:** You may be seated. Good morning,
22 ladies and gentlemen. I hope everybody had a
23 pleasant and restful evening.

24 You each have a notepad that is in your seat.
25 There should be a white sticker on the front of

Opening Instruction to Jury

1 that notebook. If you would write that -- your
2 juror number on that sticker so that you will be
3 able to readily identify which notepad belongs to
4 you.

5 Ladies and gentlemen, the case that we're
6 about to try is the State of South Carolina versus
7 Toya Danielle Steward. What I'm now going to say
8 to you is intended to serve as an introduction to
9 the trial of this case. These remarks, ladies and
10 gentlemen, are not a charge on the law. And so
11 that you know, "charge" is a legal term of art
12 that simply means instructions. So when you hear
13 the Court say "charge," it is -- charge and
14 instructions are interchangeable terms. And
15 again, these remarks are not a charge on the law.

16 I will instruct you on the law that applies
17 to this case at the end of the testimony and the
18 arguments of counsel and before you retire to
19 consider your verdict in this case. This is
20 merely an explanation of the procedure that we
21 will follow so that you may better understand what
22 is happening.

23 And you will be given the opportunity to take
24 notes. And I will give you some additional
25 instructions regarding that near the conclusion of

Opening Instruction to Jury

1 this preliminary instruction.

2 The defendant, ladies and gentlemen, is
3 charged by three indictments filed with this
4 court, that being arson second degree, burglary
5 second degree, and attempted murder. The elements
6 of which I will explain to you at the conclusion
7 of the case. The indictments, ladies and
8 gentlemen, are simply the formal charge or charges
9 by which the case is brought into court. And they
10 are not in any sense evidence of any of the
11 allegations they may contain.

12 The defendant has pled not guilty to the
13 indictments. The state, therefore, has the burden
14 of proving each of the elements of the indictments
15 beyond a reasonable doubt. And it will be your
16 duty, ladies and gentlemen, to decide whether the
17 state has met that burden.

18 Your job and purpose as jurors is to find and
19 determine the facts. You are the sole judges of
20 the facts. If at any time I make any comment
21 regarding the facts, you must disregard it. You
22 are to determine the facts from the testimony you
23 hear and the other evidence introduced in court.
24 It is, then, up to you to determine the inferences
25 which you feel may be properly drawn from the

1 evidence.

2 It is especially important that you perform
3 your duty of determining the facts diligently and
4 conscientiously. Because ordinarily, there is no
5 way to correct an erroneous term -- determination
6 of facts made by a trial jury. On the other hand
7 and with equal emphasis, the same law that makes
8 you the judges of the facts makes me the judge of
9 the law.

10 The law as given by the Court as the only law
11 you can consider. You must accept and follow it
12 even though you may disagree with it. The Court
13 cannot tell you what the facts are, and you cannot
14 disagree with the Court about what the law is or
15 what the law should be. Your responsibility,
16 ladies and gentlemen, is to take the law as it is
17 instructed and apply it to the facts as you find
18 them from the testimony of the witnesses and the
19 other evidence that will be introduced during the
20 course of the trial. After doing that, you will
21 render your verdict under the solemn oath that
22 you've taken as jurors in this case.

23 Until I advise you to begin your
24 deliberations, you must not discuss this case with
25 anyone. That includes your fellow jurors,

Opening Instruction to Jury

1 friends, family members, or anyone who might be
2 involved in the case. After the case is submitted
3 to you, you must discuss it only in the jury room
4 among your fellow jurors.

5 The attorneys and the parties in this case
6 have been advised that they're not to speak with
7 you at all. So if you should see anyone involved
8 in the case, that includes anyone that may be
9 participating in the courtroom, and they don't
10 speak with you --

11 Please there's to be no movement in the
12 gallery.

13 So these should run into anyone, whether it
14 be in the garage or in the elevators, you know,
15 just even walking down the street when you're
16 going to lunch, and they don't speak with you,
17 please don't think they're being unfriendly or
18 untoward. They're simply following the Court's
19 instructions. Again, we would not want an
20 innocent conversation to be observed by a third
21 party and misinterpreted.

22 During the trial, you're not to read, listen
23 to, or watch any media accounts about this case.
24 That includes anything that could be on in the
25 newspaper, internet, radio, or television. And

1 you're not to do any independent research of any
2 type on the internet. You must not consider
3 anything that you may have read or heard about
4 this case outside the courtroom, whether it is
5 before or during the trial. It is essential that
6 you maintain an open mind and not decide any issue
7 in this case until all of the evidence has been
8 presented, the parties have made their closing
9 arguments, and I've instructed you on the law
10 which applies to this case.

11 It is your solemn responsibility to determine
12 whether the state has met their burden of proof or
13 not. And your verdict must be based solely on the
14 evidence as it is presented to you during the
15 trial and on the law as I will instruct you during
16 and at the close of the trial.

17 In just a moment, the solicitor will make
18 what is called an opening statement, in which they
19 will outline to you what they believe the evidence
20 in this case will show or what they believe the
21 issues in this case to be. The attorney for the
22 defense may also make an opening statement,
23 although they are not required to do so. What the
24 attorneys tell you during their opening
25 statements, ladies and gentlemen, is not evidence

Opening Instruction to Jury

1 it is only their contention as to what they
2 believe the evidence will show in this case. The
3 evidence will be presented to you by the testimony
4 of sworn witnesses from the witness stand and/or
5 by exhibits that may be introduced into evidence.

6 From time to time, the attorneys will say,
7 "Your Honor, I object." Just as in sports,
8 business, or any other structured activity, there
9 are certain rules that we must obey in the
10 presentation of evidence. These rules have a
11 definite purpose. They ensure that you receive
12 the most trustworthy and reliable evidence
13 available.

14 An objection is the procedure that is used to
15 call a possible violation of these rules to my"
16 attention as the judge of the court. And for this
17 reason, you should never hold an attorney's
18 objection against them, nor should you conclude
19 from the court overruling or sustaining an
20 objection that I favor one side or the other. In
21 fact, you should expect objections. They are very
22 healthy part of our advocacy and a part of the
23 legal process.

24 Also, from time to time, the attorneys will
25 say that they have a matter of law. And sometimes

1 as a result, it might be necessary for us to
2 exclude you from the courtroom while we discuss
3 matters of law. The reason we do this is, again,
4 ladies and gentlemen, you are the finders of the
5 facts. And sometimes when I'm discussing matters
6 of law with counsel, it might be necessary for me
7 to make some comment about the facts in connection
8 with a ruling. And for this reason, we exclude
9 you from the courtroom so that in no way will you
10 be influenced by anything that the Court may say
11 or do in connection with the facts of this case.

12 In determining the facts in this case, you
13 must decide whether or not the testimony of a
14 witness or witnesses is believable. It is my
15 responsibility to rule as a matter of law as
16 whether certain testimony is admissible at all or
17 not. But once it is admitted, ladies and
18 gentlemen, whether or not you believe it is solely
19 a matter for you to determine.

20 In deciding whether to believe a witness, you
21 have the right to consider the interest of any
22 witness, the bias of any witness, the prejudice of
23 any witness, the opportunity for the witness to
24 have seen the matters and things about which the
25 witness may testify. And the way the witness acts

Opening Instruction to Jury

1 on the witness stand, what we would commonly refer
2 to as their demeanor.

3 You have a right to consider anything that is
4 in the record that will help you evaluate the
5 testimony. That means that it is your duty to pay
6 close attention to the witnesses, to observe them,
7 to listen to them, and pay close attention to
8 counsel and to the Court. Although I know it can
9 be difficult, please do not allow your thoughts to
10 wander but give strict attention to the testimony
11 so that at the end of all the testimony, after the
12 arguments of counsel, and the instructions on the
13 law given by the Court, you will then be in a
14 position to determine what the facts are and apply
15 the law to those facts and thus render a verdict
16 in this case.

17 Mr. Foreman, it is your added responsibility
18 to be the jury spokesperson, in other words, the
19 scrivener. It is -- you don't have any greater
20 vote or voice than any other jury. But we need
21 someone who takes -- who fills out the verdict
22 form and who may write out questions if the jury
23 has any during deliberations. But I'll give you
24 further instructions regarding that at the
25 conclusion of the case.

1 Again, ladies and gentlemen, the foreperson
2 is a purely random choice by the Court. I wish we
3 had a more scientific method, but we don't. We
4 just try to make sure a cross-section of the
5 community is represented in that capacity. And
6 again, that person doesn't have any greater
7 vote -- vote or voice than you do. We need to
8 scrivener when it's time for the deliberative
9 process.

10 Also, as I've explained, you will have the
11 opportunity to take notes. Not everyone finds
12 note-taking helpful to them. Please do not feel
13 you're required to take notes. Also don't try to
14 record everything that is said. It's physically
15 impossible. And as I've explained, as the finders
16 of the facts, it is essential that you rely on
17 your powers of observation as you observe the
18 witnesses and make certain determinations about
19 their credibility and believability. So again,
20 please do not allow note-taking to become a
21 distraction to you.

22 You may want to keep an outline of the main
23 points that are being made so that when you retire
24 to deliberate, you can allow your notes to refresh
25 your memory. Please be reminded that your notes

Opening Instruction to Jury

1 are for your specific and your individual
2 purposes. They're only to be used to refresh your
3 own memory. They're not to be shared with anyone
4 else. During breaks and recesses, your notes will
5 be left in your seats. And we do that to make
6 sure there's no premature temptation to deliberate
7 before it is appropriate.

8 And I would remind you, ladies and gentlemen,
9 that notes taken by a fellow juror should not be
10 considered any more reliable than a fellow juror's
11 memory. A fellow juror's memory should be
12 considered just as reliable as notes that may have
13 been taken by a fellow juror.

14 In order to preserve everyone's rights, I'm
15 going to give counsel the opportunity to take
16 exception to anything that the Court has said by
17 way of opening instruction.

18 Any exception from the state?

19 **MS. SAVAS:** No, Your Honor.

20 **THE COURT:** Any exception from the defense?

21 **MR. D'ANGELO:** No, Your Honor.

22 **THE COURT:** Ladies and gentlemen, I would ask
23 that you give counsel your full attention in
24 opening argument.

25 And bailiffs, you're instructed that no one

1 is -- there's to be no movement in the gallery
2 during this process.

3 Ms. Savas or Ms. Fries, who's going to -- you
4 may proceed when you're ready.

5 **MS. SAVAS:** Thank you, Your Honor.

6 **THE COURT:** You're welcome.

7 **MS. SAVAS:** May it please the Court.

8 **THE COURT:** Yes, ma'am.

9 **MS. SAVAS:** All right.

10 Good morning, everyone. As Judge Jefferson
11 has said, my name is Nina Savas. I'm the Managing
12 Solicitor here at Charleston County. We represent
13 the State of South Carolina for the Ninth Circuit,
14 which means Charleston and Berkeley counties.

15 This is -- Ms. Fries is next to me here. And
16 we introduced the rest of our staff that is going
17 to be with us for the duration of this time.

18 We are here today. The defendant, Ms. Toya
19 Steward, is charged with arson, burglary, and
20 attempted murder, for burning down the house of
21 her ex-boyfriend with his cousin and roommate
22 inside. We have two victims in this case.
23 They're sitting in the gallery today, and you will
24 hear from them in this trial.

25 Frank Simmons, he is the ex-boyfriend of

Opening Statement by Ms. Savas

1 Ms. Steward. He lived at [REDACTED] Avenue, a nice
2 house over in West Ashley area near Charleston.
3 He lived with his cousin Jason. And they had just
4 moved into this house a few weeks prior to this
5 incident.

6 They also live with Frank's 16-year-old son
7 at the time, Chris. They were very excited about
8 this new house. They just moved in. Frank's a
9 hard-working man. Saved up money. Got furniture.
10 Full custody of his son. And they had a
11 wonderful, nice house where they had friends and
12 family come over to live and to be together.

13 This happened on February 2020, so a few
14 years back. At that time, Frank and Toya -
15 Ms. Steward - were dating on and off. But a few
16 weeks prior, they were sort of in the process of
17 breaking up. And they broke up this very morning
18 of the fire. Okay.

19 So on February 8, a 911 call came in about
20 two o'clock in the afternoon that a good Samaritan
21 was driving by the house and saw a house on fire.
22 He immediately called 911, and checked to see if
23 there was any surviving people in the home.
24 Luckily, Jason, who was home at the time, managed
25 to barely escape from the fire. And the Good

1 Samaritan had seen him on the front lawn. And he
2 tended to him to help him.

3 That morning, Frank had left early to go help
4 the mother of his children, who he have good
5 relationship with and he had the son living with
6 him, to do some home renovations on her house. So
7 he had left fairly early about seven, eight
8 o'clock in the morning, to go pick up a friend of
9 his (inaudible) who was going to help him with the
10 home renovations for her. So he was already gone
11 on that day.

12 Jason stayed behind. He didn't really want
13 to help out. He wanted to stay home.

14 That morning, Toya and Frank were exchanging
15 text messages. That morning, there was a little
16 bit of drama on social media. Frank wanted to
17 slowly break up with Toya, finally kind of be free
18 of her. And part of doing that new independence,
19 he just wanted to make an Instagram account. So
20 made a new Instagram account.

21 What was his first post? Classic gym selfie?
22 Right? Well, it got the attention. There were
23 people commenting on it, giving him compliments.
24 Well, Toya had to, of course, mark her territory,
25 even in cyberspace. So she put a comment on the

Opening Statement by Ms. Savas

1 Instagram post.

2 Not only did she do that, she then messaged
3 people who were also commenting. She then came
4 into contact with this other female named Destiny,
5 who Frank had met just shortly before. She lives
6 in Georgia. They were just talking. She started
7 messaging this other female.

8 From that, she kind of realized Frank was
9 talking to her. Toya didn't like that. Toya got
10 jealous. Toya got downright pissed off. And she
11 made it known.

12 Frank found out. Because Destiny brought it
13 to Frank's attention she was receiving all these
14 messages. Frank, final straw. Can't deal with it
15 anymore. Didn't want to do -- be with Toya
16 anymore. He let her know. He let her know that
17 morning that he was done. He sent the text.

18 Well, some time prior to this, they had
19 discussed Frank helping Toya out to fix her car.
20 Didn't really have concrete plans about it. Frank
21 had already left that Saturday morning to go help
22 with the home renovation. Toya just shows up.
23 Frank's gone. Jason's at home, relaxing in the
24 morning.

25 About 9:30 in the morning, Toya starts

1 banging on the door. Tells Frank she's there,
2 hollering, making a scene. Jason doesn't really
3 want to get involved. And he doesn't really like
4 to mess with Toya. And he doesn't interfere in
5 their relationship.

6 Reached out to Frank. Said, "Frank, girl's
7 here. What are we going to do?"

8 Frank said, "Just ignore her. Just don't
9 answer the door."

10 That was fine with Jason. He didn't want to
11 interfere. It's not like Jason. Jason keeps to
12 himself. He's quiet. Does his thing. He goes to
13 work. That's it. He doesn't get in the middle of
14 these things. They keep their private lives
15 private.

16 Well, Toya's been banging on the door and at
17 that house for about two hours. Even so much that
18 Frank tells her to leave and said, "My son is in
19 the home. So please leave."

20 Now there's been some issues. They kind of
21 had a boundary. My son's home. Frank didn't
22 want, you know, other females around, just to keep
23 that role model figure for his son in his life.
24 So they had that sort of understanding.

25 Eventually, after two hours, Toya tired out

Opening Statement by Ms. Savas

1 and she left. Once the coast was clear, Jason got
2 hungry. He left some food in his truck, which was
3 parked outside. Frank's car was parked outside.

4 Now let me say this, Frank has two cars.
5 He's got a pickup truck and a Dodge Challenger.
6 He had the pickup truck because he was doing the
7 work at the house. Dodge Challenger parked in the
8 front yard. Frank's truck -- or Jason's truck
9 parked in the front yard. Toya knew that these
10 were their cars. They were right there. So she
11 thought someone was in there, because she's
12 banging on the door and the cars are in the
13 driveway. Well, she finally leaves.

14 Jason goes outside. Coast is clear. Grabs
15 his food. Comes back inside and starts eating
16 lunch. Puts it in the microwave. Starts eating.

17 Then he just -- Toya comes back about one
18 o'clock in the afternoon. Comes back. Jason
19 looks out the window, sees her car, Chevy Equinox
20 again, and sees her. Again, he doesn't want to
21 mess with her. He goes and starts to use the
22 restroom.

23 Next thing he hears is yelling and cursing
24 and carrying on. And from the back door in their
25 house -- the bathroom's in the rear of the house.

1 There's a backdoor down a little hallway. What
2 does he hear? Glass shatters. Hollering coming
3 from inside. He hears ruffriging [phonetic]
4 around the rooms, golf clubs banging, Toya
5 cussing, mad as hell.

6 The next thing he hears is something being
7 poured all over the floor. He thinks it's water.
8 He doesn't know what's going on. He just happens
9 to go to the bathroom. He hears this liquid being
10 sloshed around and poured all over the house. He
11 doesn't know what's happening.

12 Next thing he knows, he goes to open the
13 bathroom door, and boom, there's a loud explosion
14 in the home. And the house catches fire. There
15 are flames in the hallway, smoke everywhere. He
16 could hardly see. He goes back to what we were
17 all taught when we're little kids. Touch the
18 doorknob. Is it hot? Stay low to the ground.

19 Jumps through the hallway. Right across from
20 the bathroom the hallway is his bedroom. Bust out
21 the window. Dives out the window to the house.
22 Barely escapes with his life. Because she set the
23 house on fire with him in it in the bathroom. He
24 gets outside. Toya's gone.

25 At that time, our good Samaritan drives by.

Opening Statement by Ms. Savas

1 The house is on fire. He lives down the road. He
2 sees smoke coming through the streets. He tried
3 to see what's going on. He doesn't know. Goes
4 over there. Sees the house on fire. Sees Jason
5 in the front yard, completely disheveled, coming
6 out of his house. He was in his pajamas, just a
7 mess. Goes to help. Calls 911. Gets Jason.

8 Jason's frazzled. His phone, his keys,
9 everything was in the house. He didn't have time
10 to grab anything. So the Good Samaritan, Dan,
11 takes him to Jason's friend's house down the road
12 so he can kind of come down and get some help.

13 From there, they called Frank. This time,
14 about two o'clock now. Frank's driving his buddy
15 back to (inaudible). Call comes in. "Hey, man.
16 Your house is on fire. And Jason barely got out
17 alive." Barely got out alive.

18 He tells his friend, "I gotta go. You gotta
19 get out." He wasn't even back at his house yet.
20 It was not scary. Drops his friend off in the
21 middle of on John's Island. And he turns around
22 and books it back to West Ashley. When he comes
23 over main road over on John's Island, cloud of
24 smoke in the sky. And he goes, "Oh, no. That's
25 my house on fire." He knew.

1 Gets back to Jason's friend's house and goes
2 gets Jason. They then come back. On scene are
3 the fire crews. First responders are there,
4 risking their lives to put out this fire, unaware
5 of whether someone's in there or not. They're
6 doing their job, busting in the doors to hot fire.
7 Many fire trucks come. They then need to escalate
8 this call for service. And they call even more
9 backup because of the house fire and the severity
10 of it. They're on scene. Jason and Frank say,
11 "Oh my god. This is our house. What's
12 happening?" Jason barely made it out alive.

13 So the fire department has investigators of
14 their own called fire marshals. You'll hear from
15 the Chief Fire Marshal Kevin Berkel. He came that
16 day. He responded to the fire. He began
17 investigating the fire as they always do. Then
18 realized that there's some evidence to show that
19 this was not an accident. It's not natural.
20 Someone did this.

21 He stops everything. They speak with the
22 victims on scene. Pauses. Calls the Charleston
23 County Sheriff's Office. We need an arson
24 detective out here now. This now a crime scene.
25 It is no longer just a fire. It's a crime scene.

Opening Statement by Ms. Savas

1 They shut everything down. Once the fire
2 department subdues the fire, gets it down to where
3 it's relatively safe, tape goes up. They wait for
4 the investigators to come.

5 Because of that, they also have trained
6 canines. Just like drug dogs, they can smell
7 accelerants. (Inaudible). They call SLED,
8 South Carolina Law Enforcement Division. They're
9 the only ones with an arson canine. Because it's
10 such a specialized thing, we don't have them
11 locally. That officer comes -- an agent comes
12 from Horry County. They call him out. No one can
13 go in the house until the canine cleared it for
14 safety for people.

15 Canine goes in with the investigators. Hits
16 on two spots positive for accelerant. And the
17 fire investigators then go in and does their
18 investigation. They find other spots as well.
19 The house was in such disarray. It's so dangerous
20 the poor canine actually couldn't get into the
21 other part of the house. They searched just the
22 first half that was safe for the dog.

23 But once everything else cleared out, they
24 could clear the debris. The chief fire marshal
25 goes back in to complete the rest of the

1 investigation.

2 They also called Crime Scene out from the
3 sheriff's office. You'll hear from him. They
4 collected pieces of debris from those points where
5 the dog hit and the fire marshal said accelerant
6 was used. They then take pieces of that floor.
7 And we have that. And they then send it for
8 testing to see what was used. Is there evidence
9 here? They send that off to SLED. Positive,
10 gasoline. She lit the house on fire with
11 gasoline.

12 Meanwhile, investigators start talking with
13 the victims. They tell her, "Listen. This is
14 Toya Steward. She's my ex-girlfriend. We broke
15 up today. She told me she's here. I saw her.
16 She was here. She lit this house on fire."

17 They then dispatched an officer out to Toya's
18 house. Toya lives in Mount Pleasant. Let me make
19 something clear. Toya doesn't have a key to
20 Frank's house. Toya doesn't live at Frank's
21 house. She was not invited to come back that day.
22 No one knew she was coming. She just shows up.

23 Investigators get sent to her apartment in
24 Mount Pleasant. And they see her. Before they
25 walk in the door in the parking lot, there's her

Opening Statement by Ms. Savas

1 car. Chevy Equinox, just as Jason described it,
2 just as Frank described it. The same car Jason
3 saw parked in the driveway when she came to burn
4 the house down. They then go in, find the
5 defendant, and arrest her at her home.

6 Crime Scene then has the car towed. And they
7 go back to the sheriff's office. In her car,
8 there is a bottle of lighter fluid in her car.
9 What I don't want us to get confused with, lighter
10 fluid is different than gasoline. The lighter
11 fluid was not what lit the house on fire. But
12 they took the car because they saw it. Because at
13 that time, they didn't know what was the -- what
14 was used -- to liquid used to catch it on fire.
15 Okay.

16 The SLED testing for gasoline came months and
17 months later once it gets shipped off to Colombia.
18 So they took any evidence that they thought could
19 be possible. So they took her car, because
20 there's a bottle of lighter fluid. But also in
21 her car was her driver's floor mat.

22 Crime Scene took that floor mat. Sent that
23 to SLED. Gasoline on her floor mat. Because when
24 she was pouring that fire around in the house --
25 the house in the gasoline, she's stepping all in

1 it. It gets transferred to the driver's seat of
2 the car when she leaves the scene and goes back to
3 her house. And they were smart enough to take it,
4 get it tested, and it's gasoline as well.

5 You will hear from witnesses in the fire,
6 from the Good Samaritan, to the victims, from the
7 officers, case agent, to see how this whole story
8 progressed. Also, plus a little random thing she
9 left behind she told Jason about. When she burnt
10 the house down, she left an anklet he gave her as
11 a Christmas gift. Broke it and left it right
12 there on the recycle bin by the back door -- or
13 the side door.

14 She left markings that she was at the scene.
15 Jason saw her. She told Frank she was there.
16 There's evidence that she was there. We had
17 eyewitness. We have evidence to prove that she
18 was at the scene. Not only that, the gasoline
19 from her car, and the gasoline that was poured in
20 the house. Where'd she get the gasoline?

21 Victims come on scene. Look around their
22 house. Their gas can's missing. In the back yard
23 by the back door on the back steps, they keep the
24 gas can for the lawn mower.

25 Remember how I said Chris lived with them,

1 the 16-year-old? Frank made him do his chores,
2 and he had to mow his lawn. Frank had filled up
3 that gas can just right before that. So he had so
4 much gas. And it's a five-gallon gas tank, just
5 enough to pour it in, just to get the lawnmower
6 going.

7 Here's a whole gas can sitting right there on
8 the back door right where she broke in that now
9 happen to be missing. We don't know what she did
10 with it. But we know it was missing. We know the
11 door was locked. And we know the gas can was
12 there that day. And no one else came or left that
13 house besides Frank and Jason and Toya Steward.
14 Because he broke up with her that day. He has
15 been trying to get out of this relationship for a
16 while. And she just wouldn't let it go.

17 At the end of this trial, I believe you will
18 find her guilty of arson, burglary, and attempted
19 murder of Jason Simmons. And I ask that you come
20 back and render that guilty verdict at the end of
21 this trial. Thank you.

22 **THE COURT:** Mr. D'Angelo.

23 **MR. D'ANGELO:** Thank you, Your Honor. May
24 please the Court.

25 **THE COURT:** Yes, sir.

1 **MR. D'ANGELO:** Good morning.

2 A mystery only stays a mystery when you don't
3 investigate. I've been involved with this case,
4 as you heard the dates, almost right at four years
5 now. As I was getting ready for this trial, I was
6 trying to think about opening statement I was
7 gonna give, try to think about how am I gonna
8 relate this case to y'all. What do I want y'all
9 to take away from my opening statement and take
10 away about what is this case?

11 And as I got to thinking about that, I
12 remembered as a kid, I used to read the Hardy Boys
13 books. I'm not sure if any of y'all are familiar
14 with these books, if you've ever read Nancy Drew
15 mysteries, read them as a child or read them to
16 your kids. And it got me thinking, "Man, I loved
17 these books."

18 My mom would buy them for me if I did well in
19 school or completed chores. She'd get them in a
20 (inaudible) and they'd be all shrink-wrapped
21 together at Sam's Club. And every once in a
22 while, she'd bring me a pack. And I'd be so
23 excited. Open them up. And I flipped through.
24 Looked at the covers of them. Look at the titles.
25 And they always had great titles. "While the

Opening Statement by Mr. D'Angelo

1 Clock Ticked," "Mystery of the Desert Giant," "The
2 Secret Panel."

3 And I'd look at them. I'd look at the
4 artwork on the front. I'd even flip them open.
5 Read some of the first chapters. "A Startling
6 Discovery," "The Battered (inaudible),"
7 "Disturbing Developments," "The Traffic Signal
8 Blew," "A Few Tiles Searched." And I'd try to
9 figure out maybe what's the book about.

10 But until I opened the book, until I read the
11 first page and the second page, the first chapter,
12 or the chapter after that, until I got to the end
13 of the book, couldn't solve the mystery. There
14 always was a twist. There always was something in
15 the book that required you to read and figure it
16 out. Because a mystery only stays a mystery when
17 you don't investigate.

18 This trial, ladies and gentlemen, is the
19 mystery. The government has presented you this
20 case that we'll be going through this week. A
21 mystery of arson, of attempted murder, of
22 burglary. And it's their job as we go through
23 this week to look at witness after witness and
24 fact after fact. It is their job to build chapter
25 after chapter, this mystery to you. So that at

1 the end in stunning fashion and completeness, they
2 can bring it to you that there's only one
3 conclusion, that Toya Steward must have started
4 that fire. .But what they've done is, they've come
5 up with a title. Come up with some fancy artwork.
6 And they've written some chapters for you.

7 Written Chapter One, "A Woman Scorned."
8 We'll talk to you about how Frank and Toya were in
9 a relationship, how they broke up, how Toya was
10 hurt.

11 Chapter Two, they'll talk, "The
12 Confrontation." How Toyota wanted her things
13 back, about how Toya was mad and was messaging
14 Frank.

15 Written Chapter Three for you. "The Scene of
16 the Crime." Toya went to Frank's house, her
17 boyfriend's home, who was supposed to be working
18 on her car that morning. She went into an open
19 door. She wanted her things back.

20 Chapter Four, "The Arsonist." That Jason
21 will state that he saw Toya outside and that it
22 had to have been Toya inside the house who burned
23 it down because he heard her. It had to have been
24 her. That's it.

25 Have you solved the case? Do you know what

Opening Statement by Mr. D'Angelo

1 happened? Of course not. You've got to
2 investigate. And you have to read on further.
3 You would expect in a case like this, that the
4 government would have Chapter Five for the clues,
5 witnesses talked to, neighbors interviewed,
6 locations, whereabouts vetted and verified that
7 the police would have investigated. I'd
8 suggest --

9 **MS. SAVAS:** Objection, Your Honor.

10 **THE COURT:** Basis?

11 **MS. SAVAS:** Pretrial motion.

12 **THE COURT:** Please approach.

13 (Sidebar conference is held off the record.)

14 **THE COURT:** The objection's overruled.

15 " You may proceed.

16 **MR. D'ANGELO:** I would posit Chapter Six you
17 should see. "The Arsonist." Potential injuries
18 that a person sustained. Investigation and
19 testimony of the dangers of starting a fire and
20 the flammability of gasoline, photos of a person
21 at the gas station receiving the gas, evidence of
22 a gas can found in a vehicle or at a home, or
23 certainly an investigation into the like.

24 The problem with this book that the
25 government has written for y'all is that they took

1 an assertion that Toya Steward started the fire.
2 They took that at conclusion, they took it at face
3 value, and they stopped their investigation there.
4 The government wants to paint a picture. They
5 have a fancy cover, a fancy picture of Toya
6 Steward running from a home engulfed in flames
7 behind her, clutching a gas can in hand.

8 Unfortunately, Toya Steward is not the face
9 of the investigation. As we go through, I'd ask
10 that y'all pay attention. As Ms. Blazer and I are
11 going to be talking to these witnesses, two
12 questions that we're going to be asking of these
13 witnesses. First, how important -- or rather --
14 excuse me. How easy was it to get that
15 information? How easy was it to get that
16 information? And how important was it for that
17 information for the jurors, for each and every one
18 of you, to have? How important was it for you to
19 have that piece of information in order to render
20 your verdict?

21 They've given you a captivating title.
22 They've given you a captivating cover, again,
23 trying to paint Toya at the front of that. But
24 ladies and gentlemen, I would pose to you the two
25 most important people in this trial is Detective

Opening Statement by Mr. D'Angelo

1 Brittany Sinke, who is just now Sergeant Cheeks,
2 and Frank Simmons.

3 You're gonna have the opportunity to hear
4 from Detective Sinke, the investigation that she
5 did; the investigation that she did not do. And
6 you're gonna have an opportunity to hear from
7 Mr. Frank Simmons.

8 As I stated at the beginning of this opening,
9 four years I have been involved in this case, just
10 at four years. Four years, I had been waiting to
11 ask Mr. Frank Simmons some questions. I hope
12 y'all are as ready for those as I am. The mystery
13 only stays a mystery when you don't investigate.

14 **THE COURT:** The state may proceed,
15 Your Honór.

16 **MS. SAVAS:** Thank you.

17 **THE COURT:** You're welcome.

18 **MS. SAVAS:** At this time, the state calls Dan
19 Heiterer.

20 **THE CLERK:** Please raise your right hand.
21 Place your left hand on the Bible.

22 **DANIEL HEITERER**

23 having first been duly sworn, testifies as follows:

24 **THE CLERK:** Please be seated. Please state
25 your full name, spelling your last name directly

1 into the microphone.

2 **THE WITNESS:** Daniel Brewer Heiterer. It's
3 D-a-n-i-e-l H-e-i-t-e-r-e-r.

4 **THE COURT:** You may proceed. Sir, please
5 speak directly into the microphone. Thank you.

6 **DIRECT EXAMINATION**

7 **BY MS. SAVAS:**

8 **Q** Good morning. You just stated your name.
9 Can you say it one more time?

10 **A** Daniel Heiterer.

11 **Q** Okay.

12 Dan. How old are you?

13 **A** 31.

14 **Q** And are you working?

15 **A** Yes, ma'am.

16 **Q** What do you do?

17 **A** I'm a longshoreman.

18 **Q** And back in 2020, specifically back in
19 February 8, where were you living around that time?

20 **A** 2042 Wadbury Lane.

21 **Q** Okay.

22 Were you around that area around two o'clock
23 in the afternoon that day?

24 **A** Yes, ma'am.

25 **Q** Do you live in the area -- is that nearby

1 [REDACTED] Avenue in West Ashley?

2 A As I'm aware of, yes, ma'am.

3 MS. SAVAS: Okay.

4 May I approach, Your Honor?

5 THE COURT: You may.

6 BY MS. SAVAS:

7 Q Dan, I'm going to show you what has been
8 admitted into evidence as State's Exhibits 1 through
9 5 -- 1 through 4 -- 5. Sorry. Looking at these, do
10 they accurately represent with what's within them?

11 A Yes, ma'am.

12 Q Okay.

13 State is publishing State's Exhibit 1.

14 Dan, just so we --

15 Bear with me while I -- all right.

16 Just so we get acclimated with the area, this
17 a map of Charleston. This Mount Pleasant over here?

18 A (No audible response.)

19 Q Is that Mount Pleasant?

20 A Yes, ma'am.

21 Q Okay.

22 And this is downtown and West Ashley?

23 A Yes, ma'am.

24 Q And is that an area up here off of 61?

25 A Yes, ma'am.

1 Q Getting a closer look. Is this off of Bees
2 Ferry Road and 61 right here of this area?

3 A Yes, ma'am.

4 Q Okay.

5 Is it just past (inaudible) and all that in
6 West Ashley? All right.

7 Now, in this map, this is Wood Avenue. And
8 that's 2245. Is that the area?

9 A Yes, ma'am. That is.

10 Q Now it's not what it looks like today. But
11 back then, is this what it looked like from the street
12 view?

13 A Yes, ma'am. It is.

14 Q And was this the house?.

15 A Yes, ma'am.

16 Q Showing you State's Exhibit 5. This is a
17 front view of the home that day, or back then?

18 A Yes, ma'am. That's what the house looked
19 like.

20 Q But this is not -- these cars weren't there.
21 This is just a photo from Google to show what the house
22 looks like years ago?

23 A Yes, ma'am.

24 Q Okay.

25 Dan, when you were driving around that day,

1 did you notice anything?

2 **A** We had just made a Costco trip. We were
3 headed about 1:30, around that time, yes, ma'am,
4 westbound up 61. And I noticed smoke coming from the
5 road about that time, making a left-hand turn into my
6 neighborhood.

7 **Q** Okay.

8 **A** Just noticed that the smoke looked different
9 than leaves typically would. So I happen to go by that
10 way. Because there's two routes to go to my house from
11 that -- from that point. So I went past and noticed
12 that it was a little bit more than just smoke from
13 leaves. So I stopped. Kind of looked around. And
14 that's when I was like holy crap.

15 **Q** And what did you see when you got closer to
16 where the smoke was coming from?

17 **A** I mean, you could watch the smoke get larger
18 and larger and larger. As I walked up the driveway to
19 see if, you know, there was vehicles there, if anybody
20 was home, a man walked around back. He had grass all
21 over him. I was like, "Hey, man. You good?" And he
22 was like yeah. He gave me a thumbs-up. You could tell
23 he was kind of walking it off or whatever.

24 At that point, I had just stood across the
25 road and did what I had to do as far as get my vehicle

1 out of the way. I think at that point I had already
2 called 911.

3 Q Okay.

4 Do you remember about what time you had
5 called 911?

6 A I couldn't tell you exact time. I could tell
7 you between 1:30 and 2:10.

8 Q Okay.

9 So about two o'clock --

10 A Yes, ma'am.

11 Q -- could have been?

12 And when you pull up to the house, what did
13 you see? Did you see any flames --

14 A Not --

15 Q -- or smoke?

16 A -- initially. At first, it was just smoke
17 that looked like it was coming from the back of the
18 house.

19 Q Okay.

20 A But like I said, as you stood there, it was
21 starting to come out of windows, door frames, very
22 aggressively.

23 Q Okay.

24 Did you -- did you take a video when you were
25 out there?

1 **A** Yes, ma'am.

2 **Q** I'm showing you --

3 **MS. SAVAS:** Your Honor, may I approach the
4 witness?

5 **THE COURT:** Uh-huh.

6 **BY MS. SAVAS:**

7 **Q** -- State's Exhibit 6. Do you recognize this?

8 **A** Yes, ma'am.

9 **Q** How do you recognize that?

10 **A** Yesterday the Special Investigator showed me
11 it.

12 **Q** Okay.

13 And is this a -- it's been admitted into
14 evidence without objection. Was this a video that you
15 provided to the state in preparation for this case?

16 **A** Yes, ma'am.

17 **Q** A video that you took from your cell phone
18 that day documenting the fire?

19 **A** Yes, ma'am.

20 **MS. SAVAS:** At this time, Your Honor, the
21 state seeks to publish to the jury State's
22 Exhibit 6.

23 **THE COURT:** You may proceed.

24 (Exhibit is played.)

25 **BY MS. SAVAS:**

1 **Q** Dan, is that the cellphone video you took
2 with the house on fire?

3 **A** It is.

4 **Q** So you said you called 911 as soon as you saw
5 it. Was there fire trucks there yet?

6 **A** No, ma'am.

7 **Q** So you called the fire department and then
8 they arrived on scene?

9 **A** Yes, ma'am.

10 **MS. SAVAS:** May I approach the witness,
11 Your Honor?

12 **THE COURT:** Yes.

13 **BY MS. SAVAS:**

14 **Q** I am showing you what's been admitted as
15 State's Exhibit 7. Is this a screenshot of that video?

16 **A** Yes, ma'am.

17 **Q** This is a screenshot from the cell phone
18 video we just watched. Were these vehicles there when
19 you arrived on scene?

20 **A** Yes, ma'am. They were.

21 **Q** And is this the individual you saw coming
22 from the house?

23 **A** Yes, ma'am. It is.

24 **Q** And did you do anything else? Once you
25 called 911 and spoke with him, did you -- did you take

1 him anywhere?

2 **A** Yes, ma'am. After the fire department
3 arrived and the situation seemed like there's nothing
4 else I could do or provide any help, I was just talking
5 to him. He had no shoes and covered in dirt and grass,
6 like I said. So I was like, "Is there anywhere I could
7 take you? Or do you need something?"

8 He provided a location. So I gave him
9 that -- or punched it in. Took him there. He got out.
10 And I was the last time I ever talked him.

11 **Q** Okay.

12 No further questions. Please answer any
13 questions the defense may have. Thank you, Dan.

14 **THE COURT:** Mr. D'Angelo.

15 **MR. D'ANGELO:** Thank you, Your Honor.

16 **THE COURT:** You're welcome.

17 **CROSS-EXAMINATION**

18 **BY MR. D'ANGELO:**

19 **Q** Morning, Daniel.

20 **A** Morning.

21 **Q** So as you had stated, you lived -- you lived
22 in that neighborhood, correct?

23 **A** Currently, I do.

24 **Q** Okay.

25 Currently, you're still living there. Okay.

1 You're actually -- you were familiar with
2 Frank Simmons who lived at that house, right?

3 A No, sir. I've never met that man.

4 Q You hadn't told an officer in your statement
5 that you were familiar with Frank Simmons?

6 A The only reason why I was familiar with him
7 is when I gave that gentleman a ride back to that
8 location that he had given me. He mentioned that
9 his -- the owner of the house or whoever the person
10 that occupied it permanently was a longshoreman as well
11 with 1422A. And that was just casual conversation.

12 Q Okay.

13 But as you're pulling into your neighborhood,
14 you stayed you started to see kind of smoke coming up,
15 right?

16 A Yes, sir.

17 Q It's kind of like lighter colored almost
18 white smoke?

19 A Initially, yes, sir.

20 Q Trying to figure out is it leaves, what
21 exactly is burning, right?

22 A Yes, sir.

23 Q And as you're starting to pull in through the
24 neighborhood, you stated the smoke start getting a
25 little darker, right?

1 A Yes, sir.

2 Q Okay.

3 So you're trying to, again, investigate,
4 right? What's going on in my neighborhood, right?

5 A Yes, sir.

6 Q Okay.

7 You get to the house. And again, you're
8 seeing smoke. It's starting to come out of this house,
9 right?

10 A Yes, sir.

11 Q Okay.

12 You stated there's no -- no flames coming out
13 yet?

14 A Not initially.

15 Q And you see -- you see a gentleman coming out
16 of the house, right?

17 A I did not see him exit the house. But he
18 came from around, behind the house.

19 Q Okay.

20 And that's -- that person is Jason Simmons,
21 you know now, correct?

22 A Now, I do know. Yes, sir.

23 Q Okay.

24 And he's kind of -- kind of coming around the
25 side of the house. You said he looked flustered,

1 right?

2 A He looked dazed and confused.

3 Q Okay.

4 A Yes, sir.

5 Q All right.

6 And at that point, obviously, you could tell
7 this is a house fire that's happening, right?

8 A Yes, sir.

9 Q Okay.

10 So as you stated, you -- you had a cell phone
11 on you at that time, right?

12 A Yes, sir.

13 Q And you immediately called 911 --

14 A Yes, sir.

15 Q -- right?

16 You spoke with a dispatcher, correct?

17 A Yes, sir.

18 Q And you let them know, "Y'all, there --
19 there's a fire here at this house"?

20 A Yes, sir.

21 Q You were able to kind of ultimately help
22 Jason Simmons out, correct?

23 A I would hope so.

24 Q Okay.

25 Well, you were able -- you took a video of --

1 of the house, correct, that we just saw?

2 A Yes, sir.

3 Q Okay.

4 Jason Simmons. He's putting some stuff into
5 the back of his truck, right?

6 A Yes, sir.

7 Q All right.

8 And then you drove him to a friend's house,
9 correct?

10 A Yes, sir.

11 Q You -- you eventually -- the following day,
12 you ended up speaking with an officer, right?

13 A I wouldn't be able to tell you if it was the
14 following day.

15 Q Okay.

16 A I feel like it was a couple of days later
17 possibly.

18 Q But you, you initiated a phone call to
19 police, right?

20 A Yes, sir.

21 Q You wanted to let them know kind of what you
22 had seen?

23 A Yes, sir. I was more worried about being a
24 cohort.

25 Q Sure. Yeah. You wanted to reach out to them

1 and let -- you know, kind of -- kind of give a
2 statement of what --

3 A Yes, sir.

4 Q -- you had seen?

5 A It felt like I had just left the scene. And
6 I didn't know how to go about that afterwards.

7 Q Sure.

8 You never received a follow-up call from a
9 detective, did you?

10 A No, sir.

11 Q Okay.

12 You hadn't received any other call until this
13 case was getting ready for trial, right?

14 A Yes, sir. Approximately a week ago, I would
15 say.

16 MR. D'ANGELO: Okay.

17 Brief moment, Your Honor.

18 THE COURT: Yes, sir.

19 MR. D'ANGELO: Nothing further, Your Honor.

20 THE COURT: Any redirect of the witness?

21 MS. SAVAS: No, Your Honor. And --

22 THE COURT: Any objection to the witness
23 being excused from the state?

24 MS. SAVAS: None from the state, Your Honor.

25 THE COURT: From the state?

1 From the defense?

2 MR. D'ANGELO: None from the defendant, Your
3 Honor.

4 THE COURT: Sir, you're excused.
5 Call your next witness.

6 MS. SAVAS: The state calls Jason Simmons.

7 THE CLERK: Please raise your right hand and
8 place your left hand on the Bible.

9 JASON SIMMONS

10 having first been duly sworn, testifies as follows:

11 THE CLERK: Please be seated.

12 Please state your full name, spelling your
13 last name directly in the microphone.

14 THE WITNESS: Jason C. Simmons.
15 S-i-m-m-o-n-s.

16 DIRECT EXAMINATION

17 BY MS. SAVAS:

18 Q Thank you, Jason.

19 How are you feeling today?

20 A I'm all right.

21 Q We're here.

22 A Uh-huh.

23 Q Okay.

24 Jason, how old are you?

25 A I'll be 47 next month.

1 Q Okay.

2 I'm just gonna --

3 MS. SAVAS: Your Honor, may I approach the
4 witness?

5 THE COURT: You may.

6 BY MS. SAVAS:

7 Q I'm just going to lower this. 'Cause you're
8 soft-spoken. Just make sure everybody can hear you.

9 Forty-seven next month?

10 A Uh-huh.

11 Q What do you do for a living?

12 A I'm a sheet metal journeyman slash welder.

13 Q Okay.

14 So a lot of technical skills?

15 A Uh-huh.

16 Q Tradesmen?

17 A Yes.

18 Q Okay.

19 Jason --

20 A Okay.

21 MS. SAVAS: Is there a way to turn up his
22 microphone? We'll just have to make sure that --

23 THE WITNESS: I'll speak louder.

24 BY MS. SAVAS:

25 Q Jason, where are you from?

1 **A** I'm originally from New York.

2 **Q** Okay.

3 Do you ever live in Charleston?

4 **A** Yes.

5 **Q** All right.

6 When did you move down here?

7 **A** I want to say 1999.

8 **Q** Okay.

9 So you've been here a minute?

10 **A** Well, I've been coming down here my entire

11 life. This is where my father's from.

12 **Q** So you have family in Charleston?

13 **A** Yes.

14 **Q** And you know, Frank Simmons?

15 **A** My entire life. That's my cousin.

16 **Q** How is he your cousin?

17 **A** My father and his mother is brother and

18 sister.

19 **Q** Okay.

20 So y'all are first cousins?

21 **A** Yes.

22 **Q** Y'all are close?

23 **A** Yeah.

24 **Q** Okay.

25 Did you ever live with Frank?

1 A Yes.

2 Q Where did you live?

3 A Off of 61.

4 Q Did you live at [REDACTED] Avenue?

5 A Yes.

6 Q Do you recall when y'all moved in together
7 over there?

8 A I want to say it was cold. Sometime in
9 November.

10 Q Okay.

11 Were you living there back on
12 February 8, 2020?

13 A Yes.

14 Q Okay.

15 And so you had just recently moved there?

16 A Yes, ma'am.

17 Q Did you live with anything -- anyone else in
18 the home at the time?

19 A Christopher was staying there also.

20 Q Your nephew?

21 A Yes.

22 Q Is that Frank's son?

23 A That's Frank's son. But he calls me Uncle
24 Jason.

25 Q Uncle Jason?

1 **A** Uh-huh.

2 **Q** Okay.

3 How old was he at the time?

4 **A** 15, 16.

5 **Q** Okay.

6 So I want to go -- we're just gonna jump
7 right in -- all right? -- to February 8. Can you
8 describe -- were you home that morning?

9 **A** Yes, ma'am.

10 **Q** Was Frank home that morning?

11 **A** No. He left out early.

12 **Q** Okay.

13 You did not want to go with him.

14 **A** I didn't feel like doing no type of -- you
15 know, I work all through the week. So I didn't want to
16 help him on the weekend doing whatever he had to --

17 **Q** You weren't gonna burn your weekend helping
18 his --

19 **A** Right.

20 **THE COURT:** Sir, I'm going to need you to
21 speak as close to that microphone as you can.
22 Cause I can barely hear you. And we have to be
23 able to record everything that's being said.

24 **THE WITNESS:** Okay.

25 **THE COURT:** Sir, is there anyway you can get

1 a little closer to that microphone?

2 THE WITNESS: My, my chest is already on the
3 table.

4 THE COURT: Yeah.

5 And we can't move that mic.

6 THE WITNESS: I'll -- I'll speak up.

7 THE COURT: Thank you.

8 THE WITNESS: Uh-huh.

9 THE COURT: You may continue.

10 BY MS. SAVAS:

11 Q All right, Jason. So you did not want to go
12 help Frank with manual labor on your day off?

13 A Not at all.

14 Q Fair enough. What did you do instead that
15 morning?

16 A I just stayed home, relaxing, played my game.
17 I'm a gamer. So I turned on my game and started
18 playing my game.

19 Q Where do you play those games?

20 A In the den.

21 Q Okay.

22 Now, Jason, do you have a car?

23 A Yes.

24 Q What kind of car --

25 A Well, I -- I have a truck.

1 Q A truck?

2 A Yes.

3 Q Can you describe that truck?

4 A It's a 2001 Dodge Ram. It's blue.

5 Q Blue.

6 And does Frank have cars?

7 A Yeah, he has a car and a truck at the time.

8 Q What -- what kind of car does he have?

9 A He had a Dodge Challenger. And I think that

10 old truck is a Ford or something like that, a Ford

11 truck.

12 Q Do you know what car he took that day when he

13 went to go do the work?

14 A He took his truck.

15 Q So was his other car in the driveway?

16 A Yes.

17 Q And was your car in the front as well?

18 A Yes.

19 Q Okay.

20 Now, was anyone else home with you --

21 A No.

22 Q -- at that time?

23 So you were home alone?

24 A Uh-huh.

25 Q Jason, do you know the defendant Toya

1 Steward?

2 A Yes. I've met her before.

3 Q How do you know her?

4 A Through Frank?

5 Q Was she with Frank at that time?

6 A As far as at that day?

7 Q Just in that timeframe, were they dating?

8 A I know that morning I remember him arguing or
9 something like that.

10 Q Okay.

11 But have you met her before that day?

12 A Yes.

13 Q How many times would you say?

14 A A few times.

15 Q You've talked to her?

16 A Yes.

17 Q So you know her voice?

18 A Uh-huh.

19 Q You know what she looks like?

20 A Yes.

21 Q You know what kind of car she drives?

22 A Yes.

23 Q What kind of car?

24 A I want to say it was an Equinox.

25 Q Okay.

1 And you've seen her drive that car?

2 **A** Yes.

3 **Q** You -- every time you saw her, did she drive
4 that car?

5 **A** Yes.

6 **Q** Did she come over to y'all's house before?

7 **A** Yes.

8 **Q** Okay.

9 Did she drive that car there?

10 **A** Yes.

11 **Q** Okay.

12 Jason, do you see Ms. Steward in the
13 courtroom today?

14 **A** Yes.

15 **Q** Can you point her out for us?

16 **A** She's sitting between her lawyers.

17 **MS. SAVAS:** Let the record reflect the
18 witness and victim Jason Simmons in this case
19 identified the defendant, Ms. Toya Steward, in the
20 courtroom.

21 **THE COURT:** You may proceed.

22 **MS. SAVAS:** Thank you, Your Honor.

23 **BY MS. SAVAS:**

24 **Q** Jason, so you wake up. You start playing
25 your video games in the den. What happened?

1 ignore her.

2 Q Did you ignore her?

3 A Yeah. I finished playing my game.

4 Q Why didn't you want to answer the door and
5 just tell her Frank wasn't home?

6 A I didn't want to get involved with their
7 two -- whatever they had going on.

8 Q Okay.

9 A I stay out of stuff like that. He does the
10 same for me. So...

11 Q Did you know she was coming over that day?

12 A No.

13 Q Did Frank tell you she was coming over that
14 day?

15 A No.

16 Q Did she come over unannounced before?

17 A Yes.

18 Q Was it more than once?

19 A A couple of times, she came over at night
20 unannounced.

21 Q Did she eventually leave that first time?

22 A That morning?

23 Q Yes, sir.

24 A Yeah. It was a few hours later though.

25 Q What she was doing for those few hours?

1 **A** Banging on the door.

2 **Q** For a few hours outside?

3 **A** Yeah. I guess she thought it was someone in
4 there, figuring that it was -- Frank car was there and
5 my truck was there. But we figured that -- you know,
6 no one answered the door. I figured she would have
7 left.

8 **Q** Okay.

9 And after she left a few hours later, what
10 happened?

11 **A** I went outside. Got my lunch -- well, got my
12 dinner from the night before. Came back in the house.
13 Heated it up in the microwave. Ate a little bit of it.
14 And went -- then I went to use the bathroom.

15 **Q** What happened when you were in the bathroom?
16 Well, besides the personal stuff. Did anything --

17 **A** Well, I was using the bathroom. And I hear
18 our -- well, what I could think of, the only sound that
19 that was, was the back door being -- it was a loud
20 sound.

21 **Q** Let me pause. When you went out to your
22 truck, got your food, came back inside, before you went
23 to the bathroom, did you notice anything else outside?

24 **A** No.

25 **Q** Okay.

1 Did Toya come back a few hours later? Or did
2 Toya come back a little bit after she left?

3 A Yes.

4 Q Did you see her come back?

5 A That's when I heard some more banging on the
6 door. And I went in the laundry room and looked
7 through that window and seen that there was someone at
8 the door. Well, it was Toya at the door.

9 Q So she left, came back, and you saw her
10 through the laundry room window. Did you see her car?

11 A At the time from the laundry room window, you
12 can't see the driveway. You can see the side door.

13 Q Uh-huh.

14 A So that's when I'm seen her.

15 Q Did you see her car there again that same
16 time?

17 A Yes.

18 Q Okay.

19 A But not at the time when I looked out --

20 Q The laundry room.

21 A -- the laundry room window.

22 Q But at some point, you did see her car there
23 again?

24 A Oh, yeah. You can hear the car -- you can
25 hear a car pull up when you're sitting on the --

1 Q Gotcha.

2 A -- couch in the den. And you can see it.

3 Q Okay.

4 So you see her and you hear her come back.

5 And then you go to the bathroom?

6 A Yes, I went to the bathroom.

7 Q Okay.

8 So she comes back to the house. You see her.

9 You hear her. Then you go to the restroom. And then
10 what happens when you're in the restroom?

11 A While I'm in the restaurant for a few
12 minutes. And I hear the back door glass shatter. Now
13 I'm hearing someone in the house. And as I'm saying --
14 you know, trying to identify what's going on. That's
15 when I hear her voice. She's in a rage. And I want to
16 say I -- that's when I texted my cousin Frank. She's
17 in the house. Call 911. And that was about it from
18 there.

19 Q So she was in the house. You could hear her
20 voice.

21 A Yes.

22 Q Was she talking to anyone?

23 A She was, I guess, talking to herself. She
24 was in a rage.

25 Q Was she yelling?

1 **A** Yes. She was yelling, cursing.

2 **Q** Did you hear anything else in the commotion?

3 **A** Golf clubs, clothes rattling, stuff like
4 that.

5 **Q** So once you heard the commotion of Toya,
6 yelling and screaming and, with things in your house,
7 what did you hear next?

8 **A** That was the tricky part. Because it sounded
9 like I was hearing like almost bathtub water running or
10 something. I just -- I'm like, What is this? I'm
11 hearing water. And then when I realized this isn't
12 water, I remember we had a gas can. Christopher just
13 cut the yard that weekend. And that's when I've put
14 one and one together. This is gas, I'm thinking. And
15 that's when I heard the explosion. And --

16 **Q** What happened after the explosion happened?
17 Were you inside the bathroom still?

18 **A** Yeah. I was inside the bathroom. All the
19 lights turned off. I started feeling on the doorknob.
20 Because I wasn't sure what was on the other side of the
21 door. I started touching the doorknob. And then I
22 know I smelled fire. I smelled smoke. And I told
23 myself I wasn't going to burn alive in this house.

24 I opened up the door. It was just flames in
25 the hallway. I wasn't sure if my room was on fire.

1 Q Uh-huh.

2 A But I -- that was my fastest exit, I was
3 thinking. So I just stood back to the back of the
4 bathroom and ran as fast as I can through the hallway
5 into my room out the window.

6 Q When you jumped out the window, where did it
7 put you? On the side yard? Or in the back?

8 A I would have been in the front of the yard.

9 Q The front yard?

10 A Uh-huh.

11 Q Okay.

12 And what did you do once you make it outside?

13 A Took a deep breath. And then I seen an old
14 lady was in a car. She asked me did I needed help. and
15 I told her yes, call 911 basically.

16 Q Did anyone else come to help you?

17 A Another car pulled up. It was -- it was a
18 guy and his girlfriend. And they asked me did I need
19 any help. And I was like, "Yes, I need to get in touch
20 with my cousin. My phone and everything is in house."
21 I was in pajamas and socks. I was like everything is
22 in house. And I don't know how to get in touch with
23 them. And I -- I didn't know his number by heart. But
24 I know a friend of ours knew his number. And I told
25 him to take me to Arthur Seabrooke house. And that's

1 how I got in touch with Frank.

2 Q And was that person Dan who just testified?

3 A No. It wasn't Dan. It wasn't Dan who just
4 testified who -- who -- well, it don't -- he -- this is
5 four years ago. It didn't look like him. I thought it
6 was someone else actually.

7 Q Was it a young man?

8 A Yes.

9 Q A young white man?

10 A Yes. It was a white man.

11 Q Okay.

12 And he had called 911 and took you to your --
13 to your friend's house?

14 A Yes.

15 Q Okay.

16 You -- have you ever seen him before?

17 A No.

18 Q Have you seen him since that day?

19 A No.

20 Q So you really wouldn't know if it was him or
21 not?

22 A Right.

23 Q You're just assuming because I said that?

24 A Right.

25 Q Okay. I got you. All right.

1 Jason, I'm gonna show you what's been
2 admitted as State's Exhibit 7. Is this you?

3 A I think so.

4 Q And is that your pickup truck?

5 A Yes, that's my truck.

6 Q Is this Jason's car?

7 A That's Frank's car.

8 Q Or Frank's car. You're right.

9 Is that your house on fire?

10 A Yes, that's our house.

11 Q Is this how your vehicle was parked that
12 morning?

13 A Yes.

14 Q Is that where they were parked when Toya came
15 over the first time?

16 A Yes. We always park our vehicles like that.

17 Q Is that how -- you always park that way?

18 A Yeah. I always park on the grass.

19 Q And is that how y'all were parked when she
20 came over the second time?

21 A Yes.

22 Q Do you recall where she parked her car the
23 first time she came over?

24 A I want to say between both of our vehicles.

25 Q Do you recall where she parked the second

1 time she came over?

2 A Same place.

3 Q So right around here?

4 A Yes.

5 Q So you have an easy view to see that her car
6 was there, 'cause it right there?

7 A Yes.

8 Q Jason, showing you what's been admitted as
9 State's Exhibit 8. Is this your house after it burnt
10 down?

11 A Yes, ma'am.

12 Q This was where Frank's car was parked?

13 A Yes, ma'am.

14 Q Jason, you said you come out the front
15 window, your bedroom. Which window would that be?

16 A That's the window right behind the bushes to
17 your left.

18 Q This window right here?

19 A Yes.

20 Q So you jumped out of this window escaping the
21 fire?

22 A Yes.

23 Q Showing you what's been admitted as State's
24 Exhibit No. 9. Is this that window you jumped out of?

25 A It's hard to tell from that picture. But

1 yes, pretty much I'm thinking that's the same window.

2 Q So that's your bedroom window and this is the
3 front door?

4 A Yes.

5 Well, that's the flower bed by the front
6 door.

7 Q Right here?

8 A Yes.

9 Q I'm showing you what's been admitted as
10 State's Exhibit 47. This is an inside photo. Is this
11 your bedroom after the fire?

12 A Yes, it looks like it.

13 Q Is this the window you jumped out of?

14 A Yes, ma'am.

15 Q So the whole house was on fire. And you had
16 to jump through this window with the lines and
17 everything?

18 A Uh-huh. Yes.

19 Q I'm showing you what's been admitted as
20 State's Exhibit 10. Is this a picture of your side
21 house?

22 A Yes, that's the side of the house.

23 Q What is this door here?

24 A That's the door that she was banging on.

25 Q Is that -- do you know what room that is?

1 **A** That's the den.

2 **Q** The den you were in playing the PlayStation?

3 **A** Yes.

4 **Q** And this is where she was banging?

5 **A** Yeah. That's the door that you could come in

6 at.

7 **Q** What is this?

8 **A** That's a window.

9 **Q** What room is that?

10 **A** That's a laundry room.

11 **Q** So that's the laundry room window. You had a

12 clear view of the driveway where her car was parked?

13 **A** Yes.

14 **Q** And then what is this over here?

15 **A** I want to say that's also the laundry room.

16 **Q** That's the back area?

17 **A** Yeah. Yes.

18 **Q** So Jason, just to clarify: This back area is

19 your laundry room?

20 **A** Uh-huh.

21 **Q** And this is like a den?

22 **A** Well, those --

23 **Q** Other den?

24 **A** The door that you pointed at where the

25 garbage cans is at, that's a door.

1 Q Okay.

2 These are windows?

3 A Yes.

4 Q Okay.

5 So it's hard to tell, right --

6 A Yes.

7 Q -- in this picture? All right.

8 What is this picture of, State's Exhibit 11?

9 A That looks like the -- almost --

10 Q The back of the house?

11 A -- the back of house. Yes.

12 Q All right.

13 This your dining room?

14 A Yes, ma'am.

15 Q The back porch?

16 A Yes, ma'am.

17 Q State's Exhibit 12 showing you. Is this

18 another view of your backyard at that time?

19 MR. D'ANGELO: Objection. Your Honor,

20 leading.

21 THE COURT: Technically. But they're

22 admitted into evidence. I don't think it's really

23 any -- overruled. I'm going to give her some

24 latitude in the interest of time.

25 MR. D'ANGELO: Understood, Your Honor.

1 **THE COURT:** Watch the leading, Ms. Savas.

2 **MS. SAVAS:** Yes, ma'am.

3 **BY MS. SAVAS:**

4 **Q** Jason, what is this door?

5 **A** That's the back door to get into the house.

6 **Q** Is that the same door you heard her break in
7 through?

8 **A** Yes.

9 **Q** Jason, you said y'all kept a gas can. Do you
10 recall where you used to keep the gas can?

11 **A** Right there on a back porch.

12 **Q** So right around this area, the back porch
13 area?

14 **A** Yes, ma'am.

15 **Q** Was it there that morning?

16 **A** I never went in the backyard that morning to
17 know. But I'm -- I'm thinking it, yeah, should be
18 there. Christopher just cut the yard probably that day
19 or two before that.

20 **Q** So you keep it in the same spot?

21 **A** Yes. It's always there.

22 **Q** And no one used it since Chris mowed the
23 lawn?

24 **A** No.

25 **Q** Showing you State's Exhibit 13. What is this

1 door?

2 A I'm not even sure. It's hard to tell.

3 Q Is this your back porch?

4 A It could be after --

5 Q This is Exhibit 12.

6 A Well, I guess that'd be it after the fire,

7 yes.

8 Q You -- you didn't really look around like --

9 A Not --

10 Q -- too much after the fire --

11 A No.

12 Q -- did you? Okay.

13 So was that back door glass, you said?

14 A Yes.

15 Q Do you -- can you tell what this is here?

16 A That look like glass on the floor.

17 Q And did you hear glass shatter before she

18 broke in?

19 A Yes.

20 Q Showing you State's Exhibit 14. Is this just

21 a picture beside the house?

22 A Uh-huh. Yes, ma'am.

23 Q Showing you picture State's Exhibit 15.

24 Jason is this how y'all's cars were parked?

25 A Yes, ma'am.

1 Q And then this is that side door?

2 A Yes, ma'am.

3 Q And then the laundry room is in the back
4 there?

5 A Yes, ma'am.

6 Q And where did she park her car that day
7 again?

8 A Right between ours.

9 Q Right here. Okay.

10 Jason, you said you knew what kind of car she
11 drive. Showing you State's Exhibit 16. Is this the
12 car she drove that day?

13 A Yes.

14 Q That's the Chevy Equinox?

15 A Looks familiar, yes.

16 Q Showing you what's been marked as -- and
17 admitted as State's Exhibit 39, Jason. Now it looks a
18 little different. Do you recognize this room?

19 A That's the bathroom. Yeah, I want to say
20 that's the bathroom?

21 Q The aftermath of your fire?

22 A Yes.

23 Q Is that the room you were hiding in?

24 A Yes. That's the room I was in.

25 Q Jason, you said that you hid in this bathroom

1 when you heard the glass shatter?

2 A Yes, ma'am.

3 Q About how far away from that bathroom is your
4 bedroom window you jumped out of?

5 A My -- my bedroom is adjacent to the bathroom.
6 So it's just the hallway. And then my room is right
7 there.

8 Q When you opened that bathroom door, did you
9 see the flames?

10 A Yes.

11 Q Were you scared?

12 A Of course, I was.

13 Q What went through your mind that day?

14 A I'm not burning alive.

15 Q Did you think you were gonna die?

16 A No. I mean, my instincts kicked in. And my
17 main thing was getting -- getting out this house.

18 Q You weren't gonna let yourself die that day?

19 A No.

20 Q Jason, this was four years ago. Do you still
21 think about this?

22 A Here and there.

23 Q After the fire, did you think about it?

24 A Yes. After the fire, I thought about it.

25 Q How did that affect you?

1 **MR. D'ANGELO:** Objection. Relevance,
2 Your Honor.

3 **THE COURT:** I'm sorry. Basis of the
4 objection?

5 **MR. D'ANGELO:** Relevance.

6 **THE COURT:** Sustained. Relevance.

7 **MR. D'ANGELO:** Move to strike, Your Honor.

8 **THE COURT:** Ladies and gentlemen, you are to
9 disregard the last question and answer in your
10 deliberations.

11 You may proceed.

12 **BY MS. SAVAS:**

13 **Q** Jason, do you -- were you able to salvage any
14 of your things that day?

15 **A** Some things. A little clothes, but they was
16 filled with smoke. So I really, you know, can't really
17 keep anything.

18 **Q** Did y'all have to eventually move?

19 **A** Yes.

20 **Q** Jason, who did you see that day at your
21 house?

22 **A** I seen Toya.

23 **Q** And who burned your house down?

24 **A** Obviously, I would say Toya.

25 **MS. SAVAS:** Please answer any questions the

1 defense may ask.

2 THE COURT: You may proceed.

3 MR. D'ANGELO: Thank you, Your Honor.

4 THE COURT: You're welcome.

5 CROSS-EXAMINATION

6 BY MR. D'ANGELO:

7 Q All right.

8 Good morning, Jason.

9 A Good morning.

10 Q All right.

11 As we've heard, Frank Simmons was your
12 cousin, right?

13 A Yes, sir.

14 Q As family often does, he was letting you live
15 with him at that time, right?

16 A Yes.

17 Q You didn't permanently live at the house, did
18 you?

19 A Yeah. I was permanently staying there. I
20 was paying some bills there.

21 Q Your name wasn't on the lease when --

22 A No.

23 Q -- you had moved in, right?

24 A No. It wasn't on the lease.

25 Q You were living on an air mattress in the

1 room, correct?

2 A Yes. Until I got my furniture.

3 Q Okay.

4 You didn't have any furniture in the room at
5 the time, right?

6 A We fairly just moved there.

7 Q Okay.

8 You had met Toya a couple of times
9 previously, right?

10 A Yes.

11 Q Okay.

12 You'd met her at -- at Frank's house,
13 correct?

14 A Yes.

15 Q But again, like you said, it's not -- it's
16 not your girlfriend, right?

17 A You are correct.

18 Q You tried not to get too involved in Frank's
19 relationships?

20 A Well, I -- well, I had my own relationship.
21 He had his.

22 Q Okay.

23 You know, when you spoke with the
24 detective -- you remember speaking with the detective
25 that afternoon, right?

1 A The -- the day of the fire?

2 Q The day of the fire, correct?

3 A Yes.

4 Q Okay.

5 You couldn't quite remember Toya's name that
6 day, right?

7 A Couldn't remember her name.

8 Q Yeah. Frank -- Frank had to remind you that
9 her name was Toya?

10 A Well, yes. It's a possibility. Because I
11 used to always call her Tonya, or something like that.

12 Q Okay.

13 But again, you tried not to get too involved
14 with Frank's girlfriends, right?

15 A Yes.

16 Q Had you met Destiny Brees at that time?

17 A From what I'm -- from what I'm hearing with
18 Destiny, I'm thinking this is a little girl that --
19 from one of Frank's prior relationships, was her
20 daughter.

21 Q Okay.

22 Had you met Crystal Dalsing at that time?

23 A Yes.

24 Q Talk a bit about that morning. You had said
25 it's a Saturday morning, right?

- 1 **A** Yes.
- 2 **Q** You just -- you just wanted to relax --
- 3 **A** Pretty much.
- 4 **Q** Correct?
- 5 You worked hard week, right?
- 6 **A** Yes.
- 7 **Q** Frank had told you that he was going out that
- 8 morning, right?
- 9 **A** Yes.
- 10 **Q** And told police that he was going to pick up
- 11 a mechanic friend of his, correct?
- 12 **A** Yes.
- 13 **Q** He had left about 8:30, I think you had
- 14 stated earlier?
- 15 **A** It was early in the morning.
- 16 **Q** It was early in the morning, right?
- 17 **A** Uh-huh.
- 18 **Q** And you were just -- you were just trying to
- 19 hang out. You stated you were wanting to play your
- 20 PlayStation, right?
- 21 **A** Pretty much.
- 22 **Q** Sometime about 9, 10 o'clock a.m., you hear a
- 23 bang on the door, right?
- 24 **A** I'm hearing banging on the door.
- 25 **Q** Okay.

1 Someone's outside, right?

2 A Yes.

3 Q You're -- you're hearing yelling?

4 A Well, I actually seen who was outside.

5 Q Okay.

6 Well, you said you kind of went to the -- the
7 side window and you peeked out --

8 A Right.

9 Q -- right?

10 Now you weren't trying to let anyone know
11 that you were in the house, right?

12 A I was just wanting to relax. I didn't want
13 to get into no anything. Because I was just, you know,
14 at home, right?

15 Q Right. You don't -- you don't want to be
16 involved with whatever is going on out there, correct?

17 A Correct.

18 Q That's why you -- you text Frank, right?

19 A That his girlfriend's outside and she's --

20 Q You're letting him know that she's outside,
21 right?

22 A Right.

23 Q And he tells you don't -- don't engage,
24 correct?

25 A Yeah.

1 Q Again, you told detective you're just looking
2 through the slat on the side of the blinds, right?

3 A Uh-huh.

4 Q You're not even trying to -- you're not even
5 trying to touch the blinds so the blinds don't move,
6 correct?

7 A Correct.

8 Q So you go about your day. You're just
9 relaxing that morning, right?

10 A Uh-huh.

11 Q You had said that you'd seen Toya's car was
12 parked on the driveway behind the black Challenger,
13 correct?

14 A No. In between my truck and the black
15 Challenger.

16 Q I'm gonna show you -- Jason, I'm showing you
17 State's Exhibit 15.

18 So the first time when Toya arrives at the
19 house, you said Toya had arrived that morning, right?

20 A Yes.

21 Q Okay.

22 The first time Toya arrives, you stated that
23 Toya had parked behind Frank's challenger, correct?

24 A No.

25 Q Your statement is that she had parked between

1 the two cars?

2 A Yes.

3 Q But you just continue on without your day,
4 right?

5 A Yeah. Pretty much.

6 Q You're -- you're not engaging with her. You
7 stated later that day, you got kind of hungry, right?

8 A Uh-huh.

9 Q So you had gone and gotten your food --

10 A Yes.

11 Q -- right?

12 Go back inside. And you heated it up, right?

13 A Uh-huh.

14 Q Told detectives you heated it for three
15 minutes, right?

16 A Fairly around that time, three minutes.

17 Q You just took it out and it was still cold,
18 wasn't it?

19 A Yeah.

20 Q Okay.

21 So you put it back in. You put it back into
22 the microwave and went to the bathroom --

23 A Uh-huh.

24 Q -- correct? Okay.

25 Prior to putting the food in the microwave,

1 you stated that you had heard Toya come back to the
2 house, right?

3 **A** Yes. When -- when -- when I -- when I --
4 when she left -- it was the time that she left. That's
5 when I went outside to my truck and got my food from
6 that night. It was -- I -- I remember because it was
7 cold.

8 **Q** Okay.

9 **A** So my -- my food was very cold. I put it in
10 the microwave. Ate a little bit of it. Figured it was
11 still cold. Let me heat it up some more. And that's
12 when I went to the bathroom.

13 **Q** Okay.

14 And you -- and as you said then, you hear her
15 come back to the house --

16 **A** Yes.

17 **Q** -- right?

18 And you went and peeked out the laundry room
19 window, right?

20 **A** Yes.

21 **Q** Okay.

22 Frank, I'm showing you State's Exhibit 10.

23 All right. Excuse me, Jason. Jason. I'm sorry.

24 Jason, this back window, that's the laundry
25 room, right?

1 **A** Yes.

2 **Q** That's the door to the den, right?

3 **A** Yes.

4 **Q** And this window is a window in the den,
5 correct?

6 **A** The only window I thought that was in the den
7 was the two front where Frank car's parked at.

8 **Q** Okay.

9 If I was to show you a picture, or a floor
10 plan of the house that you were living in, did help --
11 help you remember, you think?

12 **A** A little bit.

13 **MR. D'ANGELO:** Your Honor, permission to
14 approach the witness?

15 **THE COURT:** You may.

16 **BY MR. D'ANGELO:**

17 **Q** All right, Jason. I show you Exhibit 20.
18 This is the layout of the house that you were living in
19 at that time, right?

20 **A** Yes.

21 **Q** Okay. And this here, this is the den that
22 you were hanging out in, correct?

23 **A** Yes, sir.

24 **Q** That's where you were playing the
25 PlayStation.

1 **A** Yes, sir.

2 **Q** And that's the door that leads out to the
3 driveway --

4 **A** Yes.

5 **Q** -- right? Okay.

6 And that's a window that's there to the den,
7 right?

8 **A** Where's the windows that was in the front of
9 the den? Can you show me that? There was two windows
10 that's in front -- all right.

11 **Q** So that's the window -- that's the front of
12 the house --

13 **A** Okay.

14 **Q** -- right? There's -- there's the front door,
15 right, Jason?

16 **A** Okay.

17 **Q** Okay.

18 So then this is -- it was a garage that had
19 been converted into a den, right?

20 **A** Yes.

21 **Q** Okay.

22 So that's the door that leads out to the side
23 of the driveway, right? That's the window that's at
24 the back of the den, correct?

25 **A** See. I don't remember that window being

1 there. But I would think so if that's the blueprint to
2 the house.

3 Q And you see this marked in the back "laundry
4 room," --

5 A Yes.

6 Q -- right? That's the laundry room in the
7 back of the house, correct?

8 A Uh-huh.

9 Q There's a window off that laundry room right
10 there, correct?

11 A Yes.

12 Q All right. So again, Jason, I'm gonna show
13 you State's Exhibit 10 here. Again, this is the side
14 of that house --

15 A Okay.

16 Q -- correct? All right.

17 This is the door off the den to the driveway.
18 This is that window that we saw on the diagram --

19 A Yes.

20 Q -- in that den, right?

21 A Yes.

22 Q And that's the window in the laundry room,
23 correct?

24 A Yes.

25 Q I want to make sure I get this right. So you

1 had told detectives that when Toya came back to the
2 house, you looked out the laundry room, correct?

3 A Yes.

4 Q All right.

5 You said her vehicle was parked all the way
6 over here between your two cars, right?

7 A Yes.

8 Q Again, showing you State's Exhibit 15. All
9 the way over here is where you're saying her car was
10 parked --

11 A Yeah. In --

12 Q -- correct?

13 A In between our two vehicles.

14 Q Okay.

15 You stated on direct that when she came back,
16 you could hear the sound of the engine, right?

17 A Say that again, sir.

18 Q You had said you could hear the sound of her
19 engine in the driveway?

20 A No. I don't remember saying I could hear the
21 sound of her engine in the driveway.

22 Q When Ms. Savas had asked you questions a
23 minute ago, you stated that you could hear the sound of
24 Ms. Steward's vehicle, the engine, in the driveway,
25 correct?

1 A Well, I heard a car pull up. And then I
2 heard her knocking on the door.

3 Q Okay.

4 But you were peering out that side back
5 window, right?

6 A Well, the -- the front of the house, you can
7 see a car pull up through the two front windows?

8 Q Correct.

9 But I'm talking about when you were looking
10 out the window from the -- from the laundry room.

11 A Yes.

12 Q Okay?

13 A Uh-huh.

14 Q When you looked out the window in the laundry
15 room, you couldn't quite see the car in the driveway,
16 could you?

17 A You could see a car in the driveway.

18 Q You could hear the sound of the engine in the
19 driveway, right?

20 A No. You could -- you could see a car.

21 Q Again, you'd gone and gotten your food,
22 right? You'd heated it up, correct?

23 A Yes.

24 Q And you had gone to the bathroom. Now,
25 understandably, the events of that day, a lot happened,

1 right?

2 A Yes.

3 Q When you were -- Detective Sinke, you met
4 with the detective that afternoon, right?

5 A Yes.

6 Q Gave her a statement of what happened, right?

7 A Yes.

8 Q There -- there were some time gaps that you
9 kind of had when you were speaking with her, right?

10 A Well, when the -- when all this happened and
11 I talked to that detective, I think I was still in
12 shock.

13 Q Yeah. A lot had happened that morning,
14 right?

15 A Yes.

16 Q It was Frank who had to remind you that Toya
17 had come back at one o'clock, right?

18 A No, frank didn't remind me of anything. I
19 couldn't get in touch with Frank after I texted him to
20 call 911.

21 Q I'm talking about when the detect -- when you
22 were speaking with the detective, right?

23 A Right.

24 Q Frank was there with you at that point?

25 A Yes.

1 Q You both were talking with her together?

2 A Yes.

3 Q She was asking y'all what had happened,
4 correct?

5 A Yes.

6 Q And y'all both were talking with her,
7 correct?

8 A Yes.

9 Q And again, understandably, there were some
10 gaps that you had when you were speaking with her,
11 right?

12 A Could have been. It was four years ago, sir.

13 Q And again --

14 A I don't really recall.

15 Q And again, Frank had to remind you that Toya
16 had come back to the house?

17 **MS. SAVAS:** Objection. Asked and answered.

18 **THE COURT:** Basis?

19 Please repeat the question.

20 **MR. D'ANGELO:** Frank had reminded you --

21 **THE COURT:** No, repeat the question to the
22 witness.

23 **BY MR. D'ANGELO:**

24 Q Frank had reminded you that Toya had come
25 back to the house at one o'clock?

1 **THE COURT:** Overruled.

2 **THE WITNESS:** No. I don't recall that.

3 **BY MR. D'ANGELO:**

4 **Q** You were in the bathroom when you stated you
5 heard a loud noise, right?

6 **A** I heard the back door glass smashing.

7 **Q** Total detective it sounded like a gunshot had
8 gone off --

9 **A** Yes.

10 **Q** -- right?

11 Understandably, you're terrified, right?

12 **A** Yes.

13 **Q** The door to the bathroom had been shut,
14 right?

15 **A** Yes.

16 **Q** You got up. You turned the light off,
17 correct?

18 **A** Yes.

19 **Q** Locked the door.

20 **A** It was already locked.

21 **Q** Okay.

22 And you actually got into the shower behind
23 the shower curtain, correct?

24 **A** This is all after the explosion.

25 **Q** After the explosion?

1 A Uh-huh.

2 Q But again, you're in the bathroom. You're
3 not wanting anyone to know you're in the bathroom,
4 correct?

5 A Correct.

6 Q You text Frank, right?

7 A Yes.

8 Q You're texting him to call 911.

9 A No. I texted him, She's in the house. Call
10 911.

11 Q All right.

12 You're trying to stay as quiet as possible,
13 right?

14 A Yes.

15 Q You said you can hear the voice, a female
16 voice, correct?

17 A Yes.

18 Q She's cursing, right?

19 A Yes.

20 Q Talking out loud to herself?

21 A Yes.

22 Q And you said you were able to identify that
23 voice is Toya, right?

24 A Yes.

25 Q Now it's just one voice you're hearing,

1 correct?

2 A Correct.

3 Q This person is not having a conversation with
4 anyone?

5 A No. It just sound like a person in rage,
6 running through the house, cursing, and just was not in
7 their right mind from how I heard it.

8 Q Person just -- just talking to themselves,
9 you said?

10 A They was in a rage, sir.

11 Q Now, you told detectives a bit about kind of
12 what this person was doing, correct?

13 A Yes.

14 Q Okay.

15 You heard, you said, them rumbling through
16 stuff, right?

17 A From what I heard, it sound like she walked
18 past my room, the bathroom, and headed straight to
19 Frank's room.

20 Q Well, Jason, you stated to detectives, you
21 heard her coming and she went into your room directly
22 across the bathroom from you, right?

23 A No. I don't recall that at all.

24 Q You said you heard the door open across the
25 hall and she went in, didn't you?

1 A No. I heard the back door glass shatter.

2 Q Okay.

3 A Someone's in the house --

4 Q Yeah.

5 A -- in the hallway past my -- the bathroom
6 door where I was at. In the -- in the back bedroom,
7 which was sounded like it was could have been Frank's
8 room.

9 Q You said you heard a person go from door to
10 door down the hallway, right?

11 A Yeah. It sound like it was opening up doors
12 and --

13 Q Right. You're hearing doors opening up --

14 A Yeah.

15 Q -- down in the hallway, right?

16 A Yes.

17 Q Yeah. Frank, I'm showing you State's Exhibit
18 20. Yeah, this is the bath -- this is the bathroom,
19 right? Right here.

20 A Yes.

21 Q Okay.

22 And that -- that's the bathroom that you're
23 inside, correct?

24 A Uh-huh.

25 Q All right.

1 And you told Detectives you hear someone come
2 in and they're opening doors down the hallway here,
3 correct?

4 A Yes.

5 Q All right.

6 We have your bedroom, that you were staying
7 in that's right there, correct?

8 A Yes.

9 Q Frank's, your nephew Chris's, that's his back
10 bedroom there, right?

11 A Uh-huh.

12 Q And this is Frank's bedroom there, correct?

13 A Correct.

14 Q Again, you told detectives the person was
15 going room to room, opening doors, looking around?

16 A Yes.

17 Q Okay.

18 And again, you were staying as absolute quiet
19 as you can, right?

20 A Uh-huh. Yes.

21 Q You were texting Frank, again, Call 911,
22 right?

23 A Yes.

24 Q You told the detectives that?

25 A Yes.

1 Q Detective Sinke ever ask to see your cell
2 phone?

3 A I'm not sure.

4 Q You never showed Detective Sinke the text
5 messages of you calling 911, did you?

6 A I -- I never called 911.

7 Q Did -- excuse me. Sorry, Jason. You never
8 showed Detective Sinke text messages if you telling
9 Frank to call 911?

10 A I can't recall, sir. I might have. I'm --
11 just -- it's like I said, it was four years ago. I'm
12 not sure I understand.

13 Q I -- I understand. Now you're in the
14 bathroom. And you stated you heard an explosion sound,
15 right?

16 A Yes. Like whenever you like, for instance,
17 you put gasoline on a bunch of leaves and throw a match
18 on it. It combust and boom. Well, that's what I heard
19 inside the house.

20 Q Okay.

21 And you instantly -- well, let me back up.
22 So again, you said it was the loudest thing you had
23 ever heard, right?

24 A Yeah. Pretty much.

25 Q And you said you were not going to die in

1 that house. You were going to get out, right?

2 A Yes.

3 Q Yeah. I mean, your first thought was: I'm
4 getting out of this house as fast as possible.

5 A Well, there's no window in the bathroom. So
6 I -- I knew I had to come out through this door.

7 Q Right.

8 And -- and again, your goal is to get out of
9 that house as quickly as possible, right?

10 A Yes.

11 Q You touched the doorknob?

12 A Yes.

13 Q Doorknob's not hot, right?

14 A Right.

15 Q Opened the door. And you said you saw smoke
16 all in the hallway, right?

17 A Flames.

18 Q Flames in the hallway?

19 A Yes.

20 Q And again, you made a beeline through those
21 into your bedroom, correct?

22 A Not -- yes. Not knowing if my bedroom was on
23 fire.

24 Q Again, Exhibit 20, I'm showing you. You go
25 straight out this bathroom across the hallway, right?

1 A Yes.

2 Q Right into your bedroom, right?

3 A Yes, sir.

4 Q And right out that front window --

5 A Yes.

6 Q -- correct?

7 All right. Frank, I'm showing you -- or
8 excuse me. Jason, I'm showing you State's Exhibit 8.
9 Jason, right here, that's where -- that's where your
10 window was, right, right in front of the house?

11 A Yes, sir.

12 Q Okay.

13 So that brings you right out into the front
14 yard?

15 A Yes, sir.

16 Q And again, you were getting out of that house
17 as fast as humanly possible, right?

18 A Yes.

19 Q But you didn't see Toya when you came out of
20 the house, did you?

21 A I wasn't looking for Toya. After -- after I
22 hit that window, I was just making sure I wasn't on
23 fire.

24 Q Understandable. But again, you didn't see
25 Toya when you come out of the house, right?

1 **A** I wasn't looking for Toya. Like I said, I
2 was making sure I wasn't on fire.

3 **Q** Okay.

4 You didn't see a vehicle racing out of your
5 driveway?

6 **A** I wasn't looking for -- I was trying to make
7 sure of my well-being.

8 **Q** Standing right there in the front of the
9 yard, you didn't see a vehicle racing down the street,
10 did you?

11 **A** Seen the vehicle who stopped and asked me did
12 I need help.

13 **Q** Right. That wasn't Toya, right?

14 **A** No.

15 **Q** You didn't see Toya outside the front of the
16 yard?

17 **A** No.

18 **Q** You didn't have your phone or keys on you,
19 right?

20 **A** And I was in pajamas.

21 **Q** They -- they had been left -- you had left
22 your phone in the bathroom, right?

23 **A** If that -- yeah. Because that's where I
24 texted Frank, yes.

25 **Q** So you came out, again, the front window,

1 correct?

2 A Yes.

3 Q You were -- you were in your pajama pants at
4 the time, right?

5 A Yes.

6 Q Your pajama pants had gotten burned up a
7 little bit as you had to get through the flames?

8 A Yes.

9 Q Detective never asked to get that pair of
10 pajama pants from you, did they?

11 A I don't recall.

12 Q You were able to get a few things from your
13 room, right?

14 A Yes. When I realized that the fire just
15 didn't seem like it was spreading fast as I thought it
16 was, I tried to grab anything I could to salvage.

17 Q And again, you stated you get out of the
18 house. Kind of a -- this good Samaritan comes by,
19 right?

20 A Well, yes. Someone just turning around the
21 corner.

22 Q Daniel Heiterer is the gentleman that you
23 just heard testify, correct?

24 A Yes.

25 Q Okay.

1 And he called 911 for you, right?

2 **A** Yes.

3 **Q** Okay.

4 You -- you were asking him, "Please call 911.
5 I don't have my phone," right?

6 **A** I'm not sure if I was asking him. I think he
7 just did it because that was the right thing to do at
8 the time, you know, the house was on fire.

9 **Q** Daniel helped you. He drove you to a
10 friend's house, correct?

11 **A** Correct.

12 **Q** Okay.

13 That's where you were able to get Frank's
14 number, right?

15 **A** Yes.

16 **Q** Again, nowadays, not many people probably
17 have many numbers memorized anymore, right?

18 **A** Correct.

19 **Q** So you needed to find someone to help you get
20 in touch with Frank?

21 **A** Yes.

22 **Q** Frank comes and picks you up, correct?

23 **A** Yes.

24 **Q** And then y'all went back to the house?

25 **A** Yes.

1 Q All right.

2 At that time, fire trucks are there, right?

3 A Yes.

4 Q And you end up speaking -- speaking with fire
5 firefighters, right?

6 A Yes.

7 Q You spoke with some -- some investigators,
8 correct?

9 A Yes.

10 Q And then again, you spoke with the detective,
11 right?

12 A Yes.

13 Q And you gave her a statement, correct?

14 A Yes.

15 Q Police -- police never looked at your cell
16 phone, did they?

17 A I think my cell phone might have still been
18 in house at the time.

19 Q They never asked for you to -- to get your
20 records for your cell phone for them, did they?

21 A No.

22 Q They never searched your truck?

23 A No.

24 Q Honestly, again, since this incident, you
25 haven't spoken with the prosecutor since about a week

1 and a half ago, correct?

2 **A** Pretty much it was hard for them to get in
3 touch with me because I was working in Texas.

4 **MR. D'ANGELO:** Okay.

5 No further questions, Your Honor.

6 **THE COURT:** Any redirect?

7 **MS. SAVAS:** Yes, Your Honor.

8 **THE COURT:** You may proceed.

9 **MS. SAVAS:** Thank you, Your Honor.

10 **THE COURT:** You're welcome.

11 **REDIRECT EXAMINATION**

12 **BY MS. SAVAS:**

13 **Q** Jason, you lived in this house, right, for a
14 while?

15 **A** The two months we was there.

16 **Q** So you know what you can see out of your own
17 window, right?

18 **A** Yes.

19 **Q** Jason, was your phone left in the house that
20 was on fire?

21 **A** Yes.

22 **Q** Okay.

23 Jason, were you the one that told officers
24 Toya burnt the house down?

25 **A** Pretty much.

1 **Q** Is that because you saw her?

2 **A** Yes.

3 **Q** And you heard her?

4 **A** I heard her in the house.

5 **Q** Jason, did you burn your house down with you
6 inside of it?

7 **A** No.

8 **Q** Who was the only other person there at that
9 time?

10 **MR. D'ANGELO:** Objection. Speculation.

11 **THE COURT:** Overruled.

12 **THE WITNESS:** I would say Toya.

13 **BY MS. SAVAS:**

14 **Q** And who burned your house down with you
15 inside of it?

16 **A** I would say Toya.

17 **MS. SAVAS:** No further questions.

18 **THE COURT:** Any objection to the witness be
19 excused from the state?

20 **MS. SAVAS:** Your Honor, I might ask to keep
21 him in case of --

22 **THE COURT:** Is it subject to recall, is that
23 the short answer?

24 **MS. SAVAS:** Yes, Your Honor.

25 **THE COURT:** Thank you.

1 Any exception from the defense?

2 MR. D'ANGELO: (No audible response.)

3 THE COURT: Any exception from the defense
4 with the witness being excused subject to recall?

5 MR. D'ANGELO: No, Your Honor.

6 THE COURT: Sir, you're excused, subject to
7 being recalled.

8 THE WITNESS: Okay.

9 THE COURT: Mr. Foreman, ladies and
10 gentlemen, you-all have been sitting over an hour
11 and a half. I'm going to give you a brief comfort
12 break. During the break, please do not discuss
13 the case. And please leave your notepads in your
14 seats.

15 (The jury exits the courtroom at 11:43 a.m.)

16 THE COURT: You may be seated.

17 Who's the state's next witness?

18 MS. SAVAS: Your Honor, we have the fire
19 department next.

20 THE COURT: Who is your next witness?

21 MS. SAVAS: Brinson.

22 THE COURT: Make sure he's in the courtroom
23 please when we resume the 10-minute restroom
24 break.

25 MS. SAVAS: Yes, Your Honor.

1 (A recess is taken.)

2 THE COURT: Anything from the state before we
3 proceed?

4 MS. SAVAS: Just, Your Honor, we're going to
5 13 total witnesses, not 12. It doesn't change as
6 far as the duration of the trials -- of the trial.
7 It just -- I said 12 yesterday because I had
8 numbered them the same on my list.

9 THE COURT: Okay.

10 MS. SAVAS: But it'll be 13. But no one else
11 kind of major.

12 THE COURT: Defense ready to proceed?

13 MR. D'ANGELO: Yes, Your Honor.

14 THE COURT: Please bring in the jury.

15 Please have the witness already standing by
16 the witness stand, please.

17 MS. SAVAS: Your Honor, before the jury comes
18 in.

19 THE COURT: Uh-huh.

20 MS. SAVAS: We have our SLED person coming
21 from Columbia.

22 THE COURT: Uh-huh.

23 MS. SAVAS: Does the Court know yet at which
24 time she may want to take a break or --

25 THE COURT: Depends on how long this

1 testimony goes. I'm going to call it as I see it.

2 **MS. SAVAS:** Yes, ma'am.

3 **THE COURT:** It will probably be close to one
4 o'clock.

5 **MS. SAVAS:** Thank you, Your Honor.

6 **THE COURT:** Uh-huh.

7 (The jury enters the courtroom at 12:11 p.m.)

8 **THE BAILIFF:** The jury's present, Your Honor.

9 **THE COURT:** You may be seated.

10 Ladies and gentlemen, I hope you're refreshed
11 from your break. We'll now resume with witness
12 testimony. You may call your next witness.

13 **MS. SAVAS:** The state calls Chief Michael
14 Brinson.

15 **THE COURT:** Please swear the witness.

16 **MICHAEL BRINSON**

17 having first been duly sworn, testifies as follows:

18 **THE WITNESS:** I do.

19 **THE CLERK:** Please be seated.

20 Please state your full name, spelling your
21 last name directly into the microphone.

22 **THE WITNESS:** Michael Brinson, Jr.

23 B-r-i-n-s-o-n.

24 **THE COURT:** You may proceed.

25 **DIRECT EXAMINATION**

1 BY MS. FRIES:

2 Q Good afternoon, Chief Brinson. Where are you
3 employed?

4 THE COURT: You're going to need to speak up,
5 Ms. Fries. We can barely hear you.

6 BY MS. FRIES:

7 Q Where are you employed?

8 A The St. Andrews Fire Department.

9 Q And what's your current position there?

10 A Current position is assistant chief of
11 training.

12 Q How long have you been employed at St.
13 Andrews?

14 A Fifteen years, currently.

15 Q And how long have you been in your current
16 position?

17 A Two months.

18 Q And how long have you been a firefighter?

19

20 A Approximately 17 years.

21 Q And what are your jobs and duties as a chief?

22 A Right now, my current job and duties is to
23 coordinate with the crews to ensure training is
24 completed and documented properly to meet up the ISO
25 standards set forth.

1 Q And can you explain to the jury your training
2 and experience that you had?

3 A I been in the fire service for 17 years.
4 Started at St. Andrews. Been there for 16 -- 15 years.
5 Excuse me. And extended amount of classes all over the
6 United States to meet the standards of the organization
7 as well as to set forth standards of National Fire
8 Academy.

9 Q Okay.
10 And were you working on February 8?

11 A Yes, ma'am.

12 Q And what was your position back then?

13 A Captain.

14 Q And were you involved in this case?

15 A Yes, ma'am.

16 Q And just so the jury is aware, what were your
17 duties as a captain?

18 A My duties on a normal day is just to
19 coordinate to crew to assure training's being done,
20 station duties as well, and to train to better ourself
21 for the community and protect and to service citizens.

22 Q And did you also respond as calls as part of
23 your duties?

24 A Yes, ma'am. We also respond to calls to
25 provide the service.

1 Q Okay.

2 And how did you get involved in this case?

3 A 911 dispatch.

4 Q And were you dispatched to 2245 -- or [REDACTED]
5 [REDACTED] Avenue?

6 A Yes, ma'am.

7 Q And what time did you arrive on scene
8 approximately?

9 A 2:09 p.m.

10 Q And how did you arrive on scene?

11 A I arrived on as first engine and Engine 303.

12 Q Okay.

13 And how does that engine work? Who's on that
14 engine? What are your duties?

15 A Current staffing on that engine that day was
16 three. You have a driver-operator, which is -- pumps
17 their apparatus for fire, or operates the emergency
18 vehicle to the incident. I have myself, which was the
19 captain at the time. My job is to lead the crews. And
20 you have a firefighter who is -- is delegated to do
21 tasks as the captain gives them the roles to do so.

22 Q And were you the first engine on scene?

23 A Yes, ma'am.

24 Q And what's the responsibility of the first
25 engine on scene?

1 **A** If it's a confirmed working fire, we have to
2 initiate a water supply. So try to find the closest
3 hydrant or lay a line so that other crews -- the trucks
4 can pick it up.

5 We size up the incident. Give everybody a --
6 we paint a picture of what's going on. So when they
7 are -- as they're responding, they kind of get a
8 general idea what they're going to do when they get
9 there.

10 We will deploy hose lines for the type of
11 fire that we see, the type of occupancy. I will -- the
12 (inaudible) officer do as a 360, to kind of get a big
13 overall picture of the incident. And then we proceed
14 to try to extinguish the fire safely and effectively.

15 **Q** And in this case, what did you do when you
16 arrived on scene?

17 **A** So initiate a water supply at the corner of
18 Wood Avenue and Pinehurst. We got on scene. I
19 reported heavy fire, smoke showing. We stretched -- I
20 ordered my firefighter to stretch a line to the front
21 of the building. I completed a 360. Reported heavy
22 smoke showing -- heavy smoke conditions showing.

23 And then we -- along with additional crews,
24 we forced the door and made an entry to push to the
25 (inaudible) of the fire.

1 Q And were there any observations that you made
2 to the home when you first arrived on scene?

3 A Yeah. It was a -- the smoke conditions were
4 very thick, black, turbulent smoke. Made it very hard
5 to see the occupancy itself. As we did a 360. I
6 noticed the back doors looked -- appeared to be forced
7 in before anybody else got there. Come back around.
8 And the smoke conditions alone was just something
9 that -- it was a lot -- a lot of smoke. Very lot of
10 smoke.

11 Q What color was the smoke?

12 A Very black.

13 Q And I believe you touched on this. But how
14 was the visibility when you made entry into the home?

15 A When we made entry into the house, you
16 couldn't see your hand in front of your face?

17 Q And what happens if there's no visibility?

18 A Go back to our training. And we knew where
19 the fire was located from the -- we could see it from
20 the outside. But getting there, we utilized the wall
21 as a guide, more or less a map. As we instruct -- as I
22 instructed my firefighters to continue to utilize the
23 water from the hose to make the conditions more
24 feasible for us to be inside.

25 Q And did the thickness of the smoke require

1 additional water or additional firefighters?

2 **A** Yes. Multiple -- multiple handlines were
3 deployed. If I recall correctly, it was three. And we
4 had to utilize the hydrant to provide a copious amount
5 of water.

6 **Q** And did you observe any vehicles parked in
7 the -- in the home?

8 **A** There was two vehicles, I believe, in the
9 front driveway: One pickup truck and one car.

10 **Q** And given your training and experience, what
11 does it mean when the smoke is very dark and heavy?

12 **A** Fuel-fed fire. It's a -- tends to show that
13 something's -- something's fueling that fire. I've
14 been on multiple fires that the smoke conditions is --
15 just doesn't tend to appear that way. It's light --
16 lighter smoke, not as much, not as heavy, not as
17 turbulent. Very turbulent black smoke on arrival to
18 the house fire.

19 **Q** And so would a -- would a typical house fire
20 have lighter smoke as you described?

21 **A** Yeah. And it's not usually that turbulent.

22 **Q** Okay.

23 And what are the dangers for these types of
24 fires?

25 **A** With the zero visibility, it's a -- you can't

1 see where you're going. You're pushing inside
2 something that's waiting for the correct mixture to
3 continue to -- because it's off gas. And you're
4 waiting -- it's waiting for correct mixture to actually
5 ignite, which can make it more dangerous for that --
6 for crews pushing inside.

7 Q And does it also make it more dangerous for
8 the surrounding homes?

9 A Yes. Because smoke conditions. Just people
10 around there, they're breathing that stuff in. It's
11 not -- it's not good for their lungs. It's not good
12 for their health.

13 Q And given your extensive training and
14 experience, how would you rate the severity of this
15 fire?

16 A Very severe.

17 Q And did you do anything else on scene?

18 A We -- I coordinated with the additional
19 trucks from the City of Charleston that was there to
20 have them do a vertical ventilation to -- to -- that
21 allows the heated gases inside to rise and get out of
22 the roof so it makes it more bearable for us inside to
23 push on to the fire itself.

24 Q And can you describe a little bit about how
25 you fought the fire?

1 **A** We made it -- and we forced the door from the
2 front door. We pushed inside. And we just continued
3 to open the line, try to cool the atmosphere as much as
4 we could until we could make it to the fire. Once we
5 made it to the fire, we just put as much water as
6 possible to try to bring the fire under control.

7 **Q** And you testified earlier that when -- upon
8 making entry, you noticed the backdoor was already
9 broken down, that --

10 **A** It appears that -- it appeared to be open.
11 And we didn't -- I -- my crew did not mess with that
12 door.

13 **Q** Okay.

14 And did you eventually transfer command to
15 someone?

16 **A** Transfer command to Battalion Chief Looney.

17 **Q** And when did you do that?

18 **A** Approximately 2:13 p.m.

19 **Q** And do you know how long it took to put out
20 that fire?

21 **A** Let's say -- I believe it was 30, 45 minutes.

22 **Q** And how do you know when it's safe to
23 re-enter a structure?

24 **A** Usually there's no more smoke conditions,
25 fires obviously. And we tend to take gas meters inside

1 just to get the readings to make sure it's something
2 that we can say we can safely go in there without
3 wearing SCBAs.

4 Q And did you do anything else after you
5 transferred command?

6 A Transferred command. We were sent to rehab
7 to change our cylinders, get some refreshed, and then
8 we were sent back in, to do what we call overhaul.

9 Q And what's overhaul?

10 A Just checking for extension of fire; you
11 know, making sure that it's not extending into the
12 wall; we've got the bulk of the fire out and all the
13 fire knocked down, so we don't leave and it reignites.

14 MS. FRIES: Beg the Court's indulgence.

15 BY MS. FRIES:

16 Q I'm gonna just show you a photo of the home.
17 I'm now going to show you State's Exhibit 13. Is this
18 the back door of the home?

19 A Yes, ma'am.

20 Q And what is that below the back door? What
21 does that appear to be?

22 MS. FRIES: Beg the Court's indulgence.

23 THE COURT: Uh-huh.

24 BY MS. FRIES:

25 Q Did you break this door upon making entry?

1 **A** No, I did not.

2 **Q** Did you shatter any glass?

3 **A** No, ma'am.

4 **MS. FRIES:** I have nothing further. Please
5 answer anything the defense may have.

6 **THE COURT:** Any questions for the witness?

7 **MS. BLAZER:** Your Honor, please it please the
8 Court?

9 **THE COURT:** Yes, ma'am. You may proceed.

10 **MS. BLAZER:** Thank you.

11 **THE COURT:** You're welcome.

12 **CROSS-EXAMINATION**

13 **BY MS. BLAZER:**

14 **Q** Good afternoon.

15 **A** Good afternoon.

16 **Q** How are you?

17 **A** Good.

18 **Q** You know when you were dispatched to the fire
19 was -- you arrived at 2:09; is that right?

20 **A** That was the dispatch time was 2:09 p.m.

21 **Q** Okay.

22 And then you transferred authority to another
23 firefighter at 2:13, you said?

24 **A** Yes, ma'am.

25 **Q** So you know what time you were dispatched,

1 but you don't know what time the fire started, do you?

2 A No, ma'am.

3 Q And do you know what time the 911 call came
4 in?

5 A Not without looking back at the dispatch
6 report.

7 Q Okay.

8 But you wouldn't have known that when you
9 arrived on scene, would you?

10 A No. It's actually we have it on the
11 computer. But without looking at it, I would not know.

12 Q Okay.

13 But when you arrived you -- you testified on
14 direct that you observed black smoke. This -- this was
15 a fire that was -- it was underway?

16 A Yes, ma'am.

17 Q And so I want to make sure I know the
18 difference between arrival and dispatch. 2:09, you
19 testified, is when you were dispatched or when you
20 arrived?

21 A Dispatched from, I believe it was 2:09 p.m.
22 When we -- we -- that's when we actually get the
23 notification that "Hey, there's a fire."

24 Q Okay.

25 A (Inaudible)

1 Q Okay.

2 So you have no idea how much time has passed
3 between when the 911 call comes in and when you're
4 dispatched?

5 A No.

6 Q Okay.

7 But you know that when you arrive, this is a
8 fire that appears to you to have been set by or -- or
9 fueled by an accelerant or fuel; is that right?

10 A I believe it was a fuel-fed fire, meaning it
11 was fueled by some kind of potential accelerant to make
12 it that developed on our arrival.

13 Q And you testified on direct that you are --
14 you're involved in training for your organization --

15 A Correct.

16 Q -- right?

17 And so does training -- does that mean that
18 you're training people about how to put out fires?

19 A Yes.

20 Q Okay.

21 Are you also training people in how to
22 identify the causes of fires?

23 A No. We have fire marshals.

24 Q Okay.

25 So that's not really -- that's just years of

1 being affiliated with the work that you do that you --
2 you start to learn new things about what kinds of fires
3 look like a regular house fire and what kinds of fires
4 look like a fuel-fed fire?

5 A Yes, ma'am.

6 Q Okay.

7 So you're never involved then in collecting
8 evidence to assess the cause of a fire?

9 A No, ma'am.

10 Q Okay.

11 So when you talked earlier about ISO
12 standards, those are firefighting standards.

13 A Yes. I -- we -- in my job, we tend to get --
14 ISO standards is just standards that we have to meet
15 yearly to be able to stay a certified firefighter.

16 Q Okay.

17 Fuel-fed fires are dangerous, right?

18 A Any fire is dangerous --

19 Q Okay.

20 A But yes, ma'am.

21 Q And fuel-fed fires are dangerous in part
22 because they're fast?

23 A Yes.

24 Q Gasoline doesn't burn slow?

25 A Yes.

1 **Q** Right? Just using one example?

2 **A** Uh-huh.

3 **Q** Gasoline is just one kind of fuel that you
4 could fuel a fire with, right?

5 **A** Uh-huh.

6 **Q** And it burns fast?

7 **A** Yes.

8 **Q** And it burns hot?

9 **A** Yes.

10 **Q** And it makes a lot of black smoke?

11 **A** Yes.

12 **MS. BLAZER:** Beg the Court's indulgence.

13 **THE COURT:** Yes, ma'am.

14 **MS. BLAZER:** No further questions.

15 **THE COURT:** And any redirect of the witness?

16 **MS. FRIES:** No redirect, Your Honor.

17 **THE COURT:** Any objection to the witness be
18 excused from the state?

19 **MS. FRIES:** No, Your Honor.

20 **THE COURT:** From the defense?

21 **MS. BLAZER:** No, Your Honor.

22 **THE COURT:** Sir, you're excused.

23 Call your next witness.

24 **MS. SAVAS:** The state calls Robert Looney.

25 **THE CLERK:** Please raise your right hand.

1 Place your hand on the Bible.

2 **ROBERT LOONEY**

3 having first been duly sworn, testifies as follows:

4 **THE CLERK:** Please be seated. Please state
5 your full name, spelling your last name directly
6 into the microphone.

7 **THE WITNESS:** Robert Jason Looney,
8 L-o-o-n-e-y.

9 **THE COURT:** You may proceed.

10 **MS. SAVAS:** Thank you, Your Honor.

11 **THE COURT:** You're welcome.

12 **DIRECT EXAMINATION**

13 **Q** Good afternoon.

14 **A** Good afternoon.

15 **Q** What is your formal title?

16 **A** Battalion chief?

17 **Q** And where are you currently employed?

18 **A** St. Andrews Fire Department?

19 **Q** And how long have you been a battalion chief?

20 **A** A little over five years now.

21 **Q** And how long have you been employed with
22 St. Andrews?

23 **A** Just over 16 years.

24 **Q** And what area does St. Andrews encompass?

25 **A** Portions of West Ashley.

1 Q Okay.

2 And how long have you been in firefighting?

3 A I started in June of 2001.

4 Q And as battalion chief, what are some of your
5 responsibilities?

6 A Battalion chief for me, I oversee daily
7 operations on our -- on C shift for the fire
8 department.

9 Q And what are some of those daily operations?

10 A I make sure scheduling is -- is done so
11 everybody's on, you know, the correct apparatus. I
12 respond to emergency calls with other agencies and with
13 other apparatus. And just take care of, you know,
14 other maintenance items and -- and other duties
15 required.

16 Q What kind of training have you had in fire --
17 as a firefighter and as a battalion chief?

18 A As far as the firefighter, I've got, you
19 know, Firefighter 2. For officer training, I have
20 State Fire Officer 1, Fire Officer 2, Fire Officer 3.
21 And so those are the qualifications.

22 Q And can you -- you've mentioned a lot of
23 firefighters, battalion chief. Can you just overview
24 the structure of a like firehouse, fire station?

25 A Sure. So you have a firefighter. They're --

1 they pull the hoses and they do the work. Then we have
2 engineers. They drive the fire trucks. And then you
3 have -- every firetruck has an officer or captain. And
4 they are in charge of that fire truck for the day and
5 for that shift.

6 And then from the captain, you go into a
7 battalion chief. Which my job, I oversee the entire
8 shift. And from my -- above me, you have the admin
9 chiefs. So assistant chief of training, deputy chief
10 of operations, deputy chief of administration, and the
11 fire marshal, and then the fire chief.

12 Q Okay.

13 And in what was your position back on
14 February 8, 2020?

15 A Battalion chief.

16 Q And that's the same position you have now?

17 A Correct.

18 Q Okay.

19 And were you involved in this case?

20 A Yes.

21 Q How did you get involved?

22 A I was dispatched.

23 Q Do you call the address you were dispatched
24 to?

25 A [REDACTED] Avenue.

1 Q And do you know what county that's in?

2 A Charleston.

3 Q And the state?

4 A Yes. South Carolina.

5 Q And that's the West Ashley area?

6 A Correct.

7 Q Okay.

8 Do you know what time the first call came in
9 for the fire?

10 A Shortly after 2. Around 2:06, I believe.

11 Q Are you familiar -- are -- when someone calls
12 for emergency services such as fire or police, they
13 call 911, correct?

14 A Correct.

15 Q Does that dispatch create a report?

16 A Yes.

17 Q Do you know what those reports are called?

18 A CADs.

19 Q Okay.

20 A It's a computer-aided dispatch through the
21 CDC.

22 Q And have you seen a CAD report regarding this
23 case?

24 A Yes.

25 Q If I show you one to refresh your

1 recollection, would you be able to read it to give the
2 exact time?

3 A Yes.

4 MS. SAVAS: May I approach the witness,
5 Your Honor?

6 THE COURT: You may.

7 BY MS. SAVAS:

8 Q Can you just -- I'm pointing here to what
9 time the first phone call came in regarding the fire
10 from 911?

11 A 14:05:31.

12 Q And what does that mean?

13 A That's when I --

14 Q What other time? What does that mean?

15 A 2:05. That's when they called -- someone
16 called 911.

17 Q And does it show when the first unit arrived?

18 A Yes.

19 Q What time is that?

20 A 14:06:26, which would be 2:06:26.

21 Q So about a minute later --

22 A Correct.

23 Q -- the first fire truck arrived.

24 A That's when the first fire truck was
25 assigned.

1 Q Assigned?

2 A Yes.

3 Q Okay.

4 I'm gonna direct you to one of the lines.

5 Does it show when the first engine arrived on scene?

6 A Yes. It says 14:09:55.

7 Q So it would be 2:09 p.m.?

8 A I'm sorry. 14:09:34 was Engine 303 on the

9 scene.

10 Q So seconds?

11 A Correct.

12 Q So 2:09 p.m.?

13 A Correct.

14 Q So just about four minutes after the fire was

15 called from 911.

16 A Correct?

17 Q How far away is your fire department from

18 that residence?

19 A Our Station 3 is just down the street --

20 Q Okay.

21 A -- from them. Mine is a couple minutes away.

22 Q Okay.

23 A Closer.

24 Q So that first engine that responded to the

25 scene was nearby?

1 **A** Correct.

2 **Q** And do you recall when you arrived on scene?

3 Do you want me to show you your CAD? Sorry.

4 **A** Yeah. I think it was around 2:12, 2:13.

5 Yeah. 2:12:52.

6 **Q** So 2:12 p.m., arrived on scene?

7 **A** Correct.

8 **Q** And what happens when you arrive on scene?

9 **A** When I arrive on scene, if I'm the first
10 chief officer on scene, I take command from the
11 first-due engine company.

12 **Q** And who did you take command from that day?

13 **A** Captain Brinson.

14 **THE COURT:** Sir, could you speak a little
15 closer to the microphone for me if you could?

16 Thank you.

17 **BY MS. SAVAS:**

18 **Q** Okay.

19 They're just picking up everything. And it's
20 hard to hear because we've got TVs and other air
21 periphery.

22 Chief Looney, so can you just briefly explain
23 the response on scene for the fire trucks that come
24 out?

25 **A** Right. So for structure fire response, your

1 dispatch sends four engines, which are trucks that hold
2 water. And they have hoses. So they pump water. Then
3 you get a heavy rescue, a ladder company, and three
4 battalion chiefs.

5 Q And so Brinson was the first engine on scene?

6 A Correct.

7 Q Which you said per the CAD was that 2:09 p.m.
8 arrival?

9 A Correct.

10 Q Okay.

11 And what did you observe when you arrived on
12 scene?

13 A Single-story family residence with heavy
14 smoke showing, heavy black smoke.

15 Q And what did you do when you arrived on
16 scene?

17 A I assumed command.

18 Q And in doing that, did you -- did you request
19 any additional units to assist?

20 A I did. I requested a working fire dispatch,

21 Q What is that?

22 A A working fire dispatch is when you have a
23 working fire, or what we call a working fire, that
24 prompts dispatch to send two more engines, another
25 ladder company, and another battalion chief.

1 Q Why did you ask for additional responding
2 units in this case?

3 A The sheer size of what I could see from the
4 fire.

5 Q Okay.

6 What happened after the working fire dispatch
7 was called?

8 A They should have -- dispatch should have
9 dispatched, you know, two more engines: A ladder and
10 another battalion.

11 Q And were you also in charge of swapping the
12 crews out from the house that were fighting fires?

13 A Yes.

14 Q And did that happen here?

15 A Yes.

16 Q Okay.

17 Do you know how entry was made in the home?

18 A Through the front door.

19 Q Okay.

20 Was a search of the property conducted in
21 addition to extinguishing the fire?

22 A Yes. So when we operate at a fire scene, we
23 do primary and secondary searches to make sure there's
24 no -- no one left inside.

25 Q When the crews entered initially, did they

1 know if someone was inside or not?

2 A Not initially, no.

3 Q Did -- was a search conducted on the interior
4 of the home?

5 A Yes.

6 Q Was anyone located at that time?

7 A No.

8 Q Was anyone found to be outside at the time?

9 A Not to my knowledge.

10 Q Were there vehicles at the house?

11 A Yes.

12 Q How many?

13 A Two.

14 Q Do you recall what they were?

15 A Car and a pickup truck.

16 Q Okay.

17 Can you describe the fire or the smoke when
18 you arrived on scene?

19 A It was heavy black.

20 Q And given your training and experience, does
21 that indicate anything to you as a firefighter?

22 A There's something burning that's not supposed
23 to be or normally burning in a structure.

24 Q Okay.

25 What could that be examples of?

1 **A** I mean anything from an accelerant to, you
2 know, anything that gives off, you know, thick heavy
3 black smoke.

4 **Q** In your training and experience, would
5 gasoline give off that color smoke?

6 **A** Yes.

7 **Q** Did anyone else come out to the scene
8 regarding the fire investigation?

9 **A** The fire marshal.

10 **Q** And do you know who that was?

11 **A** Chief Berkel.

12 **Q** And why was he called out?

13 **A** Chief Berkel is called out on any structure
14 fire to investigate.

15 **Q** Where other emergency services called to the
16 scene?

17 **A** Not by myself, I don't believe.

18 **Q** Did law enforcement arrive?

19 **A** I believe so, yes.

20 **Q** Were you there when they showed up?

21 **A** I don't recall.

22 **Q** Okay.

23 Did you eventually transfer command?

24 **A** I did, yes.

25 **Q** Who did you give command to?

1 **A** Chief Berkel.

2 **Q** Do you recall what time that was? If I show
3 you your CAD, would that help refresh your
4 recollection?

5 **A** Yes.

6 **Q** Okay.

7 **A** (Reviews document.)

8 16:18. So 4:18.

9 **Q** In that amount of time, did the fire crews
10 continue to extinguish the fire then?

11 **A** I believe they were close to being done at
12 that point in time.

13 **Q** So once you transfer command -- when -- when
14 do you transfer command or why?

15 **A** Once I -- once command is transferred to the
16 fire marshal, most the time the fire is completely out
17 and all hotspots have been taken care of, and the fire
18 marshal's in the investigation phase?

19 **Q** Do you give the chief fire marshal a debrief
20 when he arrives?

21 **A** He -- he begins his own investigation. And
22 he starts, you know, interviewing the first officer and
23 crew on scene. And then -- then he'll come to command
24 and speak with myself or --

25 **Q** So he creates his own independent

1 investigation regarding the fire?

2 A Correct.

3 Q Okay.

4 No further questions at the moment -- or did
5 you do anything else once you transferred command?

6 A Returned to service. Went back to the
7 station.

8 Q So you just went back to the station?

9 A Uh-huh.

10 Q Okay.

11 Please answer the questions the defense has.

12 THE COURT: Any questions for the witness?

13 MS. BLAZER: Yes, ma'am. Briefly.

14 THE COURT: You may proceed.

15 MS. BLAZER: Thank you, Your Honor.

16 CROSS-EXAMINATION

17 BY MS. BLAZER:

18 Q Good afternoon.

19 A Good afternoon.

20 Q How are you?

21 A Doing well.

22 Q Good.

23 You spoke on direct about searching the
24 property. When you were talking about that, you were
25 talking about looking for people --

1 **A** Correct?

2 **Q** -- right?

3 And you -- and you said -- you talked about a
4 primary and a secondary search.

5 **A** Correct.

6 **Q** Can you explain to the jury what you mean by
7 that?

8 **A** So a primary search is when we make an entry
9 to a house with a -- or a structure fire. It's -- and
10 we go room by room and search for any victims in the
11 residence.

12 It's a quick, fast search. Because most of
13 the time, it's been done during firefighting
14 operations. Once, you know, the fire department --
15 firefighting has come to -- concluded and the fire's
16 mostly out, we'll go back through and do a secondary
17 search, which is a more detailed, slower, methodical
18 search to make sure we didn't miss anything on the
19 first time.

20 **Q** But again, you're looking for people --

21 **A** Correct?

22 **Q** -- right? This isn't -- you were not part of
23 any search or inspection for the purposes of
24 identifying the cause of the fire or the motivation for
25 the fire?

1 A Correct.

2 Q But you, correct me if I'm wrong, one of the
3 duties that you had when the fire was over was, you --
4 you created a report for the fire department; is that
5 right?

6 A Yes.

7 Q Do you do that report from your own memory,
8 from the memories of other people? Or how -- how --
9 tell -- tell the jury how that comes about.

10 A So when I -- when we do our reports from the
11 fire, we'll go back. Once the calls over,
12 investigation or whatever is done, is completed, the
13 CDC pushes the calls through our reporting system. And
14 we'll do an independent report, a narrative from -- a
15 general narrative of what happened over the whole
16 scene. And then each individual apparatus will do
17 their own narrative of what they specifically did.

18 Q Okay.

19 So you oversee the report, but you have each
20 individual engine kind of weigh in?

21 A Correct.

22 Q And that report has a -- has a standardized
23 structure, right?

24 A Yes.

25 Q And it asks you to report not just what

1 everybody did, but whether this was an accidental fire
2 and electrical fire, an intentionally-set fire. There
3 are check boxes at the top of the form that asked you
4 to do that, right?

5 **A** There are.

6 **Q** And did you make your own independent
7 assessment of the answers to those questions? Or were
8 those -- when you filled that out, was that based on
9 what you learned from Fire Marshal Berkel?

10 **A** That portion of the report is filled out by
11 the fire marshal --

12 **Q** Got it. Great?

13 **A** -- through his investigation is completed.

14 **Q** Okay.

15 So taking you back to when you arrived, and
16 you saw black smoke that was indicative of a fuel-based
17 fire --

18 **A** Uh-huh.

19 **Q** -- or fuel-fed fire, I think that's what
20 y'all call it, right? Fuel-fed.

21 **A** Yeah.

22 **Q** Okay.

23 So although you are not a fire inspector, you
24 have been doing this since 2001. You can tell the
25 difference between an -- a fuel-fed fire and an

1 ordinary house fire?

2 A Right.

3 Q And immediately on scene, you determined that
4 that's what it looked like.

5 A It was out of the ordinary, yes.

6 Q Okay.

7 And it was out of the ordinary in part
8 because of the quantity and color of the smoke?

9 A Correct.

10 Q And so if somebody who called 911 saw -- saw
11 a small amount of smoke, they would have had to have
12 seen it right after it started?

13 MS. SAVAS: Objection. Speculation.

14 THE COURT: Please rephrase the question.

15 BY MS. BLAZER:

16 Q Okay.

17 These fires that are fuel-fed, they burn
18 fast?

19 A Yes.

20 Q They burn hot?

21 A Yes.

22 Q Smoke accumulates very quickly?

23 A Yes.

24 Q And the darker the smoke, the more fuel there
25 appears to have been?

1 **A** Yes.

2 **MS. BLAZER:** I have nothing further. Thank
3 you.

4 **THE COURT:** Any redirect?

5 **MS. SAVAS:** Just one, Your Honor.

6 **THE COURT:** You may proceed.

7 **REDIRECT EXAMINATION**

8 **BY MS. SAVAS:**

9 **Q** She just asked you if more fuel was added.
10 Are you saying in the middle of it, more fuel was added
11 during the fire or just that fuel was added to create
12 that type of fire?

13 **A** Well, the fuel that -- there was no fuel
14 added during the fire that I'm aware of.

15 **Q** Okay.

16 Nothing further.

17 **THE COURT:** Any objection to the witness be
18 excused from the state?

19 **MS. SAVAS:** No, Your Honor.

20 **THE COURT:** From the defense?

21 **MS. BLAZER:** No, Your Honor. Thank you.

22 **THE COURT:** Sir --

23 You're welcome.

24 Sir, you're excused.

25 **THE WITNESS:** Thank you.

1 **THE COURT:** Mr. Foreman, ladies and
2 gentlemen, we're going to take advantage of this
3 break in testimony to take our lunch recess.
4 During the break, please do not discuss the case
5 among yourselves or with anyone else. And please
6 do have any contact with anyone in or about the
7 building. You will leave your notepads in your
8 seats. Also please don't expose yourself to any
9 media coverage regarding this case.

10 We'll resume at two o'clock, which gives you
11 about an hour and 10 minutes for lunch. As soon
12 as everyone has returned to the jury room, we'll
13 resume testimony. Have a good lunch.

14 (The jury exits the courtroom at 12:50 p.m.)

15 **THE COURT:** You may be seated.

16 Anything before we break for lunch from the
17 state?

18 **MS. SAVAS:** Just as far as witness timing,
19 Your Honor. Was there -- I have a couple of
20 witnesses, Judge, that may take some time. But I
21 didn't know if we wanted to jump into the cell
22 phones today.

23 **THE COURT:** You planning to call the
24 witness --

25 **MS. SAVAS:** It would be a longer witness --

1 **THE COURT:** -- today?

2 **MS. SAVAS:** I'm sorry?

3 **THE COURT:** Do you plan to call the witness
4 today?

5 **MS. SAVAS:** He is up in a couple of
6 witnesses -- a few witnesses.

7 **THE COURT:** That's not my question. Are they
8 next witnesses that you plan to call this
9 afternoon?

10 **MS. SAVAS:** Are they -- I'm sorry? I
11 can't --

12 **THE COURT:** I'm trying to figure why I would
13 need to take it up if you don't plan to call those
14 witnesses today?

15 **MS. SAVAS:** I'm just saying that they may
16 call, depending on how quickly or how long Your
17 Honor wants to go today for her cut-off time for
18 court.

19 **THE COURT:** Cutting off at 5 o'clock.

20 **MS. SAVAS:** You're cutting off at 5 o'clock?

21 **THE COURT:** Yep.

22 **MS. SAVAS:** I just don't want to -- I didn't
23 know if the Court wanted to break up his
24 testimony. I could see us possibly --

25 **THE COURT:** Who are your next witnesses,

1 Ms. Savas?

2 MS. SAVAS: It would be the -- continue on
3 with the fire and then crime scene.

4 THE COURT: Uh-huh.

5 MS. SAVAS: And then if we could come to a
6 kind of a decent stopping point, Judge, with
7 another witness, I'd then call cellphone first
8 thing in the morning.

9 THE COURT: It's up to you the order you want
10 to call your witnesses in. But I'm not going to
11 use any time this afternoon to deal with that when
12 I have witnesses who can testify. And that we can
13 go ahead and disclose of. Do you understand what
14 I'm saying?

15 I'm not going to stop in the continuing of
16 witnesses to deal cell phones, is what I'm saying.
17 That's not a good use of time.

18 MS. SAVAS: Right.

19 THE COURT: If you have witnesses here, we
20 need to call them and get rid of their testimony
21 while we got the jury's attention.

22 MS. SAVAS: Right. Yes, ma'am.

23 THE COURT: That give you the clarity you
24 were seeking?

25 MS. SAVAS: Yes, ma'am.

1 **THE COURT:** Okay.

2 Anything from the defense before we recess
3 for lunch?

4 **MR. D'ANGELO:** No, Your Honor. Thank you.

5 **THE COURT:** You-all can leave everything in
6 the courtroom. It will be locked when you leave.

7 And we'll be back at two o'clock.

8 **MR. D'ANGELO:** Thank you, Your Honor.

9 **THE COURT:** You're welcome.

10 (A lunch recess is taken.)

11 **MS. SAVAS:** Yes, Your Honor.

12 **THE COURT:** Is the defense ready to proceed?

13 **MR. D'ANGELO:** Yes, Your Honor.

14 **THE COURT:** Who's your next witness,
15 Ms. Savas?

16 **MS. SAVAS:** Could be Agent Graham.

17 **THE COURT:** Is he -- he or she present?

18 **MS. SAVAS:** Right here, Your Honor, in the
19 courtroom ready for you.

20 **THE COURT:** Okay.

21 Please bring in the jury.

22 (The jury enters the courtroom at 2:19 p.m.)

23 **THE COURT:** You may be seated.

24 Ladies and gentlemen, I hope y'all had a
25 pleasant lunch recess. We'll now resume

1 testimony. State may proceed.

2 MS. SAVAS: State calls Agent Joe Graham.

3 THE COURT: Please swear the witness.

4 JOE GRAHAM

5 having first been duly sworn, testifies as follows:

6 THE CLERK: Please be seated. Please state
7 your full name, spelling your last name directly
8 into the microphone.

9 THE WITNESS: Joseph Graham. Last name's
10 G-r-a-h-a-m.

11 THE COURT: You may proceed.

12 MS. FRIES: Thank you, Your Honor.

13 THE COURT: You're welcome.

14 DIRECT EXAMINATION

15 BY MS. FRIES:

16 Q Good afternoon, Agent Graham.

17 A Good afternoon.

18 Q Where are you employed?

19 A I work for the South Carolina State Law
20 Enforcement Division.

21 Q Is that also known as SLED?

22 A It is commonly referred to as SLED, yes.

23 Q And how long have you worked there?

24 A A little over six years.

25 Q And what's your role?

1 **A** I'm assigned to the counterterrorism unit
2 with -- within the arson investigations unit.

3 **Q** And were you in law enforcement prior to
4 SLED?

5 **A** I was served a little over 17 years with the
6 City of Mullins Police Department.

7 **Q** What were your different positions in law
8 enforcement?

9 **A** When I started, I started up in patrol.
10 Worked my way up through the ranks to lieutenant on
11 patrol. Short time after that, I was promoted to
12 investigations, where I ended up getting promoted to
13 captain over investigations for the City of Mullins.
14 Served in that position approximately five years before
15 I left there and came to SLED.

16 **Q** And what training have you done regarding
17 arson investigations?

18 **A** In reference to arson investigations, before
19 I even got into law enforcement, I was a volunteer
20 firefighter. I worked there for 25 years at the local
21 agency that I was employed with. Throughout those 25
22 years, I took various courses in firefighting and
23 actual fire investigation.

24 When I came on with SLED in 2018, of course,
25 I took additional courses. Numerous -- I hold several

1 certifications through the International Association of
2 Arson Investigators as well as the National Association
3 of Fire Investigators.

4 I'm certified as a certified fire
5 investigator. I'm also certified as an evidence
6 collection technician. I'm also certified as a
7 certified explosive and fire investigator as well as a
8 certified vehicle fire investigator.

9 Q Okay.

10 And what kind of training do you do with
11 canines?

12 A Back in 2018, when I came to SLED, I got
13 certified as a canine handler, which entailed me
14 traveling to Alabama for one month. The training was
15 160 hours long. So I actually stayed there for a
16 month, in which I was trained as a handler along with
17 my canine. At which point to get certified, we had to
18 pass a practical exam provided by the agency that I was
19 there with training.

20 Q How many cases have you worked specifically
21 with canine -- with your canine?

22 A Approximately 100.

23 Q And do canines have different purposes?

24

25 A Some do. There's multipurpose canines and

1 then they're single-purpose canines.

2 Q And can you explain the difference in those?

3 A Multipurpose canines are usually trained for
4 multiple functions, whether it be narcotics, tracking,
5 article recovery, or searching, that kind of things.

6 Single-purpose dogs are just that. They're
7 for one single purpose.

8 Q Is your canine a single-purpose or a
9 multipurpose?

10 A He is single-purpose.

11 Q What is his single purpose?

12 A His single purpose is he's an ignitable
13 liquid protection canine.

14 Q What is -- when you reference "ignitable
15 liquids," what does that mean?

16 A An ignitable liquid is basically any liquid
17 that is combustible, or flammable. It comes in various
18 forms that most of us see day to day such as gas,
19 kerosene, those kinds of things. My dog is specific to
20 searching out those types of liquids.

21 Q And as a single-purpose canine, how does your
22 canine give an alert?

23 A He is a passive alerter. So when he -- when
24 he gives a final alert, he actually sits down, looks at
25 where he's wanting me to see the evidence, and stays

1 until I give him commands.

2 Q And were you a canine agent on
3 February 8, 2020?

4 A Yes, I was.

5 Q And were you dispatched to [REDACTED] Avenue?

6 A I was.

7 Q And how does the dispatch process work?

8 A So for us, the local agencies would call our
9 dispatch to make a request for whatever they need from
10 our agency. In this case, it was for a canine to come
11 onto a fire scene. Once they look -- or notify our
12 dispatch, our dispatch gets in touch with our duty
13 officer that's on call.

14 Our duty officer will then get in touch with
15 the local agency, whoever it was that called and made
16 the request, gather pertinent information for our
17 reports. Then they will notify the regional lieutenant
18 with us.

19 The regional lieutenant will decide who
20 they're going to send to the call, notify our duty
21 officer. And then the duty officer will notify the
22 agent that's responding out and let them know where
23 they need to go.

24 Q What time did you approximately arrive?

25 A I think it was approximately about 8:30 p.m.

1 when I arrived on this scene.

2 Q And what did you do when you first arrived?

3 A What I first do when I arrive, I speak with
4 the local agencies that are there, the ones that
5 requested us. In this matter, I spoke with the fire
6 department and with the sheriff's office to find out
7 what they had, what they were looking from us, and as
8 to what legal grounds that I would have had to have
9 been there.

10 Q Were you given authority to search the home?

11 A We were given authority. The sheriff's
12 office had -- the sheriff's office had obtained a
13 consent to search form from the property owner.

14 Q And once you had that, how did you perform
15 the search?

16 A Once I begin preparing for my search,
17 normally, what I do is I take a walk-through through
18 the structure. I look for safety hazards, anything
19 that might put the dog's life in danger, nails, that
20 kind of stuff, glass, loose -- loose things. I also
21 look for certain household chemicals, bleach, that kind
22 of stuff. I don't want to put the dog in any scene
23 that's going to overwhelm the dog's sensories, which
24 could in turn hurt him. In this case, that's exactly
25 what I done. I did a walk-through, looking for safety

1 factors and anything of that that could hinder the dog.

2 Q And then once you got inside with your
3 canine, what happened?

4 A Once we make the approach with the canine, I
5 always bring him up to the front door, or the front
6 entrance area, depending on where I'm going to start my
7 search from. In this case, I brought him up to the
8 front door. I usually have him sit there for a few
9 minutes. Because there's a lot of smells going on
10 inside of that residence. A lot of stuff has been
11 burned. There's a lot of natural odors and stuff in
12 there. So I get him acclimated to the area before I
13 actually let him go in.

14 In this case, once I let him go in -- we have
15 two different ways we can search. Usually I let the
16 dog free search himself when I first take him in. Or I
17 can actually take him in and present and have him
18 search areas that I want him to search. In this case,
19 I let him free search, which is my common practice from
20 training and experience. So that's what we did.

21 Q Do you look for any type of behavioral
22 changes when you're inside the home with your canine?

23 A So when the dog is searching, that's --
24 that's our -- a common key for us is, we look for -- as
25 a canine officer, we look for behavioral changes with

1 the dog. That simply means that he may walk past a
2 door going down a hallway or anything like that and all
3 of a sudden stop, turn around, and go back into that
4 door. Those are the types of behaviors we're looking
5 for, to see if he's getting into a scent cone or a
6 scent pattern, if there is any type of ignitable liquid
7 present. Normally if we see those kinds of things, he
8 has picked up on something that he recognizes and he's
9 trying to find it.

10 Q In this case, did you notice any behavioral
11 changes?

12 A In this case, I did. We entered through the
13 front door, which kind of was into a room. And then
14 there was a hallway to the left. As soon as we got
15 into that hallway, I could tell that he was actually a
16 little overwhelmed with some of the scent that was in
17 there. At which point, I let him free search. We went
18 down to the end of the hallway on the left end of the
19 hallway and in the right bedroom at the end of the
20 hallway where he alerted the two samples: One in the
21 hallway and one into the right bedroom.

22 Q And did you let him off leash during this?

23 A No. In this situation, there were some open
24 doors. There so a lot of times, I won't run them off
25 leash if he has a way of getting out, simply for the

1 fact that if he gets out and runs, he could get injured
2 or whatever. So in this matter, he was on leash when I
3 was running him.

4 Q . Did he lead the way when he was --

5 A Yes. When he's on leash or off leash, I let
6 him lead the way.

7 Q And did you place placards where he alerted
8 to?

9 A Yes. Once he makes an alert, my common
10 practice is that I'll take evidence markers or placards
11 and place them down where he -- he picks up that scene
12 so we can document it and collect samples from that
13 area.

14 Q . I'm now going to show you a photo, State's
15 Exhibit 20. Are you able to show the jury where your
16 canine alerted to?

17 A So if you're looking at this diagram, if you
18 look into this hallway right here where the red writing
19 is, right where her pen is, this is the left side of
20 the rear of the hallway that I referred to, that would
21 have been one -- one spot that he would have alerted
22 on.

23 And then into the bathroom or -- I'm sorry --
24 the bedroom to the right where her pen is now, he would
25 have alerted within that area right there as well.

Joe Graham - Direct Examination by Ms. Fries

1 **Q** Okay.

2 Now I'll show you State's Exhibit 17. What
3 does this show?

4 **A** That's a little dark there. It looks like
5 that is the -- a picture of the interior of the bedroom
6 from the doorway.

7 **Q** Okay. So this is the bedroom?

8 **A** It's a little hard for me to tell. But
9 that's -- that's what it looks like, yes.

10 **Q** If I show you the photo, would you be able
11 to --

12 **A** Yes, if I could see it up close.

13 **MS. FRIES:** May I approach, Your Honor?

14 **THE COURT:** You may.

15 **THE WITNESS:** Yes. This looks like where he
16 alerted within the bedroom.

17 **BY MS. FRIES:**

18 **Q** Okay.

19 I'm showing you State's Exhibit 17 -- excuse
20 me, 18. What does this show?

21 **A** This would have been the -- the area that he
22 would have alerted to within the hallway.

23 **Q** Okay.

24 And that's -- this is outside of the bedroom?
25 Outside of the bedroom, yes.

1 Q Now I'm gonna show you what's been marked as
2 State's Exhibit 19. Is this just an enlarged photo of
3 that placard?

4 A That's correct.

5 Q And was canine -- was your canine able to go
6 throughout the entirety of the home?

7 A No, we were not. There was some -- a lot of
8 fall-down debris within the -- the garage portion of
9 the structure that we were not able to access.

10 Q And in safety concerns that you had in this
11 case for your canine, can a human expert look
12 throughout the home for certain ignitable liquids?

13 A They can look for certain patterns, irregular
14 burn patterns, that kind of stuff that would be
15 consistent with an ignitable liquid being used.

16 Q And who was with you when you were searching
17 the home?

18 A There was still some of the local guys there.
19 I think there were some Crime Scene there, some of the
20 sheriff's office, and some of the fire department
21 members still there.

22 Q And what did you do next?

23 A After we done the search, I put my dog back
24 up. And I notified the investigator that initially
25 called us and let them know what the canine had found.

1 **Q** And was that the extent of your involvement?

2 **A** It was, other than generating a report.

3 **MS. FRIES:** Okay.

4 Beg the Court's indulgence.

5 I have nothing further. Please answer
6 anything the defense may have.

7 **THE COURT:** Any questions of the witness?

8 **MS. BLAZER:** Briefly, Your Honor.

9 **THE COURT:** You may proceed.

10 **MS. BLAZER:** May it please the Court?

11 **THE COURT:** Yes, ma'am.

12 **CROSS-EXAMINATION**

13 **Q** Good afternoon.

14 **A** Good afternoon.

15 **Q** How are you?

16 **A** I'm well. How about yourself?

17 **Q** Doing great. Thanks.

18 **A** Good.

19 **Q** Your canine is trained to detect various
20 kinds of ignitable liquids, right?

21 **A** Correct.

22 **Q** And not just in a single form, correct?

23 **A** I'm not sure what you mean.

24 **Q** Well, so not just leaning in and sniffing it
25 in a gas can, but in an evaporated form in a post --

1 what -- they call it pyrolysis form; is that right?

2 **A** Pyrolysis is -- it usually affects different
3 items after it's been exposed to a fire.

4 **Q** Right. .

5 **A** Most canines, as my canine are -- although we
6 teach them to alert to certain ignitable liquids, we
7 also teach them -- we expose them to pyrolysis and that
8 sort of stuff that would be present on fire scenes, to
9 keep them from alerting to stuff like that.

10 **Q** Okay.

11 But -- so I think I -- if the -- if the
12 question was confusing, it's my fault. So if -- your
13 canine is trained not only to smell gasoline as you and
14 I might smell it at the gas station, but also post
15 fire?

16 **A** Yes.

17 **Q** Okay.

18 So -- and gasoline is something that has a
19 lot of fumes that come off that -- like the liquid kind
20 of gives off off-gases, right?

21 **A** It -- it -- it gives off vapors, yes.

22 **Q** And it can do that in an evaporative state
23 for a period of time?

24 **A** One -- one of the samples that we use -- we
25 actually use two samples. We use a 75 percent

1 evaporated gas and a 50 percent evaporated gas for that
2 purpose.

3 Q Got it. And you said that you've taken lots
4 of courses. Is -- was your canine trained through the
5 ATF program?

6 A No, ma'am. He was trained by Global Canine
7 Solutions in Alabama.

8 Q Okay. So that's why -- that was the Alabama
9 trip you mentioned?

10 A Yes, ma'am.

11 Q I gotcha. So that's a private company that
12 does these trainings?

13 A It is a private company.

14 Q And you mentioned that you're a certified
15 fire investigator. But you didn't -- you didn't play
16 the role of evidence collector or the person whose job
17 it was to determine the actual cause or person involved
18 in the fire?

19 A I did not.

20 Q Okay.

21 You mentioned that you walked through the
22 structure before you had your canine in, to look for
23 hazards, household chemicals, things that would confuse
24 him. Did you find any?

25 A Not -- not things that would confuse him. It

1 would just be items that could potentially harm him
2 or -- or his senses. And in this matter, I don't
3 recall finding any.

4 Q You don't recall. Okay.

5 MS. BLAZER: Beg the Court's indulgence just
6 a moment. (Pause.)

7 Nothing further, Your Honor.

8 THE COURT: Any --

9 MS. BLAZER: Thank you.

10 THE COURT: You're welcome.

11 Any redirect of the witness?

12 MS. SAVAS: No, Your Honor.

13 THE COURT: Any objection to the witness be
14 excused from the state?

15 MS. SAVAS: No, Your Honor.

16 THE COURT: From the defense?

17 MS. BLAZER: No, Your Honor.

18 THE COURT: Sir, you're excused.

19 THE WITNESS: Thank you.

20 THE COURT: You're welcome.

21 THE COURT: Call your next witness.

22 MS. SAVAS: The state calls Fire Marshal
23 Kevin Berkel.

24 KEVIN BERKELL

25 having first been duly sworn, testifies as follows:

1 **THE CLERK:** Please be seated. Please state
2 your full name, spelling your last name into the
3 microphone.

4 **THE WITNESS:** Kevin Berkel, B-e-r-k-e-l.

5 **THE COURT:** You may proceed.

6 **MS. SAVAS:** Thank you, Your Honor.

7 **THE COURT:** You're welcome.

8 **DIRECT EXAMINATION**

9 **BY MS. SAVAS:**

10 **Q** What is your official title?

11 **A** I'm chief fire marshal.

12 **Q** Okay.

13 And where are you the chief fire marshal at?

14 **A** St. Andrews Fire Department.

15 **Q** Okay.

16 And how long have you been the chief fire
17 marshal at St. Andrews?

18 **A** Seven years.

19 **Q** And how long have you been in -- working with
20 St. Andrews?

21 **A** Just about 10 years.

22 **Q** Okay.

23 And what is your previous background to
24 becoming chief fire marshal?

25 **A** I have 28 years of fire-fighting experience,

1 both structural and aircraft rescue and firefighting at
2 a regional airport. Also fire suppression down here in
3 South Carolina.

4 When I first joined -- when I first moved
5 down to South Carolina, I worked for Folly Beach Public
6 Safety. I was a fire sergeant there. I ran the fire
7 department down at Folly Beach, fire suppression, auto
8 extrication, EMS.

9 Then I went to St. Andrews and started on the
10 truck. I was what they call a trolley firefighter. So
11 my basic function was first on the line going into a
12 structure fire. And that's --

13 Q Okay.

14 A Then I was promoted to the fire marshal.

15 Q Do you have training that goes into all of
16 your background?

17 A Yes, I do.

18 Q What kind of training have you done?

19 A At recruit schools, Firefighter 1,
20 Firefighter 2, Hazardous Materials Operations, EMT
21 basic for the state and national, aircraft rescue and
22 firefighting, Hazardous Materials Operations -- I think
23 I said that. But -- and just various courses
24 throughout my whole career continuing and to specialize
25 in certain things.

1 **Q** Have you had specialized training in arson
2 cases?

3 **A** Yes.

4 **Q** Do you have specialized training for origin
5 and cause investigations?

6 **A** Yes.

7 **Q** Do you continue your training even today?

8 **A** Yes, I do.

9 **Q** Do you know about how many hours you might
10 have trained total in your career?

11 **A** I know --

12 **Q** Would it be a few hundred?

13 **A** Several hundred, if not over a thousand.

14 **Q** Sure.

15 And what's your level of education? What's
16 your education background?

17 **A** I graduated high school up in Pennsylvania.

18 **Q** And did you have special education? Or is it
19 training in the firefighting as well? Did you get
20 certificates?

21 **A** Yes, ma'am.

22 **Q** Okay.

23 And do you also belong to professional
24 organizations?

25 **A** I do. I'm a member of the International

1 Association of Arson Investigators on the international
2 level and also on our state chapter, which is
3 Chapter 33. I'm a national member of the Fraternal
4 Order of Police. I'm also a member of the Reading
5 Police -- Reading Fraternal Order of Police.

6 Q And in part of your certifications, do you
7 also have the fire investigation certification --

8 A Yes.

9 Q -- from IAAI?

10 A Yes, I do.

11 Q And what is IAIA -- IAAI?

12 A IAAI is International Association of Arson
13 Investigators. It's an international group.

14 Q Okay.

15 A And then there's also a state chapter, which
16 is Chapter 33.

17 Q And about how many fires would you say you've
18 investigated in your career?

19 A Over a hundred.

20 Q About how many of those would be a
21 residential structure fire?

22 A The majority were residential. There --
23 there were about -- about a third of them were
24 commercial structures. But the majority are
25 residential.

1 Q Have any involved death or near-death?

2 A Yes.

3 Q Do you have any tools you use when you're
4 doing your investigations?

5 A Yeah. We have several hand tools that we
6 use. We use shovels and rakes and shifting components,
7 screwdrivers, hammers, electric saws. But we also have
8 the ability to call in specialized people like
9 accelerant canine detection dogs. We're also able to
10 call in Alcohol, Tobacco and Firearms Response Team on
11 a national level, should we need those. Also SLED,
12 which is the South Carolina Law Enforcement Division,
13 can also call them for specialized.

14 And with the ATF, if they send out their
15 team, they send out electrical engineers and structural
16 engineers. So yes, there's plenty of tools at my
17 disposal.

18 Q Do you also take photographs of your
19 investigations?

20 A Yes.

21 Q And you compiled detailed reports as part of
22 your investigations?

23 A Yes.

24 Q Have you ever testified in court before
25 regarding your arson investigation?

1 **A** Not in arson investigations.

2 **Q** Okay.

3 As part of your investigation, do you
4 determine cause and origin --

5 **A** Yes.

6 **Q** -- of fires?

7 **MS. SAVAS:** Your Honor, at this time, to seek
8 [sic] would state [sic] to admit the Chief Fire
9 Marshal Kevin Berkel as an expert in the field of
10 a fire investigator for cause and origin.

11 **THE COURT:** Any objections or questions?

12 **MS. BLAZER:** No, Your Honor.

13 **THE COURT:** So admitted without objection.

14 **MS. SAVAS:** Thank you, Your Honor.

15 **THE COURT:** You're welcome.

16 **BY MS. SAVAS:**

17 **Q** Since I've just brought it up, can you just
18 briefly before we go into it specifically, what is --
19 your investigation -- what are you looking for? What
20 is a cause and an origin?

21 **A** The origin and cause is simply what it says.
22 The -- the origin is where the fire started, or an area
23 where it started. So that would be the origin. And
24 the cause would be the specific components that came
25 together to have that fire started.

1 Q Were you involved in this case?

2 A Yes.

3 Q And what was your position back on
4 February 8, 2020?

5 A At that point, I was a rank of a captain.

6 Q And did you get called out as -- as a fire
7 investigator in this case?

8 A Yes.

9 Q And did you get dispatched to 20- -- [REDACTED]
10 [REDACTED] Avenue on that day?

11 A Yes.

12 Q Do you recall what time you were dispatched?

13 A I believe it was -- 14:06 is when the
14 dispatch went out over consolidated dispatch.

15 Q Okay.

16 And do you remember about what time you
17 arrived on scene?

18 A I believe it was around 14:36 or 2:36 in
19 the --

20 Q Okay.

21 A -- afternoon.

22 Q Why would there be a gap in time between your
23 call-out and when you arrived on scene?

24 A So when I'm off duty, which I was that
25 specific day, I was -- I was out with my wife. And we

1 were doing some fun things.

2 And when the call goes out for the crews to
3 respond to the fire, I automatically get a dispatch
4 text on my phone. I always carry my radio with, so I
5 can turn it on and go to the incident channel that
6 they're working on. So I can hear the -- the -- what
7 we call the size-up. So when the first unit arrives,
8 they give a size-up of what they see, and then what
9 they're going to do. So that gives me a kind of a
10 head-start, a mental picture of what they're seeing as
11 they first pull up.

12 Knowing that there were multiple calls on
13 this specific dispatch text, I had to go home to get
14 changed and then get my -- my vehicle that I have as a
15 take-home car that has all my equipment in. And then
16 once I power up my mobile data terminal, then I hit
17 "Responding." And then that's when it actually shows
18 on the CAD notes that I'm actually responding to the
19 call.

20 Q Were fire crews already on scene when you
21 arrived?

22 A Yes.

23 Q Okay.

24 And what did you observe as far as the
25 condition of the house when you arrived initially?

1 **A** Well, when I first arrived, the bulk of the
2 fire was pretty much out. There was some smoke still
3 around the area and from the structure. They were
4 doing what we call "overhaul operations." Basically
5 hitting hotspots that they had to pull down some walls
6 and ceilings and stuff to the fire that's been hidden
7 or still smoldering, so that they can fully extinguish
8 the fire. Excuse me. So that -- that was what I
9 observed when I first arrived.

10 **Q** And what -- who was commanding the scene at
11 that time?

12 **A** That would be chief -- Battalion Chief
13 Looney.

14 **Q** And did he eventually turn over command to
15 you?

16 **A** Eventually yes, he did.

17 **Q** Okay.

18 And do you speak with the fire crews when you
19 arrive upon scene?

20 **A** Yeah. When I first arrived at the scene, I
21 always find the first crew that was on location. So I
22 can ask them just general information: What did you
23 see when you first arrived? What did you do? When you
24 made entry to the structure, did you have to force
25 entry? Was it already open? What -- what were the

1 fire conditions like when you -- when you first made
2 your entry in? What we call a push for the fire seat,
3 going in to find where the actual fire is. You know,
4 when you started hitting the fire, what were the
5 conditions like? How did it react when you started
6 hitting it with water? So those are the gen- -- just
7 general questions. Also, you know, did you see
8 anything out of the ordinary?

9 Q When you arrived on scene, did you speak with
10 Michael Brinson who was the first fire crew on scene?

11 A Yeah. Captain Brinson. He was the captain
12 of Engine 303. They were the first unit arriving on
13 occasion that day. So I -- I did speak to him.

14 Q And in your investigation speaking with him,
15 what did you learn?

16 A I learned that when they first arrived -- if
17 you're looking at a house on your right-hand side --

18 Q I'm gonna bring one thing for you to help you
19 with this. If I show you a lay-out the house in this
20 case, would that assist you --

21 A Yes, ma'am.

22 Q Okay.

23 -- in your explanation?

24 I'm showing you State's Exhibit 20. Okay.

25 Did you draw this?

1 **A** (No audible response.)

2 **Q** Did -- is this the lay-up you made?

3 **A** Yes, it is.

4 **Q** And you put this in your report for this
5 fire?

6 **A** Yes, I did.

7 **Q** Okay.

8 So you can continue.

9 **A** Okay.

10 So if -- if you're looking at the front of
11 the house, which is at the bottom of the -- of the
12 screen, it's what we commonly refer to as the Alpha
13 side, or the front of the house. And we always go in a
14 clockwise direction. So on your left-hand side, that
15 would be the Bravo side. The rear of the house would
16 be the Charlie side. And on the right-hand side would
17 be the Delta side.

18 What I learned speaking with Captain Brinson
19 is that there was heavy fire through the roof and out
20 the front window on the Alpha, Delta, or the front
21 right side of the house; that the smoke was very black,
22 almost as black as this microphone, very turbulent,
23 pushing very, very hard; and that when they made entry
24 to the house and started hitting the fire, it was
25 exceptionally hard to put out.

1 Q Did you speak with anyone else upon arriving
2 on scene?

3 A Besides the first crew?

4 Q Yes.

5 A At that time, no.

6 Q Okay.

7 When -- during your investigation on scene,
8 did you speak with anyone else?

9 A Yes.

10 Q Who was that?

11 A Besides Chief Looney and Captain Brinson, I
12 also spoke with Frank Simmons and Jason Simmons.

13 Q And who are they?

14 A Frank is the renter of that house. And then
15 Jason was a relative who was also staying with him at
16 the house.

17 Q When did you first see them?

18 A So after I spoke with the initial fire crews,
19 the operations were pretty much winding down the
20 overhaul. And what happens after -- at that point is
21 that the incident commander, which was Chief Looney at
22 the time, they called what we call a "hot wash." And
23 basically, everybody who's on the fire ground, they get
24 in kind of like a circle, and they talk about what they
25 did on scene, what their actions were, what went good,

1 what went not so good, what they could improve. So it
2 was basically a quick review of what was going on at
3 the scene. And that's what I was doing at the time.

4 **Q** And so you were -- you were doing your hot
5 wash, getting a debrief with the other fire crews --

6 **A** Yes.

7 **Q** And then the victims came on scene?

8 **A** That's correct.

9 Once we started the hot wash shortly after,
10 two gentlemen came up on the front lawn, who turned out
11 to be Frank and Jason. Frank fell back on the front
12 lawn and looked up at the sky.

13 **THE COURT:** Basis?

14 **MS. BLAZER:** Hearsay.

15 **THE COURT:** He's describing what he rashly
16 perceived. He was there. He's describing it.
17 Overruled. It's not hearsay.

18 . You may proceed, sir, with your answer.

19 **THE WITNESS:** Frank fell back on his back,
20 looked up at the sky, and said, "I can't believe
21 she did this."

22 **MS. BLAZER:** Objection.

23 **THE COURT:** Excited utterance.

24 **MS. SAVAS:** Excited utterance.

25 **THE COURT:** Overruled. Exception to the

1 hearsay rule.

2 **BY MS. SAVAS:**

3 **Q** So Frank said -- I'm sorry. Can you repeat
4 that?

5 **A** Yes. Frank --

6 **Q** What did Frank say?

7 **A** Frank yelled out, "I can't believe she did
8 this."

9 **Q** And what was Jason doing at that time?

10 **A** At that time, I didn't see Jason right off --
11 off --

12 **Q** Okay.

13 **A** -- right away.

14 **Q** And what happened once Frank came onto the
15 scene and Jason came onto scene, what did you do?

16 **A** I stopped the hot wash right at that moment
17 and said, "Wait, I need to go talk to this guy." So I
18 went over and spoke with Frank. And --

19 **Q** What did you learn from that conversation as
20 part of your investigation?

21 **A** Speaking with Frank, I learned that earlier
22 that day, he had broken up with his girlfriend. That
23 him and -- he wasn't home at the time that we got this
24 fire call.

25 **Q** Did -- did you learn if anyone was home at

1 the time?

2 A Yes.

3 Q Who was that?

4 A That would be Jason.

5 Q What did you learn from your conversation
6 with Jason being home?

7 A I learned from Jason that he was inside the
8 house, that earlier in the day around 10 a.m. in the
9 morning, that he saw Frank's ex-girlfriend, Toya
10 Steward, out front yelling obscenities, banging on the
11 doors. And that then she had left. Okay. That --
12 also learned that she had come back around two o'clock,
13 and that she was, again, yelling obscenities and
14 banging on doors and he said he went into the bathroom
15 to call Frank.

16 And while he was in the bathroom, he heard a
17 smashing sound of the rear door glass. And then he
18 heard what he described to me as some liquid pouring
19 throughout the house, that sounded like somebody just
20 pouring water. But she also -- he also said that he
21 heard her yelling obscenities inside the house.

22 He then heard what he described as a loud
23 boom. Okay. He said when he opened the door to the
24 bathroom, all he saw was fire.

25 Q Can I ask you, as an expert in your

1 investigations, could a fire igniting cause the sound
2 of a loud boom?

3 A It could, yes.

4 Q Okay.

5 And once you got this information from the
6 victims, what did you do next?

7 A At that time, the hot wash still was stopped.
8 And I immediately secured the entire house with fire
9 line tape in order that nobody goes in that house. We
10 had fire attack lines inside the house. We had fire
11 suppression tools inside the house. And those were
12 left in place and disconnected from the trucks. And I
13 secured that scene.

14 Q Why did you secure the scene?

15 A Because of what I learned from Jason and
16 Frank, and coupled with what I was told by the first
17 arriving units on location, I felt that there was --
18 that it was a potential crime scene.

19 Q Okay.

20 And if it's a potential crime scene, do you
21 call out for the sheriff's office?

22 A Yes, ma'am.

23 Q Do you call out for an arson detective from
24 the sheriff's office or an investigator?

25 A I call for an investigator and -- and a

1 forensics unit as --

2 Q Okay.

3 A -- well.

4 Q And did you get consent from Frank to search
5 the home?

6 A Yes, I did.

7 Q And was it written consent?

8 A Yes, it was.

9 Q Did that allow you, then, to also continue
10 your investigation and interior of the home eventually?

11 A That's correct. Yes.

12 Q Did you also request a canine dog?

13 A I did.

14 Q Why would you request the canine arson dog?

15 A Because of the limited information that I had
16 and also with what I was told and what I learned, that
17 it was a potential crime scene, again, like I had
18 mentioned before, that's one tool that's at my
19 disposable -- not disposable, but disposal, that I can
20 call in to assist in the investigation.

21 Q And did crime -- or canine eventually arrive
22 on the scene?

23 A Yes.

24 Q And did he do a search of the home?

25 A He did.

1 Q And what did you learn from the canine's
2 investigation?

3 A When the canine handler came out with his
4 canine, he indicated that his canine indicated that two
5 spots in the home for an accelerant.

6 Q And what is an "accelerant"?

7 A An accelerant is a mixture or a substance
8 that accelerates the growth and spread of a fire.

9 Q And in this case, did you also do an
10 investigation the same time as the sheriff's office
11 Crime Scene came out?

12 A Yes. After -- after the canine came out and
13 we had a debrief on that -- the canine's findings, then
14 forensics through the Charleston County Sheriff's
15 Office and myself, we went in to process that scene.

16 Q Why would you both have two investigations on
17 the same house?

18 A I won't call it two separate investigations.
19 It's basically the same investigation. It's just that
20 the Charleston County Sheriff's Office forensic unit,
21 their job and as far as that is, to collect evidence
22 and samples. Okay?

23 My job as far as my investigation was, to
24 investigate the origin and cause of the fire as a
25 whole.

1 Q And in this case, did you determine an origin
2 and cause?

3 A I did.

4 Q What was that?

5 A I determined that the fire was incendiary.

6 Q And what does that mean?

7 A Incendiary just simply means that there was a
8 fire that was an intentionally-set fire at a spot where
9 one -- a fire should not be and also one that would not
10 be expected to be.

11 Q So in your investigation, you determined this
12 was an intentionally-set fire, that was -- an --
13 accelerants were used?

14 A Well, at that time, the accelerants were
15 possible.

16 Q Okay.

17 And you said you took photos of the same?

18 A Yes.

19 Q I'm going to walk you through some photos.
20 I'm just gonna (inaudible). So is this the house on
21 that day of the fire?

22 A Yes, it is.

23 Q Showing you State's Exhibit 21. What is this
24 a photo of?

25 A That is a photo of the front right corner of

1 the house, of the Alpha Delta corner. And that is the
2 service drop and where the service meter for the
3 electric, coming from the pole, is mounted.

4 Q Why would you take a photo of the service
5 meter?

6 A As part of my investigation, which is a -- a
7 systematic approach, I have to look at all
8 possibilities. Power to the house. That's actually
9 what we consider a competent ignition source, because
10 it has power. So I photographed and examine that to
11 make sure that there was a -- not a failure of the
12 circuit coming from the pole or at the service meter to
13 make sure that that was not a contributing factor to
14 the fire.

15 Q Did you determine that that was a factor for
16 the fire in this case?

17 A It was determined that that was not a factor
18 in the fire.

19 Q Okay.

20 Going to show you State's Exhibit 22. What
21 is this photo of?

22 A That's -- that photo was taken from right at
23 the front door. And that's looking towards the back of
24 the house.

25 Q So this is the front entryway of the house as

1 you found it?

2 **A** Yes, ma'am.

3 **Q** I'm showing you State's Exhibit 20- -- this
4 says 22.

5 **MS. SAVAS:** I'm going to remark this. My
6 apologies.

7 Beg the Court's indulgence.

8 State's Exhibit 87.

9 **THE COURT:** You need to show that to
10 Mr. D'Angelo. (Pause.)

11 Any exceptions, Mr. D'Angelo?

12 **MR. D'ANGELO:** No, Your Honor.

13 **THE COURT:** Marked and admitted without
14 exception, State's 87.

15 (State's Exhibit No. 87 is marked for
16 identification and admitted into the record.)

17 **BY MS. SAVAS:**

18 **Q** And what is this a photo of?

19 **A** That photo is of the front right living room.
20 As you walk in the front door, it's the room immediate
21 to -- immediately to your right.

22 **Q** Let me just ask you briefly, why is all of
23 this debris all over the floor and from the ceiling?
24 Do you know?

25 **A** Yeah. The -- the debris that looks yellow is

1 actually insulation that came from above the ceiling.
2 And the reason why it's down is that when the
3 firefighters go in and do overhaul and attack the fire,
4 they sometimes have to pull the ceiling down to get at
5 fire above the ceiling. So they use hooks. And they
6 go up into the drywall ceiling and pull that down.

7 Q Showing you State's Exhibit 23. What is this
8 a photo of?

9 A That's of the same room, but the front window
10 that faces towards the road.

11 Q State's Exhibit 24. Is this back in that
12 front entryway hallway?

13 A Yes.

14 Q And what does this lead into?

15 A That leads into -- that leads right to the
16 back door into a common area that's basically a dining
17 room and then a kitchen area.

18 Q So the kitchen, State's Exhibit 25, is this
19 the kitchen that you -- picture you took?

20 A Well, the kitchen -- the kitchen is to the
21 right of that photo when you go through that doorway.
22 But that's -- those are cabinets on the left-hand side.
23 And if you continue back, that opening in the back is
24 the back door.

25 Q What is significant about the wall here?

1 **A** Well, there's charring on the -- on the
2 side -- on the left-hand side of that room. And what
3 that indicates is fire did get to that area. And the
4 way that charring is, it shows the direction of the
5 fire

6 **Q** Showing you State's Exhibit 26. This is the
7 remainder of the kitchen?

8 **A** Yes.

9 **Q** Okay.

10 What is there significance about the way this
11 black stuff here in these -- in the ceiling?

12 **A** So the black that you see on the -- the
13 ceiling joists above the kitchen there, if you notice
14 that it's black on a top edge of it and it comes down
15 in like a semicircle, it's what we call "saddle burns."
16 And that just indicates that fire was above and was
17 burning down.

18 **Q** And let me ask you -- I'm gonna go back to
19 this photo of the back door. You said you can see a
20 flow pattern from this of the fire; is that correct?

21 **A** Yes.

22 **Q** What is the flow pattern in this photo?

23 **A** Well, that flow pattern shows that because
24 there's no back door there any -- any longer in the
25 picture, it's what we call "ventilation point." So any

1 hot air and gases and smoke will go to a ventilation
2 point where an opening. And that's where it goes out.
3 So in your expert opinion, there's a house fire and
4 this back door busted open, the window was busted,
5 would the fire try to escape out that back way?

6 A Yeah. Fire looks for oxygen. So it goes to
7 where the oxygen is at.

8 Q And so that's what happened in this case
9 here?

10 A That created that type of fire pattern, yes.

11 Q Showing you State's Exhibit 27. Is that just
12 more of the kitchen?

13 A Yeah. That is a picture of the kitchen,
14 facing the right side of the home. to the left of the
15 cabinet in that dark area, that's actually steps
16 leading down to the converted garage.

17 Q Okay.

18 And is -- well, showing you State's
19 Exhibit 28. Is that the converted garage there, the
20 steps down to that room?

21 A Yeah. These are the steps that lead down to
22 the converted garage, yes.

23 Q Okay.

24 Showing you State's 29. Is this that
25 converted garage where you were describing?

1 A It is --

2 Q Take a step down and you look to the right,
3 what is this right here?

4 A So the square object you see that's kind of
5 like a shadow or a silhouette, that is a vehicle that
6 was parked in front of that window.

7 Q What is this right here? This white brick.

8 A That is a fireplace that is inside the room.

9 Q Did you examine the fireplace to see if it
10 was lit at the time of the fire?

11 A I'm sorry. What?

12 Q Was the fireplace lit? Did you examine as
13 part of the investigation?

14 A Yes.

15 Q And was it deemed -- what is your conclusion
16 about the fireplace?

17 A The conclusion, looking at the fireplace, is
18 that any type of fire damage or any type of fire
19 effects in that fireplace was not because the fireplace
20 was lit. It was because of the fire in the room
21 reached that point.

22 Q Okay.

23 And did -- for your investigation, the fire
24 goes so far out the window to reached this car?

25 A Yes, it does.

1 Q That was parked in the front at the time of
2 the fire?

3 A Yes.

4 Q Showing you Exhibit 30. Is this more of that
5 room? The same room?

6 A Yes. That's me standing in front of that
7 large window in the same room, looking --

8 Q So you're looking at the kitchen. You're
9 looking back up --

10 A I'm looking toward the -- straight back to
11 the back of the house.

12 Q Okay.

13 Chief Berkel, what is this photo -- why take
14 a picture of the lawn? What is this right here?

15 **THE COURT:** What number are you referring to?

16 **MS. SAVAS:** 31. Sorry, Your Honor.

17 **THE COURT:** No worries.

18 **MS. SAVAS:** Thank you.

19 **THE COURT:** You're welcome.

20 **BY MS. SAVAS:**

21 Q What is this?

22 A So that square is actually the service panel,
23 or the circuit breaker panel, in that room. Or -- and
24 it's for the house.

25 Q And then, was that part of your

1 investigation?

2 A Yes, it was.

3 Q And what did you determine from the breaker
4 panel?

5 A I determined that the -- the damage to the
6 circuit breaker panel was from fire effects from
7 outside the circuit breaker panel that affected the
8 actual circuit breakers that are inside that panel.

9 Q And I am showing you State's Exhibit 32.
10 This is just a photo of that close-up of the panel?

11 A Yes, it is.

12 Q Okay.

13 And so that was not a cause of this fire.

14 A It was not.

15 Q Showing you State's Exhibit 33. Can you
16 explain what this photo is? I guess we'll start, what
17 happened to this wall?

18 A So the firefighters that were in fighting
19 fire, tore down the wall, to get at fire and check for
20 extension. What that does show is that the fire did
21 not reach inside the wall. But also too that it did
22 not originate inside the wall and come out of the wall,
23 because of the clean wood that's there.

24 Q And does this (inaudible)?

25 A So as part of my investigation, I look for

1 fire patterns. And because the actual drywall or the
2 gypsum dry board is no longer there on the wall,
3 looking at that scene in that specific spot, looking at
4 the charring at floor level, and looking at the -- the
5 burn patterns going up and out from that point, I could
6 guesstimate -- and I put up the tape so I could take a
7 visual photograph to indicate what the fire pattern
8 would actually kind of look like.

9 Q And is that a pour pattern?

10 A That is not a pour pattern.

11 Q Okay.

12 That's your fire pattern?

13 A That's my fire pattern.

14 Q Okay.

15 Showing you State's Exhibit 34. What does
16 this show down here?

17 A So that -- as I process the scene, I
18 excavate. So there's a lot of debris, as you saw in a
19 lot of these pictures, a lot of debris that was pulled
20 down. I have to go layer by layer, to look for not
21 only evidence, but also to uncover fire patterns and
22 char patterns, to try to get to an area of origin and
23 possibly get to a point of origin. And I got down to
24 the floor level in this picture. And the baseboard --
25 it's hard to see from the picture from this far away,

1 but that -- the dark line that goes across, that's
2 actually wooden baseboard. And --

3 Q This?

4 A Yes, ma'am.

5 Q Okay.

6 A So there was heavy charring. It was, I
7 believe I indicated on my -- my diagram, about 36
8 inches wide that it was heavy charring right at the
9 floor level. But then past that point, there was
10 hardly any, if none, charring. What that tells me is
11 that there was heavy fire for longer duration right at
12 that spot where there was heavy charring at floor
13 level.

14 Q And what would cause a heavier fire -- is
15 that your core pattern?

16 A No.

17 Q And this your diagram?

18 A Yes.

19 Q This is a breaker panel?

20 A Yes.

21 Q You describe that there's a pour pattern
22 around here and a point of origin?

23 A Yeah. So --

24 Q Is that what we're looking at here in this --

25 A Yeah. That's before it was cleaned even

1 more.

2 Q But that's where you've determined there to
3 be a core pattern and a point of origin?

4 A Yeah. So -- so a pour pattern in 2020, at
5 that time, the term "pour pattern" was actually a
6 commonly used term. It's now been changed and actually
7 accurately reflects an irregular burn pattern. Okay.
8 So as we clean that off, you would actually be able to
9 see an irregular burn pattern, also commonly known as
10 what they refer to as a pour pattern. So that's what I
11 indicated on my diagram.

12 Q Who placed this placard here?

13 A I believe that was Charleston County
14 Forensics.

15 Q And so did they collect a piece of debris
16 from this area?

17 A They collected --

18 Q (Inaudible)?

19 A Yes. They collected a sample from the floor
20 at that -- at that spot.

21 Q Okay.

22 State's Exhibit 35 -- 35. Is this just a
23 closer view of the car being burned through the window?

24 A Yes, it is.

25 Q State's Exhibit 36, why do you take a photo

1 of the ceiling here and it's all black? What does that
2 indicate?

3 A Well, it indicates a couple of things.
4 No. 1, it -- it's difficult to see in the photo as it's
5 showing up on the screen. But right at that spot,
6 there's no roof left. Because the fire burned through
7 the roof. Okay. But that also shows that the fire got
8 into the attic area at that -- at that point.

9 Q So the fire was in the attic?

10 A Yes.

11 THE COURT: What number was that, please?

12 MS. SAVAS: 36.

13 BY MS. SAVAS:

14 Q Showing you State's Exhibit 37. Can you
15 tell -- and I might bring this to you -- just what that
16 room is? Might be able to indicate it from the
17 objects.

18 A Yeah. This is a picture of the rear room.

19 Q Is that the laundry room?

20 A Yeah. The laundry room. It has a hot water
21 heater and also a washer-dryer.

22 Q Is that a window in the laundry room?

23 A Yeah. That's -- that's at the back of the
24 house.

25 Q And did you have any conclusion as a result

1 of investigating the laundry room and the dryer?

2 **A** Yeah. Fire did enter that room, but the fire
3 did not originate from that room. Both the water
4 heater and the washer and dryer showed external flame
5 damage and heat damage. But there was no indication
6 that fire actually emanated from those and moved out of
7 that room.

8 **Q** So it's not --

9 **THE COURT:** What number is that?

10 **MS. SAVAS:** I'm sorry?

11 **THE COURT:** What number is that?

12 **MS. SAVAS:** 37.

13 **BY MS. SAVAS:**

14 **Q** So the fire was not caused by the water
15 heater?

16 **A** That's --

17 **Q** And it's not caused by the dryer?

18 **A** That's correct.

19 **Q** I'm showing you State's Exhibit 38. Are we
20 walking down the bedroom hallway now?

21 **A** Yeah. So --

22 **Q** Okay.

23 **A** -- that picture is right at the entrance,
24 going into the dining room area to the right. And to
25 the left would be the front door.

1 Q Why is this significant? Can you explain the
2 color on the wall and the dark on the ceiling?

3 A Yeah. So that's just smoke and heat damage,
4 is what that indicates.

5 Q And Chief Berkel, there's a placard here,
6 down at the very end of the hallway by the bedrooms.
7 Is that another point of origin you had determined?

8 A Yes.

9 Q And was that the safe spot the canine hit
10 positive for accelerant?

11 A That was one of them, yes.

12 Q And go into the mas- -- State's Exhibit 40,
13 the master bedroom. This is the hallway. Is this
14 another placard to indicate where the canine hit?

15 A Yes, it is.

16 Q And what is significant about this photo in
17 the flooring that you determined?

18 A So if you can see a dark line and then you
19 have a lighter-colored area closer to where that
20 placard is --

21 Q So right here. The coloring and the floor
22 changing?

23 A Yeah. So --

24 Q What does that mean?

25 A That lighter color is a protected area, where

1 there was -- the rug was actually laying there. And
2 when the rug burns, it retracts. So if anybody --
3 through cellophane into a fire, you see how it kind of
4 crumbles back and kind of like retracts. That's
5 exactly what carpet does when there's fire.

6 Q And going back to your layout photo, in the
7 master bedroom you determine there to be a pour pattern
8 there as well?

9 A Yeah. There was an irregular burn pattern as
10 well.

11 Q And a point of origin?

12 A Yeah.

13 Q I'm showing you State's Exhibit 41. I guess
14 it's just a close-up of that same floor --

15 A Yeah. That's --

16 Q -- and the color changes you described?

17 A Yeah. That's -- that's looking from the
18 hallway into the master bedroom and as part of the
19 irregular burn pattern.

20 Q And State's Exhibit 42. This is a close-up
21 of the other point of origin and pour pattern around
22 that you have marked on your layout.

23 A Yes. That's in the hallway, outside the
24 master bedroom.

25 Q And State's Exhibit 43, can you describe what

1 happened to the floor here?

2 **A** So after we washed down the floor, you can
3 see a regular burn patterns as well or what was
4 referred to as a pour pattern.

5 **Q** So in this same -- this is where the No. 2
6 placard was in the same corner?

7 **A** Yes.

8 **Q** And going into the master bedroom?

9 **A** Yes, ma'am.

10 **Q** Okay.

11 State's Exhibit 44. This is one of the back
12 rooms. Is that one of the back bedrooms?

13 **A** May I see? (Reviews document.)

14 Yes. That's the bedroom at the front left of
15 the home.

16 **Q** State's Exhibit 45, did you take a photo of
17 one of the closets in that same bedroom?

18 **A** Yes.

19 **Q** And -- and are there clothes still hanging in
20 that photo?

21 **A** Yes, there is.

22 **Q** Okay.

23 That's some of the bedroom clothes. Showing
24 you State's Exhibit 46. Is this another room in the
25 back?

1 **A** That's actually the room that's directly
2 across from the bathroom.

3 **Q** Okay.

4 . So directly across from the bathroom, this is
5 that room?

6 **A** Which is the center front room, next to the
7 front door, on the front side of the house.

8 **Q** State's Exhibit 48, is that the other side of
9 that?

10 **A** No. That is the wall just to the left of the
11 stairs that lead down to --

12 **Q** Okay.

13 **A** -- the converted garage in the kitchen.

14 **Q** Chief Berkel, I am showing you State's
15 Exhibit 47. So this is the window in that bedroom
16 across from the bathroom, correct?

17 **A** Yes, it is.

18 **Q** Okay.

19 And it shows the blinds were falling down?

20 **A** Yes.

21 **Q** And there were markings on the wall. What is
22 that?

23 **A** That's soot deposits from the fire.

24 **Q** So the fire was in that room?

25 **A** Well, actually, the fire was not in that

1 room.

2 Q Okay.

3 A So when --

4 Q Smoke?

5 A I'm sorry?

6 Q Smoke?

7 A Yes, ma'am.

8 Q All right.

9 Showing you State's Exhibit 49. That's a
10 clear photo of the burn and char?

11 A Yes, it is.

12 Q Going back to your layout, Chief Berkel, how
13 many points of origin did you determine in your
14 investigation?

15 A I determined three.

16 Q Okay.

17 So you have three points of origin. One, the
18 hallway in front of the master bedroom --

19 A Yes.

20 Q Is that correct?

21 The second one is inside the master bedroom
22 with more pour pattern?

23 A Yes.

24 Q And then the third is in the converted garage
25 by where the car melted, correct?

1 A Yes.

2 Q And then you had an additional pour pattern
3 up in that hallway that leads down into that area?

4 A Yeah, irregular burn patterns there at the
5 top of the steps. Yes.

6 Q And did you also do a survey of the exterior
7 of the house?

8 A Yes, I did.

9 Q Okay.

10 Q And did you notice there to be garbage cans
11 on the side of the house?

12 A Yes.

13 Q Showing you State's Exhibit 50. Is this a
14 photo you took?

15 A Yes, it is.

16 Q And showing you State's Exhibit 51. Is this
17 a close-up? What is this right here?

18 A It's a piece of jewelry.

19 Q Showing you -- showing you State's
20 Exhibit 52. Chief Berkel, is this the piece of --
21 piece of jewelry that you noticed that day that was
22 collected on scene?

23 A Yes, it is.

24 Q And it was broken?

25 A It was as it was in the picture.

1 Q Little infinity pendant?

2 A Yes.

3 Q And is that by the side door, Chief Berkel?

4 Would you like -- I can show you a picture, if will
5 help?

6 A It was.

7 Q It was?

8 A Yeah.

9 Q Okay.

10 A On the -- on the right side of the house that
11 leads into the converted garage.

12 Q So Chief Berkel, as a result of your
13 investigation, did you determine the cause of the fire?

14 A I did.

15 Q What was that?

16 A I determined that the cause of the fire was
17 incendiary.

18 Q Okay.

19 And as you explained, that means it was
20 intentionally set?

21 A That's correct.

22 Q And you also determined the origin of the
23 fire had three locations.

24 A Yes, I had three different origins and points
25 of ignition.

1 Q And during your investigation, did you learn
2 if there were any heating or activities involving a
3 flame or ignition source going on before the fire?

4 A Speaking with Jason who was home at the time,
5 I learned that there was no cooking, no open flames, or
6 anything else in operation that would produce a
7 competent heat source.

8 Q So was the way you come to your conclusion,
9 you just sort of rule things out?

10 A Yeah. So how I come to my conclusion is, I
11 do a -- an entire examination of the entire home. It
12 doesn't matter what information I get from the get-go
13 and from when I first arrived. As an investigator to
14 do a competent investigation, I have to look at all
15 possible factors, okay, all possible hypotheses. And
16 that's why we use the systematic approach.

17 Q Chief Berkel, did you determine whether there
18 was a natural cause like weather?

19 A I determined that there was no natural cause.

20 Q Was there a failure of electrical equipment
21 in the home?

22 A No.

23 Q Was there any cooking going on at the time?

24 A No.

25 Q Was there any open flames found?

1 **A** No.

2 **Q** Did you rule out whether it was accidental?

3 **A** I did.

4 **Q** And so I think I reversed that. So can you
5 explain that? Did -- it was not an accident?

6 **A** It was not an accident.

7 **Q** Okay.

8 And you wrote a report as part of this
9 investigation, as you always do?

10 **A** Yes.

11 **Q** Okay.

12 And in your report, did you determine the
13 ignition, or have commentary about what an ignition
14 would be?

15 **A** I did.

16 **Q** Okay.

17 And what was the heat source you determined
18 to be?

19 **A** Be an open flame.

20 **Q** Okay.

21 And how did you make that determination?

22 **A** So we'll go and start in the master bedroom
23 at that point, or area of origin. That area of origin
24 was in the middle of a floor. There were no electrical
25 outlets there. There were no space heaters close by.

1 There was no competent ignition source at that
2 location, at that point of origin. So somebody's
3 leaving something on accidentally, or having a candle
4 lit sitting on the floor, none of that was found. So
5 having an accidental fire at that specific point of
6 origin, or area of origin, was eliminated.

7 In the hallway, in the second part, again, on
8 the floor, there were no electrical outlets in the wall
9 at that point. And also in that photo, there was a
10 fire pattern, which was what we referred to as an
11 inverted V, or an upside down V. And that goes down to
12 the floor level. So when a fire occurs at that
13 location and burns up, and that's the type of pattern
14 you'll get against a solid wall. Okay. There were
15 no -- no other electrical components or open flames at
16 that location either. So that -- an accidental --

17 Q Chief Berkel, showing you Exhibit 42, you're
18 talking about this?

19 A Yes, ma'am.

20 Q So this shows that someone lit something on
21 fire right here because of the way that the wall is
22 stained?

23 A Yeah. That's a -- that's a fire pattern.
24 And in fact, just a few weeks ago, we did live fire
25 training up at the State Fire Academy. And we

1 purposely lit a trash can against the wall. And that's
2 exactly how that pattern looked.

3 Q And did you determine in this case, the items
4 that were first ignited?

5 A So at this point of the investigation in
6 there, it was suspected that it was an ignitable
7 liquid. That was later confirmed.

8 Q And that was also -- you learned that from
9 the canine who had a positive alert?

10 A Well, they gave the positive alert. But that
11 confirmation doesn't come back until the samples are
12 sent to the lab and certified lab report is --

13 Q Okay.

14 A -- sent back.

15 Q And your cause of ignition, did you determine
16 it to be intentional, you said in your report?

17 A Yes.

18 Q And you indicated accelerants were used in
19 your report?

20 A Yes.

21 Q In your report, did you also write the
22 availability of material ignited? I can show you. I
23 can refresh your recollection with the actual report if
24 that helps. Would it help to see your exact report?

25 A Yes.

1 Q I know I'm asking you a lot of information?

2 A Yes, it would.

3 Q I believe it was in Section D of your report,
4 material use?

5 A Yes.

6 Q What did you check there?

7 A I checked "available at scene."

8 Q And why did you indicate that?

9 A Through the investigation and lab analysis
10 and everything, it was that the first material ignited,
11 which was the ignitable liquid, was available at the
12 scene. Because we were able to get samples from the
13 scene.

14 Q And what was that determined to be, the
15 liquid?

16 A It was determined to be gasoline.

17 Q And in that report in Section E, Suspect
18 Motivation Factors, you checked -- what did you check?

19 A I checked "personal."

20 Q Why did you check personal motivation?

21 A I checked personal motivation as a result of
22 my interviews and -- with the victims and my
23 investigation of the totality.

24 Q And what was the entry method you indicated
25 in your report?

1 **A** We on the same page?

2 **Q** It might be somewhere else in there.

3 **A** Yeah.

4 **Q** Right here?

5 **A** Method, I indicated window forced or broken.

6 **Q** What window were you referring to?

7 **A** That would be the rear window to the rear
8 door of the structure.

9 **Q** Okay.

10 You also wrote other investigative
11 information. What did you select there? Other crimes
12 involved?

13 **THE COURT:** (Inaudible).

14 **MS. SAVAS:** What -- I didn't -- I'm sorry. I
15 didn't hear her.

16 **THE COURT:** He's an expert. He's stating the
17 basis of his opinion. He cannot repeat what
18 someone else did. He can only say what he did as
19 a result of studying what someone else did. So
20 here -- are you eliciting an opinion from him?

21 **MS. SAVAS:** His report findings.

22 **THE COURT:** Okay.

23 **MS. SAVAS:** It's still in the report.

24 **BY MS. SAVAS:**

25 **Q** You had other investigations? Do you see

1 that on there?

2 **A** Yes.

3 **Q** Oh, okay. Can you please read what you
4 selected in your report?

5 **A** I checked "other crimes involved."

6 **Q** And what was that?

7 **A** At the conclusion of my investigation, I
8 checked that box because I was informed of the
9 attempted murder of Jason.

10 **Q** Because he was in the home at the time?

11 **A** Because he was in home at the time.

12 **Q** And what was the -- you had another box
13 initial investigation, forced entry?

14 **A** Uh-huh.

15 **Q** Can you please explain what you wrote there?
16 And why?

17 **A** Are you talking about the entry method,
18 again?

19 **Q** It says forced entry prior to fire department
20 arrival, No. 6.

21 **A** Yeah. The initial observations, yes. Forced
22 entry prior to fire department arrival. That just
23 means that there was entry made to the home prior to
24 fire department arriving to put out the fire.

25 **Q** And in conclusion, your final expert

1 determination of this fire was what?

2 A That it was intentionally-set incendiary.

3 Q And what did you do with your findings once
4 you completed your investigation?

5 A I got with Charleston County Sheriff's Office
6 detective and gave my report and photos.

7 Q Do you recall who that sheriff's office
8 investigator was?

9 A Yes. It was Detective Sinke.

10 Q Detective Sinke?

11 A Yes.

12 Q Okay.

13 I have nothing further at this time. If you
14 could answer any questions from the defense.

15 THE COURT: You may precede when you're
16 ready.

17 MS. BLAZER: Thank you, Your Honor.

18 THE COURT: You're welcome.

19 CROSS-EXAMINATION

20 BY MS. BLAZER:

21 Q Good afternoon, chief.

22 A Good afternoon.

23 Q How are you?

24 A Very well.

25 Q Good.

1 So just to recap some of what you testified
2 to on direct, to be a fire investigator requires
3 training beyond just what you need to know to fight a
4 fire?

5 A That's correct, yes.

6 Q Because identifying the causes of a fire
7 requires you to understand the science of fire?

8 A That is correct, yes.

9 Q And it requires you to develop skill in
10 identifying and/or collecting evidence?

11 A That is correct, yes.

12 Q Here you were more in the role of identifying
13 it rather than collecting it; is that correct? In the
14 sense that -- Charleston County Sheriff's Office sent
15 somebody out from Crime Scene to actually do
16 collection; isn't -- isn't that right?

17 A Yes. They did collection.

18 Q So you were marking some things with
19 placards. But generally speaking, you were identifying
20 evidence, not collecting it?

21 A So the canine handler from SLED, when he
22 initially went in with his canine, where they indicated
23 is where he put his placard at.

24 Q And then you photographed those placards?

25 A Yes, ma'am.

1 Q Okay.

2 So that was a kind of evidence collection.
3 But in terms of pulling up debris and things like that,
4 that was something that was left to CCSO?

5 A When they collected the evidence and cut out
6 samples, Charleston County Sheriff's Forensics did
7 that.

8 Q Okay.

9 So that -- that skill that you developed in
10 investigating and identifying and collecting evidence,
11 that's training that you've gotten over years?

12 A Yes, ma'am.

13 Q And could you talk just a little bit more --
14 you told us a little about -- about your training. But
15 have you ever done any training put on by the Bureau of
16 Alcohol, Tobacco, and Firearms?

17 A I have.

18 Q What kind of trainings have those been?

19 A So I spent two weeks up at the National Fire
20 Academy in Emmitsburg, Maryland. And that was for fire
21 investigation. And those two weeks, a lot of my
22 instructors were ATF agents. And we did live burns
23 there. And we processed burn scenes and burn -- burn
24 pods, where they would actually mock up a room with
25 couches, chairs, beds. And they would actually light

1 it on fire, not in front of us. Because then they
2 would send us in to try to figure it out. So that was
3 just one of the times that I trained with ATF.

4 Just a few weeks ago, I had also training
5 with an ATF agent up at the -- at the State Fire
6 Academy for fire dynamics.

7 Q Uh-huh.

8 A That's what I was referring to with the live
9 burns that we did up there. So yes.

10 Q Got it.

11 And so you answered my next question, which
12 is, Do you do trainings with SLED? And the answer's
13 "yes"?

14 A Yes.

15 Q Do you ever do trainings put on by private
16 entities like the insurance industry or other private
17 entities?

18 A Yes, we do. There's -- there's a local
19 electrical engineer. And as -- at the moment, I don't
20 know his name. But he has come out to several of my
21 scenes already investigating fires on the private side,
22 where he's retained by an insurance company. But he
23 gives more insight on like electrical fires and
24 failures of electrical equipment and appliances and
25 stuff like that. So we've trained with him as well.

1 Q So you train consistently, as recently as a
2 week or two ago, to keep up to date on the developments
3 in fire science?

4 A Yes, ma'am.

5 Q And that -- you gave us an example of that on
6 direct because you told us that the language has
7 evolved. Back in 2020 when you made that diagram, we
8 were talking about pour patterns. But today we're
9 talking about irregular burn patterns, right?

10 A Uh-huh.

11 Q Talk a little bit about what that -- why --
12 why did we change.

13 A I'm not sure why they changed it. I can only
14 surmise that it more accurately describes that type of
15 pattern, you see that shouldn't be where it is, No. 1,
16 and the shape it is, No. 2, as more of an irregular
17 burn pattern than it is a pour pattern.

18 Q Okay.

19 So you trained predominantly on the hows of
20 how a fire might start, but you've also trained
21 obviously on the whys, you know, why somebody might
22 start a fire.

23 A It is a component of it, yes.

24 Q Uh-huh.

25 And you're -- as you testified on direct,

1 your department completes that standardized report, the
2 documents, among other things, your conclusions. And
3 you told the jury about those conclusions a little bit
4 ago?

5 A Yes, ma'am.

6 Q You make a conclusion with regard to the
7 cause of ignition?

8 A Yes.

9 Q And you have choices. It's check the boxes,
10 right?

11 A On a report --

12 Q Yeah.

13 A -- it may have boxes to check --

14 Q Yeah.

15 A -- but that's not what I'm pigeonholed to do
16 is check a box.

17 Q Right. Because there's a box on all of these
18 that says "other." So if it's --

19 A That's correct.

20 Q -- something other than those choices.

21 But -- but there are a standardized list of choices,
22 because there are a typical set of things that you're
23 regularly confronted with, things like failure of
24 equipment, or heat source unintentional, intentional
25 fires, acts of nature, that kind of thing?

1 A That is correct.

2 Q And the same thing is true where you have to
3 make a determination about suspected motivation
4 factors. There's a list of standard responses?

5 A There -- there are a list. But like you had
6 mentioned, there's a box that says "other" --

7 Q Right.

8 A -- or "undetermined" --

9 Q Right.

10 A -- or "unknown." A lot of those types of
11 responses are covered in my narrative --

12 Q Uh-huh.

13 A -- because there's not a box to check. Okay.
14 And that's after the totality of the investigation
15 is --

16 Q That's right.

17 A -- over with, with all the data that's
18 collected and analyzed and tested.

19 Q Right. Because people set fires for a wide
20 variety of reasons. Yes?

21 A That's possible, yes.

22 Q Yeah. And that's -- and their reasons aren't
23 something you can determine from just looking at the
24 remnants in the house?

25 A Well, my job is not to determine the reason

1 behind it.

2 Q Uh-huh.

3 A My job is to determine the origin and the
4 cause of it.

5 Q Right.

6 Because although you're required to make a
7 note of the suspected motivation factors, when it comes
8 to getting to the whys, beyond just your -- your
9 suspicions, that really is a law enforcement
10 obligation, right?

11 A That's correct.

12 Q Yeah.

13 A That's why it says suspected.

14 Q Right.

15 Because if you were going to come to a firm
16 conclusion about who and why something was done, you'd
17 have applied the same systematic approach to finding
18 that answer that you applied to figuring out how the
19 fire started here.

20 A Yeah. I always use a systematic approach, no
21 matter what the final conclusion ends up being.
22 Whether it be natural, accidental, or intentional, I
23 still use the same systematic approach to make sure
24 that I cover all the bases and all the possibilities
25 and all the hypothesis that might be able to come upon

1 an investigation so that I do a thorough, a complete
2 and professional investigation that's unbiased.

3 Q And you walked us through that on direct.
4 You -- you took fire scene photos that we went through
5 point by point, correct?

6 A Yes, ma'am.

7 Q You made a diagram of the scene?

8 A Yes, ma'am.

9 Q And that diagram assists the other
10 investigators. But it assisted you here today.

11 A It actually assists, I believe, everybody in
12 the courtroom. And whoever might actually look at that
13 report that what they're reading in my text of my
14 report and what they're seeing in all the boxes
15 checked, it kind of brings it all together so that you
16 can actually visualize and say, "Yes, I know exactly
17 what you're talking about."

18 Q And I'm -- I'm no drawing expert. But it
19 looks to me like you put some care and attention and
20 time into drawing this diagram. In addition to those
21 kinds of activities, you -- as you testified on direct,
22 you spoke to people who arrived on scene. You spoke to
23 Frank Simmons and Jason Simmons?

24 A Yes, ma'am.

25 Q They arrived a little bit after you did,

1 correct?

2 A Yes.

3 Q Uh-huh.

4 And Frank told you that he had broken up with
5 a woman named Toya earlier in the day. And Jason told
6 you that he saw Toya return between 1:30 and 2:00?

7 A And also around 10 o'clock that morning.

8 Q Correct. Right.

9 And Jason told you that he heard liquid
10 pouring and a loud boom?

11 A Yes.

12 Q And you testified on direct that something
13 that combusts can make a loud boom?

14 A That is correct.

15 Q Explain for the jury the conditions that lead
16 a fire to make a loud boom versus just that hooshing
17 sound we've heard, you know, when you -- when you light
18 the grill with charcoal briquettes.

19 A So first off, my personal experience, I have
20 a gas grill. So I'm not sure if who has a gas grill.
21 But when you turn the gas on, and it doesn't light
22 right away, if you keep going and keep going and not
23 shut the gas off, you hear that -- depending on the
24 person's perspective, it could be a boom. It could be
25 a big whoosh, you know. But it's -- it's a very

1 instantaneous type of thing.

2 In -- in this case, that's how he described
3 it to me.

4 Q Uh-huh.

5 A So I just write down what he described.

6 In this type of scenario, we're talking about
7 gasoline. Gasoline produces a lot of vapors very
8 easily. Okay. If I poured gasoline in the middle of
9 this room and lit it, it would light on fire and, you
10 know, everybody'd be mad at me.

11 But when you put it in an enclosed area, like
12 a hallway, all those fumes and that fuel-air mixture is
13 combined. And it's actually contained in a smaller
14 area. So that when it does light off, you're gonna get
15 a louder sound. Okay.

16 Q So when they -- when he told you -- when
17 Frank told you he'd broken up with Toya, Jason told you
18 Toya had been there twice that day, Jason told you he
19 heard liquid and a loud boom, that was enough for you.
20 You wanted to call in the canine?

21 A Well, he also told me that he heard her
22 inside the house.

23 Q Right. Right.

24 A Okay.

25 Q So all of those things that they told you,

1 that was plenty to have you say, "Let me get the canine
2 in to try to identify the -- whether there are
3 accelerants present here."

4 **A** Well, at that point that indicated to me,
5 okay, that this is a potential crime scene and it
6 needed to be secured immediately.

7 **Q** Uh-huh. Uh-huh.

8 **A** And that Charleston County Sheriff's Office
9 and Charleston County Forensics needed to be notified.
10 I did call a local canine accelerant dog. But they
11 were not available. So I called for a SLED dog. So
12 that's -- that's the indication. But --

13 **Q** Yeah.

14 So again, you're trying to find the -- the
15 cause of the fire. That's your focus. You include
16 CCSO as soon as you determine that it sounds like this
17 might be a crime scene?

18 **A** That's correct, yes.

19 **Q** And partly, your -- your -- your job is not
20 to investigate crimes. Your job is to investigate
21 fires that may -- we may learn they are crimes, but the
22 fire is your area, right?

23 **A** My job is origin and cause.

24 **Q** Right.

25 And so for that reason, they don't equip you

1 guys with body-worn cameras and dash cameras the way
2 they do the police, right?

3 A That is correct.

4 Q So your conversations with Frank and Jason
5 weren't recorded. But that's not surprising, because
6 you don't wear -- regularly wear a body-worn camera or
7 a recording device?

8 A That is correct.

9 Q And so you testified earlier that the canine
10 did arrive around 8:30 that night; is that right?

11 A Yeah. I have to look at my report for the
12 exact time.

13 Q And -- and the canine alerted on those two
14 areas we saw in your photographs, Placard No. 1 and
15 Placard No. 2?

16 A Yes, ma'am.

17 Q Okay.

18 About how long was it before you were
19 actually physically able to go into the -- to the
20 house?

21 A From what point?

22 Q From your arrival.

23 A It was many hours. I'm not sure the exact
24 many hours.

25 Q Uh-huh.

1 Because it was dark out pretty much by the
2 time you were able to go inside?

3 A Yes, ma'am.

4 Q Yeah.

5 But you were able to begin -- I -- I assume
6 you had flashlights and things like that to illuminate
7 as you were searching?

8 A I don't understand the question.

9 Q Did you use flashlights to illuminate the
10 house as you were walking through in the dark?

11 A Yes. Through the house, yes.

12 Q Okay. Yeah.

13 And so I read your report. And it sounds
14 like as soon as there were no hot spots, you started
15 your search. You noted in your report that the
16 addition, which is the -- the converted garage, right?

17 A That would be the --

18 Q Yeah. The addition in the laundry room
19 reached which you called "flashover stage"?

20 A Yes.

21 Q Can you explain that to the jury?

22 A Absolutely. So if you have a compartment
23 like a room and a fire starts, fire burns up and out.
24 So as the fire is burning, you have hot air gases and
25 incomplete products combustion, which is actually what

1 smoke is. Once it hits the ceiling and starts
2 spreading out -- but as it's burning, it's also
3 convecting heat from that area. So when it hits the
4 ceiling, that heat is convecting down, and it's raising
5 everything in this room to its ignition temperature.
6 So -- ignition temperature.

7 Everything can burn if you get it hot enough.
8 And when you're talking in a compartment, once that
9 whole room gets to its ignition temperature, and that
10 hot layer of gas starts banking down far enough that it
11 brings everything to its ignition temperature is what
12 we call a flashover. And a flashover is simply when
13 everything that can burn goes into an open flame burn.

14 Q And you also talked about in your report that
15 the bedroom showed a short duration of extremely high
16 heat. Do you recall that?

17 A Yes, I do.

18 Q And that would be around the area that --
19 that was -- that they later determined there was in
20 fact an accelerant?

21 A Yes.

22 Q Because -- and we later learned that it was
23 gasoline?

24 A Yes.

25 Q And we know that gasoline burns hot and it

1 burns fast?

2 A Yes.

3 Q Okay.

4 And I -- from -- I wasn't there. I wasn't in
5 the house. But from your photos -- you took a lot of
6 really helpful photographs. And you go through the
7 house. And you can see that there's a -- there's a
8 pillow that looks like it's untouched. There's --
9 there are a couple of things in the closet that looked
10 like they're untouched. And then there are things that
11 are completely destroyed.

12 A Uh-huh.

13 Q Things like -- you know, big things,
14 cabinets, appliances, that kind of thing are destroyed.
15 And then something that you might not immediately
16 assume would survive is hanging neatly in a closet,
17 right? That's just how fire works. Fire is
18 unpredictable, right?

19 A Yeah. So fire moves. So as fire burns and
20 moves through a structure, there's protected areas.
21 And there's unprotected areas. You know, normally the
22 unprotected areas where -- is where you see the
23 blistering of the paint, the blistering of the drywall,
24 and the charring of the wood. And that's because the
25 hot gas layers that are above and higher in the

1 ceiling. And as that smoke is moving down hallways and
2 in bedrooms, that's depositing all that soot and all
3 that smoke.

4 If the heat gets in there, which the heat
5 will -- probably will get in there, it may get in there
6 at -- in -- in different intensities.

7 Q Uh-huh.

8 A So you may see plastic louvered window
9 dressing that's melted or just kind of like hanging
10 down and just kind of like gave it up, but not actually
11 burned. So it has heat damage, but the fire actually
12 didn't reach it. Because it's not charred. So it
13 doesn't actually come into a full open flame burn.

14 Q Right.

15 And I guess -- this is the first arson case
16 I've done in a long time. So I had to refresh myself
17 on a lot of what you know and what you do every day.
18 But I think what I'm learning is that fire is really
19 actually pretty predictable. I said it was
20 unpredictable. But maybe it's that it's predictable if
21 you understand it. Is that fair to say?

22 A It depends on the conditions.

23 Q Okay.

24 A It depends on a lot of factors. Okay. Fire
25 does burn up and out. I mean, that's -- that's a

1 pretty constant. But what affects how a fire flows
2 through a structure depends on ventilation points,
3 structural failures, wind conditions, weather
4 conditions, dew point conditions. There's just a lot
5 of different factors that go into how a fire moves
6 through a structure at any given point. So --

7 Q And so that's the sort of thing that people
8 who aren't trained to understand how it works and to
9 factor in all of those things, might not be able to
10 predict what would happen if they intentionally set a
11 fire?

12 A I'm not understanding --

13 Q Well, I mean --

14 A -- your question.

15 Q -- how the fire might travel through a house
16 is not something we would expect a person who has no
17 experience with fire --

18 THE COURT: Basis. Is the objection
19 withdrawn?

20 MS. SAVAS: Just speculation, out of his
21 realm of knowledge.

22 THE COURT: Overruled.

23 Sir, do you need the question repeated?

24 THE WITNESS: Yes, please.

25 THE COURT: Please repeat the question.

1 **BY MS. BLAZER:**

2 **Q** I'm gonna have to think about what it was.

3 You wouldn't -- you wouldn't expect somebody
4 who is intentionally setting a fire, who doesn't know
5 all the things you know, to have your level of
6 knowledge about how the fire might travel once that
7 fire gets set? That was so convoluted. I'm sorry.

8 **THE COURT:** Restate the question. And make
9 sure you establish a foundation for the opinion
10 you're trying to elicit.

11 **BY MS. BLAZER:**

12 **Q** You're an arson investigator?

13 **A** I'm a fire --

14 **Q** A fire -- so you investigate non-arson fires,
15 too, right?

16 **A** Yes.

17 **Q** But you do investigate intentionally-set
18 fires?

19 **A** Yes.

20 **Q** And you are trained to understand how people
21 set intentionally-set fires?

22 **A** Yes.

23 **Q** And so in your training and experience, would
24 you agree with me that somebody who doesn't have all of
25 your experience who sets a fire might not know what to

1 expect once that fire is lit?

2 **MS. SAVAS:** Objection. Speculation. Lack of
3 knowledge on who this person is in a hypothetical
4 situation and what they do or do not know.

5 **THE COURT:** Overruled. It's an appropriate
6 hypothetical. It needs to be reworded, however,
7 so it's not convoluted so the witness can
8 understand the question.

9 **BY MS. BLAZER:**

10 **Q** All right.

11 I'm going to -- this is my constant struggle.
12 I'm sorry.

13 You're trained to know how people set fires.
14 You're trained in arson and -- and other fire
15 investigations?

16 **A** Yes, I am.

17 **Q** And you have studied how people set fires as
18 part of your training?

19 **A** That is correct.

20 **Q** And people who set fires who are not
21 experienced like you are, might not know what you know
22 about how a fire moves once it's set?

23 **MS. SAVAS:** Objection. Speculative.

24 **THE COURT:** Overruled. It's within his
25 knowledge.

1 Answer the question.

2 **THE WITNESS:** Okay.

3 **THE COURT:** Sir, do you understand the
4 question?

5 **THE WITNESS:** We're getting close.

6 **THE COURT:** I think it will be easier for you
7 to restate.

8 **MS. BLAZER:** I'm gonna try, Judge.

9 **THE COURT:** If you take it out the form of a
10 hypothetical, I think it would work better.

11 **BY MS. BLAZER:**

12 **Q** An arsonist sets a fire.

13 **A** Yes.

14 **Q** Do you expect them to know exactly what's
15 going to happen next?

16 **A** Do I expect them to know?

17 **Q** Uh-huh.

18 **A** It will be a personal opinion. But part of
19 my training is motivating factors.

20 **Q** Uh-huh.

21 **A** Okay.

22 And what I've learned through my training as
23 far as motivating factors in arson cases is that not a
24 lot of thought is going into what is going to happen.
25 After the fire is set, a lot of the motivating factors

1 is that there is a, lack of better term, an end game,
2 and that just want the house to burn down or the
3 building to burn down or the business to burn down or
4 the car to burn up. And that's rarely what happens --

5 Q Uh-huh.

6 A -- as a motivating factor.

7 Q And that's why arsonists often leave
8 unintentional clues?

9 A Leave unintentional -- I'm sorry?

10 Q Clues to how they did it or who they are.

11 A Every crime scene, no matter whether it's
12 arson, homicide, burglary, car theft, there's always
13 evidence left behind.

14 Q So an experienced arson investigator like
15 you, or fire investigator like you, who understands the
16 science of fire, is looking for those mistakes that an
17 arsonist might make?

18 A It could be part of my investigation. It's
19 not the sole point of my investigation.

20 Q Sure?

21 A My investigation is broad. And that's why I
22 look at all kinds of different possible hypotheses that
23 could start -- start the fire, like electrical,
24 natural, unintentional, accidental. Excuse me. But
25 just like an appliance that may fail and cause a fire,

1 yes, I'm trained to look at that and look for specific
2 signs for that. So in relationship to your -- in --
3 in -- to relate to your question. And to answer your
4 question, yeah, that's part of my training is to look
5 at -- look at those types of things like fire patterns,
6 irregular burn patterns, physical evidence, whether it
7 be anything you can imagine.

8 Q So physical evidence might be looking for the
9 gas can that was -- contained the gasoline that was
10 poured all over this house, right?

11 A That's one container that can hold gasoline?

12 Q Right.

13 We don't -- there wasn't one found here,
14 correct?

15 A Not inside the house, no.

16 Q Right.

17 And so -- but that's a kind of container.
18 And sometimes somebody might leave that inside the
19 burning house, hoping for it to catch on fire and
20 disappear, right?

21 A A lot of times. Sometimes that's the way
22 people think.

23 Q It's the way people think. But it's not the
24 way it works, is it?

25 MS. SAVAS: Objection. Argumentative.

1 **THE COURT:** Overruled.

2 Sir, you may answer the question.

3 **THE WITNESS:** Repeat your question.

4 **BY MS. BLAZER:**

5 **Q** Well, you said, "That's how some people
6 think." And I -- and -- and I think I'm picking up
7 what you're saying. Because that's what people think,
8 but it's not what actually happens. Like that people
9 think they're going to burn the whole gas can up in
10 the -- in the big inferno that they set. But often,
11 there's something left behind?

12 **A** That is correct.

13 **Q** Okay.

14 So for example, while the walls of a
15 heavy-gauged plastic or metal gas can might incinerate,
16 the bottom might remain completely intact?

17 **A** It's possible, yes.

18 **Q** And people like you look for clues like that,
19 because that kind of evidence could be useful later, to
20 dust for fingerprints, to, you know, maybe even get
21 DNA?

22 **A** Is that a question?

23 **Q** Yes.

24 **A** It's possible, yes.

25 **Q** So on the day of this fire, you arrived with

1 information you could observe from your -- with your
2 own two eyes, right? You observed the aftermath of a
3 fire?

4 A That is correct.

5 Q And you got immediate information from that
6 first responding engine, talking about the color of the
7 smoke?

8 A Yes.

9 Q And that told you things that in your
10 experience drew -- pushed you in one direction in terms
11 of what it might mean?

12 A It didn't push me in any direction. It was
13 just a data point.

14 Q Right.

15 Because you didn't want to jump to
16 conclusions?

17 A I do not --

18 Q Right?

19 A -- jump to conclusions.

20 Q You -- you -- you got reasons at the very
21 beginning to think that this might be an arson. But
22 you took your time to try to be sure.

23 A I take my time to do a thorough, complete
24 investigation.

25 Q Because you want to rule out all the other

1 explanations?

2 A That's my job --

3 Q Yeah.

4 A -- is to do that, not -- not that I want to.

5 Q Right?

6 A That's -- that's my purpose. And that's my
7 job.

8 Q Right.

9 And you went through on direct and showed --
10 and Ms. Savas helped you show us all those things you
11 ruled out, things like electrical fires, natural
12 causes, that sort of thing. And you do that because,
13 as part of your job, you want to rule out innocent or
14 act of nature causes before you start pursuing arson as
15 your only theory?

16 A So when I do an investigation, once I've
17 determined that I need to do an origin and cause
18 investigation, your next step is collecting data.

19 Q Yeah.

20 A Whatever that data may be, whether it be from
21 interviews, whether it be through direct observation,
22 whether it be through things I see processing the
23 scene. And as I'm collecting that data, I'm creating
24 and coming up with different hypotheses that may be the
25 cause of the fire.

1 Once I come up with those hypotheses with
2 what I'm shown and what I see evidentiary with fire
3 patterns, smoke patterns, ventilation patterns,
4 interviews, direct observation, all that, then I have
5 to test that data. Okay. Is this possible? Is this
6 not possible? Is this probable? Is it not probable?
7 But each of those different hypotheses, I gotta go
8 through on whether I show it to be positive or true, or
9 if it's false.

10 In this case, whether -- it was a hypothesis.
11 Even though as I'm driving there, it's mostly sunny.
12 There's no rain in sight. I still have to look at that
13 as a possible source, or the cause of the fire.
14 Pulling the weather reports, looking and talking with
15 people, looking at the videos, I can actually
16 positively rule that out as a cause.

17 So it's a systematic approach. It's not what
18 I feel or what I think or if I get this piece of data,
19 I'm going to go in that direction automatically. I
20 have to look at all the hypotheses that I come up with
21 the data -- with the data that is presented with me and
22 what I discover at the scene to come up with, No. 1, a
23 complete, thorough investigation, taking my time, not
24 leaving anything unturned, doing the very best I can
25 with the systematic approach that I'm trained in, and

1 finally come to a conclusion if that's the conclusion I
2 can come to.

3 Q Turning back to your diagram, you -- you
4 noted on direct that you identified those three points
5 of origin that we talked about, the one in the hallway,
6 the one in the bedroom, and the one in the converted
7 garage, correct?

8 A Yes, ma'am.

9 Q And you're aware that there was a collection
10 of debris from each of those points of origin for later
11 testing? Are you aware that -- that that -- that there
12 was debris from each of those points that was collected
13 by CCSO for later testing?

14 A Yeah, CCSO, Charleston County Sheriff's
15 Office Forensics, they took samples at each of those
16 points to send to the lab for testing.

17 Q And so you would have expected that at each
18 of those points of origin -- or -- or I should just ask
19 you. Would you have expected that at each of those
20 points of origin you would have found that -- that --
21 that the testing would have revealed accelerants at
22 each of those points?

23 A I don't expect anything until the results
24 come back.

25 Q I like that.

1 Were you aware that the sheriff's office put
2 out a bolo for hospitals looking for a woman with
3 possible burns to her hands and face immediately after
4 the fire?

5 **A** At that time, I did not.

6 **Q** Would that have made sense to you, based on
7 everything that you saw in your investigation?

8 **A** I'm not sure what you're asking as far as
9 that. If I knew that at the time, I mean --

10 **Q** Yeah.

11 **A** -- sure. If I saw somebody running away on
12 fire, I would probably expect the same thing too.

13 **Q** Okay.

14 Once your fire investigation ended, did you
15 play any further role in investigating the why of this
16 fire?

17 **A** No. Once -- once my investigation was done,
18 the origin and cause investigation and I collected all
19 my data and we released the scene, I did my report and
20 that -- that was -- that's the extent of my role in
21 this entire investigation is the origin and cause.

22 **MS. BLAZER:** Thank you.

23 Beg the Court's indulgence.

24 I have no further questions. Thank you,

25 Your Honor.

1 **THE COURT:** Any redirect?

2 **MS. SAVAS:** Just briefly, Your Honor.

3 **REDIRECT EXAMINATION**

4 **BY MS. SAVAS:**

5 **Q** Chief Berkel, there's a lot of talk about
6 semantics on burn pattern or regular burn pattern and
7 pour pattern. The lingo may have changed, but is it
8 still indicating the same thing?

9 **A** As far as what.

10 **Q** In your drawing, you still make note that
11 there was something irregular and significant in these
12 areas by the point of origin?

13 **A** Yeah. So everywhere on my diagram that I
14 actually have labeled as a pour pattern, again, like I
15 said, the terminology has changed. It's more of an
16 irregular burn pattern, but it's -- it's the same thing
17 and at the same locations.

18 **Q** Okay.

19 And in this case, gasoline was poured. And
20 what would cause it to then ignite? What would the --
21 what would the person need? The arsonist need?

22 **A** It would need an open flame to ignite?

23 **Q** Could that be anything commonly found? Just
24 anything with a flame?

25 **A** Anything with a flame will definitely ignite

1 gasoline.

2 Q And if the arsonist used a gas can to pour
3 gas and then light it, could they have just taken the
4 gas can with them and leave the scene?

5 A Is that possible?

6 Q Yeah.

7 A Absolutely.

8 Q So it could burn up in the fire, or they
9 could have just taken it with them and hide the
10 evidence, right?

11 A That is a possibility, yes.

12 Q And in your report, you concluded you checked
13 the personal box as a motivational factor because Frank
14 broke up with her. So you found it to be a
15 motivational, intentional fire in this case?

16 A At the -- at the end of my investigation with
17 all the data that I collected, and what I've been told,
18 and what I've seen, and what I've documented, yes.

19 MS. SAVAS: No further questions.

20 THE COURT: Any objections to the witness
21 being excused from state?

22 MS. SAVAS: No, Your Honor.

23 THE COURT: From the defense?

24 MS. BLAZER: No, ma'am, Your Honor.

25 THE COURT: Sir, you're excused.

1 Mr. Foreman, ladies and gentlemen, we're
2 going to take advantage of this break in testimony
3 to give you a brief comfort break. During the
4 break, please do not discuss the case. And please
5 leave your notepads in your seats.

6 (The jury exits the courtroom at 4:09 p.m.)

7 **THE COURT:** You may be seated. We'll be at
8 ease for 10 minutes.

9 (A recess is taken.)

10 **THE COURT:** Is your next witness present?

11 **MS. SAVAS:** Yes, Your Honor. He's in the
12 courtroom.

13 **THE COURT:** He needs to go ahead and approach
14 the stand, please.

15 They should be right behind me.

16 The defense ready to proceed?

17 **MR. D'ANGELO:** Yes, Your Honor.

18 (The jury enters the courtroom at 4:25 p.m.)

19 **THE BAILIFF:** All the jurors are present,
20 Your Honor.

21 **THE COURT:** You may be seated.

22 Please call your next witness.

23 **MS. SAVAS:** Thank you, Your Honor.

24 **THE COURT:** You're welcome.

25 **MS. SAVAS:** The state calls Jason Riley.

1 **JASON RILEY**

2 having first been duly sworn, testifies as follows:

3 **THE CLERK:** Please be seated.

4 Please state your full name, spelling your
5 last name directly into the microphone.

6 **THE WITNESS:** Jason Harold Riley, R-i-l-e-y.

7 **THE COURT:** You may proceed.

8 **MS. SAVAS:** Your Honor, at this time, the
9 state would seek to read --

10 **THE COURT:** You generally don't publish
11 stipulations before witness. Generally. Is that
12 stipulation?

13 **MS. SAVAS:** Yes, Your Honor. Is there a
14 different time you'd prefer?

15 **THE COURT:** It's not my preference. It's
16 just from an evidentiary standpoint, you would do
17 that a little bit later.

18 **MS. SAVAS:** Yes, Your Honor.

19 **THE COURT:** You may proceed when you're
20 ready.

21 **MS. SAVAS:** Thank you, Your Honor.

22 **THE COURT:** You're welcome.

23 **DIRECT EXAMINATION**

24 **BY MS. SAVAS:**

25 **Q** What is your official title?

1 A Investigator.

2 Q And where do you work?

3 A Charleston County Sheriff's Office.

4 Q And is there a specific unit you're in?

5 A I work in the forensic services unit.

6 Q And how long have you been there?

7 A I've been there for 12 and a half years.

8 Q And what are your responsibilities in the
9 forensic services unit?

10 A Not only do we deal with call-outs to work
11 particular crime scenes to try to determine evidentiary
12 items at those scenes, we also deal with evidence that
13 comes to us from the other members of the sheriff's
14 office. So we deal with both evidence that we collect
15 and evidence that's turned into us from others.

16 Q Okay.

17 And do you have specialized training?

18 A We do. Training is a yearly, almost like an
19 on-the-job training. There's also classes that you can
20 also attend, whether they're sponsored by the Criminal
21 Justice Academy, or if they're sponsored locally, or if
22 they're webinars. Those are available all the time.
23 And it's a constant on-the-job training.

24 Q Okay.

25 And do you have special certifications?

1 **A** I do have some certifications.

2 **Q** Okay.

3 All related to forensic services?

4 **A** Yes, ma'am.

5 **Q** And law enforcement?

6 **A** Yes, ma'am.

7 **Q** And how long have you been law enforcement
8 total?

9 **A** Just shy of 24 years.

10 **Q** Close to retirement? Okay.

11 What was your position back on
12 February 8, 2020?

13 **A** Was the same job that I have now, crime scene
14 investigator for the forensic services unit for
15 Charleston County.

16 **Q** Okay.

17 Were you working that day?

18 **A** I was actually off that day. I believe that
19 was a weekend day. But I was the on-call crime scene
20 investigator.

21 **Q** Okay.

22 And how did you get involved in this case?

23 **A** I received a call from the detective sergeant
24 at the time, which was Sergeant Smith, that afternoon
25 to respond to Wood Avenue for a suspicious fire

1 investigation.

2 Q Okay.

3 And you responded to [REDACTED] Avenue?

4 A Yes, ma'am.

5 Q Okay.

6 Do you recall about what time you arrived on
7 scene or when?

8 A Would have been between 3:30 and 4:30 that
9 afternoon.

10 Q Okay.

11 And when you arrived, what did you observe?

12 A Well, I observed the house was on the corner
13 of Wood Avenue and, I believe, Idamor. The fire was
14 out. There was not an active fire scene. The fire
15 department was there. Most of the property had been
16 roped off with crime scene tape. The residential
17 structure was a single-story structure, heavily --
18 heavy fire damage, heavy smoke damage and, of course,
19 the water damage.

20 So when I first got there, I parked on the
21 side of Idamor, which is perpendicular to Wood Avenue.
22 And I approached the fire personnel on scene first.

23 Q And what did you do once you approached them?

24 A Well, at the time, I believe it was Captain
25 Berkel at the time; he's the chief now, I do believe.

1 I asked him, Well, what time did the fire department
2 get there? At what point did he respond? And I leaned
3 heavily on the fire department on arson investigation.
4 That's more their field.

5 And he and I kind of walked to the outside of
6 the property. He pointed some things out to me on the
7 property. He showed me some examples, kind of where
8 the -- the heaviest fire damage had been from the
9 exterior of the house. He did also explain to me that
10 it was somebody inside when the fire started that had
11 left the residence when the fire happened. That person
12 was in a patrol vehicle at the time.

13 Q And when you arrived, did you take photos?

14 A I did. After we kind of did a preliminary
15 walk around, I did a preliminary photography of the
16 overall scene from the outside. So I kind of show what
17 the property looks like, what on the property it looks
18 like, what any outbuildings might be, the damage that I
19 can kind of zero in on from the exterior.

20 Kind of do a 360 or as best you can 360.
21 Sometimes there's obstacles in your way and you can't.
22 Once you kind of document that as an overall, kind of
23 an overall view of what you have, then you kind of
24 reconvene with either the deputies, detectives, or the
25 fire investigator on scene.

1 Q And you made that part of this case file?

2 A Yes, ma'am.

3 Q And when you arrived, was the canine SLED dog
4 there yet?

5 A No, he was not.

6 Q Okay.

7 Did you wait for him to arrive on scene?

8 A I did.

9 Q Did you go inside the house when he arrived?

10 A I did.

11 Q Okay.

12 And what did you do with the canine?

13 A Well, the canine -- it was good to have a
14 canine. They can sense things that humans cannot. So
15 the canine goes in first. We go in, following the
16 canine. And the canine will alert the handler if it
17 detects things that could possibly be accelerants or
18 areas where something may have accelerant added. So I
19 follow along, taking photographs. And then I will mark
20 areas the canine alerts to so that we can take samples
21 from later. And we'll use number placards or alphabet
22 placards. I used number placards in this particular
23 case.

24 Q And did you put number placards in this case?

25 A Yes, ma'am. I did.

1 Q So if there are placards in the pictures,
2 that was you, indicating an area of significance?

3 A That's correct.

4 Q I'm showing you State's Exhibit No. 17.
5 Here's Placard No. 1. Is that you there?

6 A Yes, ma'am. It is.

7 Q Okay.

8 And what did you do with those spots?

9 A Well, once the spots are identified with a
10 placard, that's just your location to kind of give you
11 a -- kind of bring your eye down to in the photograph
12 to what area you're dealing with, especially in a fire
13 scene. Because there's so much damage at times, the
14 heavy damage.

15 So we'll place the placard in that location.
16 We'll take a photograph first before we do any kind of
17 sampling. And then we'll collect the sample.
18 Sometimes the sample is something that I can collect
19 myself. I can either pull up something or I can
20 collect some burnt debris. Sometimes you actually have
21 to use the fire department. They have power tools to
22 actually help to remove a piece of that substrate.

23 And in this case, there was a material on top
24 of the floor, which I was able to cut a section out.
25 And then we use power tool to cut the piece of wood

25 And then the fourth sample was in that

1 addition, at a location where we appeared to have a
2 burned V pattern. When a fire typically burns, it's --
3 where it starts, it'll pattern out into a V. And we
4 had a possible V pattern in that location. So I
5 collected a sample there.

6 Q So this is your fourth one that you were
7 indicating is a V pattern?

8 A Yes, ma'am. In the -- in the --

9 Q Exhibit 34.
10 State's Exhibit 20, you took it from this
11 step-down area where that was indicated as well, No. 3?

12 A Yes, ma'am.

13 Q Okay.

14 How did you collect those four spots of
15 debris? What did you put them in?

16 A Well, they're collected and placed in -- in
17 this case, we use one of two things: We'll use a nylon
18 bag or we'll use a sterile paint can. In this case, I
19 used paint cans. And they come in the gallon, quart,
20 and pint size. They're just a sterile metal can with
21 the lids. And in this case, I used that paint can.

22 MS. SAVAS: It's time to read the
23 stipulation.

24 THE COURT: Not in the middle of testimony.

25 MS. SAVAS: Okay.

1 BY MS. SAVAS:

2 Q I'm going to show you what's been admitted
3 into evidence as State's Exhibit 53A and E. Do you
4 recognize this?

5 A I do.

6 Q And how do you recognize that?

7 A It has my initials on the can. It has the
8 label that I affixed to it after I entered the piece of
9 evidence at the office.

10 Q And what do those labels have notated on
11 there? Is there a case report number on there?

12 A There is. That's the large number at the
13 top. And underneath, that's the bar code that the
14 computer system reads. And beneath that, you'll have
15 the type of report that we're working on, the report
16 date, the item number. That's kind of a secondary
17 number to tell me what this is.

18 There's also a very tiny barcode number that
19 associated with that barcode. And then my name,
20 because I'm the one who actually entered this piece
21 into the system.

22 Q And what is the case file number associated
23 with this case?

24 A That's the year 2020, 0026808.

25 Q And what is the fire debris description for

1 this can?

2 **A** For this can, it is P-1, which represents
3 Placard No. 1, master bedroom floor backslash carpet.

4 **Q** And I'm showing you what's been admitted as
5 State's Exhibit 54A and B. What is that one?

6 **A** This one is another fire sample, just a
7 larger can. It's indicated as fire debris P-2, for
8 Placard 2, hallway floor, kind of the flooring and
9 baseboard.

10 **Q** And when you secured this for evidence, was
11 that tape secured when you did it on top.

12 **A** The tape is secured on top. Not at the
13 scene. At the scene, the can is sealed and is secured
14 in my vehicle. The tape is later affixed to it when I
15 get back to the office.

16 **Q** Okay.

17 I'm gonna go ahead and -- can you open that
18 one?

19 **A** (Complies).

20 **Q** And what's inside there?

21 **A** And again, this is Placard No. 2. So it is
22 the flooring and baseboard, a piece of cord around.
23 You have, it looks to be a piece of MDF molding.

24 **Q** Is there anything -- anything significant you
25 notice with this paint can right now?

1 A Well, yes, ma'am. It has a distinctive aroma
2 of what I consider to be gasoline.

3 Q So these are pieces of the floor that you had
4 collected from scene that day?

5 A That is correct.

6 Q And it still smells like gasoline?

7 A Yes, ma'am.

8 Q And you did that four different times from
9 those points you discussed with the fire marshal that
10 needed (inaudible) this layout?

11 A Yes, ma'am.

12 Q And these are also the spots where the canine
13 hit that there would be an accelerant?

14 A Correct. One and two, especially.

15 Q Thank you.

16 And I'm showing you State's Exhibit 55A and
17 B. Can you please read the placard -- or the label on
18 that one for the description?

19 A And this is a fire debris Placard 3, floor by
20 doorway from kitchen to addition.

21 Q And I'm showing State's Exhibit 56A and B.
22 What is the location of that one?

23 A This one is fire debris Placard 4, floor of
24 room addition.

25 Q Thank you.

1 Did -- I'm showing you State's Exhibit 52
2 that's been admitted evidence. Did you collect
3 anything else from the scene as well?

4 A I did. There was at least two other things I
5 collected.

6 Q Did you collect the piece of jewelry?

7 A I did. There was a piece of jewelry that was
8 outside on top of a blue -- the blue commercial trash
9 cans in the driveway.

10 Q Is that the piece of jewelry you collected
11 from the trash can?

12 A Yes, ma'am.

13 Q After you collected your items, took the
14 photographs, what did you do next?

15 A Well, again, as those items are collected,
16 and when I'm finished, I go and secure them in my car.
17 Because there may be some more things I'll do on the
18 scene.

19 After I believe I'm done on the scene with
20 collecting, and I've conferred back with both the fire
21 marshal in this case, and the detective, if he or she
22 is still there, I kind of do a last walk-through to
23 make sure I didn't leave anything of my equipment in
24 the scene. And I do a last walk-around of the outside
25 to kind of clear my head and make sure that I'm

1 comfortable with what I have done. And then I get in
2 my vehicle and I head back to my office.

3 When I get to my office, I secure those
4 collected items.

5 Q And once you secure the items and evidence
6 and you return back, did you process anything else in
7 this case?

8 A I did, on a different date.

9 Q What did you do?

10 A I completed a search warrant on a vehicle on
11 February 13.

12 Q And what vehicle was that?

13 A It was a blue Chevy Equinox or a dark --
14 dark-in-color Chevy Equinox.

15 Q And I'm showing you what's been admitted as
16 State's Exhibit 57. Is this the vehicle you processed?

17 A Yes, ma'am. It is.

18 Q And why did you process this vehicle?

19 A This was a vehicle that at the time, we
20 believe the suspect had driven either to or from the
21 location. That vehicle was brought to the evidence
22 compound.

23 Q Do you know how it was brought to evidence?

24 A It was towed by Hawk's Towing, escorted by a
25 detective.

1 Q I'm show you State's Exhibit 58. Did you
2 also take photos? Is that your typical protocol?

3 A I did. Typically with a search warrant on
4 any items we do at the sheriff's office, we always
5 begin with a battery of photographs. Just like when
6 you arrive on scene somewhere, you do a general
7 overall. And with the vehicles, we'll do a general
8 nine-point overall from the exterior. And then if we
9 move straight to the interior, we kind of cordoned off
10 that vehicle, driver's side, front -- front passenger's
11 side, rear driver's side, and so forth.

12 Q And is State's Exhibit 59 another photo of
13 the interior?

14 A Yes, ma'am. It is.

15 Q What is this here that you notated?

16 A It was. It appears to be a billfold or a
17 purse type of item.

18 Q Show you State's Exhibit 60. Was that
19 found -- was that the brown purse from the center
20 console?

21 A Yes, ma'am.

22 Q And why did you take picture of this? Can
23 you read what it says?

24 A Typically on search warrants, there'll be a
25 line on there about identifiers the vehicle may contain

1 to maybe the person who uses the vehicle or it's
2 registered to. So you'll take photographs of any
3 document -- documents: Driver's license, social
4 security cards, bank information, things of that
5 nature, to kind of show that this person maybe has use
6 or access to this car.

7 And inside this brown billfold or -- or purse
8 was a tattered social security number for Toya Daniela
9 -- I believe that's Steward. I don't want to --

10 Q I'm showing you State's Exhibit 61. This is
11 the registration of the vehicle you took a picture of?

12 A That is correct. And those are typically --
13 typically found in the glove box. Not always, but this
14 appears to be a bundle of either paperwork from the
15 glove box or center console.

16 Q And does this also say that the car was
17 registered to the defendant, Toya Steward?

18 A It does.

19 Q Showing you State's Exhibit 62. This is
20 another back picture of the vehicle?

21 A That's correct.

22 Q Showing you State's Exhibit 60. Is this the
23 trunk of the vehicle?

24 A That's gonna be the trunk or rear access
25 area.

1 Q And was there anything of significance in
2 here you notated?

3 A Well, in here, I did notice that white bottle
4 that was sitting in that kind of a cup holder. And I
5 did collect that bottle from the vehicle.

6 Q What was that?

7 A It was a bottle of lighter fluid, is what the
8 labeling indicated that it was.

9 Q Showing you State's Exhibit 64. Is this the
10 front driver's side?

11 A That is.

12 Q And showing you State's Exhibit 65. Is this
13 that floor mat?

14 A That is the driver's side floor mat.

15 Q And why -- did you also collect that as part
16 of your investigation?

17 A I did collect the driver's side floor mat.

18 Q Why did you collect the driver's side floor
19 mat?

20 A Well, the driver's side floor mat was
21 something that if there was an accelerant used, which
22 again, the search warrant was done days after I
23 actually was working the scene. So we already had
24 possible information, based upon the canine search dog
25 and the things that we observed with our own senses,

1 that there might have been an accelerant used.

2 Well, if the vehicle we believe is tied to
3 the possible person who started the fire, it's
4 possibility if they were pouring an accelerant, they
5 may have walked through the accelerant or it may have
6 splashed onto their clothing or feet, which may have
7 transferred to the floor mat when they got into the
8 car.

9 Q I'm showing you it's been admitted State's
10 Exhibit 66A and B. Is this the floor mat you collected
11 that day?

12 A That is -- this is the floor mat. Again,
13 it's not going to fit in a can. So we use a arson
14 nylon barrier bag.

15 Q That preserves the item?

16 A Yes. It -- it keeps -- it's a true barrier
17 bag, where you're not going to have evaporation or --
18 or loss of any chemicals or components that might be on
19 that item.

20 Q Could you open this for us?

21 A Put something over these, so I don't
22 transfer, please.

23 Q Is there anything noticeable about that floor
24 mat as you pull it out?

25 A It still contains a little bit of what I

1 consider to be a smell of gasoline.

2 Q Okay.

3 So even four years later, it still smells of
4 gasoline?

5 A It does.

6 Q Okay.

7 And was that also secured into evidence as
8 part of the case for testing?

9 A It was. It was secured in this bag and
10 heat-sealed by me.

11 Q Okay.

12 Did you do anything else on the processing of
13 this vehicle?

14 A I did. Pursuant to that search warrant, we
15 also did latent fingerprints both on the exterior and
16 interior. Also prior to the latent print processing,
17 we collected DNA samples. And in this case, it was
18 touch DNA, which is going to be not saliva, not blood
19 or bodily fluids, but skin cell.

20 Q And so you did the fingerprint collection in
21 this case?

22 A I did.

23 Q Okay.

24 And can you just briefly overview how -- how
25 that works?

1 **A** The first thing with fingerprinting is
2 observation. There are times you can kind of see where
3 there might be smudges or interactions with someone's
4 hands or parts of their body. So the first thing is
5 observation. And again, second thing is photographic
6 documentation.

7 The third thing is you determine if you're
8 going to go ahead and use a black powder, or you're
9 going to use maybe a Bi-Chromatic powder, which is more
10 of a gray powder, which kind of helps when you have
11 maybe a label or two different colors, a dark and a
12 light. It kind of works on both of those. So you
13 determine what powder you want to use. And also you
14 determine if you need to use a brand new jar of powder
15 or a brush.

16 In this circumstance, I used one that was
17 already opened, it was no problem with cross
18 contamination. I had already collected my touch swabs.
19 So you would take your fingerprint brush, you dip it
20 into the black powder, which is kind of a silky carbon
21 powder. And then there's different techniques. And
22 you apply it to the vehicle, on the exterior hard
23 surfaces.

24 And you kind of -- it's a technique where you
25 may feather; you may dump a larger amount and brush it

1 away. But you're interacting so that powder can adhere
2 to any of those latents that are left on a hard
3 surface.

4 And then if you do have some prints that you
5 deem are -- look pretty good, that everything looks
6 good, you number those with an expo marker. And then
7 you photograph those locations to show that, well, this
8 is Print No. 1, and it was on this location on the
9 vehicle.

10 And then you would do your lifting, which is
11 using a tape that you place over that print and the
12 number. You pull that tape off. And you place it to a
13 fingerprint card. And then there's certain information
14 you fill out on the back of the card. You proceed to
15 the next one.

16 Q And you did that in this case?

17 A Yes, ma'am. I did.

18 Q Do you know where the results of -- were you
19 able to get good lifts off those?

20 A There were a couple of lifts. Again, the
21 fingerprinting process, the fingerprints were requested
22 for the search warrant.

23 Q Okay.

24 And how do you -- just briefly explain your
25 touch DNA process.

1 **A** The touch DNA process is taking a sterile, a
2 long swab, kind of like the doctor's office uses your
3 COVID swabs. It's a long sterile swab. They come two
4 or one to a pack. Then you have a sterile vial of
5 water. It has a top that you have to break off to use
6 that water to moisten the tip of your cotton swab.

7 And then you will not over wipe. You kind of
8 take that cotton swab in an area you want to take a
9 touch lift from. And you roll that cotton swab 360
10 degrees. And then you place it inside a sterile
11 cardboard tube. And you write all the information on
12 the outside of the tube, location of where the swab was
13 coming from, you have the date and the time, and then
14 that's put into an envelope.

15 **Q** Did you also fingerprint the lighter fluid
16 bottle?

17 **A** That was done. It was not at a later date.
18 It wasn't done the day that it was collected.

19 **Q** Okay.

20 And did you then secure all that into
21 evidence?

22 **A** Right. As you're generating your pieces of
23 evidence, they get secured the same way you would do
24 when you bring stuff back from the scene.

25 **Q** Did the sheriff's office deem items like we

1 discussed for testing to send it to SLED?

2 **A** Yes, ma'am. They did.

3 **Q** And can you explain why something would be
4 sent to SLED? And what is SLED?

5 **A** SLED is the State Law Enforcement Division.
6 There are a lot of things that they can do at a
7 laboratory that we don't have the capacity to do at the
8 sheriff's office. So anything with fire debris
9 evidence, we don't have the capabilities or the
10 laboratory setting to analyze those things. So those
11 items are then pre-logged, which is a computer system.
12 Kind of like I enter things into our computer system,
13 SLED has a pre-log, where you say, "I want to send you
14 this, this, this and this. And this is what I would
15 like the test to be done." And then that is packaged.
16 And that is taken to SLED.

17 And they have evidence intake personnel who
18 take that and check it into their evidence so they can
19 have a laboratory analysis done on the items you send
20 them.

21 **Q** And what was the sheriff's office requesting
22 be tested? What was the testing for?

23 **A** The fire samples and also the floor mat were
24 sent up there, to have them tested to look for any
25 accelerants found in both the samples from the house

1 and from the floor mat.

2 Q And in this case, who completed the pre-log
3 form?

4 A The pre-log?

5 Q If I show you your pre-log, would that
6 refresh your memory?

7 A Yes, ma'am. (Reviews document.)

8 All right. This SLED request through their
9 website was done by Crime Scene Technician Lori Watts
10 is her title.

11 Q And what date did she do the pre-log?

12 A Looks to be May 12.

13 Q Of what year?

14 A I'm sorry. 2020.

15 Q That's okay.

16 And did those items then get transported to
17 SLED?

18 A They did.

19 Q Do you recall who from sheriff's office
20 transported them physically to SLED?

21 A I do. It was Investigator McElroy.

22 Q And to the best of your knowledge, were the
23 proper procedures followed in collecting, processing,
24 and storing the evidence in this case?

25 A Yes, ma'am.

1 Q And the transporting of it to SLED?

2 A Yes, ma'am.

3 Q Nothing further. Please answer any questions
4 defense may have.

5 A Yes, ma'am.

6 THE COURT: Any questions for the witness?

7 MS. BLAZER: Yes, ma'am.

8 THE COURT: You may proceed.

9 MS. BLAZER: Thank you, Your Honor.

10 THE COURT: Yes, ma'am.

11 CROSS-EXAMINATION

12 BY MS. BLAZER:

13 Q Good afternoon.

14 A Afternoon.

15 Q How are you?

16 A Good now.

17 Q Good.

18 You conducted the vehicle search warrant
19 execution as you just described. And we saw a lot of
20 stuff in that trunk?

21 A Yes, ma'am.

22 Q Did you go through it all?

23 A The items, we typically will go through box
24 by box. If there's luggage in there, we'll look
25 through the luggage.

1 Q So you -- all we see are boxes and the small
2 number of things you've collected, but you looked
3 through all of that.

4 A More than likely. Typically, I would have
5 taken a picture if I went through things item by item.

6 Q And so you didn't take anything into evidence
7 other than the things that you've testified here to
8 today --

9 A Yes, ma'am.

10 Q -- from that -- from that car?

11 You talked on direct about having collected a
12 little piece of jewelry?

13 A Yes, ma'am.

14 Q I'm gonna show you what's been marked as
15 State's Exhibit 51. All right.

16 So I'm showing you what's been marked as
17 State's 51. And you can sort of -- can you sort of
18 make out the things that you collected?

19 A Yes, ma'am.

20 Q And do you see anything else in that picture?

21 A Ashtray with cigarette butts.

22 Q So did you observe in the course of your
23 investigation or -- or walk through the house at any
24 time, lighters or matches that might have lit
25 cigarettes?

1 **A** Not pinpointed, I guess. I didn't pinpoint
2 any.

3 **Q** Okay.

4 So -- but -- and you didn't collect any
5 lighters at the scene that you could recall?

6 **A** No, ma'am.

7 **Q** You took the driver's-side floor mat out of
8 the vehicle, correct?

9 **A** Yes, ma'am.

10 **Q** And you didn't take any of the other floor
11 mats?

12 **A** That's correct.

13 **Q** And when you took it, you observed all
14 appropriate procedures. So you sealed it up pretty
15 quickly?

16 **A** Yes, ma'am.

17 **Q** And you've kept it sealed for the better part
18 of four years, except for the times that it was taken
19 out for testing?

20 **A** That's correct.

21 **Q** Did you -- did you test the carpet in the
22 trunk?

23 **A** No, ma'am.

24 **Q** And I didn't see any photographs that you
25 took of any gas cans. You didn't see anything like

Jason Riley - Cross-Examination by Ms. Blazer

1 that in the car?

2 A No, ma'am.

3 Q You testified on direct that not only do you
4 do crime scene collection, but your division actually
5 receives other material that's collected in other --
6 by -- by other deputies in the course of their
7 investigations?

8 A Yes, ma'am. That's correct.

9 Q Do you recall in the course of this case,
10 ever having any clothes turned into evidence for you?

11 A No, ma'am.

12 Q Do you recall any shoes being turned into
13 evidence in this case?

14 A I do not.

15 MS. BLAZER: Beg the Court's indulgence.

16 THE COURT: Yes, ma'am.

17 MS. BLAZER: I have nothing further. Thank
18 you.

19 THE COURT: Any redirect?

20 MS. SAVAS: Nothing from the state, Your
21 Honor.

22 THE COURT: Any objection to the witness
23 being excused from the state?

24 MS. SAVAS: Not from the state.

25 THE COURT: From the defense?

1 **MS. BLAZER:** No, Your Honor.

2 **THE COURT:** Sir, you're excused.

3 **THE WITNESS:** Thank you, Your Honor.

4 **THE COURT:** You're welcome.

5 Please approach.

6 **MS. SAVAS:** Yes, Your Honor.

7 (A sidebar conference is held off the record.)

8 **THE COURT:** Ladies and gentlemen, we have an
9 indulgence to ask of you. For you-all that don't
10 know, SLED is fairly short-handed. And they have
11 to travel all over the state to testify. We have
12 a witness who is here from Columbia. And I was
13 wondering if you-all would be able to indulge us
14 about 15 to 20 minutes to dispose of his testimony
15 so that he doesn't have to drive here to
16 Charleston, again, in the morning. Will that
17 create any kind of scheduling conflict for the
18 panel? Will that work for everybody? We
19 appreciate your indulgence.

20 You may call your next witness.

21 **MS. SAVAS:** The state calls Hue Tang.

22 **HUE TANG**

23 having first been duly sworn, testifies as follows:

24 **THE CLERK:** Please be seated.

25 Please state your full name, spelling your

1 last name into the microphone.

2 THE WITNESS: My name is Hue Tang. Last name
3 spelled T-a-n-g.

4 THE COURT: And sir, if you could spell your
5 first name for us as well.

6 THE WITNESS: Spelled H-u-e.

7 THE COURT: Thank you.

8 You may proceed.

9 MS. FRIES: Thank you, Your Honor.

10 THE COURT: You're welcome.

11 DIRECT EXAMINATION

12 BY MS. FRIES:

13 Q Good afternoon, Mr. Tang.

14 A Good afternoon.

15 Q Where are you employed?

16 A I'm employed by South Carolina Law
17 Enforcement Division.

18 Q And how long have you been employed there?

19 A Over 33 years.

20 Q And what position do you have at SLED?

21 A I'm employed as forensic scientist, assigned
22 to trace evidence section.

23 Q And who was -- were you working in SLED in
24 May 2020?

25 A Yes, ma'am.

1 Q And what are your duties?

2 A My duties assigned is to trace evidence
3 section as a trace examiner. My duty there is to exam
4 trace evidence. Trace evidence encompass multi
5 discipline, fire debris, gunshot residues, pane --
6 glass explosive, duct tape, (inaudible), and general
7 unknown.

8 Q And what kind of training -- if you could
9 just explain your training, education, and a little bit
10 of your experience?

11 A I receive a bachelor of science with major in
12 chemistry from University of South Carolina. I have
13 complete additional graduate courses in analytical
14 chemistry. I complete my training with all the
15 discipline and trace evidence. I attend and completed
16 multiple professional meeting and training over the
17 years.

18 Q And have you worked arson cases?

19 A Yes, ma'am.

20 Q And have you chemically analyzed items to
21 determine whether they're accelerants?

22 A Correct.

23 Q How many times approximately?

24 A Nearly a thousand times.

25 Q And how many base analysis do you make in a

1 given week?

2 A On average, we receive about three to five
3 cases per week.

4 Q And do you make these analyses as part of
5 your, you know, duties and as part of SLED?

6 A Yes, ma'am.

7 Q And what kind of equipment do you have at the
8 lab for testing accelerants?

9 A Well, we have variety of analytical
10 instrument for arson analysis. We mainly use gas
11 chromatograph mass spectrometer.

12 Q Okay.

13 And is this equipment accurate in its testing
14 ability?

15 A Yes, ma'am.

16 Q And have you previously been admitted as an
17 expert in accelerants in court?

18 A Yes, ma'am. I have.

19 Q And how many times?

20 A At least 11 times.

21 Q And have you testified regarding
22 accelerants --

23 A Yes, ma'am.

24 Q -- in court before?

25 A At least 11 times.

1 **MS. FRIES:** Your Honor, at this time, the
2 state moves that Mr. Tang be declared as an expert
3 in the field of accelerants.

4 **THE COURT:** Any objection or -- any
5 objections or questions?

6 **MS. BLAZER:** No, ma'am, Your Honor.

7 **THE COURT:** So admitted without objection.
8 You may proceed.

9 **MS. FRIES:** Thank you, Your Honor.

10 **THE COURT:** You're welcome.

11 **BY MS. FRIES:**

12 **Q** As a result of completing your analysis, do
13 you generate any sort of report?

14 **A** Yes, ma'am. I have.

15 **Q** Is that your report --

16 **A** Yes, ma'am.

17 **Q** -- in front of you?

18 **A** Yes, ma'am.

19 **Q** What does that report contain?

20 **A** It contains submitting agency information.

21 And over here, the lab number and local agency lab
22 number, and incident day, victim name, suspect name.

23 And in this case, we have five items. And we have item
24 description for each container, and result.

25 **Q** I'm going to put it up here. This is

1 Exhibit 67. And so this is what you were explaining
2 this is the lab number?

3 A Correct.

4 Q All right.

5 And it's -- what case number is this?

6 A For our SLED lab number, it's L20-04684. And
7 the submitting agency case number is 20-002680.

8 Q And can you describe the process in which
9 law -- in which items are received by SLED from local
10 law enforcement agencies?

11 A Local agency, they log into iLab through our
12 web page and create a pre-log to enter all the
13 information that relate to the case that they submit in
14 the future. And on the day that they scheduled to be
15 in Columbia, they submit the items to our evidence
16 control unit. And we have evidence control unit
17 technician that verify all the information that the
18 officer have entered and verify the condition of the
19 evidence.

20 Then they create a data entry for this case.
21 And they assign a unique case number, which is
22 L20-04684. And they make sure that all contain that
23 label. Then they store in secure area until the day
24 that I -- we received from them for my analysis.

25 Q What's the form called that law enforcement

1 agencies fill out to submit items to SLED?

2 A When they enter iLab, they create a pre-log
3 which this document.

4 Q And who completed the pre-log form in this
5 case?

6 A Lori Watts.

7 Q And what day was the pre-log submitted?

8 A She enter on March 3, 2020.

9 Q How many items were submitted by the
10 Charleston County Sheriff's Office to SLED?

11 A Five items.

12 Q And what were those items?

13 A The first item is fire debris collect from
14 master bedroom, floors, carpet, and place inside -- in
15 arson cans. Fire debris collect from hallway flooring
16 and baseboard -- baseboard and place inside a arson
17 can. Item No. 3, fire debris collect from floor by
18 doorway from kitchen, addition, and placed in an arson
19 can. Item No. 4, fire debris collect from floor of
20 room addition and placed inside an arson can. And the
21 last item, Item No. 5, driver carpet floor mat collect
22 from suspect vehicle.

23 Q And what exam requests were made from the
24 sheriff's office?

25 A All five item requests for trace flammable.

1 Q And what is that kind of test?

2 A Test for the presence of ignitable liquid in
3 a sample.

4 Q And is there another part of the report who
5 showed -- that shows who touched each item?

6 A It's called chain custody, a documentation to
7 show that the continuation of custody the item come it
8 create to time dispose.

9 Q And was there a chain of custody in this --
10 in this case?

11 A Yes.

12 Q And is that part of your report?

13 A I have it with me.

14 Q I also have a copy as well.

15 A Okay.

16 Q Do you know who submitted the items to
17 Charleston County? Or sorry. From Charleston County
18 Sheriff's Office.

19 A From Hershel, Mc- -- McElroy.

20 Q And what happens when those items are
21 submitted?

22 A As I mentioned earlier, the evidence control
23 technician receive, and create a lab number. And they
24 place in a secure area. They are retrieved from
25 evidence control.

1 Q And who checked those items in?

2 A On March 12, 2020, Forensic Technician
3 Dora -- Doris Yarborough.

4 Q And what happened after Ms. Yarborough
5 checked them in?

6 A She place in a secure intake area.

7 Q And then who take -- who touched the items
8 next, and why?

9 A The day I retrieved the evidence for my
10 analysis, another forensic -- forensic technician, Vera
11 Martinez.

12 Q Okay.

13 What happened after Ms. Martinez had the
14 items?

15 A From the time -- can you repeat that?

16 Q Yes. So what happened after Ms. Martinez had
17 the items? Did she then -- did you then receive them?

18 A Yes. Once she retrieved the item from secure
19 area, she transferred the item to me.

20 Q Okay.

21 And then the -- are the items then labeled
22 and marked once they're in SLED custody?

23 A Yes, ma'am.

24 Q And how are they marked?

25 A For the container we have created a

1 barcode -- I'm sorry. From the container -- activity
2 container, we create a barcode. An individual
3 container, I create the barcode for it.

4 Q And did that happen in this case?

5 A Yes, ma'am.

6 Q And are the items renumbered accordingly for
7 SLED purposes?

8 A Yes, ma'am.

9 Q And when you received the items in this case,
10 did they appear to be tampered with at all?

11 A No, ma'am.

12 Q And were the seals intact?

13 A Uh.

14 Q Were they -- were they still sealed?

15 A Yes, ma'am.

16 Q And would you -- would you test an item if
17 the item was compromised in any way?

18 A No, ma'am.

19 Q And is that part of the policies of SLED?

20 A Correct.

21 Q And you said you created a report in this
22 case, and that's up on the screen?

23 A Correct.

24 Q Okay.

25 So going over Item 1, what does that say?

1 What is Item 1?

2 **A** Item 1. This my observation. One can
3 contain unburned wood and carpet.

4 **Q** Okay. All right.

5 Now I'm going to show you what's been marked
6 as 53A and 53B, is this what you tested, a sample?

7 **A** Yes, ma'am.

8 **Q** Okay.

9 And 53B here, is this a sample of that -- of
10 what's in here. This on the outside?

11 **A** Oh, yeah. Yes.

12 **Q** Okay.

13 And can you explain for the jury what this
14 language means right here? Item 1. Is that the tools
15 that were used?

16 **A** Yes. That's the instrument we use to analyze
17 for ignitable liquid.

18 **Q** Okay.

19 And what were the results of Item 1?

20 **A** Gasoline found. This include any brand of
21 octane as well as alcohol-blend gasoline.

22 **Q** Okay. And what does that mean?

23 **A** That mean --

24 **Q** Is it -- is it gasoline?

25 **A** Yeah. Gasoline.

1 Q Okay.

2 A Different brand octane.

3 Q And down here, Item 1.1, is that just
4 regarding the sample? Can you explain that?

5 A Sure.

6 Q In order to analyze sample, we use a
7 (inaudible). We -- I open the container, examine the
8 content, and I place a activate charcoal strip. And
9 the charcoal strip acts as absorbing. And I close the
10 lid and place the container in an oven. And we heat it
11 at 60 degrees, between 60 and 70 degree Celsius for 16
12 hours to heat up the whatever ignitable liquid present
13 in the fire debris. And it escape into (inaudible)
14 component. Then that's when the activated charcoal
15 absorbs it.

16 And once -- the next day, I remove the
17 charcoal strip. And I cut it in half. That's where
18 the activated charcoal from Item 1.1 to preserve for
19 future testing, should it need to be. And the other
20 half, I use it to analyze with my gas chromatograph
21 instrument.

22 Q Okay.

23 And in looking at Item 2, can you explain
24 what Item 2 is?

25 A Sure.

1 Q One gallon can containing wood and partially
2 burned plastic material.

3 Showing you what's been marked as 54A and
4 54B. Is that the sample that you tested?

5 A Yes, ma'am.

6 Q And does that have the same -- what's the
7 case number?

8 A L20-04684, Item 2.

9 Q Okay.

10 And again, below the item, that's just the
11 tools that were used to test?

12 A Yes, ma'am. The instrument we used.

13 Q Okay.

14 And what were the results of Item 2?

15 A Gasoline found. This includes any brand of
16 octane as well as any alcohol-blend gasoline.

17 Q Okay.

18 And then Item 2.1. That's similar to what
19 Item 1 --

20 A Correct. There's all kinds.

21 Q And then looking at Item 3, could you explain
22 what that -- what Item 3 is?

23 A Sure. One (inaudible) can, contain wood and
24 fire debris.

25 Q Now showing you what's been marked as 55A and

1 55B. Is this the sample that you tested?

2 A Yes, ma'am.

3 Q And again, it has the same case number?

4 A Correct.

5 Q And what were the results for Item 3?

6 A No ignitable liquids of any evidence values
7 found. The volatile component found are consistent
8 with product produced when natural or synthetic
9 materials are subjected to heating or burning.

10 Q What does that mean?

11 A That mean that when -- a product when you
12 heat is produced a material chemical that the makeup of
13 that substrate or whatever material, like plastic, you
14 might find some styrene or polyethylene present.

15 Q And is 3.1 the same thing as the charcoal
16 strip?

17 A Correct.

18 Q And what is Item 4?

19 A Item 4. One (inaudible) can, contain wood
20 and fire debris.

21 Q Showing you what's been admitted as 56A and
22 56B. Is this the sample that you tested?

23 A Yes, ma'am.

24 Q And what -- what are the results of that --
25 of Item 4?

1 **A** Result is no ignitable liquid of evidence --
2 evidentiary value found. Volatile component found are
3 consistent with products produced when natural or
4 synthetic material are subject to heat or burning.

5 **Q** And is this similar to the previous item,
6 Item 3, the results?

7 **A** Yes, ma'am.

8 **Q** And looking at Item 5, what is that item?

9 **A** Item No. 5, one nylon bag containing one
10 black floor mat.

11 **Q** I'm going to show you what's been marked as
12 56A and 56B. Is this the sample that you tested?

13 **A** Yes, ma'am.

14 **Q** Okay.

15 **A** And again, it has the same case number?

16 **A** Correct.

17 **Q** And what were the results of this?

18 **A** Gasoline found. This includes any brand of
19 octane as well as any alcohol-blend gasoline.

20 **Q** And so from your expert testing -- are those
21 all the items that you tested?

22 **A** Correct.

23 **Q** And from your expert testing, are you able to
24 differentiate various types of accelerants?

25 **A** Yes, ma'am.

1 Q And how -- how are you able to do that?

2 A Based on the chemical composition and based
3 on the boiling point of the accelerant present in
4 evidence. In ignitable liquid classification, we have
5 seven different classes based on like boiling point
6 range from C4 to C9. We consider that a light
7 petroleum products. And then from C8 to C13, it's
8 falling under medium petroleum products. And from C8
9 to above like 20 plus, that falling under the heavy
10 petroleum products.

11 And gasoline is unique by itself. It doesn't
12 fall in the boiling range. It encompass from C4 all
13 the way up to C15.

14 Q And so is gasoline distinguish --
15 distinguishable from other accelerants such as lighter
16 fluid?

17 A Yes, ma'am.

18 Q And what type of gasoline is it?

19 A Gasoline designed for internal combustion
20 engine?

21 Q Can you find it at a gas station?

22 A Sure.

23 Q Is it for gas engines like a lawnmower?

24 A Yes.

25 Q And so just to -- you know, to confirm your

Hue Tang - Cross-Examination by Ms. Blazer

1 testimony, the accelerants found from the fire debris
2 within the home were gasoline?

3 A Correct.

4 Q And the accelerant found on the floor mat
5 that was in the defendant's vehicle was also gasoline?

6 A Correct.

7 Q And in your expert opinion, do you know --
8 can you say how gasoline can be transferred to the
9 interior of a vehicle floor mat?

10 A You can like step on a puddle of gasoline and
11 transfer on it. Or you can -- container or something
12 touch the bottom of the -- of the bottom or the
13 container maybe sit on it.

14 Q Okay.

15 And did you do anything else in this case?

16 A No, ma'am.

17 Q Okay.

18 I have nothing further. Please answer
19 anything the defense may have.

20 THE COURT: Any questions?

21 MS. BLAZER: Yes, Your Honor.

22 THE COURT: You may proceed.

23 MS. BLAZER: Thank you.

24 THE COURT: You're welcome. Yes, ma'am.

25 CROSS-EXAMINATION

1 BY MS. BLAZER:

2 Q Good afternoon.

3 A Good afternoon.

4 Q How are you?

5 A Good.

6 Q Good.

7 So in May 2020, you -- Charleston County
8 Sheriff's Office submitted items from the arson in this
9 case to you for testing, yes?

10 A Correct.

11 Q And you received them in sealed containers?

12 A Correct.

13 Q And they were sealed by Charleston County
14 Sheriff's Office to ensure that no testable substances
15 can escape.

16 A Or enter.

17 Q Or enter. Great point. Yes.

18 And you received in that pre-log that
19 Ms. Fries went through with you, five items labeled as
20 fire debris?

21 A Correct.

22 Q And your only involvement in this case is to
23 test the material they send to you?

24 A Correct.

25 Q You have to go by the descriptions that law

1 enforcement gives you of what these various things are?

2 A That's true.

3 Q And she went through with you what they how
4 they were listed on the pre-log.

5 A That's true.

6 Q And so -- because those descriptions of what
7 they have are transmitted to you through that form,
8 that's how you know what they think they are?

9 A Correct.

10 Q Okay.

11 So Item 1 was listed in the pre-log as debris
12 collected from the master bedroom floor. And there was
13 gas found there, right?

14 A Correct.

15 Q Item 2 was listed as debris collected from
16 hallway flooring in the baseboards. And there was gas
17 found there, yes?

18 A Yes.

19 Q Item 3 was listed as debris collected from
20 the floor by the doorway from the kitchen. There was
21 no gas found there?

22 A Correct.

23 Q Item 4 was listed as debris collected from
24 the floor of the room addition. No gas there?

25 A Correct.

Hue Tang - Cross-Examination by Ms. Blazer

1 Q Item 4 was listed as driver's carpeted floor
2 mat collected from suspect's vehicle. Gas found --

3 A No. 5.

4 Q I'm sorry. Did I say four again?

5 A Yes.

6 Q I'm sorry. You're right.

7 Item 5 was listed as driver's carpeted floor
8 mat collected from suspect's vehicle. Gas found there?

9 A Correct.

10 Q Okay.

11 You were not given any other items to test?

12 A No, ma'am.

13 Q You were not given any items to test listed
14 as the suspect's shoes?

15 A No, ma'am.

16 Q The victim's shoes.

17 A No clothing.

18 Q No suspect's clothing? No victim's clothing?

19 A Right.

20 Q Okay.

21 I am very bad at chemistry. And I know this
22 because I have a senior in high school who is also bad
23 at it. So I'm going to -- you're going to have to help
24 me through this.

25 A Okay.

1 Q But I think I got this down.

2 Gasoline has different chemical properties
3 than a liquid that's like water?

4 A Yes.

5 Q And water is two hydrogens and an ox- -- or
6 is it two hydrogens and an oxygen, right?

7 A Yeah. H₂O, yes.

8 Q Right.

9 So when it evaporates, it's gone from the
10 thing that it evaporated --

11 A Correct.

12 Q -- off of.

13 But gas doesn't work like that, right?

14 A Well, see, when you have carpet it as an
15 absorbent. It's absorb --

16 Q Uh-huh.

17 A -- the gasoline. When I opened the
18 container, I was able to detect an odor --

19 Q Uh-huh.

20 A -- of petroleum product --

21 Q Uh-huh.

22 A -- for Item 1 and 2.

23 Q Uh-huh. Okay.

24 But the reason we keep it all sealed is
25 because the -- the -- although there is an evaporation

1 on some level, they're -- they're -- because gas is
2 a -- is made up of hydrocarbons and petrochemicals and
3 all that stuff. When it evaporates, it doesn't just
4 magically disappear, right?

5 A It evaporate, yes.

6 Q Okay.

7 So I want to talk to you very briefly about
8 your testing process. You -- you went through it
9 already. But I just want to clarify a few things. You
10 don't just start running the items that are submitted
11 through you -- to you through testing equipment as soon
12 as you receive them. You don't just shove them into
13 the spectrometer or the --

14 A Well, I received that item on May 13 --

15 Q Uh-huh.

16 A -- at probably early in the morning. And I
17 perform the testing on the same day.

18 Q Because you -- but -- but -- I guess I wasn't
19 clear. You don't receive it and -- and then just shove
20 it into the testing. You do what you explained to us.
21 You put the strip in the container. You heat it up?

22 A Yes. That's how we process.

23 Q Right.

24 That's the processing part.

25 A Yeah.

1 Q And then you test it later?

2 A Yeah, the following day.

3 Q Right.

4 A Yes.

5 Q And you process the item so that the testing
6 part that you do causes minimal damage to the evidence
7 that's actually been collected, right?

8 A It's a vapor on this.

9 Q Right. It absorbs that vapor?

10 A Right.

11 Q Right.

12 And when you're doing the testing, the kind
13 of -- when you're testing the kind of evidence you're
14 doing here, you're using that charcoal strip?

15 A Correct.

16 Q And when you're done with the testing, you
17 seal back up the canister. But you save the charcoal
18 strip, right?

19 A The half that I did not test.

20 Q Right. Right.

21 So the half that you tested disappears. But
22 the other half that should be identical is preserved?

23 A Right.

24 Q Uh-huh.

25 And you use the testing results from the

1 charcoal strips to write your reports and to provide
2 analysis?

3 A Correct.

4 Q And you went through it on direct. . You have
5 a strict set of rules that you have to follow regarding
6 how you handle evidence?

7 A Yes.

8 Q And because -- and you have those rules,
9 because eventually you know, you might end up right
10 here?

11 A Yes.

12 Q And it needs to have all been properly
13 preserved?

14 A Correct.

15 Q And you would never discard the evidence or
16 your charcoal -- charcoal strips just because your
17 report was finished?

18 A The archive one which identical to other half
19 that we preserved --

20 Q Right.

21 A -- for future testing should --

22 Q Right. You would never throw that away?

23 A Correct.

24 MS. BLAZER: No further questions.

25 THE COURT: Any redirect of the witness?

1 **MS. FRIES:** Just briefly, Your Honor.

2 **REDIRECT EXAMINATION**

3 **BY MS. FRIES:**

4 **Q** Mr. Tang, I'm going to show you Exhibit 55A
5 and 55B. So this is Item 3, the sample that -- where
6 gasoline was not found --

7 **A** Correct.

8 **Q** -- right?

9 And you're just testing this piece, this
10 sample, this small sample, correct?

11 **A** The other half.

12 **Q** The other -- the other half, okay.

13 **A** Right.

14 **Q** But it's a small sample?

15 **A** Correct.

16 **Q** So that doesn't necessarily mean that -- that
17 gasoline couldn't have been around the area?

18 **A** This area either have low amount or none
19 present in that -- in that area.

20 **Q** Okay.

21 And -- but regarding the rest of the room,
22 you can't test what you weren't given, correct?

23 **A** Correct.

24 **Q** Okay. Nothing further.

25 **THE COURT:** Any objection to the witness

1 being excused from the state?

2 **MS. SAVAS:** No, Your Honor.

3 **THE COURT:** From the defense?

4 **MS. BLAZER:** No, ma'am, Your Honor.

5 **THE COURT:** Sir, you're excused.

6 **THE WITNESS:** Thank you.

7 **THE COURT:** You're welcome.

8 Mr. Foreman, ladies and gentlemen, we thank
9 you for your indulgence in allowing us to go
10 beyond five o'clock. We'll resume in the morning
11 at 9:30.

12 During the break, please do not discuss the
13 case. Please do not read, watch, or listen to any
14 media accounts about this case, if there are any.
15 And please refrain from doing any independent
16 research of any type regarding any issue or matter
17 in this case on the internet or making any
18 comments on any social networking sites.

19 If you would leave your notepads in your
20 seats, we'll secure them during the break. Hope
21 y'all have a great evening. We'll see you in the
22 morning at 9:30.

23 (The jury exits the courtroom at 5:31 p.m.)

24 **THE COURT:** You may be seated.

25 All right. Anything before we adjourn from

1 the state?

2 MS. SAVAS: No, Your Honor.

3 THE COURT: From the defense?

4 MR. D'ANGELO: No, Your Honor.

5 THE COURT: Have a good evening. I'll see
6 y'all at 9:30.

7 You can leave anything you need to in the
8 courtroom. It'll be locked. And as you know,
9 it's recorded. So you don't have to tote anything
10 you don't need to. You can leave it if you'd
11 like.

12 (The Court recesses for the day at 5:32 p.m.)

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CERTIFICATE

1
2 I, the undersigned, Teresa B. Johnson, Official
3 Court Reporter, do hereby certify that I transcribed
4 the electronic recording of the remote hearing in this
5 matter; and that the foregoing is a true transcript of
6 said electronic recording.

7 I do further certify that I am not a relative,
8 employee, attorney, or counsel of any of the parties
9 connected with the action, nor am I financially
10 interested in the action.

11
12 Dated: 5/22/2024

13
14 /s/Teresa B. Johnson

15 Teresa B. Johnson

16 Official Court Reporter
17
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23
24
25

STATE OF SOUTH CAROLINA	)	COURT OF GENERAL SESSIONS
	)	
COUNTY OF CHARLESTON	)	Case No.: 2023GS1003323,
	)	2023GS1003324
	)	
State of South Carolina,	)	
	)	
vs.	)	
	)	
Toya Danielle Steward,	)	
	)	
Defendant.	)	February 28, 2024

TRANSCRIPT OF TRIAL - DAY 3 OF 5

BEFORE THE HONORABLE DEADRA L. JEFFERSON
Circuit Court Judge, and a jury

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

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

2 (Proceedings begin on the 28th day of
3 February 2024, at 9:45 a.m.)

4 **THE COURT:** You may be seated.

5 All right. The state ready to proceed?

6 **MS. SAVAS:** Yes, Your Honor.

7 **THE COURT:** Defense ready to proceed?

8 **MR. D'ANGELO:** Yes, Your Honor.

9 **THE COURT:** Who's your next witness,
10 Ms. Savas?

11 **MS. SAVAS:** This would be Detective Muirheid.
12 So I don't know if you'd want to do the *Denno*
13 hearing at this moment or have him --

14 **THE COURT:** Do you have any other witnesses
15 that don't require in camera hearings that are
16 here and present, ready to proceed?

17 **MS. SAVAS:** No. Judge, everyone moving
18 forward will require these hearings.

19 **THE COURT:** Pardon me?

20 **MS. SAVAS:** Everyone moving forward will
21 require these hearings to be established.

22 **THE COURT:** Why would this be required for
23 your remaining witnesses? You only have one
24 witness who's going to testify about statements,
25 right?

1 **MS. SAVAS:** And then the next witness will
2 require his in camera hearing for the cell phones.

3 **THE COURT:** And then who else would require
4 in camera testimony?

5 **MS. SAVAS:** I need that to be established to
6 determine what I can bring out of my remaining
7 witnesses. I do not have anyone else, Your Honor,
8 that I can call. We called everyone yesterday,
9 ma'am.

10 **THE COURT:** Who is Almarintha Carter?

11 **MS. SAVAS:** She's the homeowner, Your Honor.

12 **THE COURT:** Do you plan to call her?

13 **MS. SAVAS:** Your Honor, it really depends on
14 the defense. At this point in this time, the
15 state's requesting to call Detective Muirheid to
16 discuss the statement.

17 **THE COURT:** And I asked a question about
18 witnesses that don't require his testimony,
19 because I am not particularly fond of having this
20 jury wait right this moment. And I cannot imagine
21 under any circumstances that Ms. Carter's
22 testimony would be contingent on Detective
23 Muirheid.

24 **MS. SAVAS:** Your Honor, at this point in
25 time, unless defense brings something out before

1 the state rests, we do not intend to call her at
2 this moment.

3 **THE COURT:** What about Destiny Brees?

4 **MS. SAVAS:** Your Honor, she -- if she were to
5 testify, I need all of these other items to come
6 in.

7 **THE COURT:** How? She's a fact witness that's
8 alleged to be involved with your victim. How
9 would the statements -- how is -- how is that --

10 **MS. SAVAS:** She's involved with the messages
11 between the defendant who admitted that she was
12 messaging her, and then there's cell phone context
13 to her testimony.

14 **THE COURT:** She can testify about what she
15 got on her cell phone. She can testify about what
16 she talked about on Instagram, correct? Isn't
17 that one of the people y'all allege had
18 conversations on Instagram with the defendant?

19 **MS. SAVAS:** Yes, Your Honor.

20 **THE COURT:** Okay.

21 So what we're really talking about is your
22 desire to do what you'd like to do, right?
23 Because there's a particular way you want to try
24 your case, which I understand. But I also am in
25 charge of running this courtroom and making sure

1 that the jury's time is used efficiently.

2 And I'm not particularly fond at this moment,
3 having them wait any prolonged period of time.
4 It's better if we can deal with some other fact
5 witnesses and then have them wait, if that's
6 possible.

7 **MS. SAVAS:** Your Honor, I --

8 **THE COURT:** If I find out that you're not
9 being direct with me, it's going to be
10 problematic.

11 **MS. SAVAS:** I can assure the Court that I'm
12 being direct and no other witness can testify
13 without getting through Detective Muirheid and
14 then the cell phone expert, Your Honor.

15 **THE COURT:** How many remaining witnesses do
16 you have?

17 **MS. SAVAS:** Five.

18 **THE COURT:** And as I understand that,
19 Mr. D'Angelo, the only conversations that you
20 have -- well, the only statements you have a
21 concern about regarding your client are the
22 following, because I understand from Ms. Savas
23 that she does not intend nor is she seeking to
24 play the interview. What she is seeking to elicit
25 from the detective is particular statements

1 purported to have been made by your client to him
2 during the interview in her home; is that
3 accurate? And that the only statements you have
4 an issue with are -- bear with me one moment --
5 that she saw the cars in the driveway, that she
6 was relieved that Chris was not at home, regarding
7 the items she purchased -- well, actually, you
8 said you didn't have a problem with that.

9 And actually, I need some clarity. Are you
10 seeking to play these messages that were left
11 on -- or purportedly left on his answering
12 machine?

13 **MS. SAVAS:** Oh, you're -- we're not going to
14 call Detective Muirheid? You're -- the
15 voicemails, Judge?

16 **THE COURT:** Uh-huh.

17 **MS. SAVAS:** Yes, Your Honor. I seek to bring
18 those in through Frank Simmons himself. It was
19 his phone.

20 **THE COURT:** Do you have any exception to
21 those?

22 **MR. D'ANGELO:** I -- I would, Your Honor.
23 Just --

24 **THE COURT:** Tell me what the basis of that
25 would be.

1 **MR. D'ANGELO:** The basis would be relevance
2 and authentication. Again, if the --

3 **THE COURT:** Are you saying that Mr. Simmons
4 can't authenticate that it's his phone, it's his
5 voicemail, and he hadn't had enough interaction
6 with Ms. Steward to know her voice?

7 **MR. D'ANGELO:** No, Your Honor. I think it
8 would just need to be authenticated as to date and
9 time when these voicemails were made. I would
10 just say I'm --

11 **THE COURT:** Wouldn't that be on the voicemail
12 machine. When you have -- and I assume these
13 messages, based on what I've listened to, are from
14 a cell phone. And if you go to the envelope
15 information, it always tells you when a call came
16 and what time it was and the length of it.

17 **MR. D'ANGELO:** What I have is just a folder
18 of labeled voicemails. And then it's just --
19 it's, I believe, a letter and a number. I don't
20 believe I have anything stating when that
21 particular voicemail came in, date and time.

22 **THE COURT:** Ms. Savas, did you not provide
23 that information --

24 **MS. SAVAS:** The way in which --

25 **THE COURT:** -- to Mr. D'Angelo?

1 **MS. SAVAS:** Correct. The way in which we
2 would say these voicemails were forwarded from
3 Mr. Simmons, that phone he does no longer has.
4 But he assures us it's from that day. We can
5 correlate it to the call log from Ms. Steward. We
6 are getting these in, Your Honor, as goes to her
7 present sense impression, the state of mind, her
8 motive.

9 **THE COURT:** That's not what I asked for. I
10 don't --

11 **MS. SAVAS:** I also --

12 **THE COURT:** I did not ask for argument. I
13 asked you to answer a particular question. Mr.
14 D'Angelo said that you've not provided him with
15 envelope information for these messages. And
16 that's what I need to know, and that's the answer
17 I was seeking.

18 Did you provide him with the envelope
19 information regarding when these calls were
20 received, the length of them, and what date and
21 time they were received?

22 **MS. SAVAS:** Your Honor, we do not have an
23 envelope. However, we have informed defense that
24 they were from that day. They are -- they agreed
25 to that. And then last minute, they said they

1 cannot agree to that. Mr. D'Angelo told me it's
2 his understanding as well they're from that day.
3 We can correlate it to Ms. Steward's call log to
4 show those calls. The victim will testify they
5 came in that day and around these specific
6 timeframes. They're also contextually based upon
7 her simultaneous and contemporaneous text messages
8 that he received. So we do believe they are
9 self-authenticating under Rule 901(b)(4) about a
10 telephone conversation from a particular person is
11 self-identifying, shows that he was the one, that
12 it was his phone call.

13 **THE COURT:** And what's the basis of the
14 objection, Mr. D'Angelo?

15 **MR. D'ANGELO:** Again, basis would be
16 authenticity -- authentication.

17 **THE COURT:** We both know that's not in good
18 faith. He can authenticate phone calls from his
19 own phone?

20 **MR. D'ANGELO:** Then I would state relevance,
21 Your Honor. Because again, if you go through
22 the --

23 **THE COURT:** I have to hear it in camera for
24 any other additional objections. Because I don't
25 really -- I've listened to them, but I don't know

1 what his testimony is going to be regarding them.
2 So we'd have to take that up in camera. I just
3 needed to know if there was an objection to it.

4 That then takes us back to my original
5 inquiry, which was that you had no objection to
6 Officer Muirheid testifying to the following --
7 this is based on our colloquy on Monday -- which
8 is that her phone number, that she knows the
9 defendant -- that she knows the Simmons, she knew
10 where they lived, her timeline on that day, her
11 relationship status, her instagram name, that
12 Mr. Simmons in her estimation was cheating on her,
13 that -- you had an objection to him -- her
14 testimony that she saw the cars in the driveway,
15 that she was relieved that Chris was not there.

16 And we never got to a consensus about what
17 the officer would testify regarding the exact word
18 verbiage that Ms. Steward used with him. There
19 was some discussion about there being a
20 parenthetical that she had called multiple times or
21 that she had called nonstop. I need to know
22 exactly what he would testify regarding what
23 Ms. Steward reportedly said to him. Was it
24 multiple times, or that she was calling nonstop,
25 or that she was simply calling and texting?

1 **MS. SAVAS:** There is a statement she
2 specifically makes that say, "We've been texting
3 back and forth."

4 **THE COURT:** So that's what you would elicit
5 from him, correct?

6 **MS. SAVAS:** I would also -- she says that she
7 texted him at 4:59 p.m.

8 **THE COURT:** I need to know exactly what you
9 would be seeking to elicit from the witness and
10 what he would testify to so I can determine if
11 Mr. D'Angelo has any objection to it so that we
12 can narrow the scope?

13 **MS. SAVAS:** I think, Your Honor --

14 **THE COURT:** I --

15 **MS. SAVAS:** Yes, ma'am. And I understand. I
16 think -- and in listening to that statement, there
17 is so much that she states.

18 **THE COURT:** Uh-huh.

19 **MS. SAVAS:** It is not clear. I would prefer
20 to just keep it simple, as Your Honor's indicated,
21 and say, Did she indicate whether she was
22 messaging throughout the entirety of the day and
23 calling throughout the entirety of the day, that
24 would be sufficient for the state to prove my
25 point, Judge. Otherwise, we have to go back and

1 clip every single time she talks about it. And I
2 can get that in through Paul McManigal through the
3 Cellebrite information. But I just want her
4 statement coming in, at the very least, to say it
5 was throughout the entirety of the day, texting
6 and calling.

7 **THE COURT:** Is there any exception to that
8 line of inquiry, Mr. D'Angelo?

9 **MR. D'ANGELO:** Yes, Your Honor. I would just
10 say cause their quote --

11 **THE COURT:** I just need to know if there's an
12 objection. Are you saying that -- I've listened
13 to the tape. And she does make several different
14 statements.

15 **MR. D'ANGELO:** Yes, Your Honor.

16 **THE COURT:** The reason I'm asking is because
17 if Ms. Savas does not intend to play the tape, she
18 can only elicit from the witness exactly what was
19 said. Now, what she's proposing is that she
20 elicit from her witness a parenthetical of the
21 entirety of your client's statements. I don't
22 know if it inures to her benefit for him to
23 testify every time she said something by texting
24 and calling, after having listened to what she
25 said.

1 **MR. D'ANGELO:** Certainly, Your Honor. I
2 think if we're keeping it to, "We've been texting
3 back and forth that day" -- again, that -- that's
4 the quote she said.

5 **THE COURT:** You have any exception to that,
6 Ms. Savas?

7 **MS. SAVAS:** I would like it to also -- I
8 would like Detective Muirheid to be able to have
9 that summarize statement the entirety of the day.
10 Back and forth was just one specific time --

11 **THE COURT:** He can't -- yeah. Here's
12 the rub --

13 **MS. SAVAS:** Frank was not texting back and
14 forth.

15 **THE COURT:** I got you. But here's the rub,
16 if you want to elicit and if it comes in, he has
17 to say exactly what she said. He can't paraphrase
18 what she said, unless y'all agree to it. So he's
19 gonna have to say exactly what she said. He
20 doesn't get to say his impression of what she
21 said.

22 **MS. SAVAS:** Then, Your Honor, then the state
23 ~~would almost seek to admit in her entire statement~~
24 in --

25 **THE COURT:** Well, I don't know that --

1 **MS. SAVAS:** -- because it's too --

2 **THE COURT:** Yeah. I don't know that that's
3 gonna happen either. So you need to call your
4 witness so I can hear what he has to say. You-all
5 can take your seats.

6 **MS. SAVAS:** The state calls Detective
7 Muirheid to the stand.

8 **CARL "WILL" MUIRHEID**

9 having first been duly sworn, testifies as follows:

10 **THE WITNESS:** Yes, ma'am, I do.

11 **THE CLERK:** Please be seated.

12 Please state your full name.

13 **THE WITNESS:** My name is Will Muirheid. My
14 last name is spelled M-u-i-r-h-e-i-d.

15 **THE COURT:** And your first name? Will --
16 Carl W. Muirheid.

17 **THE WITNESS:** Yes, ma'am. Carl W. Muirheid.
18 I go by Will. Yes, ma'am.

19 **THE COURT:** Thank you, sir.
20 You may proceed.

21 **MS. SAVAS:** Thank you, Your Honor. May it
22 please the Court.

23 Would the --

24 **THE COURT:** Yes, ma'am.

25 **MS. SAVAS:** Would the Court like me to go --

1 jump into his --

2 **THE COURT:** You need to have -- this is a
3 limited inquiry.

4 **MS. SAVAS:** Yes, Judge.

5 **THE COURT:** So you need to proceed
6 accordingly.

7 **MS. SAVAS:** Yes, Judge.

8 **DIRECT EXAMINATION**

9 **BY MS. SAVAS:**

10 **Q** Detective Muirheid, did you speak with the
11 defendant on February 8, 2020?

12 **A** Yes.

13 **Q** And where did you speak with her?

14 **A** At her residence.

15 **Q** And in doing that, did you ask her to go back
16 to headquarters?

17 **A** Yes.

18 **Q** Did she agree to go back with you?

19 **A** No. She referred [sic] to stay at her home.

20 **Q** Did she let you in her home consensually?

21 **A** Yes.

22 **Q** Did you have a search warrant for her home?

23 **A** No.

24 **Q** Did you have to break down the door to get
25 in?

1 A No.

2 Q So she consented to your entering?

3 A Yes.

4 Q Did she consent to speaking with you?

5 A Yes.

6 Q Did she prefer to stay at the comfort of her
7 home?

8 A Yes.

9 Q Why did you want to take her to headquarters?
10 Was it to arrest her?

11 A No.

12 Q Why was it?

13 A We are equipped at -- at our headquarters
14 with audio and visual record -- recording. So it would
15 have just encapsulated if in case a situation like this
16 where we're in court, we could give the jury a whole
17 view.

18 Q And Detective Muirheid, did you end up
19 recording this statement?

20 A Audio, yes.

21 Q Did she consent to it being recorded?

22 A Yes.

23 Q Before you began speaking with her, did she
24 ever tell you she did not want to talk to you?

25 A No. It was -- it was a consensual

1 conversation.

2 Q Did she ever tell you that she -- you made
3 her uncomfortable?

4 A No.

5 Q Did you have an arrest warrant for her at
6 that time?

7 A No, I did not.

8 Q When you went to speak with her, were you
9 directed to arrest her prior to you speaking to her?

10 A No. I was simply sent there to speak to her,
11 identify her, and potentially get a timeline of -- of
12 the events that had happened that day so that the case
13 agent, Sergeant Cheek, could make a decision that way.

14 Q Did you tell her you had a warrant?

15 A No.

16 Q When you arrived, who else was there?

17 A When I got there probably around 8 p.m., in
18 the parking lot there was a Mount Pleasant police
19 officer. I do not know his name. He was a patrol
20 officer in uniform. He was just there. I guess they
21 located Ms. Steward's vehicle that was in the parking
22 lot there at the apartment complex.

23 ~~Q When you went to her apartment, did you knock~~
24 ~~on the door?~~

25 A I don't -- I don't remember who specifically

1 knocked on the door. We were both there. So hand of
2 one, hand of all, one of us knocked on the door.

3 Q So you went together?

4 A Yes.

5 Q And then she opened the door?

6 A Yes.

7 Q And let you both in?

8 A I don't know if he actually went in. But --
9 because when I got there, I asked her if she would come
10 back with me to the station. She said she didn't want
11 to. I said that's fine. Can we speak there? We did
12 that.

13 Upon that, I asked if -- just for my safety,
14 can I make sure no one else is in the house? She
15 agreed to that. I did a protect- -- what I would call
16 a protective sweep. No one else was in the house. And
17 then I felt safe and comfortable there. Ms. Steward
18 felt comfortable.

19 So the Mount Pleasant police officer had to
20 get back to his patrol duties. And that's what he did.

21 Q So there was only one Mount Pleasant officer
22 when you arrived. And he was in the parking lot?

23 A Yes.

24 Q And then you both walked together to her
25 apartment?

1 **A** Yes.

2 **Q** And you entered. Was there anyone else
3 present during your interview?

4 **A** No.

5 **Q** Did you draw your weapon on her?

6 **A** No.

7 **Q** Did you tell her she had to speak to you?

8 **A** No.

9 **Q** Do you recall how long it was?

10 **A** The -- the conversation?

11 **Q** Yes.

12 **A** Forty-five minutes to an hour.

13 **Q** Okay.

14 Did she appear to understand what was
15 happening?

16 **A** A hundred percent.

17 **Q** Did she have an understanding of why you were
18 there?

19 **A** Yes.

20 **Q** Did you give her her Miranda warnings?

21 **A** No.

22 **Q** Why not?

23 **A** ~~I was not interrogating her and she was not~~
24 in custody.

25 **Q** Detective Muirheid, how long have you been

Carl "Will" Muirheid - Direct Examination by Ms. Savas

1 law enforcement?

2 A Over 20 years.

3 Q And about how many times have you given
4 Miranda warnings, do you think?

5 A Hundreds. Hundreds.

6 Q So do you know in your training, experience
7 and professional background when and when not to give
8 Miranda?

9 A Yes. I know when to provide Miranda.

10 Q And this was not one of those situations that
11 you as a officer would be legally required to provide
12 Miranda?

13 A She was not in custody. And I was not
14 interrogating her. So I did not believe Miranda was
15 even appropriate or a problem.

16 Q Okay.

17 Was she physically restrained?

18 A No.

19 Q Did you block the door from her exiting?

20 A No.

21 Q Was the door locked?

22 A I don't know if the door was locked. I know
23 that I did not lock the door.

24 Q Okay.

25 Were you in uniform with a duty belt and all

1 your weapons?

2 A No.

3 Q Or were you in your suit like you are today?

4 A No. I wasn't even in a suit.

5 Q Casual?

6 A Yeah.

7 Q Okay.

8 A We'll go business casual.

9 Q Okay.

10 A Cause it was a -- it was a call out.

11 Q At any time did she tell you that she did not
12 want to talk to you?

13 A No.

14 Q At any time did she tell you to leave?

15 A No.

16 Q At any time did she physically kick you out?

17 A No.

18 Q At any time did her demeanor appear to be
19 that she was scared?

20 A No. Not scared. I would not say scared.

21 Q Scared of you?

22 A No, not scared of me.

23 ~~Q Did she raise her voice at you?~~

24 A She raised her voice.

25 Q Detective Muirheid, in the nature of your

1 conversation, was she freely giving you information?

2 A Yes.

3 Q In that conversation, were you in
4 interrogation style, peppering her with questions, or
5 letting her talk?

6 A I let her speak.

7 Q Did she in fact interrupt you during the
8 conversation?

9 A There -- yes. There were times that she
10 interrupted me.

11 Q Multiple times.

12 A Yeah.

13 Q She -- she -- it was my understanding that
14 she was trying to get her point across.

15 Q So she appeared to want to speak to you to
16 get her point across?

17 A Yeah. At no time did I feel like she
18 didn't -- did not want to speak to me until towards the
19 end.

20 Q Okay.

21 And at the end, did she ever request an
22 attorney?

23 A Not specifically.

24 Q Did she mention a lawyer?

25 A I -- I don't know if she specifically

1 mentioned a lawyer. I do remember something to the
2 effect that she wanted someone with her best interests,
3 which, you know, doing this as long as I've done,
4 that's -- that's the time where I'm gonna pump the
5 brakes. And -- and I believe I even asked her, "Do you
6 want a lawyer?"

7 Q Yes.

8 A And I don't think she specifically ever did.
9 But I knew that was -- we were getting to the point
10 where maybe needing to wrap it up.

11 Q And did you try to end the conversation at
12 that time?

13 A Yes.

14 Q And did you tell her to stop talking?

15 A I don't remember if I specifically told her
16 stop talking. But that is something that I often do in
17 my past and in my experience, just when I think that
18 people are getting to the point where they're teetering
19 on wanting an attorney or not.

20 Q Detective Muirheid, were you trying to get --
21 once she mentioned attorney and speaking to someone
22 with her best interests, were you then trying to end
23 the conversation at that time?

24 A Yeah.

25 Q But did she continue to talk to you?

1 **A** Yes.

2 **Q** And she continued to interrupt you at that
3 point?

4 **A** Yes.

5 **Q** Did you then ultimately just completely end
6 it?

7 **A** If I remember from the review of when I
8 listened, because obviously this was four years ago --

9 **Q** Uh-huh.

10 **A** -- so I did a review of the interview. It
11 ended pretty abruptly because I was like we have to be
12 done speaking now.

13 **Q** Yes.

14 Did you threaten to arrest her during your
15 conversation?

16 **A** No.

17 **Q** Did you pull your handcuffs out during your
18 conversation?

19 **A** No.

20 **Q** Did you threaten to send her to prison?

21 **A** No.

22 **Q** Okay.

23 What happened after you turned off the
24 recorder?

25 **A** After I turned off the -- after I turned off

1 the recorder, I contacted Detective Cheek, who's the
2 case agent, advised her of the information that was
3 passed on to me by the defendant, Ms. Steward. And I
4 was directed by the case agent based on her
5 investigation to go ahead and arrest Ms. Steward.

6 Q Okay.

7 So it's not until after the conversation
8 ended, you then recapped and debriefed with the case
9 agent on scene, that then you were advised to arrest
10 her?

11 A Correct.

12 Q Was she in custody prior to your arrival or
13 during your conversation?

14 A No. She --

15 Q Was she detained?

16 A No.

17 Q What happened after the -- after Sergeant
18 Cheek told you to arrest her?

19 A I placed her in handcuffs. And she was in
20 custody.

21 Q Did you take anything from her?

22 A Her phone.

23 Q Okay?

24 MS. SAVAS: Beg the Court's indulgence.

25 BY MS. SAVAS:

Carl "Will" Muirheid - Cross-Examination by
Mr. D'Angelo

1 Q Okay, Detective Muirheid. At this time, we
2 can go into the contents of her statement.

3 THE COURT: The issue is not the content of
4 her statement.

5 MS. SAVAS: Okay.

6 THE COURT: The issue is whether her
7 statement was procured illegally --

8 MS. SAVAS: Okay. Yes, Judge.

9 THE COURT: -- and in violation of her due
10 process; is that correct? Isn't that the basis of
11 your objection?

12 MR. D'ANGELO: Correct, Your Honor.

13 MS. SAVAS: Okay, Judge.

14 THE COURT: Then we'll move on. Mr. D'Angelo
15 or Ms. Blazer, who wants to cross-examine him?

16 I assume you're done with your inquiry,
17 Ms. Savas?

18 MS. SAVAS: Yes, Judge.

19 THE COURT: It's gonna be you or Ms. Blazer?

20 MR. D'ANGELO: Me, Your Honor.

21 THE COURT: Go ahead and cross-examine him.

22 MR. D'ANGELO: Thank you, Your Honor.

23 THE COURT: You're welcome.

24 CROSS-EXAMINATION

25 BY MR. D'ANGELO:

Carl "Will" Muirheid - Cross-Examination by
Mr. D'Angelo

1 Q All right.

2 Good morning.

3 A Good morning.

4 Q All right.

5 Detective Muirheid, so you had a conversation
6 with Detective Sinke prior to arriving at Ms. Steward's
7 house, correct?

8 A Yes.

9 Q Okay.

10 Around -- I believe it was approximately 7:20
11 p.m. over dispatch where now Sergeant Cheeks had stated
12 that she was requesting a call from a Mount Pleasant
13 detective, right?

14 A I -- I do not know anything about what
15 Detective -- or Sergeant Cheek was requesting --

16 Q Okay.

17 A -- at that time. I don't know.

18 Q You essentially were told though get -- get
19 in touch with -- with this detective, there's an
20 ongoing investigation, right?

21 A I do not specifically, remember being told to
22 speak to a detective. All I remember is being told to
23 ~~respond to that address, which was 1053 Rifle Range, to~~
24 talk to Ms. Steward because she was supposedly a
25 suspect for an arson that occurred.

Carl "Will" Muirheid - Cross-Examination by
Mr. D'Angelo

1 Q Correct.

2 And to be clear --

3 A I don't remember who told me.

4 Q -- you had a conversation with Sergeant
5 Cheeks, correct?

6 A I would have had to have some sort of
7 conversation with her.

8 Q Correct. You would have had to have some
9 sort of conversation because you were told that there
10 was a potential arson case, right?

11 A Correct.

12 Q You were told that Toya Steward was a
13 potential suspect --

14 A Correct.

15 Q -- correct?

16 And you were told the location of -- of where
17 she potentially lived, right?

18 A Correct.

19 Q You were told that you needed to lay eyes on
20 her, right?

21 A Correct.

22 Q You were to -- you were to try to get a
23 statement while you could, right?

24 A Yes.

25 Q Okay.

Carl "Will" Muirheid - Cross-Examination by
Mr. D'Angelo

1 And while detectives -- or excuse me,
2 Sergeant Cheeks was working on getting an arrest
3 warrant, right?

4 **A** I -- I don't know what Sergeant Cheek was
5 doing at that time.

6 **Q** But again, you had a conversation with
7 Sergeant Cheek to be clear?

8 **A** I have to be clear with you. I -- in this
9 situation, and -- and I'm not trying to be coy or -- or
10 mess anything up here. I don't remember if I talked to
11 Sergeant Cheek or if I talked to -- because at the
12 time, Sergeant Cheek was a detective, just like me.
13 Low person on the totem pole. So I was advised
14 normally by an on-call sergeant, who at that time would
15 have been Christina Smith, who's now a major, I -- I
16 was told by her to respond. So I honestly do not know
17 if I spoke to Detective Cheek, Sergeant Cheek, or the
18 other sergeant. So that's --

19 **Q** Okay.

20 **A** -- that's my issue with that.

21 But I did have a conversation with someone.
22 I was directed to go to her residence, Ms. Steward's
23 residence, in order to get some sort of statement or
24 timeline regarding the arson that occurred that day.

25 **Q** Okay.

Carl "Will" Muirheid - Cross-Examination by
Mr. D'Angelo

1 And you arrived at Toya Steward's apartment,
2 correct?

3 A Correct.

4 Q You stated there was another officer, a
5 uniformed officer who was already there, right?

6 A Correct.

7 Q They had located her vehicle, correct?

8 A Correct.

9 Q And that officer -- you and that officer had
10 inspected that vehicle in the parking lot, right?

11 A Yeah. That's fair.

12 Q Okay.

13 It was nighttime --

14 A It was nighttime.

15 Q -- right?

16 Y'all were using your flashlights to peer
17 into the vehicle, correct?

18 A I wouldn't have had a flashlight.

19 Q Okay.

20 A But I'm sure a flashlight would have had to
21 have been used to see into a window.

22 Q You documented in your report that y'all were
23 attempting to look into the vehicle to see what you can
24 see in plain view, right?

25 A Yes.

Carl "Will" Muirheid - Cross-Examination by
Mr. D'Angelo

1 Q Okay.

2 She -- Ms. Steward lived on an upper floor in
3 the apartment complex, correct?

4 A I -- I believe it was -- I believe I remember
5 walking upstairs.

6 Q Okay.

7 A I'm not a hundred percent --

8 Q Again, not -- not sure which one of y'all
9 knocked on the door. But -- but one of y'all knocked
10 on the door, correct?

11 A Correct.

12 Q All right.

13 She came to the front door and opened it?

14 A Correct.

15 Q Y'all -- y'all announced that -- that you
16 were there to speak with her, right?

17 A Correct.

18 Q Okay.

19 You asked if you could step inside to speak
20 with her, right?

21 A Yes.

22 Q And she -- she let you in to come speak with
23 her. ~~She actually stated that she had seen y'all~~
24 downstairs peering with flashlights into her car,
25 right?

Carl "Will" Muirheid - Cross-Examination by
Mr. D'Angelo

1 **A** I remember her saying that during her
2 statement.

3 **Q** She said so she was just sitting there
4 waiting for y'all to come because she knew that they
5 were -- y'all were coming to talk with her?

6 **A** Yes, sir.

7 **Q** All right.

8 Now, you asked to, for officer safety
9 understandably, perform a protective sweep of the
10 apartment, correct?

11 **A** Correct.

12 **Q** Again, you're trying to see if anyone else is
13 potentially in there, right?

14 **A** Correct.

15 **Q** You actually stayed with Ms. Steward as the
16 uniformed officer patrolled -- or took a protective
17 sweep of the apartment, right?

18 **A** I don't remember that that way. I remember
19 that -- me walking there and checking.

20 **Q** Okay.

21 Again, you didn't have a body cam on,
22 correct?

23 **A** No.

24 **Q** And we have no body cam evidence preserved
25 for today?

1 **A** Not that I know of. None from me. I do know
2 that.

3 **Q** Y'all requested to take her to the police
4 station, right?

5 **A** I asked her to go with me to our offices.

6 **Q** She said she wanted to talk with y'all at her
7 own home?

8 **A** Yes. She declined.

9 **Q** Y'all informed her why you were there, right?

10 **A** I told her I was there, yes.

11 **Q** Y'all were seated at her table, correct?

12 **A** I'm getting -- when you say y'all, you're
13 talking about Ms. Steward and -- and me?

14 **Q** Correct. I'm sorry. Let me be more clear.
15 Yes. You --

16 **A** I just want to make sure that we know that
17 the Mount Pleasant guy is gone. The patrol officer is
18 gone.

19 **Q** So after the protective sweep, he had stepped
20 outside, right?

21 **A** Yeah. I -- I had him leave because we were
22 comfortable we were gonna just talk.

23 ~~**Q** And you sat down at the table with~~
24 Ms. Steward, right?

25 **A** Yes.

Carl "Will" Muirheid - Cross-Examination by
Mr. D'Angelo

1 Q Okay.

2 And again, as you stated, you're trained
3 detective, right?

4 A Yes.

5 Q Okay.

6 You're trained in investigative techniques,
7 right?

8 A Yes.

9 Q Trained in interrogation techniques?

10 A Yes.

11 Q Take classes on how to ask questions with
12 people?

13 A I've taken classes like that, yes.

14 Q Trained on how to ask a question, right?

15 A Some of those classes, yes.

16 Q Right.

17 Trained on how to craft a question to be able
18 to get the information that you want?

19 A To get the -- the truth, yes.

20 Q You don't just question defendants, right, or
21 suspects?

22 A No. We interview and talk to everybody.

23 Q Right.

24 You talk -- and any kind of witness, you're
25 trained in how to talk with them, right?

Carl "Will" Muirheid - Cross-Examination by
Mr. D'Angelo

1 **A** Yeah. I mean, it's -- it's not a whole lot
2 to it.

3 **Q** Sure.

4 But any witness can be intimidated often
5 talking with law enforcement, you'd agree?

6 **MS. SAVAS:** Objection.

7 **THE COURT:** Basis.

8 **MS. SAVAS:** Just --

9 **THE COURT:** You need to stand when addressing
10 the Court.

11 **MS. SAVAS:** Yes, Your Honor. Objection.
12 Speculation for lack of foundation of knowledge on
13 this officer, knowing what every person feels when
14 encountering police.

15 **THE COURT:** I think he's done this enough --
16 he said he's given these warnings a hundred --
17 more than hundreds of times. I think he can
18 answer within his rational perception of this
19 experience. Overruled.

20 Sir, do you understand the question?

21 **THE WITNESS:** Yes. Yes, ma'am. Absolutely.

22 **BY MR. D'ANGELO:**

23 ~~**Q** And I'll re-ask the question.~~

24 Again, you could agree your average person
25 can often be intimidated when talking with police?

Carl "Will" Muirheid - Cross-Examination by
Mr. D'Angelo

1 **A** I'm not going to use the word "often." But I
2 can definitely see where people can be intimidated by
3 law enforcement.

4 **Q** Sure.

5 And so you're trained in how to try to make
6 people feel comfortable, right?

7 **A** Yes. And just as a general part of my
8 personality, talking with people, I know that that's
9 the best way to speak with people.

10 **Q** Right. Trying to --

11 **A** That's the way my mom raised me.

12 **Q** Exactly.

13 **A** Not just training.

14 **Q** You're trying to get people to open up when
15 you're talking with them, right?

16 **A** Sure. Yes.

17 **Q** Okay.

18 So you were there to establish a timeline of
19 what Toya was doing that day, right?

20 **A** Correct.

21 **Q** You told Toya that that's why you were there.
22 That information was important to you, right?

23 **A** That was -- to me, that was the most
24 important thing. That was the reason I was there. My
25 mission, if you say.

Carl "Will" Muirheid - Cross-Examination by
Mr. D'Angelo

1 **Q** Okay.

2 You were there. And you explained her, you
3 were there about a fire that happened at Frank Simmons'
4 home?

5 **A** Correct.

6 **Q** She explained with you her relationship with
7 Frank, right?

8 **A** Correct.

9 **Q** She explained that they had been fighting
10 that morning?

11 **A** Yes.

12 **Q** She explained to you what the fight was
13 about?

14 **MS. SAVAS:** Your Honor, he's going into the
15 statement which the state did not do in the
16 original proffer.

17 **THE COURT:** They don't have to. They're
18 going to the surrounding and attendant
19 circumstances regarding the objective beliefs or
20 perceptions of his client in whether her statement
21 was voluntary. And I'm gonna give him some
22 latitude. Overruled.

23 ~~**MR. D'ANGELO:** Thank you, Your Honor.~~

24 **THE COURT:** Because that's what I am
25 understanding the purpose of him asking these

Carl "Will" Muirheid - Cross-Examination by
Mr. D'Angelo

1 questions, not the substance or relevance of the
2 statements.

3 Sir, do you need the question repeated?

4 **THE WITNESS:** Yes, if --

5 **MR. D'ANGELO:** And I'll -- I'll --

6 **THE WITNESS:** -- you don't mind.

7 **MR. D'ANGELO:** -- repeat the question.

8 **THE WITNESS:** So I could --

9 **THE COURT:** Please repeat the question.

10 **THE WITNESS:** -- make sure I give a --

11 **MR. D'ANGELO:** Certainly.

12 **THE COURT:** Thank you.

13 **BY MR. D'ANGELO:**

14 **Q** So again, she explained to you that they had
15 been fighting that morning, right?

16 **A** Yes.

17 **Q** She explained to you what the fight was
18 about?

19 **A** Yes.

20 **Q** She provided you information in regards to
21 this other woman, Destiny Brees?

22 **A** Yes.

23 **Q** And again, y'all -- and again, let me --
24 sorry -- be clear.

25 **A** Her and I.

Carl "Will" Muirheid - Cross-Examination by
Mr. D'Angelo

1 Q You and Ms. Steward are seated across from
2 each other?

3 A I'm -- I'm good to go now. Hundred percent.

4 Q She's not walking around doing chores while
5 you're having a discussion?

6 A No. No.

7 Q Okay.

8 You're asking these questions. And she's
9 providing an answer.

10 A Yes. She was very cooperative. Yes.

11 Q She told you the route that she had taken
12 that day, correct?

13 A To the best of her knowledge, yes.

14 Q Uh-huh.

15 She provided you with names of people that
16 she spoke with.

17 A She -- absolutely.

18 Q And obviously, you hadn't had a chance to go
19 out and investigate any of these things, right?

20 A No, sir.

21 Q Okay.

22 Before you started with Toya -- before you
23 ~~had started speaking with Toya, you had made up your~~
24 mind about what had happened, right?

25 A No. I -- to -- to be -- this was actually

Carl "Will" Muirheid - Cross-Examination by
Mr. D'Angelo

1 kind of refreshing for me in a way. Because I wasn't
2 the lead detective. And I was basically given -- I
3 normally am the one handing out the assignments. My
4 assignment was to go and speak to her. I didn't -- I
5 knew very little about what happened. Some of the
6 information I was hearing was brand new to everything.

7 Q Right. You -- you had fairly little
8 information that you'd been given, right?

9 A Correct.

10 Q You were told a house burned down, right?

11 A I was told there was a fire --

12 Q You --

13 A -- and that a witness believe they saw
14 Ms. Steward set that fire. That's what I was told, and
15 the address I was given.

16 Q Let's be clear. You had been given, right,
17 that Frank Simmons lived at an address, right?

18 A I don't -- I -- yes. Yes. His name -- his
19 name was given. It was Frank.

20 Q Right. You had the name of Frank Simmons,
21 right?

22 A Yes.

23 Q That he lived at this house, [REDACTED] Ave,
24 correct?

25 A I don't even -- I remember that it was Wood

Carl "Will" Muirheid - Cross-Examination by
Mr. D'Angelo

1 Ave.

2 Q That he had been involved in a break-up with
3 Toya Steward, correct?

4 A I -- I -- I don't remember them even getting
5 into that that much.

6 Q Did -- did you read your report in preparing
7 for testimony this morning?

8 A I looked over it.

9 Q Okay.

10 And in your report, you stated --

11 A If you'd like to show me my report so that I
12 can see that, that's fine.

13 Q Would that help refresh your recollection?

14 A Yeah. Absolutely.

15 MR. D'ANGELO: Your Honor, may I approach?

16 THE COURT: You may.

17 THE WITNESS: Thank you. Is there a specific
18 place on here that you're referring to?

19 BY MR. D'ANGELO:

20 Q First -- first couple of paragraphs --

21 A Okay.

22 Q -- you can take a look at.

23 A Yes. ~~Would -- would you like me to read it?~~

24 Q No.

25 A Yes. It -- it says estrange boyfriend. So I

Carl "Will" Muirheid - Cross-Examination by
Mr. D'Angelo

1 would have had that information, yes.

2 Q Okay. And that a witness had placed Toya --
3 had placed Toya Steward at the location of the fire,
4 right?

5 A Correct.

6 Q Okay.

7 So just to be abundantly clear --

8 A Yes, sir.

9 Q -- Toya Steward was the suspect of an arson,
10 right?

11 A Yes.

12 Q Of a house that was her ex-boyfriend's?

13 A Yes.

14 Q Okay.

15 And as I had asked, just again to be clear
16 for the Court and for the record, before you had
17 started talking with Toya, you had made up your mind
18 about what had happened, correct?

19 A That is incorrect.

20 Q Well, let's take a look at what exactly it
21 was that Toya had provided. Because she provided you
22 her whereabouts of that day, right?

23 A Correct.

24 Q She provided you details of an argument that
25 she had involved with, right?

Carl "Will" Muirheid - Cross-Examination by
Mr. D'Angelo

1 **A** With Frank.

2 **Q** With Frank.

3 **A** Yes.

4 **Q** Right. She provided you names of people that
5 she'd interacted with that day, right?

6 **A** Yes.

7 **Q** Again, she provided you with this name of a
8 woman on Instagram that she had been speaking with,
9 right?

10 **A** Yes.

11 **Q** Again, in your own statement, you said Frank
12 was cheating on her too, right?

13 **A** During her interview?

14 **Q** Correct.

15 **A** Yes.

16 **Q** And again, you hadn't had -- you hadn't had
17 the opportunity to reach out to speak with -- with this
18 woman, right?

19 **A** With Ms. Destiny?

20 **Q** Yes.

21 **A** No. I had not.

22 **Q** And again -- but -- excuse me. But after 35
23 ~~minutes of speaking with her, you told her, "I'm just~~
24 going to get down to the nitty-gritty of it, of why I'm
25 here," right?

Carl "Will" Muirheid - Cross-Examination by
Mr. D'Angelo

1 **A** Okay. Yes.

2 **Q** You then pretend -- you proceeded to tell her
3 that you believed she started the fire, right?

4 **A** Yes.

5 **Q** So you told her no matter how many times that
6 you tell me that you did not do it, I personally am not
7 going to believe you, right?

8 **A** Correct.

9 **Q** You were there to get her to confess to
10 starting the fire?

11 **A** Are you asking me a question?

12 **Q** Yes. You were there to get her to start --
13 confess to starting the fire, right?

14 **A** No.

15 **Q** You were telling her that all of the evidence
16 is going to show that she did it, right? You told her
17 that?

18 **A** If you're saying that's in the transcript,
19 then yes, I believe you. I would have said that, yes.
20 I believe that she started the fire.

21 **Q** But again, you hadn't had an opportunity to
22 investigate anything, right?

23 **A** To do a full investigation? No. Absolutely
24 not.

25 **Q** You're just going off of the information that

Carl "Will" Muirheid - Cross-Examination by
Mr. D'Angelo

1 you had been provided.

2 **A** I'm going off the information in her
3 statement.

4 **Q** Towards the end of y'all talking, she
5 repeatedly was stating to you that she did not start
6 the fire, right?

7 **A** She said that several times.

8 **Q** You kept asking her the question over and
9 over. Who did? Who did? Right?

10 **A** Yes. If that's in the transcript, yes.

11 **Q** She kept telling you she didn't start the
12 fire, right?

13 **A** She told me several times that she wouldn't
14 do that, or something to that --

15 **Q** At one point, you even asked her her age
16 yesterday. You asked her, "How old are you,
17 Ms. Steward," right?

18 **A** Yes.

19 **Q** You asked her that?

20 **A** Yes.

21 **Q** She told you she was 46?

22 **A** Forty-six years old.

23 **Q** ~~And you said, "Well, you lie like a child,"~~
24 right?

25 **A** Yes.

Carl "Will" Muirheid - Cross-Examination by
Mr. D'Angelo

1 Q Because you knew she was lying to you?

2 A Yes.

3 Q Because to be clear, you had made up your
4 mind that she had started that fire?

5 A After she gave her -- her statement to me,
6 100 percent, I had made up my mind based on the
7 information that I had, and nothing else outside of
8 that, that she did start that fire. I 100 percent
9 believe that she started that fire.

10 Q And you were there to get you -- Toya to tell
11 you why, right?

12 A No. I was originally there to get a timeline
13 to figure out what was going on. After --

14 Q Well, you told -- go ahead. Sorry to
15 interrupt.

16 A Yeah, yeah. After I decided that I believe
17 that she started the fire at that point, then yes, I do
18 want to elicit a confession. I think that's an
19 important piece of the -- the case.

20 Q Right. Your job then at that point was to
21 elicit a confession?

22 A Yes. The truth. Yes.

23 Q That's why you told her that if she didn't
24 provide a reason, people were going to come up with
25 reasons of their own, right?

1 **A** It's been my experience that that happens
2 quite often.

3 **Q** Because you stated to her your reason for why
4 was because she was a woman scorned, right?

5 **A** Yes, I believe that.

6 **Q** By your statement, Destiny was a woman scorn
7 too, right?

8 **A** She could be, yes. I think she lived in
9 Savannah though, and not at his house.

10 **Q** Toya -- Toya eventually stated that she
11 wanted to speak with someone who had her best interest,
12 right?

13 **A** Something to that effect.

14 **Q** She said I think I need to speak with a
15 lawyer.

16 **A** Again, if that was specifically said, if it's
17 in a transcript, I 100 percent believe you.

18 **Q** And -- and at that point, you then stopped
19 speaking with her, right?

20 **A** Yes. It's my recollection.

21 **Q** You stood up from the table that y'all were
22 seated at, right?

23 **A** Sure. Yes.

24 **Q** You took out your phone. And you called
25 Sergeant Cheek at that moment, right?

Carl "Will" Muirheid - Cross-Examination by
Mr. D'Angelo

1 A Sergeant Cheek, yes. I don't know if I
2 called in front of Ms. Toya. I would think I wouldn't.
3 I probably walked outside of the apartment. I don't
4 know that for a fact though.

5 Q But again, you call Sergeant Cheek, right?

6 A Yes.

7 Q Because you had Sergeant Cheek's number.

8 A Yes.

9 Q Okay. Sergeant Cheek told you that they
10 were -- you relayed the information that Toya had
11 provided, right?

12 A Yes.

13 Q There was -- and then Sergeant Cheek at that
14 point, told you the arrest warrants were ready, right?

15 A Not arrest warrants ready. She said 10-95,
16 which is our 10 Code for go ahead and put her in
17 custody for an arrest. I don't know if warrants
18 were -- I don't even know what she was doing. I don't
19 know where she was at. I don't know anything about
20 that.

21 Q And you placed her into arrest at that
22 point --

23 A Yes.

24 Q . -- right?

25 You took her cell phone, correct?

Carl "Will" Muirheid - Redirect Examination by
Ms. Savas

1 **A** Yes.

2 **Q** She provided you her password to that cell
3 phone, right?

4 **A** She was very cooperative, yes.

5 **Q** And even at that point, you still never
6 Mirandized her, right?

7 **A** No. I wasn't going to ask her any more
8 questions after she was in custody regarding that --
9 the case.

10 **Q** Providing Miranda warnings isn't asking a
11 question, is it?

12 **A** Providing Miranda? No.

13 **MR. D'ANGELO:** Brief moment, Your Honor.

14 (Pause.)

15 Nothing -- nothing -- nothing further, Your
16 Honor.

17 **THE COURT:** Any redirect?

18 **MS. SAVAS:** Yes, Your Honor.

19 **REDIRECT EXAMINATION**

20 **BY MS. SAVAS:**

21 **Q** Detective Muirheid, as you've said, you've
22 been in law enforcement for 20 years and you know a
23 ~~confession is an important part of an investigation~~

24 **A** Absolutely.

25 **Q** -- right?

Carl "Will" Muirheid - Redirect Examination by
Ms. Savas

1 If your intent going there was to get a
2 confession, would you have given her Miranda before
3 speaking to her?

4 **A** In -- in -- yes.

5 **Q** Okay.

6 **A** Because -- because it would have been a more
7 interrogative situation versus a fact-finding mission
8 that I was on to start --

9 **Q** And Detective Muirheid, in your 20 years, you
10 testified in trial before about defendant statements?

11 **A** Yes.

12 **Q** So you know the legal hurdles that must be
13 overcome to get a statement into the trial, correct?

14 **A** Yes.

15 **Q** So you know it's important that Miranda
16 warnings must be given to give statements from
17 custodial interrogation, right?

18 **A** Yes.

19 **Q** And was that conversation with Toya Steward
20 as a 20-year law enforcement officer, a custodial
21 interrogation?

22 **A** No.

23 **Q** And when you confronted her about her
24 starting the fire and you thought she did, was that a
25 result of her statements to you in that exact

1 conversation?

2 A Yes.

3 Q Did you know what was going on at the crime
4 scene with Sergeant Cheek?

5 A I really didn't.

6 Q Was anyone giving you updates about anything
7 from the scene?

8 A No.

9 Q And the moment she invoked, whether it was
10 vague or not, her right to an attorney, you did your
11 best to end that conversation, correct?

12 A Yes.

13 Q And as you said, she appeared to want to get
14 her side of the story to you, correct?

15 A Yes.

16 Q And that's what she was intent on doing,
17 correct?

18 A That's what I felt, yes.

19 MR. D'ANGELO: Your Honor, if I may have just
20 a very brief recross?

21 THE COURT: Very brief. Limited to redirect.

22 MR. D'ANGELO: Yes, Your Honor.

23 ~~RECROSS-EXAMINATION~~

24 BY MR. D'ANGELO:

25 Q If after five minutes of speaking with you,

Carl "Will" Muirheid - Recross-Examination by
Mr. D'Angelo

1 Toya Steward had wanted to stand up, take her keys,
2 tell you to get out of the house and leave, you
3 wouldn't have let her leave at that point.

4 A Let -- let her leave?

5 Q Let Toya Steward leave at that point.

6 A After five minutes, yeah. Yes, I would have.

7 Q Your job was to locate Toya Steward and get a
8 statement from her, correct?

9 A That is correct.

10 Q If she -- if she told me that she didn't want
11 to speak to me at all, and told me to leave, I would
12 have left right then. And the investigation would have
13 just continued without her statement, like hundreds of
14 other investigations I've had.

15 MR. D'ANGELO: Thank you.

16 THE COURT: Anything further from the state?

17 MS. SAVAS: In regards to his testimony for
18 the --

19 THE COURT: Any further questions?

20 MS. SAVAS: No.

21 THE COURT: They asked re-recross. You have
22 the burden of proof. Do you have any other
23 questions?

24 MS. SAVAS: No, Your Honor.

25 THE COURT: What's the basis of the

1 objection?

2 **MR. D'ANGELO:** Your Honor, and I have
3 submitted my -- my brief. I know Your Honor has
4 that and has read through it. Trying to keep this
5 consent -- concise, Your Honor.

6 Based on the case law, the first prong that
7 we need to look and examine is, was she placed in
8 custody, was it custodial interrogation? Your
9 Honor, I think based on the statements that we
10 have heard today -- again, I know Your Honor has
11 had a chance to listen to the audio. I think the
12 facts are clear: Toya was in custody.

13 Detective Muirheid had one job when he went
14 there. He was there to lay eyes on Toya, to
15 locate her, to get a statement, and hang onto her
16 while Sergeant Cheek was attempting to get an
17 arrest warrant. He -- the information he has
18 provided is that there's a house that's burned
19 down; it's potentially between two people that are
20 engaged in a heated argument; they'd broken up
21 that day; and that a witness places Toya Steward
22 there; that Toya Steward is the suspect.

23 ~~He's there asking questions, trying to get~~
24 her to open up, trying to get her to provide him
25 information, which she does. She's providing

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1 locations. She's providing names. She's provided
2 the name of another woman that he himself states
3 has very the same motive that Toya would. He
4 doesn't have the opportunity to verify any of that
5 information.

6 And again, as I elicited on cross, at a
7 certain point, he just tells her, "Look. Let's
8 get down to the point of all of this. I know you
9 did it. There's nothing you're going to tell me
10 that's going to change my mind." Everything she
11 had told him up to that point is providing
12 information that he's not having a chance to
13 verify. But again, he has his marching orders.
14 He has been told what has happened and that she is
15 the suspect.

16 Police, especially detectives, are trained in
17 how to interrogate and how to ask questions and
18 how to get someone to open up to them. Obviously,
19 he's not coming out swinging with questions, right
20 as he's talking to her. He's trying to make her
21 feel comfortable. He's trying to get her to open
22 up.

23 There is no way in my opinion, Your Honor,
24 that a single African-American female is feeling
25 comfortable or that she has the ability to leave

1 at any moment when two officers arrived at her
2 home, telling her why they're there. She knows
3 that that they are there to question where she is
4 a suspect in this potential arson.

5 I -- I find it humorous, Your Honor, to be
6 completely honest, the fact that if Toya Steward
7 wanted to pick up her keys 5, 10 minutes into this
8 conversation, that Detective Muirheid was simply
9 going to allow her to walk away.

10 He stated upon cross, "Yes, I wanted to
11 elicit a confession." Once we were talking about
12 he was accusing her of starting the fire, he
13 said -- and again, Your Honor, I know you take
14 copious notes -- "I did want to elicit a
15 confession." That was his goal, Your Honor. That
16 was the reason he was there.

17 The courts provide several examples, several
18 factors, highlighting some of the ones that I
19 think are important, whether contact was initiated
20 by law enforcement or the person interrogated.
21 Here it was law enforcement. Whether the
22 expressed purpose of the interview was to question
23 ~~the person as a witness or as a suspect.~~ Again,
24 in the report, it was as a suspect. Whether the
25 restrictions on the person's freedom of movement.

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1 I would submit, seated at her table there, with a
2 male detective questioning her, again, I do not
3 think my single female African-American client
4 felt that she had the ability to just say, "Hey,
5 get out of my house," pick up her keys and leave.

6 Whether police dominated and controlled the
7 course of the interrogation. Again, Your Honor, I
8 know you've listened to it. He is directing the
9 questions as they are moving forward. He is
10 steering the conversation where he wants to go.
11 And again, changes the conversation into telling
12 her, "Look, I know you did it. Tell me why.
13 Otherwise, people are just gonna make up reasons."

14 Whether a police manifested a belief that the
15 person was culpable, and they had witnesses.
16 Again, he's talking. He's -- he's talking to --
17 Your Honor, again, I know you listened to the
18 statement. He's talking to her about evidence
19 that's going to be there, that's going to show and
20 prove ultimately that she did it.

21 Another factor, whether police used
22 interrogation techniques to pressure the suspect.
23 I would say I think it's clear from listening to
24 the audio that he did.

25 And whether a person was arrested at the end

1 of the interrogation. Again, once he is done, he
2 stands up, speaks with Sergeant Cheek, tells
3 Sergeant Cheek what he -- the information he's
4 been provided, no investigation happens, and she
5 is arrested.

6 Again, Your Honor, I think my motion
7 covers -- covers my argument. I would
8 respectfully state to the Court, I think the
9 evidence is clear and overwhelming. She was --
10 she was in custody. It was a custodial
11 interrogation.

12 **THE COURT:** The state like to respond?

13 **MS. SAVAS:** Yes, Your Honor. Thank you.

14 Your Honor, the state also filed a brief in
15 this case for as a matter of the record. I would
16 first address the statements made by defense in
17 his argument. Several of the things he just said
18 are actually not in evidence, Your Honor.

19 He did not -- Detective Muirheid did not go
20 there to arrest her or to take her into custody or
21 to hold her at her apartment. Detective Muirheid
22 testified he was directed to go there to see if
23 ~~she was home and to see if he could speak with~~
24 her, which is what he did.

25 Detective Muirheid said under oath on the

1 stand that if she wanted to tell him to leave, he
2 would have left. He has hundreds of cases, no
3 offense to the sheriff's office. As a prosecutor,
4 there are many where I don't get statements from
5 the suspects. There are many times where they
6 leave.

7 Detective Muirheid's job is not to violate
8 people's rights. As he said, it is to get the
9 truth, and he would leave. And he has 20 years of
10 law enforcement experience. And he knows when
11 someone is invoking their right and whether
12 someone needs Miranda. She never asked him to
13 leave.

14 When she did discuss even the vagueness of
15 someone in his best interest or her best interest,
16 he took it upon himself to end the conversation
17 without her even explicitly requesting a lawyer at
18 that time. He started going down that line that
19 of saying, "Do you want a lawyer? Stop talking.
20 Stop talking." She continued to interrupt him.

21 He did not say solely, "I wanted to elicit a
22 confession." The next part of that sentence was,
23 "I wanted to get the truth." It is a
24 misrepresentation by defense to purport that his
25 intention was to only get a confession. He said

1 multiple times his job is to get the truth, not
2 specifically that it was a confession in this
3 moment.

4 Your Honor, as the state cited in their
5 brief, it is by *State verse Ledford*, 351 S.C. 83,
6 this analysis is a objective analysis, whether a
7 reasonable person in the suspect's position would
8 have understood them to be in custody; therefore,
9 it's an objective standard.

10 Here Detective Muirheid testified she did not
11 appear to be uncomfortable. She did not say she
12 was uncomfortable. In fact, she made this
13 arrangement herself because she was more
14 comfortable in her own home speaking to him at the
15 comfort of her casual kitchen table. And there
16 was no evidence as to why she personally, African
17 American or female or otherwise, would be
18 intimidated by Detective Muirheid. There's no
19 indication Detective Muirheid meant any racial
20 slurs, or any derogatory comments as a female, or
21 that he was even aggressive with her.

22 In fact, Detective Muirheid testified she
~~23 herself was aggressive and yelled at him, which~~
24 shows through her own demeanor actions and
25 statements that she was actually the person in

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1 control of that situation and was clearly not
2 scared of him by raising her voice at him.

3 Furthermore, Your Honor, this test is whether
4 it is a voluntariness. That is the state's
5 burden. The state went through a long line of
6 questioning as to whether the defendant wasn't
7 detained or arrested or physically restrained in
8 any form. Her will was not overborne as it is
9 deemed by the courts to examine. It's a totality
10 of the circumstances test.

11 She is middle age. She did appear to know
12 what was happening. She understood why he was
13 there. She was -- there's no evidence that she
14 was intoxicated. It was a short brief 30 to 40 --
15 45-minute conversation that she actually led and
16 continued on. And it was long because of her
17 involuntary statements.

18 The detective (inaudible). There's no
19 physical punishment, no deprivation of food or
20 sleep, no promises, no threats made by the
21 detective in any way as well. Therefore, this was
22 a completely voluntary statement made by the
23 defendant, so much so that she had the defendant
24 know and acknowledge and testify she wanted this
25 conversation. She knew they were coming because

1 she had already talked to Frank that day earlier
2 and she also was at that house earlier with these
3 conversations. The allegations were already made
4 against her burning the house down by Frank from a
5 conversation he had prior to Detective Muirheid's
6 arrival.

7 Also, Your Honor in determining whether this
8 was an interrogation or not, Detective Muirheid
9 does have training and experience. He said this
10 was not interrogative techniques. This was a
11 casual conversation in which the defendant
12 continued on herself.

13 The courts also indicated in U.S. v. Parker,
14 SC -- 262 F.3d 415, that there's a similar case
15 where a defendant was in her bedroom, having a
16 interview with an officer. And in that case, the
17 Supreme Court -- the Court of Appeals -- I'm
18 sorry -- the Fourth Circuit said the suspect was
19 not entitled to Miranda warnings while being
20 questioned by law enforcement in her own bedroom.

21 Here he was -- she was in the safety of her
22 home in her kitchen table. The Court has already
23 ~~ruled on this matter, showing that that does not~~
24 necessarily mean it's in custody.

25 Although she was a person of interest,

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1 Detective Muirheid was not the case agent. She
2 was not his suspect. As he said, it was
3 refreshing. He didn't really know what was going
4 on. He didn't know what she would say. So at
5 that time, she was not -- was not there sent to
6 arrest her.

7 And whether someone is a suspect or not is
8 not the test. It's whether that the statement was
9 voluntary or it was a custodial interrogation.
10 She was not in custody. There was not even any
11 other police officers there with him. He sent the
12 only uniform patrol officer out and had him leave.
13 He was there by himself in casual wear. There was
14 no threat of weapons.

15 She opened the door. She let him in her
16 home. She never asked to leave. She never said
17 she didn't want to talk to them. She agreed to
18 the recording, said that on the recording itself.
19 There was no domination or control.

20 Actually Detective Muirheid kind of lost
21 control of the conversation because she continued
22 to interrupt him multiple times. He was not
23 aggressive or confrontational. Although he did
24 say she did not -- he felt that she burnt the
25 house down, he testified on cross and on redirect

1 that it was because of her statements, not because
2 of things that were happening at the scene that he
3 was not made aware of.

4 He was just given a background to --
5 dispatched out as he said, Go talk to her. Go see
6 if she's here as just one of the resources from
7 the sheriff's office. He did not know the details
8 going on at the house. It was not until after he
9 recapped the conversation to the case agent,
10 coupled with what was happening at scene and other
11 things they gathered, was she then put under
12 arrest at that time. He did not go there with the
13 intent to arrest her. He did not go there with
14 the intention to keep her into custody. And she
15 voluntarily opened her door and let him in and
16 spoke with him for the duration of that
17 conversation.

18 Therefore, Your Honor, the state feels both
19 in testimony based on the case law and the briefs
20 submitted, that this was not a custodial
21 interrogation, and that the Court would allow in
22 statements made by the defendant to Detective
23 Muirheid in their conversation.

24 **THE COURT:** Anything further?

25 **MR. D'ANGELO:** Your Honor, I would just

1 simply say, I think it's important to remember why
2 we have the Miranda warnings, what the Miranda
3 warnings are. The right to remain silent.
4 Anything can be used against you. Understanding
5 the importance of, again, why our Supreme Court
6 United -- United Supreme -- State Supreme Court
7 has those warnings and understanding how police
8 interrogate, understanding how police interact
9 with citizens, understanding the importance of why
10 we have those rights.

11 **THE COURT:** How much of the statement would
12 the state be seeking to introduce?

13 **MS. SAVAS:** Your Honor, sort of what we
14 talked about earlier.

15 **THE COURT:** I need to know exactly what you
16 would be seeking to use.

17 **MS. SAVAS:** You want -- would you like me to
18 ask my line of questioning, Judge?

19 **THE COURT:** No. I need you to answer the
20 question, which is exactly what -- what line of
21 questioning would you be seeking to elicit from
22 this witness?

23 **MS. SAVAS:** I would see to elicit her
24 biographical information, her phone number, that
25 they were break -- they were in the process of

1 breaking up. She said that he broke up with her
2 that morning. She was upset. She said she was
3 upset. She said she was pissed. She admitted to
4 being at Frank's house. The distance between
5 their two houses. She did not have a key. Her
6 timeline she gives Detective Muirheid.

7 She knocked on the side door. No one
8 answered. She saw Frank's and Jason's -- Frank's
9 car and Jason's truck, but Frank's truck was gone.
10 She thought Frank was home because his car was out
11 front.

12 She -- Instagram conversation. She saw Frank
13 made a new Instagram. She commented on that. He
14 then blocked her, and that comment was removed
15 that day. She was talking to the female, Destiny,
16 from Instagram. Those two were sending messages.
17 Her Instagram handle. That destiny sent her
18 screenshots of a text message conversation between
19 Destiny and Frank. Toya sent that screenshot to
20 Frank that day. That made her upset that --
21 during her conversations with Destiny. The gifts
22 she gave Frank: The washer and dryer, the laptop.
23 ~~That Frank called her to tell her his house was on~~
24 fire. She's told Detective Muirheid she then went
25 back and saw the house was on fire. That there