

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Oconee County

Honorable Kristi F. Curtis, Circuit Court Judge

JACOB D. DROTNING,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2025-001438

APPENDIX

MOLLY M. KEEGAN
Appellate Defender

ALAN WILSON
Attorney General

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

TALIDA BALAJ
Assistant Attorney General
PO Box 11549
Columbia, SC 29211-1549
(803) 734-3737

ATTORNEY FOR PETITIONER

ATTORNEYS FOR RESPONDENT

VOLUME I OF II

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S.C. SUPREME COURT

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1 State of South Carolina
2 County of Oconee In the Court of General Sessions

3
4 State of South Carolina)
5) 2014-GS-37-00742, 743
6 -vs-) 2015-GS-37-00441, 442
7 Jacob Daniel Drotning,) October 17, 2016
8 Defendant.) Volume 1 of 4
9 -----) Pages 1 - 97
) Transcript of Record

10
11 B E F O R E:

12 The Honorable R. Scott Sprouse, Judge;
13 and a jury.

14
15 A P P E A R A N C E S:

16 David R. Wagner, Jr., Esquire
17 Lindsey Satterfield Simmons, Esquire
18 Attorneys for the State

19
20
21
22 Gregory Lee Cole, Jr., Esquire
23 Attorney for Defendant

24
25
Diane L. Marcengill, RPR, CRR
Circuit Court Reporter
Certified Realtime Reporter

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09:46 1 (WHEREUPON, court convened with all parties
09:46 2 present except the defendant and the following
10:20 3 proceedings were had commencing at 9:46 a.m.)

10:20 4 THE COURT: Good morning, ladies and gentlemen.
10:20 5 I'm Scott Sprouse, your resident circuit judge here in
10:20 6 Oconee County. It will be my pleasure to serve with
10:20 7 you this week for a term of general sessions court.

10:20 8 General sessions means criminal court. If you are
10:20 9 called to serve on a jury this week, it means that you
10:20 10 will hear a criminal case.

10:20 11 First order of business that we have is to make
10:20 12 sure everyone is in the right courthouse. If you have
10:20 13 been summoned to appear in federal court, magistrate's
10:21 14 court, or municipal court, you're in the wrong place.

10:21 15 Is anyone uncertain of whether they're in the
10:21 16 right courthouse? Very good.

10:21 17 This term of court is for one week, so you are
10:21 18 subject to being called as jurors for criminal cases
10:21 19 this week. We understand the inconvenience that jury
10:21 20 service poses to all of you in your daily lives. But
10:21 21 rest assured, it is appreciated. Our system could not
10:21 22 function without our citizens being willing to serve as
10:21 23 jurors. Hopefully this will be an enjoyable and
10:21 24 educational week for you.

10:21 25 Madam Clerk, have you introduced yourself and your

10:21 1 staff for the jury?

10:21 2 THE CLERK: No, sir, not yet.

10:21 3 Good morning. My name is Beverly Whitfield. I'm
10:21 4 your elected clerk of court. This is my assistant
10:21 5 clerk of court, Lisa Burton. One of us will be in the
10:21 6 courtroom at all times. So if you need anything,
10:21 7 please tell the bailiffs or come and see us. We'll be
10:21 8 glad to help you.

10:21 9 THE COURT: Ladies and gentlemen, this gathering
10:21 10 has two purposes, and that is to determine your
10:22 11 eligibility and qualification to serve as jurors in
10:22 12 circuit court. As part of this process, we will have a
10:22 13 roll call, and it is now necessary for you to go under
10:22 14 oath for that roll call.

10:22 15 Madam Clerk.

10:22 16 THE CLERK: Ladies and gentlemen, if you would
10:22 17 please stand and raise your right hand.

10:22 18 (WHEREUPON, the jury pool was sworn.)

10:22 19 THE CLERK: Let the record reflect that all
10:22 20 members of the jury panel have accepted the oath.

10:22 21 THE COURT: Okay. The clerk of court will now
10:22 22 call the roll. When your name is called, please stand,
10:22 23 and in a loud, clear and audible voice, provide the
10:22 24 following information: One, your occupation, if you
10:22 25 are employed. If you are self-employed, state the

10:23 1 nature of your business. Two, if you are retired or
10:23 2 disabled, state your former occupation. Three, whether
10:23 3 or not you are married, and if so, your spouse's
10:23 4 occupation. And, finally, if your spouse is retired or
10:23 5 disabled, state their former occupation or nature of
10:23 6 business.

10:23 7 Madam Clerk.

10:23 8 THE CLERK: Juror number 8, Keith Baker.

10:23 9 PROSPECTIVE JUROR: My name is Keith Baker. I do
10:23 10 landscaping. I'm not married. What was that last one?

10:23 11 THE CLERK: That was it. Very good.

10:23 12 Number 10, James Bashnan.

10:23 13 PROSPECTIVE JUROR: I work at Grady's. My wife
10:23 14 works at Clemson.

10:23 15 THE CLERK: And that's it.

10:23 16 Number 11, Vonda Beatty.

10:24 17 PROSPECTIVE JUROR: I work for the Postal Service,
10:24 18 and my husband works for Tenneco Automotive.

10:24 19 THE CLERK: Number 12, Philip Beaudion.

10:24 20 PROSPECTIVE JUROR: My name is Phillip Beaudion.
10:24 21 I work for DPR Harding. I'm not married.

10:24 22 THE CLERK: Okay.

10:24 23 Number 13, Richard Bender.

10:24 24 PROSPECTIVE JUROR: Richard Bender. I am retired
10:24 25 former home builder. My wife is retired. She was our

10:24 1 accountant.

10:24 2 THE CLERK: Number 14, Sherry Berg.

10:24 3 PROSPECTIVE JUROR: I'm currently unemployed, and
10:24 4 my husband lives in a different state. He's in the
10:24 5 service.

10:24 6 THE CLERK: Number 15, Robert Bernazzoli.

10:24 7 PROSPECTIVE JUROR: I work at Borg Warner
10:24 8 automotive, and I am single.

10:24 9 THE CLERK: Number 17, Joseph Blackwell.

10:24 10 PROSPECTIVE JUROR: Clemson University.

10:24 11 THE CLERK: Number 23, Barry Bryant.

10:24 12 PROSPECTIVE JUROR: I am a technician at Itron. I
10:25 13 am presently separated.

10:25 14 THE CLERK: Number 25, Melanie Childress.

10:25 15 PROSPECTIVE JUROR: Walgreens distribution center,
10:25 16 and I'm single.

10:25 17 THE CLERK: Number 31, Melinda Cox.

10:25 18 PROSPECTIVE JUROR: I work at the Oconee County
10:25 19 Airport, and I'm divorced.

10:25 20 THE CLERK: Number 33, Pamela Crowe.

10:25 21 PROSPECTIVE JUROR: I work at Itron, and my
10:25 22 husband also works at Itron.

10:25 23 THE CLERK: Number 37, Kasey Dobbins.

10:25 24 PROSPECTIVE JUROR: I work at Central Residential,
10:25 25 and I'm single.

10:25 1 THE CLERK: Number 38, Matthew Dolly.

10:25 2 PROSPECTIVE JUROR: I work at Marathon Gas, and

10:25 3 I'm single.

10:25 4 THE CLERK: Number 40, William Downing.

10:25 5 PROSPECTIVE JUROR: I'm an engineer with Lift

10:25 6 technologies. My wife is an accountant.

10:25 7 THE CLERK: Number 44, Carina Fletcher.

10:25 8 PROSPECTIVE JUROR: I'm a stay-at-home mom, and my

10:25 9 husband is in consumer finance.

10:25 10 THE CLERK: Okay.

10:25 11 Number 46, Melanie Fultz.

10:26 12 PROSPECTIVE JUROR: I'm the admissions coordinator

10:26 13 at Seneca Health and Rehab and unmarried.

10:26 14 THE CLERK: Number 50, Ovidio Garcia.

10:26 15 PROSPECTIVE JUROR: I'm a technician at Borg

10:26 16 Warner. My wife works in Clemson.

10:26 17 THE CLERK: Number 51, Tony Garland.

10:26 18 PROSPECTIVE JUROR: I'm self-employed. I'm a

10:26 19 handyman. I'm also employed by the South Carolina

10:26 20 National Guard. My wife is a teacher with the Oconee

10:26 21 County School District.

10:26 22 THE CLERK: Thank you.

10:26 23 Number 53, Jonathan Grant.

10:26 24 PROSPECTIVE JUROR: I work for Oconee Joint

10:26 25 Regional Sewer Authority, and my wife is unemployed.

10:26 1 THE CLERK: Number 57, Diane Hannon.

10:26 2 PROSPECTIVE JUROR: I work at Clemson University,
10:26 3 and my husband also works at Clemson University.

10:26 4 THE CLERK: Number 60, Amelia Harvey.

10:26 5 PROSPECTIVE JUROR: Amelia Harvey. I'm a retired
10:26 6 teacher from the South Carolina -- Oconee County School
10:26 7 District. My husband also works with the Oconee County
10:26 8 School District.

10:26 9 THE CLERK: Number 63, Carl Hooper.

10:27 10 PROSPECTIVE JUROR: I work for Larry's Small
10:27 11 Engine Repair, single.

10:27 12 THE CLERK: Number 76, Jody Kelly.

10:27 13 PROSPECTIVE JUROR: I work at Southern Wesleyan
10:27 14 University, and I'm unmarried.

10:27 15 THE CLERK: Number 83, Zachary Lee.

10:27 16 PROSPECTIVE JUROR: Residential construction and
10:27 17 unmarried.

10:27 18 THE CLERK: Number 85, James Loggins.

10:27 19 PROSPECTIVE JUROR: International Kitchen Supply,
10:27 20 unmarried.

10:27 21 THE CLERK: Number 88, Peter Lusk.

10:27 22 PROSPECTIVE JUROR: I'm a manager at AT&T. My
10:27 23 wife is a nurse practitioner.

10:27 24 THE CLERK: Number 89, Randall Lyles.

10:27 25 PROSPECTIVE JUROR: I'm a fire warden, South

10:27 1 Carolina Forestry Commission. My wife works for Blue
10:27 2 Ridge Electric.

10:27 3 THE CLERK: Number 90, Louisa Lyman.

10:27 4 PROSPECTIVE JUROR: Retired school district
10:27 5 administrator. My husband is a retired psychologist.

10:27 6 THE CLERK: Number 92, Isabella Marcengill.

10:27 7 PROSPECTIVE JUROR: I'm a full-time student and
10:27 8 part-time worker at Heavenly Hogs Barbecue, single.

10:28 9 THE CLERK: Number 95, Brittney McCall.

10:28 10 PROSPECTIVE JUROR: Accountant at Clemson
10:28 11 University. My husband is a pastor at Golden Corner
10:28 12 Church.

10:28 13 THE CLERK: Number 108, Cynthia Napolitano.

10:28 14 PROSPECTIVE JUROR: Self-employed, children's
10:28 15 formal wear, and I'm single.

10:28 16 THE CLERK: Number 116, Rachel Owens.

10:28 17 PROSPECTIVE JUROR: I work at the hospital, and
10:28 18 I'm single.

10:28 19 THE CLERK: Number 122, Aimee Pitts.

10:28 20 PROSPECTIVE JUROR: I work at Seneca Baptist
10:28 21 Preschool, Clemson University, and I own a photography
10:28 22 studio. I am single.

10:28 23 THE CLERK: Number 126, John Ramey.

10:28 24 PROSPECTIVE JUROR: I work at Sandvik in
10:28 25 Westminster. I'm married, and my wife is a housewife.

10:28 1 THE CLERK: Number 136, Randy Rosbough.

10:28 2 PROSPECTIVE JUROR: Retired from Timken Company.

10:28 3 My wife retired from Oconee Federal Savings & Loan.

10:28 4 THE CLERK: Number 138, Jessica Santana.

10:28 5 PROSPECTIVE JUROR: Unemployed and single.

10:28 6 THE CLERK: Number 141, Sean Schooley.

10:29 7 PROSPECTIVE JUROR: I work for Quiktrip and

10:29 8 unmarried.

10:29 9 THE CLERK: Number 147, Paige Sloan.

10:29 10 PROSPECTIVE JUROR: I work for Clemson university,

10:29 11 and my husband works at Oconee nuclear station.

10:29 12 THE CLERK: Number 148, Anthony Smith.

10:29 13 PROSPECTIVE JUROR: I work at Sealed Air, and my

10:29 14 wife is unemployed.

10:29 15 THE CLERK: Number 149, Joshua Smith.

10:29 16 PROSPECTIVE JUROR: I work for Duke Energy,

10:29 17 contract employee, and my wife is a stay-at-home

10:29 18 mother.

10:29 19 THE CLERK: Number 152, Katrina Spurr.

10:29 20 PROSPECTIVE JUROR: I work for Merle Norman

10:29 21 Cosmetics. My husband is United States Marine Corps

10:29 22 retired.

10:29 23 THE CLERK: Number 158, Roy Thrasher.

10:29 24 PROSPECTIVE JUROR: I'm retired. My wife is

10:29 25 deceased.

State of South Carolina v. Jacob Daniel Drotning 2014-GS-37-742&743;2015-GS-37-441&442
Jury Roll Call

10:29 1 THE CLERK: Number 160, Wendy Van Ooteghem.

10:29 2 PROSPECTIVE JUROR: I'm retired from Oconee

10:29 3 Memorial as a financial analyst. My husband retired

10:29 4 from Schneider Electric, now works at The Cliffs

10:29 5 communities.

10:29 6 THE CLERK: Number 161, Alice Vogel.

10:29 7 PROSPECTIVE JUROR: I work for Koyo Bearing, and I

10:30 8 am a widow.

10:30 9 THE CLERK: Number 163, Sheila Wald.

10:30 10 PROSPECTIVE JUROR: Oconee County government. My

10:30 11 husband is a pastor.

10:30 12 THE CLERK: Number 164, Jasmine Warren.

10:30 13 PROSPECTIVE JUROR: I'm a manager at Ingles. My

10:30 14 husband currently serves in the United States Army.

10:30 15 THE CLERK: Number 165, Patsy Watkins.

10:30 16 PROSPECTIVE JUROR: I'm Patsy Watkins. I am

10:30 17 currently unemployed, and my husband is disabled.

10:30 18 THE CLERK: Number 170, Jeffrey Winchester.

10:30 19 PROSPECTIVE JUROR: Work for Amec Foster Wheeler.

10:30 20 My wife retired from Greenville County schools.

10:30 21 THE CLERK: Number 175, David Yoder.

10:30 22 PROSPECTIVE JUROR: Self-employed, Yoder's Health

10:30 23 Products. My wife is a homemaker.

10:30 24 THE CLERK: Number 186, Thomas Busha.

10:30 25 PROSPECTIVE JUROR: I work at Greenfield

10:30 1 Industries, and my wife works at Seneca Health and
10:30 2 Rehab.

10:30 3 THE CLERK: Number 198, Thomas Darragh.

10:30 4 PROSPECTIVE JUROR: Johnson Controls, supervisor.
10:31 5 Wife is a housewife.

10:31 6 THE CLERK: Number 199, Janis Davies.

10:31 7 PROSPECTIVE JUROR: I work for the South Carolina
10:31 8 Department of Motor Vehicles, and I'm a widow.

10:31 9 THE CLERK: Number 204, Robert Didgeon.

10:31 10 PROSPECTIVE JUROR: Retired, Duke Energy. Wife
10:31 11 still works at Greenville Health System at Oconee.

10:31 12 THE CLERK: Number 208, Angela Foxx.

10:31 13 PROSPECTIVE JUROR: I work for Johnson Controls.
10:31 14 My husband is an electrical contractor, self-employed.

10:31 15 THE CLERK: Number 231, Jason Lowery.

10:31 16 PROSPECTIVE JUROR: I work for David Zimmerman at
10:31 17 Oconee nuclear site. My wife works for Greenville
10:31 18 Hospital System.

10:31 19 THE CLERK: Number 238, Ronald Miller.

10:31 20 PROSPECTIVE JUROR: Retired from Alcoa. My wife
10:31 21 is a retired Realtor.

10:31 22 THE CLERK: Number 244, Michelle Nix.

10:31 23 PROSPECTIVE JUROR: My husband and I are
10:31 24 self-employed with Nationwide Insurance Agency.

10:31 25 THE CLERK: Number 245, Emree Orr.

10:31 1 PROSPECTIVE JUROR: Unemployed and not married.

10:31 2 THE CLERK: Number 246, Adam Parslow.

10:31 3 PROSPECTIVE JUROR: I work for Auto Zone. My wife
10:32 4 works for Johnson Controls.

10:32 5 THE CLERK: Number 256, Catherine Schnepf.

10:32 6 PROSPECTIVE JUROR: I'm a nurse anesthetist at
10:32 7 AnMed Hospital, single.

10:32 8 THE CLERK: Number 257, Sonya Seymour.

10:32 9 PROSPECTIVE JUROR: Social worker, state of
10:32 10 Georgia. My husband is a minister.

10:32 11 THE CLERK: Number 260, Philip Shirley.

10:32 12 PROSPECTIVE JUROR: Oconee County government. My
10:32 13 wife works in the school district.

10:32 14 THE CLERK: Number 271, Bryant White.

10:32 15 PROSPECTIVE JUROR: I work at Food Lion, not
10:32 16 married.

10:32 17 THE CLERK: Number 272, Susan Whitehead.

10:32 18 PROSPECTIVE JUROR: Chickasaw Point Golf Course.
10:32 19 My husband works for CNL Services.

10:32 20 THE CLERK: 275, Bonnie Wulff.

10:32 21 PROSPECTIVE JUROR: Bonnie Wulff, married. My
10:32 22 husband works for Nason Company here in Walhalla.

10:32 23 THE CLERK: And what do you do?

10:32 24 PROSPECTIVE JUROR: I'm a housewife.

10:32 25 THE CLERK: Okay. Thank you.

10:32 1 Okay. Is there anyone here whose name I did not
10:32 2 call, if you would, please stand.
10:32 3 Okay. What is your name and number?
10:32 4 PROSPECTIVE JUROR: Number 39, Frank Donald.
10:33 5 THE CLERK: Number 39, Frank -- what was your last
10:33 6 name?
10:33 7 PROSPECTIVE JUROR: Donald.
10:33 8 THE CLERK: Donald, okay. And if you will give
10:33 9 the information where you're employed. If you're
10:33 10 married, your spouse's information as well.
10:33 11 PROSPECTIVE JUROR: I work for Advanced Auto
10:33 12 Parts, married. Wife works for the Department of
10:33 13 Social Services.
10:33 14 THE CLERK: Thank you.
10:33 15 And your number?
10:33 16 PROSPECTIVE JUROR: 255.
10:33 17 THE CLERK: Your name?
10:33 18 PROSPECTIVE JUROR: Melissa Ryan.
10:33 19 THE COURT: Okay.
10:33 20 PROSPECTIVE JUROR: Administrative assistant in
10:33 21 Seneca, not married.
10:33 22 THE CLERK: Did you check in and get -- okay. You
10:33 23 did not.
10:33 24 PROSPECTIVE JUROR: No.
10:33 25 THE CLERK: When we take a break, if you don't

10:33 1 mind coming forward so that we can get you checked in
10:33 2 and give you a jury badge. Okay?

10:33 3 PROSPECTIVE JUROR: Okay.

10:33 4 THE CLERK: Thank you.

10:33 5 Is there anyone else?

10:34 6 Okay, Judge.

10:34 7 THE COURT: Thank you. I now have certain
10:34 8 questions to ask you to determine your qualifications
10:34 9 to serve as jurors in this court. These questions
10:34 10 determine your eligibility to serve. State law
10:34 11 requires that I ask these questions.

10:34 12 If any juror needs to respond to a particular
10:34 13 question, you will need to stand, give your juror
10:34 14 number first, then your name. It is absolutely
10:34 15 essential that we have accurate information. Some of
10:34 16 these questions are very personal. If you do not wish
10:34 17 to stand and disclose this information openly in the
10:34 18 presence of your fellow jurors, I will give you the
10:34 19 opportunity to come forward at the end. Just be sure
10:34 20 to remember to come forward at the end if you do not
10:34 21 stand when a question requiring an affirmative response
10:34 22 of you is asked. Please listen very carefully to these
10:34 23 questions.

10:34 24 Is any member of the jury panel not a citizen of
10:35 25 the United States of America? If so, please stand.

10:35 1 There are none.

10:35 2 Is any member of the jury panel not a resident and
10:35 3 citizen of Oconee County, South Carolina? If so,
10:35 4 please stand.

10:35 5 There are none.

10:35 6 Is any member of the jury panel unable to read,
10:35 7 write, speak or understand the English language? If
10:35 8 so, please stand.

10:35 9 There are none.

10:35 10 Does any member of the jury panel have less than a
10:35 11 sixth grade education or its equivalent? If so, please
10:35 12 stand.

10:35 13 There are none.

10:35 14 Is any member of the jury panel unable, because of
10:35 15 mental or physical infirmities, to render efficient
10:35 16 jury service? Does any member of the jury panel have
10:35 17 any medical condition that would prevent you from
10:35 18 serving on a jury this week?

10:36 19 Now, let me explain this question. I get
10:36 20 questions very commonly from jurors who cannot sit for
10:36 21 long periods of time. Some people have back problems
10:36 22 and other issues that make them have to get up and
10:36 23 stretch their legs. You will be allowed to take breaks
10:36 24 as we go along. Usually every one to two hours.

10:36 25 So with that said, does anyone have any physical

10:36 1 problem, mental problems that would make it to where
10:36 2 you cannot serve as a juror?

10:36 3 There are none.

10:36 4 Has any member of the jury panel been convicted by
10:36 5 guilty plea or trial in a state or federal court of
10:36 6 record of a crime punishable by imprisonment for more
10:36 7 than one year and your civil rights have not been
10:36 8 restored by pardon or amnesty?

10:36 9 Punishable by more than one years means that you
10:36 10 could have received a sentence of more than one year
10:36 11 regardless of what sentence you may have actually
10:36 12 received. If so, please stand.

10:36 13 PROSPECTIVE JUROR: Your Honor, can you repeat
10:37 14 that one more time, please?

10:37 15 THE COURT: Okay. Has any member of the jury
10:37 16 panel been convicted by guilty plea or trial in a state
10:37 17 or federal court of record of a crime punishable by
10:37 18 imprisonment for more than one year and your civil
10:37 19 rights have not been restored by pardon or amnesty?

10:37 20 Punishable by more than one year means that you
10:37 21 could have received a sentence of more than one year
10:37 22 regardless of what sentence you may have actually
10:37 23 received.

10:37 24 PROSPECTIVE JUROR: I was thinking, I got a
10:37 25 2012 -- I have a felony on my record and --

10:37 1 THE COURT: Sir, would you come forward, please.

10:37 2 (Prospective juror approached the bench.)

10:37 3 THE COURT: What is your number?

10:38 4 PROSPECTIVE JUROR: 8.

10:38 5 THE COURT: Number 8, Mr. Baker.

10:38 6 PROSPECTIVE JUROR: Yes, sir.

10:38 7 THE COURT: All right. What's your situation,

10:38 8 Mr. Baker?

10:38 9 PROSPECTIVE JUROR: I think I'm misunderstanding.

10:38 10 I was just asking because from 2012 I have burglary

10:38 11 third here in Greenville. I did two years of state.

10:38 12 THE COURT: Were you convicted of that?

10:38 13 PROSPECTIVE JUROR: Yeah. I did two years in

10:38 14 state for it.

10:38 15 THE COURT: That would disqualify you from jury

10:38 16 service.

10:38 17 PROSPECTIVE JUROR: That's why I told you that.

10:38 18 THE COURT: Thank you for letting us know that.

10:38 19 You are excused.

10:38 20 PROSPECTIVE JUROR: Have a good one.

10:38 21 THE COURT: Yes.

10:38 22 PROSPECTIVE JUROR: Your Honor, Juror Number 12,

10:38 23 Phillip Beaudion. Does South Carolina recognize

10:38 24 adjudication of a felon for a no contest plea for a

10:38 25 misdemeanor battery charge?

10:38 1 THE COURT: Let me talk to you.

10:39 2 (Prospective juror approached the bench.)

10:39 3 THE COURT: Okay. Yes, sir. You are number 12?

10:39 4 PROSPECTIVE JUROR: Yes, sir.

10:39 5 THE COURT: Mr. Beaudion, what kind of conviction?

10:39 6 PROSPECTIVE JUROR: It was a no contest plea for a

10:39 7 battery charge.

10:39 8 THE COURT: In what state was that in?

10:39 9 PROSPECTIVE JUROR: Florida, Lake County.

10:39 10 THE COURT: What kind of penalty did you receive?

10:39 11 PROSPECTIVE JUROR: No time.

10:39 12 THE COURT: All right. And what degree of battery

10:39 13 was it?

10:39 14 PROSPECTIVE JUROR: I do not know. It's been

10:39 15 eight years ago, so.

10:39 16 THE COURT: Madam Solicitor, do you have a record

10:39 17 for Mr. Beaudion?

10:39 18 MR. WAGNER: He has a battery and it's -- the

10:39 19 Florida statute is battery, touch or strike.

10:39 20 THE COURT: That sounds like -- is it classified

10:39 21 as a misdemeanor?

10:39 22 PROSPECTIVE JUROR: It was.

10:39 23 MR. WAGNER: It is a misdemeanor.

10:39 24 THE COURT: Okay. That sounds like that is

10:40 25 similar to our assault and battery third degree. That

10:40 1 would not be a disqualifying offense.

10:40 2 PROSPECTIVE JUROR: Would not?

10:40 3 THE COURT: Would not be. Thank you for letting
10:40 4 me know that.

10:40 5 PROSPECTIVE JUROR: Yes, sir.

10:40 6 THE COURT: Any further on that question?

10:40 7 Is any member of the jury panel a clerk or deputy
10:40 8 clerk of court, constable, sheriff, or other
10:40 9 commissioned law enforcement officer, probate judge,
10:40 10 county commissioner, magistrate, or other county
10:40 11 officer or employed within the walls of any courthouse?
10:40 12 If so, please stand.

10:40 13 There are none.

10:40 14 Is there any member of the jury panel who has
10:40 15 previously served on jury duty in circuit court during
10:41 16 2016?

10:41 17 Now, keep in mind this is circuit court, not
10:41 18 federal court, magistrate's court, or municipal court.
10:41 19 If you served in this calendar year, please stand.

10:41 20 There are none.

10:41 21 Has any member of the jury panel served as a
10:41 22 member of the Oconee County Grand Jury during the past
10:41 23 several years? If so, please stand.

10:41 24 There are none.

10:41 25 We now move to jury exemptions. State law

10:41 1 provides for several exemptions to jury service. An
10:41 2 exemption does not mean that you are not qualified to
10:41 3 serve. It simply means that you have the right to say,
10:41 4 "I choose not to serve."

10:41 5 Those of you who are 65 years of age or older may
10:41 6 be exempted from service. Those of you 65 years of age
10:41 7 or older represent a pool of tremendous talent for jury
10:41 8 service, and we urge you to serve this week if you are
10:41 9 inclined to do so. But if you wish to be exempted, you
10:42 10 may certainly do so.

10:42 11 Is there any member of the jury panel who is 65
10:42 12 years of age or older and wishes to be exempted from
10:42 13 jury service this week? If so, please stand.

10:42 14 There are none.

10:42 15 Another exemption concerns prior jury service. No
10:42 16 person is required to serve as a juror more often than
10:42 17 once every three calendar years. Therefore, if any
10:42 18 member of the jury panel has served on jury duty during
10:42 19 the last three calendar years, you may be exempt from
10:42 20 service this week if you choose to be exempted.

10:42 21 Now, again, please note that this exemption does
10:42 22 not apply if your jury service was in a magistrate's
10:42 23 court, a municipal court, or federal court. If this
10:42 24 exemption applies to any of you and you wish to be
10:42 25 exempted, please stand.

10:42 1 There are none.

10:42 2 Persons who have served as grand jurors during the
10:42 3 last five calendar years may be exempt from jury
10:42 4 service. If any member of the jury panel has served on
10:43 5 a grand jury during the last five calendar years, you
10:43 6 may be exempt from service this week if you choose to
10:43 7 be exempted.

10:43 8 If this exemption applies to any member of the
10:43 9 jury panel and you wish to be exempted, please stand.

10:43 10 There are none.

10:43 11 Next exemption deals with those of you who have
10:43 12 small children. Please listen very carefully to this
10:43 13 exemption. It has several parts, all of which must
10:43 14 apply for you to be exempted on this basis.

10:43 15 You may be exempted from jury service if: One,
10:43 16 you have a small child or children under the age of
10:43 17 seven years; two, you have legal custody of your child
10:43 18 or children; three, you have the principal care,
10:43 19 custody, and control of your child or children; and
10:43 20 four, you are unable to make arrangements for the
10:43 21 adequate care of your child or children while
10:43 22 performing jury duty.

10:43 23 If all of these requirements apply to you, then
10:43 24 you may be exempted on this basis. If this exemption
10:44 25 applies to you and you wish to be exempted, please

10:44 1 stand.

10:44 2 PROSPECTIVE JUROR: Can I ask a question?

10:44 3 THE COURT: Please stand. What was your number?

10:44 4 PROSPECTIVE JUROR: 37.

10:44 5 THE COURT: Okay. Ms. Dobbins.

10:44 6 PROSPECTIVE JUROR: Yes, sir. All of them but one

10:44 7 apply to me. My children are nine and 12, but I do

10:44 8 have sole custody, 100 percent. And if my mom is not

10:44 9 at home, I won't have anyone to keep them.

10:44 10 THE COURT: Under the statute, they have to be

10:44 11 under the age of seven. That would not apply to you,

10:44 12 ma'am, but thank you for calling that to my attention.

10:44 13 PROSPECTIVE JUROR: Yes, sir.

10:44 14 THE COURT: Yes, ma'am. Your number?

10:44 15 PROSPECTIVE JUROR: 44.

10:44 16 THE COURT: Ms. Fletcher.

10:44 17 PROSPECTIVE JUROR: Yes. I have a child who is

10:44 18 three who only goes to daycare half day, and my husband

10:44 19 is going to be traveling this week for business. And

10:44 20 I'm not sure of how we're going to make that work.

10:44 21 THE COURT: You don't have anyone else that can

10:44 22 care for the child while you're here?

10:45 23 PROSPECTIVE JUROR: We haven't. Only today and

10:45 24 possibly Thursday and Friday, but we're not sure yet

10:45 25 about Tuesday and Wednesday.

10:45 1 THE COURT: Okay. Okay. All right. Well, the
10:45 2 way the statute is worded, I'll excuse you on that
10:45 3 basis, Ms. Fletcher. Thank you for calling that to my
10:45 4 attention.

10:45 5 PROSPECTIVE JUROR: Thank you.

10:45 6 THE COURT: Yes, ma'am. Your number?

10:45 7 PROSPECTIVE JUROR: 164.

10:45 8 THE COURT: Ms. Warren?

10:45 9 PROSPECTIVE JUROR: Yes, sir. I have two small
10:45 10 kids under the age of seven, and my husband is
10:45 11 stationed at Fort Bragg.

10:45 12 THE COURT: You don't have anyone else that can
10:45 13 care for the children?

10:45 14 PROSPECTIVE JUROR: My mother-in-law just had
10:45 15 surgery.

10:45 16 THE COURT: Thank you, ma'am. You would be
10:45 17 excused on that basis.

10:45 18 PROSPECTIVE JUROR: Thank you.

10:45 19 THE COURT: Yes, ma'am.

10:45 20 PROSPECTIVE JUROR: 272.

10:45 21 THE COURT: Ms. Whitehead?

10:45 22 PROSPECTIVE JUROR: Yes. My kids, my grandkids, I
10:45 23 have three of them, six, four, and two that I take care
10:45 24 of.

10:46 25 THE COURT: That does not apply. Do you have

10:46 1 legal custody?

10:46 2 PROSPECTIVE JUROR: No.

10:46 3 THE COURT: That does not apply to you.

10:46 4 PROSPECTIVE JUROR: They live with me.

10:46 5 THE COURT: Thank you for calling that to my
10:46 6 attention, ma'am.

10:46 7 Okay. Any further?

10:46 8 The next exemption involves those of you who may
10:46 9 be attending school at this time or working in some
10:46 10 capacity with the school. If this exemption applies to
10:46 11 you and you wish to be exempted, we will transfer your
10:46 12 service to another term of court at a time which will
10:46 13 not conflict with your school responsibilities.

10:46 14 Ladies and gentlemen, if you come up here during
10:46 15 the June and July summer term, it's full of students
10:46 16 and school teachers. We accommodate you if you're in
10:46 17 school.

10:46 18 Is there a member of the jury panel who is a
10:46 19 full-time student, school teacher, certified personnel,
10:46 20 school crossing guard, school bus driver, or who serves
10:46 21 in any public or private school-related function
10:46 22 including technical colleges who is unable to serve on
10:47 23 jury duty this week as a result of that school
10:47 24 involvement?

10:47 25 Yes, ma'am. Your number?

10:47 1 PROSPECTIVE JUROR: 92. Isabel Marcengill.

10:47 2 THE COURT: Okay. Ms. Marcengill?

10:47 3 PROSPECTIVE JUROR: Yes, sir.

10:47 4 THE COURT: What's your status?

10:47 5 PROSPECTIVE JUROR: Right now I am a full-time

10:47 6 student, and I work part-time on part of those days as

10:47 7 well. So my end of term does not end until

10:47 8 November 29th then I have first-week exams on the first

10:47 9 week of December, but I have school all this week.

10:47 10 THE COURT: Where are you going to school?

10:47 11 PROSPECTIVE JUROR: Tri-County Technical College

10:47 12 in Pendleton.

10:47 13 THE COURT: Transfer Ms. Marcengill to a summer

10:47 14 term.

10:47 15 All right. Thank you, ma'am. You will be

10:47 16 transferred to a summer term.

10:47 17 Yes, ma'am. Your number?

10:47 18 PROSPECTIVE JUROR: 57.

10:47 19 THE COURT: Ms. Hannon?

10:47 20 PROSPECTIVE JUROR: Yes.

10:47 21 THE COURT: What's your status, Ms. Hannon?

10:47 22 PROSPECTIVE JUROR: I work for Clemson University

10:48 23 directly with the students Mondays through Thursdays,

10:48 24 and it would be difficult for me to have somebody fill

10:48 25 my role.

10:48 1 THE COURT: Is that during the school year, or do
10:48 2 you work in the summer as well.

10:48 3 PROSPECTIVE JUROR: During the school year. I
10:48 4 work only part-time during the summer so I would have
10:48 5 definitely more availability during the summer.

10:48 6 THE COURT: Transfer Ms. Hannon to a summer term.
10:48 7 Thank you, ma'am.

10:48 8 PROSPECTIVE JUROR: Thank you.

10:48 9 THE COURT: Is there any member of the jury panel
10:48 10 who is employed with the Department of Corrections at a
10:48 11 penitentiary? If so, and you would like to be
10:48 12 exempted, please stand.

10:48 13 There are none.

10:48 14 Is there any juror who performs services for a
10:48 15 business, a commercial or agricultural enterprise which
10:48 16 are so essential to the operation of the enterprise
10:49 17 that if you were required to perform jury duty, the
10:49 18 enterprise would have to close or stop functioning. If
10:49 19 so and you wish to be exempted, please stand.

10:49 20 Yes, ma'am.

10:49 21 PROSPECTIVE JUROR: Yes we have two locations, one
10:49 22 in Walhalla and one in Seneca. We've got short staff
10:49 23 so we don't have anyone to open up our Seneca office
10:49 24 from 9:00 to 1:00. So I have to go to the Seneca
10:49 25 office and open it up.

10:49 1 THE COURT: Your number?

10:49 2 PROSPECTIVE JUROR: 244.

10:49 3 THE COURT: Ms. Nix, so the office is closed now?

10:49 4 PROSPECTIVE JUROR: No. Tuesday through Friday.

10:49 5 THE COURT: So that's the standard under the
10:49 6 statute, you would be excused on that basis since the
10:49 7 office is closed without you there. So thank you,
10:49 8 ma'am. You are excused.

10:49 9 All right. Any further?

10:49 10 Is there any juror who is the primary caretaker of
10:49 11 a severely disabled person who is unable to care for
10:50 12 himself or cannot be left unattended? If so, and you
10:50 13 wish to be exempted, please stand.

10:50 14 Okay. There are none. Finally, is there any
10:50 15 juror who is the primary care taker of a person aged 65
10:50 16 or older? If so, please stand.

10:50 17 There are none.

10:50 18 Ladies and gentlemen, that concludes the statutory
10:50 19 list of qualifications and exemptions.

10:50 20 THE CLERK: We have a juror that's raised their
10:50 21 hand.

10:50 22 THE COURT: Yes, ma'am, I didn't see you. What's
10:50 23 your number?

10:50 24 PROSPECTIVE JUROR: 165, Patsy Watkins.

10:50 25 THE COURT: Okay. Ms. Watkins.

10:50 1 PROSPECTIVE JUROR: My husband, he's disabled. He
10:50 2 depends on me for everything, and he can't hardly walk.
10:50 3 And he's got a lot of health problems, and I need to
10:50 4 be -- at least accessible to where if he calls me, if
10:50 5 he needs me, I can get to him to take care of him.

10:51 6 THE COURT: You don't have anyone else that can
10:51 7 watch him?

10:51 8 PROSPECTIVE JUROR: No, sir. Both my kids work,
10:51 9 and my family that lives close to us, they're all older
10:51 10 than us.

10:51 11 THE COURT: All right. You will be excused under
10:51 12 that statute. Thank you, ma'am.

10:51 13 PROSPECTIVE JUROR: Thank you, sir.

10:51 14 THE COURT: Ladies and gentlemen, it may be that
10:51 15 you are qualified and no exemption applies to you, but
10:51 16 jury service this week would constitute an extreme
10:51 17 hardship on you for a particular reason. I cannot
10:51 18 permanently excuse a qualified juror from jury service,
10:51 19 but I can, under extreme and compelling circumstances,
10:51 20 transfer a juror to another term of court, particularly
10:51 21 jurors who have not been previously transferred.

10:51 22 Please understand that general inconvenience is
10:51 23 not sufficient reason to transfer you to another term
10:51 24 of court. To justify a transfer to another term of
10:52 25 court, service this week must constitute an extreme

10:52 1 hardship to you.

10:52 2 Now is the chance for any of you to come forward
10:52 3 and speak to me who did not want to give a public
10:52 4 response to one of the earlier questions or who may
10:52 5 have a question about whether or not they are
10:52 6 disqualified or exempt or whether they desire to be
10:52 7 transferred to another term of court.

10:52 8 PROSPECTIVE JUROR: I have --

10:52 9 THE COURT: Hold on.

10:52 10 PROSPECTIVE JUROR: 12. I'm sorry, sir.

10:52 11 THE COURT: What's going on?

10:52 12 PROSPECTIVE JUROR: I have a pending criminal
10:52 13 custody case with my ex-wife. If we start this this
10:52 14 next week, the following week I have to go to Florida
10:52 15 for a mediation trial.

10:52 16 THE COURT: Okay. Well, it's not this week. When
10:52 17 is the trial that you have to go to?

10:53 18 PROSPECTIVE JUROR: November 1st.

10:53 19 THE COURT: Okay. You should be fine.

10:53 20 PROSPECTIVE JUROR: I should be? Okay. Are we
10:53 21 doing anything tomorrow?

10:53 22 THE COURT: Yeah. This is for the whole week.

10:53 23 PROSPECTIVE JUROR: At 1 o'clock tomorrow I'm
10:53 24 supposed to have a consultation with my lawyer, if I
10:53 25 can rearrange that today.

10:53 1 THE COURT: Has he ever been transferred?

10:53 2 PROSPECTIVE JUROR: I have not been transferred.

10:53 3 THE COURT: I can transfer you to another term of
10:53 4 court if that's what you -- I can't excuse you from
10:53 5 jury service, but I can transfer you.

10:53 6 PROSPECTIVE JUROR: Okay. So this starts in the
10:53 7 morning and runs all day?

10:53 8 THE COURT: If you're selected as a juror.

10:53 9 PROSPECTIVE JUROR: If I am selected. Okay. If I
10:53 10 can call my lawyer today and rearrange for the
10:53 11 consultation the following next week, then I can serve
10:53 12 this week.

10:53 13 THE COURT: All right. Well, again, I can
10:53 14 transfer you to another term of court. But, now, if
10:53 15 you don't exercise that and if you're called to serve
10:53 16 as a juror, you're going to have to appear regardless
10:53 17 of whatever else you might have scheduled. So, I mean,
10:53 18 I'm going to leave that up to you if you want to be
10:54 19 transferred.

10:54 20 PROSPECTIVE JUROR: Let's transfer, please. That
10:54 21 way I can --

10:54 22 THE COURT: Okay.

10:54 23 PROSPECTIVE JUROR: This has been going on for
10:54 24 almost a year.

10:54 25 THE COURT: Now, keep in mind, when they put you

10:54 1 back on the list and you get summoned as a juror again,
10:54 2 you now have already been transferred.

10:54 3 PROSPECTIVE JUROR: It's going to have to roll
10:54 4 through, yes, sir.

10:54 5 THE COURT: Okay. Thank you.

10:54 6 PROSPECTIVE JUROR: Am I excused?

10:54 7 THE COURT: Yes, sir. You are excused.

10:54 8 Transfer number 12.

10:54 9 Yes, ma'am.

10:54 10 PROSPECTIVE JUROR: I work for the State. Juror
10:54 11 257. We have court. It's been continued to Wednesday.
10:54 12 This is the original subpoena, but that's the
10:54 13 attorney's name, and I have to be a witness for an
10:54 14 investigation on Wednesday in Habersham County. So I
10:54 15 need to be transferred to another --

10:54 16 THE COURT: Have you ever been transferred?

10:54 17 PROSPECTIVE JUROR: I have never been.

10:54 18 THE COURT: Transfer number 257 to another term of
10:54 19 court.

10:54 20 PROSPECTIVE JUROR: Okay. Thank you.

10:54 21 THE COURT: Thank you, Ms. Seymour.

10:55 22 Any further? Okay.

10:55 23 All right. After conducting the statutory
10:55 24 questions as to qualifications and exemptions, I find
10:55 25 that the jury panel is qualified for service in general

10:55 1 sessions court this term in Oconee.

10:55 2 Ladies and gentlemen, now that you have been
10:55 3 qualified, let me give you some basic guidelines for
10:55 4 the week.

10:55 5 First will be regarding cell phones. You will not
10:55 6 be allowed to use cell phones in court. The clerk of
10:55 7 court will assist you if you have any issues needing to
10:55 8 communicate with your family or work and so forth. Or
10:56 9 if you're -- if there's any emergencies that arise,
10:56 10 your clerk staff is here to help you.

10:56 11 Now, this also is inevitable. You're going to run
10:56 12 into people in the hallway that may be participating in
10:56 13 one of these cases. If you see one of these attorneys,
10:56 14 they're not going to speak to you. It's not because
10:56 15 they're trying to be rude, but they know they can't
10:56 16 have any interaction with you. So it's very important
10:56 17 that you use the juror elevator, that you do not have
10:56 18 any interaction with any of the attorneys or the
10:56 19 parties or witnesses to cases that would be called.

10:56 20 We also ask you to be prompt. Instructions will
10:56 21 be given whenever we break at what time we have to
10:56 22 reconvene, so it's very important that you be prompt.
10:56 23 It's not fair to the parties, to the cases, or the
10:56 24 staff, or to your fellow jurors if we have to wait and
10:56 25 delay the proceedings because someone is not on time.

10:57 1 Again, if there are any emergencies, any issues
10:57 2 that arise, let the clerk of court and her staff know
10:57 3 and they're here to assist you.

10:57 4 Now, we're going to take our first break, and then
10:57 5 we're going to select our first jury after that. We're
10:57 6 going to take a break for about 15 minutes. Do not
10:57 7 leave the courthouse. So be back in the courtroom in
10:57 8 15 minutes.

10:57 9 (WHEREUPON, the prospective jury panel
10:57 10 exited the courtroom at 10:57 a.m.)

10:57 11 (WHEREUPON, recess taken from 10:58 a.m.
11:14 12 to 11:14 a.m.)

11:14 13 (WHEREUPON, the defendant is now present.)

11:14 14 THE COURT: Counsel, approach quickly.

11:14 15 (WHEREUPON, a bench conference was held off the
11:14 16 record in the presence of the prospective jury panel,
11:21 17 but out of their hearing.)

11:21 18 THE COURT: All right. Ms. Simmons, we're ready
11:21 19 to proceed?

11:21 20 MS. SIMMONS: Yes, Your Honor.

11:21 21 THE COURT: Mr. Cole, ready to proceed?

11:21 22 MR. COLE: Yes, Your Honor.

11:21 23 THE COURT: Madam Clerk, do you have the
11:21 24 indictments?

11:21 25 THE CLERK: They have them to call the case.

11:21 1 THE COURT: Go ahead and call the case.

11:21 2 MR. WAGNER: Your Honor, the State calls for trial
11:21 3 the case of State versus Jacob Daniel Drotning,
11:21 4 2014-742 for attempted murder; 2014-743 for arson in
11:21 5 the second degree; 2015-441 for domestic violence of a
11:21 6 high and aggravated nature; and 2015-442 for malicious
11:21 7 injury to property.

11:22 8 THE COURT: All right. Ladies and gentlemen, as
11:22 9 the solicitor stated, this is the case of the State
11:22 10 versus Jacob Daniel Drotning of the charges of
11:22 11 attempted murder, arson second degree, CDV of a high
11:22 12 and aggravated nature, and malicious injury to
11:22 13 property. Mr. Drotning has pled not guilty to these
11:22 14 charges.

11:22 15 These indictments are not evidence, but they're
11:22 16 simply the charges that bring the cases to court, and
11:22 17 they are not in any sense evidence of the allegations
11:22 18 that they contain. The State, therefore, has the
11:22 19 burden of proving the indictments, proving the charges
11:22 20 against the defendant, beyond a reasonable doubt.

11:22 21 If you are called to serve as the jury in the
11:22 22 case, it will be your duty, ladies and gentlemen, to
11:23 23 decide whether or not the State has met their burden.

11:23 24 So you are called here today to form a jury panel
11:23 25 from which the parties can select a jury to determine

11:23 1 the facts of case.

11:23 2 I realize a while ago I asked you a whole bunch of
11:23 3 questions. I'm going to ask you some more. Now, these
11:23 4 questions are not to pry into your private lives but
11:23 5 merely to ensure that each party receives a fair and
11:23 6 impartial jury to hear the case.

11:23 7 First order of business, I'd like each attorney to
11:23 8 introduce themselves, also your clients and any staff
11:23 9 members that may be assisting during the presentation
11:23 10 of this case.

11:23 11 Mr. Wagner, Ms. Simmons.

11:23 12 MR. WAGNER: I'm David Wagner from the solicitor's
11:23 13 office. Seated with me is Lindsey Simmons, also from
11:23 14 my office. We will be prosecuting the case on behalf
11:23 15 of the State.

11:23 16 MR. COLE: Ladies and gentlemen, my name is Lee
11:23 17 Cole. I'm an attorney from the big city of Williamston
11:23 18 in Anderson County. And my client is Jacob Drotning.
11:24 19 And Jacob is here with me today. Thank you.

11:24 20 THE COURT: Let me remind you, ladies and
11:24 21 gentlemen, the clerk has put you under oath so you are
11:24 22 still under oath for purposes of the questioning.

11:24 23 Is any member of the jury panel related by blood
11:24 24 or marriage or has a close personal or social
11:24 25 relationship with a party or one of the attorneys

11:24 1 involved in the case? If so, please stand.

11:24 2 Has any member of the jury panel ever been
11:24 3 represented by one of the attorneys involved in the
11:24 4 case or any law firm that they may have been a member
11:24 5 of or had one of these attorneys represent someone
11:24 6 against you in court? If so, please stand.

11:24 7 The following is a list of potential witnesses in
11:24 8 the case: Sergeant Scott Arnold, Oconee County
11:25 9 Sheriff's Office; Lieutenant Bo Barton, South Carolina
11:25 10 Law Enforcement Division; Kara Bennick, Greenville
11:25 11 County Sheriff's Office; Carissa Bettes, Seneca Fire
11:25 12 Department; Agent Maryann Boehm, South Carolina Law
11:25 13 Enforcement Division; Chris Cartee, Seneca Fire
11:25 14 Department; Matthew Cehula; Catherine Cook; Ruby Cook;
11:25 15 Danny Delmarco; Golden Corner Realty; Allison Dukes
11:25 16 Lamb of the Joseph M. Still Burn Center; Bryan Evans;
11:25 17 Zaheed Hassan, Medical Doctor; Henry Kilpatrick; Isaac
11:25 18 Lewis, Oconee County Sheriff's Office; Harley Chapman,
11:25 19 Oconee Memorial Hospital; Paul Marcengill, Seneca Fire
11:25 20 Department; Josh May Med Trans Corporation; Daniel
11:26 21 McGowan, Oconee County Sheriff's Department; Michael
11:26 22 Moskal, South Carolina Law Enforcement Division; Deputy
11:26 23 Charles Mulwee, Oconee County Sheriff's Office; Agent
11:26 24 Tim Nafziger, Greenville County Sheriff's Office; Chief
11:26 25 Jan Oliver, Seneca Fire Department; Investigator Anna

11:26 1 Orr, Oconee County Solicitor's Office; Travis Overton,
11:26 2 Oconee County Law Enforcement Center; Sergeant Barry
11:26 3 Owens, Oconee County Sheriff's Office; Sergeant David
11:26 4 Philpott, Oconee County Sheriff's Office; Captain Steve
11:26 5 Pruitt, Oconee County Sheriff's Office; Deputy Chris
11:26 6 Roach, Oconee County Sheriff's Office; Joseph Shaffer,
11:26 7 Medical Doctor; Kevin Spielmann; Brandy Towe; Special
11:26 8 Agent Daren Vaughn, South Carolina Law Enforcement
11:27 9 Division; Daohcuang Xayachack; Haleigh Zinker; and
11:27 10 Lacey Durham of the Oconee County Law Enforcement
11:27 11 Center.

11:27 12 Is any member of the jury panel related by blood
11:27 13 or marriage or has a close personal or social
11:27 14 relationship with any of these potential witnesses? If
11:27 15 so, please stand.

11:27 16 Yes, ma'am. We'll start on this side.

11:27 17 Your number?

11:27 18 PROSPECTIVE JUROR: 138.

11:27 19 THE COURT: Okay. Ms. Santana?

11:27 20 PROSPECTIVE JUROR: Yes.

11:27 21 THE COURT: What's the nature -- first of all,
11:27 22 which witness do you know? What's the relationship?

11:27 23 PROSPECTIVE JUROR: Matthew Cehula and Henry
11:27 24 Kilpatrick, both close family friends.

11:27 25 THE COURT: Okay. With that knowledge, do you

11:27 1 feel that you could be fair and impartial if selected
11:27 2 as a juror in this case?

11:27 3 PROSPECTIVE JUROR: Yes.

11:27 4 THE COURT: All right. Thank you, ma'am.

11:27 5 Yes, ma'am. Your number?

11:27 6 PROSPECTIVE JUROR: 37.

11:27 7 THE COURT: Okay. Ms. Dobbins?

11:28 8 PROSPECTIVE JUROR: Yes, sir. Chris Roach, Isaac
11:28 9 Lewis, and Henry Kilpatrick.

11:28 10 THE COURT: What's the nature of that
11:28 11 relationship?

11:28 12 PROSPECTIVE JUROR: I went to school with Chris
11:28 13 Roach, am friends with his wife. I'm friends with
11:28 14 Henry Kilpatrick through his wife, and I went to school
11:28 15 with Ike Lewis. And he's been coming on and off to our
11:28 16 church.

11:28 17 THE COURT: With that knowledge, do you feel that
11:28 18 you could be fair and impartial if selected?

11:28 19 PROSPECTIVE JUROR: Absolutely.

11:28 20 THE COURT: All right. Thank you, ma'am.

11:28 21 All right. Yes, ma'am.

11:28 22 PROSPECTIVE JUROR: 122. I taught Lindsey
11:28 23 Simmons' son in preschool last year, and Chris Roach
11:28 24 and I are friends.

11:28 25 THE COURT: You're Ms. Pitts?

11:28 1 PROSPECTIVE JUROR: Uh-huh.

11:28 2 THE COURT: With that knowledge, do you feel that
11:28 3 you could be fair and impartial if selected?

11:28 4 PROSPECTIVE JUROR: Yes.

11:28 5 THE COURT: All right. Thank you, ma'am.

11:28 6 Let's go -- yes, sir.

11:28 7 PROSPECTIVE JUROR: I have a hearing impairment,
11:28 8 and I've heard very little that's been said here this
11:28 9 morning. And I just wanted to make someone aware that
11:28 10 I can't hear what's being said.

11:29 11 THE COURT: Okay. What's your number, sir?

11:29 12 PROSPECTIVE JUROR: 17.

11:29 13 THE COURT: Mr. Blackwell? Mr. Blackwell?

11:29 14 PROSPECTIVE JUROR: Yes, sir.

11:29 15 THE COURT: Well, Mr. Blackwell, just have a seat
11:29 16 and we'll come back to you in just a moment.

11:29 17 Madam Clerk.

11:29 18 (Off-the-record discussion with the clerk.)

11:29 19 THE COURT: All right. Yes, ma'am.

11:29 20 PROSPECTIVE JUROR: 275. I am friends with Henry
11:29 21 Kilpatrick's wife, also Lacey Durham.

11:29 22 THE COURT: You're Ms. Wulff?

11:29 23 PROSPECTIVE JUROR: Yes.

11:29 24 THE COURT: So you're friends with

11:29 25 Mr. Kilpatrick's wife, and what was the other one?

11:29 1 PROSPECTIVE JUROR: Lacey Durham.

11:29 2 THE COURT: And with that knowledge, do you feel
11:29 3 that you could be fair and impartial if selected?

11:29 4 PROSPECTIVE JUROR: Yes, sir.

11:29 5 THE COURT: All right. Thank you, ma'am.

11:29 6 Yes, sir. What's your number?

11:29 7 PROSPECTIVE JUROR: I'm juror number 89.

11:29 8 THE COURT: Mr. Lyles?

11:29 9 PROSPECTIVE JUROR: Yes, sir. I've been a
11:29 10 volunteer fireman in the county for 40 years so I know
11:30 11 several of the firemen who were listed.

11:30 12 THE COURT: Are you currently a volunteer fireman?

11:30 13 PROSPECTIVE JUROR: Yes, sir.

11:30 14 THE COURT: You will be excused for cause in this
11:30 15 case, then, sir. Okay.

11:30 16 Mr. Lyles, I'm going to have you remain seated,
11:30 17 but you will be removed from the pool in this case.

11:30 18 But I'm going to have you remain seated.

11:30 19 PROSPECTIVE JUROR: Thank you.

11:30 20 THE COURT: At the very back. Yes, ma'am.

11:30 21 PROSPECTIVE JUROR: Number 33. I know Daniel
11:30 22 McGowan. He is a family friend.

11:30 23 THE COURT: You're Ms. Crowe?

11:30 24 PROSPECTIVE JUROR: Ms. Crowe, yes.

11:30 25 THE COURT: All right. With that knowledge, do

11:30 1 you feel that you could be fair and impartial?

11:30 2 PROSPECTIVE JUROR: Yes, sir.

11:30 3 THE COURT: All right. Thank you, ma'am.

11:30 4 Yes, ma'am.

11:30 5 PROSPECTIVE JUROR: I am juror 169. I'm human
11:30 6 resources manager for Oconee County. A lot of these
11:30 7 officers have come through our office so we're very
11:30 8 aware of who they are as well as the solicitor's
11:30 9 employees. We also -- I have handled risk management
11:31 10 for a number of years, and so I'm very aware of who
11:31 11 these volunteer firefighters are as well.

11:31 12 THE COURT: So through your employment?

11:31 13 PROSPECTIVE JUROR: Yes, sir.

11:31 14 THE COURT: You are in a position where these
11:31 15 people work -- all right. Ma'am, you would be excused
11:31 16 for cause in this case.

11:31 17 That would be juror number 169.

11:31 18 Yes, sir.

11:31 19 PROSPECTIVE JUROR: Wait -- excuse me. I lied to
11:31 20 you. 163. Sorry.

11:31 21 THE COURT: 163?

11:31 22 PROSPECTIVE JUROR: One of my many talents is not
11:31 23 reading upside down. Sorry.

11:31 24 THE COURT: Well, I thought my eyesight had failed
11:31 25 me on the list. All right.

11:31 1 PROSPECTIVE JUROR: Sorry.

11:31 2 THE COURT: Yes, ma'am.

11:31 3 PROSPECTIVE JUROR: 116. I know Paul Marcengill.

11:31 4 THE COURT: And you are Ms. Owens?

11:31 5 PROSPECTIVE JUROR: Yes.

11:31 6 THE COURT: And with that knowledge, do you feel

11:31 7 that you could be fair and impartial if selected?

11:31 8 PROSPECTIVE JUROR: Yes.

11:31 9 THE COURT: All right. Thank you, ma'am.

11:31 10 Has any member of the jury panel ever been treated

11:31 11 by any of the physicians listed? If so, please stand.

11:32 12 There are none.

11:32 13 Has any member of the jury panel, family member or

11:32 14 close personal friend, ever been prosecuted by the

11:32 15 Tenth Circuit Solicitor's Office? If so, please stand.

11:32 16 Okay. There are none.

11:32 17 Has any member of the jury panel, family member or

11:32 18 close personal friend, been accused of or prosecuted

11:32 19 for domestic violence, arson, or attempted murder? If

11:32 20 so, please stand.

11:32 21 There are none.

11:32 22 Are you or any members of your immediate family

11:32 23 employed by or a contractor for any federal, state, or

11:32 24 local law enforcement agencies?

11:32 25 Now, if you have already answered in the

11:33 1 affirmative -- I think we have had two excused for
11:33 2 cause -- you don't need to answer again, but any
11:33 3 further. Anyone employed or any contractor for any
11:33 4 federal, state, or local law enforcement agency? If
11:33 5 so, please stand.

11:33 6 PROSPECTIVE JUROR: Did you say family members?

11:33 7 THE COURT: Yes, ma'am. You are Ms.?

11:33 8 PROSPECTIVE JUROR: Dobbins, 37.

11:33 9 My cousin is William Clay Sheriff. And he is with
11:33 10 Oconee County. And Bryan Sheriff is my cousin. He's
11:33 11 with Seneca.

11:33 12 THE COURT: He's employed with the sheriff's
11:33 13 department?

11:33 14 PROSPECTIVE JUROR: Yes, sir.

11:33 15 THE COURT: Okay. Okay. All right. Ma'am, I
11:33 16 would excuse you for cause in this case, then. Thank
11:33 17 you. Please be seated.

11:33 18 Anyone else? Okay.

11:33 19 Are you or any members of your immediate family
11:33 20 involved with members of or supporters of Safe Harbor
11:34 21 or any of the women's shelters? If so, please stand.

11:34 22 There are none.

11:34 23 Are any -- are you or any members of your
11:34 24 immediate family members of or financial supporters of
11:34 25 organizations that advocate for or support victims of

11:34 1 domestic violence? If so, please stand.

11:34 2 There are none.

11:34 3 Have you or any members of your immediate family
11:34 4 ever been the victim of domestic violence, domestic
11:34 5 abuse, or involved in an abusive relationship? If you
11:34 6 need to come forward to talk to me, I'll be happy to
11:34 7 come on forward.

11:34 8 Okay. Yes, ma'am. Your number?

11:35 9 PROSPECTIVE JUROR: 152.

11:35 10 THE COURT: 152. Ms. Spurr?

11:35 11 PROSPECTIVE JUROR: Yes.

11:35 12 THE COURT: What's the nature of that?

11:35 13 PROSPECTIVE JUROR: I was a child of domestic
11:35 14 violence in my home for the first 15 years of my life.

11:35 15 THE COURT: Okay. With that knowledge, do you
11:35 16 feel that you can be fair and impartial if selected?

11:35 17 PROSPECTIVE JUROR: Yes, sir.

11:35 18 THE COURT: Okay. Thank you, ma'am.

11:35 19 PROSPECTIVE JUROR: Okay.

11:35 20 THE COURT: You can return to your seat.

11:35 21 Yes, ma'am.

11:35 22 PROSPECTIVE JUROR: He wasn't physically abusive,
11:35 23 my ex-husband.

11:35 24 THE COURT: What's your number?

11:35 25 PROSPECTIVE JUROR: 255. I'm nervous.

11:35 1 THE COURT: Let's see here. Ms. Ryan?

11:36 2 PROSPECTIVE JUROR: I didn't send in my paper. I
11:36 3 got it Friday.

11:36 4 THE CLERK: Melissa Ryan.

11:36 5 PROSPECTIVE JUROR: I had a divorce. It was ugly.
11:36 6 He was emotionally abusive, so I'm a little bit
11:36 7 sensitive. I did volunteer at a women's shelter when I
11:36 8 was in my early twenties. I don't know if that --

11:36 9 THE COURT: Okay. Well, let me ask you this:
11:36 10 With that knowledge, do you feel that you could be fair
11:36 11 and impartial if you're selected?

11:36 12 PROSPECTIVE JUROR: I do.

11:36 13 THE COURT: You do? Thank you, ma'am.

11:36 14 PROSPECTIVE JUROR: You're welcome. Thank you.

11:36 15 THE COURT: Yes, sir. Mr. Ramey, number 126.

11:36 16 PROSPECTIVE JUROR: Yes. My mother was raped by
11:36 17 my eldest brother about 35 years ago.

11:36 18 THE COURT: With that knowledge, do you feel like
11:36 19 you could be fair and impartial?

11:36 20 PROSPECTIVE JUROR: I'm not sure.

11:37 21 THE COURT: Okay.

11:37 22 PROSPECTIVE JUROR: It still bothers me.

11:37 23 THE COURT: Okay. Well, thank you for your
11:37 24 candor. I'm going to have you return to your seat.

11:37 25 Yes, ma'am. What's your number?

11:37 1 PROSPECTIVE JUROR: Vogel, juror 161.

11:37 2 THE COURT: What's going on?

11:37 3 PROSPECTIVE JUROR: My granddaughter was sexually
11:37 4 abused.

11:37 5 THE COURT: Okay. With that knowledge, do you
11:37 6 feel that you could be fair and impartial?

11:37 7 PROSPECTIVE JUROR: I'm pretty sure I could be.

11:37 8 THE COURT: Well, it's not pretty sure. You
11:37 9 either can or you can't be.

11:37 10 PROSPECTIVE JUROR: Yeah. I think so.

11:37 11 THE COURT: Okay. Thank you, ma'am.

11:37 12 All right. Anything further?

11:38 13 Now, these charges stem from an incident that is
11:38 14 alleged to have occurred on May 16, 2014, in Oconee
11:38 15 County.

11:38 16 Does any member of the jury panel have any prior
11:38 17 knowledge about the facts of this case from any source?
11:38 18 If so, please stand.

11:38 19 There are none.

11:38 20 Has any member of the jury panel had any
11:38 21 conversations with any of the parties involved in this
11:38 22 case or the attorneys involved in this case regarding
11:38 23 this case? If so, please stand.

11:38 24 There are none.

11:38 25 Does any member of the jury panel know of any

11:38 1 other reason which we haven't already discussed why he
11:38 2 or she could not be fair and impartial to both the
11:39 3 State and the defendant in deciding this case if you
11:39 4 were called to serve as a juror? If so, please stand.

11:39 5 Okay. There are none.

11:39 6 Any further questions from the State?

11:39 7 MR. WAGNER: No, sir.

11:39 8 THE COURT: Any further questions from the
11:39 9 defense?

11:39 10 MR. COLE: No, your Honor.

11:39 11 THE COURT: All right. Ladies and gentlemen,
11:39 12 we're now ready to select a jury. This is done a
11:39 13 little bit differently. We don't draw them out of the
11:39 14 hat anymore. The clerk can show you our old hopper up
11:39 15 here. The names used to go in the hopper, and they
11:39 16 would be pulled out. The computer does that for us
11:39 17 now, generates a random list. I date myself. When I
11:39 18 started practicing law, we had to use that.

11:39 19 Gentlemen, two alternates?

11:39 20 MR. WAGNER: Yes.

11:40 21 MR. COLE: Yes, Your Honor.

11:40 22 THE COURT: Okay. We'll do two alternates.

11:40 23 The clerk is going to generate a list, and then
11:40 24 the jury will be struck. So it will just take a
11:40 25 minute.

11:42 1 THE CLERK: Ladies and gentlemen, as I call your
11:42 2 name, if you would please come forward. If you would,
11:42 3 please come to the bar, turn and face the gallery, and
11:43 4 bring your personal belongings with you.

11:43 5 Juror number 23, Barry Bryant.

11:43 6 (WHEREUPON, a white male stepped forward.)

11:43 7 THE CLERK: What says the State?

11:43 8 MR. WAGNER: Present the juror.

11:43 9 THE CLERK: What says the defense?

11:43 10 MR. COLE: Please seat the juror.

11:43 11 THE CLERK: Sir, if you would, please take a seat
11:43 12 in the jury box.

11:43 13 Number 198, Thomas Darragh.

11:43 14 (WHEREUPON, a white male stepped forward.)

11:43 15 THE CLERK: What says the State?

11:43 16 MR. WAGNER: Present the juror.

11:43 17 THE CLERK: What says the defense?

11:43 18 MR. COLE: Please seat the juror.

11:43 19 THE CLERK: Sir, if you would, please take a seat
11:43 20 in the jury box.

11:43 21 Number 170, Jeffrey Winchester.

11:44 22 (WHEREUPON, a white male stepped forward.)

11:44 23 THE CLERK: What says the State?

11:44 24 MR. WAGNER: Present the juror.

11:44 25 THE CLERK: What says the defense?

11:44 1 MR. COLE: Please seat the juror.

11:44 2 THE CLERK: Sir, if you would, please take a seat

11:44 3 in the jury box.

11:44 4 Number 40, William Downing.

11:44 5 (WHEREUPON, a white male stepped forward.)

11:44 6 THE CLERK: What says the State?

11:44 7 MR. WAGNER: Present the juror.

11:44 8 THE CLERK: What says the defense?

11:44 9 MR. COLE: Please seat the juror.

11:44 10 THE CLERK: Sir, if you would, please take a seat

11:44 11 in the jury box.

11:44 12 Number 275, Bonnie Wulff.

11:44 13 (WHEREUPON, a white female stepped forward.)

11:44 14 THE CLERK: What says the State?

11:44 15 MR. WAGNER: Please excuse the juror on this case.

11:45 16 THE CLERK: Ma'am, you have been excused from this

11:45 17 case. You may be seated.

11:45 18 Number 238, Ronald Miller.

11:45 19 (WHEREUPON, a white male stepped forward.)

11:45 20 THE CLERK: What says the State?

11:45 21 MR. WAGNER: Present the juror.

11:45 22 THE CLERK: What says the defense?

11:45 23 MR. COLE: Please seat the juror.

11:45 24 THE CLERK: Sir, if you would, please take a seat

11:45 25 in the jury box.

11:45 1 Number 161, Alice Vogel.

11:45 2 (WHEREUPON, a white female stepped forward.)

11:45 3 THE CLERK: What says the State?

11:45 4 MR. WAGNER: Present the juror.

11:46 5 THE CLERK: What says the defense?

11:46 6 MR. COLE: Please excuse the juror.

11:46 7 THE CLERK: Ma'am, you have been excused from this

11:46 8 case. You may be seated.

11:46 9 Number 108, Cynthia Napolitano.

11:46 10 (WHEREUPON, a white female stepped forward.)

11:46 11 THE CLERK: What says the State?

11:46 12 MR. WAGNER: Present the juror.

11:46 13 THE CLERK: What says the defense?

11:46 14 MR. COLE: Please excuse the juror.

11:46 15 THE CLERK: Ma'am, you have been excused from this

11:46 16 case. You may be seated.

11:46 17 Number 246, Adam Parslow.

11:46 18 (WHEREUPON, a white male stepped forward.)

11:46 19 THE CLERK: What says the State?

11:47 20 MR. WAGNER: Present the juror.

11:47 21 THE CLERK: What says the defense?

11:47 22 MR. COLE: Please seat the juror.

11:47 23 THE CLERK: Sir, if you would, please take a seat

11:47 24 in the jury box.

11:47 25 Number 33, Pamela Crowe.

11:47 1 (WHEREUPON, a white female stepped forward.)
11:47 2 THE CLERK: What says the State?
11:47 3 MR. WAGNER: Present the juror.
11:47 4 THE CLERK: What says the defense?
11:47 5 MR. COLE: Please excuse the juror.
11:47 6 THE CLERK: Ma'am, you have been excused from this
11:47 7 case. You may be seated.
11:47 8 Number 50, Ovidio Garcia.
11:48 9 (WHEREUPON, a Hispanic male stepped forward.)
11:48 10 THE CLERK: What says the State?
11:48 11 MR. WAGNER: Present the juror.
11:48 12 THE CLERK: What says the defense?
11:48 13 MR. COLE: Please seat the juror.
11:48 14 THE CLERK: Sir, if you would, please take a seat
11:48 15 in the jury box.
11:48 16 Number 95, Brittney McCall.
11:48 17 (WHEREUPON, a white female stepped forward.)
11:48 18 THE CLERK: What says the State?
11:48 19 MR. WAGNER: Present the juror.
11:48 20 THE CLERK: What says the defense?
11:48 21 MR. COLE: Please excuse the juror.
11:48 22 THE CLERK: Ma'am, you have been excused from this
11:48 23 case. You may be seated.
11:48 24 Number 204, Robert Didgeon.
11:48 25 (WHEREUPON, a white male stepped forward.)

11:48 1 THE CLERK: What says the State?

11:48 2 MR. WAGNER: Present the juror.

11:49 3 THE CLERK: What says the defense?

11:49 4 MR. COLE: Please excuse the juror.

11:49 5 THE CLERK: Sir, you have been excused from this

11:49 6 case. You may be seated.

11:49 7 Number 175, David Yoder.

11:49 8 (WHEREUPON, a white male stepped forward.)

11:49 9 THE CLERK: What says the State?

11:49 10 MR. WAGNER: Present the juror.

11:49 11 THE CLERK: What says the defense?

11:49 12 MR. COLE: Please seat the juror.

11:49 13 THE CLERK: Sir, if you would, please take a seat

11:49 14 in the jury box.

11:49 15 Number 83, Zachary Lee.

11:49 16 (WHEREUPON, a white male stepped forward.)

11:49 17 THE CLERK: What says the State?

11:50 18 MR. WAGNER: Present the juror.

11:50 19 THE CLERK: What says the defense?

11:50 20 MR. COLE: Please seat the juror.

11:50 21 THE CLERK: Sir, if you would, please take a seat

11:50 22 in the jury box.

11:50 23 Number 85, James Loggins.

11:50 24 (WHEREUPON, a white male stepped forward.)

11:50 25 THE CLERK: What says the State?

11:50 1 MR. WAGNER: Please excuse the juror on this case.

11:50 2 THE CLERK: Sir, you have been excused from this

11:50 3 case. You may be seated.

11:50 4 Number 116, Rachel Owens.

11:50 5 (WHEREUPON, a white female stepped forward.)

11:50 6 THE CLERK: What says the State?

11:50 7 MR. WAGNER: Present the juror.

11:51 8 THE CLERK: What says the defense?

11:51 9 MR. COLE: Please excuse the juror.

11:51 10 THE CLERK: Ma'am, you have been excused from this

11:51 11 case. You may be seated.

11:51 12 Number 158, Roy Thrasher.

11:51 13 (WHEREUPON, a white male stepped forward.)

11:51 14 THE CLERK: What says the State?

11:51 15 MR. WAGNER: Present the juror.

11:51 16 THE CLERK: What says the defense?

11:51 17 MR. COLE: Please excuse the juror.

11:51 18 THE CLERK: Sir, you have been excused from this

11:51 19 case. You may be seated.

11:51 20 Number 271, Bryant White.

11:51 21 (WHEREUPON, a white male stepped forward.)

11:51 22 THE CLERK: What says the State?

11:51 23 MR. WAGNER: Present the juror.

11:52 24 THE CLERK: What says the defense?

11:52 25 MR. COLE: Please seat the juror.

11:52 1 THE CLERK: Sir, if you would, please take a seat
11:52 2 in the jury box.
11:52 3 Number 46, Melanie Fultz.
11:52 4 (WHEREUPON, a white female stepped forward.)
11:52 5 THE CLERK: What says the State?
11:52 6 MR. WAGNER: Present the juror.
11:52 7 THE CLERK: What says the defense?
11:52 8 MR. COLE: Please excuse the juror.
11:52 9 THE CLERK: Ma'am, you have been excused from this
11:52 10 case. You may be seated.
11:52 11 Number 255, Melissa Ryan.
11:52 12 (WHEREUPON, a white female stepped forward.)
11:52 13 THE CLERK: What says the State?
11:52 14 MR. WAGNER: Present the juror.
11:53 15 THE CLERK: What says the defense?
11:53 16 MR. COLE: Please excuse the juror.
11:53 17 THE CLERK: Ma'am, you have been excused from this
11:53 18 case. You may be seated.
11:53 19 Number 138, Jessica Santana.
11:53 20 (WHEREUPON, a white female stepped forward.)
11:53 21 THE CLERK: What says the State?
11:53 22 MR. WAGNER: Present the juror.
11:53 23 THE CLERK: What says the defense?
11:53 24 MR. COLE: Please excuse the juror.
11:53 25 THE CLERK: Ma'am, you have been excused from this

11:53 1 case. You may be seated.

11:53 2 Number 256, Catherine Schnepf.

11:53 3 (WHEREUPON, a white female stepped forward.)

11:53 4 THE CLERK: What says the State?

11:54 5 MR. WAGNER: Present the juror.

11:54 6 THE CLERK: What says the defense for cause?

11:54 7 MR. COLE: Please seat the juror.

11:54 8 THE CLERK: Ma'am, if you would, please take a

11:54 9 seat in the jury box.

11:54 10 Number 260, Phillip Shirley.

11:54 11 (WHEREUPON, a white male stepped forward.)

11:54 12 THE CLERK: What says the State?

11:54 13 MR. WAGNER: Present the juror.

11:54 14 THE CLERK: What says the defense?

11:54 15 MR. COLE: Please seat the juror.

11:54 16 THE CLERK: Sir, if you would, please take a seat

11:54 17 in the jury box.

11:54 18 This will be for our first alternate.

11:54 19 Number 63, Carl Hooper.

11:54 20 (WHEREUPON, a white male stepped forward.)

11:54 21 THE CLERK: What says the State?

11:55 22 MR. WAGNER: Please excuse the juror on this case.

11:55 23 THE CLERK: Sir, you have been excused from this

11:55 24 case. You may be seated.

11:55 25 Number 147, Paige Sloan.

11:55 1 (WHEREUPON, a white female stepped forward.)

11:55 2 THE CLERK: What says the State?

11:55 3 MR. WAGNER: Present the juror.

11:55 4 THE CLERK: What says the defense?

11:55 5 MR. COLE: Please seat the juror.

11:55 6 THE CLERK: Ma'am, if you would, please take a

11:55 7 seat in the jury box.

11:55 8 This will be for our Alternate Number 2.

11:55 9 Number 76, Jody Kelley.

11:55 10 (WHEREUPON, a white female stepped forward.)

11:55 11 THE CLERK: What says the State?

11:55 12 MR. WAGNER: Present the juror.

11:56 13 THE CLERK: What says the defense?

11:56 14 MR. COLE: Please excuse the juror.

11:56 15 THE CLERK: Ma'am, you have been excused from this

11:56 16 case. You may be seated.

11:56 17 Number 208, Angela Foxx.

11:56 18 (WHEREUPON, a white female stepped forward.)

11:56 19 THE CLERK: What says the State?

11:56 20 MR. WAGNER: Present the juror.

11:56 21 THE CLERK: What says the defense?

11:56 22 MR. COLE: Please seat the juror.

11:56 23 THE CLERK: Ma'am, if you would, please take a

11:56 24 seat in the jury box.

11:56 25 Judge.

11:56 1 THE COURT: Thank you, Madam Clerk.

11:56 2 Are there any motions or exceptions to the

11:56 3 selection of the jury panel from the State?

11:56 4 MR. WAGNER: No, sir.

11:56 5 THE COURT: Any motions or exceptions to the

11:56 6 selection of the jury panel from the defense?

11:56 7 MR. COLE: Yes, Your Honor.

11:56 8 THE COURT: All right.

11:56 9 Mr. Bailiff, would you take our jury panel to the

11:56 10 jury room.

11:57 11 Madam Bailiff, would you take the rest of the jury

11:57 12 panel out into the lobby.

11:57 13 (WHEREUPON, all jurors exited the courtroom at

11:58 14 11:57 a.m.).

11:58 15 THE COURT: Is that door shut? Okay. Very good.

11:58 16 Mr. Cole.

11:58 17 MR. COLE: Thank you, Your Honor. May it please

11:58 18 the court. Your Honor, I would move at this time for a

11:58 19 mistrial. I did not see this. I didn't recognize the

11:58 20 alleged victim during jury qualification. However, my

11:58 21 client, who was standing and watching through the

11:58 22 window here, says that he saw the alleged victim and

11:58 23 whoever she was seated with, he said that they were not

11:59 24 seated on the back row at that time, that they were

11:59 25 actually seated on one of the pews with the members of

11:59 1 the jury panel. And he said he did see one -- he said
11:59 2 he saw the alleged victim speak to someone with a tag
11:59 3 on that indicated that they were a member of the jury
11:59 4 panel.

11:59 5 And, Your Honor, he says that he saw the alleged
11:59 6 victim stand up and proceed out of the courtroom
11:59 7 when -- during the break between jury qualification and
11:59 8 jury selection. So, Your Honor, because if she spoke
11:59 9 to someone in here and then she went outside, Your
11:59 10 Honor, I think that there is enough there that she
11:59 11 could have spoken to someone.

11:59 12 We don't have any way of knowing who that was, and
11:59 13 because of that, I think the entire jury panel is
11:59 14 tainted so I would have to ask for a mistrial.

11:59 15 I certainly and my client wants to get this trial
11:59 16 over with, but we feel that -- I just feel that this
12:00 17 jury is irreparably tainted at this time.

12:00 18 THE COURT: Mr. Cole, you don't know the identity
12:00 19 of this person that your client alleges spoke to the
12:00 20 victim?

12:00 21 MR. COLE: No. It was a person.

12:00 22 THE COURT: Was it a male or a female?

12:00 23 THE DEFENDANT: Male.

12:00 24 MR. COLE: It was a male, Your Honor.

12:00 25 THE COURT: Okay. But you don't know the identity

12:00 1 of the person?

12:00 2 THE DEFENDANT: I think it was dismissed. He was
12:00 3 outside the jury pool, so --

12:00 4 MR. COLE: He was not one of the ones that was
12:00 5 selected for the jury on this case.

12:00 6 THE COURT: Do you have any evidence that he spoke
12:00 7 to other jurors regarding the case?

12:00 8 MR. COLE: Your Honor, there's no evidence, but
12:00 9 that's what I'm worried about because he was -- all the
12:00 10 ones that were selected for this case and all the rest
12:00 11 of them were outside. And then also, if the alleged
12:00 12 victim and whoever was with her were outside, then I
12:00 13 think -- we just don't know, Your Honor. And with that
12:00 14 level of not knowing, I think is enough to not have --
12:01 15 to say that the jury is tainted. And because the --
12:01 16 it's one of those things that we may never know, Your
12:01 17 Honor, but the sanctity of the jury, as the court
12:01 18 knows, is what our system is built on. So I think if
12:01 19 there is even a suspicion that it was tainted, and we
12:01 20 have that because we saw her speak to someone. My
12:01 21 client saw her speak to someone and then she went
12:01 22 outside, I think that that's enough for the suspicion
12:01 23 to be there.

12:01 24 THE COURT: All right. Ms. Simmons.

12:01 25 MS. SIMMONS: Your Honor, as you know, we have a

12:01 1 victim's advocate. She has been with the victim the
12:01 2 entire time in the courtroom. I have spoken with the
12:01 3 victim's advocate. I spoke with the victim and her
12:01 4 family members. They indicate they have not had
12:01 5 contact with any potential jurors. They knew that they
12:01 6 should not have contact. They have not in any way,
12:01 7 shape, or form. The victim was allowed to use the
12:02 8 restroom during the break. Certainly there is no other
12:02 9 restroom available to her, but it was a single trip to
12:02 10 the restroom and back.

12:02 11 THE COURT: Was the victim's advocate with her
12:02 12 when she went outside?

12:02 13 MS. SIMMONS: Her mother is who accompanied her to
12:02 14 the restroom.

12:02 15 THE COURT: Well, I would note for the record --
12:02 16 well, Mr. Cole, I asked the jury panel the question:
12:02 17 Have any members of the panel or members of the pool
12:02 18 had conversations with any of the parties or witnesses
12:02 19 to the case, and none answered in the affirmative so
12:02 20 I'm going to deny your motion at this time.

12:02 21 Are there any other motions pertaining to the jury
12:02 22 panel?

12:02 23 MR. COLE: None from the defense, Your Honor.

12:02 24 THE COURT: Okay. All right. Let's get our jury
12:02 25 back in here.

12:02 1 (WHEREUPON, all jurors came into open court at
12:04 2 approximately 12:03 p.m.)

12:04 3 THE COURT: All right. Madam Clerk, would you
12:04 4 swear our jury.

12:04 5 (WHEREUPON, the jury was impaneled.)

12:04 6 THE COURT: To the remainder of the jury panel,
12:04 7 this will conclude your service for today. You will be
12:04 8 able to go home. The clerk has given you a telephone
12:04 9 number.

12:04 10 Madam Clerk, you have given them --

12:04 11 THE CLERK: It's on the top of the letter you
12:05 12 received when you checked in this morning. It's the
12:05 13 718 number.

12:05 14 THE COURT: Make sure everyone has your sheet.
12:05 15 The telephone number is on the sheet. Call that number
12:05 16 after 6 o'clock tonight, and it will give you further
12:05 17 instructions. Okay? So, everyone, you are free to go.
12:05 18 Hope everyone has a good evening, and call that number
12:05 19 after 6 o'clock tonight. Thank you.

12:05 20 (WHEREUPON, the remainder of the prospective jury
12:06 21 pool exited the courtroom at 12:05 p.m.)

12:06 22 (WHEREUPON, the jury entered open court at
12:06 23 12:06 p.m.)

12:06 24 THE COURT: All right. Ladies and gentlemen,
12:06 25 before we start this case, I'm going to give you some

12:06 1 basic instructions on what we're doing here today and
12:06 2 what your role in the case will be, what my role will
12:07 3 be.

12:07 4 I'm the judge of the law. You will apply the law
12:07 5 to the facts of the case as I give it to you. You are
12:07 6 the judge of the facts. As a judge of the facts, you
12:07 7 will have the duty to evaluate the evidence that is
12:07 8 presented during the trial. Evidence is the sworn
12:07 9 testimony from the witness stand and any exhibits that
12:07 10 are entered into evidence.

12:07 11 Each attorney will have the opportunity to give an
12:07 12 opening statement and outline their positions to you
12:07 13 and any evidence that he or she intends to present to
12:07 14 support those claims, but keep in mind what the
12:07 15 attorneys say is not evidence. You and you alone
12:07 16 determine the credibility of witnesses and how much
12:07 17 weight to give their testimony. Keep in mind that the
12:07 18 statements of the attorneys are not evidence, but
12:07 19 they're tools that they use to help you understand
12:07 20 their positions.

12:07 21 The State has the burden of proof in this trial.
12:07 22 It must prove beyond a reasonable doubt that the
12:08 23 defendant is guilty of the offense charged. If the
12:08 24 State fails to meet that burden, you must find the
12:08 25 defendant not guilty.

12:08 1 On the other hand, if the State does meet its
12:08 2 burden and proves its case beyond a reasonable doubt,
12:08 3 then you must find the defendant guilty.

12:08 4 The defendant is presumed innocent during the
12:08 5 trial and has no burden of proof in the trial. You're
12:08 6 going to hear more about this as the trial goes on, but
12:08 7 I'm going to give you a preliminary definition. A
12:08 8 reasonable doubt is a doubt that would cause a
12:08 9 reasonable person to hesitate to act.

12:08 10 Now, this is not an endurance contest. We will
12:08 11 take breaks as we go along. We're getting ready to
12:08 12 take our first big break. If you get in distress and
12:08 13 you need a break, let your bailiff know.

12:08 14 Like I told you a while ago, your clerk's staff is
12:08 15 here to help you. So if there's any issue that comes
12:09 16 up for which you need a break and there's something
12:09 17 happening that we need to know about, let the bailiff
12:09 18 know.

12:09 19 Now, I'm going to give you some instructions that
12:09 20 are very important so listen carefully to this. There
12:09 21 are three things that you are absolutely prohibited
12:09 22 from doing while you're serving as a juror in this
12:09 23 case.

12:09 24 The first is there should be no independent
12:09 25 investigation. Now, in this era of Internet access,

12:09 1 Wi-Fi, and smart phones and the technology available to
12:09 2 you, that's easy to do. But that is absolutely
12:09 3 prohibited. You are not to look up the facts of the
12:09 4 case or the law. Do not consult with media about the
12:09 5 facts of this case.

12:09 6 You're not allowed to take notes during the
12:09 7 proceedings. Now, the reason for that is some people
12:09 8 are good note-takers and others are not good
12:09 9 note-takers. Your deliberations at the end of the
12:09 10 trial should not turn into a contest between those who
12:10 11 take good notes and those who do not.

12:10 12 Also, during the course of a trial, the demeanor
12:10 13 of a witness may be an important factor for you to
12:10 14 consider, and if your head is buried in a notepad, you
12:10 15 may miss something that's important during a trial. So
12:10 16 that's why you're not allowed to take notes.

12:10 17 The second thing you are prohibited from doing is
12:10 18 deliberating. Now, deliberating means talking about
12:10 19 the case amongst yourselves. When you're at lunch or
12:10 20 you're in the jury room during a break, you can talk
12:10 21 about anything that you want to talk about except this
12:10 22 case. You may not deliberate until the end when I
12:10 23 instruct you to begin your deliberations.

12:10 24 The last thing that you cannot do, and I've
12:10 25 already mentioned this in the preliminary questions,

12:10 1 and that is have any interaction or talk to third
12:10 2 parties about the case. So like I said, these
12:10 3 attorneys, they're going to go the other way if they
12:11 4 run into you in the parking lot or the lobby. And
12:11 5 they're not trying to be rude, they just know they
12:11 6 can't have contact with you. If you run into witnesses
12:11 7 or people that may be called in the case, you can't
12:11 8 have any interaction with them.

12:11 9 Now, this also applies to third parties. And this
12:11 10 is the hard thing because you're going to go home.
12:11 11 Your family is going to want to know, what are you
12:11 12 doing up here? What's this case about? Believe me, I
12:11 13 get questioned when I go home, too. But you have to
12:11 14 tell them the judge said you can't talk about it. So
12:11 15 you can't have conversations with third parties.

12:11 16 Again, do not consult media. There are media
12:11 17 here. They're doing their job. They're reporting the
12:11 18 news. It's a good idea for you serving as a juror not
12:11 19 to look at the paper and not to look at the television
12:11 20 broadcasts or listen to the radio news while you're
12:11 21 serving as a juror because I'm going to ask you that
12:11 22 question tomorrow. I'm going to ask you all of these
12:11 23 things when you come back to court, so it's very
12:12 24 important you keep those instructions in mind.

12:12 25 Now, a couple of last things before I send you

12:12 1 out. For the first thing I'm going to ask of you, and
12:12 2 that is these attorneys are going to present their
12:12 3 cases. Sometimes they object. One attorney asks a
12:12 4 question or one attorney wants to put in a piece of
12:12 5 evidence that the other attorney objects to. The fact
12:12 6 that I rule one way or the other should not be
12:12 7 interpreted that I favor one side or the other. My job
12:12 8 is simply to ensure that each side, both the State and
12:12 9 the defendant, receive a fair trial. And with that
12:12 10 said, sometimes I have to send you out of the jury
12:12 11 room. And that's not to hide things from you, but it's
12:12 12 to ensure that each side receives a fair trial. This
12:12 13 is their only day in court so it's very important that
12:12 14 each side has a fair opportunity to present their case.

12:12 15 So your first order of business, and this
12:12 16 hopefully won't take very long, but I'm going to send
12:13 17 you to the jury room right now, and I want you to elect
12:13 18 a foreperson. This will be the presiding juror over
12:13 19 your deliberations at the end. This will also be the
12:13 20 juror who communicates with the court if there's some
12:13 21 issue that needs to be addressed. You will need to
12:13 22 send a written note through the bailiff to the court,
12:13 23 and the foreperson will be the one to send that note.

12:13 24 So, Mr. Bailiff, if you will take our jury to the
12:13 25 jury room. When you have elected the foreperson, knock

12:13 1 on the door, write his name down or her name down on a
12:13 2 sheet of paper, and send that back.

12:13 3 (WHEREUPON, the jury exited open court at
12:13 4 12:13 p.m.)

12:13 5 THE COURT: All right. Any exceptions to my
12:13 6 preliminary instructions from the State?

12:13 7 MR. WAGNER: No, sir.

12:13 8 THE COURT: Any exceptions to my preliminary
12:14 9 instructions from the defense?

12:14 10 MR. COLE: No, your Honor.

12:14 11 THE COURT: All right. We'll be in recess just
12:14 12 for a minute while they elect a foreperson. And then
12:14 13 what I'm going to do is send them home for the day.
12:14 14 We'll break for lunch, come back, and I understand
12:14 15 there is a number of motions that the defense has, and
12:14 16 we'll do those motions right after lunch. Okay?

12:14 17 We'll be in recess.

12:14 18 MR. COLE: Thank you, Your Honor.

12:14 19 (WHEREUPON, a recess was taken from 12:14 p.m. to
12:19 20 12:19 p.m.)

12:19 21 THE COURT: All right. Juror number 170 has been
12:20 22 elected as the foreperson.

12:20 23 So let's make this a court's exhibit.

12:20 24 (WHEREUPON, the jury entered open court at
12:21 25 12:20 p.m.)

12:21 1 THE COURT: All right. Ladies and gentlemen of
12:21 2 the jury, you have selected your foreperson.

12:21 3 Mr. Foreman, you will sit where you're seated
12:21 4 right now in that front row.

12:21 5 THE FOREPERSON: Yes, sir.

12:21 6 THE COURT: I'm just going to give you a roadmap
12:21 7 of what we're doing for the rest of the trial. We're
12:21 8 going to break today. There's some legal matters that
12:21 9 need to be taken up this afternoon. So I'm sending you
12:21 10 home now.

12:21 11 You will report in the morning. We will convene
12:21 12 the trial at 9:30 tomorrow morning. So remember my
12:21 13 instructions because, again, I have to ask you about
12:21 14 that in the morning.

12:21 15 So I hope everyone has a good evening. We'll see
12:21 16 you in the morning at 9:30. Come to the jury room
12:21 17 where you just were.

12:21 18 (WHEREUPON, the jury exited open court at
12:22 19 12:21 p.m.)

12:22 20 THE COURT: All right. Anything before we break
12:22 21 for lunch?

12:22 22 MR. WAGNER: Not from the State, Judge.

12:22 23 MR. COLE: No, your Honor.

12:22 24 THE COURT: All right. We will do the defense
12:22 25 motions at 2 o'clock. We'll be in recess.

12:22 1 MR. COLE: Thank you, Judge.

12:22 2 (Lunch recess taken from 12:22 p.m. to 2:05 p.m.)

02:05 3 THE COURT: Let's go on the record.

02:05 4 Mr. Cole, I believe you have some motions.

02:05 5 MR. COLE: Yes, Your Honor. May it please the

02:05 6 court. I want to move -- make a motion in limine on

02:05 7 several of the alleged victim, Catherine Cook's,

02:06 8 out-of-court statements, and I'm going to go off of --

02:06 9 we have this annotated list that the solicitor and I

02:06 10 prepared -- I prepared part of it and she prepared the

02:06 11 notes to it.

02:06 12 Does the court still have a copy?

02:06 13 THE COURT: Yes, sir. I have the copy that you

02:06 14 and the solicitor provided to me which has the speaker,

02:06 15 the recipient, the statement, the discovery location,

02:06 16 and then the State's reply to your motion on each

02:06 17 statement.

02:06 18 MR. COLE: Yes, Your Honor.

02:06 19 THE COURT: If you would like to make that an

02:06 20 exhibit.

02:06 21 MR. COLE: Yes, Your Honor. I believe the State

02:06 22 will stipulate to that, that we can make that an

02:06 23 exhibit.

02:06 24 THE COURT: Make that a court's exhibit.

02:06 25 MR. WAGNER: Yes, Your Honor.

02:06 1 THE COURT: Let's do that so then we can deal with
02:06 2 each one of these statements individually.

02:06 3 MR. COLE: All right. Thank you, Your Honor.

02:06 4 (Court's exhibit marked.)

02:06 5 MR. COLE: The first statement is a statement from
02:07 6 Catherine Cook to Brandy Towe, Haleigh Zinker that, "He
02:07 7 done this to me. He blew me up."

02:07 8 And, Your Honor, we would object to the
02:07 9 introduction of that statement. I believe the State
02:07 10 is -- will try to introduce that statement as an
02:07 11 excited utterance.

02:07 12 However, Your Honor, we believe in this case that
02:07 13 it would not qualify as an excited utterance based on
02:07 14 it was answers to questions that these EMS officials
02:07 15 asked the victim.

02:07 16 I have some case law, Your Honor, and I'd be happy
02:07 17 to pass that up, that *State vs. Washington*, where in
02:07 18 that case, it's a little bit different than this
02:07 19 situation. That case found that there was -- that the
02:07 20 excited utterance exception did not apply to a formal
02:07 21 police interview. However, I think there's several
02:07 22 lines in this case that support that it needs to be a
02:08 23 volunteered statement, it needs to be a spontaneous
02:08 24 statement to qualify under the excited utterance
02:08 25 exception.

02:08 1 In that case it says that these statements were
02:08 2 made in response to the officers' questions. None of
02:08 3 the statements were independent assertions or
02:08 4 exclamations regarding the events. And also in *State*
02:08 5 *v. Washington*, it says that -- it distinguishes the
02:08 6 statements in that case from what it would -- what the
02:08 7 court considered to be genuine excited utterances which
02:08 8 were fundamentally different from off-the-cuff
02:08 9 volunteered responses.

02:08 10 So I feel like in this situation these were not
02:08 11 off-the-cuff volunteered responses. These were
02:08 12 responses to the EMS's questions. So I think it would
02:08 13 meet certainly the normal requirements of excited
02:08 14 utterance being a -- being in a state of stress and
02:09 15 responding to that stress. We're not contesting that.
02:09 16 But I think this extra element that *State v. Washington*
02:09 17 introduces on that, that it has to be volunteered, it
02:09 18 has to be spontaneous. And in this situation it was
02:09 19 not. So that's kind of the first reason why I think
02:09 20 this should be excluded.

02:09 21 Also, Your Honor, we, in this kind of situation,
02:09 22 we believe -- I think there's some confrontation clause
02:09 23 issues in this situation because we believe, based on
02:09 24 the discovery, that the victim plans to testify, and
02:09 25 when she testifies, that she's going to testify that

02:09 1 she does not remember making these statements. So that
02:09 2 is going to make her, basically, unavailable to testify
02:09 3 as to these statements.

02:09 4 We can't -- normally, if she was going to come up,
02:09 5 the confrontation clause, we could cross-examine her on
02:09 6 these statements. I can cross-examine her on these
02:09 7 statements, but she's going to say she doesn't
02:10 8 remember. So I think that prejudices my client as far
02:10 9 as his confrontation clause rights as well.

02:10 10 Also, Your Honor, I believe the State is going to
02:10 11 try to say that this was a statement regarding medical
02:10 12 treatment. I don't think them saying -- her stating,
02:10 13 "He did this to me," has anything to do with her
02:10 14 medical treatment.

02:10 15 I do have a case, Your Honor, *State vs. Brown*,
02:10 16 where it says the perpetrator's identity would rarely,
02:10 17 if ever, be a factor which the doctor relied on in
02:10 18 diagnosing or treating the victim. This is not a
02:10 19 doctor, but they are medical professionals, EMS. So
02:10 20 the identity of who did this to her would not be used
02:10 21 in their treatment, so I don't think it's proper under
02:10 22 that exception as well.

02:10 23 Finally, I think the State has cited dying
02:10 24 declaration. I don't think that's appropriate in this
02:10 25 case because the alleged victim, thankfully, is alive,

02:10 1 and she is available to testify, and so that the dying
02:10 2 declaration exception would not apply.

02:11 3 THE COURT: Do you have copies of the case law
02:11 4 that you cited?

02:11 5 MR. COLE: Yes, Your Honor.

02:12 6 THE COURT: All right. Ms. Simmons.

02:12 7 MS. SIMMONS: Your Honor, the State does believe
02:12 8 that this statement and this next several statements
02:12 9 that we'll be discussing does qualify as an excited
02:12 10 utterance under 803(b)(2), Your Honor.

02:12 11 The excited utterance, the whole thing is it
02:12 12 suspends the witness' reflective thought process, Your
02:12 13 Honor. And there's four cases in South Carolina that I
02:12 14 think are precisely on point, Your Honor, and I will
02:13 15 pass copies of those up.

02:13 16 Specifically, I would bring your attention to
02:13 17 *State v. McLean*, 544 S.E.2nd 530. This victim was
02:13 18 specifically questioned by physicians treating her.
02:13 19 And her response to their specific questions, she
02:13 20 identified her attacker. This was approximately
02:13 21 40 minutes -- 40 minutes of questioning at the
02:13 22 hospital, and the victim did eventually die. And this
02:13 23 was admitted as a dying declaration as well as an
02:13 24 excited utterance. And that was in response to
02:13 25 specific questions.

02:13 1 Your Honor, it's a three-prong test. The
02:13 2 statement must relate to a startling event or
02:13 3 condition. The statement must have been made while the
02:13 4 declarant was under the stress of the event. And the
02:13 5 stress of the excitement must be caused by a startling
02:13 6 event or condition.

02:13 7 At this point in time, the victim had been burned
02:13 8 over 60 percent of her body. She made these statements
02:13 9 at the scene when she was actually either laying on the
02:13 10 sidewalk in front of the adjoining residence or in the
02:13 11 ambulance. She's making these to first responders and
02:13 12 law enforcement.

02:14 13 Your Honor, the call records reflect that the call
02:14 14 went out at 2246, and law enforcement, first
02:14 15 responders, and fire were on scene at 2252. So the
02:14 16 bulk of these statements were made shortly thereafter
02:14 17 and the flight departed at 2339. So all of the
02:14 18 statements at the scene in the ambulance are less than
02:14 19 an hour after the actual event.

02:14 20 Your Honor, we would bring your attention also to
02:14 21 *State vs. Blackburn*, 247 S.E.2nd 334, *State vs.*
02:14 22 *Burdette*, 515 S.E.2nd 525, and *State vs. Sims*, 558
02:14 23 S.E.2nd 518.

02:14 24 THE COURT: If you could hand up copies of those,
02:14 25 I'd appreciate it.

02:14 1 MS. SIMMONS: Yes, sir.

02:15 2 Your Honor, I do not believe whether these
02:15 3 statements were responsive to questioning is relevant
02:15 4 in the analysis of an excited utterance.

02:15 5 In the alternative, we would argue that the
02:15 6 statements were made for purposes of medical diagnosis,
02:15 7 Your Honor. The victim was questioned by the first
02:15 8 responders regarding her injuries so they would know
02:15 9 what had happened to her and how they could best treat
02:15 10 her.

02:15 11 And, Judge, we also would say under South Carolina
02:15 12 Rules of Evidence 804(b)(2) that these statements were
02:15 13 made under the fear of impending death, Your Honor.
02:15 14 And I would refer you back to the *McHoney* case on that
02:15 15 as well.

02:15 16 The victim here is available to testify; however,
02:15 17 she will testify that she does not recall the
02:15 18 statements, thus making the dying declaration evidence
02:15 19 rule available to us.

02:16 20 I do not believe there is a confrontation clause
02:16 21 issue because the recipient of the statement, all of
02:16 22 those witnesses will testify, and they're available for
02:16 23 cross-examination.

02:16 24 THE COURT: All right. So, Mr. Cole, this first
02:16 25 statement that you handed up the case law on, this is

02:16 1 to the recipient Brandy Towe and Haleigh Zinker, EMS
02:16 2 responders?

02:16 3 MR. COLE: Yes, Your Honor.

02:16 4 THE COURT: Your argument is referring also to the
02:16 5 Harley Chapman statement.

02:16 6 MR. COLE: Yes, Your Honor. This would refer also
02:16 7 to the Harley Chapman statement and also on down to
02:16 8 statements to firefighters that is on the second page.

02:16 9 THE COURT: Looks like there is a statement to
02:17 10 Corporal Owens of the Oconee County Sheriff's Office
02:17 11 and then Isaac Lewis and Carissa Bettes, firefighters.

02:17 12 MS. SIMMONS: Your Honor, I do believe that this
02:17 13 case law analysis would apply to the first four
02:17 14 statements.

02:17 15 MR. COLE: Yes, Your Honor, I agree.

02:17 16 THE COURT: What I'm trying to put my finger on,
02:17 17 all of these statements were made at the scene; is that
02:17 18 correct, all four of these?

02:17 19 MS. SIMMONS: Yes, Your Honor. The first
02:17 20 responder that worked with her was Brandy Towe. She
02:17 21 was subsequently assisted by Firefighter Isaac Lewis.
02:17 22 Corporal Owens was on scene pretty much
02:17 23 contemporaneously with that. He arrived in less than
02:17 24 ten minutes, and Harley Chapman drove the ambulance to
02:17 25 meet the Life Flight.

02:17 1 THE COURT: Okay.

02:17 2 MR. COLE: And I would agree with that, Your
02:17 3 Honor, that these first four statements would basically
02:17 4 be the same argument. And if I could briefly respond
02:17 5 to the State, Your Honor.

02:17 6 THE COURT: Yes, sir.

02:17 7 MR. COLE: I believe -- I agree with the State's
02:17 8 analysis of what the three-prong test for the excited
02:18 9 utterance. However, *State vs. Washington* was decided
02:18 10 after all of these other cases that have been cited.
02:18 11 And to my reading of *State vs. Washington* is that it
02:18 12 modifies that test slightly, Your Honor, because the
02:18 13 court says this is the test, these are the three --
02:18 14 these are the three rules for the test. But then the
02:18 15 following paragraph, it says, "But this does not
02:18 16 qualify as an excited utterance because it was in
02:18 17 response to police questioning during a formal
02:18 18 interview."

02:18 19 So I believe that this case requires a trial court
02:18 20 to consider the spontaneousness of a response in that
02:18 21 analysis of an excited utterance. And I believe that's
02:18 22 what -- in all of these statements, that they were in
02:18 23 response to questions. They were not -- she didn't
02:18 24 just volunteer the information.

02:18 25 And also, Your Honor, as to the dying declaration,

02:18 1 I do believe that it would only apply in a case where
02:19 2 the victim actually died. And also I believe the rules
02:19 3 say that it was only applicable in a homicide case or
02:19 4 in a civil matter, and this is not a homicide case. So
02:19 5 I think the only way the State could get it in would be
02:19 6 under the excited utterance.

02:19 7 I don't believe -- and also the same goes for the
02:19 8 medical treatment. I believe that that -- that what --
02:19 9 who, you know, she's identifying that who did that to
02:19 10 her has nothing to do with the treatment. What was
02:19 11 done to her certainly would, but who did it to her
02:19 12 would not.

02:19 13 MS. SIMMONS: Your Honor --

02:19 14 THE COURT: Mr. Cole, in reading the case you
02:19 15 handed up, *State vs. Washington* -- and, Ms. Simmons,
02:19 16 the court is aware of the cases that you handed up.

02:19 17 I think under the test, clearly the event that's
02:19 18 the center of this case was a startling event. How
02:19 19 that event came about is the crux of this trial. But,
02:20 20 clearly, that is a startling event, for a person to
02:20 21 receive burns.

02:20 22 The second prong of the test, at the scene shortly
02:20 23 after the burns were received. To the court's view,
02:20 24 that's clearly under the stress and excitement. And
02:20 25 the startling event would have been what caused the

02:20 1 excitement. So I think it comes in under excited
02:20 2 utterance.

02:20 3 Now, Mr. Cole, I will point out in *State vs.*
02:20 4 *Washington*, prompted responses are just one part of the
02:20 5 test that the court has set forth. It sets forth also
02:20 6 emotional and inherent responses under that same test.
02:20 7 So I don't think it changes the law. I just think the
02:20 8 facts of that case are fundamentally different than the
02:20 9 facts that have been put forth to the court in this
02:20 10 case. This is -- the *State vs. Washington* is a
02:20 11 situation where the declarant was taken or went to the
02:21 12 police station sometime after the event so the excited
02:21 13 utterance did not apply.

02:21 14 So I'm going to deny your motion on those four
02:21 15 statements.

02:21 16 Let's move on to the next one.

02:21 17 MR. COLE: Thank you, Your Honor. The next
02:21 18 statement that I'm going to object to, Your Honor --
02:21 19 let me make sure I get the page right -- it's on the
02:21 20 fourth page, Your Honor. There is a statement that was
02:21 21 made May 17th, 2014 --

02:21 22 THE COURT: Okay.

02:21 23 MR. COLE: -- from Catherine Cook to Allison
02:21 24 Dukes, the nurse at Augusta hospital. And under that
02:21 25 statement, she answers some questions to the nurse.

02:21 1 Now, this was after the event. That was on the
02:21 2 14th, so this was -- I'm sorry, on the 17th, so it
02:22 3 was -- and then the State admits this was after she
02:22 4 woke up from her initial unconsciousness due to the
02:22 5 matter.

02:22 6 And I believe, Your Honor, that so much time has
02:22 7 passed that the stress of the event would no longer be
02:22 8 the cause for the excited utterance. I think at this
02:22 9 point she's clearly responding to prompts and questions
02:22 10 of the nurse, and that it had been, just using the
02:22 11 three-prong test, that the statement, she would not
02:22 12 still be under the stress of the event at this point.

02:22 13 Certainly she was still -- I imagine she still
02:22 14 would have been in pain, she would have still been
02:22 15 enduring a lot of stress, but the initial stress of the
02:22 16 event that caused the excited utterance would have
02:22 17 dissipated at this point because you're in a different
02:22 18 place, it's a different time, and I believe enough time
02:23 19 had passed.

02:23 20 Also, Your Honor, I don't believe this can come in
02:23 21 under the medical exception either because these are,
02:23 22 again, statements that are not -- there's nothing in
02:23 23 these statements that are used to diagnose her. These
02:23 24 are statements used -- that are -- basically the State
02:23 25 is putting these statements in to identify who

02:23 1 allegedly did this to her. And I think the case law is
02:23 2 clear that that is not relevant as far as medical
02:23 3 diagnosis is concerned.

02:23 4 THE COURT: Thank you, Mr. Cole.

02:23 5 Ms. Simmons.

02:23 6 MS. SIMMONS: Your Honor, due to the fact that the
02:23 7 excited utterance was made, in this case the next day,
02:23 8 probably in the 12-hour range from the event, the mere
02:23 9 fact that that statement was made sometime after the
02:23 10 incident does not disqualify as an excited utterance as
02:23 11 long as the circumstances indicate its reliability.
02:23 12 And that's *Blackburn* that I've already handed up, 247
02:23 13 S.E.2d 334. That was a statement after 11 hours.

02:24 14 Nurse Dukes' statement actually says that, "When
02:24 15 Katie woke up, we began to question Katie, and she
02:24 16 correctly wrote down her parents' name and phone number
02:24 17 so they can be contacted. We questioned about the
02:24 18 events leading up to the accident. She answered
02:24 19 various questions." And, Your Honor, specifically,
02:24 20 "She was asked to write down her boyfriend/husband's
02:24 21 name so we would know not to let him in the unit."

02:24 22 Judge, I believe this is an excited utterance
02:24 23 still because she's under the stress of the event.
02:24 24 She's just woken up from being sedated. She's in the
02:24 25 Augusta burn center. Burns are covering her body.

02:24 1 This is the first statement she's given.

02:24 2 Your Honor, I also believe it is a statement for
02:24 3 the purpose of medical diagnosis because Ms. Dukes
02:24 4 specifically says and will testify, "The reason we
02:24 5 inquire as to who did this is so we would not let her
02:24 6 husband in the burn unit." So as part of the treatment
02:24 7 protocol, they asked, "Who did this to you," so that
02:24 8 person would not have access. At this particular point
02:24 9 in time they didn't have an identification of the
02:25 10 defendant. They didn't know if he was in custody or
02:25 11 not.

02:25 12 And, Judge, I also still believe that this is a
02:25 13 statement under the belief of impending death. At this
02:25 14 time she was critical, Your Honor. She will testify
02:25 15 she does not have memories of what she told Ms. Dukes,
02:25 16 and Ms. Dukes will be available to testify.

02:25 17 Your Honor, I believe all three of those
02:25 18 exceptions apply to the statement made at the burn
02:25 19 center.

02:25 20 THE COURT: Mr. Cole, do you want to respond to
02:25 21 that?

02:25 22 MR. COLE: Briefly, Your Honor, I would just say
02:25 23 again that this is -- the trial court has to look, this
02:25 24 court has the authority to look at the totality of the
02:25 25 circumstances in an excited utterance analysis. And

02:25 1 under the totality of the circumstances in this case
02:25 2 with the time period that's passed, with it being
02:25 3 prompted, and with, you know, basically shaking the
02:25 4 head to yes or no questions, I think the justification
02:25 5 for excited utterance is that it is more reliable than
02:25 6 a regular hearsay statement. I think all of that also
02:26 7 goes to this, in this case shows that there is -- that
02:26 8 that reliability is decreased and so these should not
02:26 9 be entered.

02:26 10 As far as the medical diagnosis goes, Your Honor,
02:26 11 I don't believe that there is any indication that this
02:26 12 would be used for treatment. Just keeping someone out
02:26 13 of the hospital, that is a security issue, not a
02:26 14 treatment issue for the patient.

02:26 15 And, again, the same objections as far as the
02:26 16 dying declaration. This is not a homicide case, and
02:26 17 that the victim lived in this matter. And she's
02:26 18 available to testify.

02:26 19 THE COURT: Let me ask you this, Mr. Cole. Under
02:26 20 the *Blackburn* case, the court defined excited utterance
02:26 21 or reiterated the definition of excited utterance, and
02:26 22 the court said, "Generally accusatory utterances" -- in
02:26 23 this case it was a homicide victim -- "are admissible
02:26 24 as part of res gestae when they spring spontaneously
02:27 25 and instinctively from the stress of pain or

02:27 1 excitement."

02:27 2 Now, I want you to address Ms. Simmons' arguments
02:27 3 as the woman was still under pain because of the
02:27 4 severity of her injuries when she woke up.

02:27 5 What is your position on the time lapse and the
02:27 6 fact that she had just woken up or had pain issues?
02:27 7 Because this case gives that window for an excited
02:27 8 utterance to come in.

02:27 9 MR. COLE: Thank you, Your Honor. I believe that,
02:27 10 and I certainly believe that she would have been in
02:27 11 pain when she woke up. However, Your Honor, that pain
02:27 12 that goes along with the excitement, the stress of the
02:27 13 action, necessarily has to be some type of feeling,
02:27 14 pain, sorrow, something, some type of feeling along
02:27 15 with excitement to get to an excited utterance.

02:27 16 And I think in this situation, because she may
02:27 17 have still been in some pain, but enough time had
02:28 18 passed that the shock and excitement would have worn
02:28 19 off to the extent that this would no longer be an
02:28 20 excited utterance.

02:28 21 THE COURT: Okay. Are you arguing that she had
02:28 22 had the ability or the time to deliberate or think
02:28 23 about what she was going to say?

02:28 24 MR. COLE: Yes, Your Honor. I think that the time
02:28 25 passed, the time that had passed would have allowed her

02:28 1 to have that time to deliberate or think about it.

02:28 2 THE COURT: Okay.

02:28 3 Ms. Simmons, I'll give you --

02:28 4 MS. SIMMONS: Your Honor, I still believe
02:28 5 *Blackburn* applies, and I agree with the *res gestae*
02:28 6 analysis. She had not had sufficient time to reflect
02:28 7 on this, Your Honor. She woke up in the burn center,
02:28 8 like I said. This was the first time anybody had any
02:28 9 opportunity to talk to her. She nodded her head
02:28 10 responsive to questioning. She also was able to write
02:28 11 on like a pad of gauze the same things that she told
02:28 12 them as to who did it, her mom's phone number, and
02:29 13 things of that nature.

02:29 14 Your Honor, under the excited utterance and the
02:29 15 dying declaration, she doesn't have to actually have
02:29 16 been aware of the fact that she was on the verge of
02:29 17 dying, but the totality of the circumstances would
02:29 18 indicate that being a rational conclusion.

02:29 19 THE COURT: How many -- you may have mentioned
02:29 20 this earlier, but I wanted to make sure that I'm
02:29 21 accurate in my recollection of what you said. Did you
02:29 22 say this happened 12 hours after the incident?

02:29 23 MS. SIMMONS: Judge, the incident would have
02:29 24 happened slightly before midnight. But -- they were
02:29 25 dispatched at 2246. The nurse will testify that she

02:29 1 came on at 7:00 a.m. and that these statements were
02:29 2 made shortly after that.

02:29 3 The victim's mom received notice of the injuries,
02:29 4 based on what the victim provided, slightly after 7:00.
02:29 5 So we are looking at probably nine, ten hours after the
02:30 6 incident.

02:30 7 THE COURT: And was the declarant sedated during
02:30 8 that time?

02:30 9 MS. SIMMONS: She was sedated when they left the
02:30 10 scene at the hospital -- I mean when they left the
02:30 11 scene in Seneca. She was sedated for the entire life
02:30 12 flight, put through the emergency room protocol, and
02:30 13 the nurse's statement says that, "When she woke up, we
02:30 14 began to question her." That was the first opportunity
02:30 15 that they had to get responses -- have a conversation
02:30 16 with her. They actually were surprised that she was as
02:30 17 alert as she was at that particular juncture.

02:30 18 THE COURT: Okay. I'm looking -- and, Mr. Cole,
02:30 19 I'm looking at the case law, and the whole rationale of
02:30 20 the test is to ensure that the declarant did not have
02:30 21 time to deliberate. And I think the language used by
02:31 22 the *Blackburn* case is, that the statement is -- the
02:31 23 exact language is, "Made soon enough after the act to
02:31 24 preclude deliberation." And the facts that are being
02:31 25 given to me on the joint exhibit and what's being told

02:31 1 to me is this lady was sedated and this was her first
02:31 2 response. So I'm going to deny your motion on that,
02:31 3 but it's noted for the record.

02:31 4 MR. COLE: Thank you, Your Honor. And those are
02:31 5 all the objections I had to the out-of-court statements
02:31 6 for purposes of this motion in limine.

02:31 7 THE COURT: Okay. Do you have any other issues?

02:31 8 MR. COLE: Yes, Your Honor. I do have another
02:31 9 motion -- really two motions, but they are connected,
02:31 10 regarding the indictments in this case.

02:31 11 I would move, Your Honor, first to dismiss the
02:31 12 charge of CDVHAN in this case because I believe,
02:32 13 looking at it under the totality of the circumstances,
02:32 14 that it does merge with the charge of attempted murder.

02:32 15 Now, I have researched and not been able -- this
02:32 16 may be an issue of first impression. I haven't been
02:32 17 able to find much on this issue. However, by statute,
02:32 18 as the court knows, ABHAN is a lesser included offense
02:32 19 of attempted murder.

02:32 20 In this situation, CDVHAN, the only additional
02:32 21 element to CDVHAN is that it would be a person of the
02:32 22 protected class, a family member, that the assault was
02:32 23 committed on.

02:32 24 And also with attempted murder is a specific
02:32 25 intent crime. So in this case the State would have to

02:32 1 prove that he specifically intended to kill the victim.

02:32 2 The victim is the person who is the person who is being

02:33 3 alleged as part of the protected class in the CDVHAN.

02:33 4 So I think in this situation, when you look at it, even

02:33 5 though it appears there is an additional element, I

02:33 6 believe that there's not really an additional element

02:33 7 in the CDVHAN charge under the old statute, and that it

02:33 8 would be a lesser included offense of attempted murder.

02:33 9 So I think that it would be -- the merger doctrine

02:33 10 would apply in this situation so I would ask for the

02:33 11 charge of CDVHAN to be dismissed.

02:33 12 THE COURT: Do you have any case law that says

02:33 13 that domestic violence under the old CDV statute or

02:33 14 even the new domestic violence statute is a lesser

02:33 15 included offense of murder, attempted murder, or

02:33 16 assault and battery first or any other offense?

02:33 17 MR. COLE: No, your Honor. I don't have any case

02:33 18 law determining that. Like I say, I do believe this

02:33 19 may be kind of a novel issue.

02:34 20 But I would say that in this case, I believe that

02:34 21 by reason and looking at the statutes, that it should

02:34 22 merge.

02:34 23 THE COURT: Well, as you're aware, the *Merrick vs.*

02:34 24 *State* opinion back in the early '90s defined a lesser

02:34 25 included offense of having a test of whether the

02:34 1 offenses include all of the same elements.

02:34 2 Now, clearly in this case, there is an element to
02:34 3 the CDV high and aggravated that's not present in the
02:34 4 attempted murder charge. So are you arguing that that
02:34 5 doesn't matter? How do you reconcile the fact that the
02:34 6 CDVHAN charge has an element that is not present in the
02:34 7 attempted murder charge?

02:34 8 MR. COLE: Your Honor, I believe in this case,
02:34 9 under these set of circumstances, that the element is
02:34 10 present in the attempted murder charge because I
02:34 11 believe in the attempted murder charge in this case
02:35 12 that the State has to prove that my client specifically
02:35 13 intended to kill the victim.

02:35 14 Under the CDV, the extra element is the victim,
02:35 15 basically, the identity of the victim as being a member
02:35 16 of the protected class. So I think in this case,
02:35 17 because the CDV has to be a family member, member of
02:35 18 the protected class, in this case the victim, then also
02:35 19 the attempted murder, the person that they have to
02:35 20 prove that he attempted to murder, had the specific
02:35 21 intent to murder was the victim, then I believe the
02:35 22 elements actually do match up that every element of the
02:35 23 attempted murder would also be an element of CDVHAN in
02:35 24 this case.

02:35 25 THE COURT: All right.

02:35 1 Ms. Simmons.

02:35 2 MS. SIMMONS: Yes, Your Honor. Attempted murder
02:35 3 doesn't require the victim be a household member.
02:35 4 Judge, I have three cases for you: *State vs. Burton*,
02:35 5 589 S.E.2nd 6; *State vs. Parker*, 543 S.E.2d 255; and
02:36 6 *State vs. Watson*, 563 S.E.2d 336.

02:36 7 Your Honor, they discuss specifically what you
02:36 8 just mentioned about an element being different in the
02:36 9 lesser included.

02:36 10 Your Honor, the *Burton* case specifically says, "An
02:36 11 offense is a lesser included offense of another if the
02:36 12 greater of the two offenses includes all the elements
02:36 13 of the lesser offense." Obviously, the attempted
02:36 14 murder does not include the element of a household
02:36 15 member, and that is the basis of separate charge.

02:36 16 THE COURT: These cases are -- my understanding of
02:36 17 what the law is, the CDV high and aggravated nature has
02:36 18 an element that is not present in the attempted murder
02:37 19 charge. And as Ms. Simmons correctly stated, the test
02:37 20 is whether the greater of the two offenses includes all
02:37 21 of the elements of the lesser offense. That's been the
02:37 22 long-standing law. And, clearly, the attempted murder
02:37 23 charge does not have the household member element
02:37 24 that's present in the CDV high and aggravated.

02:37 25 So, Mr. Cole, I'm going to deny your motion on

02:37 1 that on that basis.

02:37 2 MR. COLE: Thank you, Your Honor.

02:37 3 And the final motion, Your Honor, is regarding the
02:37 4 arson and the malicious injury to real property. In a
02:37 5 similar manner, I would move to dismiss the malicious
02:37 6 injury to real property charge because I believe the
02:37 7 arson second degree, that basically under the same
02:37 8 analysis, for the jury to convict my client of arson
02:37 9 second degree, they would necessarily have to convict
02:37 10 him of malicious injury to real property because the
02:38 11 elements of arson second degree are that my client
02:38 12 would have burned or aided or caused to be burned a
02:38 13 building, and then second degree is a dwelling.

02:38 14 So under malicious injury to real property, it
02:38 15 would be they have to injure or damage some real
02:38 16 property. So I believe it would -- Your Honor, it
02:38 17 would merge together because it would contain the
02:38 18 higher charge, the arson charge, would contain all the
02:38 19 elements of the malicious injury to real property.

02:38 20 THE COURT: Ms. Simmons.

02:38 21 MS. SIMMONS: Judge, the arson victim, the arson
02:38 22 charges, he set a fire to a dwelling that injured the
02:38 23 victim. The victim in that case is going to be Katie
02:38 24 Cook. The malicious injury to property victim is going
02:38 25 to be Golden Corner Realty, separate victims, in order

02:38 1 to satisfy the statute. The malicious injury to
02:38 2 property statute also requires a specific dollar
02:39 3 amount. In this case 2 to \$10,000. I believe the
02:39 4 elements are different.

02:39 5 THE COURT: All right. Mr. Cole, I'm going to
02:39 6 deny your motion on the same grounds.

02:39 7 MR. COLE: Thank you, Your Honor.

02:39 8 Those are all the motions in limine, pretrial
02:39 9 motions that defense has at this time.

02:39 10 THE COURT: All right.

02:39 11 MR. COLE: Your Honor, I apologize. There is one
02:39 12 other motion that I will go ahead and put on the record
02:39 13 now if that pleases the court.

02:39 14 THE COURT: Yes, sir.

02:39 15 MR. COLE: The State does plan to introduce some
02:39 16 photographs in this case of the victim, specifically of
02:39 17 her injuries. And I would move at this time for those
02:39 18 to be excluded based on a Rule 403 analysis that any
02:39 19 probative value that these photographs would give to
02:39 20 the jury would be highly prejudicial to my client, and
02:40 21 the prejudice would outweigh any probative value.

02:40 22 These are very graphic pictures of the injuries
02:40 23 that the victim suffered. And I believe that it
02:40 24 would -- the graphic nature of these pictures would
02:40 25 just be prejudicial especially in this case where there

02:40 1 is so much other testimony that is going to come from
02:40 2 healthcare workers, doctors, nurses that will show the
02:40 3 injuries to the victim. And so that would -- I believe
02:40 4 in this case, Your Honor, that the prejudice would
02:40 5 outweigh the probative value for these photographs.

02:40 6 THE COURT: Thank you, Mr. Cole.

02:40 7 Yes, ma'am.

02:40 8 MS. SIMMONS: Your Honor, I have three cases for
02:40 9 you regarding the admissibility of photographs: *State*
02:40 10 *vs. Torres*, 703 S.E.2d 226; *State vs. Martucci*, 669
02:40 11 S.E.2d 598; and *State v. Collins*, 763 S.E.2d 22.

02:40 12 And, Your Honor, in *Torres*, autopsy photos of the
02:41 13 victim were admissible. And in *Martucci*, autopsy
02:41 14 photographs of a child's internal organs were
02:41 15 admissible. And in *State vs. Collins* from 2014,
02:41 16 autopsy photographs of the victim who had been mauled
02:41 17 by dogs were admitted, and the supreme court said that
02:41 18 was not an abuse of discretion by the trial court.

02:41 19 Your Honor, these pictures are imperative for the
02:41 20 State's prosecution to show where the injuries
02:41 21 occurred, as we have to prove intent. And, obviously,
02:41 22 the defense is asserting this is an accident. In order
02:41 23 for a medical professional and the jury to understand
02:41 24 the nature of the injuries, these photographs are
02:41 25 essential. And, Your Honor, I have picked some of the

02:41 1 least offensive photographs. There are far worse ones
02:41 2 than this.

02:41 3 Judge, they are the photographs that were
02:41 4 previously reviewed in chambers.

02:41 5 THE COURT: All right. I will note that I had a
02:42 6 pretrial conference with the attorneys and viewed the
02:42 7 photographs in question. I find they do have probative
02:42 8 value that makes them admissible.

02:42 9 So I'm going to deny your motion on that,
02:42 10 Mr. Cole.

02:42 11 MR. COLE: Thank you, Your Honor.

02:42 12 And I think that is all the motions I have at this
02:42 13 time.

02:42 14 THE COURT: Thank you. Anything before we go into
02:42 15 recess?

02:42 16 MS. SIMMONS: No, your Honor. Mr. Cole and I have
02:42 17 agreed to meet immediately after this and go ahead and
02:42 18 premark all the exhibits to expedite things tomorrow.

02:42 19 THE COURT: That's what I was going to suggest,
02:42 20 that the attorneys get together and mark the exhibits
02:42 21 so we can move in an orderly fashion when we commence
02:42 22 tomorrow.

02:42 23 MS. SIMMONS: Thank you, Judge.

02:42 24 THE COURT: We'll go into recess.

02:42 25 MR. COLE: Thank you, Your Honor.

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(WHEREUPON, proceedings adjourned at 2:42 p.m.)

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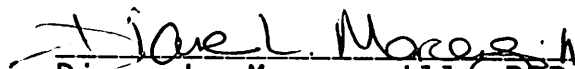
Certificate of Reporter

I, Diane L. Marcengill, Official Court Reporter for the Tenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of a portion of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Circuit Court for Oconee County, South Carolina, on the 17th day of October 2016.

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I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

March 5, 2017



Diane L. Marcengill, CRR, CRR
Circuit Court Reporter
Certified Realtime Reporter

1 State of South Carolina
In the Court of General Sessions
2 County of Oconee

3
4 State of South Carolina)
5) 2014-GS-37-00742, 743
6 -vs-) 2015-GS-37-00441, 442
7 Jacob Daniel Drotning,) October 18, 2016
8 Defendant.) Volume 2 of 4
9 -----) Pages 98 - 215
) Transcript of Record

10
11 B E F O R E:

12 The Honorable R. Scott Sprouse, Judge;
13 and a jury.

14
15 A P P E A R A N C E S:

16 David R. Wagner, Jr., Esquire
17 Lindsey Satterfield Simmons, Esquire
Attorneys for the State

18 Gregory Lee Cole, Jr., Esquire
Attorney for Defendant

19
20
21
22 Diane L. Marcengill, RPR, CRR
23 Circuit Court Reporter
24 Certified Realtime Reporter
25

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1 E x h i b i t s

2 For the State:

3	Marked	Description	Identified	Admitted
4	1	Photo		132
	2	Photo		133
	3	Photo		133
5	4	Photo		188
	11	Photo		117
6	36	Photo		117
	37	Photo		117
7	47	Photo		116
	105	Red gas can		205
8	106	Broken piece of lighter		206
	107	Closet door		207

9
10 For the Defendant:

11	Marked	Description	Identified	Admitted
12		None offered.		

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1 (WHEREUPON, court convened with all parties
2 present and the following proceedings were had
09:51 3 commencing at 9:32 a.m.)

09:51 4 THE COURT: Anything before we bring our jury in?

09:51 5 MR. WAGNER: No, sir.

09:51 6 MR. COLE: No, your Honor.

09:51 7 THE COURT: Okay. All right.

09:51 8 Mr. Bailiff, if you will get our jury for us,
09:51 9 please.

09:52 10 (WHEREUPON, the jury entered open court at
09:52 11 9:52 a.m.)

09:52 12 THE COURT: All right. Good morning, ladies and
09:52 13 gentlemen. I hope everyone had a good evening. We're
09:52 14 ready to proceed with the trial.

09:52 15 Before we get started, did anyone have any third
09:52 16 parties attempt to talk to you about the facts of the
09:52 17 case, did anyone conduct any independent research from
09:52 18 any source, and were there any deliberations?

09:52 19 Let the record reflect there are no positive
09:53 20 responses. Can everyone hear me?

09:53 21 Let the record reflect there are no positive
09:53 22 responses.

09:53 23 Mr. Solicitor, is the State ready to proceed?

09:53 24 MR. WAGNER: Yes, sir.

09:53 25 THE COURT: All right.

09:53 1 MR. WAGNER: May it please the court, Judge.

09:53 2 May 16, 2014, began, I guess, a typical day for

09:53 3 the victim, Katie Cook. She and her husband, the

09:53 4 defendant -- Drotning is his last name -- had been

09:53 5 having troubles at home, financial troubles, job

09:53 6 troubles, loss of job. They had been down here about a

09:53 7 year, moved down here from Minnesota. Been living

09:53 8 here, working here. He lost his job, had been denied

09:53 9 his retirement -- not retirement but unemployment

09:53 10 benefits for the second time. There were some issues

09:53 11 going on in their house.

09:53 12 Her memory of those nights is very sketchy. She

09:53 13 can't remember it all. As a matter of fact, there is a

09:53 14 lot of stuff she can't remember. And she remembered

09:53 15 more that night after this incident happened than she

09:54 16 remembered later on when she woke up. And you've got

09:54 17 to understand from Katie Cook's perspective what

09:54 18 happened and what she dealt with for basically eight

09:54 19 months.

09:54 20 The defendant is charged with four crimes. He's

09:54 21 charged with attempted murder, that he did, on May 16,

09:54 22 2014, pour gasoline on Katie Cook and set her on fire

09:54 23 thereby attempting to murder her. He's charged with

09:54 24 second-degree arson because he set what the SLED agent

09:54 25 will tell you four different fires in the house

09:54 1 attempting to burn the house down. Charged with
09:54 2 malicious damage to personal property for damaging the
09:54 3 rental house between \$2,000 to \$10,000. The law sounds
09:54 4 weird when you hear that stuff, but that's the way the
09:54 5 law in South Carolina is. It varies sometimes as to
09:54 6 the dollar amount.

09:54 7 And he's also charged with criminal domestic
09:54 8 violence of a high and aggravated nature, and that's
09:54 9 basically for causing serious bodily harm to a family
09:55 10 member, i.e., his wife at the time, Katie Cook, now his
09:55 11 ex-wife, by setting her on fire.

09:55 12 Katie spent roughly eight months in a burn unit.
09:55 13 You know, the big burn unit where badly burned people
09:55 14 go down in Augusta, Georgia. She had, I think, 40 --
09:55 15 49 surgeries. She was at death's door three times and
09:55 16 over \$10 million in medical bills. That's the amount
09:55 17 of damage her body incurred due to the gasoline that
09:55 18 was poured on her and set on fire.

09:55 19 You're going to have to consider the four charges.
09:55 20 At the end of this case, we're going to be asking for a
09:55 21 guilty verdict on all counts.

09:55 22 You're going to hear from a number of witnesses
09:55 23 over the next few days. I think probably -- can't hold
09:55 24 me to it, but I anticipate we'll be done by Thursday.
09:55 25 But there will be a number of witnesses scheduled to

09:55 1 come in each day for y'all to hear. And that's how we
09:56 2 prove our case.

09:56 3 And we do have the burden of proof in this case.
09:56 4 We have got to prove each and every element of each of
09:56 5 those crimes to you, and we have the witnesses to do
09:56 6 it. You're going to hear the 911 call. You're going
09:56 7 to hear from the first responders, the paramedics that
09:56 8 got called out there. Isaac Lewis, who was a volunteer
09:56 9 firearm paramedic, he was out there on the scene.
09:56 10 You're going to hear from the investigator, Scott
09:56 11 Arnold, who investigated the case. Sergeant Barry
09:56 12 Owens from the sheriff's office who was one of the
09:56 13 first initial officers that got out there. You're
09:56 14 going to hear from a number of experts, the witnesses
09:56 15 from SLED, come in and testify as to DNA on some things
09:56 16 as well as an arson investigator from SLED who reviewed
09:56 17 the case and investigated the arson aspect of it.
09:56 18 You're going to hear trace evidence people and from the
09:56 19 evidence collection people at the sheriff's office.

09:56 20 So you're going to hear from a number of witnesses
09:56 21 over the next few days. What is important, I think, to
09:57 22 remember, you bring something -- everybody brings to
09:57 23 the table here your common sense. You're going to hear
09:57 24 from all these witnesses, you're going to take the
09:57 25 evidence, the facts as they are presented to you from

09:57 1 the stand, you use your common sense and apply it to
09:57 2 the law at the end of this case as the judge gives it.
09:57 3 And I'm going to tell you, the end result is you're
09:57 4 going to find this defendant guilty on all four
09:57 5 charges.

09:57 6 As I told you earlier, the victim, she has a very
09:57 7 sketchy memory of what happened. She can't remember it
09:57 8 all. But when they got there, these first responders,
09:57 9 they heard -- I mean, she was distraught, to say the
09:57 10 least. I mean, she basically woke up, had just been
09:57 11 set on fire. She ran out of the house and ended up
09:57 12 going to a neighbor's, knocked on the door. They
09:57 13 weren't home. Luckily, there was another neighbor
09:57 14 across the street that ended up calling 911 and they
09:58 15 were able to get there pretty soon.

09:58 16 When the police officers got there, the first
09:58 17 responders got there, she made a number of statements.
09:58 18 She said that, "He did this to me. He blew me up. He
09:58 19 lit me on fire." There was a number of times where she
09:58 20 told them what had happened. They put her -- basically
09:58 21 put her to sleep. She was out of being conscious for a
09:58 22 number of hours until they medevaced her on the chopper
09:58 23 to Augusta and she came to there, made some other --
09:58 24 basically nodded her head and answered some other
09:58 25 questions for the people there. She had a hard time

09:58 1 talking. Again, she spent eight months in the burn
09:58 2 unit and was really -- I mean, she is lucky to be here.

09:58 3 I ask you to pay attention to every witness. Bear
09:58 4 with us. It may seem a little odd sometimes. You may
09:58 5 kind of think we're -- you know, the witnesses may come
09:58 6 in a different order than maybe you would like them to.
09:58 7 And at some point in time you have to call one witness
09:59 8 before others. Some were available on some days, some
09:59 9 on others, so it may seem sketchy at times how the
09:59 10 witnesses are presented.

09:59 11 But at the end of it, you will see how all the
09:59 12 pieces to the puzzle, they all add up and they all show
09:59 13 what happened on this day back in June 2014 here in
09:59 14 Oconee County.

09:59 15 So, anyway, I'm David Wagner from the solicitor's
09:59 16 office. I'll be presenting the case on behalf of the
09:59 17 solicitor's office with Lindsey Simmons here. We'd ask
09:59 18 you just to bear with us, listen to both sides, the
09:59 19 questions that are asked, the responses that are given,
09:59 20 and pay attention and use your common sense. We'd ask
09:59 21 for a guilty verdict at the end of this thing. Thank
09:59 22 you.

09:59 23 THE COURT: All right.

09:59 24 Mr. Cole.

09:59 25 MR. COLE: May it please the court, Your Honor.

09:59 1 Ladies and gentlemen of the jury. My name is Lee
09:59 2 Cole, and I'm representing Jacob Drotning in this case.
09:59 3 This is Mr. Drotning.

10:00 4 I want to first start off by thanking each of you
10:00 5 for being here today. I understand this is probably
10:00 6 not the way that you wanted to spend your week this
10:00 7 week. You've all got things going on in your lives.
10:00 8 You all have obligations. But you're here this week,
10:00 9 and you're here doing something that's very important.

10:00 10 In fact, in my opinion, you are the most important
10:00 11 people in this courtroom. You're the most important
10:00 12 people because the jury is the foundation of our
10:00 13 justice system in the United States. The jury is the
10:00 14 mechanism by which a person can receive justice. The
10:00 15 jury is the mechanism by which justice can be done.
10:00 16 And I think that's very important, and I know all of
10:00 17 you will take your role very important and very
10:00 18 seriously this week in that because my client is
10:01 19 counting on you for justice.

10:01 20 I would ask that you look at the evidence that's
10:01 21 presented. Look at it thoroughly. Try to look at it
10:01 22 with an open mind. In our country, a person charged
10:01 23 with a crime cannot be guilty of that crime unless the
10:01 24 State proves that the person is guilty beyond a
10:01 25 reasonable doubt. So I would ask that you look at the

10:01 1 evidence that the State presents.

10:01 2 Now, we will agree this is a tragic, this is a
10:01 3 horrific matter. Ms. Cook suffered awful injuries,
10:01 4 injuries that I could not have imagined, and the
10:01 5 evidence will show that in this case. However, I would
10:01 6 submit to you when you look at the evidence, when it's
10:01 7 presented to you, if you look at it with an open mind,
10:02 8 look at it with a reasonable mind, look at it with the
10:02 9 importance of the duty which the State has put on you
10:02 10 to give justice, you will see that my client, Jacob
10:02 11 Drotning, is not guilty. You will see the evidence
10:02 12 will show that the State cannot meet its burden of
10:02 13 proving him guilty to any of these charges beyond a
10:02 14 reasonable doubt.

10:02 15 So I ask that you look at the evidence and that
10:02 16 you will give my client justice, justice that only you
10:02 17 as the jury can do. Thank you.

10:02 18 THE COURT: All right.

10:02 19 Ms. Simmons, call your first witness.

10:02 20 MS. SIMMONS: Thank you, Your Honor. May it
10:02 21 please the court, the State calls Catherine Cook.

10:02 22 **CATHERINE COOK,**

10:02 23 **BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:**

10:03 24 **DIRECT EXAMINATION**

10:03 25 **BY MS. SIMMONS:**

10:03 1 Q Good morning, Katie.

10:03 2 A Good morning.

10:03 3 Q Could you state your full name for the record and
10:03 4 spell it.

10:03 5 A Catherine Danielle Cook, C-a-t-h-e-r-i-n-e,
10:03 6 C-o-o-k.

10:03 7 Q And what name do you go by?

10:03 8 A Katie.

10:03 9 Q I know you're nervous, Katie, so we're going to
10:03 10 ease into this. Okay?

10:03 11 Where do you live now?

10:03 12 A Georgia.

10:03 13 Q And how old are you?

10:03 14 A I am 33.

10:03 15 Q Okay. And tell us a little bit about yourself.

10:03 16 A I was born and raised in Minnesota. I used to
10:04 17 love being on the lake and boating. My favorite job
10:04 18 was working at a vet office. I'm a cat and dog person
10:04 19 and bird person. I'm generally a happy person.

10:04 20 Q And do you have any prior criminal record?

10:04 21 A No.

10:04 22 Q How do you know the defendant in this case?

10:04 23 A He's my ex-husband.

10:04 24 Q When did you meet the defendant?

10:04 25 A We met in June 2003.

- 10:04 1 Q And when did you get married?
- 10:04 2 A April of 2009 and divorced in February of 2015.
- 10:04 3 Q Okay. I have a couple of random questions I have
10:04 4 to ask you for later.
- 10:04 5 Do either one of you smoke?
- 10:04 6 A I don't. He did.
- 10:04 7 Q And are you right-handed?
- 10:04 8 A Yes, I am.
- 10:04 9 Q Is the defendant right-handed?
- 10:04 10 A Yes, ma'am. Or yes, he is.
- 10:04 11 Q So you guys had been together since about 2003?
- 10:04 12 A Yes.
- 10:05 13 Q Tell me a little bit about the history of your
10:05 14 relationship.
- 10:05 15 A It was hard. When I thought it was going good, it
10:05 16 was okay. When it was bad, it was pretty awful. He
10:05 17 was jealous and possessive. And, unfortunately, it got
10:05 18 pretty bad at the end.
- 10:05 19 Q Do you have any children together?
- 10:05 20 A We do not together.
- 10:05 21 Q Does he have any children?
- 10:05 22 A Yes, he does.
- 10:05 23 Q What kind of jobs did you both work in Minnesota?
- 10:05 24 A He was an auto mechanic, and I was in customer
10:05 25 service.

- 10:05 1 Q And when did you move to South Carolina?
- 10:05 2 A May of 2013.
- 10:05 3 Q Why did you move here?
- 10:05 4 A He had been offered a job.
- 10:05 5 Q How did that job come about?
- 10:05 6 A Through the Internet. He was headhunted on
- 10:06 7 Monster.
- 10:06 8 Q Is it for a mechanic's job?
- 10:06 9 A Yeah.
- 10:06 10 Q And whose idea was it to move from Minnesota to
- 10:06 11 South Carolina?
- 10:06 12 A It was his.
- 10:06 13 Q And is your family in Minnesota?
- 10:06 14 A Yes. Both of our families were all in Minnesota.
- 10:06 15 Q And what did you do in South Carolina when you got
- 10:06 16 here?
- 10:06 17 A I didn't have a job right away. I eventually had
- 10:06 18 a job in a vet office and a grocery store.
- 10:06 19 Q Did your relationship get better here?
- 10:06 20 A It was supposed to be a fresh start.
- 10:06 21 Unfortunately, it was pretty clear within a few months
- 10:06 22 that it was not going to get any better.
- 10:06 23 Q The same behavior continued?
- 10:06 24 A Yes. He would hide my car keys and my cell phone
- 10:06 25 from me for days, and I wouldn't be able to call work

10:07 1 and let them know that I wasn't going to be there so I
10:07 2 would be let go for no call no show. My mom came and
10:07 3 visited in June, and it was a pretty tense, awkward
10:07 4 visit. He barely said ten words to her. She had made
10:07 5 it clear to me at that point that I would be welcome
10:07 6 home, me, if I ever needed to be. And I took that to
10:07 7 heart, and I think I had -- I brought that up to him in
10:07 8 February, around my birthday, that I was done. I
10:07 9 wanted to go home.

10:07 10 Q Did you have any friends here in South Carolina?

10:07 11 A No.

10:07 12 Q Were friends encouraged?

10:07 13 A No. We didn't go out.

10:07 14 Q Looking back at this time frame in April and May
10:07 15 of 2014, I want to kind of focus on that. How had
10:08 16 things progressed between you two at that point?

10:08 17 A In April and May?

10:08 18 Q Yeah.

10:08 19 A It had deteriorated to almost nothing. We were
10:08 20 like strangers in the house. He had just lost his job.
10:08 21 I just lost my job. Neither one of us was working so
10:08 22 we couldn't pay bills or rent. There was a lot of
10:08 23 resentment.

10:08 24 Q Were you making future plans at that time?

10:08 25 A Yes. I was -- I wanted to go home.

10:08 1 Q And you had conveyed that to him?

10:08 2 A Yes.

10:08 3 Q Back to him losing his job, what was his
10:08 4 unemployment status?

10:08 5 A He had just been denied unemployment.

10:08 6 Q And around what date do you recall that was?

10:08 7 A It was probably about a week before this incident.

10:08 8 Q And how did he feel about that?

10:08 9 A He was upset. He thought he deserved it.

10:09 10 Q Would you say he was angry?

10:09 11 A Yeah.

10:09 12 Q Did you have any savings or items you could pawn
10:09 13 at that point? Sounds like you were in financial
10:09 14 despair.

10:09 15 A No. Nothing worth anything that would help pay
10:09 16 rent.

10:09 17 Q Anything notable happen about May 14th?

10:09 18 A We were driving home from Walhalla to Walmart
10:09 19 because gas was supposed to be cheaper there, and we
10:09 20 were trying to make it there, and we had ran out of
10:09 21 gas.

10:09 22 Q What happened then?

10:09 23 A He had taken off walking to the gas station. I
10:09 24 waited at the car. A couple had pulled over to help me
10:09 25 move the car out of the way of traffic and saw him

10:09 1 walking and gave him a ride back.

10:10 2 Q Did he come back with gas?

10:10 3 A Yes.

10:10 4 Q What was the gas in?

10:10 5 A A red gas can.

10:10 6 Q Did he use all the gas?

10:10 7 A I was led to believe it wasn't all used because I
10:10 8 had made a comment when he got back in the car that it
10:10 9 reeked of gasoline. And he said something along the
10:10 10 lines that it didn't all fit or I didn't use it all.

10:10 11 Q What happened with the gas can when you returned
10:10 12 home?

10:10 13 A It was left in the garage, I assume.

10:10 14 Q Did you or the defendant ever at any time use
10:10 15 gasoline when you grilled?

10:10 16 A No.

10:10 17 Q And would you ever have been grilling after
10:10 18 10 o'clock at night?

10:10 19 A No.

10:10 20 Q What time did you guys usually eat?

10:10 21 A I'm an early eater, so 5:00 or 6:00.

10:10 22 Q And where was the grill located at your house?

10:10 23 A It was on the patio right off the side door.

10:10 24 Q And were there any weapons in your home like
10:10 25 firearms or anything?

10:11 1 A No.

10:11 2 Q I have to ask this. Back in May of 2014, were you
10:11 3 suicidal at all?

10:11 4 A Absolutely not.

10:11 5 Q What happened to you on May 16th of 2014?

10:11 6 A I suffered burns on 60 percent of my body.

10:11 7 Q Did this occur at your home?

10:11 8 A Yes.

10:11 9 Q Is that in Oconee County?

10:11 10 A Yes.

10:11 11 Q Do you have any independent recollections of the
10:11 12 incident on May 16th?

10:11 13 A I do.

10:11 14 Q Tell us what you remember. And you can show us.

10:11 15 A I was in the hallway, and I looked down at my arms
10:11 16 and they were glowing. And I was terrified. And when
10:11 17 I looked up, I saw him standing there. And he didn't
10:11 18 look concerned, and he didn't look worried. And he
10:11 19 didn't even look panicked. He didn't look anything.
10:11 20 And that's when I knew that if I was going to get help,
10:12 21 I had to get it myself. So I made my way to the
10:12 22 neighbor's house, and I was banging on their door, and
10:12 23 I realized that there was nobody home. That's when my
10:12 24 legs gave out, and I was -- I sank to the ground, and I
10:12 25 thought I'm going to die on a stranger's porch

10:12 1 thousands of miles from home. And that's the last
10:12 2 thing I remember.

10:12 3 Q Katie, I want to show you -- first of all, is the
10:12 4 person that you saw in your living room that watched
10:12 5 you be on fire, is he present in the courtroom today?

10:12 6 A Yes, he is.

10:12 7 Q Could you please point him out.

10:12 8 A Jake Drotning (indicating).

10:13 9 MS. SIMMONS: Your Honor, please reflect that the
10:13 10 witness has pointed out the defendant.

10:13 11 BY MS. SIMMONS:

10:13 12 Q I want to show you a couple of pictures, Katie.
10:13 13 These are pictures of your home.

10:13 14 Show you State's Exhibit 47.

10:13 15 MR. COLE: No objection, Your Honor.

10:13 16 THE COURT: What number is this?

10:13 17 MS. SIMMONS: Your Honor, first is State's
10:13 18 Exhibit 47.

10:13 19 THE COURT: Okay. State's Exhibit 47 will be
10:13 20 admitted without objection.

10:13 21 (WHEREUPON, State's Exhibit Number 47 was admitted
10:13 22 into evidence.)

10:13 23 BY MS. SIMMONS:

10:13 24 Q Do you recognize this, Katie?

10:13 25 A Yes.

10:13 1 Q What is this?

10:13 2 A It's the hallway.

10:13 3 Q And is anything notable on the ceiling?

10:13 4 A That is where the fire alarm should be.

10:13 5 Q And was it like that prior to May 16th of 2014?

10:13 6 A No.

10:13 7 Q Okay. And I'm going to bring your attention to

10:14 8 State's Exhibit 11. And what is that?

10:14 9 A That is the lid. That's the fire alarm.

10:14 10 Q And was it on the floor prior to May 16th of 2014?

10:14 11 A No.

10:14 12 THE COURT: All right. Are these exhibits without

10:14 13 objection?

10:14 14 MR. COLE: Yes, your Honor.

10:14 15 THE COURT: What numbers are being entered without

10:14 16 objection?

10:14 17 MS. SIMMONS: Your Honor, the State would move to

10:14 18 admit State's 47, 11, 37 and 36.

10:14 19 THE COURT: State's 47, 11, 37 and 36, is that

10:14 20 correct, without objection, Mr. Cole?

10:14 21 MR. COLE: Yes.

10:14 22 THE COURT: All right. Those would be admitted

10:14 23 without objection.

10:14 24 (WHEREUPON, State's Exhibit Numbers 11, 36,

10:14 25 37 and 47 were admitted into evidence.)

10:14 1 BY MS. SIMMONS:

10:14 2 Q Is that how your hallway looked prior to May 16th?

10:14 3 A It wasn't that dirty, but yeah.

10:14 4 Q Was there a gas can there prior to May 16th?

10:14 5 A No.

10:14 6 Q And I want to show you your bedroom. Did the

10:15 7 smoke detector in your bedroom look that way prior to

10:15 8 May 16, 2014?

10:15 9 A No, it was not.

10:15 10 Q And where is this floor?

10:15 11 A That's part of the bedroom.

10:15 12 Q And were those items in the floor prior to

10:15 13 May 16th?

10:15 14 A No.

10:15 15 Q Do you remember talking to the first responders,

10:15 16 paramedic, fire and police, at the scene?

10:15 17 A I do not.

10:15 18 Q Do you remember talking to the nurses in Augusta

10:15 19 on May 17th?

10:15 20 A I do not.

10:16 21 MS. SIMMONS: Your Honor, may I approach the

10:16 22 witness?

10:16 23 THE COURT: Yes, ma'am.

10:16 24 BY MS. SIMMONS:

10:16 25 Q Katie, I'm going to show you what's been premarked

10:16 1 as State's Exhibit 108. Do you recognize this writing
10:16 2 on this?

10:16 3 A Yes, I do. It's mine.

10:16 4 Q And front and back?

10:16 5 A Yes.

10:16 6 Q Do you remember writing on this in Augusta?

10:16 7 A I do not.

10:16 8 Q But it is your writing?

10:16 9 A It is my writing.

10:16 10 Q What kind of things -- what does it say?

10:16 11 A It was my mom's name on it. It has her phone
10:16 12 number, and it asks if my cats made it or if they're
10:16 13 okay. And I asked if they had called my mom. And I
10:16 14 wanted to be cooler. I was hot. I had written down
10:17 15 that -- Jake Drotning and that he was my husband. And
10:17 16 then surgery and how long, how long am I -- how long.

10:17 17 Q Thank you, Katie. What was your specific
10:17 18 diagnosis at Augusta?

10:17 19 A When I arrived there, I had third-degree burns on
10:17 20 60 percent of my body. The burns on my back were so
10:17 21 deep that my organs went into shock and they were
10:17 22 starting to shut down. I was critical. I could
10:17 23 have -- I should have -- it should have been fatal.

10:17 24 Q How long were you sedated or in a coma?

10:17 25 A I was in a medically induced coma for four months.

10:18 1 Q What were your thoughts when you finally woke up
10:18 2 from this?

10:18 3 A When I woke up, I did not need anybody to tell me
10:18 4 who had done that to me, why I was in that hospital
10:18 5 bed. I was a little fuzzy on the details of how I had
10:18 6 gotten there, but I knew that Jake had put me there,
10:18 7 that he was the reason that I -- that that -- that that
10:18 8 was who had done that to me.

10:18 9 Q How many surgeries have you had, Katie?

10:18 10 A 49.

10:18 11 Q How much are your medical bills?

10:18 12 A Over ten million.

10:18 13 Q And where are the bulk of your injuries?

10:18 14 A They're all over.

10:18 15 MS. SIMMONS: May the witness stand, Your Honor?

10:18 16 THE COURT: Yes, ma'am.

10:18 17 THE WITNESS: They are all on my back and my
10:18 18 bottom.

10:18 19 BY MS. SIMMONS:

10:18 20 Q Do you have any burns to your chest or your --

10:18 21 A I did not.

10:18 22 Q What current treatments are you receiving?

10:19 23 A I go in for laser treatments once a month to help
10:19 24 with the scarring and try and make them less tight.

10:19 25 Q What's the current prognosis your doctors give

10:19 1 you?

10:19 2 A Well -- hold on.

10:19 3 I'll start reconstructive surgeries soon. I still
10:19 4 go in for laser treatments. I have no sweat glands on
10:19 5 70 -- you know, 60 percent of my body, so I'm
10:19 6 constantly in danger of overheating.

10:20 7 Q You'll be dealing with this for the foreseeable
10:20 8 future?

10:20 9 A Yes.

10:20 10 MS. SIMMONS: Beg the court's indulgence for one
10:20 11 moment.

10:20 12 Katie, please answer any questions the defense may
10:20 13 have.

10:20 14 THE COURT: Mr. Cole, your witness.

10:20 15 MR. COLE: Thank you, Your Honor. May it please
10:20 16 the court.

10:20 17 CROSS-EXAMINATION

10:20 18 BY MR. COLE:

10:20 19 Q Ms. Cook, let me ask you a couple more questions
10:20 20 about the night that you suffered these injuries.

10:20 21 Now, earlier in that day, you and Mr. Drotning had
10:20 22 been drinking; is that correct?

10:21 23 A I'm not sure.

10:21 24 Q At the time of this incident, did you drink
10:21 25 heavily?

10:21 1 A Not -- we drank a few times a week.

10:21 2 Q And would you say -- did you go to Alcoholics

10:21 3 Anonymous?

10:21 4 A I went with him a few times.

10:21 5 Q Would you say that you were --

10:21 6 A I was trying to encourage him to go.

10:21 7 Q Would you say that you were an alcoholic?

10:21 8 A No.

10:21 9 Q Prior to this, you testified that y'all had had

10:21 10 some problems as far as finances and things of that

10:21 11 nature. But isn't it true that on the day and the days

10:21 12 immediately preceding your injuries that you had been

10:21 13 approved for food stamps?

10:21 14 A We were in the process of applying. That's why we

10:21 15 were coming back from Walhalla. We had turned in our

10:22 16 application.

10:22 17 Q And isn't it also true that the day that you

10:22 18 suffered your injuries or thereabout that Mr. Drotning

10:22 19 was able to make a deal with your utility provider so

10:22 20 that your power and water wouldn't get cut off?

10:22 21 A No. I Did not know anything about that.

10:22 22 Q And isn't it also true that the day that this

10:22 23 happened or somewhere thereabout that Mr. Drotning made

10:22 24 or perhaps you and Mr. Drotning made arrangements with

10:22 25 your landlord so you were going to be able to keep the

- 10:22 1 home?
- 10:22 2 A Not that I know of.
- 10:22 3 Q In that home that you lived in, it was on Utica
10:22 4 Avenue; is that correct?
- 10:22 5 A Yes.
- 10:22 6 Q In that home, did y'all cook a fair amount in the
10:23 7 home?
- 10:23 8 A Yes.
- 10:23 9 Q And the stove in that home, isn't it true that
10:23 10 when you cooked on that, it often caused the smoke
10:23 11 detectors to go off?
- 10:23 12 A Not often, but yes.
- 10:23 13 Q So it had caused smoke detectors to go off in the
10:23 14 past?
- 10:23 15 A Yes.
- 10:23 16 Q And the day -- the day before you suffered the
10:23 17 injuries, isn't it true that y'all were cooking in the
10:23 18 home and it did cause the smoke detectors to go off?
- 10:23 19 A No.
- 10:23 20 Q When you and Mr. Drotning had arguments sometimes,
10:23 21 was it a common practice of yours when y'all were
10:23 22 arguing to lock him in the garage of the home or lock
10:23 23 him out of the home by using the door that goes to the
10:23 24 garage?
- 10:23 25 A No.

10:23 1 Q But you had locked him in the garage before?

10:24 2 A No. I had not locked him in the garage.

10:24 3 Q The gas can that you testified to earlier, that
10:24 4 was a -- you said you assumed that that was in the
10:24 5 garage, but you don't know for sure that that can was
10:24 6 stored in the garage?

10:24 7 A That's where we generally would store that type of
10:24 8 thing. I didn't have any reason to question him for
10:24 9 having it anywhere else.

10:24 10 Q Now, on one side of the home you lived in, you had
10:24 11 a garage, and on the other side there was a patio where
10:24 12 the grill was; is that correct?

10:24 13 A Yes.

10:24 14 Q And so there was a gas can that was stored out
10:24 15 there near the grill around this time; isn't that
10:24 16 right?

10:24 17 A No, there wouldn't have been. It would have been
10:25 18 in the garage.

10:25 19 Q But you don't remember specifically seeing this
10:25 20 gas can in the garage on the day of this incident?

10:25 21 A No.

10:25 22 Q When EMS and the police came to the scene, my
10:25 23 client was with you, comforting you on the porch of the
10:25 24 neighbor's home; isn't that correct?

10:25 25 A I don't recall. Last memory I have I was by

10:25 1 myself.

10:25 2 Q When it comes down to it, Ms. Cook, you don't
10:26 3 remember my client doing any harm to you on the night
10:26 4 in question, do you?

10:26 5 A No, but I saw him.

10:26 6 Q You saw him, but when you saw him, he didn't have
10:26 7 the gasoline can in his hand, did he?

10:26 8 A No.

10:26 9 Q And when you saw him, he didn't have a lighter in
10:26 10 his hand, did he?

10:26 11 A No.

10:26 12 Q And you didn't see him pour gasoline on you; is
10:26 13 that correct?

10:26 14 A I did not.

10:26 15 Q And you didn't see him try to burn you; is that
10:26 16 correct?

10:26 17 A That's correct.

10:26 18 Q So, really, the memory you had, you saw him and he
10:26 19 lived -- and y'all lived together in the home, right?

10:26 20 A Yes.

10:26 21 Q So you saw him in the home the night you were
10:26 22 injured?

10:26 23 A Yes.

10:26 24 Q But you did not see him harm, injure, or any
10:27 25 otherwise way try to hurt you; is that correct?

10:27 1 A Correct.

10:27 2 MR. COLE: No further questions, Your Honor.

10:27 3 MS. SIMMONS: Just one follow-up Your Honor.

10:27 4 REDIRECT EXAMINATION

10:27 5 BY MS. SIMMONS:

10:27 6 Q Katie, when you guys did fight or argue in the

10:27 7 home, where did you usually go?

10:27 8 A I would go into the bedroom. Sometimes I would

10:27 9 lock myself in the bathroom, but the bedroom.

10:27 10 Q Thank you.

10:27 11 THE COURT: Any question in response to that

10:27 12 question, Mr. Cole?

10:27 13 MR. COLE: No, your Honor.

10:27 14 THE COURT: Okay. All right.

10:27 15 Thank you, ma'am. You can step down.

10:27 16 THE WITNESS: Thank you.

10:28 17 MS. SIMMONS: Your Honor, we are going to call the

10:28 18 next witness out of order.

10:28 19 The State calls Isaac Lewis.

10:28 20 **ISAAC LEWIS,**

10:28 21 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

10:28 22 DIRECT EXAMINATION

10:28 23 BY MS. SIMMONS:

10:28 24 Q Deputy Lewis, please state your name for the

10:28 25 record.

10:28 1 A Isaac Corey Lee Lewis.

10:28 2 Q Tell us a little bit about your background.

10:28 3 A Before working at the sheriff's office, I worked
10:28 4 at Seneca fire department for ten years. In that time,
10:28 5 I also worked at Westminster fire department as a
10:29 6 lieutenant and at the county fire department for a year
10:29 7 as -- just as a firefighter. And during the time, I
10:29 8 took EMT training through Tri-County Technical College.

10:29 9 Q So you're currently employed at the sheriff's
10:29 10 office?

10:29 11 A Yes, ma'am.

10:29 12 Q How long have you been there?

10:29 13 A Just a bit over a year now.

10:29 14 Q Where were you working on May 16, 2014?

10:29 15 A At Seneca fire department.

10:29 16 Q Did you respond to a fire that night?

10:29 17 A Yes, ma'am, I did.

10:29 18 Q Did a 911 call come in?

10:29 19 A Yes, ma'am.

10:29 20 Q Did any of those 911 calls originate from the
10:29 21 defendant?

10:29 22 A I'm not real sure if it came straight from the
10:29 23 defendant because the only thing that we heard was the
10:29 24 911 call came in. And once we got on scene, we thought
10:29 25 it was from passersby.

10:29 1 Q What time did you come in and what time did you
10:30 2 get there?

10:30 3 A The call came in around 2246 which is 10:46, and
10:30 4 we got there less than ten minutes in time because
10:30 5 being so close to where we were.

10:30 6 Q Was the incident location in Oconee?

10:30 7 A Yes, ma'am.

10:30 8 Q What did you see when you got there?

10:30 9 A When I first got on scene, I saw the smoke coming
10:30 10 from the residence. And to the left of the residence
10:30 11 on the porch, I saw first responders and some of the
10:30 12 volunteer firefighters were standing around and with
10:30 13 the patient and her husband.

10:30 14 Q What was your primary role back at that point?

10:30 15 A As soon as I stepped off the truck, because I was
10:30 16 EMT trained and no one else was on scene at the time, I
10:30 17 was told to take over responsibility of treating the
10:30 18 patient.

10:30 19 Q What were the extent of the victim's injuries that
10:30 20 you saw?

10:30 21 A After walking over to her and seeing the clothing,
10:31 22 I saw just a few burns coming around the left side of
10:31 23 her face or her neck and then on the right side and on
10:31 24 her hands.

10:31 25 Q Did you ever roll her over?

10:31 1 A Yes, ma'am. After I -- we're taught in EMT class
10:31 2 to expose the patient just to assess all the injuries.
10:31 3 So I started cutting her clothes off. And once I cut
10:31 4 her sleeves down on her shirt, I rolled her over to her
10:31 5 side and saw that she had second- and third-degree
10:31 6 burns from the lower part of her head all the way down
10:31 7 to the bottom of her feet.

10:31 8 Q This shirt that you cut off, was it part of the
10:31 9 fire?

10:31 10 A No, ma'am.

10:31 11 Q Were there any other people at the home that you
10:31 12 saw besides the victim and the defendant?

10:31 13 A No, ma'am.

10:31 14 Q Based on your training and experience, at that
10:31 15 point in time, did you believe her injuries would be
10:31 16 fatal?

10:31 17 A I did at that time because I've seen people with
10:31 18 less burns, and they have ended up dying in the past.

10:32 19 Q During this time, was she still under the stress
10:32 20 of the event that had happened?

10:32 21 A Yes, ma'am.

10:32 22 Q What was her mental status at that point?

10:32 23 A At the time when I started talking to her, she
10:32 24 could remember her name, remember where she was, her
10:32 25 husband's name, everything that was going on, where

10:32 1 they were from. And just basically talking to her, she
10:32 2 was in a good, sound mind.

10:32 3 Q Did she seem intoxicated?

10:32 4 A No, not to me.

10:32 5 Q Did you ever ask her what happened?

10:32 6 A I did once I got in the back of the ambulance.

10:32 7 After we loaded in the ambulance and I was asked by one
10:32 8 of the paramedics do I know what happened, and I said
10:32 9 no, I don't. I said, but I will ask. So I turned and
10:32 10 asked her and --

10:32 11 MR. COLE: Objection; hearsay. Calls for hearsay
10:32 12 response.

10:32 13 THE COURT: Overruled.

10:32 14 BY MS. SIMMONS:

10:32 15 Q Please answer the question.

10:32 16 A Whenever I turned to ask her what had happened,
10:32 17 she said, "No. I don't remember." And she shook her
10:32 18 head, and then she immediately stopped and said, "Yes,
10:32 19 I do. He set me on fire. Why would he do this to me?
10:33 20 I'm a nice person. Why would he do this to me?"

10:33 21 Q Who is she referring to?

10:33 22 A Her husband.

10:33 23 Q And do you see her husband present in the
10:33 24 courtroom?

10:33 25 A Yes, ma'am.

10:33 1 Q Please point him out.

10:33 2 A The defendant.

10:33 3 Q Thank you.

10:33 4 Did her husband say anything while you were
10:33 5 treating Katie?

10:33 6 A While I was sitting on the porch treating her, he
10:33 7 kept saying, "I'm sorry. I'm sorry," and he kept
10:33 8 bumping into me as I was trying to treat her. And I
10:33 9 asked some of the other people that were standing
10:33 10 there, the first responders, to take him out of the way
10:33 11 so I could continue treating her.

10:33 12 Q What did he say happened?

10:33 13 A He said while they were outside trying to light
10:33 14 the grill, that it just flamed up and caught her on
10:33 15 fire.

10:33 16 Q What was his demeanor at that point in time?

10:33 17 A He really wasn't seeming like he was upset, but he
10:33 18 kept saying, "I'm sorry. I'm sorry," and he just had
10:33 19 like a glassed over look on his face.

10:34 20 Q Did he appear to be intoxicated?

10:34 21 A By looking at him, yes. I didn't really smell
10:34 22 because of the burning, the burning from the house and
10:34 23 the burning from her, from Katie. I didn't really
10:34 24 smell the alcohol, but from the look, yes.

10:34 25 Q Was he eventually removed from the scene?

10:34 1 A Yes, ma'am.

10:34 2 Q I'm going to show you what has been premarked as
10:34 3 State's Exhibit 3 -- 1, 2 and 3.

10:34 4 MR. COLE: Your Honor, I would renew my earlier
10:34 5 objection to these photographs. It was made in the
10:34 6 pretrial conference based on prejudice.

10:34 7 THE COURT: Okay. All right. That's overruled
10:34 8 but noted for the record, Mr. Cole.

10:34 9 MS. SIMMONS: May I approach the witness?

10:34 10 THE COURT: Yes, ma'am.

10:35 11 BY MS. SIMMONS:

10:35 12 Q Do you recognize these photographs?

10:35 13 A Yes, ma'am, I do.

10:35 14 Q And are these a fair and accurate depiction of
10:35 15 what you saw that night in the --

10:35 16 A Yes, ma'am.

10:35 17 Q Have these photographs been altered or tampered
10:35 18 with in any way to change what you saw?

10:35 19 A No, ma'am.

10:35 20 MS. SIMMONS: Your Honor, at this time we would
10:35 21 move to admit and publish to the jury State's 1, 2 and
10:35 22 3.

10:35 23 THE COURT: They are admitted, and defendant's
10:35 24 objection is noted.

10:35 25 (WHEREUPON, State's Exhibit Numbers 1, 2 and 3

10:35 1 were admitted into evidence.)

10:35 2 BY MS. SIMMONS:

10:35 3 Q Tell me what we're seeing here.

10:35 4 A That is Katie as she's laying on the porch. And I
10:35 5 was knelt down right beside her trying to treat her.

10:35 6 That is after we cut the shirt off of her, and I

10:35 7 eventually got the burn blanket and wrapped her in the
10:35 8 blanket.

10:35 9 Q State's Exhibit 2?

10:35 10 A That is around the same time. She told me to hold
10:35 11 my hand -- asked if she could hold my hand and was
10:35 12 asking me to continue to talk to her just to keep her
10:36 13 mind off of everything that is going on.

10:36 14 Q That is your hand in the photograph?

10:36 15 A Yes, ma'am.

10:36 16 Q And State's Exhibit 3?

10:36 17 A That is Mr. Drotning as he was standing. Whenever
10:36 18 I walked up, I seen him kneeling right here at her feet
10:36 19 and just kept saying, "I'm sorry." And I noticed the
10:36 20 singed hair on his head.

10:36 21 Q And back to your treatment of Katie. Did she have
10:36 22 any burns to her airway?

10:36 23 A No, ma'am.

10:36 24 Q And did you accompany Katie in the ambulance?

10:36 25 A Yes, ma'am, I did.

10:36 1 Q Where were you going?

10:36 2 A We were going to a landing zone for the helicopter
10:36 3 to land. She told me -- she asked me if I could stay
10:36 4 with her while everything was going on, so I
10:36 5 accompanied her into the ambulance and continued
10:36 6 talking with her and telling her stories just to keep
10:36 7 her mind off of everything.

10:36 8 Q And approximately how long after the initial call
10:36 9 came in did the helicopter depart?

10:37 10 A It was less than an hour for the full thing to
10:37 11 happen. It went by so fast, but it was actually less
10:37 12 than an hour.

10:37 13 MS. SIMMONS: Please answer any questions Mr. Cole
10:37 14 may have.

10:37 15 THE COURT: All right.

10:37 16 Mr. Cole, your witness.

10:37 17 MR. COLE: Thank you, Your Honor.

10:37 18 CROSS-EXAMINATION

10:37 19 BY MR. COLE:

10:37 20 Q Deputy Lewis?

10:37 21 A Yes, sir.

10:37 22 Q When you first spoke to Ms. Cook and asked if does
10:37 23 she remember her response, her initial response was no;
10:37 24 is that correct?

10:37 25 A Yes, sir.

10:37 1 Q And you did not check Ms. Cook or perform any type
10:37 2 of test on her for drugs or alcohol; is that correct?

10:37 3 A That is correct, sir.

10:37 4 Q And you did not test or perform any type of test
10:37 5 or checks on my client, Mr. Drotning, for drugs or
10:37 6 alcohol; is that correct?

10:37 7 A No, sir.

10:37 8 Q That is correct?

10:38 9 A Yes, sir, that's correct.

10:38 10 Q When you arrived on the scene, my client was on
10:38 11 the porch attempting to provide assistance to Ms. Cook;
10:38 12 is that correct?

10:38 13 A No, sir. He was knelt down at her feet. The
10:38 14 first responders that were on scene before the fire
10:38 15 department got there were trying to provide care for
10:38 16 her, and he was knelt down at her feet and just kept
10:38 17 saying, "I'm sorry."

10:38 18 Q But he was there with her, that's correct?

10:38 19 A Yes, sir.

10:38 20 Q And he never said -- he never made any admission
10:38 21 or said that he had done anything to her; is that
10:38 22 correct?

10:38 23 A That is correct, sir.

10:38 24 Q And he had no burn marks visible on him; is that
10:38 25 correct?

10:38 1 A No, sir, just the singed hair.

10:38 2 Q Singed, but he had no actual burns?

10:38 3 A No, sir.

10:38 4 Q And there were no signs that he had been burned --

10:38 5 A No, sir.

10:38 6 Q -- is that correct?

10:38 7 A I was not treating him at the time. I was

10:39 8 treating Ms. Drotning -- I mean Ms. Cook because she

10:39 9 had the most severe burns and was the one that was

10:39 10 needing treatment at the time.

10:39 11 Q From what you observed, he had no signs that he

10:39 12 had been burned?

10:39 13 A No, sir, not at all. No, sir.

10:39 14 MR. COLE: No further questions.

10:39 15 THE COURT: Anything further from this witness?

10:39 16 MS. SIMMONS: One quick follow-up.

10:39 17 REDIRECT EXAMINATION

10:39 18 BY MS. SIMMONS:

10:39 19 Q Deputy Lewis what did the defendant tell you had

10:39 20 happened?

10:39 21 A She said -- or he said that the grill flamed up

10:39 22 when they were trying to light the grill.

10:39 23 Q And that was the cause of the injuries?

10:39 24 A And that was the cause of her burns.

10:39 25 Q Thank you.

10:39 1 THE COURT: Anything further?

10:39 2 MR. COLE: No, your Honor.

10:39 3 THE COURT: All right.

10:39 4 Thank you, Officer. You can step down.

10:40 5 MS. SIMMONS: The state calls Brandy Towe.

10:40 6 **BRANDY TOWE,**

10:40 7 **BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:**

10:40 8 **DIRECT EXAMINATION**

10:40 9 **BY MS. SIMMONS:**

10:40 10 Q Ms. Towe, please state your full name for the

10:40 11 record.

10:40 12 A Brandy Elizabeth Towe.

10:40 13 Q Tell us a little bit about your background.

10:40 14 A I have been off and on with Oconee County rescue

10:40 15 quad since 2005 -- well, 2005 to '15 and I got an EMT B

10:40 16 certificate from Tri-County Tech in 2008 which is now

10:40 17 expired. I've got a criminal justice degree that I

10:41 18 obtained in 2010, and I'm currently training as an

10:41 19 industrial first responder in my current job.

10:41 20 Q Were you a certified EMT back in 2014?

10:41 21 A No, ma'am. I was a certified first responder.

10:41 22 Q Where did you volunteer as a first responder back

10:41 23 in 2014?

10:41 24 A Tri-city rescue, Seneca.

10:41 25 Q Did you respond to Utica Street on May 16th of

- 10:41 1 2014?
- 10:41 2 A Yes, ma'am, I did.
- 10:41 3 Q Is that in Oconee County?
- 10:41 4 A That is.
- 10:41 5 Q When the call came in, how fast did you get there?
- 10:41 6 A When the call came in, I was traveling on Wells
10:41 7 Highway. I would say probably within three to
10:41 8 five minutes.
- 10:41 9 Q Do you personally know either the defendant or the
10:41 10 victim in this case?
- 10:41 11 A No, ma'am, I do not.
- 10:41 12 Q When you got there, who was present on scene?
- 10:41 13 A When I pulled up on scene, I actually encountered
10:41 14 the defendant first, Mr. Drotning, and he was
10:41 15 screaming, "Help her. Help her. That's my wife." And
10:42 16 upon further investigation -- you know, she was lying
10:42 17 on the adjoining duplex porch. And she had real severe
10:42 18 second- and third-degree burns, approximately
10:42 19 60 percent of her body.
- 10:42 20 Q Was there anybody there at the house other than
10:42 21 the two of them?
- 10:42 22 A No, ma'am, there wasn't.
- 10:42 23 Q Did you engage with the victim at that time?
- 10:42 24 A Yes, ma'am, I did.
- 10:42 25 Q Did you believe her name was Christine at that

10:42 1 point?

10:42 2 A At that point I did. She was talking through the
10:42 3 pain, and there was a lot going on. I was actually in
10:42 4 a still kind of investigating the scene.

10:42 5 Q As to the victim, what kind of burns did you see?

10:42 6 A Most were posterior second- and third-degree
10:42 7 mostly, predominantly on the back.

10:42 8 Q Did you see any nasal singeing?

10:42 9 A No, ma'am, I didn't.

10:42 10 Q And were you able to treat her at the scene?

10:42 11 A Very little. Unfortunately, as a first responder,
10:42 12 there's little treatment that you can provide for a
10:43 13 burn victim.

10:43 14 Q Did she appear to be at risk of imminent death?

10:43 15 A Absolutely.

10:43 16 Q Was she still under the stress of the event when
10:43 17 you were --

10:43 18 A Absolutely.

10:43 19 Q Was she alert and oriented enough to give you
10:43 20 information?

10:43 21 A Yes, ma'am, she was. But the thing that rang out
10:43 22 most in my ear is she was very dominant in the fact
10:43 23 that, "He had done this to me." And she stated at that
10:43 24 time, "He done this to me. He done this to me." And,
10:43 25 "He blew me up."

10:43 1 Q When she made those statements to you, who was
10:43 2 present?

10:43 3 A I was present, along with a couple of other
10:43 4 responders and Mr. Drotning. And I tried to separate
10:43 5 the two and have other responders check Mr. Drotning
10:43 6 for any other apparent injuries and see if I could get
10:43 7 information from the victim.

10:43 8 Q So what specifically did she tell you?

10:43 9 A That, "He done this to me. He blew me up."

10:43 10 Q Were you able to talk to the defendant at that
10:43 11 time?

10:43 12 A I did have some conversation with the victim -- I
10:44 13 mean with the defendant, and he stated that he was
10:44 14 pouring some kind of accelerant on the grill from a gas
10:44 15 can. I'm assuming it was gas. And my knowledge from
10:44 16 that, fire travels the route of the accelerant, so I --
10:44 17 I began pressing other responders that were on scene to
10:44 18 check him further for injuries because he should have
10:44 19 had injuries that coincided with that fact.

10:44 20 Q Was he injured?

10:44 21 A No, ma'am. Other than some singeing that I saw
10:44 22 and no other care was provided for him on scene.
10:44 23 However, I did not provide care for him.

10:44 24 Q Did what you saw at the scene support his claim
10:44 25 that the grill had blown up?

10:44 1 A No, ma'am, it did not.

10:44 2 Q And at what point did you discontinue care of the
10:44 3 victim?

10:44 4 A When Ike Lewis arrived on scene. He had a little
10:44 5 further current medical training than I had. I turned
10:44 6 the scene over to him and backed off to speak with
10:45 7 Deputy Barry Owens regarding what I had found at the
10:45 8 scene.

10:45 9 Q Ms. Towe, please answer any questions Mr. Cole may
10:45 10 have.

10:45 11 A Yes, ma'am.

10:45 12 THE COURT: Mr. Cole.

10:45 13 MR. COLE: Thank you, Your Honor.

10:45 14 CROSS-EXAMINATION

10:45 15 BY MR. COLE:

10:45 16 Q Ma'am, during this incident, did you perform any
10:45 17 type of test or checks on Ms. Cook to see if she was
10:45 18 under the influence of drugs or alcohol?

10:45 19 A No, sir. That's beyond my realm of practice.

10:45 20 Q Did my client -- my client told you that the grill
10:45 21 was located on the side of the house?

10:45 22 A He did not tell me where the grill was located.

10:45 23 Q Did you go and check any of the grills?

10:45 24 A No, sir, I personally did not. I relayed the
10:45 25 information to Barry Owens with the Oconee County

10:46 1 Sheriff's Office.

10:46 2 Q And my client said at first when you first got
10:46 3 there, he said, "Help her. Help her"; is that correct?

10:46 4 A That is correct.

10:46 5 Q And you said that you removed the two from each
10:46 6 other. Is that because he was wanting to be close to
10:46 7 Ms. Cook?

10:46 8 A No, sir. That is because the stories weren't
10:46 9 adding up. If he poured accelerant onto a hot surface,
10:46 10 number one, flame follows the accelerant. Number two,
10:46 11 if there was anything further going on, I wanted
10:46 12 Ms. Cook to be able to talk to me and them to both be
10:46 13 able to get proper treatment. He was so involved in
10:46 14 her care that we couldn't care for her properly, and we
10:46 15 couldn't see that he was cared for properly.

10:46 16 Q So he was close to Ms. Cook?

10:46 17 A He was. And that is the reason that I had
10:46 18 separated them.

10:46 19 Q And so by saying he was involved in her care, he
10:47 20 was trying to do what he could to render her aid?

10:47 21 A I don't -- I can't that he was involved in her
10:47 22 care. I separated them so we would care for her
10:47 23 properly without him being here.

10:47 24 Q You just testified that he was involved in her
10:47 25 care; is that correct?

10:47 1 A I'm -- I said that he was there and he was -- you
10:47 2 know, he was basically in our face as we were trying to
10:47 3 provide care for her. He didn't -- he didn't do
10:47 4 anything to medically care for her.

10:47 5 Q But he was there with her concerned for her?

10:47 6 A He was present, yes.

10:47 7 Q And he said, "Help her. Help her"?

10:47 8 A He did.

10:47 9 Q If someone says, "Help you help me," (sic), then
10:47 10 in your experience, that would show concern?

10:47 11 A Normally, yes.

10:47 12 MR. COLE: No further questions.

10:47 13 THE COURT: Anything further?

10:47 14 MS. SIMMONS: No, your Honor.

10:47 15 THE COURT: Nothing further from this witness?

10:48 16 MS. SIMMONS: No, your Honor.

10:48 17 THE COURT: Thank you, ma'am. You can step down.

10:48 18 MS. SIMMONS: Your Honor, could we possibly take
10:48 19 our morning break at this time?

10:48 20 THE COURT: Okay.

10:48 21 Mr. Bailiff -- Madam Bailiff, if you will take our
10:48 22 jury to the jury room.

10:48 23 (WHEREUPON, the jury exited open court at
10:48 24 10:48 a.m.)

10:48 25 THE COURT: Okay. We'll go into recess for about

10:48 1 15 minutes.

10:48 2 MS. SIMMONS: Thank you, Judge.

10:48 3 MR. COLE: Thank you, Your Honor.

10:48 4 (WHEREUPON, a recess was taken from 10:48 a.m. to

10:48 5 11:13 a.m.)

11:13 6 THE COURT: Anything from either side before we

11:13 7 bring the jury back in?

11:13 8 MS. SIMMONS: No, your Honor.

11:14 9 MR. COLE: No, your Honor.

11:14 10 THE COURT: All right. Mr. Bailiff, if you will

11:14 11 get our jury.

11:14 12 (WHEREUPON, the jury entered open court at

11:14 13 11:14 a.m.)

11:14 14 THE COURT: All right.

11:14 15 Ms. Simmons, call your next witness.

11:14 16 MS. SIMMONS: The State calls Matthew Cehula.

11:14 17 **MATTHEW ROBERT CEHULA,**

11:14 18 **BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:**

11:14 19 **DIRECT EXAMINATION**

11:14 20 **BY MS. SIMMONS:**

11:15 21 Q Good morning. Please state your full name for the

11:15 22 record.

11:15 23 A Matthew Robert Cehula.

11:15 24 Q And can you spell your last name.

11:15 25 A C-e-h-u-l-a.

11:15 1 Q Matthew, tell us a little bit about yourself.

11:15 2 A I'm a local business owner, and I own a towing and
11:15 3 recovery company. I've been in the area pretty much
11:15 4 all my life. Family has been in the area pretty much
11:15 5 all my life.

11:15 6 Q Do you know the victim or defendant personally in
11:15 7 this case?

11:15 8 A I do not.

11:15 9 Q Do you remember any -- do you remember the evening
11:15 10 of May 16th of 2014?

11:15 11 A Yes, ma'am.

11:15 12 Q What happened that evening?

11:15 13 A My wife, my child and I and two other friends, we
11:15 14 were leaving our rental house on Meadow Drive on our
11:15 15 way to dinner. We were cleaning out my rental house.
11:15 16 As I was going through the back side of the
11:15 17 neighborhood, because Goddard, the street is so torn
11:15 18 up, we cut through the back side.

11:15 19 As I made a left, I don't remember the name of the
11:16 20 street, but it's behind the theatre. Made a left. We
11:16 21 were going up towards the theatre to turn left on
11:16 22 Goddard. As soon as I got to the little S curve on
11:16 23 that street, there was a gentleman that came running
11:16 24 down the driveway several houses ahead. I could see
11:16 25 him. As he was running down the driveway, he then

11:16 1 started running towards us.

11:16 2 As I started approaching him, I started slowing
11:16 3 down. He then started smacking my windshield screaming
11:16 4 his house was on fire, his house was on fire. I wasn't
11:16 5 even at a complete stop. I was looking around. You
11:16 6 know, I was kind of creeping at that point like idle
11:16 7 speed. Didn't see anything. Just kind of looked like
11:16 8 he was not all there or something was wrong, but there
11:16 9 was no house on fire so I continued to pull away and
11:16 10 then called 911. I had never seen him before. Like I
11:16 11 said, my friend lived three houses down from where he
11:17 12 ran from. So that's another reason why I called.

11:17 13 Q Do you recognize the person that you saw that
11:17 14 night?

11:17 15 A I do.

11:17 16 Q Who is that?

11:17 17 A The gentleman right there on the right.

11:17 18 MS. SIMMONS: Your Honor, please let the record
11:17 19 reflect he's referring to the defendant.

11:17 20 Q Did he ever -- so he only mentioned that his house
11:17 21 was on fire?

11:17 22 A Correct.

11:17 23 Q Did he ever mention that his wife was injured?

11:17 24 A No, ma'am.

11:17 25 Q Did he appear to be out of control or under the

11:17 1 influence, anything like that?

11:17 2 A Yeah. That's another -- that's the biggest reason
11:17 3 why we called.

11:17 4 Q And when you called 911, what did you tell them?

11:17 5 A That there was an intoxicated person running down
11:17 6 the road saying his house was on fire.

11:17 7 Q Did you actually see a female anywhere?

11:17 8 A No, ma'am. It -- it was dark. I mean, the
11:17 9 streetlights only cover so much.

11:17 10 Q And did you get out and actually try to help him?

11:17 11 A No, ma'am.

11:17 12 Q Why not?

11:17 13 A He was just being that erratic. I wasn't going to
11:17 14 put myself, my wife, or my child in danger. That's why
11:18 15 we just drove away.

11:18 16 Q About what time do you think you called 911?

11:18 17 A It was anywhere between 10:30 and 11:00.

11:18 18 Q Thank you very much. Please answer any questions
11:18 19 Mr. Cole may have.

11:18 20 THE COURT: Mr. Cole, your witness.

11:18 21 MR. COLE: No questions, Your Honor.

11:18 22 THE COURT: All right. Thank you, sir. You can
11:18 23 step down.

11:18 24 Call your next witness.

11:18 25 MS. SIMMONS: The State calls Harley Chapman.

11:18 1 HARLEY CHAPMAN,
11:18 2 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:
11:18 3 MS. SIMMONS: Your Honor, may the prior witness be
11:18 4 excused?
11:18 5 THE COURT: Any objection?
11:18 6 MR. COLE: No objection.
11:18 7 THE COURT: All right. That witness will be
11:18 8 excused.
11:18 9 MS. SIMMONS: Thank you.
11:18 10 DIRECT EXAMINATION
11:18 11 BY MS. SIMMONS:
11:18 12 Q Mr. Chapman, please state your full name for the
11:19 13 record.
11:19 14 A Harley Edward Chapman, Jr.
11:19 15 Q Tell me a little bit about your background.
11:19 16 A I'm a paramedic and registered nurse. I've been
11:19 17 both for about ten years now. Been a paramedic here in
11:19 18 Oconee County for about ten years. I was an ICU nurse,
11:19 19 a VR nurse, flight nurse on a helicopter, for seven
11:19 20 years.
11:19 21 Q Are you still employed in that field?
11:19 22 A Yes, ma'am.
11:19 23 Q What kind of education do you have for those?
11:19 24 A I have a nursing degree. It's an associate's
11:19 25 degree in science in nursing. My paramedic was a

11:19 1 paramedic refresher course and exam challenge. I'm a
11:19 2 certified flight nurse and certified flight paramedic,
11:19 3 certified critical care nurse.

11:19 4 Q Were you working on May 16, 2014?

11:19 5 A Yes, ma'am.

11:19 6 Q And did you respond to Utica Street in Seneca?

11:19 7 A Yes, ma'am.

11:19 8 Q What did you find when you arrived?

11:19 9 A When we arrived, we found two separate groups of
11:19 10 people. Later one -- later it was found one was Katie
11:19 11 and one was Mr. Drotning.

11:19 12 Most of the commotion was where Katie was. Being
11:20 13 the primary paramedic, I went to her. My partner went
11:20 14 to the other group of people.

11:20 15 Q What injuries did you see on Katie?

11:20 16 A When I first approached, I could see some burns on
11:20 17 her arms. Once we started to get her moved, we saw the
11:20 18 burns on her back and her legs.

11:20 19 Q Where were her burns concentrated, what area of
11:20 20 her body?

11:20 21 A Mostly to her back and legs.

11:20 22 Q What was her prognosis at that point?

11:20 23 A Very poor.

11:20 24 Q Were you able to offer her any treatment at all?

11:20 25 A Some, yeah. Pain control.

11:20 1 Q Did you load her into the ambulance?

11:20 2 A We did.

11:20 3 Q Did you ask her what had happened?

11:20 4 A Yes, ma'am.

11:20 5 Q And was she still under the stress of the event at

11:20 6 that time?

11:20 7 A Yes, ma'am.

11:20 8 Q What did she tell you?

11:20 9 MR. COLE: Objection; hearsay.

11:20 10 THE COURT: Overruled.

11:20 11 THE WITNESS: As we were putting her into the back

11:20 12 of the ambulance, my partner was already in the

11:20 13 ambulance with Mr. Drotning. As we were loading the

11:20 14 stretcher into the ambulance, I asked her did she

11:20 15 remember what happened. It's a standard question I ask

11:20 16 everybody. And she said, "Yes. He lit me on fire."

11:20 17 Q Who was she referring to as "he"?

11:21 18 A Mr. Drotning.

11:21 19 Q And do you see Mr. Drotning today?

11:21 20 A I do.

11:21 21 Q Please point him out.

11:21 22 MS. SIMMONS: Your Honor, let the record reflect

11:21 23 the witness has pointed to the defendant.

11:21 24 Q What was the defendant's behavior like in the

11:21 25 ambulance?

11:21 1 A He seemed kind of agitated or a little panicky
11:21 2 almost, and he just kept saying, "I'm sorry."

11:21 3 Q Where did you transport the victim?

11:21 4 A To a local church parking lot for a landing zone
11:21 5 for the helicopter.

11:21 6 Q How long after the initial call did the helicopter
11:21 7 depart?

11:21 8 A Probably a little less than an hour. 45 minutes
11:21 9 to an hour.

11:21 10 Q What was the victim's condition for the flight?

11:21 11 A Very critical.

11:21 12 Q Do they do anything to sedate people during a
11:21 13 flight?

11:21 14 A We did. We actually, prior to the helicopter
11:21 15 leaving, we went ahead and sedated her and secured her
11:21 16 airway.

11:21 17 Q Please answer any questions Mr. Cole may have.

11:21 18 MR. COLE: Thank you, Your Honor.

11:21 19 THE COURT: Mr. Cole.

11:21 20 CROSS-EXAMINATION

11:21 21 BY MR. COLE:

11:22 22 Q Mr. Chapman, did you perform any kind of test on
11:22 23 Ms. Cook to see if she was under the influence of drugs
11:22 24 or alcohol?

11:22 25 A No, sir.

11:22 1 Q Did you treat my client, Mr. Drotning, at all or
11:22 2 just Ms. Cook?

11:22 3 A Just Ms. Cook.

11:22 4 Q And you testified that my client said, "I'm
11:22 5 sorry," but he did not -- he did not say that he had
11:22 6 done anything to Ms. Cook, did he?

11:22 7 A No, sir.

11:22 8 Q When you arrived on scene, was my client,
11:22 9 Mr. Drotning, still with Ms. Cook?

11:22 10 A No, sir.

11:22 11 Q So they had already been separated at that point?

11:22 12 A Correct.

11:22 13 Q Did Mr. Cook -- I'm sorry, Mr. Drotning have any
11:23 14 visible burns on him that you saw?

11:23 15 A I saw him very little. I couldn't answer to that.
11:23 16 I saw him as he was being removed from the ambulance by
11:23 17 the deputies. That's all I really saw of him.

11:23 18 Q So he was in the ambulance with Ms. Cook?

11:23 19 A No, sir. He was in the ambulance with my partner.
11:23 20 And as we were loading Ms. Cook into the ambulance, the
11:23 21 deputies removed him from the ambulance.

11:23 22 Q So he wanted to stay in the ambulance -- he wanted
11:23 23 to be in the ambulance with Ms. Cook; is that correct?

11:23 24 A I don't know that. I can't answer that.

11:23 25 Q But that's what -- y'all were about to put

11:23 1 Ms. Cook into the ambulance, but the deputies made him
11:23 2 get out of the ambulance before you put him in; is that
11:23 3 correct?

11:23 4 A About the same time.

11:23 5 MR. COLE: No further questions, Your Honor.

11:23 6 THE COURT: Any redirect?

11:23 7 MS. SIMMONS: No, your Honor.

11:23 8 We'd ask Mr. Chapman be excused.

11:23 9 THE COURT: Any objection?

11:23 10 MR. COLE: No objection, Your Honor.

11:23 11 THE COURT: All right.

11:23 12 Thank you, sir. You are excused.

11:24 13 MS. SIMMONS: The State calls Chief Jan Oliver.

11:24 14 **JAN DALE OLIVER,**

11:24 15 **BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:**

11:24 16 **DIRECT EXAMINATION**

11:24 17 **BY MS. SIMMONS:**

11:24 18 Q Chief, if you could state and spell your full name
11:25 19 for the record.

11:25 20 A My name is Jan Dale Oliver, J-a-n, D-a-l-e,
11:25 21 0-l-i-v-e-r.

11:25 22 Q Where are you employed?

11:25 23 A I am employed at the Seneca Fire Department as
11:25 24 chief of the department.

11:25 25 Q And what's your background? How long have you

11:25 1 been in fire?

11:25 2 A My background, I started in '86, worked up through
11:25 3 the ranks of each officer position, held the position
11:25 4 of fire marshal for several years, shift captain and
11:25 5 then promoted to chief.

11:25 6 Q What kind of job duties -- what are your job
11:25 7 duties every day?

11:25 8 A To oversee all aspects of the fire service there
11:25 9 in Seneca. When we have a call, I answer 99 percent of
11:25 10 the calls with the responding vehicles. I'm in charge
11:26 11 of calling in extra help, investigators, whatever the
11:26 12 situation may be.

11:26 13 Q Were you the commanding officer on scene on a fire
11:26 14 on Utica Street on May 16th of 2014?

11:26 15 A No, ma'am. Actually, one of my firefighters, the
11:26 16 first firefighter on the scene, took incident command.
11:26 17 When I arrived, he informed me the fire was small in
11:26 18 the house, and we only needed a water can which carries
11:26 19 two and a half gallons of water to put it out. I
11:26 20 assumed the safety officer position.

11:26 21 Q And you were the ranking officer on scene?

11:26 22 A Correct.

11:26 23 Q Describe the scene inside the home.

11:26 24 A Inside the house, once you enter the front door,
11:26 25 just a few feet inside the door, there were burn marks

11:26 1 on the floor. You go back a little further into the
11:27 2 room, there is a couch turned over. And just behind
11:27 3 and beside it, there's burn marks on the floor there.
11:27 4 There was a rug in the kitchen that had been burnt.
11:27 5 You go back down the hall towards the back bedroom,
11:27 6 there is another burn mark close to one end of the
11:27 7 hall. And then at the far end where the room was, when
11:27 8 you enter the room, to the right is a closet. The
11:27 9 bottom half of the door had been burnt and some of the
11:27 10 tiles in the floor.

11:27 11 Q Did your firemen cause the disarray in the home?

11:27 12 A No, ma'am. I inquired about that once everything
11:27 13 cleared up, and the first-in fireman said that was the
11:28 14 way they found it.

11:28 15 Q Did they turn the -- did they overturn the couch?

11:28 16 A No, ma'am.

11:28 17 Q Did they move the gas can in the household?

11:28 18 A No, ma'am. Once the area was clear, a member of
11:28 19 law enforcement got my attention and asked me if there
11:28 20 was a grill in the house. And in the process of
11:28 21 searching the house to see if there was a grill, I
11:28 22 noticed the gas can laying at the end of the hallway
11:28 23 just outside the room where the fire originated.

11:28 24 Q Did your firemen alter or tamper with the smoke
11:28 25 alarms at all?

11:28 1 A No, ma'am. When they came in, the smoke detectors
11:28 2 were already, one in the hallway, one in the room of
11:28 3 origin, was laying in the floor with the wires hanging.
11:28 4 There was also two smoke detectors in the other
11:28 5 bedrooms.

11:28 6 Q What kind of fire did you find?

11:29 7 A The fire that we found inside the residence was
11:29 8 the bottom of the door. And there was no ignition
11:29 9 source to be found anywhere around that closet door.

11:29 10 Q Did you check the appliances in the home?

11:29 11 A We -- we checked everything that could possibly
11:29 12 short-circuit and spark. Nothing was found out of the
11:29 13 ordinary.

11:29 14 Q Did you check the grill?

11:29 15 A Yes, ma'am. Once I arrived on the scene, I talked
11:29 16 with my fireman that was giving care to the patient.
11:29 17 And once I took the safety position, part of that is to
11:29 18 do a 360-degree walk around the residence. As I walked
11:29 19 up the side of the home, there is a patio, concrete
11:30 20 patio, with a charcoal grill there. At the time of me
11:30 21 walking by, I noticed there was a layer of dew already
11:30 22 settled on top of it.

11:30 23 I went on around, went back in the house. And
11:30 24 then once the officer asked me to check the inside,
11:30 25 that was the only grill found on-site.

11:30 1 Q Is there any evidence in the home that a grill --
11:30 2 inside the home that a grill had started a fire?

11:30 3 A No, ma'am.

11:30 4 Q Did you see any food out and ready to cook in the
11:30 5 home?

11:30 6 A The only thing we saw were some dirty dishes in
11:30 7 the sink and across the bar. There was no open food.

11:30 8 Q And based on your training and experience, what
11:30 9 kind of fire did you believe this was?

11:30 10 A At the time we really didn't know. Something had
11:30 11 to start it. And while looking for the grill, I went
11:30 12 to report to the law enforcement officer that had asked
11:31 13 me about the grill, and that's when I saw the gas can
11:31 14 sitting at the end of the hall. I instructed all my
11:31 15 firefighters in the room that were using thermal
11:31 16 imaging cameras and stuff to make sure the fire was out
11:31 17 to gather our tools and exit the building when I saw
11:31 18 the gas can.

11:31 19 Q I'm going to show you what has already been
11:31 20 admitted as State's Exhibit 47. Is this consistent
11:31 21 with what you saw in the hallway that night?

11:31 22 A Yes, ma'am.

11:31 23 Q And would your firemen have removed the batteries
11:31 24 from the smoke detectors?

11:31 25 A No, ma'am. The only time we would touch a smoke

11:31 1 detector is after the fire and smoke was cleared and
11:31 2 the detector would not clear itself, then we would
11:31 3 silence the smoke alarm.

11:31 4 Q That didn't occur in this case?

11:31 5 A No, ma'am.

11:32 6 Q And were the batteries in or out of the smoke
11:32 7 detectors?

11:32 8 A We found no batteries in the detectors that were
11:32 9 down.

11:32 10 Q Do you recognize this?

11:32 11 A Yes, ma'am.

11:32 12 Q Tell me a little bit about that.

11:32 13 A That is the gas can at the end of the hall. The
11:32 14 doorway to the left of the picture is the room where
11:32 15 the fire occurred, and that can was found at the end of
11:32 16 the hall.

11:32 17 Q Do you recognize this?

11:32 18 A This is looking out the door. To the left of the
11:32 19 picture is where the fire was. The round item there
11:32 20 beside the broom, handle of the broom, is the smoke
11:32 21 detector that was wired above where it's laying.

11:32 22 Q And State's 37?

11:32 23 A That is where the detector should have been
11:32 24 installed.

11:32 25 Q Okay. Please answer any questions that Mr. Cole

11:33 1 may have.

11:33 2 THE COURT: Mr. Cole, your witness.

11:33 3 MR. COLE: Thank you, Your Honor.

11:33 4 CROSS-EXAMINATION

11:33 5 BY MR. COLE:

11:33 6 Q Chief, you said that your -- that your officers,
11:33 7 the other employees of the fire department, were on the
11:33 8 scene prior to you getting there; is that correct?

11:33 9 A That is correct.

11:33 10 Q And were they in the house prior to you getting
11:33 11 there?

11:33 12 A I had one off-duty fireman and a volunteer that
11:33 13 had entered the residence. As I was getting out of my
11:33 14 vehicle, they were coming out.

11:33 15 Q So they were in the residence when you got out of
11:33 16 your vehicle?

11:33 17 A That is correct.

11:33 18 Q And so you didn't see if they touched -- with your
11:33 19 own eyes if they moved anything or touched anything
11:33 20 inside the residence?

11:33 21 A No, sir, I did not.

11:33 22 Q When you looked around the house, was there a pan
11:34 23 of -- do you remember if there was a pan on the stove?

11:34 24 A The counter was covered in dishes. I cannot say
11:34 25 for sure. I know there was no ice or anything warm at

11:34 1 all in the kitchen.

11:34 2 Q It wasn't warm, but there were pans all over the
11:34 3 counter and one could have been on the stove?

11:34 4 A Where someone had cooked a meal.

11:34 5 Q So there was an indication that someone had cooked
11:34 6 at meal at some point in that kitchen?

11:34 7 A Prior.

11:34 8 Q When you were examining the home, did you see any
11:34 9 gasoline or other accelerant on any of the walls or any
11:35 10 of the floor of the home?

11:35 11 A Once I found the gas can laying in the floor, we
11:35 12 backed out of the house, isolated it as a crime scene
11:35 13 and turned it over to investigators for the sheriff's
11:35 14 department.

11:35 15 Q Prior to that, you didn't see any gasoline or
11:35 16 accelerant on any of the walls or the floor?

11:35 17 A I Did not notice any.

11:35 18 MR. COLE: No further questions.

11:35 19 MS. SIMMONS: Just one follow-up.

11:35 20 REDIRECT EXAMINATION

11:35 21 BY MS. SIMMONS:

11:35 22 Q Chief, you did testify prior to that you inquired
11:35 23 of all your firefighters if they had altered the stove
11:35 24 the gas can or the smoke detectors?

11:35 25 A Yes, ma'am. While I was trying to figure out why

11:35 1 there were so many spot fires in the house, I did
11:35 2 question firefighters, all of them that were inside
11:35 3 before and after I got there, about the couch and smoke
11:35 4 detectors and everything.

11:35 5 Q And the gas can?

11:35 6 A And the gas can.

11:35 7 MS. SIMMONS: Thank you.

11:36 8 MR. COLE: No further questions.

11:36 9 THE COURT: All right. Any objection to this
11:36 10 witness being excused?

11:36 11 MS. SIMMONS: No, your Honor.

11:36 12 MR. COLE: No objection.

11:36 13 THE COURT: All right.

11:36 14 Thank you, Chief. You are excused.

11:36 15 MR. WAGNER: May it please the court, Your Honor.

11:36 16 The State calls Barry Owens.

11:36 17 **BARRY LANE OWENS,**

11:36 18 **BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:**

11:36 19 **DIRECT EXAMINATION**

11:36 20 **BY MR. WAGNER:**

11:37 21 Q Sergeant Owens, would you give us your full name
11:37 22 and spell your last name for the record.

11:37 23 A Sure. My name is Barry Lane Owens, B-a-r-r-y,
11:37 24 L-a-n-e, O-w-e-n-s.

11:37 25 Q And who do you work for?

11:37 1 A I work for the Oconee County Sheriff's Office.

11:37 2 Q Were you working for the sheriff's office back on
11:37 3 May 16th of 2014?

11:37 4 A Yes, sir, I was.

11:37 5 Q And how long have you worked for the sheriff's
11:37 6 office total?

11:37 7 A Total now is right at ten years with the sheriff's
11:37 8 office.

11:37 9 Q What are your job duties now and what were they
11:37 10 roughly two years ago when this happened?

11:37 11 A Job duties now is I'm assigned to investigation
11:37 12 division. I primarily investigate property crimes.
11:37 13 Two years prior to that, I was an assigned corporal on
11:37 14 road patrol on Delta shift.

11:37 15 Q Were you dispatched to the scene of the fire on
11:37 16 Utica Street?

11:37 17 A Yes, sir, I was.

11:37 18 Q What did you find when you got there?

11:38 19 A Whenever we got there, we found the female victim,
11:38 20 Ms. Cook, laying on a neighbor's porch. And her
11:38 21 husband was in the area babbling that he was sorry,
11:38 22 that they were grilling, and that he accidentally set
11:38 23 her on fire.

11:38 24 Q What time of day was it?

11:38 25 A This was just shy of 11 o'clock. 10:40-something.

11:38 1 Q How long after you got dispatched did you get
11:38 2 there?

11:38 3 A Within just a few minutes. Me and my supervisor
11:38 4 were in the area.

11:38 5 Q Okay. Was anybody else there when you got there?

11:38 6 A Just Ms. Cook and Mr. Drotning.

11:38 7 Q Okay. So EMS hadn't gotten there quite yet?

11:38 8 A Not real sure if the responder -- if the
11:38 9 responders had gotten there yet. If so, it was just
11:38 10 maybe just one.

11:38 11 Q Okay.

11:38 12 A But I don't recollect if the responders had gotten
11:39 13 there yet at that time.

11:39 14 Q When you pulled up, where did you park and what
11:39 15 did you do?

11:39 16 A I parked on the -- I believe if memory serves me
11:39 17 correctly, I was in the roadway. And the first part,
11:39 18 we just kind of just sat there and waited on fire and
11:39 19 rescue to do their thing. Everything looked at that
11:39 20 point to kind of be a normal -- a normal incident, so.

11:39 21 Q Did you -- what drew your attention to the victim?
11:39 22 Where did you see her? What drew your -- how did you
11:39 23 end up finding her next door?

11:39 24 A Well, we could visibly see the victim laying next
11:39 25 door and was laying there. It was obvious, you could

11:39 1 see she was in a lot of stress and severely burned.

11:39 2 Q Okay. Where was the defendant?

11:39 3 A Defendant was in close proximity to her.

11:39 4 Q Okay. And did either of them say anything?

11:40 5 A The defendant, let's see, just kept saying that

11:40 6 they were grilling. He is kind of whining, kind of

11:40 7 whimpering, but really was no show of emotions. Later

11:40 8 on I was talking to the EMS worker --

11:40 9 MR. COLE: Objection; calls for hearsay as to the

11:40 10 EMS worker.

11:40 11 THE COURT: Sustained as to the EMS worker.

11:40 12 THE WITNESS: Okay. I was speaking to the victim

11:40 13 as to -- basically which is what we do every time we go

11:40 14 to a call, what happened. And she said that, "He did

11:40 15 it. He set me on fire" --

11:40 16 MR. COLE: Objection as to the victim.

11:40 17 THE COURT: Overruled.

11:40 18 BY MR. WAGNER:

11:40 19 Q So you went and spoke to the victim?

11:40 20 A Yes, sir. Went to speak to the victim. And she

11:40 21 said that he done it to her. I asked her if it was on

11:40 22 purpose and she said yes. And she, like I say, she was

11:40 23 still under the immediate stress of the situation. She

11:41 24 was burned the majority of her body, so.

11:41 25 Q Did you do a sweep of the house and why, if you

11:41 1 did?

11:41 2 A Yes, sir, I did. After the defendant told me he
11:41 3 was grilling, we obviously checked the grills to make
11:41 4 sure that they were, in fact, grilling, in which we
11:41 5 found that they were not. They were covered with dew.
11:41 6 I opened the lid, placed my hand on the grill, the
11:41 7 grill was cold to the touch.

11:41 8 The reason I done a protective sweep or I say a
11:41 9 sweep of the house was basically was trying to prove
11:41 10 the defendant did not do that, was trying to give him
11:41 11 the benefit of the doubt. Went inside the home, seen
11:41 12 that it looked like there was a struggle inside the
11:41 13 home, the couch was overturned, stuff was in disarray.
11:41 14 And we were going in checking the appliances making
11:41 15 sure they didn't for some reason bring a grill or some
11:41 16 type of something else into the house that they were
11:41 17 going to be cooking with.

11:42 18 Q What kind of condition was the defendant in?

11:42 19 A I'd say in an intoxicated condition. He was --
11:42 20 like I say, he was kind of whiney. It was absolutely
11:42 21 no show of any tears or remorse. It was more of just
11:42 22 whiney. Just whining. Seemed to have been
11:42 23 intoxicated.

11:42 24 Q When you say you inspected the grill, did you
11:42 25 actually pick the cover up and look inside?

11:42 1 A Yes, sir. I actually picked the cover up and also
11:42 2 set my hand inside it.

11:42 3 Q Was there any charcoal in it?

11:42 4 A They were, but it's after time whenever it sits
11:42 5 there. I mean, it's just little stuff on the bottom
11:42 6 that would normally be there. There wasn't any like
11:42 7 you were grilling. I mean, definitely not.

11:42 8 Q Okay. Did it appear that anybody had even tried
11:42 9 to start a fire?

11:42 10 A No, sir.

11:42 11 Q Were the smoke detectors working?

11:43 12 A No, sir, they were not. They were jerked from the
11:43 13 ceiling.

11:43 14 Q Could you smell any smoke in the house?

11:43 15 A Yes, sir, you could smell smoke.

11:43 16 Q And did you see a gas can anywhere?

11:43 17 A Yes, sir, I did. Gas can was located in the
11:43 18 hallway, which was within close proximity to where the
11:43 19 bedroom was.

11:43 20 Q Did you find any gasoline, accelerants outside the
11:43 21 house?

11:43 22 A No, sir, none to the exterior of the house.

11:43 23 Q Was the victim coherent?

11:43 24 A Yes, sir, she was.

11:43 25 Q Was she still under the stress?

11:43 1 A She was in tremendous pain, but she was able to
11:43 2 speak to us.

11:43 3 Q Was she calm?

11:43 4 A Sir?

11:43 5 Q Was she calm?

11:43 6 A Considering the traumatic situation like this, she
11:43 7 was calm, but you could still tell that she was afraid
11:43 8 she was going to die. She was afraid she was going to
11:43 9 die as well as I was afraid she was going to die.

11:43 10 Q How long between the time you got there did EMS
11:44 11 arrive, and at what point did you leave her side?

11:44 12 A I left her whenever EMS started doing their thing
11:44 13 and whenever -- began to talk to my sergeant about the
11:44 14 issue and tell him kind of what we thought we had.
11:44 15 Because like I say, it was just a normal situation up
11:44 16 to the point that things started not to add up.

11:44 17 Q When things started to not add up, did you call
11:44 18 for an investigator to come out there?

11:44 19 A Yes, sir. I told my supervisor, and I believe it
11:44 20 was him that made the call to Sergeant Arnold.

11:44 21 Q Was Sergeant Arnold on call that day?

11:44 22 A Yes, sir. That's correct.

11:44 23 Q Thank you, Officer. That's all the questions I
11:44 24 have.

11:44 25 THE COURT: All right. Mr. Cole.

11:44 1 MR. COLE: Thank you, Your Honor.

11:44 2 CROSS-EXAMINATION

11:44 3 BY MR. COLE:

11:44 4 Q Sergeant Owens, did you perform any type of drug
11:44 5 or alcohol or sobriety test on Ms. Cook?

11:45 6 A No, sir. She was a dying victim at that time.

11:45 7 There wasn't any need to waste time on no sobriety

11:45 8 test. That was the least of our worries, her sobriety.

11:45 9 Q Did you perform any kind of sobriety or drug or
11:45 10 alcohol test on Mr. Drotning?

11:45 11 A No, sir, as we would have not. He wasn't driving.

11:45 12 Q When you did the sweep of the home, did you find
11:45 13 any -- did you see any gas or other accelerant on any
11:45 14 of the floor or the walls of the home?

11:45 15 A The walls were burned, sir. And to be honest, I'm
11:45 16 not trained in that realm so I wouldn't have known if
11:45 17 it had been an accelerant or not. I did notice burns.

11:45 18 Q You didn't see any gasoline, you didn't see any
11:45 19 liquid on the floors or the walls, did you?

11:45 20 A No, sir, I did not.

11:45 21 Q The gas can that you saw, it was the red -- a red
11:45 22 gas can; is that correct?

11:45 23 A Yes, sir.

11:45 24 Q And did you see any other gas can?

11:45 25 A No, sir, I didn't.

11:46 1 Q And this type -- the gas can that you saw, did you
11:46 2 examine it at all?

11:46 3 A No, sir. That's when we called for -- like I say,
11:46 4 we called for investigators.

11:46 5 MR. COLE: No further questions, Your Honor.

11:46 6 THE COURT: Anything further from this witness?

11:46 7 MR. WAGNER: No, sir.

11:46 8 THE COURT: Any objection to this witness being
11:46 9 excused?

11:46 10 MR. WAGNER: No, sir.

11:46 11 MR. COLE: No objection, Your Honor.

11:46 12 THE COURT: All right.

11:46 13 Thank you, Officer. You are excused.

11:46 14 THE WITNESS: Thank you.

11:46 15 MR. WAGNER: Call Scott Arnold.

11:46 16 **SCOTT BRADLEY ARNOLD,**

11:46 17 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

11:46 18 DIRECT EXAMINATION

11:46 19 BY MR. WAGNER:

11:46 20 Q Could you give us your full name and spell your
11:46 21 last name for the record, please.

11:47 22 A Scott Bradley Arnold, A-r-n-o-l-d.

11:47 23 Q And who do you work for?

11:47 24 A I'm employed with the Oconee County Sheriff's
11:47 25 Office.

- 11:47 1 Q What's your rank and job duties?
- 11:47 2 A Sergeant Arnold. I'm an investigator, property
11:47 3 crimes investigator, for the last 11 years.
- 11:47 4 Q Do you guys as investigators, do y'all rotate
11:47 5 being on call?
- 11:47 6 A Yes, we do.
- 11:47 7 Q Is it part of your job duties if you get a case
11:47 8 like we're here on today, if you're on call, you're the
11:47 9 person that ends up going out to investigate?
- 11:47 10 A Yes.
- 11:47 11 Q So you occasionally get assigned arsons, murders,
11:47 12 other things like that, too, if they occur while you're
11:47 13 on call?
- 11:47 14 A Yes.
- 11:47 15 Q How long have you worked for the sheriff's office?
- 11:47 16 A Sheriff's office, right at 18 years. I've got
11:47 17 around 20, 22 years law enforcement experience.
- 11:47 18 Q And how long have you been in investigations
11:47 19 there?
- 11:47 20 A Right at 11 years.
- 11:47 21 Q So you were on call May 16, 2014, when this fire
11:47 22 occurred?
- 11:47 23 A Yes.
- 11:47 24 Q Did you get called to come out there from home?
- 11:47 25 A Yes, I did.

11:47 1 Q Did you respond?

11:47 2 A Yes, I did.

11:47 3 Q When you got there, what did you find when you
11:48 4 arrived?

11:48 5 A When I arrived, I spoke with Sergeant Owens about
11:48 6 this incident. He advised that --

11:48 7 MR. COLE: Objection as to --

11:48 8 THE COURT: Sustained.

11:48 9 BY MR. WAGNER:

11:48 10 Q Let me ask you this: Was the victim there?

11:48 11 A No. The victim had left prior to my arrival.

11:48 12 Q So she had been medevaced out, I guess?

11:48 13 A Yes.

11:48 14 Q Was the defendant still there?

11:48 15 A Yes, he was.

11:48 16 Q What was his demeanor?

11:48 17 A He was handcuffed, placed in investigative
11:48 18 detention in the back of a patrol car. I was going to
11:48 19 talk to him, going to read him his rights. He wouldn't
11:48 20 waive his rights.

11:48 21 MR. COLE: Objection.

11:48 22 BY MR. WAGNER:

11:48 23 Q What was his demeanor?

11:48 24 THE COURT: Hold on.

11:48 25 MR. COLE: Objection, Your Honor, as to the last

11:48 1 question regarding rights of the defendant.

11:48 2 THE COURT: Okay. Are you moving on to another
11:48 3 question, Mr. Wagner?

11:49 4 MR. WAGNER: Yes, sir.

11:49 5 THE COURT: That question is withdrawn.

11:49 6 THE WITNESS: He was loud, using a lot of
11:49 7 profanity when I was talking to him.

11:49 8 BY MR. WAGNER:

11:49 9 Q Okay. All right. Was there any fire there on the
11:49 10 scene?

11:49 11 A No, there was no fire.

11:49 12 Q Okay. As a result of your discussions with
11:49 13 Sergeant Owens, Barry Owens, all right, did you
11:49 14 investigate this as a potential crime?

11:49 15 A Yes, I did.

11:49 16 Q All right. And to investigate that, did you need
11:49 17 to go into the residence based on what you knew at the
11:49 18 time?

11:49 19 A Yes.

11:49 20 Q What did you do to enable you to go back into the
11:49 21 house?

11:49 22 A Obtain a search warrant for the residence.

11:49 23 Q Did you, in fact, obtain, over the course of your
11:49 24 investigation, several search warrants to go back in
11:49 25 the house at different times?

- 11:49 1 A Yes, I did.
- 11:49 2 Q How many?
- 11:49 3 A Three.
- 11:49 4 Q Starting with the first one, what did you obtain
- 11:50 5 search warrants for, and what did you do in the course
- 11:50 6 of your investigation?
- 11:50 7 A First one, I obtained a search warrant that night
- 11:50 8 based on information I received. I took fire debris,
- 11:50 9 hair samples, and a red gas can and broken piece of a
- 11:50 10 lighter. And we also took photographs that night.
- 11:50 11 Q Okay. Did you go back out there the next day?
- 11:50 12 A Went up there on the 19th, I believe. The 19th.
- 11:50 13 Q This occurred on the 16th. Was it a Friday night?
- 11:50 14 A It was -- yeah, it was right at midnight when it
- 11:50 15 happened, when I was called out, so most of my
- 11:50 16 investigation occurred on the 17th.
- 11:50 17 Q All right. So then you went back out on -- was it
- 11:50 18 Monday, the 19th?
- 11:50 19 A It was the 19th, yeah.
- 11:50 20 Q Who did you go out there with?
- 11:51 21 A I went out there with Sergeant Philpott, crime
- 11:51 22 scene technician.
- 11:51 23 Q And did y'all -- y'all did another search on the
- 11:51 24 premises. And did y'all take some more things from
- 11:51 25 there?

- 11:51 1 A Yes, I did.
- 11:51 2 Q Okay. What did y'all do with those?
- 11:51 3 A It was -- Sergeant Philpott collected those items,
11:51 4 and he kept them in his custody.
- 11:51 5 Q And you did a third search warrant?
- 11:51 6 A Obtained a third one for his property.
- 11:51 7 Q And where was that?
- 11:51 8 A I obtained it to get his personal property.
- 11:51 9 Q Okay. Where did you serve that? Where was that?
- 11:51 10 A It was executed by David Philpott, Sergeant
11:51 11 Philpott, at the jail.
- 11:51 12 Q Okay. So when you say "his property," you're
11:51 13 talking about the defendant's clothes, stuff that he
11:51 14 had on?
- 11:51 15 A Yes. We took digital photographs, a
11:52 16 black-in-color belt, a metal ring, a gray-in-color
11:52 17 T-shirt, plaid shorts and underwear.
- 11:52 18 Q Sergeant Philpott took those items?
- 11:52 19 A Sergeant Philpott took those. I was not present
11:52 20 when that happened.
- 11:52 21 Q Did you do a return on a search warrant? What do
11:52 22 you have to do -- when you do a search warrant on
11:52 23 something like that, what do you have to do, legal
11:52 24 steps?
- 11:52 25 A I obtain the search warrant. Sergeant Philpott is

11:52 1 the one that does the return.

11:52 2 Q While you were out there that night, did you check
11:52 3 the grill?

11:52 4 A Yes, I did.

11:52 5 Q What happened? What did you find?

11:52 6 A After I was notified of the grill, I went and
11:52 7 actually physically touched it. It was cool. Also had
11:52 8 dew on top of it. I actually lifted up the top, and it
11:52 9 was not used. There was no evidence whatsoever that
11:52 10 grill had been lit up that night.

11:52 11 Q Were there any other grills or any other evidence
11:52 12 of cooking inside the house?

11:52 13 A No.

11:52 14 Q Did you find any food out or anything like that
11:52 15 like anybody had been attempting to cook?

11:53 16 A There was a lot of items on that bar. I mean, you
11:53 17 could just -- a lot of things all over the place.

11:53 18 Dishes in the sink. I didn't see any means of cooking.

11:53 19 Q Did you find any hamburgers, hot dogs, steaks, or
11:53 20 pork chops?

11:53 21 A No.

11:53 22 Q No food that would be cooked on a grill?

11:53 23 A No.

11:53 24 Q Did you try to talk to any neighbors?

11:53 25 A Yes, I did.

- 11:53 1 Q Was anybody a witness to anything?
- 11:53 2 A Nobody witnessed anything.
- 11:53 3 Q Who made the 911 call?
- 11:53 4 A A bystander.
- 11:53 5 Q Did the defendant make a 911 call?
- 11:53 6 A No, he did not call 911.
- 11:53 7 Q What was the status of the smoke detectors in the
- 11:53 8 house when you got in there and did a search?
- 11:53 9 A Once I entered, I seen several small fires among
- 11:53 10 the house, noticed that the fire alarms were jerked off
- 11:53 11 the wall. They were in the floor. Also I noticed a
- 11:53 12 red gas can at the end of the hallway next to their
- 11:54 13 bedroom.
- 11:54 14 Q Based on what you had that night, did you obtain a
- 11:54 15 warrant for the defendant?
- 11:54 16 A Yes, I did.
- 11:54 17 Q What did you charge him with?
- 11:54 18 A I charged him with attempted murder and arson
- 11:54 19 second.
- 11:54 20 Q Did you later discuss another couple of charges
- 11:54 21 that he's currently charged with?
- 11:54 22 A Yes, I did.
- 11:54 23 Q Okay.
- 11:54 24 A Which I -- he was later charged with criminal
- 11:54 25 domestic violence high and aggravated nature, malicious

11:54 1 injury to personal property.

11:54 2 Q Okay. Did you search the other side of the
11:54 3 bedroom? What did you find when you went in there and
11:54 4 started looking? Did you find --

11:54 5 A Once I entered in later, found out their bedroom,
11:54 6 the bedroom all the way down to the end to the left, I
11:54 7 noticed that the closet door had a lot of burns at the
11:55 8 bottom area, and the floor had burned, had a small area
11:55 9 burned also. And also noticed that -- we found a
11:55 10 broken lighter in the floor.

11:55 11 Q Okay. Did y'all take those items into evidence
11:55 12 with Sergeant Philpott?

11:55 13 A Yes, we did.

11:55 14 Q Did you actually take the door that was burnt?

11:55 15 A Yes, we did.

11:55 16 Q What did you find on the one from June 17th? What
11:55 17 did you seize on that search warrant?

11:55 18 A You talking about May 17th? Ask me that question
11:55 19 again, David.

11:55 20 Q The one from June. There's one from June 17th
11:55 21 you've got.

11:56 22 A Have you got a copy of it?

11:56 23 MR. WAGNER: Yes.

11:56 24 Your Honor, may I approach the witness?

11:56 25 THE COURT: Yes, sir.

11:56 1 BY MR. WAGNER:

11:56 2 Q Do you recognize that?

11:56 3 A Yes, I do.

11:56 4 Q What is that?

11:56 5 A That's a search warrant I obtained June 17th.

11:56 6 Q Okay. So is that when you went out another time?

11:56 7 A Yeah, went out another time.

11:56 8 Q What did you take possession of on that one?

11:56 9 A I took a blue-in-color bed sheet, quarter round
11:56 10 baseboard with floor cuttings, and digital photographs
11:56 11 of the master bedroom.

11:56 12 Q Okay. So you did four search warrants total?

11:56 13 A Yeah. We did four search warrants.

11:57 14 Q When I say four, three and then another one a few
11:57 15 weeks later?

11:57 16 A Uh-huh.

11:57 17 Q Okay. Let me ask you this: Why did you go back
11:57 18 out the fourth time? What was the delay several weeks
11:57 19 ago? Did you consult with anybody to go back out and
11:57 20 look for something else, or what did you do?

11:57 21 A Yes, I did. I consulted with several SLED agents
11:57 22 and also Captain Greg Reed about this, and we kept
11:57 23 obtaining search warrants based on opinions.

11:57 24 Q Okay.

11:57 25 A To collect more evidence.

11:57 1 Q Thank you.

11:57 2 That's the only questions I have.

11:57 3 THE COURT: Mr. Cole.

11:57 4 MR. COLE: May it please the court, Your Honor.

11:57 5 CROSS-EXAMINATION

11:57 6 BY MR. COLE:

11:57 7 Q When you were searching the home, did you find any
11:57 8 or see any gasoline or accelerant on the walls or the
11:58 9 floor of the home?

11:58 10 A No.

11:58 11 Q The gas can that you found in the home, it was a
11:58 12 red gas can; is that correct?

11:58 13 A Yes.

11:58 14 Q And did you examine -- did you look at that gas
11:58 15 can, hold that gas can?

11:58 16 A I examined it along with Sergeant Philpott.

11:58 17 Q And that was the type of gas can that you get at a
11:58 18 gas station, and it is made to be put into a vehicle;
11:58 19 is that correct?

11:58 20 A Correct.

11:58 21 Q And so on the end of that gas can, then, it has to
11:58 22 be pushed in on the end for gas to come out of it; is
11:58 23 that correct?

11:58 24 A I'd have to look at that gas can again, but it's
11:58 25 been a while since I've seen it.

11:58 1 MR. COLE: Your Honor, I want to put State's
11:59 2 Exhibit 11 back on the screen.

11:59 3 THE COURT: Yes, sir.

11:59 4 BY MR. COLE:

11:59 5 Q This is the gas can you found; is that correct?

11:59 6 A That's the gas can.

11:59 7 Q And this red nozzle on the end right here, that
11:59 8 was on it when you found it, right?

11:59 9 A Correct.

11:59 10 Q And that red nozzle right there, it has to be
11:59 11 pushed in like when you would put it into a car, the
11:59 12 gas tank pushes it in in order for gas to come out of
11:59 13 that gas can; is that correct?

11:59 14 A I'm not sure about that gas can. I didn't
11:59 15 physically touch it.

11:59 16 Q But you said you examined it?

11:59 17 A I examined it while Sergeant Philpott was
11:59 18 collecting it.

12:00 19 Q Did you find any shot glasses in the home?

12:00 20 A I didn't see any.

12:00 21 Q Did you perform any type of drug or alcohol or
12:00 22 sobriety test on Mr. Drotning?

12:00 23 A No, I did not.

12:00 24 MR. COLE: No further questions, Your Honor.

12:00 25 MR. WAGNER: Nothing further for this witness,

12:00 1 Your Honor.

12:00 2 THE COURT: All right.

12:00 3 Thank you, Officer. You can step down.

12:00 4 MR. WAGNER: Can we approach just as far as
12:00 5 scheduling? I know it's getting to be lunchtime.

12:00 6 THE COURT: Yes.

12:00 7 (WHEREUPON, a bench conference was held off the
12:00 8 record in the presence of the jury, but out of the
12:03 9 hearing of the jury.)

12:03 10 THE COURT: All right.

12:03 11 Ladies and gentlemen, after conferring with the
12:03 12 attorneys in the case, I think we've reached a natural
12:03 13 stopping point for lunch. I'm going to send you to
12:03 14 lunch now. We will start back at 1:30.

12:03 15 So remember the instructions from yesterday. No
12:03 16 discussion of the case with third parties, no
12:03 17 deliberations amongst yourselves, and no independent
12:03 18 research. So I hope everyone has a good lunch, and
12:03 19 we'll see you back at 1:30.

12:03 20 (WHEREUPON, the jury exited open court at
12:04 21 12:03 p.m.)

12:04 22 THE COURT: Okay. Anything before we go to
12:04 23 recess?

12:04 24 MS. SIMMONS: No, your Honor.

12:04 25 MR. COLE: No, your Honor.

12:04 1 THE COURT: All right. We will now go to lunch.
12:04 2 Start back at 1:30.
12:04 3 (Lunch recess taken from 12:04 p.m. to 1:30 p.m.)
01:30 4 THE COURT: Anything from either side before we
01:30 5 bring our jury in?
01:30 6 MR. WAGNER: No, sir.
01:30 7 MR. COLE: No, your Honor.
01:30 8 THE COURT: All right. Get our jury for us,
01:30 9 please, sir.
01:31 10 (WHEREUPON, the jury entered open court at
01:32 11 1:31 p.m.)
01:32 12 THE COURT: All right. Ladies and gentlemen, I
01:32 13 hope everyone had a good lunch. We are now ready to
01:32 14 proceed.
01:32 15 Ms. Simmons, call your next witness.
01:32 16 MS. SIMMONS: The State calls Sergeant David
01:32 17 Philpott.
01:32 18 **DAVID PHILPOTT,**
01:32 19 **BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:**
01:32 20 **DIRECT EXAMINATION**
01:32 21 **BY MS. SIMMONS:**
01:32 22 Q Sergeant Philpott, please state your full name for
01:32 23 the record.
01:32 24 A David Philpott, P-h-i-l-p-o-t-t.
01:33 25 Q Where are you employed?

01:33 1 A I'm currently employed by the Oconee County
01:33 2 Sheriff's Office.

01:33 3 Q How long have you been there?

01:33 4 A February will be 15 years.

01:33 5 Q And what's your education background?

01:33 6 A Graduated high school in '95. Graduated from
01:33 7 Clemson University in 2000. Began working for the
01:33 8 sheriff's office February 2002, then graduated the
01:33 9 South Carolina Criminal Justice Academy May of that
01:33 10 same year and have been with the sheriff's office ever
01:33 11 since.

01:33 12 Q What unit are you assigned to presently?

01:33 13 A Criminal investigative division.

01:33 14 Q How long have you been there?

01:33 15 A Full-time since 2010.

01:33 16 Q And what does that job entail?

01:33 17 A My current position, myself and Sergeant Merck do
01:33 18 the crime scene forensics. We do everything from
01:33 19 responding to scenes to process them as far as usually
01:33 20 fingerprints, things like that, on burglaries, any kind
01:34 21 of DNA evidence on personal crimes, assaults, things
01:34 22 like that. We respond to major crimes after hours. We
01:34 23 also take in evidence other deputies collect. We house
01:34 24 and store the evidence and transport any evidence or
01:34 25 drugs to labs for analysis and that sort of thing.

01:34 1 Q Did you execute four search warrants in this
01:34 2 matter?

01:34 3 A Yes, ma'am.

01:34 4 Q And on what items or where?

01:34 5 A The first search warrant was at the residence the
01:34 6 night the incident happened. Then, I believe, it was
01:34 7 two days later we had a second search warrant that was
01:34 8 executed at the jail to get the defendant's clothing,
01:34 9 his personal property from the jail property. That
01:34 10 same day, we did a third search warrant that was back
01:34 11 at the residence. And then about a month later, there
01:34 12 was a fourth search warrant again back out at the
01:35 13 residence.

01:35 14 Q Did you collect SLED items 1 through 18
01:35 15 personally?

01:35 16 A Yes, ma'am.

01:35 17 Q And who did you receive item 19 from?

01:35 18 A Item 19 was a swab that was obtained by Anna Orr,
01:35 19 and she personally turned that over to myself.

01:35 20 Q Let's talk about each item individually, where it
01:35 21 was collected, when it was collected, when it was
01:35 22 transported to SLED.

01:35 23 MR. COLE: Your Honor, we'll stipulate as to the
01:35 24 chain of custody on the items that she's referring to.

01:35 25 THE COURT: Items 1 through 19, chain of custody

01:35 1 is stipulated?

01:35 2 MR. COLE: Yes, your Honor.

01:35 3 THE COURT: Madam Solicitor, that is noted for the
01:35 4 record.

01:35 5 MS. SIMMONS: Thank you.

01:35 6 Q Since the chain of custody has been stipulated,
01:35 7 could you just briefly tell us what items 1 through 19
01:35 8 are, and did all of those items go to SLED?

01:35 9 A Yes, ma'am. Okay. Item number 1, paint cans, the
01:36 10 typical gallon paint can. Dealing with arson cases, we
01:36 11 have to submit that evidence in arson cans. They're
01:36 12 specially sealed to keep any kind of accelerant into
01:36 13 the item. So a lot of this is going to be an arson can
01:36 14 containing, but that's what the can itself is.

01:36 15 So Item number 1 was an arson can containing fire
01:36 16 debris, which is photo marker number 1. Item number 2
01:36 17 is an arson can containing fire debris from photo
01:36 18 marker number 2. Item 3 is a hair sample. Item 4 is a
01:36 19 sample of a liquid substance from the collected red gas
01:36 20 can. Item 5 is an arson can containing fire debris
01:36 21 from photo marker number 6. Item 6 is an arson can
01:36 22 containing black-in-color belt that belonged to the
01:36 23 Defendant Drotning. Item 7 is an arson can containing
01:37 24 a gray-in-color T-shirt from Drotning. Item 8 is an
01:37 25 arson can containing plaid shorts from Mr. Drotning.

01:37 1 Item 9 is an arson can containing underwear from
01:37 2 Mr. Drotning. Item 10 is an arson can containing
01:37 3 linoleum floor cutting, which is photo marker 7. Item
01:37 4 11 is an arson can containing fire debris, photo marker
01:37 5 number 9. Item 12 is a pillow with a red-in-color
01:37 6 stain. Item 13 is an arson can containing fire debris.
01:37 7 Item 14 is an arson can containing linoleum floor
01:37 8 cutting, which was a control sample requested by SLED.
01:37 9 Item 15 is an arson can containing a piece of quarter
01:37 10 round, baseboard, and linoleum floor cuttings. Item 16
01:37 11 is a control sample bag for SLED item number 3 was the
01:37 12 hair. Item 17 is a control sample bag for SLED items
01:38 13 number 6, 8 and 9 which was Mr. Drotning's clothing.
01:38 14 Item 18 was a buccal swab from Mr. Drotning. And item
01:38 15 19 is a buccal swab from Katie Cook.

01:38 16 Q And who actually obtained item 19?

01:38 17 A That was obtained by Anna Orr.

01:38 18 Q Did you transport all of these items to SLED for
01:38 19 processing?

01:38 20 A Yes, ma'am.

01:38 21 Q And are all of those items contained in the two
01:38 22 boxes that are sitting in front of you?

01:38 23 A The two swabs are in the two plastic bags. All
01:38 24 those other items are in the two boxes.

01:38 25 MS. SIMMONS: Your Honor, let the record reflect

01:38 1 the defense has stipulated to chain of custody on the
01:38 2 items in the boxes and the plastic bags.

01:38 3 THE COURT: Noted for the record.

01:38 4 BY MS. SIMMONS:

01:38 5 Q Did you also collect what has been marked State's
01:38 6 Exhibit 108?

01:38 7 A Yes, ma'am.

01:39 8 MS. SIMMONS: May I approach the witness, Your
01:39 9 Honor?

01:39 10 THE COURT: Yes, ma'am.

01:39 11 BY MS. SIMMONS:

01:39 12 Q Where did you collect it from?

01:39 13 A That was obtained in Augusta at the Augusta burn
01:39 14 center. I received that from Teresa Mills on
01:39 15 May 23rd -- May 23rd, 2014.

01:39 16 Q Did you alter it, tamper with it, or change it in
01:39 17 any way while it's been in your custody?

01:39 18 A No, ma'am.

01:39 19 Q Does part of your job entail taking crime scene
01:39 20 photos?

01:39 21 A Yes.

01:39 22 Q Did you take several in this case?

01:39 23 A Yes, I did.

01:39 24 Q I'm going to show you what has already been
01:39 25 admitted -- this may be a lengthy process, Sergeant

01:39 1 Philpott, because there are a lot of photographs.

01:40 2 Madam Clerk, can you turn the lights off?

01:40 3 THE COURT: Madam Solicitor, these are already in
01:40 4 evidence?

01:40 5 MS. SIMMONS: The first four, Your Honor, are, and
01:40 6 then we'll have to go from there.

01:40 7 THE COURT: Counsel, approach.

01:40 8 (WHEREUPON, a bench conference was held off the
01:40 9 record in the presence of the jury, but out of the
01:41 10 hearing of the jury.)

01:41 11 MS. SIMMONS: Your Honor, at this time the State
01:41 12 would move into evidence State's Exhibits 4 through 76
01:41 13 with the exception of 11, 36, 47 and 37 which have
01:41 14 previously been admitted.

01:41 15 MR. COLE: No objection, Your Honor.

01:41 16 THE COURT: So State's Exhibits 4 through 76 would
01:42 17 be admitted without objection.

01:42 18 (WHEREUPON, State's Exhibit Numbers 4 through
01:42 19 76 were admitted into evidence.)

01:42 20 BY MS. SIMMONS:

01:42 21 Q Sergeant Philpott, I'm going to show you State's
01:42 22 Exhibit 37. Tell me what that is.

01:42 23 A That is a picture of the ceiling and one of the
01:42 24 smoke detectors with the detector pulled down or
01:42 25 knocked down.

01:42 1 Q And State's Exhibit 47?

01:42 2 A That's showing the hallway. And you can see just
01:42 3 to the left of the overhead light there, that that's a
01:42 4 smoke detector that's missing from the ceiling.

01:42 5 Q And State's Exhibit 36?

01:42 6 A That is the bedroom looking through the door there
01:42 7 into the hallway. You can see the broom on the floor,
01:43 8 and that's one of the smoke detectors there by the
01:43 9 handle.

01:43 10 Q And State's 11?

01:43 11 A That is looking down the hallway. The master
01:43 12 bedroom is there on the left through that open doorway.
01:43 13 On the right side at the end of the hall, you can see a
01:43 14 smoke detector on the floor. And then there's the
01:43 15 overturned gas can kind of in the center of the picture
01:43 16 at the end of the hallway on the floor.

01:43 17 Q And State's 4?

01:43 18 A That's the living room looking kind of from the
01:43 19 kitchen back towards the front door. The door there at
01:43 20 the top of the picture is actually the main front door
01:43 21 that goes outside. And you can see several of the
01:43 22 yellow photo markers there. The one on the bottom
01:43 23 right kind of next to that cat food bag, that was hair
01:44 24 that was on the floor. The other two markings were, I
01:44 25 believe, marking fire debris that was on the floor.

01:44 1 Q And those were the items you referenced being sent
01:44 2 to SLED?

01:44 3 A Yes. The yellow there, that's those photo markers
01:44 4 I was referring to there during the description of the
01:44 5 items.

01:44 6 Q And number 5?

01:44 7 A That picture is essentially the same picture but
01:44 8 looking in the opposite direction. So I'm standing in
01:44 9 the open doorway to the outside of the residence. You
01:44 10 can see the fire debris next to the water container
01:44 11 there on the bottom. You can see the overturned couch.
01:44 12 And then that's looking back towards the back of the
01:44 13 residence.

01:44 14 Q State's number 6?

01:44 15 A That's pretty much the same picture after some
01:45 16 markers had been placed down. And you can see that the
01:45 17 couch has been uprighted to see what was under it or
01:45 18 what might have been missing or hidden that we couldn't
01:45 19 see in the earlier picture.

01:45 20 Q State's number 7?

01:45 21 A That's a close-up of photo marker number 1 that's
01:45 22 there on the floor in the living room. You can see
01:45 23 that's what we call fire debris. It's something that
01:45 24 had been burned, and that's what's collected and put in
01:45 25 the arson cans.

01:45 1 Q State's number 8?

01:45 2 A That was a close-up of the photo marker number 2
01:45 3 which is more fire debris.

01:45 4 Q And State's number 9?

01:45 5 A That's just another view of the earlier picture.

01:46 6 You can see the number 3 marker on the right is the

01:46 7 hair that's on the floor. And in that picture you

01:46 8 can't see the numbers on the markers, but the one near

01:46 9 the water container, that was the marker number 1.

01:46 10 It's just an overall that shows both of them together.

01:46 11 Q And State's number 10?

01:46 12 A That's a close-up of the marker number 3 with the
01:46 13 hair sample that was collected.

01:46 14 Q State's number 12?

01:46 15 A That's a close-up of the gas can that was on the
01:46 16 floor at the end of the hallway.

01:46 17 Q Was it subsequently sampled and sent to SLED?

01:46 18 A Yes.

01:46 19 Q State's number 13?

01:46 20 A It's just another picture of the same view on the
01:46 21 end of the hallway with the smoke detector and the gas
01:47 22 can before the markers were put down.

01:47 23 Q And 14?

01:47 24 A That is the master bedroom. On the right side of
01:47 25 that picture, that's where it goes out into the hallway

01:47 1 where the gas can was. In the center top edge of the
01:47 2 picture, that open doorway there, that's going into, I
01:47 3 believe, the closet. The bed on your left. And you
01:47 4 can see some of the clothes on the floor. You can't
01:47 5 see it real well in that picture, but the broken piece
01:47 6 of the lighter is kind of there in the middle of the
01:47 7 clothes on the floor. It's just not a zoomed-in
01:47 8 picture to where you can make that out.

01:47 9 Q State's number 15?

01:47 10 A That's more of a close-up of the burn damage to
01:47 11 the door there in the master bedroom on the right side.

01:47 12 Q State's number 16?

01:48 13 A That's a closer-up image of marker number 6 which
01:48 14 was depicting some of the fire debris there that was
01:48 15 collected with the arson can to be submitted to SLED.

01:48 16 Q State's 17?

01:48 17 A That's a closer-up image.

01:48 18 Q And State's 18?

01:48 19 A That picture was from, I believe, it was search
01:48 20 warrant number 3. That was two days later when we went
01:48 21 back out on Monday. The number 6 marker was there from
01:48 22 the night before, then the number 7 marker was marking
01:48 23 some of the new items that we came out with the
01:48 24 subsequent search warrant to obtain that day.

01:48 25 Q And State's 19?

01:48 1 A That is showing where some of the linoleum floor
01:48 2 was missing where we had cut it and removed it to send
01:49 3 to SLED. And you can actually see that the door has
01:49 4 been taken off the hinges where we collected the door
01:49 5 as well.

01:49 6 Q State's 20?

01:49 7 A That's a closer-up image. It's kind of hard to
01:49 8 see there. I guess the black piece that's next to the
01:49 9 white at the bottom of the doorjamb, that was a piece
01:49 10 that we had cut out that was in the arson can that was
01:49 11 submitted as the quarter round, the baseboard, and the
01:49 12 floor cutting. That's just a close-up showing the
01:49 13 piece we cut out.

01:49 14 Q State's 21?

01:49 15 A That is an image basically from the hallway
01:49 16 looking back towards the kitchen and towards the front
01:49 17 of the residence. You can see fire debris there at the
01:49 18 marker number 9. You can kind of see some of the items
01:49 19 that are on the counter, the kitchen counter. Then on
01:50 20 the right side of that image, where you see the yellow,
01:50 21 that was a marker for, I believe, it was burned
01:50 22 flip-flops that were wrapped in that rug there by that
01:50 23 door which goes into the garage.

01:50 24 Q The flip-flops were wrapped inside a rug?

01:50 25 A They were inside it, and the rug was wrapped

01:50 1 around them.

01:50 2 Q State's Exhibit 22?

01:50 3 A That's the master bedroom. The way that image is
01:50 4 taken, to your right would be where the bed was.

01:50 5 That's looking, I guess, on the left side wall as

01:50 6 you're looking at the bed. That just shows another

01:50 7 burn pattern that was on the wall that didn't -- it

01:50 8 shouldn't have been there. There was no reason for

01:50 9 that to be there, and it was just a picture showing

01:50 10 that there was more damage in the room.

01:50 11 Q That is the opposite wall of the closet?

01:50 12 A Yes.

01:50 13 Q State's number 23?

01:50 14 A That is showing where we cut some of the linoleum
01:51 15 there. SLED had requested a control sample, and that
01:51 16 was the sample that we had taken because there wasn't
01:51 17 any fire or burn damage in that area, so it should have
01:51 18 been a clean sample.

01:51 19 Q State's 24?

01:51 20 A That is a close-up image of two pictures ago, the
01:51 21 damage to the wall to the side of the TV. That's where
01:51 22 we cut out some of the baseboard and linoleum where
01:51 23 that was submitted to SLED.

01:51 24 Q And 25?

01:51 25 A That's a closer-up image of the same thing.

01:51 1 Q 26?

01:51 2 A That is an overall image of the bedroom as it was
01:51 3 the night when we responded. That's before any markers
01:51 4 were put down. That was just kind of an overall of the
01:51 5 entire bedroom where you can see the blinds at the top
01:52 6 of the windows, they actually melted just from the
01:52 7 intense heat in the bedroom. And we were taking a
01:52 8 picture to show the heat damage. And that's a
01:52 9 closer-up image of those blinds. That's a close-up
01:52 10 image on the blinds on the other side.

01:52 11 THE COURT: Could you refer to what number?

01:52 12 MS. SIMMONS: I'm sorry, Judge. 28. 27 and 28.

01:52 13 Q State's number 29?

01:52 14 A That is one of the initial photos. When we first
01:52 15 responded, it was just an overall, where we take
01:52 16 pictures and work from the outside in. And that's just
01:52 17 showing the front of the house, the residence.

01:53 18 Q State's number 30?

01:53 19 A That is the right side of the residence. That's
01:53 20 the patio and the grill off to the right side. You can
01:53 21 see the crime scene tape was already up upon my
01:53 22 arrival, and those were just some of my overall shots
01:53 23 as I was working my way around the residence.

01:53 24 Q You stated the patio is on the right side of the
01:53 25 home?

01:53 1 A If you're looking at the front of the residence,
01:53 2 it's on the right side.

01:53 3 Q And on what side of the home is the garage?
01:53 4 A It would be on the left side.

01:53 5 Q State's number 31?
01:53 6 A That was a closer-up image. I had already been
01:53 7 advised at this point that possibly the charcoal grill
01:53 8 on the patio had been involved. That was just a
01:53 9 closer-up picture showing the grill and the fact that
01:53 10 the crime scene tape was actually wrapped around it and
01:53 11 it wasn't hot, hadn't melted the tape. It was just an
01:54 12 overall picture.

01:54 13 Q And State's 32?
01:54 14 A That's a close-up image where you can actually see
01:54 15 the dew or condensation that was on top of the grill.

01:54 16 Q Did you personally see that condensation?
01:54 17 A Yes, ma'am.

01:54 18 Q State's number 33?
01:54 19 A That was one of the exterior doors just showing
01:54 20 that there were no signs of forced entry.

01:54 21 Q State's 34?
01:54 22 A That picture was when we came back out on the
01:54 23 Monday for search warrant number 3. And, once again,
01:54 24 we just retake photos. We start from the outside in.
01:54 25 And that was some of the initial, you know, as we began

01:54 1 walking around the outside. You can still see the
01:55 2 crime scene tape up from Friday night, Saturday
01:55 3 morning. And there's the grill on the right-hand side
01:55 4 of the picture.

01:55 5 Q State's 35?

01:55 6 A That was the Monday when we came back out where we
01:55 7 had just started marking new items we were going to
01:55 8 collect. You can see the number 7 on the floor and I
01:55 9 believe it was maybe 8, I can't tell from looking at
01:55 10 that picture, but that's where the door is marked where
01:55 11 we were taking pictures and then going to collect the
01:55 12 door.

01:55 13 Q State's 38?

01:55 14 A That was a picture taken of the laundry room. The
01:55 15 doorway to your left where you can see the blue cooler,
01:55 16 that's actually going out into the garage. That was
01:55 17 just a picture in the kitchen. You can see on the
01:55 18 floor kind of in front of the clothes hamper, I guess,
01:56 19 that's the rug, the burned rug that had the flip-flops
01:56 20 inside it. And it's just a picture there on the floor
01:56 21 in the kitchen.

01:56 22 Q Did you have to unwrap the rug to take this
01:56 23 photograph?

01:56 24 A From looking at that picture, I'm not sure if that
01:56 25 was the first night or if that was on Monday, just

01:56 1 because the pictures are out of order. But when we
01:56 2 originally went to the scene that Friday night, we had
01:56 3 to unroll it to see what was in it. And then it had
01:56 4 been touched several times since. Looking at that one,
01:56 5 I just don't know if that's from the first night or the
01:56 6 Monday afternoon.

01:56 7 Q But the first night it was rolled?

01:56 8 A Yes.

01:56 9 Q State's 39?

01:56 10 A That's from the Friday night where we unrolled it
01:56 11 and marked that to take a picture to actually see what
01:56 12 was inside the rug.

01:56 13 Q State's 40?

01:56 14 A That's a close-up of the flip-flops that were
01:56 15 burned that were inside the wrapped-up rug.

01:57 16 Q State's 41?

01:57 17 A That's another picture just looking down the
01:57 18 hallway towards the bedroom there on the left. And you
01:57 19 can see the smoke detector and the gas can at the end
01:57 20 of the hallway.

01:57 21 Q 42?

01:57 22 A That's a picture looking basically towards the
01:57 23 kitchen from standing kind of behind where the couch
01:57 24 is. That was just one of the initial overalls there by
01:57 25 the trash can. You can see some of the fire debris

01:57 1 that's on the floor before photo markers were put down.

01:57 2 Q And what items do you see on the counter?

01:57 3 A It's kind of hard to see in that picture unless
01:57 4 you know what you're looking for. About the center of
01:57 5 the counter space, you can see on the front edge there
01:58 6 is the little red gas cap that came off the gas can.

01:58 7 Q And that was there when you arrived the evening in
01:58 8 question?

01:58 9 A Yes.

01:58 10 Q 43?

01:58 11 A That's a closer-up image just showing the kitchen
01:58 12 countertops and what's there. In that one, you can see
01:58 13 the red gas can cap next to the papers there on the
01:58 14 counter.

01:58 15 Q 44?

01:58 16 A That's just another picture in the kitchen again
01:58 17 of the countertop looking back in a different
01:58 18 direction. The couch is kind of behind and to the
01:58 19 right there, and then you can see the red gas cap on
01:58 20 the counter as well.

01:58 21 Q 45?

01:59 22 A Just another image of the kitchen just showing
01:59 23 what is on the counters, just something to refer back
01:59 24 to later if investigators had questions of what was
01:59 25 there.

01:59 1 Q And State's 46?

01:59 2 A That's basically 180 degrees from the prior
01:59 3 picture, turn around and the stove and those counters
01:59 4 are behind you. And that was a picture of what was on
01:59 5 the stove and the fact that all the eyes were turned
01:59 6 off. It's just an over all kitchen picture.

01:59 7 Q Was the skillet on the stove clean or dirty?

01:59 8 A If I remember correctly, it was dirty.

01:59 9 Q State's 48?

01:59 10 A That's just showing the picture -- I believe that
01:59 11 one's probably the hallway, just showing the smoke
01:59 12 detector where it was no longer installed and had been
01:59 13 pulled down or knocked down.

01:59 14 Q State's 49?

02:00 15 A On the left side, the red, kind of maroon color,
02:00 16 that's the couch. The table to the side of it. Then
02:00 17 you can see that's some fire debris on the floor there
02:00 18 by the electrical cord. It was just a picture of that
02:00 19 debris on the floor.

02:00 20 Q Was the cord on top or on the bottom of that item?

02:00 21 A It was hard to tell. It was pretty much all kind
02:00 22 of melted together.

02:00 23 Q And State's 50?

02:00 24 A That's a close-up of the same item, just fire
02:00 25 debris.

02:00 1 MS. SIMMONS: Beg the court's indulgence for one
02:00 2 moment.

02:01 3 Q Did you serve a search warrant on the defendant to
02:01 4 take photographs of him and take his personal
02:01 5 belongings at the detention center?

02:01 6 A Yes, ma'am.

02:01 7 Q I'm going to show you State's 51.

02:01 8 A That's just like we did the residence, an overall
02:01 9 picture, basically working from the outside in. That
02:01 10 was just an overall showing Mr. Drotning there in the
02:01 11 jail.

02:01 12 Q 52?

02:01 13 A And that's a same picture, just of the back side.

02:01 14 Q State's 53?

02:01 15 A That's just a close-up of the hands. When we
02:01 16 photograph people, we usually do tops of hands, bottoms
02:01 17 of hands, you know, front, back, just looking for any
02:02 18 kind of mark, injuries, bruises. And that one there is
02:02 19 just a depiction of the top of his hands.

02:02 20 Q And moving on to State's 54?

02:02 21 A That's the bottom of his hands or inside of his
02:02 22 hands.

02:02 23 Q State's 55?

02:02 24 A That's a closer-up image of the inside of his
02:02 25 right hand.

02:02 1 Q State's 56?

02:02 2 A And that's a closer-up image of the inside of his
02:02 3 left hand.

02:02 4 Q How would you characterize the size of his hands?

02:02 5 A Large compared to mine.

02:02 6 Q State's 57?

02:02 7 A That's a picture of his right elbow. We just saw
02:02 8 the mark or injury there, and that was a picture of
02:02 9 that.

02:03 10 Q Now State's 58?

02:03 11 A That's a closer-up image of the same mark or
02:03 12 injury, just with a scale for reference.

02:03 13 Q State's 59?

02:03 14 A That's a picture of the bottom of his left foot.

02:03 15 Q State's 60?

02:03 16 A And that's the bottom of his right foot.

02:03 17 Q You also retrieved the defendants's clothing at
02:03 18 that time?

02:03 19 A Yes, ma'am.

02:03 20 Q Let me show you what's been marked as State's 61.

02:03 21 A That is a picture of the front of his shirt.
02:03 22 After we or after I collected it from the corrections
02:03 23 officer, it was in just a property -- a jail property
02:03 24 bag. Then we came back to the office and actually laid
02:03 25 them out where we could take pictures of them.

02:03 1 Q And you also collected a control of the jail
02:03 2 property bag for SLED?
02:03 3 A Yes.
02:04 4 Q State's 62?
02:04 5 A That is the back side of the same shirt.
02:04 6 Q State's 63?
02:04 7 A That's a closer-up image of that mark or substance
02:04 8 on the shirt.
02:04 9 Q Was that shirt, that mark, sent for testing?
02:04 10 A It was sent to SLED.
02:04 11 Q State's 64?
02:04 12 A That is, again, it's just an even closer image
02:04 13 with a scale for reference.
02:04 14 Q State's 65?
02:04 15 A That is the front of his shorts that he had on
02:04 16 when he was brought in.
02:04 17 Q State's 66?
02:04 18 A And that's the back side of the same shorts.
02:04 19 Q State's 67?
02:04 20 A That's a picture of his boxers or underwear.
02:05 21 That's the front of them.
02:05 22 Q State's 68?
02:05 23 A And that's the back.
02:05 24 Q State's 69?
02:05 25 A That's the belt that he was wearing at the time he

02:05 1 was brought in.

02:05 2 Q State's 70?

02:05 3 A That is a closer-up picture just of the different
02:05 4 bits of writing that was on the bag that I obtained
02:05 5 from Augusta burn center.

02:05 6 Q State's 71?

02:05 7 A That's another closer-up image, just the different
02:05 8 writing that's on it.

02:05 9 Q State's 72?

02:05 10 A That's another picture from the same bag.

02:05 11 Q State's 73?

02:05 12 A That looks like it's an overall picture of one of
02:06 13 the sides of the bag which shows all of the writing
02:06 14 that was on the bag.

02:06 15 Q State's 74?

02:06 16 A And that's a closer-up image of some of the
02:06 17 writing on one of the sides.

02:06 18 Q State's 75?

02:06 19 A That's an overall from the other side of the bag
02:06 20 showing all the writing on that one side.

02:06 21 Q And State's 76?

02:06 22 A And that's another overall from the opposite side
02:06 23 once again.

02:06 24 Q Did you also --

02:06 25 Madam Clerk, we can turn the lights back on?

02:06 1 Q Did you also collect the gas can in question?

02:06 2 A I did.

02:06 3 Q I'm going to show you what has been premarked as
02:07 4 State's Exhibit 105. Is that the gas can you
02:07 5 collected?

02:07 6 A Yes, ma'am, it is.

02:07 7 Q Is it in substantially the same condition as when
02:07 8 you collected it, aside from the fact a sample was sent
02:07 9 to SLED?

02:07 10 A It is.

02:07 11 MS. SIMMONS: Your Honor, at this time the State
02:07 12 would move to admit State's 105.

02:07 13 THE COURT: Any objection?

02:07 14 MR. COLE: No objection, Your Honor.

02:07 15 THE COURT: State's Exhibit 105 would be admitted
02:07 16 without objection.

02:07 17 (WHEREUPON, State's Exhibit Number 105 was
02:07 18 admitted into evidence.)

02:07 19 BY MS. SIMMONS:

02:07 20 Q Did you also collect the lighter from the floor of
02:07 21 the master bedroom?

02:07 22 A Yes, ma'am.

02:07 23 Q I'm going to show you what's been premarked as
02:07 24 State's 106. Was this item collected by you, and has
02:07 25 it been altered or tampered with since its collection?

02:07 1 A Yes. I collected this, and it has not been
02:07 2 altered or tampered with in any way.

02:08 3 Q I would ask at this time you open this item for
02:08 4 the jury's view.

02:08 5 A (Witness complies.)

02:08 6 Q Again, where was this item collected?

02:08 7 A This item was off of the floor in the master
02:08 8 bedroom, in with one of the piles of clothing.

02:08 9 (Item opened.)

02:08 10 Q Is that the item you collected?

02:08 11 A Yes, it is.

02:08 12 Q And what is that?

02:08 13 A This is the top piece of a lighter. You can see
02:09 14 the button here that you push to actually, I guess,
02:09 15 start the lighter. And then this down here is where
02:09 16 the fuel canister or butane or whatnot would have been.
02:09 17 But this is the broken top part of it.

02:09 18 MS. SIMMONS: Your Honor, at this time the State
02:09 19 would move to admit State's 106.

02:09 20 MR. COLE: No objection, Your Honor.

02:09 21 THE COURT: State's Exhibit 106 would be admitted
02:09 22 without objection.

02:09 23 (WHEREUPON, State's Exhibit Number 106 was
02:09 24 admitted into evidence.)

02:09 25 Q Sergeant Philpott, did you retrieve the door in

02:09 1 this case?

02:09 2 A Yes, I did.

02:09 3 Q Could you show the jury the door, please.

02:09 4 THE COURT: You may step down.

02:10 5 BY MS. SIMMONS:

02:10 6 Q Sergeant Philpott, is this the door that you
02:10 7 retrieved from the residence of the defendant and Katie
02:10 8 Cook?

02:10 9 A It is. It has my tag here, and I also wrote
02:10 10 information here on the door itself.

02:10 11 Q And other than sampling for SLED, has it been in
02:10 12 your care and custody since this time?

02:10 13 A It has.

02:10 14 Q And is it in substantially the same condition as
02:10 15 when you retrieved it?

02:10 16 A It is.

02:10 17 Show you both sides.

02:10 18 MS. SIMMONS: Your Honor, at the time the State
02:11 19 would move to admit State's 107.

02:11 20 THE COURT: Any objection?

02:11 21 MR. COLE: No objection, Your Honor.

02:11 22 THE COURT: State's Exhibit 107 would be admitted
02:11 23 without objection.

02:11 24 (WHEREUPON, State's Exhibit Number 107 was
02:11 25 admitted into evidence.)

02:11 1 BY MS. SIMMONS:

02:11 2 Q Sergeant Philpott, all of the items that we
02:11 3 discussed that were sent to SLED, were they returned to
02:11 4 you after testing?

02:11 5 A Yes, ma'am, they were.

02:11 6 Q Have they been in your care and custody since that
02:11 7 time?

02:11 8 A They have.

02:11 9 Q Please answer any questions Mr. Cole may have.

02:11 10 CROSS-EXAMINATION

02:11 11 BY MR. COLE:

02:11 12 Q Sergeant Philpott, there were several photographs
02:12 13 that the State has shown that were admitted as exhibits
02:12 14 of my client; is that correct?

02:12 15 A Yes, sir.

02:12 16 Q And my client, he voluntarily cooperated with you
02:12 17 in having those photographs taken; is that correct?

02:12 18 A Correct.

02:12 19 Q And he was cooperative and didn't try to hide
02:12 20 anything while you took those; is that correct?

02:12 21 A No, sir, he did not.

02:12 22 MR. COLE: No further questions, Your Honor.

02:12 23 THE COURT: Anything further from this witness?

02:12 24 MS. SIMMONS: Your Honor, if I may confer with the
02:12 25 court reporter for one second.

02:12 1 (Pause.)

02:12 2 MS. SIMMONS: Your Honor, nothing further from
02:12 3 this witness.

02:12 4 THE COURT: All right.

02:12 5 Thank you, Officer. You may step down.

02:13 6 MR. WAGNER: Your Honor, we call Anna Orr.

02:13 7 **ANNA JOY ORR,**

02:13 8 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

02:13 9 DIRECT EXAMINATION

02:13 10 BY MR. WAGNER:

02:13 11 Q Give us your full name and spell your last name
02:13 12 for the record.

02:13 13 A My name is Anna Joy Orr, A-n-n-a, J-o-y, O-r-r.

02:14 14 Q Could you tell us about your background.

02:14 15 A Yes. I have approximately eight years in law
02:14 16 enforcement. I have worked in uniformed patrol
02:14 17 division. I worked in narcotics as well as an
02:14 18 investigator here at the solicitor's office.

02:14 19 Q Currently where are you working?

02:14 20 A I'm employed by the Tenth Circuit Solicitor's
02:14 21 Office, and I'm assigned as an investigator to the
02:14 22 Oconee County office here.

02:14 23 Q Did you go to the victim for purposes of taking a
02:14 24 buccal swab?

02:14 25 A Yes, sir, I did. I went in Georgia to a parking

02:14 1 lot. It was a McDonald's parking lot. I met with the
02:14 2 victim and her mother and father to take a buccal swab
02:14 3 from her to obtain a DNA standards sample to send to
02:14 4 SLED.

02:14 5 Q How does that work and what do you do?

02:14 6 A There is a sterile container. You take an item
02:14 7 out. It looks like an elongated Q-Tip. You swab the
02:14 8 inside of someone's cheek. In this case it was
02:14 9 Ms. Cook's cheek. That picks up DNA tissues. I put it
02:14 10 back inside of the container. I seal it, I sign for
02:14 11 it, I label it. And that's what I did.

02:15 12 Q Okay. What did you do with that sample?

02:15 13 A The same day, I drove to the Oconee County
02:15 14 Sheriff's Office after meeting with Ms. Cook, and I
02:15 15 turned it over to Sergeant David Philpott.

02:15 16 Q Did you tamper or alter with it in any manner
02:15 17 while it's in your custody?

02:15 18 A No, sir.

02:15 19 Q Have you seen it since?

02:15 20 A No, sir.

02:15 21 Q You turned it over to Sergeant Philpott?

02:15 22 A Yes, sir.

02:15 23 Q When was that?

02:15 24 A It was June 25th, 2015.

02:15 25 Q Let me show you what's been marked State's I.D.

02:16 1 number 104.

02:16 2 A Yes, sir.

02:16 3 Q Do you recognize that?

02:16 4 A Yes, sir.

02:16 5 Q Is that the item that you turned over to Sergeant
02:16 6 Philpott?

02:16 7 A Yes, sir, it is.

02:16 8 Q Thank you. That's all the questions I have.

02:16 9 MR. COLE: No questions, Your Honor.

02:16 10 THE COURT: Thank you, ma'am. You may step down.

02:16 11 MR. WAGNER: Your Honor, we call Travis Overton.

02:16 12 **TRAVIS OVERTON,**

02:16 13 **BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:**

02:17 14 **DIRECT EXAMINATION**

02:17 15 **BY MS. SIMMONS:**

02:17 16 Q Officer Overton, where are you employed?

02:17 17 A With the sheriff's office at the detention center.

02:17 18 Q How long have you been there?

02:17 19 A Seven years.

02:17 20 Q And what kind of -- what's your job duties?

02:17 21 A When people are brought to the detention center,
02:17 22 we book them, pat them down, process them and watch
02:17 23 over them.

02:17 24 Q Who booked the defendant on May 17th of 2015?

02:17 25 A Lacey Durham, I believe.

02:17 1 Q She was working for the sheriff's office at that
02:17 2 time?

02:17 3 A Yes.

02:17 4 Q What happens with the defendant's clothing once
02:17 5 it's taken?

02:17 6 A They're assigned a property box. When they change
02:17 7 out, they bring us the clothes. We put them in the
02:17 8 property box, and they're put in the property room.

02:17 9 Q What property box was he assigned?

02:17 10 A 184.

02:17 11 Q And did you retrieve the defendant's clothing on
02:17 12 May 19, 2014, pursuant to a search warrant?

02:17 13 A Yes.

02:17 14 Q And who did you give that to?

02:17 15 A Sergeant Philpott.

02:17 16 Q And would that clothing be, the chain has been
02:17 17 previously stipulated on, that would be SLED number 6,
02:18 18 a black-in-color belt, 7, a gray-in-color shirt, and 8,
02:18 19 plaid shorts, and 9, underwear?

02:18 20 A Yes.

02:18 21 Q And those were the items you turned over to
02:18 22 Sergeant Philpott?

02:18 23 A Yes.

02:18 24 Q Did you alter or tamper or open the bag in any way
02:18 25 before you turned it over?

02:18 1 A No, ma'am.

02:18 2 Q Please answer any questions Mr. Cole may have.

02:18 3 MR. COLE: No questions, Your Honor.

02:18 4 THE COURT: Thank you, Officer. You may step
02:18 5 down.

02:18 6 MR. WAGNER: Your Honor, we were quicker than I
02:18 7 thought. This is all we can call today.

02:18 8 THE COURT: Okay. All right.

02:18 9 Ladies and gentlemen, we're going to go ahead and
02:18 10 break, and y'all will be able to go home today. We
02:19 11 will resume in the morning at 9:30. Be back in the
02:19 12 jury room before 9:30.

02:19 13 And remember the instructions: You can't talk to
02:19 14 third parties about the case. You can't deliberate.
02:19 15 You can't do independent investigation.

02:19 16 So I hope everyone has a good evening. We'll see
02:19 17 you in the morning at 9:30.

02:19 18 (WHEREUPON, the jury exited open court at
02:19 19 2:19 p.m.)

02:19 20 THE COURT: All right. Now, how many witnesses do
02:19 21 you anticipate calling tomorrow?

02:20 22 MS. SIMMONS: May we approach on the scheduling?

02:20 23 THE COURT: Yes. I want to get it figured out,
02:20 24 how we're going to proceed.

02:20 25 (WHEREUPON, a bench conference was held

02:24

1 off the record.)

02:24

2 THE COURT: We'll now go into recess until 9:30

02:24

3 tomorrow.

02:31

4 (WHEREUPON, proceedings adjourned at 2:31 p.m.)

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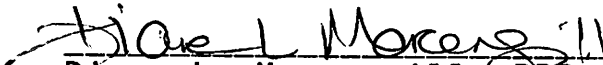
Certificate of Reporter

I, Diane L. Marcengill, Official Court Reporter for the Tenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of a portion of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Circuit Court for Oconee County, South Carolina, on the 18th day of October 2016.

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I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

March 5, 2017



Diane L. Marcengill, RPR, CRR
Circuit Court Reporter
Certified Realtime Reporter

1 State of South Carolina In the Court of General Sessions
2 County of Oconee

3
4 State of South Carolina)
5) 2014-GS-37-00742, 743
6 -vs-) 2015-GS-37-00441, 442
7 Jacob Daniel Drotning,) October 19, 2016
8 Defendant.) Volume 3 of 4
9 -----) Pages 216 - 343
) Transcript of Record

10
11 B E F O R E:

12 The Honorable R. Scott Sprouse, Judge;
13 and a jury.

14
15 A P P E A R A N C E S:

16 David R. Wagner, Jr., Esquire
17 Lindsey Satterfield Simmons, Esquire
18 Attorneys for the State
19 Gregory Lee Cole, Jr., Esquire
20 Attorney for Defendant

21
22 Diane L. Marcengill, RPR, CRR
23 Circuit Court Reporter
24 Certified Realtime Reporter
25

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1 E x h i b i t s

2 For the State:

3	Marked	Description	Identified	Admitted
4	78	Photo		294
	79	Photo		294
5	80	Photo		294
	81	Photo		294
6	82	Photo		294
	83	Photo		294
7	84	Photo		294
	85	Photo		294
8	86	Arson can #1	249	265
	87	Arson can #2		265
9	89	Sample of liquid from gas can		265
	90	Arson can #6		265
10	91	Arson can with belt		265
	92	Arson can with shorts		265
11	93	Arson can with boxer briefs		265
	94	Arson can with debris		265
12	95	Arson can with floor cutting		265
	96	Arson can with debris		265
13	97	Arson can with linoleum		265
	98	Arson can with debris		265
14	99	Arson can with control sample		265
	100	Arson can with debris		265
15	101	Pillow		279
	102	T-shirt		279
16	108	Plastic bag w/purple writing		293
	109	Check #708 \$8,109.78		228
17	110	Invoice 4433948		228
	111	SLED report		265
18	112	SLED report		279

19 For the Defendant:

20	Marked	Description	Identified	Admitted
21		None offered.		

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24

25

State of South Carolina v. Jacob Daniel Drotning 2014-GS-37-742&743;2015-GS-37-441&442
Kevin Michael Spielmann - Direct

1 (WHEREUPON, court convened with all parties
2 present and the following proceedings were had
09:30 3 commencing at 9:12 a.m.)

09:30 4 THE COURT: Anything from either party before we
09:30 5 call our jury back in?

09:30 6 MR. WAGNER: Not from the State, Your Honor.

09:30 7 MR. COLE: No, Your Honor.

09:30 8 THE COURT: All right. Let's get our jury.

09:30 9 (WHEREUPON, the jury entered open court at
09:31 10 9:30 a.m.)

09:31 11 THE COURT: Good morning, ladies and gentlemen.
09:31 12 You knew I was going to ask you this, but did anyone
09:31 13 have any third parties attempt to talk to them about
09:31 14 the case, or were there any deliberations or any
09:31 15 independent investigation from any source?

09:31 16 Let the record reflect there are no positive
09:31 17 responses.

09:31 18 Very good. We're ready to proceed.

09:31 19 Madam Solicitor, call your next witness.

09:31 20 MS. SIMMONS: Thank you, Your Honor. The State
09:31 21 calls Kevin Spielmann.

09:31 22 **KEVIN MICHAEL SPIELMANN,**

09:31 23 **BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:**

09:32 24 **DIRECT EXAMINATION**

09:32 25 **BY MS. SIMMONS:**

- 09:32 1 Q Please state and spell your name for the record.
- 09:32 2 A Kevin Michael Spielmann, S-p-i-e-l-m-a-n-n.
- 09:32 3 Q Kevin, what do you do?
- 09:32 4 A I own a tire service center.
- 09:32 5 Q And how long have you done that?
- 09:32 6 A 22 years.
- 09:32 7 Q And where is your service center located?
- 09:32 8 A On the bypass in Seneca.
- 09:32 9 Q How do you know the defendant and victim in this
- 09:32 10 case?
- 09:32 11 A I had hired Jake through Monster. He was
- 09:32 12 looking -- we were looking for certified technicians,
- 09:32 13 technicians who were good with computer diagnostics
- 09:33 14 with automobiles. And we found his application and had
- 09:33 15 him come down and interviewed him.
- 09:33 16 Q Why would you resort to using Monster.com to get
- 09:33 17 mechanics?
- 09:33 18 A It's -- cars have become a lot more high tech, and
- 09:33 19 so you have to have both mechanical aptitude of taking
- 09:33 20 things apart and putting them back together but also
- 09:33 21 the electronic aptitude, so, you know, the computer
- 09:33 22 diagnostic, understanding how they actually work.
- 09:33 23 Q A little harder to find, then?
- 09:33 24 A It's hard to find, yes.
- 09:33 25 Q Once you saw his application, what did you do from

09:33 1 there?

09:33 2 A Well, we invited him -- I invited him down to
09:33 3 South Carolina to see the business and to get a feel
09:33 4 for him. And he came down with Katie.

09:33 5 Q And did you eventually hire him?

09:33 6 A We did, yeah.

09:33 7 Q And how long did he work for you?

09:33 8 A A little over six months, I believe. Maybe a
09:34 9 little bit longer than that.

09:34 10 Q And what do you know about Katie and the
09:34 11 defendant's relationship?

09:34 12 A Well, you know, I met them personally, you know,
09:34 13 before they came down. And it seemed that Katie was
09:34 14 rather reserved and Jake was more of the talker in the
09:34 15 relationship.

09:34 16 Q How did the course of his employment go with you?

09:34 17 A At first it was fine. But within a couple, maybe
09:34 18 three months, we had problems with absenteeism that was
09:34 19 actually related more to drinking, not being able to
09:34 20 show up to work. There was a period where he didn't
09:34 21 show up for a week, and I ended up going to his house
09:34 22 to ask him what was going on. And he had said that
09:35 23 they had been drinking heavily. At that time, though,
09:35 24 it was Jake who is doing all the talking. Katie, at
09:35 25 that time -- actually, she didn't even come into the

09:35 1 room. She was in the bedroom the whole time. And that
09:35 2 just seemed strange that if two people are drinking
09:35 3 heavily, that they would both be talking. Just seemed
09:35 4 unusual.

09:35 5 Q What did the chronic absences lead to?

09:35 6 A His loss of a job.

09:35 7 Q Did he file for unemployment benefits?

09:35 8 A He did.

09:35 9 Q And on the first claim, what was the result?

09:35 10 A It was denied.

09:35 11 Q And you, obviously, contested the claim?

09:35 12 A He contested it, yes.

09:35 13 Q And did he appeal that?

09:35 14 A There was. And, again, he did not receive
09:35 15 unemployment benefits.

09:35 16 Q Around what date did you receive notice that the
09:36 17 unemployment benefits had been denied the second time?

09:36 18 A It was, I believe, the Wednesday before the
09:36 19 incident.

09:36 20 Q And did you speak with him after the unemployment
09:36 21 benefits were denied?

09:36 22 A Yes. Before the appeal. And at that time I had
09:36 23 said, well, you know if you want a job, you can have a
09:36 24 job, your job back. But he actually said no, that he'd
09:36 25 rather just get the unemployment benefits. And I told

09:36 1 him that wasn't going to happen.

09:36 2 Q Thank you, Kevin. Please answer any questions Mr.

09:36 3 Cole may have.

09:36 4 THE COURT: Mr. Cole, your witness.

09:36 5 MR. COLE: Thank you, Your Honor.

09:37 6 CROSS-EXAMINATION

09:37 7 BY MR. COLE:

09:37 8 Q Mr. Spielmann, you gave a statement to the police

09:37 9 in which you stated that you didn't know much about my

09:37 10 client and Ms. Cook's personal life; isn't that

09:37 11 correct?

09:37 12 A If it says so. I honestly don't remember exactly

09:37 13 what I told the police at the time.

09:37 14 MR. COLE: Your Honor, I'm going to pass up a

09:37 15 statement to refresh the witness' recollection.

09:37 16 THE COURT: Yes, sir. Did you give Ms. Simmons a

09:37 17 copy of it?

09:37 18 MS. SIMMONS: I have it, Your Honor. Thank you.

09:37 19 THE COURT: Okay.

09:38 20 BY MR. COLE:

09:38 21 Q So, now, with your recollection refreshed,

09:38 22 Mr. Spielmann, did you give a statement that stated

09:38 23 that you didn't know much about their personal lives?

09:38 24 A I did.

09:38 25 Q Isn't it true that you took my client and Ms. Cook

09:38 1 to AA, Alcoholics Anonymous?

09:38 2 A I did.

09:38 3 Q And so would you say that both of them were
09:38 4 alcoholics?

09:38 5 A They did not announce the fact that they were
09:38 6 alcoholic at the meeting.

09:38 7 Q But they both went to the meetings; is that
09:38 8 correct?

09:38 9 A They did.

09:38 10 Q And how many meetings did they go to with you?

09:38 11 A One.

09:38 12 MR. COLE: No further questions.

09:38 13 THE COURT: Any redirect?

09:38 14 MS. SIMMONS: No further questions for this
09:38 15 witness, Your Honor. We'd ask he be excused to return
09:38 16 to his business.

09:38 17 MR. COLE: No objection.

09:38 18 THE COURT: All right.

09:38 19 Thank you, sir. You are excused.

09:39 20 MR. WAGNER: Danny Delmarco.

09:39 21 **DANIEL CHRISTOPHER DELMARCO,**

09:39 22 **BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:**

09:39 23 **DIRECT EXAMINATION**

09:39 24 **BY MR. WAGNER:**

09:39 25 Q Could you give us your full name and spell your

- 09:39 1 last name for the record.
- 09:39 2 A Sure. It's Daniel Christopher Delmarco,
- 09:39 3 D-e-l-m-a-r-c-o.
- 09:39 4 Q Where are you from, Mr. Delmarco?
- 09:39 5 A I'm from Seneca.
- 09:39 6 Q And what do you do for a living?
- 09:39 7 A I'm a real estate agent.
- 09:39 8 Q How long you been doing that?
- 09:39 9 A Since around 2006.
- 09:39 10 Q What kind of things do you do as a real estate
- 09:40 11 agent?
- 09:40 12 A We do -- I'm heavily investor related, so we do a
- 09:40 13 lot of investment properties, actually purchase
- 09:40 14 properties on our own for rental units. I'm a
- 09:40 15 representative for Fannie Mae so we do a lot of
- 09:40 16 foreclosures and things of that nature.
- 09:40 17 Q Do you also do rentals?
- 09:40 18 A Yes.
- 09:40 19 Q Did you do rentals a couple years ago, back in
- 09:40 20 2014?
- 09:40 21 A That's correct.
- 09:40 22 Q And you know the defendant in this case and his
- 09:40 23 ex-wife, Katie Cook?
- 09:40 24 A Yes.
- 09:40 25 Q And how do you know them?

09:40 1 A They rented a unit from us on Utica Street, units
09:40 2 that we have.

09:40 3 Q What kind of tenants were they?

09:40 4 A You know, from the beginning of the tenant
09:40 5 relationship, rent was always paid on time so
09:40 6 everything was going well. It was just towards the end
09:40 7 of the relationship that things started getting behind
09:40 8 a little bit.

09:40 9 Q Do you know anything about their personal life?

09:40 10 A No, I don't.

09:40 11 Q Back -- what was the condition of the rental prior
09:40 12 to May 16th of 2014?

09:40 13 A Condition of the unit, was in, you know, fairly
09:40 14 good shape. Of course, you're going to have different
09:41 15 things where clothes are around, stuff like that, but
09:41 16 nothing abnormal or anything like that.

09:41 17 Q On or about May 16th, what was the status of their
09:41 18 rent as far as them paying their rent?

09:41 19 A They were behind all of April's rent and then
09:41 20 May's rent hadn't been paid as of yet.

09:41 21 Q So was it safe to say they were two months behind
09:41 22 or one month?

09:41 23 A Two months, two months behind.

09:41 24 Q Was there any damage that occurred due to fire on
09:41 25 May 16th?

09:41 1 A There was. I initially, let's see, visited the
09:41 2 unit the next day, and there was fire damage in the
09:41 3 master bedroom, from what I remember, down the hallway
09:41 4 a couple spots somewhere, in the kitchen, and a couple
09:41 5 spots in the living room. And then some smoke damage
09:41 6 kind of throughout. But the heaviest damage, I think,
09:41 7 was in the master bedroom.

09:41 8 Q Did you pay to fix it?

09:41 9 A Well, we did. We have insurance through Safeco,
09:42 10 so we coordinated with our insurance company and
09:42 11 ServPro Pickens County.

09:42 12 Q ServPro is the company that comes around and fixes
09:42 13 smoke and water damage?

09:42 14 A Smoke, fire, water damages and so forth.

09:42 15 Q Let me show you what's been marked State's
09:42 16 Exhibit for identification number 110. Do you
09:42 17 recognize that?

09:42 18 A Yes.

09:42 19 Q What is that?

09:42 20 A That is the restoration invoice for the damages at
09:42 21 the property. We did get a credit for removing some of
09:42 22 the flooring, just to kind of help with our deductible.

09:42 23 Q What was your deductible?

09:42 24 A My understanding on that one, it should have been
09:42 25 \$1,000.

09:42 1 Q Did you actually have to write them a check,
09:42 2 though?

09:42 3 A Yes, we did.

09:42 4 Q Let me show you what's been marked State's Exhibit
09:42 5 Number 109. Do you recognize that?

09:42 6 A Yes.

09:42 7 Q What is that?

09:42 8 A That's the check that we wrote to ServPro for the
09:42 9 damages for the restoration.

09:42 10 Q What was the amount of the damages, and what did
09:43 11 you have to pay them?

09:43 12 A \$8,109.78.

09:43 13 Q Is both State's Exhibit 109 and 110 a true and
09:43 14 accurate copy of the paperwork of both the invoice and
09:43 15 the check that you wrote?

09:43 16 A Yes, they are.

09:43 17 MR. WAGNER: Your Honor, at this time we would
09:43 18 move to introduce State's 109 and 110.

09:43 19 MR. COLE: No objection, Your Honor.

09:43 20 THE COURT: State's 109 and 110 would be admitted
09:43 21 without objection.

09:43 22 (WHEREUPON, State's Exhibit Numbers 109 and
09:43 23 110 were was admitted into evidence.)

09:43 24 BY MR. WAGNER:

09:43 25 Q They were behind two months. Did you enter into

09:43 1 any kind of discussions about trying to get them caught
09:43 2 back up?

09:43 3 A We did in the month of May. I don't remember the
09:43 4 exact day that we talked, but I was trying to reach out
09:43 5 to them. It was tough getting in touch with them for
09:43 6 that month of April. Once I did get in contact with
09:43 7 them, from what I can remember, they were trying to --
09:43 8 I know he had mentioned something about unemployment,
09:44 9 was trying to get that worked out. And then I think he
09:44 10 mentioned something about possibly doing some side jobs
09:44 11 or family going to help him get the April rent caught
09:44 12 up. I told him we would have up to around that 20th
09:44 13 time frame of May and at that point, you know, I
09:44 14 couldn't wait any further. I also, I think we talked
09:44 15 vaguely about I have several rental units, and he
09:44 16 was -- seemed to be pretty handy. So I said if we do
09:44 17 get at least that last month, maybe I could use you on
09:44 18 some of our properties to help, you know, since you
09:44 19 lost your job and so forth. I really didn't know the
09:44 20 reason why he lost his job or anything like that, but
09:44 21 was just trying to figure out a way to make everything
09:44 22 work.

09:44 23 Q So your deadline was May the 20th?

09:44 24 A Uh-huh. That's correct.

09:44 25 Q And the fire occurred on the 16th?

- 09:44 1 A That's correct.
- 09:44 2 Q Approximately how much was the rent?
- 09:44 3 A The rent was, I believe on that unit, was 775 a
09:44 4 month.
- 09:45 5 Q Thank you, sir. Will you answer any questions the
09:45 6 defense has?
- 09:45 7 A Sure.
- 09:45 8 THE COURT: Mr. Cole.
- 09:45 9 MR. COLE: Thank you, Your Honor.
- 09:45 10 CROSS-EXAMINATION
- 09:45 11 BY MR. COLE:
- 09:45 12 Q Mr. Delmarco?
- 09:45 13 A Uh-huh.
- 09:45 14 Q Isn't it true that you had a phone conversation
09:45 15 with my client on the day of this incident, on the day
09:45 16 of the fire?
- 09:45 17 A Like I said earlier, you know, I know I talked and
09:45 18 we had a conversation. I don't know the exact date.
09:45 19 It's been a couple years ago, but I thought it was
09:45 20 somewhere between the 10th to the 15th, 16th, something
09:45 21 in that time frame.
- 09:45 22 Q And during that conversation you worked out with
09:45 23 my client where he could do some work for you and to
09:45 24 help get caught up on the rent?
- 09:45 25 A There wasn't anything worked out at that point.

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09:45 1 We still had to get the other month's rent caught up.
09:45 2 Typically, what I do if I find people are willing to
09:45 3 work with us, you know, I don't have a problem going
09:45 4 through and helping them and hiring them to do some
09:45 5 work on our side. But the main thing we talked about
09:45 6 initially was there was going to be the prior month's
09:46 7 paid up by that 20th or so deadline, and then that
09:46 8 would show that he was serious about trying to take
09:46 9 care of the unit and stay in the unit because our lease
09:46 10 was up at the end of May. And if he showed that
09:46 11 progression, then we would be glad to have him work on
09:46 12 some of the other properties to help give us a little
09:46 13 more income.

09:46 14 Q So it's safe to say, then, that you were willing
09:46 15 the work with him and Ms. Cook to try to get caught up?

09:46 16 A It's -- as long as they followed through and paid
09:46 17 the prior balance of April and showed a little bit of,
09:46 18 you know, showed that they were wanting to make it
09:46 19 work. That was the main thing. We needed to have
09:46 20 that. And, again, from what I recall, that was either
09:46 21 going to come from family member, doing some side jobs
09:46 22 in the mechanic industry, or friends.

09:46 23 Q As far as the damages go, from your independent
09:47 24 knowledge of the incident, you don't know if it was my
09:47 25 client or Ms. Cook that caused this fire, do you?

09:47 1 A The only thing I know is there was a fire at the
09:47 2 unit.

09:47 3 Q All right. And my client and Ms. Cook were the
09:47 4 ones living in the unit; is that correct?

09:47 5 A That's correct.

09:47 6 MR. COLE: No further questions, Your Honor.

09:47 7 MR. WAGNER: Your Honor, we'd ask this witness be
09:47 8 excused.

09:47 9 MR. COLE: No objection, Your Honor.

09:47 10 THE COURT: All right. Thank you, sir. You are
09:47 11 excused.

09:47 12 MS. SIMMONS: Your Honor, the State calls Bryan
09:47 13 Evans.

09:47 14 **BRYAN ASHLEY EVANS,**

09:47 15 **BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:**

09:48 16 **DIRECT EXAMINATION**

09:48 17 **BY MS. SIMMONS:**

09:48 18 Q Good morning, Bryan.

09:48 19 A Good morning.

09:48 20 Q I know you're soft-spoken, so if you could speak
09:48 21 up for me.

09:48 22 Could you spell your full name for the court
09:48 23 reporter.

09:48 24 A B-r-y-a-n, A-s-h-l-e-y, E-v-a-n-s.

09:49 25 Q Thank you, Bryan.

09:49 1 How old are you?

09:49 2 A 36.

09:49 3 Q Where are you originally from?

09:49 4 A Oconee.

09:49 5 Q And at present, what's your living situation?

09:49 6 A I'm struggling to try to find work, find a place

09:49 7 to live.

09:49 8 Q And did our office actually provide you with

09:49 9 somewhere to stay and food last night?

09:49 10 A Yes, ma'am.

09:49 11 Q Bryan, do you have a prior criminal record?

09:49 12 A Yes, ma'am.

09:49 13 Q Is it extensive?

09:49 14 A Yes, ma'am.

09:49 15 Q Does it include burglaries, larcenies, drug

09:49 16 charges, shopliftings?

09:49 17 A Yes, ma'am.

09:49 18 Q And that record dates back a few years?

09:49 19 A Yes, ma'am.

09:49 20 Q Did you spend time in the Oconee County detention

09:49 21 center in 2014?

09:49 22 A The whole year, yes, ma'am.

09:49 23 Q Were you housed with the defendant, Jacob

09:49 24 Drotning, during that time?

09:49 25 A Yes, ma'am.

09:49 1 Q Did you at some point in time start to have
09:49 2 conversations with him?

09:49 3 A Yes, ma'am.

09:49 4 Q What did he -- did you begin to talk about why he
09:49 5 was there?

09:50 6 A Yes, ma'am.

09:50 7 Q What did he initially tell you?

09:50 8 A He told me that they had been drinking vodka, a
09:50 9 good bit, said they was drunk. Said all he remembered
09:50 10 was her screaming and she was on fire. He had told me
09:50 11 this probably twice. Later on, probably two weeks
09:50 12 later, he told me -- we had just come in from outside.
09:50 13 He told me he had poured gasoline on her and lit a
09:50 14 match and, "Torched the bitch," exact words.

09:50 15 Q When he was making these statements to you, did he
09:50 16 seem concerned about his wife?

09:50 17 A No, ma'am. He seemed more concerned that his
09:50 18 family wouldn't talk to him anymore.

09:50 19 Q Did you have a personal relationship with either
09:50 20 the defendant or the victim before this?

09:50 21 A No. Never met them before.

09:50 22 Q Do you have any motive to lie about this?

09:51 23 A No.

09:51 24 Q Had you read news coverage or had access to the
09:51 25 case material in this case when these statements were

09:51 1 made to you?

09:51 2 A No. You don't get any news coverage or anything
09:51 3 like that when you're in jail.

09:51 4 Q You had those pending charges in 2014, right?

09:51 5 A Yes, ma'am.

09:51 6 Q Did you receive any help from our office on your
09:51 7 charges?

09:51 8 A No, ma'am.

09:51 9 Q Did you actually go to prison?

09:51 10 A Yes, ma'am.

09:51 11 Q Just recently out?

09:51 12 A Yes, ma'am.

09:51 13 Q And did you and I discuss this case at all prior
09:51 14 to you actually being released from prison?

09:51 15 A No, ma'am.

09:51 16 Q Please answer any questions Mr. Cole may have.

09:51 17 Thank you.

09:51 18 CROSS-EXAMINATION

09:51 19 BY MR. COLE:

09:51 20 Q Mr. Evans, you were in the unit with my client,
09:51 21 cell block; isn't that correct, in the old jail?

09:51 22 A Yes, sir.

09:51 23 Q And there was -- so my understanding of how those
09:52 24 work is there's four people in the immediate cell with
09:52 25 you, and then there's four cells in the cell block, so

09:52 1 there's 16 guys in there; is that right?

09:52 2 A About like that.

09:52 3 Q All right. So it's 16 other guys. Did anybody

09:52 4 else hear my client supposedly tell you this stuff?

09:52 5 A Yeah. A few other people heard it, too. But like

09:52 6 I said, they down the road for murder now.

09:52 7 Q You contacted an investigator while you were still

09:52 8 in jail and told them you had information about this

09:52 9 case, didn't you?

09:52 10 A Yes, sir.

09:52 11 Q And you contacted them because you was trying to

09:52 12 get a better deal on the charges you had, didn't you?

09:52 13 A At the time, yes, sir.

09:52 14 Q Because you were charged with, at that time,

09:52 15 burglary first degree, possession of a controlled

09:52 16 substance, escape, distribution of methamphetamines

09:53 17 third or subsequent offense, another charge of

09:53 18 distribution of methamphetamines third or subsequent

09:53 19 offense; isn't that correct?

09:53 20 A Yes, sir.

09:53 21 Q And if you would have went to trial on that, you

09:53 22 could have got life in prison, couldn't you?

09:53 23 A Yeah.

09:53 24 Q But, instead, after you told the detective this,

09:53 25 the solicitor's office dropped the burglary first

09:53 1 degree, didn't they?

09:53 2 A No, sir. I never spoke to anybody about this case
09:53 3 at all.

09:53 4 Q You spoke to Detective Arnold about the case,
09:53 5 didn't you?

09:53 6 A No. I never spoke to him. I spoke to him
09:53 7 standing outside, but I never went up -- I just told
09:53 8 him I had some information. We never discussed this
09:53 9 case at all.

09:53 10 Q But you sent him a letter saying what you've said
09:53 11 here today?

09:53 12 A Yeah. But we discussed this none at all. I
09:54 13 didn't discuss this with anybody. Like I said, nobody
09:54 14 ever come talk to me. I went on to prison and done my
09:54 15 time.

09:54 16 Q But you sent a letter --

09:54 17 A The first-degree burglary, as far as that goes,
09:54 18 the first-degree burglary, I didn't burglarize nobody's
09:54 19 house. It was my aunt's house. I was given permission
09:54 20 to stay there. As far as the methamphetamine third, it
09:54 21 wasn't but my second offense anyhow.

09:54 22 Q So, regardless, you sent this letter to Detective
09:54 23 Arnold, and then after that, instead of getting life in
09:54 24 prison on these charges that you could have got, you
09:54 25 ended up serving 40 months; is that correct?

09:54 1 A I served 40 months, but it wasn't regarded to
09:54 2 this.

09:54 3 Q But it was after -- you didn't plea until after
09:54 4 you sent that letter, right?

09:54 5 A I had already -- he had already offered me
09:54 6 40 months before I even talked to these people about
09:54 7 this.

09:54 8 Q But did you plea and get sentenced?

09:54 9 A No. I wasn't going to plea to 40 months.

09:55 10 Q But you did after you sent this letter?

09:55 11 A Yeah, because there was nothing else I could do.
09:55 12 I knowed I was going to get the 40 months anyhow.

09:55 13 Q So, Mr. Evans, I saw you got swastikas on your --
09:55 14 tattooed on your hands.

09:55 15 A I got many of them.

09:55 16 Q Are you a Nazi?

09:55 17 A Am I a Nazi? No, I am not.

09:55 18 Q Ain't that a Nazi symbol?

09:55 19 A It is. I'm Aryan.

09:55 20 Q You're what now?

09:55 21 A Aryan.

09:55 22 Q So you're a white supremacist?

09:55 23 A To an extent, yeah.

09:55 24 Q Are you a member of the Aryan Nation?

09:55 25 A No, sir.

09:55 1 Q So you're not a member of any Aryan gangs?

09:55 2 A I'm a member of the Aryan Brotherhood.

09:55 3 Q Aryan Brotherhood.

09:55 4 MR. COLE: No further questions, Your Honor.

09:55 5 REDIRECT EXAMINATION

09:55 6 BY MS. SIMMONS:

09:55 7 Q Bryan, just a couple follow-ups.

09:55 8 So there were roughly, I guess, a dozen or so
09:56 9 other people in your cell block at this time, and some
09:56 10 of them did hear what you heard?

09:56 11 A Yes, sir (sic).

09:56 12 Q You have been in jail. Are people reluctant to
09:56 13 come forward with information like this?

09:56 14 A No, not the people that heard it. I mean, they
09:56 15 facing 25, 30 years anyway. What good was it going to
09:56 16 do them to say anything about it, you know. And that's
09:56 17 basically what all of them got was about 25 years after
09:56 18 they was sentenced. It's not going to do them any
09:56 19 good.

09:56 20 Q Are people fearful to come forward because they
09:56 21 don't want to be branded a snitch?

09:56 22 A Yeah. Yeah.

09:56 23 Q Thank you.

09:56 24 MR. COLE: I have a follow-up to that question,
09:56 25 Your Honor.

09:56 1 THE COURT: Yes, sir.

09:56 2 RECROSS-EXAMINATION

09:56 3 BY MR. COLE:

09:56 4 Q So, Mr. Evans, you're a snitch, then?

09:56 5 A No, I'm not what you call a snitch, no, I'm not.

09:56 6 But when somebody does something as horrific as what
09:56 7 was done to this lady down here, regardless of what the
09:57 8 situation is, this is a white man. No doubt about it.

09:57 9 That's a white lady. From where I'm from, you don't do
09:57 10 things like this to white people. Regardless of who
09:57 11 they are, if it's your wife or anybody else. I -- I
09:57 12 don't see torching somebody and setting them on fire
09:57 13 because you're drunk and you ain't got enough sense to
09:57 14 know better. I don't see hurting other people. I
09:57 15 see -- what I'm about is lifting up our race and coming
09:57 16 together and unifying ourselves and to strengthen the
09:57 17 people around you. Not to weaken them.

09:57 18 Q It would have been all right, then, if he would
09:57 19 have done this to a Latino?

09:57 20 A No. It's not right to do it to anybody. I'm
09:57 21 not -- I am not as racist as what you would call to
09:57 22 hating another race. I'm just for -- I'm for my
09:58 23 culture and what I believe, you know. I'm not against
09:58 24 any other race. They can do what they want to. That's
09:58 25 as far as this is America. You can do anything you

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09:58 1 want to. But I do stand for white people, you know. A
09:58 2 lot of people don't do that nowadays. I just don't
09:58 3 believe in a lot of things that go on nowadays. But I
09:58 4 don't believe in harming anybody for the purpose of
09:58 5 nothing because you're drunk.

09:58 6 MR. COLE: No further questions, Your Honor.

09:58 7 MS. SIMMONS: Your Honor, I would ask that
09:58 8 Mr. Evans be excused.

09:58 9 THE COURT: Any objection?

09:58 10 MR. COLE: No objection.

09:58 11 THE COURT: Thank you, sir. You are excused.

09:59 12 MS. SIMMONS: Your Honor, may we approach?

09:59 13 THE COURT: Yes. Yes, ma'am.

09:59 14 (WHEREUPON, a bench conference was held off the
09:59 15 record in the presence of the jury, but out of the
10:00 16 hearing of the jury.)

10:00 17 THE COURT: Ladies and gentlemen, we are waiting
10:00 18 on a witness to get here so we're going to take our
10:00 19 first break of the morning.

10:00 20 Mr. Bailiff, if you will take the jury to the jury
10:00 21 room.

10:00 22 (WHEREUPON, the jury exited open court at
10:00 23 10:00 a.m.)

10:00 24 THE COURT: All right. We'll be in recess.

10:00 25 Madam Solicitor, just let me know when your

10:00 1 witness gets here.

10:11 2 (WHEREUPON, a recess was taken from 10:00 a.m. to
10:14 3 10:14 a.m.)

10:14 4 THE COURT: Let's get our jury.

10:15 5 (WHEREUPON, the jury entered open court at
10:15 6 10:15 a.m.)

10:15 7 THE COURT: Madam Solicitor, call your next
10:15 8 witness.

10:15 9 MS. SIMMONS: Thank you, Your Honor.

10:15 10 The State calls Daohcuang Xayachack.

10:15 11 **DAOHCUANG XAYACHACK,**
10:15 12 **BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:**
10:15 13 **DIRECT EXAMINATION**

10:15 14 BY MS. SIMMONS:

10:16 15 Q Good morning. Could you please state your full
10:16 16 name for the record and spell it for the court
10:16 17 reporter.

10:16 18 A Dao, D-a-o, Xayachack, X-a-y-a-c-h-a-c-k.

10:16 19 Q Thank you. And you prefer to be called Dao?

10:16 20 A Yes, ma'am.

10:16 21 Q Dao, where are you employed?

10:16 22 A Southern Star Tires.

10:16 23 Q And how long have you been there?

10:16 24 A 20-something years.

10:16 25 Q What do you do there?

- 10:16 1 A I'm a shop manager.
- 10:16 2 Q Are you employed by Mr. Spielmann?
- 10:16 3 A Yes, ma'am.
- 10:16 4 Q Do you know the defendant and the victim in this
10:16 5 case?
- 10:16 6 A A little bit.
- 10:16 7 Q How do you know them?
- 10:16 8 A Well, he worked with us down there.
- 10:16 9 Q You worked with the defendant?
- 10:16 10 A Yes, ma'am.
- 10:16 11 Q And through the course of your employment, did you
10:16 12 get to know the victim?
- 10:16 13 A Yes, ma'am.
- 10:16 14 Q How long did you know them as of May of 2014?
- 10:16 15 A Well, ever since they came down and, you know,
10:16 16 when he left from there. I guess less than a year.
- 10:17 17 Q Did you notice anything about their relationship
10:17 18 during the times you worked with him?
- 10:17 19 A Not too much. They're pretty much isolated.
- 10:17 20 Q How would you characterize his feelings towards
10:17 21 her?
- 10:17 22 A Well, he make comment one day, you know, he don't
10:17 23 want his wife to go work anywhere because he don't want
10:17 24 men to look at her.
- 10:17 25 Q Did he express to you any concerns about Katie

10:17 1 near the end of the time you worked with him?

10:17 2 A Prior -- before the incident, like a month, he
10:17 3 said we're going to spend more time together because
10:17 4 his wife is moving back.

10:17 5 Q And when did you say that was said?

10:17 6 A Like a month before it happened.

10:17 7 Q Okay. Thank you. Please answer any questions
10:17 8 Mr. Cole may have.

10:17 9 CROSS-EXAMINATION

10:17 10 BY MR. COLE:

10:17 11 Q Sir, did you ever -- you never observed my client
10:18 12 and Ms. Cook together, did you?

10:18 13 A They came up to the shop one time, but I never
10:18 14 spoke to her.

10:18 15 Q So you never spoke to her at all?

10:18 16 A I tried to, but she would never, you know.

10:18 17 Q And you didn't see him engage in any kind of
10:18 18 violent behavior toward her, did you?

10:18 19 A No. No, sir.

10:18 20 MR. COLE: No further questions.

10:18 21 THE COURT: Anything further from this witness?

10:18 22 MS. SIMMONS: No, Your Honor. We would ask that
10:18 23 Mr. Xayachack be excused.

10:18 24 THE COURT: Any objection?

10:18 25 MR. COLE: No objection, Your Honor.

10:18 1 THE COURT: All right. Thank you, sir. You are
10:18 2 excused.

10:18 3 MR. WAGNER: Call Michael Moskal.

10:18 4 MICHAEL MOSKAL,

10:18 5 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

10:19 6 DIRECT EXAMINATION

10:19 7 BY MR. WAGNER:

10:19 8 Q Could you give us your full name and spell your
10:19 9 last name for the record.

10:19 10 A Michael Moskal, M-o-s-k-a-l.

10:19 11 Q What is your current employer or your current job
10:19 12 duties?

10:19 13 A I am currently employed by South Carolina Law
10:19 14 Enforcement Division, what is commonly known as SLED,
10:19 15 and I'm assigned to their trace evidence department.
10:19 16 In trace evidence, we analyze a variety of different
10:20 17 types of evidence, fire debris, gunshot residue, glass,
10:20 18 paint, explosives, general unknowns. And I'm currently
10:20 19 court qualified in each of those.

10:20 20 Q How long have you been working for SLED?

10:20 21 A I've been at SLED for ten years.

10:20 22 Q Could you tell us a little bit about your
10:20 23 background and education and training.

10:20 24 A Yes, sir. I have a BS in chemistry from the
10:20 25 College of Charleston. After that, I taught chemistry

10:20 1 at Summerville High School until 2006, at which point I
10:20 2 was hired by SLED to join their trace evidence
10:20 3 department. Once I was hired by SLED, each one of
10:20 4 those disciplines that I mentioned has a training
10:20 5 period associated with it, anywhere from a six-month
10:20 6 period to about a year period. During that time frame,
10:20 7 you will receive -- you will do samples from each one
10:20 8 of those types of evidence. So, for example, with the
10:20 9 fire debris, I was analyzing different ignitable
10:20 10 liquids so that I could identify them in fire debris.
10:20 11 I was burning samples, looking at the products that
10:21 12 come out of samples when they burn, learning to use the
10:21 13 instrumentation, learning information on fires.

10:21 14 In addition to doing those samples, you work cases
10:21 15 with a court-qualified analyst in that discipline. At
10:21 16 the end of the time frame, you are given a mock case
10:21 17 where you receive evidence just like you would in a
10:21 18 real case. Chain of custody is followed, the analysis
10:21 19 follows, the interpretation follows. At the end of
10:21 20 your analysis of it, you write a report. And then
10:21 21 after completion of the report, or a proper completion
10:21 22 of the report, you're deemed qualified to analyze fire
10:21 23 debris evidence.

10:21 24 Q Have you testified in courts in this state before?

10:21 25 A Yes, sir.

10:21 1 Q Approximately how many times?

10:21 2 A 26 or 27 times.

10:21 3 Q Have you been qualified as an expert in that
10:21 4 testimony?

10:21 5 A Yes, sir.

10:21 6 Q About the same amount of times when you come
10:21 7 testify, you come in as an expert generally?

10:21 8 A Yes, sir.

10:21 9 Q Okay. Your part in this case here was to evaluate
10:22 10 the fire debris the sheriff's office brought you?

10:22 11 A Correct. Yes, sir.

10:22 12 MR. WAGNER: Your Honor, at this time we would
10:22 13 move to qualify Mr. Moskal as an expert in fire debris
10:22 14 analysis.

10:22 15 THE COURT: Any objection?

10:22 16 MR. COLE: No objection, Your Honor.

10:22 17 THE COURT: All right. Mr. Moskal would be
10:22 18 qualified as an expert in fire debris analysis without
10:22 19 objection.

10:22 20 BY MR. WAGNER:

10:22 21 Q So were you assigned SLED case lab number
10:22 22 L14-07651?

10:22 23 A Yes, sir, I was.

10:22 24 Q And who did you receive this stuff from?

10:22 25 A May I refer to a note for a second?

10:22 1 Q Yes, sir.

10:22 2 A When evidence comes into the SLED laboratory, it
10:22 3 is delivered to the evidence custodians where it's
10:22 4 assigned a lab number, item numbers. At that point
10:22 5 it's either put into storage or routed to the analyst.

10:23 6 It was put into storage and then received by Jennifer
10:23 7 Acock, who delivered it to me in a sealed condition.

10:23 8 Q Okay. Let me show you -- got a big box here.
10:23 9 Have you got a pocketknife on you?

10:23 10 A Yes, sir.

10:23 11 MR. WAGNER: Your Honor, just for the record, this
10:23 12 is a box, contains a number of exhibits.

10:23 13 THE WITNESS: Ready?

10:23 14 MR. WAGNER: Yes, sir.

10:24 15 (Witness unseals box.)

10:24 16 BY MR. WAGNER:

10:24 17 Q Let me ask you, is that seal, is that still sealed
10:24 18 in the same manner that you sealed it?

10:24 19 A Yes, sir. Prior to me cutting it open, I looked
10:24 20 to see that our SLED seal was on here with my initials
10:24 21 and my date.

10:24 22 Q Is that the same condition as it was when it left
10:24 23 your possession?

10:24 24 A Yes, sir.

10:24 25 Q Let's go ahead and look inside there. We'll need

10:24 1 to mark these things as we go so you can refer to them.

10:25 2 A (Witness complies.)

10:25 3 Q Looking for item number 1, if you find it first.

10:25 4 A I have it. I was just going to pull them out.

10:25 5 Q If you will hand me item 1 so she can mark it.

10:25 6 Thank you, sir.

10:26 7 (WHEREUPON, State's Exhibit Numbers 86 through

10:31 8 100A were marked for identification.)

10:31 9 BY MR. WAGNER:

10:31 10 Q Agent Moskal, do you recognize those exhibits?

10:31 11 And we have them -- I'm going to refer to them from the

10:31 12 court reporter's number, and I'm going to ask you if

10:31 13 you recognize them.

10:31 14 State's Exhibit number 86, which was your lab

10:31 15 number item 1?

10:31 16 A I do. And I recognize a couple things on this.

10:31 17 Again, on the box, the container that was sealed, I had

10:31 18 my initials and the date on the seal. On the outside

10:31 19 of the box were dates and initials I had placed on the

10:31 20 box as well. And then Exhibit Number 86 also has my

10:32 21 initials and dates where I finalized the evidence on

10:32 22 here.

10:32 23 Q I'm going to go through them now for the numbers,

10:32 24 and then I'm going to put some pictures up there and

10:32 25 let you explain what you did with them.

10:32 1 State's Exhibit Number 87?

10:32 2 A I recognize State's Exhibit 87. Again, bears my
10:32 3 initials and the date when I completed it.

10:32 4 Q Okay. 88?

10:32 5 A I recognize Exhibit 88. Again, with my initials
10:32 6 and date.

10:32 7 Q This was one exhibit, but it's two different
10:32 8 numbers, 89 and 89A?

10:32 9 A I recognize Exhibits 89 and 89A. Again, each have
10:32 10 my initials and a date on them.

10:33 11 Q That's?

10:33 12 A State's Exhibit Number 90. I recognize this.
10:33 13 Again, my initials and a date where it was completed.

10:33 14 Q 91?

10:33 15 A I recognize State's Exhibit 91. Again, my
10:33 16 initials and my date.

10:33 17 Q 92?

10:33 18 A I recognize State's Exhibit 92. Again, it bears
10:33 19 my initials and a date.

10:33 20 Q 93?

10:33 21 A I recognize State's Exhibit 93, again bearing my
10:33 22 initials and date.

10:33 23 Q 94?

10:33 24 A I recognize State's Exhibit 94, bearing my
10:34 25 initials and a date.

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Michael Moskal - Direct

10:34 1 Q 95?

10:34 2 A I recognize State's Exhibit 95, bearing my
10:34 3 initials and date.

10:34 4 Q 96?

10:34 5 A I recognize State's Exhibit 96, bearing my
10:34 6 initials and date.

10:34 7 Q 97?

10:34 8 A I recognize State's Exhibit 97, bearing my
10:34 9 initials and date.

10:34 10 Q 98?

10:34 11 A I recognize State's Exhibit 98, bearing my
10:34 12 initials and date.

10:34 13 Q 99 and then 99A?

10:34 14 A I recognize State's Exhibit 99 and 99A. Again,
10:35 15 bearing my initials and date.

10:35 16 Q And last, 100 and 100A?

10:35 17 A I recognize State's Exhibit 100 and 100A. Again,
10:35 18 bearing my initials and date. And each of these items
10:35 19 also had a bar code label on it or a hand printed lab
10:35 20 number and item number that it was associated with as
10:35 21 for our case in SLED.

10:35 22 Q All right. Are those items in substantially the
10:35 23 same condition as they were when they left your
10:35 24 possession?

10:35 25 A Yes, sir, they are.

10:35 1 Q Okay. Let me hand you up State's Exhibit 111.

10:35 2 It's for identification. Do you recognize that?

10:35 3 A May I have a minute to compare it to my report?

10:36 4 Q Yes, sir.

10:37 5 A Yes, sir, I do. This appears to be a copy of the
10:37 6 report that I issued for lab number L14-07651.

10:37 7 Q Okay. It's a copy of your report that you
10:37 8 prepared?

10:37 9 A Yes, sir.

10:37 10 Q Tell us about why we feel like we're in Home Depot
10:37 11 here with these cans. What is the significance of the
10:37 12 packaging, the way they're packaged?

10:37 13 A When fire debris evidence comes into the
10:37 14 laboratory, we are looking for ignitable liquids or the
10:38 15 absence of ignitable liquids. Ignitable liquids are
10:38 16 materials that are very volatile, which means that they
10:38 17 are going to evaporate very easily. So on a hot day
10:38 18 they're going to evaporate very, very quickly. So when
10:38 19 a sample is collected at a fire scene, packaging for
10:38 20 fire debris is very important.

10:38 21 The primary ways that we like for evidence to come
10:38 22 in, the acceptable ways for evidence to come in, are
10:38 23 either in a lined paint can similar to these or in a
10:38 24 nylon bag, both of which have been designed
10:38 25 specifically to contain those volatile materials that

10:38 1 we're looking for in the ignitable liquids.

10:38 2 If the cans are rusted and have holes in them, if
10:38 3 it comes in a typical plastic bag like you get from
10:38 4 Walmart or something, or a paper bag, those materials
10:38 5 are porous, so those vapors that we're looking for
10:38 6 would have the ability to escape or even be added to
10:38 7 the sample. So when we get the evidence in for fire
10:39 8 debris, the first thing we look for is to look at the
10:39 9 container itself and make sure it's a container
10:39 10 approved for fire debris.

10:39 11 Q Can you tell us the testing process and explain
10:39 12 how it works.

10:39 13 A Yes, sir. When a sample is brought in, again, the
10:39 14 first thing we're going to look for are seals on those
10:39 15 materials to make sure the integrity of the evidence is
10:39 16 there and secure. After that, we're going to look to
10:39 17 see that the container is a proper container. At that
10:39 18 point, we'll open the container and take a very quick
10:39 19 peek inside to see what the evidence is. We don't take
10:39 20 long to identify the materials because the longer that
10:39 21 can or that bag is open, the more likely those vapors
10:39 22 are to escape. So we take a very quick peek to look to
10:39 23 see is it dirt, is it wood, is it cloth, is it
10:39 24 unidentifiable fire debris, and we make notes as far as
10:39 25 what we see.

10:39 1 After that, we put a piece of activated charcoal
10:39 2 into the can or the bag. And what that's going to do,
10:40 3 after we put that in and seal it, we heat this sample
10:40 4 for 16 hours. While it's heating, if the substrate in
10:40 5 here, whether it's wood, cloth, dirt, if it has
10:40 6 ignitable liquid in there, when it's heated in the oven
10:40 7 at 60 degrees celsius for 16 hours, it vaporizes that
10:40 8 material and causes it to rise up inside this
10:40 9 container. When it rises to the top of the container,
10:40 10 then it adheres to the piece of charcoal that we put
10:40 11 into the can overnight.

10:40 12 Once it's on the piece of charcoal, we'll then
10:40 13 take it and put that piece of charcoal into a solvent
10:40 14 called carbon disulfide, and that's going to extract it
10:40 15 from that charcoal and put it into a form where we're
10:40 16 able to put it onto the instrumentation. The
10:40 17 instrumentation is a mouthful. It's called a gas
10:40 18 chromatograph mass spectrometer. We abbreviate it as a
10:40 19 GC-MS.

10:40 20 That instrument does two things for us. The first
10:40 21 is it's going to take a mixture and separate it into
10:40 22 the individual components. I'm sure everybody has seen
10:41 23 a piece of coffee filter that had ink on it. The
10:41 24 coffee filter got wet, and as the water moved across
10:41 25 the paper, the ink began to move. Well, if it was a

10:41 1 dye that was made up of multiple colors, as it begins
10:41 2 to move, you see the individual colors come out of that
10:41 3 sample. The GC does the same thing for mixtures. It
10:41 4 separates them so we can see the individual components.
10:41 5 The second half of that instrument is the mass spec,
10:41 6 the MS portion, and it identifies what those components
10:41 7 are.

10:41 8 So once the sample has been heated overnight, we
10:41 9 extract the sample from the charcoal strip with the CS₂.
10:41 10 We put it on the GC-MS. We then receive data that
10:41 11 tells us what type of compounds, what type of ignitable
10:41 12 liquids were inside that material.

10:41 13 The ignitable liquids fall into a variety of
10:41 14 categories. We can have gasoline. We can have
10:41 15 petroleum distillates. We can have oxygenated
10:41 16 compounds. Once we look at those and decide what type
10:42 17 of category of ignitable liquid was or was not present,
10:42 18 then we issue a report.

10:42 19 Q Okay. Did you test the items that we've had up
10:42 20 here, 86 through 100?

10:42 21 A I tested all except for SLED number 3. I don't
10:42 22 remember what exhibit number it is.

10:42 23 Q Exhibit number 88. Can I hand this to you?

10:42 24 A Yes, sir. So we tested all of these exhibits
10:42 25 except for State's Exhibit 88.

- 10:42 1 Q How come you didn't test 88?
- 10:42 2 A State's Exhibit 88 came packaged in a zip-tight
10:42 3 bag that was not approved for fire debris, and so we
10:42 4 did not do an analysis on that item.
- 10:42 5 Q Okay. And what was that exhibit?
- 10:43 6 A It was a possible sample of hair.
- 10:43 7 Q Everything else, though, you tested for
10:43 8 accelerants?
- 10:43 9 A Yes, sir.
- 10:43 10 Q Okay.
- 10:43 11 A That is correct.
- 10:43 12 Q Let's go through individually starting with 86,
10:43 13 which I believe your number was number 1.
- 10:43 14 A Yes, sir.
- 10:43 15 Q What did you find -- I'm going to put up a picture
10:43 16 here, State's Exhibit Number 6. It's already in
10:43 17 evidence. It's hard to read on our screen here, but
10:44 18 number 1 here, where the corner of that paper is, that
10:44 19 was your number 1 that's number 86 here for court
10:44 20 purposes. You tested that. And what was the outcome?
10:44 21 What did you find?
- 10:44 22 A SLED item number 1, the results were no ignitable
10:44 23 liquids of evidentiary value found.
- 10:44 24 Q And number 2, over here. What did you find with
10:44 25 number 2?

10:44 1 A SLED item number 2, again there were no ignitable
10:44 2 liquids of evidentiary value found.

10:44 3 Q Here is a closer-up view of number 1. And that,
10:44 4 for the record, is State's Exhibit Number 7. And
10:44 5 number 2, which is State's Exhibit Number 8, you got no
10:45 6 results off of those?

10:45 7 A No ignitable liquids of evidentiary value were
10:45 8 found.

10:45 9 Q Okay. Number 3, which we just discussed, this
10:45 10 picture, State's Exhibit Number 10, was the hair
10:45 11 sample. That's the one you just testified to, I
10:45 12 believe, was not packaged to where you did not run a
10:45 13 test on it?

10:45 14 A Correct. SLED item number 3, there was no
10:45 15 analysis performed due to its packaging.

10:45 16 Q Can you explain that again just one more time.
10:45 17 Explain the reason for that.

10:45 18 A Yes, sir. Again, we're looking for materials that
10:45 19 are volatile, which means they escape easily. They go
10:45 20 into a gas form very easily. So in order to contain
10:45 21 them so that what I analyze is what was known to be in
10:45 22 that sample at the time of collection, the container
10:45 23 needs to be vapor proof. When it comes in a normal
10:45 24 Ziploc or zip-tight bag, those are not vapor proof and
10:45 25 are not approved for fire debris analysis.

10:46 1 Q Okay. So it would have been long gone if there
10:46 2 had been something on there?

10:46 3 A You have the potential for something to disappear,
10:46 4 for it to move out of that container, and you also have
10:46 5 a potential for something to come into the container.
10:46 6 The example I give on a hot day here or for me in the
10:46 7 Lowcountry where I'm from, if something is sitting in
10:46 8 the trunk of a car for a day or two, you have vapors in
10:46 9 the trunk, you have most of the trunks are sitting
10:46 10 right on top of the gas tank, you have the potential
10:46 11 for gas to move in and out. So, again, that's why it's
10:46 12 important for us to have vapor proof containers.

10:46 13 Q What was your SLED item number 4 that you tested?

10:46 14 A SLED item number 4 came to me as a clear liquid.

10:46 15 Q And did you test it?

10:46 16 A Yes, sir, I did.

10:46 17 Q That's, I believe, right here.

10:46 18 A Yes, sir. This is the clear liquid, item number

10:47 19 4.

10:47 20 Q And what was your result on that?

10:47 21 A My result for item 4 is that was found to be
10:47 22 gasoline.

10:47 23 Q And item number 5?

10:47 24 A SLED item number 5 was also found to contain
10:47 25 gasoline.

10:47 1 Q I believe item number 5 was actually number 6 here
10:47 2 at the base of the door. So you found gasoline there?

10:47 3 A Yes, sir. Item number 5, the debris they
10:47 4 submitted, was found to contain gasoline.

10:47 5 THE COURT: Mr. Wagner, what exhibit?

10:47 6 MR. WAGNER: I'm sorry, Judge. I'm getting ahead
10:47 7 of myself. That was number 15. And this picture here
10:47 8 is number 16. And it's a closer-up view of number 6.

10:47 9 Q So 6 is positive for gas, gasoline, right? I
10:48 10 mean, or your item number 6, our item number 90 or
10:48 11 court item number 90? I know I'm throwing a lot of
10:48 12 numbers out here.

10:48 13 A Are you looking at item 6?

10:48 14 Q I'm looking at this marker here. I'm calling it
10:48 15 6, I'm sorry. But on your thing, it was item number 5.
10:48 16 Your 5.

10:48 17 A Okay. State's Exhibit 90, SLED item 5, gasoline
10:48 18 was found.

10:48 19 Q This is State's Exhibit Number 35, another picture
10:48 20 of basically the same thing.

10:48 21 And item number 6 was, I believe, a belt that you
10:49 22 tested?

10:49 23 A Yes, sir. State's Exhibit 91, SLED item number 6,
10:49 24 was a leather belt.

10:49 25 Q What was the result of that?

10:49 1 A The result of that is a heavy normal alkane
10:49 2 product.

10:49 3 Q What does that mean?

10:49 4 A Heavy normal alkane products typically are going
10:49 5 to come from some candle oils. They can be in copier
10:49 6 toners or in some of your triplicate carbonless paper
10:49 7 forms.

10:49 8 Q What could that possibly be coming from
10:49 9 potentially? Is there anything you're looking for
10:49 10 there? Is it a --

10:49 11 A What I found in item number 6, again, when I look
10:49 12 at it, it is a normal alkane. However, there was an
10:50 13 additional item in this case that I have an opinion
10:50 14 that this could have come from that item. That item
10:50 15 was not a normal alkane, but it contained normal alkane
10:50 16 in it.

10:50 17 Q Okay. Let's go on to item number 8, which is
10:50 18 Court's Exhibit 92.

10:50 19 A Yes, sir. State's Exhibit 92, SLED item number 8,
10:50 20 there were no ignitable liquids of evidentiary value
10:50 21 found.

10:50 22 Q Okay. And do you remember exactly what that was
10:50 23 that item was?

10:50 24 A Item number 8 I just have documented as being
10:50 25 cloth.

10:50 1 Q Do you remember it being a pair of shorts?

10:50 2 A No, sir, I do not.

10:50 3 Q Item number 9, which is State's Exhibit Number 93?

10:51 4 A State's Exhibit 93, SLED item number 9, again, was

10:51 5 a piece of cloth. And it was found to have a mixture

10:51 6 of gasoline and a heavy normal alkane product.

10:51 7 Q Can we -- let's kind of back up. Can I get you to

10:51 8 open those two cans and let's look and see what those

10:51 9 were?

10:51 10 A Yes, sir.

10:51 11 Q It's item number 8 and item number 9, which is

10:51 12 State's Exhibit 92 and then 93.

10:52 13 I've got some gloves here if you need them.

10:52 14 A I have some. Thank you.

10:52 15 Can this be pulled out?

10:52 16 Q Yes, sir.

10:52 17 A So this is State's Exhibit 92, SLED item number 8,

10:52 18 and that is a pair of shorts.

10:53 19 Q Again, for the record, that was negative for

10:53 20 gasoline on that?

10:53 21 A State's Exhibit 92, SLED item number 8, was no

10:53 22 ignitable liquids of evidentiary value found.

10:53 23 Q Okay.

10:54 24 A State's Exhibit 93, SLED item number 9, is a pair

10:54 25 of boxer briefs.

10:54 1 Q And what was your result on number 9, again

10:54 2 State's Exhibit Number 93?

10:54 3 A State's Exhibit 93, SLED item number 9, was a
10:54 4 mixture containing gasoline and a heavy normal alkane
10:54 5 product.

10:54 6 Q SLED item number 10, another gallon can there,
10:55 7 which is State's Exhibit Number 35, was marker number 7
10:55 8 here at the base of the door?

10:55 9 A State's Exhibit 94, SLED item number 10, I found a
10:55 10 mixture containing gasoline and a heavy petroleum
10:55 11 product.

10:55 12 Q Item number 11, State's Exhibit 95?

10:55 13 A State's Exhibit 95, item 11, I found a mixture
10:55 14 containing gasoline and a heavy normal alkane product.

10:55 15 Q And on State's Exhibit Number 21, a picture I'm
10:55 16 putting up here, that was that one there, number 9.
10:55 17 And you found gasoline there?

10:55 18 A On State's Exhibit 95?

10:56 19 Q Yes, sir.

10:56 20 A Yes, sir.

10:56 21 Q Okay. We skipped number 12. That went with a
10:56 22 different analyst.

10:56 23 Number 13 is y'all's number 13, as far as court
10:56 24 purposes number 96, State's Exhibit number 96?

10:56 25 A State's Exhibit 96, SLED item 13, was burnt wood,

10:56 1 and I found gasoline.

10:56 2 Q Okay. SLED item number 14, State's Exhibit

10:56 3 Number 97?

10:56 4 A State's Exhibit 97, SLED item 14, was a piece of
10:57 5 linoleum flooring that was submitted as a control
10:57 6 sample, and it was found to have a heavy petroleum
10:57 7 product.

10:57 8 Q Why would y'all submit a control sample?

10:57 9 A Oftentimes control samples are submitted into the
10:57 10 laboratory because with us living in a synthetic world
10:57 11 now, oftentimes there are products in the materials
10:57 12 around us that may look similar to and behave similar
10:57 13 to other ignitable liquids. And so we'll get control
10:57 14 samples so that we can see what products are present in
10:57 15 the sample to begin with and use that to make a
10:57 16 decision as to whether the materials we see could have
10:57 17 been added to the scene or been a portion of the scene
10:57 18 to begin with.

10:57 19 Q SLED item number 15, that's State's Exhibit
10:57 20 Number 98?

10:58 21 A State's Exhibit 98, SLED item number 15, was a
10:58 22 sample of wood and linoleum. Again, I found a mixture
10:58 23 containing gasoline and a heavy petroleum product.

10:58 24 Q Last two, item number 16, State's Exhibit 99?

10:58 25 A State's Exhibit 99, SLED item 16, was a control

10:58 1 sample of a zip-tight bag. It was found to contain a
10:58 2 medium normal alkane product.

10:58 3 Q And the last one, number 17?

10:58 4 A State's Exhibit 100, SLED item 17, was a control
10:58 5 sample of a plastic bag and a paper label. And no
10:58 6 ignitable liquids of evidentiary value were found.

10:59 7 Q So in your expert opinion, from a fire debris
10:59 8 standpoint, what is the significance of the gasoline
10:59 9 scattered out through these samples? Is there a
10:59 10 significance to that?

10:59 11 A The significance to me is that I found gasoline on
10:59 12 this multitude of items.

10:59 13 Q In your report there, I can't remember which
10:59 14 one -- I've been running through.

10:59 15 A The report is State's Exhibit 111.

10:59 16 Q Is that a true and accurate copy of your report?

10:59 17 A Yes, sir, it is.

10:59 18 MR. WAGNER: Your Honor, at this time we would
10:59 19 move State's Exhibit 111 as well as State's Exhibit 86,
10:59 20 87, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 98A, 99 and
10:59 21 99A, 100. And I know I'm missing an A -- 4A. We would
11:00 22 move those into evidence.

11:00 23 THE COURT: All right.

11:00 24 Any objection?

11:00 25 MR. COLE: No objection, Your Honor.

11:00 1 THE COURT: All right. State's Exhibits 86, 87,
11:00 2 89, 89A, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 99A,
11:00 3 100, 100A, and 111 be admitted without objection.

11:00 4 Did I state all the exhibits correctly,
11:00 5 Mr. Wagner?

11:00 6 MR. WAGNER: Yes, sir.

11:00 7 THE COURT: Those would be admitted without
11:00 8 objection.

11:00 9 (WHEREUPON, State's Exhibit Numbers 86, 87,
11:00 10 89-100 and 111 were admitted into evidence.)

11:00 11 BY MR. WAGNER:

11:00 12 Q Your State's SLED number 16, State's Exhibit
11:00 13 Number 99, I'm showing you picture number 24 -- excuse
11:01 14 me, number 15, which is number 98. Can you explain --
11:01 15 your report says a mixture containing gasoline and a
11:01 16 heavy petroleum product found. Look at where it came
11:01 17 from. Can you explain, I guess, what we're seeing
11:01 18 there as far as the linoleum and that sort of thing?
11:01 19 Do you understand what I'm asking you?

11:01 20 A Yes, sir, I think so.

11:01 21 On State's Exhibit 98, SLED item number 15, the
11:01 22 report indicates that I found a mixture containing
11:01 23 gasoline and a heavy petroleum product. The gasoline
11:01 24 is straightforward. It's gasoline. The heavy
11:01 25 petroleum product is a portion that can take some

11:01 1 explanation.

11:01 2 It could have been something that was added to the
11:01 3 scene, or it could be something that came from the
11:01 4 scene. In this particular case, I believe it's
11:02 5 something that came from the scene. It matches -- it
11:02 6 is very consistent with the linoleum control sample
11:02 7 that was SLED item number 14. The chemistry between
11:02 8 the heavy petroleum products and those two samples were
11:02 9 identical.

11:02 10 So in this case I believe that what I found in
11:02 11 Exhibit 98 and SLED 15, I believe that heavy petroleum
11:02 12 product portion came from the linoleum.

11:02 13 Q So in this photograph here, State's Exhibit
11:02 14 Number 24, with seeing the smoke stuff going up the
11:02 15 wall there, apparently it was burned on the linoleum.
11:02 16 Your results are consistent with somebody pouring gas
11:02 17 and setting it on fire on that linoleum?

11:02 18 A Yes sir.

11:02 19 Q That's what you would expect to see?

11:02 20 A Yes, sir.

11:02 21 Q In the sample of liquid that you tested, was that,
11:02 22 as far as you know, a sample of gasoline taken from the
11:03 23 can?

11:03 24 A I didn't have any indication as to where the
11:03 25 liquid was taken.

11:03 1 Q But it was straight gasoline?

11:03 2 A Yes, sir.

11:03 3 Q Thank you, Agent Moskal. That's all the questions
11:03 4 I have. Answer anything the defense has.

11:03 5 THE COURT: Mr. Cole.

11:03 6 MR. COLE: Thank you, Your Honor. May it please
11:03 7 the court.

11:03 8 CROSS-EXAMINATION

11:03 9 BY MR. COLE:

11:03 10 Q Agent Moss?

11:03 11 A Moskal.

11:03 12 Q I'm sorry. Agent Moskal, there was not a control
11:03 13 sample taken, it does not appear from your report, of a
11:03 14 control sample of my client's underwear; is that
11:03 15 correct?

11:03 16 A All I know is that I had the one pair of boxer
11:04 17 briefs, yes, sir.

11:04 18 Q So you had no way of knowing what a typical pair
11:04 19 of his boxer briefs would contain on them?

11:04 20 A No --

11:04 21 Q Based on your test?

11:04 22 A Not with the evidence I was submitted, no, sir.

11:04 23 Q Isn't it true, and you're the expert in this, not
11:04 24 me, but isn't it true that gasoline is a petroleum
11:04 25 based product or that it's connected to petroleum?

11:04 1 A Yes, sir.

11:04 2 Q And the hair that you were not able to test, did
11:04 3 you have any indication of where that hair came from?

11:04 4 A No, sir. The information I was provided when it
11:05 5 was logged in simply said it was a plastic bag
11:05 6 containing hair.

11:05 7 Q But you were not able to test that because it was
11:05 8 not properly collected; is that correct?

11:05 9 A Correct. It wasn't properly packaged.

11:05 10 Q So Oconee County Sheriff's Office didn't properly
11:05 11 package that sample for you to be able to test it?

11:05 12 A Yes, sir. It appears it was collected by Oconee
11:05 13 County Sheriff's Office.

11:05 14 Q Now, your report skips some numbers. It goes
11:05 15 straight from item 6 to item 8. Do you know where the
11:05 16 item 7, what happened to it?

11:05 17 A Item 7 was a sample submitted for DNA analysis.

11:05 18 Q So item 7, isn't it true that it was a shirt of my
11:06 19 client?

11:06 20 A That's what the login information says, yes, sir.

11:06 21 Q So that was not tested for any of these materials,
11:06 22 for accelerants?

11:06 23 A No, sir. It's quite common for materials to come
11:06 24 in, for samples to come in, and agencies to make a
11:06 25 decision as to whether they want DNA analysis performed

11:06 1 on something or they want fire debris analysis
11:06 2 performed. Our analyses can interfere with each other
11:06 3 so there are times where both analyses can't be
11:06 4 performed.

11:06 5 Q Now, with gasoline, it is -- there are fumes that
11:06 6 come from gasoline; is that correct?

11:06 7 A That is, yes, sir.

11:06 8 Q And if fumes, if we open this thing and I was
11:06 9 close to it, could fumes get on my tie, and then you
11:07 10 test my tie, and there would be gasoline on it?

11:07 11 A The potential is there, yes, sir.

11:07 12 MR. COLE: No further questions, Your Honor.

11:07 13 REDIRECT EXAMINATION

11:07 14 BY MR. WAGNER:

11:07 15 Q You're saying basically sometimes you have to pick
11:07 16 and choose what you test for?

11:07 17 A Yes, sir. There are times where agencies have to
11:07 18 decide on a particular item which is going to be more
11:07 19 probative for them.

11:07 20 Q And it was not submitted to you, the 7.1, y'all's
11:07 21 lab number was not submitted to you for your test, it
11:07 22 went to DNA?

11:07 23 A That's correct.

11:07 24 Q Okay. Thank you, Agent Moskal.
11:07 25 That's the only thing I've got.

11:07 1 THE COURT: Anything further from this witness?

11:07 2 MR. COLE: No, Your Honor.

11:07 3 THE COURT: Any objection to this witness being
11:07 4 excused?

11:07 5 MR. WAGNER: Not from the State.

11:07 6 MR. COLE: No, Your Honor.

11:07 7 THE COURT: Thank you, Agent. You are excused.

11:09 8 MR. WAGNER: Your Honor, the State would call
11:09 9 Maryann Boehm.

11:09 10 **MARYANN BOEHM,**

11:09 11 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

11:10 12 DIRECT EXAMINATION

11:10 13 BY MR. WAGNER:

11:10 14 Q Could you give us your full name and spell your
11:10 15 last name for the record.

11:10 16 A Yes. My name is Maryann Elizabeth Boehm,
11:10 17 B-o-e-h-m.

11:10 18 Q Who do you work for?

11:10 19 A I work for the South Carolina Law Enforcement
11:10 20 Division, commonly known as SLED.

11:10 21 Q And how long have you worked for them?

11:10 22 A I've worked there for approximately 11 years.

11:10 23 Q Can you tell the jury a little bit about your
11:10 24 background, your training, your education.

11:10 25 A I received a bachelor of science from James

11:10 1 Madison University -- that's in Harrisonburg,
11:10 2 Virginia -- in integrated science and technology with a
11:10 3 concentration in biotechnology.

11:10 4 Once I was employed at SLED, I went through a
11:10 5 training program that was about a year long. A senior
11:11 6 DNA analyst trained me in the proper procedures and
11:11 7 techniques to use at our laboratory. I had to
11:11 8 perform -- successfully complete five different tests
11:11 9 in order to be certified to do DNA casework analysis.

11:11 10 Q Okay. Have you testified in court before?

11:11 11 A Yes, I have.

11:11 12 Q Have you testified as an expert before?

11:11 13 A Yes, I have.

11:11 14 Q Approximately how many times?

11:11 15 A Approximately 58 times.

11:11 16 MR. WAGNER: Your Honor, at this time we'd ask to
11:11 17 qualify Ms. Boehm as an expert in the field of forensic
11:11 18 serology and DNA analysis.

11:11 19 THE COURT: Forensic?

11:11 20 MR. WAGNER: Forensic serology.

11:11 21 THE COURT: And DNA analysis.

11:11 22 Any objection?

11:11 23 MR. COLE: No objection, Your Honor.

11:11 24 THE COURT: The witness would be qualified as an
11:11 25 expert in forensic serology and DNA analysis without

11:11 1 objection.

11:11 2 BY MR. WAGNER:

11:11 3 Q Ma'am, can you tell us what DNA is?

11:11 4 A Yes. DNA stands for deoxyribonucleic acid. This
11:12 5 is a chemical found within the cells of our body. It's
11:12 6 found in all of our cells except for blood cells. It
11:12 7 gives us our physical features like our hair color and
11:12 8 height. It's also responsible for passing along traits
11:12 9 from generation to generation. We get half of our DNA
11:12 10 from our mom and half from our dad. With the exception
11:12 11 of identical twins, no two individuals have the same
11:12 12 DNA.

11:12 13 In forensic science, we are interested in the
11:12 14 portions of DNA that differ between individuals. We
11:12 15 test 15 different locations, and the combination of
11:12 16 those test results make up a DNA profile.

11:12 17 Q Is DNA the same in all people?

11:12 18 A With the exception of identical twins, no.

11:12 19 Q So what do you do as a DNA analyst? What are you
11:12 20 looking for?

11:12 21 A We receive evidence and known standards from local
11:12 22 law enforcement agencies. First, if there is a request
11:12 23 for a body fluid, we will screen it. Body fluids such
11:13 24 as blood, semen or saliva. If it's positive for
11:13 25 whatever body fluid they're interested in, we will

11:13 1 perform DNA analysis on it.

11:13 2 We take a portion of that cutting or swab, break
11:13 3 open up all the cells and extract the DNA from those
11:13 4 items. Through a series of chemicals and instruments,
11:13 5 we generate a DNA profile. We do that for the
11:13 6 evidence, and then we'll do it for the known standard
11:13 7 submitted in that case.

11:13 8 We then will compare the DNA profile from the
11:13 9 evidence and the known standards, and we will write a
11:13 10 report based on our findings.

11:13 11 Q Did you receive DNA buccal swab samples in this
11:13 12 case both for the victim, Catherine Cook, and the
11:13 13 defendant, Jacob Drotning?

11:13 14 A Yes, I did.

11:13 15 Q And when you received them, had they been altered
11:13 16 or tampered with?

11:13 17 A No, sir, they had not.

11:13 18 Q How do you know that?

11:13 19 A There was no sign of tampering. Every item that
11:13 20 is submitted to SLED we put in a heat-sealed pouch.
11:14 21 Those pouches, if open, it has to be cut into or ripped
11:14 22 into so it's easy to see if someone had opened it or
11:14 23 not, and there were no signs of tampering when I
11:14 24 received those pouches.

11:14 25 Q Let me show you what's been marked, and I'm going

11:14 1 to do it 103, which is State's Exhibit 103, your lab
11:14 2 number looks like SLED number 18.

11:14 3 A It's our item number 18, yes, sir.

11:14 4 Q And also your item number 19 which is State's
11:14 5 Exhibit 104. So 103 and then 104.

11:14 6 A Okay.

11:14 7 Q Do you recognize those?

11:14 8 A Yes. State's Exhibit 103 is the buccal swabs from
11:14 9 Jacob Drotning, and State's Exhibit 104 is the buccal
11:15 10 swabs from Catherine Cook.

11:15 11 Q Okay. And were those -- those were heat sealed?

11:15 12 A Yes, sir. This is a heat-sealed pouch. There's
11:15 13 only -- it's open only at one end. When the officer
11:15 14 brings it to SLED, they will seal it and initial it.
11:15 15 When I cut into the heat-sealed pouch, I will cut open
11:15 16 on its opposite side. And when I'm done, I seal and my
11:15 17 initials and date are in there. There's also evidence
11:15 18 tape on the actual packaging, and that was -- not
11:15 19 opened. I opened and broke that seal when I performed
11:15 20 the DNA analysis on the item.

11:15 21 Q Did you receive SLED items number 7 and number 12
11:15 22 in this case?

11:15 23 A SLED received those items.

11:15 24 Q Did you -- we're going to have to get into this
11:15 25 box here.

11:16 1 A So this box is a container B. And inside this are
11:16 2 SLED items 7 and 12.

11:17 3 (Box was cut open.)

11:17 4 This is SLED item 12. I can tell. It's labeled
11:17 5 with the case number, the item number, and the initials
11:17 6 and date of the individual who opened the item.

11:17 7 And this is SLED item number 7. The same thing,
11:17 8 the lab number, the item number, the initials and date
11:17 9 are also on this item.

11:17 10 Q You say SLED received those?

11:17 11 A Yes, sir.

11:17 12 Q And were they in a sealed condition with they came
11:17 13 to y'all?

11:17 14 A Yes, sir.

11:17 15 Q What does SLED do with them?

11:17 16 A So the DNA department is kind of broken up into
11:18 17 two different sections. We have a section where larger
11:18 18 items are screened. We call them evidence processing
11:18 19 and serology. And then there is a DNA section which I
11:18 20 do which performs the DNA analysis on the evidence and
11:18 21 standards.

11:18 22 So these items, since they were larger items, went
11:18 23 to our evidence processing section first. There
11:18 24 Forensic Technician Betty Butler looked at these items.
11:18 25 There was a request for blood so the first thing she

11:18 1 was going to do was open an item separate from each
11:18 2 other, one at a time, and will look for red-brown
11:18 3 staining, the color of blood. If she found a stain, a
11:18 4 possible blood stain, she would test it using a
11:18 5 serology test. If there was a positive indication of
11:18 6 blood, she would cut that sample and then forward it to
11:18 7 the DNA section.

11:18 8 Q Okay. You've got some other pieces of evidence
11:19 9 that came in, too, to test for DNA, SLED 7.1, 12.1 and
11:19 10 12.2. Had any of the evidence that you received been
11:19 11 altered or tampered with in any way?

11:19 12 A No. Those are the items that Betty created. From
11:19 13 item 7, she found one area that was an indication of
11:19 14 blood. So she cut out that area, put it in a coin
11:19 15 envelope, sealed it, and put it into storage for a DNA
11:19 16 analyst to pick it up.

11:19 17 Same thing for the items 12.1 and 12.2. There's
11:19 18 two areas of interest from item 12. She labeled them
11:19 19 12.1 and 12.2, cut those areas out, put them into a
11:19 20 separate coin envelope for each item, and packaged
11:19 21 those, sealed them up and forwarded them to the DNA
11:19 22 section.

11:19 23 Q Okay. And then you tested them for the DNA?

11:19 24 A Yes, sir.

11:19 25 Q All right. So you had the known standards from

11:19 1 the victim and the defendant?

11:19 2 A That's correct.

11:19 3 Q And you tested these items, 7.1 and 12.2 and 12.2,
11:20 4 18 and 19, and compared the two?

11:20 5 A That's correct.

11:20 6 Q Okay. What were your results? What happened?

11:20 7 A Do you mind if I sit down? Can I move this out of
11:20 8 the way?

11:20 9 Q Yes.

11:20 10 A All right. Like I said before, Betty performed
11:20 11 serology on those items. For item 7.1, there was an
11:20 12 indication of blood. So I performed DNA analysis on
11:20 13 that item. The DNA profile developed from item 7.1,
11:20 14 which was a cutting from the gray T-shirt, is a mixture
11:20 15 of two individuals. The DNA profile of the major
11:20 16 contributor to this mixture matches the DNA profile of
11:20 17 Catherine Cook. The probability of randomly selecting
11:20 18 an unrelated individual having a DNA profile matching
11:21 19 the major contributor to this item is approximately one
11:21 20 in 120 quintillion. The partial DNA profile of the
11:21 21 minor contributor to this mixture is insufficient for
11:21 22 interpretation.

11:21 23 The DNA profile developed from items 12.1 and
11:21 24 12.2, there was an indication of blood on those two
11:21 25 cuttings. The DNA profile developed from those items

- 11:21 1 matched the DNA profile of Catherine Cook. The
11:21 2 probability of randomly selecting an unrelated
11:21 3 individual having a DNA profile matching these items is
11:21 4 approximately one in 120 quintillion.
- 11:21 5 Q So item number 7, was that the shirt or the
11:21 6 pillow?
- 11:21 7 A That would be the shirt.
- 11:21 8 Q The other one, 12, was the pillow?
- 11:21 9 A Yes, sir.
- 11:21 10 Q That's what's in the big brown bag?
- 11:21 11 A Yes, sir.
- 11:21 12 Q And both of those tested positive for the victim's
11:21 13 DNA?
- 11:21 14 A That's correct.
- 11:22 15 Q Show you what's been marked State's Exhibit 26.
11:22 16 You weren't here, but Sergeant Philpott had testified
11:22 17 that they took the pillow. Is that basically what
11:22 18 y'all tested when it comes down there, that's the exact
11:22 19 same pillow?
- 11:22 20 A It appears to be the same pillow.
- 11:22 21 Q And then State's Exhibit Number 61?
- 11:22 22 A That appears to be the same shirt.
- 11:22 23 Q And then a closer-up view, State's Exhibit Number
11:22 24 63?
- 11:22 25 A Yes. That is where the item 7.1, I cut from.

11:22 1 Q Right here?

11:22 2 A That area, yes, sir.

11:22 3 Q Okay. Now, when you made a choice to go with DNA
11:23 4 versus testing for trace evidence for gasoline or
11:23 5 something like that, is that a call that had to be
11:23 6 made, one or the other?

11:23 7 A Yes. That's correct. The testing that the trace
11:23 8 department can do can interfere with DNA analysis. So
11:23 9 the submitting agency makes that decision, whether they
11:23 10 want DNA and blood looked for or for trace analysis.

11:23 11 Q Can I take a look at a copy of your report there?

11:23 12 A Yes, sir.

11:24 13 MR. WAGNER: Your Honor, just for the court's
11:24 14 purposes, I have had the court reporter mark the report
11:24 15 from the agent here as State's Exhibit Number 112 as
11:24 16 well as State's Exhibit Number 102 which was the gray
11:24 17 T-shirt and 101 which was the pillow.

11:24 18 We would move at this point in time to move and
11:24 19 admit State's 112, 101 and 102.

11:24 20 THE COURT: Any objection?

11:25 21 MR. COLE: No objection, Your Honor.

11:25 22 THE COURT: State's Exhibits Numbers 101, 102 and
11:25 23 112 would be admitted without objection.

11:25 24 (WHEREUPON, State's Exhibit Numbers 101,
11:25 25 102 and 112 were admitted into evidence.)

11:25 1 MR. WAGNER: Thank you, Agent Boehm. That's all
11:25 2 the questions I have.

11:25 3 THE COURT: All right.

11:25 4 Mr. Cole?

11:25 5 MR. COLE: May it please the court, Your Honor.

11:25 6 CROSS-EXAMINATION

11:25 7 BY MR. COLE:

11:25 8 Q Agent, isn't it true that if you can -- it's my
11:25 9 understanding that you could wash items in a washing
11:25 10 machine or something like that, but that would not
11:25 11 necessarily get rid of all the DNA if it was stained?

11:25 12 A It's possible.

11:25 13 Q And on the shirt that is your number 7.1, so on
11:26 14 that, you're saying that it matched positive for the
11:26 15 blood of Catherine Cook, but there's somebody else's
11:26 16 blood on there and you don't know whose that is?

11:26 17 A I can't tell you that it's someone else's blood.
11:26 18 There's someone else's DNA on that item. DNA can be
11:26 19 deposited through a body fluid such as saliva, blood,
11:26 20 or semen. It can also be deposited by touching or
11:26 21 wearing of clothing.

11:26 22 Q But you tested that shirt for blood, right?

11:26 23 A That is correct. So there is a source of blood
11:26 24 there, but I cannot tell you that both sources of DNA
11:26 25 came from blood.

11:26 1 Q Did you test these -- any of these items for any
11:26 2 other bodily fluids?

11:26 3 A No. There was no other ones requested.

11:26 4 Q And like you said, DNA is basically in all bodily
11:26 5 fluids, right?

11:26 6 A That's correct.

11:26 7 Q And it would -- so just because your report says
11:26 8 that the DNA matches, in this instance, for Catherine
11:27 9 Cook on 7.1, and then on 12.1 and 12.2 which are the
11:27 10 pillow cuttings, that does not mean that that DNA was
11:27 11 from her blood; is that correct?

11:27 12 A In my opinion, it is from her blood. However,
11:27 13 there are other sources of DNA that could leave DNA
11:27 14 behind.

11:27 15 Q So it's your opinion it's her blood, but it's your
11:27 16 opinion that it's not somebody else's blood on the
11:27 17 shirt?

11:27 18 A I cannot tell you if it's someone else's, if the
11:27 19 other source of DNA came from blood or some other body
11:27 20 fluid or from skin cells or anything like that.

11:27 21 Q So it boils down to you're saying you tested these
11:27 22 items for blood, they matched and said that there is
11:27 23 somebody's blood on these items?

11:27 24 A That's correct.

11:27 25 Q Then you tested the items -- but you didn't test

11:27 1 them for any other bodily fluids; is that correct?

11:27 2 A That's correct.

11:27 3 Q And then you tested them for DNA, and you found
11:28 4 some DNA from Catherine Cook and some DNA from an
11:28 5 unknown person on those items?

11:28 6 A Just for item 7.1.

11:28 7 Q For item 7.1, DNA from Catherine Cook and DNA from
11:28 8 an unknown person?

11:28 9 A Right. There wasn't enough information from that
11:28 10 minor contributor for me to make any comparisons to any
11:28 11 known standards.

11:28 12 Q Then on the pillows, you found DNA from Catherine
11:28 13 Cook on the pillows, but you can't say conclusively
11:28 14 that the DNA found on any of these items was from
11:28 15 blood; is that correct?

11:28 16 A In my opinion, they are from blood.

11:28 17 Q But you testified that it's possible, and because
11:28 18 DNA is on everything, that it could be from some other
11:28 19 bodily fluid or skin cells, hair, something like that?

11:28 20 A As far as the minor contributor goes, blood is a
11:29 21 great source of DNA. So if I find blood on an item,
11:29 22 I'm going to expect to find DNA. So, for example, the
11:29 23 12.1 and 12.2 cuttings, I just got a single course
11:29 24 profile, meaning one person donated that DNA.

11:29 25 Therefore, in my expert opinion, the DNA came from that

11:29 1 blood.

11:29 2 However, on item 7.1, the cutting from the shirt,
11:29 3 it was a mixture of two people's -- or at least two
11:29 4 people's DNA. So I know that one source of DNA came
11:29 5 from the blood; however, I cannot tell you if the
11:29 6 second individual came from blood or another source of
11:29 7 DNA.

11:29 8 Q But your testimony earlier was that red blood
11:29 9 cells don't contain DNA, correct?

11:29 10 A Right. But white blood cells and other components
11:29 11 in blood do contain DNA.

11:29 12 MR. COLE: No further questions, Your Honor.

11:29 13 MR. WAGNER: Nothing further, Your Honor. We ask
11:29 14 this witness be excused.

11:29 15 THE COURT: Any objection?

11:30 16 MR. COLE: No objection, Your Honor.

11:30 17 THE COURT: Thank you, ma'am. You are excused.

11:30 18 MR. WAGNER: Can we take a break for a few
11:30 19 minutes?

11:30 20 THE COURT: Mr. Bailiff, would you take our jury
11:30 21 to the jury room.

11:30 22 (WHEREUPON, the jury exited open court at
11:31 23 11:30 a.m.)

11:31 24 THE COURT: All right. We'll go into recess for a
11:31 25 few minutes.

11:31 1 (WHEREUPON, a recess was taken from 11:31 a.m. to
11:44 2 11:44 a.m.)

11:44 3 THE COURT: Mr. Wagner, are we ready?

11:44 4 MR. WAGNER: Yes, your Honor. I think we have got
11:44 5 one witness before lunch, and I think next will not be
11:44 6 here until 1 o'clock.

11:44 7 THE COURT: Okay. Well, that will work. All
11:44 8 right. Let's get our jury.

11:45 9 (WHEREUPON, the jury entered open court at
11:45 10 11:45 a.m.)

11:45 11 THE COURT: All right.

11:45 12 MS. SIMMONS: Thank you, Your Honor. The State
11:45 13 calls Allison Dukes Lamb.

11:45 14 **ALLISON DUKES LAMB,**

11:45 15 **BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:**

11:46 16 **DIRECT EXAMINATION**

11:46 17 **BY MS. SIMMONS:**

11:46 18 Q Allison, if you could state your full name for the
11:46 19 record and spell your last name.

11:46 20 A Allison Dukes Lamb, L-a-m-b.

11:46 21 Q And, Allison, back in May of 2014, was your last
11:46 22 names Duke?

11:46 23 A It was.

11:46 24 Q Tell me a little bit about your background.

11:46 25 A I am -- I graduated nursing school, went to work

11:46 1 at Doctors Hospital of Augusta in the burn unit, worked
11:46 2 my way down to the ICU, left Doctors Hospital and am
11:46 3 currently in anesthesia school.

11:46 4 Q What education and training do you have?

11:46 5 A A bachelor of science in nursing. I'm ACLS
11:46 6 certified, basic life support certified, PALS
11:46 7 certified, and TNCC certified.

11:46 8 Q And were you a certified trauma nurse back in
11:47 9 2014?

11:47 10 A TNCC is Trauma Nursing Core Course.

11:47 11 MS. SIMMONS: Your Honor, at this time, the State
11:47 12 would move that Ms. Lamb be declared an expert in
11:47 13 trauma nursing.

11:47 14 MR. COLE: No objection, Your Honor.

11:47 15 THE COURT: All right. The witness would be
11:47 16 determined as an expert in trauma nursing without
11:47 17 objection.

11:47 18 BY MS. SIMMONS:

11:47 19 Q Allison, did you have occasion to treat Katie Cook
11:47 20 on May 17th of 2014?

11:47 21 A I did. I got her that morning.

11:47 22 Q And what time had she arrived at the Doctors
11:47 23 Hospital, to the best of your recollection?

11:47 24 A I was told she arrived around midnight to our ER.

11:47 25 Q What's the standard protocol when a burn patient

11:47 1 comes in?

11:47 2 A During the middle of the night, they come in
11:47 3 through our ER and are processed, and then they're sent
11:47 4 to our debridement room so we can clean their burns up,
11:47 5 get them wrapped in dressings, and then they are taken
11:47 6 to their room where we get labs, take the photographs
11:47 7 and all that stuff.

11:47 8 Q Can you explain what the process of debridement
11:47 9 is.

11:47 10 A Debridement is scraping away the burned skin. So
11:48 11 for that, we give them narcotics, paralytics and
11:48 12 sedation because it's a painful process. And then we
11:48 13 wash them really well. And after we wash them, we wrap
11:48 14 them and soak them in an antibacterial solution.

11:48 15 Q What was Katie's prognosis upon arrival?

11:48 16 A Her burns were very deep, greater than third
11:48 17 degree, meaning all the way down to the muscle. So
11:48 18 overall, that's a poor prognosis.

11:48 19 Q Tell me a little bit about Katie's burns and what
11:48 20 you saw.

11:48 21 A She was burned to her back, her buttocks, both
11:48 22 legs. You could see where her bra line was. You could
11:48 23 see where her underwear were. They're incredibly deep.

11:48 24 Q Did the burns appear to you to be self-inflicted?

11:48 25 A No, because they were all on her back. I don't

11:48 1 understand how she could light herself on fire and just
11:48 2 get the back.

11:48 3 Q Did she have any airway burns?

11:49 4 A She did not.

11:49 5 Q What does that tell us?

11:49 6 A She wasn't -- she didn't inhale the smoke. There
11:49 7 were no inhalation injuries.

11:49 8 Q Did she eventually wake up and become alert on
11:49 9 your shift?

11:49 10 A She did. She was anxious. She was very nauseated
11:49 11 throwing up around her endotracheal tube. She was
11:49 12 asking a lot of questions about what happened -- or she
11:49 13 was asking -- checking on things. Like she had cats at
11:49 14 the house. She wanted to know where they were, if
11:49 15 anybody had notified her parents.

11:49 16 Q To your knowledge, was this the first opportunity
11:49 17 when you spoke with her or anyone was able to?

11:49 18 A It was.

11:49 19 Q Were there other nurses with you?

11:49 20 A There were. There was a nurse practitioner.
11:49 21 There was a physicians assistant. There was another
11:49 22 nurse in the room with me. We were just trying to
11:49 23 gather information at that point to find out what
11:49 24 happened, who did it. And it's kind of a
11:49 25 nerve-wracking time because she's intubated and you

11:49 1 don't want to lose your airway. So she wanted to talk
11:49 2 to us. She was motioning to talk to us. So it was
11:50 3 just about me having the comfort. So finally she kept
11:50 4 doing this (indicating). She wanted to write to me.
11:50 5 So I finally felt comfortable enough to loosen the
11:50 6 restraint, let her write to me, tell me what happened
11:50 7 so we could get the better picture and keep her
11:50 8 protected as a patient.

11:50 9 Q Initially was she able to answer questions by
11:50 10 nodding.

11:50 11 A She was.

11:50 12 Q Did you ask her if she was strangled?

11:50 13 A I did.

11:50 14 MR. COLE: Objection; hearsay.

11:50 15 THE COURT: Overruled.

11:50 16 BY MS. SIMMONS:

11:50 17 Q What was her answer to that?

11:50 18 A She said she was.

11:50 19 Q And was there any physical manifestations of being
11:50 20 choked or strangled on her body?

11:50 21 A She had a knot on the side of her neck, and that's
11:50 22 what probed the question.

11:50 23 Q Did she -- what was her answer to the question of,
11:50 24 "Did you have gas poured on you?"

11:50 25 MR. COLE: Objection; hearsay.

11:50 1 THE COURT: Overruled.

11:50 2 THE WITNESS: She said yes.

11:50 3 BY MS. SIMMONS:

11:50 4 Q And did she -- was she asked if a weapon was used?

11:50 5 A We did.

11:50 6 MR. COLE: Objection; hearsay.

11:50 7 THE COURT: Overruled.

11:50 8 THE WITNESS: She said no.

11:51 9 BY MS. SIMMONS:

11:51 10 Q And did you ask her who did this to her?

11:51 11 A We did.

11:51 12 MR. COLE: Objection; hearsay.

11:51 13 THE COURT: Overruled.

11:51 14 THE WITNESS: She wrote a name down, and it was

11:51 15 Jacob Drotning. And once she wrote that name down, we

11:51 16 asked, because her name in our computer system was

11:51 17 Katie Cook. And she wrote the name, she wrote

11:51 18 "husband" beside it. So that probed us to ask if they

11:51 19 had different last names, and she nodded her head yes.

11:51 20 Q So she was specific that Jacob Drotning had done

11:51 21 this?

11:51 22 A She was very specific. I believe we had her name

11:51 23 spelled wrong in the computer as well, and she

11:51 24 corrected us on that.

11:51 25 Q So just to recap, she said yes to being strangled,

11:51 1 yes to having gas poured on her, and yes to that her
11:51 2 husband did it?

11:51 3 A Correct.

11:51 4 Q Okay. And you said she was able to write some to
11:51 5 you?

11:51 6 A Correct.

11:51 7 Q I'm going to show you what's been premarked
11:51 8 State's Exhibit 108. Do you recognize this item?

11:51 9 A I do.

11:51 10 Q And what is that?

11:51 11 A That's the burn -- well, so the best I had to come
11:52 12 up with for her to write on that was bearable where we
11:52 13 could read it was a burn pad and a Sharpie or a dry
11:52 14 erase marker.

11:52 15 Q Tell me what is written on there and what context
11:52 16 it was written in.

11:52 17 A So once she started writing, she was asking us
11:52 18 about her cats, and then --

11:52 19 MR. COLE: Objection. This calls for hearsay
11:52 20 responses as to the entire exhibit.

11:52 21 THE COURT: Mr. Bailiff, would you take our jury
11:52 22 to the jury room, please.

11:52 23 (WHEREUPON, the jury exited open court at
11:53 24 11:52 a.m.)

11:53 25 THE COURT: Okay. Mr. Cole, I'm looking at your

11:53 1 motion in limine. Now, you renewed your objection to
11:53 2 the three statements which she nodded her head on your
11:53 3 chart from your motion in limine.

11:53 4 What is your objection to the writing? That was
11:53 5 not dealt with earlier.

11:53 6 MR. COLE: Your Honor, the question called for
11:53 7 what the context of this writing is. So we have no --
11:53 8 we have no objection to the witness reading what's
11:53 9 written on this statement, but the context of the
11:53 10 writing would call for further hearsay responses as to
11:53 11 what other questions that the nurse asked the victim
11:53 12 and the nurses -- and the victim's responses to those
11:53 13 questions.

11:53 14 THE COURT: All right.

11:53 15 Ms. Simmons, what question are you trying to ask?

11:53 16 MS. SIMMONS: Your Honor, basically I would just
11:53 17 like for her to read both sides of the pad. And the
11:53 18 only context I want her to discuss is when she wrote
11:54 19 "Jacob Drotning," she indicated that's who did that to
11:54 20 her. And she's already testified --

11:54 21 THE COURT: She's already testified to that. Just
11:54 22 limit it to what's written -- I'll sustain your
11:54 23 objection as to context questions as to the writing,
11:54 24 but she will be allowed to read what's on the exhibit.

11:54 25 MR. COLE: Thank you, Your Honor.

11:54 1 THE COURT: Okay. Let's get our jury back.
11:55 2 (WHEREUPON, the jury entered open court at
11:55 3 11:55 a.m.)
11:55 4 THE COURT: All right.
11:55 5 Ms. Simmons, proceed.
11:55 6 BY MS. SIMMONS:
11:55 7 Q Ms. Lamb, after the nodding answers, was she able
11:55 8 to write some information down for you?
11:55 9 A She was.
11:55 10 Q Could you -- is that item in substantially the
11:55 11 same condition as when it was written?
11:55 12 A It is.
11:55 13 Q Have any changes been made to it?
11:55 14 A No changes.
11:55 15 Q Can you read what she wrote on both sides of that?
11:55 16 A She wrote, "Are my cats okay? Did you call my
11:55 17 mom?" At the time we did not have her mother's name or
11:55 18 number, so she wrote down "Ruby Cook." She wrote down
11:55 19 a phone number. She wrote down "Water." She wanted
11:56 20 water. And, "Ice chips. Cold blanket." She was very
11:56 21 hot.
11:56 22 On the other side, she wrote "Jacob Drotning."
11:56 23 And she wrote "husband" underneath it. She wrote
11:56 24 "surgery" and H₂O or "water" -- or she wrote, "How long
11:56 25 would the surgery be?"

11:56 1 Q And this pad is in substantially the same
11:56 2 condition?

11:56 3 A It is exactly the same.

11:56 4 MS. SIMMONS: Your Honor, at this time the State
11:56 5 would move into evidence State's 108.

11:56 6 MR. COLE: No objection, Your Honor.

11:56 7 THE COURT: All right. State's Exhibit 108 would
11:56 8 be admitted without objection.

11:56 9 (WHEREUPON, State's Exhibit Number 108
11:56 10 was admitted into evidence.)

11:56 11 BY MS. SIMMONS:

11:56 12 Q After receiving that phone number, did someone
11:56 13 call her mom?

11:56 14 A They did.

11:56 15 Q As part of the burn protocol, are photographs
11:56 16 taken of the injuries?

11:56 17 A They are.

11:56 18 Q I'm going to show you what has been previously
11:56 19 marked State's 77, 78, 79, 80, 81, 82, 83, 84 and 85.

11:57 20 A Okay.

11:57 21 Q Do you recognize these photographs?

11:57 22 A I do. This is Katie the morning after she came
11:57 23 in.

11:57 24 Q Are these photographs a fair and accurate
11:57 25 depiction of the injuries you saw?

11:57 1 A They are.

11:57 2 Q Have they been altered or tampered with in any way
11:57 3 other than the hospital covering up her private parts?

11:57 4 A No.

11:57 5 MS. SIMMONS: At this time, the State would move
11:57 6 into evidence State's 77 through 85 and ask to publish
11:57 7 to the jury.

11:57 8 MR. COLE: Your Honor, I object to this exhibit
11:57 9 based on Rule 403 and the other matters that were
11:57 10 discussed in the pretrial motions.

11:57 11 THE COURT: Overruled. Your objections are noted
11:57 12 for the record. They would be admitted as State's 78,
11:58 13 79, 80, 81, 82, 83, 84, and 85.

11:58 14 (WHEREUPON, State's Exhibit Numbers 78 through
11:58 15 85 were admitted into evidence.)

11:58 16 BY MS. SIMMONS:

11:58 17 Q Allison, I'm going to ask you to describe the
11:58 18 injuries you see.

11:58 19 Madam Clerk, can we get the lights?

11:58 20 Q State's Exhibit 77?

11:58 21 A So this is Katie's back. The top line is where
11:58 22 her bra was, and the bottom line is where she was
11:58 23 wearing underwear or pants. And then in between is all
11:58 24 burned areas. Kind of shows you how deep it is because
11:58 25 it has the leathery appearance showing it's greater

11:58 1 than third degree.

11:58 2 Q State's number 78?

11:58 3 A This is a picture from the side of the same thing.
11:58 4 You can kind of see where it missed her -- the bottom
11:59 5 part of her leg. You can see those two areas which are
11:59 6 also burns.

11:59 7 Q State's number 79?

11:59 8 A This is on her chest. She had splatter marks on
11:59 9 her chest, and that's just the one area. You can see
11:59 10 most of the chest was spared, but it did get her in
11:59 11 that one area.

11:59 12 Q Is it safe to say the burns are heavily
11:59 13 concentrated to the posterior?

11:59 14 A Correct.

11:59 15 Q State's number 80?

11:59 16 A One of her arms. And, again, you can see how most
11:59 17 of the chest is spared. And it's the back of the arm.

11:59 18 Q State's number 81?

11:59 19 A Her foot. Again, that peeling is after
11:59 20 debridement.

11:59 21 Q State's number 82?

11:59 22 A Both of the legs. Again, mostly concentrated to
12:00 23 the back. You can see a small area from the top of the
12:00 24 leg closest to us, all pretty deep burns.

12:00 25 Q State's 83?

12:00 1 A It's the side of her neck. Her face was
12:00 2 completely spared, her ears and the back of her neck.
12:00 3 Q State's 84?
12:00 4 A Her back again. Right where her bra was, is where
12:00 5 that red line was.
12:00 6 Q And State's number 85?
12:00 7 A Her arms. Greater than third degree.
12:00 8 MS. SIMMONS: Please answer any questions Mr. Cole
12:00 9 may have for you.
12:01 10 CROSS-EXAMINATION
12:01 11 BY MR. COLE:
12:01 12 Q Ms. Lamb, there were, as we saw from the
12:01 13 photographs, there were some burns on the front of
12:01 14 Ms. Cook's body as well; is that correct?
12:01 15 A Correct.
12:01 16 Q Including the palm of the hands and, I believe, on
12:01 17 the chest and looked like the front of the legs?
12:01 18 A Correct.
12:01 19 Q However, the majority of the burns were to her
12:01 20 back; is that correct?
12:01 21 A Correct.
12:01 22 Q And that would be consistent with the fire
12:01 23 starting at her back; is that correct?
12:01 24 A I believe so.
12:01 25 MR. COLE: No further questions.

1 REDIRECT EXAMINATION

12:01 2 BY MS. SIMMONS:

12:01 3 Q The burns Mr. Cole just asked you about on her
12:01 4 back, do you have an opinion as to what type of burns
12:01 5 they are?

12:01 6 A From gasoline.

12:01 7 Q Thank you.

12:02 8 THE COURT: Anything further from this witness?

12:02 9 MR. COLE: Nothing further, Your Honor.

12:02 10 MS. SIMMONS: Your Honor, we would ask that
12:02 11 Ms. Dukes be excused.

12:02 12 THE COURT: Any objection?

12:02 13 MR. COLE: No objection, Your Honor.

12:02 14 THE COURT: All right.

12:02 15 Thank you, ma'am. You are excused.

12:02 16 MS. SIMMONS: Your Honor, at this time Dr. Shaver
12:02 17 plans to be present at 1 o'clock.12:02 18 THE COURT: Okay. Well, we'll go ahead and break
12:02 19 for lunch. Plan on starting back at 1:30. I don't
12:02 20 think that gives them enough time to get in and back if
12:02 21 we start at 1:00.12:02 22 So, ladies and gentlemen, I'm going to let you go
12:02 23 to lunch now. Just be back in the jury room before
12:03 24 1:30.

12:03 25 (WHEREUPON, the jury exited open court at

12:03 1 12:03 p.m.)

12:03 2 THE COURT: All right. We'll be in recess until

12:03 3 1:30.

12:03 4 (Lunch recess taken from 12:03 p.m. to 1:37 p.m.)

5 (WHEREUPON, the following proceedings were

6 held in chambers.)

7 THE COURT: Before we bring the jury back, I just

8 want to put on the record that I received a note from

9 the foreperson. Turns out that one of the juror's

10 mother used to work with the victim.

01:37 11 (WHEREUPON, Juror 271 enters the courtroom.)

01:37 12 THE COURT: Mr. White, I have received a note from

01:37 13 the foreman that says your mother told you that she

01:37 14 used to work with the victim; is that correct?

01:37 15 JUROR WHITE: Yes. That's what she told me

01:37 16 yesterday.

01:37 17 THE COURT: How did that come about? Who

01:37 18 initiated the discussion?

01:37 19 JUROR WHITE: She did. She said she heard on the

01:37 20 radio, just asked the lady's last name happened to be

01:37 21 Cook because she remembered. I didn't say anything. I

01:37 22 know I'm not supposed so.

01:37 23 THE COURT: You did not discuss the case with her?

01:37 24 JUROR WHITE: Huh-uh. She just said the last

01:37 25 name, and I was like, "I'm not supposed to say

01:37 1 anything." I just figured it would be better for y'all

01:37 2 to hear from me if somebody else happened to hear it.

01:37 3 THE COURT: The knowledge -- did you know the

01:37 4 victim?

01:37 5 JUROR WHITE: No. I have no clue who she was.

01:37 6 That's why I was --

01:37 7 THE COURT: And the fact that your mother may have

01:37 8 worked with her at some time in the past, would that

01:37 9 affect your ability to be fair and impartial?

01:37 10 JUROR WHITE: No, it would not.

01:37 11 THE COURT: Okay. Anything from the State?

01:37 12 MR. WAGNER: No.

01:37 13 THE COURT: Anything from the defense?

01:37 14 MR. COLE: I would just ask that -- did you and
01:37 15 your mother live together?

01:37 16 JUROR WHITE: Yeah. Yes, we do.

01:37 17 MR. COLE: Nothing further.

01:37 18 JUROR WHITE: I just want to make it known. That
01:37 19 way you did not hear it from somebody else.

01:37 20 THE COURT: But you have not discussed the case
01:37 21 with your mother?

01:37 22 JUROR WHITE: No.

01:37 23 THE COURT: Thank you, Mr. White. You can return
01:37 24 to the jury room.

01:37 25 (WHEREUPON, Juror White left the room.)

01:37 1 THE COURT: Okay. Well, that answers the court's
01:37 2 concern.

01:37 3 And does the State have any position on it?

01:37 4 MR. WAGNER: Judge, I'm fine with whatever you
01:37 5 think the proper thing to do is. If he stays on there,
01:37 6 fine. If you need to, in an abundance of caution, take
01:37 7 him off and put an alternate on, that's fine.

01:37 8 THE COURT: Mr. Cole, what's your position?

01:37 9 MR. COLE: I think with them living together, that
01:37 10 I would prefer an alternate be put on the jury just
01:37 11 because, even though he said he hadn't discussed it, I
01:37 12 don't know. You know, if you live with your mom and
01:37 13 you come home and she starts asking you questions about
01:37 14 it, especially if she worked with somebody, that
01:37 15 seems --

01:37 16 THE COURT: Well, since the defense has requested
01:37 17 that, I will remove Mr. White and we'll make the first
01:37 18 alternate the primary juror.

01:37 19 Would there be any objection just to making the
01:37 20 first alternate a primary juror?

01:37 21 MR. WAGNER: No, sir.

01:37 22 MR. COLE: No objection, Your Honor.

01:37 23 THE COURT: Okay. All right. Then we will do
01:37 24 that.

01:37 25 (WHEREUPON, the following proceedings were held

01:37 1 in open court commencing at 1:37 p.m. with all
01:41 2 parties present.)

01:41 3 THE COURT: Before we bring the jury back in, I'll
01:41 4 just put on the record the court did receive a note
01:41 5 from the foreman. It turns out one of the juror's
01:41 6 mother had worked with the victim in the past.
01:41 7 However, that juror did not discuss the case with her.
01:41 8 And at the request of defense counsel, that juror has
01:41 9 been dismissed, and the first alternate would be made a
01:41 10 primary juror.

01:41 11 So any objection to that from the State?

01:41 12 MR. WAGNER: No, sir.

01:41 13 THE COURT: Any objection from the defense?

01:41 14 MR. COLE: No objection, Your Honor.

01:41 15 I would like to put a motion on the record prior
01:41 16 to the jury coming in.

01:41 17 THE COURT: All right. Go ahead.

01:41 18 MR. COLE: Your Honor, I would move at this time
01:41 19 for a mistrial in the case even though we have the
01:41 20 alternate juror. Because we know that the juror that
01:41 21 had a potential conflict spoke to the foreman, I think
01:41 22 there is a potential that he spoke to other jurors
01:41 23 about that so it could have tainted the entire jury so
01:42 24 I would move for a mistrial.

01:42 25 THE COURT: I would deny your motion at this time.

01:42 1 I questioned the prospective juror, and he said that he
01:42 2 had not talked about the case with this individual, his
01:42 3 mother. I will question the jury again about any
01:42 4 deliberations, but as of the last questioning by the
01:42 5 court, there had been no deliberations or discussion of
01:42 6 the case by the jury. So I would deny your motion,
01:42 7 Mr. Cole.

01:42 8 MR. COLE: Thank you, Your Honor.

01:42 9 THE COURT: Let's make this a court exhibit.

01:43 10 (WHEREUPON, the jury entered open court at
01:43 11 1:43 p.m.)

01:43 12 THE COURT: Ladies and gentlemen, before we
01:43 13 proceed, I'm going to ask you again: Has there been
01:43 14 any deliberation amongst the jury discussing the facts
01:43 15 of the case in violation of the court's instructions?

01:43 16 JURY FOREMAN: No, sir.

01:43 17 THE COURT: Let the record reflect that there are
01:43 18 no positive responses.

01:44 19 All right. Mr. Solicitor.

01:44 20 MR. WAGNER: Yes, sir.

01:44 21 MS. SIMMONS: Thank you, Your Honor. The State
01:44 22 calls Dr. Joseph Shaver.

01:44 23 **JOSEPH ROBERT SHAVER, M.D.,**

01:44 24 **BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:**

01:44 25 **DIRECT EXAMINATION**

01:44 1 BY MS. SIMMONS:

01:44 2 Q Dr. Shaver, could you please state your full name

01:44 3 for the record and spell your last name.

01:44 4 A Yes, ma'am. It's Joseph, middle name Robert,

01:44 5 Shaver, S-h-a-v-e-r.

01:44 6 Q Dr. Shaver, where are you employed?

01:44 7 A I work at Doctors Hospital in Augusta, Georgia.

01:45 8 Specifically, I work at the Joseph M. Still burn

01:45 9 center.

01:45 10 Q What's your education background?

01:45 11 A Starting in college, bachelor of science in

01:45 12 biology at the University of Scranton in Scranton,

01:45 13 Pennsylvania. Then moved on to medical school at

01:45 14 Georgetown University in Washington, D.C., and then

01:45 15 went on to do a post medical school training, residency

01:45 16 is what we call it, at a place called Thomas Jefferson

01:45 17 University in Philadelphia, Pennsylvania. Three years

01:45 18 of internal medicine. Sat for my boards. I'm board

01:45 19 certified in internal medicine. Did four additional

01:45 20 years in training in what's called pulmonary medicine,

01:45 21 lungs, and then another speciality called critical care

01:45 22 medicine, which is actually a speciality involved in

01:45 23 specifically learning how to take care of patients who

01:45 24 are critically ill, organ system failure, kidneys,

01:45 25 heart, lungs, and that is a specific fellowship

01:45 1 training. And then from there, I finished and moved to

01:45 2 Augusta, Georgia.

01:45 3 Q How long have you been in Augusta?

01:46 4 A Since 1996.

01:46 5 Q 20 years?

01:46 6 A Yes, ma'am.

01:46 7 Q And have you been at the Joseph M. Still burn

01:46 8 center those 20 years?

01:46 9 A I have.

01:46 10 Q Have you testified in court before as an expert?

01:46 11 A I have.

01:46 12 Q How many times?

01:46 13 A At least four.

01:46 14 MS. SIMMONS: Judge, at this time, we would move

01:46 15 Dr. Shaver be declared an expert in critical care and

01:46 16 internal medicine.

01:46 17 MR. COLE: No objection, Your Honor.

01:46 18 THE COURT: The doctor would be admitted as an

01:46 19 expert in critical care and internal medicine without

01:46 20 objection.

01:46 21 BY MS. SIMMONS:

01:46 22 Q Dr. Shaver, generally, can choking lead to

01:46 23 unconsciousness?

01:46 24 A Yes.

01:46 25 Q And why is that?

01:46 1 A Well, when you have your blood flow obviously
01:46 2 going from your carotid arteries up to feeding oxygen
01:46 3 to your brain cells and then also you have the return
01:46 4 of blood coming through what's called the jugular
01:46 5 veins, whenever you obstruct that flow, it doesn't take
01:47 6 long for someone to become unconscious because of that
01:47 7 lack of flow. And it is also the decreased venous
01:47 8 return of blood which causes the brain to temporarily,
01:47 9 I wouldn't say swell, but it's not a circuit. The
01:47 10 brain is a circuit. Our whole body is a circulatory
01:47 11 system. And about one fifth of what we call our
01:47 12 cardiac output, which is the blood flow from our heart,
01:47 13 goes to our brain. So if you were to cut that off just
01:47 14 for a short period of time, you would pass out.

01:47 15 Q Did you specifically treat the victim in this
01:47 16 case, Katie Cook?

01:47 17 A I did.

01:47 18 Q And what was your role in her care?

01:47 19 A My role was involved in helping manage her -- her
01:47 20 organ systems that were so severely injured along with
01:47 21 the various infections that she developed during her
01:47 22 course, her prolonged course at the burn unit, while
01:47 23 she was being treated there and undergoing multiple
01:47 24 surgeries for grafting procedures and debridements,
01:48 25 which I can explain what that means whenever. But

01:48 1 helping manage her kidney failure, her lung failure,
01:48 2 and helping support her organ systems, which is what
01:48 3 critical care medicine is, helping the body organs in
01:48 4 any fashion on a daily basis to whatever triggered them
01:48 5 to become dysfunctional, to help support those organ
01:48 6 systems while the patient is overcoming whatever
01:48 7 triggered those systems to become dysfunctional.

01:48 8 Q What kind of patients do you treat at the burn
01:48 9 center?

01:48 10 A We have a very large burn center in Augusta. It's
01:48 11 been there for a long time. We have a capacity of 85
01:48 12 beds, but I specifically work in the main unit, which
01:48 13 is the 20-bed unit downstairs where we get the largest
01:48 14 and the biggest burns and severely injured burns, and
01:48 15 that's where my base camp is.

01:48 16 When patients move on from there, they move to
01:48 17 step-down units after they have either recovered or,
01:48 18 unfortunately, sometimes after they have passed on.

01:48 19 Q What kind of injuries had Katie sustained?

01:48 20 A Katie sustained significant burn injuries. About
01:49 21 60 percent of her body was burned. And I'll explain a
01:49 22 little bit, if it will help, how we determine percent
01:49 23 burn injury.

01:49 24 You know, so our whole body is 100 percent skin.
01:49 25 We have a very simple rule of what we call rule of

01:49 1 nines. And the way we calculate quickly is by looking
01:49 2 at, glancing at someone's body and how much of it has
01:49 3 been burned by appearance.

01:49 4 And to give an example, the front part of an arm
01:49 5 would be nine percent. The entire head and face would
01:49 6 be nine percent. The anterior chest and abdomen would
01:49 7 be 18 percent, so two nines. The back would be
01:49 8 18 percent. The back of the legs would be two nines.
01:49 9 And then you calculate from there. And there's
01:49 10 diagrams. And you basically come up with a percentage
01:49 11 of burn injury.

01:49 12 Q And why is that?

01:49 13 A It's important for multiple reasons, but initially
01:50 14 the percentage of burn injuries is important because it
01:50 15 gives us an idea of how much that body is going to need
01:50 16 fluid because what keeps us, which we are 95 percent
01:50 17 water. What keeps all our fluid in place is our skin
01:50 18 and all our capillaries and all our membranes.

01:50 19 When you sustain a burn injury, you lose a rapid
01:50 20 amount of fluid. Just think about when you get a
01:50 21 little blister with fluid underneath. Think about
01:50 22 that, 60 percent of your body constantly oozing. So we
01:50 23 use that to guide our ability to try and help support
01:50 24 the body while it's going through this transition of
01:50 25 this traumatic injury.

01:50 1 Q Can you explain to us degrees of burn?

01:50 2 A Yes. So a first-degree burn would be like a
01:50 3 sunburn. We have layers of skin, our epithelium, which
01:50 4 is the surface layer which is always flaking off. When
01:50 5 you get a sunburn, if you don't get a blister and you
01:50 6 get red, that will peel. That's the epithelium. It
01:50 7 can hurt because there's nerve endings.

01:50 8 Second-degree burn is when you actually develop
01:50 9 blisters. And that is where the epithelium actually is
01:51 10 damaged to the point where it actually lifts away from
01:51 11 what's called -- the next layer called the dermis. And
01:51 12 the dermis is where all the blood and the nerve
01:51 13 endings, a lot of the nerve endings are that feed the
01:51 14 epidermis, which is our first protective barrier, so a
01:51 15 blister will form. Okay. And where that blister is,
01:51 16 that would be considered what a second-degree burn is.
01:51 17 So if you have ever had a blister even from just raking
01:51 18 hard and you get a blister, there is fluid that forms
01:51 19 underneath there. Fluid is fluid that's in your body,
01:51 20 but it's lost its ability to stay where it is.

01:51 21 If you have ever, obviously, popped that blister
01:51 22 or whatever and that skin comes off, if you have ever
01:51 23 run that under water, it hurts like the dickens. So
01:51 24 second-degree burns and even third-degree burns -- a
01:51 25 third-degree burn is when the underlying area that's

01:51 1 under that blister, that reddened beefy area, that has
01:51 2 actually burned to the point where it has no more blood
01:51 3 flow. And that's what we call a third-degree burn of
01:51 4 the dermis. Because the dermis itself can actually
01:52 5 regenerate epithelial cells. So second-degree burns
01:52 6 can heal if they're taken care of well. And,
01:52 7 obviously, we are much able to take care of all types
01:52 8 of burns nowadays, but even second-degree burns can be
01:52 9 severe but they heal on their own. They don't normally
01:52 10 require grafting at all.

01:52 11 Third-degree burns, when the dermis is gone,
01:52 12 there's nothing underneath to make more cells so you
01:52 13 need to do what we call grafting and have skin grafts.

01:52 14 Q And what are Katie's degree of burns and burn
01:52 15 percentages?

01:52 16 A Her burn percentage was 60 percent and all of
01:52 17 which was third degree.

01:52 18 Q Explain the risk you encounter with this
01:52 19 percentage of burn and the degree.

01:52 20 A Okay. So the way I like to describe it, and
01:52 21 knowing our body systems, which our organ systems, so
01:52 22 our skin is our largest organ. You don't really
01:52 23 realize it, but it's an organ, okay. It has a whole
01:53 24 host of things and mediators that go through it all the
01:53 25 time.

01:53 1 So what happens is when you sustain a big,
01:53 2 traumatic injury to that part of your body -- when I
01:53 3 say big, anything over 20 to 30 percent burn injury,
01:53 4 whether it be second or third, third being, obviously,
01:53 5 certainly deeper and more intense -- that sets the body
01:53 6 off into a cascade. And everybody may have heard the
01:53 7 term either on TV or in their own personal lives with
01:53 8 loved ones of something called shock.

01:53 9 And the term shock, the best way I like to
01:53 10 describe shock is, in critical care, is the body has
01:53 11 sustained some type of injury that has now set the
01:53 12 organs that normally know how to function -- the heart,
01:53 13 the lungs, the kidneys, the immune system, the
01:53 14 coagulation system or ability to clot our blood, all
01:53 15 that goes haywire. And there is a whole host of
01:53 16 mechanisms. And I could go on and on and diagram all
01:53 17 that.

01:53 18 But shock itself, it's the inciting event and the
01:53 19 shock itself that causes the organs to shut down. And
01:54 20 it's the role of the critical care team to support
01:54 21 those organ systems until and if they can recover.
01:54 22 Sometimes they don't recover.

01:54 23 Younger patients may recover. I have had younger
01:54 24 patients not recover. It really depends. It also
01:54 25 depends on the larger the percentage of burn injury,

01:54 1 the more propensity there is for organ failure early
01:54 2 and more prolonged organ failure. Doesn't mean the
01:54 3 organs can't come back, but they need a lot of support.
01:54 4 And there's always the risk of infection, which is
01:54 5 why burn units were created in the first place. Just
01:54 6 like bone marrow units were created. Our biggest
01:54 7 protective barrier to infection is our skin, our mucous
01:54 8 membranes. When you lose that, we have bacteria all
01:54 9 over our bodies. There is bacteria in the dirt.
01:54 10 There's bacteria everywhere. MRSA, we've heard about
01:54 11 MRSA. It's you have a protective barrier. When you
01:54 12 lose that, even if you're in a setting -- burn units
01:54 13 were created because the number one cause of death in
01:54 14 burn patients was not only the organ failure, but what
01:55 15 we call sepsis from infection because there's no
01:55 16 protective barrier. And patients still die today in
01:55 17 burn units because of infection, but much less so than
01:55 18 they did, say, a decade ago or two decades ago.
01:55 19 Q Did Katie actually suffer organ failure?
01:55 20 A She did. About five days into her course, her
01:55 21 kidneys required the initiation of continued dialysis.
01:55 22 And this is not the hemodialysis that you hear when
01:55 23 someone, eventually their kidneys shut down because of
01:55 24 for whatever reason, diabetes, high blood pressure.
01:55 25 They get set up, they go to a dialysis center, they get

01:55 1 their treatments.

01:55 2 These are specialized machines that are created
01:55 3 for intensive care units that run 24 hours a day
01:55 4 through a dialysis catheter that act as an accessory
01:55 5 kidney. And we can remove fluid and dialyze the
01:55 6 patient, meaning remove all the metabolites that the
01:55 7 kidney normally does. So it's the one organ system
01:55 8 that we can support relatively well for a prolonged
01:56 9 period of time. But early on, within the first five
01:56 10 days, her kidneys shut down because of the trauma of
01:56 11 the injury.

01:56 12 Q Why do the organs shut down?

01:56 13 A Well, beyond going into like all the different
01:56 14 diagrams, there is a whole host of different mediators
01:56 15 or inflammatory mediators. Our body, when we get an
01:56 16 infection, if you have ever had something called
01:56 17 cellulitis or had a scratch and it gets red, I like to
01:56 18 think of all that redness around there is the body's
01:56 19 response is sending a bunch of white blood cells and
01:56 20 things to fight something that's foreign. And it gets
01:56 21 red. And usually, if the body's immune system is able
01:56 22 to and it's not something that's, say, a resistant
01:56 23 bacteria or something, that will eventually scab over
01:56 24 and get better like a brush burn. But a lot of times
01:56 25 you can get a cut or an infection and it can get worse

01:56 1 and worse and red.

01:56 2 All that redness is just a host of millions and
01:56 3 millions of inflammatory cells going to do what they're
01:56 4 supposed to do to help your body. So think of it at
01:56 5 that level, but then think about that going on at an
01:56 6 exponential level throughout the body. There's no
01:57 7 limit because there's no way to put a stop on that
01:57 8 body's responding to such a large injury.

01:57 9 So that's why also regular trauma, multiple
01:57 10 trauma, you know, can do the same thing. When the body
01:57 11 sustains, the body's response is -- it doesn't change
01:57 12 what it does, it just amplifies it. But the problem is
01:57 13 when that response occurs, it causes those organs to be
01:57 14 inflamed as well even though they're not the ones
01:57 15 involved. And then they shut down because they get
01:57 16 inflamed because of the body's response, if that makes
01:57 17 sense.

01:57 18 Q Did Katie suffer infections while she was in the
01:57 19 burn unit?

01:57 20 A She did.

01:57 21 Q Were there times that you believed that Katie's
01:57 22 injuries would be fatal?

01:57 23 A From the get-go, we had frank discussions with her
01:57 24 family about the fact of the size of the burn injury,
01:57 25 albeit her being young, that this certainly could be a

01:57 1 life-threatening or life-taking injury. And we had
01:57 2 conversations throughout different times when she would
01:58 3 either get worse on the breathing machine and require
01:58 4 more support, higher amounts of oxygen, higher support
01:58 5 levels.

01:58 6 Loved ones, if you have been anyone who has had
01:58 7 anyone in the intensive care unit, unfortunately, if
01:58 8 you had a loved one there, you tend to look at the
01:58 9 monitors and you want to see what's going on. And when
01:58 10 things change on the monitors, something is changing
01:58 11 with the patient. And so there are many, many times
01:58 12 that she required different levels of support, higher
01:58 13 levels. That meant that her body was getting sicker
01:58 14 from either a new infection or a very large surgery
01:58 15 that she had that required a large amount of blood
01:58 16 products to be given to her because she had to have a
01:58 17 lot of tissue removed just to keep things clean before
01:58 18 she would even get to be grafted.

01:58 19 Q At this point, can you explain debridement and
01:58 20 grafting?

01:58 21 A So if you sustain a second-degree burn and you
01:58 22 have those blisters, okay, what we've found is a faster
01:58 23 way to heal is -- I mean, if you had a small blister,
01:59 24 you pop the blister, you put a covering over it, you
01:59 25 put some lotion, Silvadene antibiotic ointment on it,

01:59 1 and eventually a scab will form. And that scab
01:59 2 underneath is the epithelial cells forming.

01:59 3 So to start off with a second-degree burn, if you,
01:59 4 say, have whole arm or both arms burned second degree,
01:59 5 blistered, the best way is to get the patient to an
01:59 6 operating room where you can sterilely clean up all
01:59 7 those blisters, clean up the tissue underneath. And
01:59 8 then we have temporary coverings that we can put over
01:59 9 those second-degree burns that immediately act like a
01:59 10 scab.

01:59 11 And, therefore, patients with second-degree burns,
01:59 12 which we call initial debridement because they get the
01:59 13 blisters removed. And in a lot of these accidents,
01:59 14 they're not ever clean. So you want to have everything
01:59 15 sterile so you don't want an infection even with a
01:59 16 second-degree burn.

01:59 17 So you get it sterilely clean in the operating
01:59 18 room and sterilely covered and dressings are put on
01:59 19 there. And then the patients, after they have been
01:59 20 debrided, stay in the hospital for a period of time.
02:00 21 Second degree is less. They can go home and come back.
02:00 22 And as they heal, that covering will come off like a
02:00 23 scab. But it also decreases the level of pain as well
02:00 24 because you have immediately covered that raw area that
02:00 25 I talked about that the water would hit.

02:00 1 Now, third-degree burns, that's where the dermis
02:00 2 itself is already burned and injured. So you're
02:00 3 talking about the next level of layer underneath your
02:00 4 dermis, okay, is if you have ever had a laceration,
02:00 5 whatever, you see this yellow stuff called fat. And
02:00 6 then underneath any fatty tissue is something called
02:00 7 fascia. And fascia is what I like to consider, the
02:00 8 best way to describe it, is the Saran wrap that covers
02:00 9 and holds all our muscles groups together. But that's
02:00 10 its own membrane and has its own blood supply. And
02:00 11 then there's muscles under that that are in bundles.

02:00 12 When someone has a third-degree burn down to the
02:00 13 level of dermis, that tissue is no longer viable. The
02:00 14 longer that tissue stays on the body, the more that
02:00 15 body thinks it's being invaded. The body doesn't know
02:00 16 it's been burned. Our immune system is wonderful but
02:01 17 it's not that sophisticated. All it knows is that it's
02:01 18 had a massive injury. And it's doing everything it can
02:01 19 to fight what it thinks may be an infection. It's
02:01 20 trauma at this point.

02:01 21 So the sooner you get that dead tissue off, the
02:01 22 less chance that those mediators that I talked about
02:01 23 that are being launched out by the immune system, they
02:01 24 kind of calm down, and you have a little bit better
02:01 25 chance of survival.

02:01 1 So the debridement is actually scraping, in the
02:01 2 operating room, scraping and just cleaning with these
02:01 3 fine blades. And there's different types of blades.
02:01 4 They even have water jet blades now that actually cut
02:01 5 through. And just basically the surgeons will clean
02:01 6 down to get all the dermis off.

02:01 7 Some surgeries, the surgery is limited to the
02:01 8 amount of blood loss. Bloodiest type of surgery, our
02:01 9 skin. Big blood supply. When you start cleaning, all
02:01 10 these little arteries come open underneath the dermis.
02:01 11 There is a large amount of blood loss. Initial
02:02 12 debridements for, say, 50, 60, 70 percent burn
02:02 13 injuries, they go on over a period of days. They don't
02:02 14 just happen all at once. The body can only take so
02:02 15 much even in a young person.

02:02 16 It's not uncommon also for a patient, for their
02:02 17 first couple of debridements, to be transfused up to
02:02 18 seven to eight units of blood, almost a whole body
02:02 19 exchange of blood, because of how much blood they lose,
02:02 20 even with tedious efforts of cleaning. And that's just
02:02 21 the first part of burn treatment is getting off all the
02:02 22 dead tissue which may take days and sometimes a day of
02:02 23 rest in between. When I say a day of rest, just let
02:02 24 the body catch up. Because on top of that, when the
02:02 25 body goes into shock, your body's ability to make its

02:02 1 own clotting factors goes away. And there is a big
02:02 2 term we call DIC, I won't go into it. But, basically,
02:02 3 we lose our ability to clot our blood, so we start to
02:02 4 have to hang plasma to help the blood to clot. So that
02:02 5 increases the risk of bleeding. And so does something
02:02 6 called platelets. Those of you who are blood donors, I
02:03 7 praise you because we use a tremendous amount of blood
02:03 8 in our burn unit and platelets and plasma. So it is
02:03 9 our mainstay of keeping people alive because of the
02:03 10 amount of blood loss.

02:03 11 But the debridement then after, to get back to
02:03 12 that real quickly, is then after the surgeon feels he
02:03 13 or she has cleaned the area down, then what they do is
02:03 14 they put a temporary covering. Not the same type of
02:03 15 covering that we would put on a second-degree burn, but
02:03 16 something called either cadaver skin. Or we even used
02:03 17 to use pig skin sterilized. The whole idea behind that
02:03 18 is it's sterilized. It's not considered totally
02:03 19 foreign to the body, although it's not that person's
02:03 20 skin, but it acts as a protective barrier. Because you
02:03 21 have got to have a protective barrier initially. And
02:03 22 all that is, that's not grafting. They call it
02:03 23 grafting surgically, but it really is just putting a
02:03 24 covering over there, numerous staples to put around it,
02:03 25 and then the patient gets wrapped in all those areas.

02:03 1 And then they undergo, until the next OR, they
02:03 2 undergo topical treatments on a routine basis that are
02:04 3 antimicrobial topical agents that suppress the
02:04 4 bacterial count. Then we get involved when the
02:04 5 infection may get into the bloodstream where we start
02:04 6 using IV antibiotics.

02:04 7 But these dressing changes can be very painful and
02:04 8 they require sedation. And that's why burn units also
02:04 9 came about because it takes a level of skill to know
02:04 10 how to medicate a patient to keep them comfortable when
02:04 11 you're taking an area and putting a topical agent that
02:04 12 could be very irritating on there, but it's necessary
02:04 13 to keep the bacterial load down. So that's what
02:04 14 initial debridement is.

02:04 15 And to go on from there, once the patient is
02:04 16 completely what we call excised and debrided, then
02:04 17 there will be anywhere between three to five days. And
02:04 18 it can vary depending on how the patient is doing
02:04 19 clinically. If they are having elevated temperature in
02:04 20 two days, they may have to go back and have things
02:04 21 looked at underneath again to see if there's not an
02:04 22 infection, more dead tissue. Because just because you
02:04 23 cleaned it down initially doesn't mean that there's
02:04 24 still not ongoing cell death even at the fat cell level
02:05 25 or the fascia. So patients will go back again, get the

02:05 1 cadaver taken off, and they'll get re-excised. More
02:05 2 blood loss, more transfusions. Risk of transfusions go
02:05 3 up with each unit of blood you get. You can have
02:05 4 reactions even with matched blood.

02:05 5 So what I'm getting to is large burn injuries are
02:05 6 a very arduous process and a very gradual process. We
02:05 7 don't get to the grafting stage in a large burn injury
02:05 8 sometimes for weeks and weeks, up to six to eight weeks
02:05 9 or longer depending on the patient, if they survive.

02:05 10 Q What kind of grafting did Katie eventually have?

02:05 11 A Katie had a combination of some of her own skin,
02:05 12 but mostly something called cultured epithelial
02:05 13 autografts. Or we like to call it CEA. And what that
02:05 14 actually is is some of her own skin in a normal area
02:05 15 was taken early on in her course because of the percent
02:05 16 of her burn injury, okay. Because if you think about
02:05 17 what you have to do, if you can't take anybody else's
02:06 18 skin, you will reject it, if you have a 60 percent
02:06 19 burn, you only have 40 percent to work with and then
02:06 20 you have to take that off. So, you know, when you
02:06 21 start getting over 50, 60 percent burns, you don't have
02:06 22 much to work with as far as viable areas to get tissue
02:06 23 to take from other parts of the body to graft. And
02:06 24 when you take a graft, you're creating a burn. You're
02:06 25 creating now a second-degree burn that has to heal

02:06 1 itself, the way it's taken. So you're creating even a
02:06 2 larger percentage of burn when you're doing grafting.

02:06 3 Cultured skin has allowed us over the years now to
02:06 4 take higher-percentage burn injuries and give them a
02:06 5 better chance of survival. And what it is is it's
02:06 6 basically their own epithelial cells are taken,
02:06 7 cultured, sent to a special lab. It's actually in
02:06 8 Massachusetts. And they actually -- they culture the
02:06 9 patient's own cells. And they grow their own
02:06 10 epithelial cells. But it takes anywhere between two to
02:06 11 three weeks to get these little patches. We call them
02:07 12 postal stamps. And they get put into suspended
02:07 13 animation when they get up to a certain level. And
02:07 14 they're only several layers thick. These are just
02:07 15 epidermal cells. These are not dermis. But you have
02:07 16 to have some type of skin to survive.

02:07 17 The goal, then, is to -- and one of my goals and
02:07 18 along with the team's is to keep the patient's organ
02:07 19 systems going along to even get to the first point
02:07 20 where you can get the first round of CEA placed onto
02:07 21 the patient. Patients sometimes are so overwhelmed
02:07 22 with infection or injury that their organ systems can't
02:07 23 take it. They don't even make it to the first time
02:07 24 where the cultured skin available.

02:07 25 And even after you put this cultured skin on, it's

02:07 1 not like putting a postal stamp on and it's good to go.
02:07 2 It's very friable, very sensitive, and it doesn't
02:07 3 always take the first time. And you can't cover
02:07 4 everything the first time. So multiple, multiple
02:07 5 rounds of weeks go by before you can totally get
02:07 6 someone covered.

02:07 7 And then the other thing that I go on to explain
02:07 8 to families because it's a common question by all
02:08 9 families is so once the skin is on, the body will get
02:08 10 better, right? Well, oftentimes no because just
02:08 11 because you have the skin covered, that doesn't make
02:08 12 all the things that happened because of the injury go
02:08 13 away. Oftentimes yes, as the patient does get better,
02:08 14 but sometimes not. But it is a very arduous, gradual
02:08 15 process for anything over 40 percent, 35 percent
02:08 16 third-degree burn injury is a long stay in the burn
02:08 17 unit.

02:08 18 Q Can you discuss the specifics of gasoline injuries
02:08 19 like Katie's?

02:08 20 A Having seen way too many gasoline burns over the
02:08 21 years, especially starting this time of year when
02:08 22 people like to get out and burn leaves and such, but
02:08 23 gasoline itself -- so, gasoline is a solvent. I like
02:08 24 to use the word lipid soluble, but fat soluble.

02:08 25 So it gets into the skin very easily if you've

02:08 1 ever got it on your hands or whatever. Not only does
02:09 2 it evaporate fast, but it actually gets absorbed real
02:09 3 quickly. It goes right through your skin into your fat
02:09 4 tissue.

02:09 5 So when gasoline burns occur, not only is there
02:09 6 the thermal effect because of the flash point and the
02:09 7 heat, but then actually what has already happened in a
02:09 8 short period of time, and it can be matter of -- it
02:09 9 doesn't have to be any more than 10, 15, 20 seconds.
02:09 10 And I don't think there's any studies out there where
02:09 11 we have tested animals to see how fast gasoline gets
02:09 12 into their system or done lab studies but very quickly
02:09 13 gets into the system.

02:09 14 So gasoline burns are some of our toughest to
02:09 15 treat because the surgeons will work diligently over
02:09 16 days and days and days and think everything looks
02:09 17 excised. They will go back three days later and
02:09 18 everything they took off underneath has become what we
02:09 19 call necrotic again because the injury from the solvent
02:09 20 has continued.

02:09 21 So then they have to go down and clean all that
02:09 22 off, the fat tissue, then sometimes the fascia. And
02:09 23 then they have to recover. And then you go to another
02:09 24 area. And those areas get infected or can get
02:09 25 infected.

02:10 1 So gasoline burns or accelerant-type burns with
02:10 2 what I would say lipid soluble or gasoline burns -- and
02:10 3 gasoline is not clean, okay. It has a host of
02:10 4 different bacteria in it, and so it's not a clean
02:10 5 substance. But they're very hard burns to treat
02:10 6 because of the nature of how fast they get into the
02:10 7 skin and how deep they can get into the areas involved.
02:10 8 So -- and they cause a lot damage because you have to
02:10 9 keep excising. You start carving big areas of fatty
02:10 10 tissue out because it's all dead, so you're not left
02:10 11 with normal architecture of the human anatomy. But you
02:10 12 have to take it off if you want to get a chance for
02:10 13 coverage. So they can be very devastating burns.

02:10 14 Q How many burn patients do you estimate you have
02:10 15 treated over the course of your career?

02:10 16 A Since 1996, I would say close to over 5,000.
02:10 17 These are big burns.

02:10 18 Q Right.

02:10 19 A We average about 3,800 burns a year admissions. I
02:11 20 can consider -- you know, I'm not making light of burns
02:11 21 at all, believe me, because any burn is not fun. But a
02:11 22 ten-percent burn, I would not see unless it was third
02:11 23 degree and in an elderly patient. Because a ten
02:11 24 percent burn in somebody who's 80 could have a 90
02:11 25 percent mortality rate because they don't have much

02:11 1 reserve. So they would probably be in my intensive
02:11 2 care unit so we could maximize their care. But around
02:11 3 that many.

02:11 4 Q Are Katie's injuries consistent with a
02:11 5 self-inflicted burn?

02:11 6 A Over the last five years, I've taken care of five
02:11 7 self-inflicted burns. Over the last 15 years, over
02:11 8 180, and I have been involved in all those burns.
02:11 9 These burns, to me, are not consistent with a
02:11 10 self-inflicted burn.

02:11 11 The self-inflicted burns that I see and just have
02:11 12 recently seen within the last year, two of which I have
02:11 13 seen and taken care of, are basically 80, 90, 95
02:11 14 percent -- self-inflicted burns are usually not
02:12 15 gestures. These are, unfortunately, people who, for
02:12 16 whatever reason, mental illness or severe depression,
02:12 17 douse themselves not just spritz themselves, they douse
02:12 18 themselves all over with gasoline, and then they have
02:12 19 fumes everywhere. And people don't realize, but a lot
02:12 20 of gas burns occur not because of the gasoline but the
02:12 21 flash point is so high. What we call flash point, the
02:12 22 ability to spark and burn. On gasoline fumes, they
02:12 23 just incinerate and develop 80, 90 percent of their
02:12 24 body is totally burned usually all third degree.

02:12 25 Q Are Katie's injuries consistent with a grilling

02:12 1 accident?

02:12 2 A Having just come through Labor Day and having just
02:12 3 come through Memorial Day and 4th of July, we see a lot
02:12 4 of grilling injuries. I would not say that they were
02:12 5 only because the majority, the ones that I've seen and
02:13 6 I have seen many over the years, are flash to the face,
02:13 7 singed eyebrows. Because when you're lighting a grill,
02:13 8 whether you be putting kerosene on it or whether you're
02:13 9 doing the old thing with the lighter and the propane or
02:13 10 whatever and poof. That's what happens. And it's an
02:13 11 instant. But you don't even have time to react. So
02:13 12 they're usually frontal, they're usually on the chest,
02:13 13 and they're usually on the arms and the face.

02:13 14 Q In your medical opinion, if someone is doused in
02:13 15 gas and lit on fire, does the actor intend to kill
02:13 16 them?

02:13 17 A I would think that the act would lead to death.

02:13 18 Q And could the actor who set -- who caused the
02:13 19 burning, could they not be injured in the process?
02:13 20 Could they be uninjured?

02:13 21 A I think they could not be -- I would think that --
02:13 22 here's the thing. People burn things all the time.
02:13 23 Driving up here this morning, I saw three different
02:14 24 people out burning leaves and burning trees and getting
02:14 25 ready for fall. They're pouring gasoline on something

02:14 1 and lighting it and they don't get burned. And this
02:14 2 goes on thousands of times a day, especially this time
02:14 3 of year.

02:14 4 Q Let me show you some photographs which have been
02:14 5 previously admitted and let you just discuss the kinds
02:14 6 of burns that you're seeing.

02:14 7 A Okay.

02:14 8 Q Where are Katie's burns concentrated?

02:14 9 A Her backside. Her back, her buttocks the backs of
02:14 10 her thighs, the backs of her legs, her calves, and the
02:14 11 back parts of her triceps and her arms.

02:14 12 Q Does some of the burn wrap around?

02:14 13 A Yeah. It doesn't know any boundaries. That's the
02:14 14 best way to describe it, I mean. But the majority of
02:14 15 the depth of the burn occurred there, and that's where
02:14 16 all the excisions, and deep excisions, occurred.

02:14 17 Q This is State's Exhibit 85.

02:14 18 A So, basically, this is what we would call a
02:15 19 third-degree burn, okay. This is what we call actually
02:15 20 a degloving burn because basically the skin is coming
02:15 21 off like a glove. And then that beefy red tissue under
02:15 22 there, that may look like what you might think is
02:15 23 viable tissue, but if you look down closer to the right
02:15 24 here, that white area, this is already dead, early on,
02:15 25 dead dermis. So that will eventually have to be

02:15 1 cleaned off, and the rest of this will convert. So
02:15 2 this would be consistent with a very deep third-degree
02:15 3 burn injury.

02:15 4 Q State's Exhibit 84?

02:15 5 A So she appears to be laying on her side, on her
02:15 6 right side. And that is her entire back. That is --
02:15 7 you see that -- so what happens here, you see that line
02:15 8 in the center there where that pink tissue is, that
02:15 9 pink band? What happens is that when you get burned,
02:15 10 your skin tightens up and cuts off blood flow. So the
02:16 11 surgeons oftentimes have to basically take cautery and
02:16 12 actually open that up to release the pressure so that
02:16 13 the body can get circulation, okay.

02:16 14 So what that is, actually it's called an
02:16 15 escharotomy. She hasn't been excised there. They're
02:16 16 just showing that that whole backside is all
02:16 17 third-degree burn. There's nothing viable. It's all
02:16 18 blanched, leathery. If you were to touch it, it would
02:16 19 be like leather.

02:16 20 Q State's 83?

02:16 21 A Right side of her face. And what you see is the
02:16 22 tape there. That is the tape, that little white thing
02:16 23 is holding her breathing tube in place for her. What
02:16 24 you see is on the right side of the neck here and her
02:16 25 ear, there is already the signs of all that yellow and

02:16 1 light colored area, even though she's fair-skinned, on
02:16 2 this lower part here is all third-degree burn injury.

02:17 3 Q State's 82?

02:17 4 A So you can see the same effect on her feet. The
02:17 5 same effect, the soles of her feet. And you can see
02:17 6 the skin. She's also degloving. Basically, these
02:17 7 aren't second-degree burns as well. These are all
02:17 8 third-degree burns. Look at the top part of her.
02:17 9 There is a blood pressure cuff there on the what looks
02:17 10 like the left calf. But then if you go above that
02:17 11 white blood pressure cuff, you see that there is a
02:17 12 little red area. But all underneath there, that's all
02:17 13 just white. And that's not her fair complexion. That
02:17 14 is actually just dead tissue, dead dermis. That's what
02:17 15 dead dermis looks like. That has to be eventually
02:17 16 excised, scraped off. And underneath there is fat.
02:17 17 And then beyond that is fascia.

02:17 18 Also notice that she has a catheter in her
02:17 19 bladder, and look at what color her urine is. This is
02:17 20 early on in the debridement room. I mean, that's not
02:17 21 yellow urine. I mean her kidneys are already under
02:18 22 such stress, and we're dumping tons -- I won't use that
02:18 23 term. That's not clinical -- but liters and liters of
02:18 24 fluid into her through these special catheters because
02:18 25 there's fluid just coming out. And if you don't do

02:18 1 that, then the patient continues in a state of shock.

02:18 2 And they still oftentimes anyway do. But you can see

02:18 3 how dark her urine is.

02:18 4 Q What degree burns are on the soles of her feet?

02:18 5 A They're all third degree.

02:18 6 Q State's 81?

02:18 7 A So initial pictures are very helpful, but we also

02:18 8 take pictures throughout the course of a burn patient's

02:18 9 course because the next trip back to the operating

02:18 10 room, something that may appear to be second degree can

02:18 11 have converted to what we call third degree because its

02:18 12 initial appearance is still in evolution. So some of

02:18 13 this on the upper part on the right here may look like

02:18 14 it's second-degree burn, what could be second degree.

02:18 15 But within 24 hours with continued fluids, not that we

02:19 16 have to give fluids, that tissue is at risk and can be

02:19 17 converted or convert to third degree. And that's why

02:19 18 the patients keep going back to the operating room

02:19 19 because the surgeons look again, they look at the

02:19 20 bedside and say it's what we call converted. Then it

02:19 21 has to be removed.

02:19 22 And then she's exhibiting some of the degloving.

02:19 23 I would say there's one little patchy area there. The

02:19 24 third toe down looks like it was unscathed. But that's

02:19 25 by appearance. But it already looks like it was

02:19 1 sloughing towards that area.

02:19 2 Q State's 80?

02:19 3 A Okay. Yeah. So there she is. She's still in
02:19 4 what we call our debridement room. She has a breathing
02:19 5 tube in place. She -- that is -- so they're lifting up
02:19 6 her hand. That is her triceps area and the back part
02:19 7 of -- part of the anterior part of her forearm but
02:19 8 mostly the back part of her triceps. It's not as clear
02:20 9 on the bottom there. And that is all third-degree burn
02:20 10 injury. Even though it looks a little beefy red, there
02:20 11 is a big difference. Second-degree burns are like a
02:20 12 light pink with blisters. Deep red like that go on to
02:20 13 be third degree. And this is early on. I mean, this
02:20 14 is within less than hours of her coming, and it's
02:20 15 already showing signs of being third.

02:20 16 Q State's 79. What part of her body is that?

02:20 17 A That's her chest. And that would be what I would
02:20 18 call a second-degree burn. A little patchy. Like
02:20 19 that's more of a light pink area there. It also could
02:20 20 be -- it may not even be a burn because it doesn't --
02:20 21 it has the appearance of a burn, but it would be unique
02:20 22 to have one little patchy area on the chest like that
02:20 23 as a burn. I don't know why that would just occur in
02:20 24 that one area. It's pinkish-like, but it's very
02:21 25 irregularly demarcated. And it doesn't have any

02:21 1 blistering appearance it to either. It's more like an
02:21 2 ecchymosis, like a bruise.

02:21 3 Q For the most part her face, her chest --

02:21 4 A It looks all spared. Yes. To look at her skin,
02:21 5 yes. There's nothing in the appearance there other
02:21 6 than that little reddened area. That looks like, even
02:21 7 her neck area looks -- I don't want to use the term
02:21 8 pristine, but it looks unscathed.

02:21 9 Q State's Exhibit 79?

02:21 10 A Okay. So here is our patient. She's in what we
02:21 11 call a prone position where she's actually on her tummy
02:21 12 in the operating room. And actually in the debridement
02:21 13 room area because I can still see the plastic because I
02:21 14 know the area.

02:21 15 But what they have done is, you see that mark I
02:22 16 talked about earlier on the upper top part here that
02:22 17 looks like it's a band, a white band? That actually
02:22 18 had to be opened up because it was going to be too
02:22 19 tight. So that was done right at the time shortly
02:22 20 after she got there after she was put on the ventilator
02:22 21 and given sedation and pain medicine to not allow that
02:22 22 to tighten up so she couldn't ventilate. It's called
02:22 23 escharotomy. That just splits open like chicken skin
02:22 24 because it's burnt. Looks like she had it also done
02:22 25 lower. And those are called what we call

02:22 1 escharotomies. And when you go deeper, they're called
02:22 2 fasciotomies, meaning that they have to go below that
02:22 3 and cut into the fascia and open up the compartments so
02:22 4 the blood flow doesn't get cut off so you can try and
02:22 5 save that part of the body down the line.

02:22 6 Q What's the prognosis for Katie's recovery at this
02:22 7 point?

02:22 8 A There is -- from a standpoint of the burn injury
02:23 9 taking her life, it should not. I will say that her
02:23 10 body is still ongoing recovery. What we know from
02:23 11 pediatric literature and burn literature is that the
02:23 12 body continues to try to heal and adjust and its
02:23 13 metabolism is very disrupted. There are endocrine
02:23 14 abnormalities, there's trouble with thyroids that can
02:23 15 occur, with the endocrine system. When I say
02:23 16 endocrine, with males, testosterone problems. With
02:23 17 women, their luteinizing hormones, their ability to
02:23 18 have periods, things like that. All that is disrupted
02:23 19 completely and takes time to come online, and sometimes
02:23 20 it needs some help.

02:23 21 So her prognosis is good for survival from this
02:23 22 standpoint. But her body is still healing.

02:23 23 Q In your experience, is it common for trauma
02:24 24 patients to suffer memory loss?

02:24 25 A Trauma patients?

02:24 1 Q To suffer memory loss?

02:24 2 A Yes, they can. They can suffer memory loss.

02:24 3 Q And would that include memories of the event

02:24 4 itself?

02:24 5 A Yes. And you can't predict which patient, but

02:24 6 what happens soon after a traumatic injury is,

02:24 7 depending on the response of EMS services, is that

02:24 8 patient oftentimes would then, once the IV is

02:24 9 established, they're given medications that help relax

02:24 10 them and give them pain relief. Very high-powered

02:24 11 morphine medicines called Sublimaze, which is a more

02:24 12 potent morphine. Doesn't affect the blood pressure as

02:24 13 much but is very good at pain relief. And also

02:24 14 something called Versed, which is, along with propofol,

02:24 15 but we don't use propofol for burns for other reasons,

02:24 16 but Versed is a benzodiazepine. It's given

02:24 17 intravenously and it's given for procedures. If

02:24 18 anybody has ever had a coloscopy or a procedure and

02:25 19 gone in for one and gotten some Versed, it has what we

02:25 20 call amnestic qualities. It takes away your short-term

02:25 21 memory or can. And it can take it away indefinitely.

02:25 22 So you may remember signing in and going in and saying

02:25 23 hi to the nurse, and then you got your Versed, and you

02:25 24 may not remember anything that went on. And you're not

02:25 25 supposed to. That's the idea. Or you may not remember

02:25 1 something that may have happened even earlier that day
02:25 2 because of some of the side effects of that. So there
02:25 3 is memory loss that can occur with trauma.

02:25 4 Q Is it also possible that these patients who suffer
02:25 5 memory loss would have been able to give accurate
02:25 6 information in the immediate time after the event?

02:25 7 A I would say yes. Only because of experience of
02:25 8 having had burns that come directly right to our
02:25 9 facility, the large burns. One about two and a half,
02:25 10 three months ago set himself on fire on his porch by
02:25 11 taking a bucket of gasoline, dumping it over himself,
02:25 12 and he was 95 percent burned. Brought to our emergency
02:26 13 room, happened to be local, was able to be talking. He
02:26 14 was in some pain, but he was able to communicate and
02:26 15 talk. And the time period from where he came from
02:26 16 locally to our emergency room was anywhere from 20 to
02:26 17 25 minutes, got to our ER, was able to talk to the
02:26 18 nursing staff, talked to the ER doctors. Very soon
02:26 19 thereafter -- they can tell you -- people can talk to
02:26 20 you with third-degree burns. It takes a while -- what
02:26 21 we do is, obviously with overwhelming trauma, we want
02:26 22 to give them pain relief and whatever. So we will
02:26 23 quickly protect their airway because if it's that big,
02:26 24 they definitely have got gasoline fumes in their lungs,
02:26 25 and their airway is going to close off pretty fast.

02:26 1 Their windpipe is going to close off. So you like to
02:26 2 get a breathing tube down. But it's not uncommon.

02:26 3 I had a patient three years go who was an
02:26 4 82-year-old farmer on his tractor. Caught on fire, was
02:26 5 working on it. Came to our burn unit. He was
02:27 6 65 percent third-degree burn. He was talking. We knew
02:27 7 that it was not going to be a good prognosis and he was
02:27 8 in his 80s. Yet he was on a tractor, doing what he
02:27 9 wanted to do. He came by chopper. But he was able to
02:27 10 talk to his wife before we put him on a ventilator and
02:27 11 talked to his daughters. We didn't let it go on and
02:27 12 on, but he told them how much he loved them. And, of
02:27 13 course, then we put a breathing tube down. But he was
02:27 14 able to at least talk to them.

02:27 15 So immediately after a burn injury, you don't
02:27 16 become incapacitated.

02:27 17 MS. SIMMONS: Beg the court's indulgence for one
02:27 18 moment.

02:27 19 Dr. Shaver, please answer any questions Mr. Cole
02:27 20 may have.

02:27 21 THE COURT: All right.

02:27 22 Mr. Cole?

02:27 23 MR. COLE: Thank you, Your Honor.

02:27 24 CROSS-EXAMINATION

02:27 25 BY MR. COLE:

02:27 1 Q Dr. Shaver, when is the -- the Versed, is that
02:27 2 given immediately after the burn, or when would that be
02:28 3 given to somebody normally?

02:28 4 A Usually Versed is not something that's given in
02:28 5 the field. It's usually something called Sublimaze
02:28 6 which doesn't have amnestic effects. So it might be
02:28 7 something that was given when the patient got on a
02:28 8 breathing machine or into the debridement room. And
02:28 9 the timing is variable depending on the level of where
02:28 10 patient is and also the level of their blood pressure.
02:28 11 So there isn't an exact algorithm, but at some point
02:28 12 during that initial period they will get some Versed to
02:28 13 help them be less anxious because they have had a big
02:28 14 injury.

02:28 15 Q That's normally soon after they get to the
02:28 16 hospital?

02:28 17 A Yes. I don't have an exact time frame, but it is
02:28 18 relatively soon.

02:28 19 Q You testified to something about fumes with
02:28 20 gasoline. So gasoline fumes can burn, they're
02:28 21 combustibile as well; is that correct?

02:28 22 A Yes, absolutely. We had a person with a cell
02:28 23 phone, unfortunately had a spark when they were filling
02:28 24 their gas tank, and they had about a 70 percent burn
02:28 25 from the spark from a cell phone. It was from the

02:28 1 fumes.

02:28 2 Q And if a person -- if a person is pouring
02:29 3 gasoline, then if a person is pouring down, the fumes
02:29 4 can still come back up; is that correct?

02:29 5 A Uh-huh, yeah. They disperse.

02:29 6 Q Yeah, disperse.

02:29 7 A Right.

02:29 8 Q So if the person was pouring and lit the gasoline
02:29 9 on fire, it's possible, even though they're pouring the
02:29 10 liquid that way, it's possible that the flame could
02:29 11 come back up towards you?

02:29 12 A It would depend on how ambidextrous the person was
02:29 13 at the same time they were pouring and then deciding to
02:29 14 light something. I have never seen somebody pour
02:29 15 gasoline on a log and then light it at the same time or
02:29 16 putting a fire on.

02:29 17 I'm saying, you know, yes, fumes. Fumes are
02:29 18 combustible. But I would say that, you know, you would
02:29 19 almost have to do it at the time -- you would almost
02:29 20 have to be flicking somebody to accelerate it at the
02:29 21 time potentially, yes.

02:29 22 Q So if you were trying to -- well, like you talked
02:29 23 about a grill fire. If you were trying to light a
02:30 24 grill with gasoline, pouring the gas and trying to
02:30 25 light it at the same time, then that's when something

02:30 1 like that could happen?

02:30 2 A It could, sure.

02:30 3 Q Or if you were trying to --

02:30 4 A Depends on the distance you are from what you're
02:30 5 pouring something onto.

02:30 6 Q So if you're close to that -- the closer you are
02:30 7 to that person or to that thing that you were pouring
02:30 8 something onto, the more likely it would be for it to
02:30 9 come back on you?

02:30 10 A Well, the fumes. I wouldn't say the gasoline.
02:30 11 But the fumes do disperse, yes.

02:30 12 Q And that Versed, it just causes -- it causes
02:30 13 short-term memory loss; is that correct?

02:30 14 A It has that side effect, yes.

02:30 15 Q It can cause --

02:30 16 A Yes. But not with everyone.

02:30 17 Q But would it cause long-term memory loss?

02:30 18 A I'm not aware of anything that says that the use
02:30 19 of long-term Versed causes long-term memory loss. In
02:31 20 fact, most burn patients can remember events in their
02:31 21 life that happened previously even if they have been in
02:31 22 the unit for months.

02:31 23 Q And, also, you did not examine the scene of this
02:31 24 fire or the evidence in this case, did you?

02:31 25 A Did not, no, sir.

02:31 1 MR. COLE: No further questions.

02:31 2 MS. SIMMONS: Just a couple follow-ups,

02:31 3 Dr. Shaver.

02:31 4 THE WITNESS: Yes, ma'am.

02:31 5 REDIRECT EXAMINATION

02:31 6 BY MS. SIMMONS:

02:31 7 A Yes, ma'am.

02:31 8 Q As far as long-term memory loss, have you seen

02:31 9 patients who never remembered the actual event of

02:31 10 suffering the burn in detail?

02:31 11 A I've had patients never remember it. And I had

02:31 12 two, only because of the length of time they were

02:31 13 there, I had two patients that were in the same

02:31 14 accident. One vividly remembered being thrown across

02:31 15 when the truck they were working on exploded. The

02:31 16 other one, who was his partner, never remembered. The

02:31 17 one patient remembered it so much that he had some

02:32 18 posttraumatic stress from whenever he would turn on the

02:32 19 gas stove, it was the same sound he heard of the pilot

02:32 20 light going on before the explosion occurred. And yet

02:32 21 his partner did not remember a thing of the accident.

02:32 22 So it really varies. And both sustained very deep

02:32 23 burn injuries. Both did survive.

02:32 24 Q And with the Versed, when it's given to patients,

02:32 25 are there times when they are able to communicate and

02:32 1 give reliable information?

02:32 2 A I would say so.

02:32 3 MS. SIMMONS: Nothing further, Your Honor.

02:32 4 MR. COLE: No further questions, Your Honor.

02:32 5 THE COURT: All right. Any objection to this
02:32 6 witness being excused?

02:32 7 MR. WAGNER: No, sir.

02:32 8 MR. COLE: No objection.

02:32 9 THE COURT: Thank you, Doctor. You are excused.

02:32 10 THE WITNESS: Thank you.

02:33 11 MR. WAGNER: Your Honor, that's all the witnesses
02:33 12 we have for today. We'll probably have a couple more
02:33 13 left in the morning.

02:33 14 THE COURT: Okay.

02:33 15 All right. Ladies and gentlemen, I'm going to let
02:33 16 you go home early. Same instructions. Do not talk
02:33 17 about the case with third parties. Do not deliberate
02:33 18 amongst yourselves, and do not do any independent
02:33 19 research.

02:33 20 I hope all of you have a good evening, and we'll
02:33 21 see you at 9:30 in the morning.

02:33 22 (WHEREUPON, the jury exited open court at
02:33 23 2:33 p.m.)

02:33 24 ///

02:34 25 ///

02:34 1 THE COURT: Okay. We'll go into recess until 9:30

02:34 2 tomorrow.

3 (WHEREUPON, proceedings adjourned at 2:34 p.m.)

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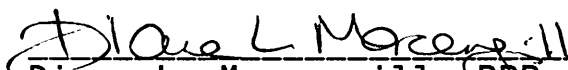
Certificate of Reporter

I, Diane L. Marcengill, Official Court Reporter for the Tenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of a portion of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Circuit Court for Oconee County, South Carolina, on the 19th day of October 2016.

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I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

March 5, 2017



Diane L. Marcengill, RPR, CRR
Circuit Court Reporter
Certified Realtime Reporter

1 State of South Carolina In the Court of General Sessions
2 County of Oconee

3
4 State of South Carolina)
5) 2014-GS-37-00742, 743
6 -vs-) 2015-GS-37-00441, 442
7 Jacob Daniel Drotning,) October 20, 2016
8 Defendant.) Volume 4 of 4
9 -----) Pages 344 - 458
) Transcript of Record

10
11 B E F O R E:

12 The Honorable R. Scott Sprouse, Judge;
13 and a jury.

14
15 A P P E A R A N C E S:

16 David R. Wagner, Jr., Esquire
17 Lindsey Satterfield Simmons, Esquire
18 Attorneys for the State

19
20
21
22 Gregory Lee Cole, Jr., Esquire
23 Attorney for Defendant

24
25
Diane L. Marcengill, RPR, CRR
Circuit Court Reporter
Certified Realtime Reporter

I N D E X

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E x h i b i t s

For the State:

Marked	Description	Identified	Admitted
	None offered.		

For the Defendant:

Marked	Description	Identified	Admitted
	None offered.		

1 (WHEREUPON, court convened with all parties
2 present and the following proceedings were had
09:36 3 commencing at 9:36 a.m.)

09:36 4 THE COURT: Anything from either side before we
09:36 5 bring our jury back in?

09:36 6 MR. WAGNER: No, sir.

09:36 7 MR. COLE: No, your Honor.

09:36 8 THE COURT: All right. If you'll get our jury.

09:36 9 (WHEREUPON, the jury entered open court at
09:37 10 9:36 a.m.)

09:37 11 THE COURT: Good morning, ladies and gentlemen. I
09:37 12 hope everyone had a good evening. And you knew I was
09:37 13 going to ask you this question, but did anyone have
09:37 14 third parties attempt to talk to them about the case,
09:37 15 were there any deliberations between you, or were there
09:37 16 any individuals engaged in independent research on
09:37 17 either the facts of the law?

09:37 18 JURY FOREMAN: No, sir.

09:37 19 THE COURT: Very good.

09:37 20 Let the record reflect that there were no positive
09:37 21 responses to any of the questions.

09:37 22 State ready to call their next witness?

09:37 23 MR. WAGNER: Yes, sir.

09:37 24 Call Daren Vaughn.

09:37 25 **DAREN KYLE VAUGHN,**

09:37 1 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

09:38 2 DIRECT EXAMINATION

09:38 3 BY MR. WAGNER:

09:38 4 Q Could you give us your full name spell your last
09:38 5 name for the record.

09:38 6 A Daren Kyle Vaughn. Last name is spelled
09:38 7 V-a-u-g-h-n.

09:38 8 Q Who do you work for?

09:38 9 A I work for the South Carolina Law Enforcement
09:38 10 Division.

09:38 11 Q SLED?

09:38 12 A Yes, sir.

09:38 13 Q How long have you worked there?

09:38 14 A Eight and a half years.

09:38 15 Q What's your background prior to that? What have
09:38 16 you done most of your working career?

09:38 17 A Prior to being employed with South Carolina Law
09:38 18 Enforcement Division, I was -- I worked at the
09:38 19 Greenville County Sheriff's Office on road patrol.

09:38 20 Q Okay. And where did you go to school?

09:38 21 A I graduated from Newberry College.

09:38 22 Q All right. What did you graduate in there?

09:38 23 A Majored in sociology, minored in criminal justice.

09:38 24 Q What are your current job duties at SLED?

09:38 25 A I'm assigned to the arson and bomb unit. My

09:38 1 primary role is fire investigations for the State of
09:39 2 South Carolina.

09:39 3 Q And what kind of a background, educational level,
09:39 4 what kind of classes have you taken that qualifies you
09:39 5 to do that for SLED?

09:39 6 A I've been to numerous courses at the National Fire
09:39 7 Academy, which is in Emmitsburg, Maryland, also through
09:39 8 the South Carolina Fire Academy. I have also taken
09:39 9 numerous tests, numerous classes throughout the course
09:39 10 of my eight and a half years. I'm also a member of the
09:39 11 National Association of Fire Investigators where they
09:39 12 have a tested program. In order for you to become
09:39 13 nationally certified, which I am, I'm a certified fire
09:39 14 and explosions investigator. I'm also certified
09:39 15 through National Association of Fire Investigators as a
09:39 16 certified vehicle and fire investigator as well.

09:39 17 Q Have you testified as an expert before?

09:39 18 A Yes, sir, I have.

09:39 19 Q In what field?

09:39 20 A Origin and cause determination.

09:39 21 Q About how many times?

09:39 22 A Roughly four to five times, yes, sir.

09:39 23 MR. WAGNER: Your Honor, at this point in time,
09:39 24 we'd move to declare Agent Vaughn as an expert in
09:40 25 origin and fire cause determination.

09:40 1 MR. COLE: No objection, Your Honor.

09:40 2 THE COURT: All right. The witness would be
09:40 3 admitted as an expert in origin of fire and causation
09:40 4 without objection.

09:40 5 BY MR. WAGNER:

09:40 6 Q Did you consult with the sheriff's office here in
09:40 7 Oconee County on this case?

09:40 8 A Yes, sir, I did.

09:40 9 Q And who did you talk to and what did you review?

09:40 10 A I spoke with Investigator Arnold here with Oconee
09:40 11 County Sheriff's Office as well as the solicitor's
09:40 12 office and reviewed the case file.

09:40 13 Q Okay. And have you been out to the scene?

09:40 14 A No, sir, I have not.

09:40 15 Q Did you review all the pictures, though, of the
09:40 16 scene?

09:40 17 A Yes, sir, I did.

09:40 18 Q Did you get involved a little later on as far
09:40 19 as --

09:40 20 A Yes, sir, I did.

09:40 21 Q I mean, like what point in time did you get
09:40 22 involved in the case?

09:40 23 A I believe it was just prior to evidence being
09:40 24 submitted to the SLED forensic lab for analysis.

09:40 25 Q Okay. Did you request any additional search

09:40 1 warrants be obtained?

09:40 2 A Yes, sir, I did.

09:40 3 Q What was that?

09:40 4 A Search warrants just to go back to the structure
09:41 5 based off the photographs that I had seen taken from
09:41 6 the scene, to go back and collect more samples from the
09:41 7 scene.

09:41 8 Q Okay. Did you review the findings of Michael
09:41 9 Moskal, the SLED trace analyst?

09:41 10 A Yes, sir, I did.

09:41 11 Q And what did they tell you?

09:41 12 A Do you have that? I can show you that. Or I have
09:41 13 a copy here with me as well.

09:41 14 Q Let me show you State's Exhibit No. 111.

09:41 15 A Yes, sir. This is the standard form that we
09:41 16 receive when we work investigations as well, South
09:41 17 Carolina Law Enforcement Division forensic service
09:41 18 laboratory report from the trace evidence section.

09:42 19 Yes, sir. You had 17 items submitted to the SLED
09:42 20 lab.

09:42 21 Q Okay. And based on your review of that, what did
09:42 22 that tell you? What were you looking for, what did
09:42 23 this tell you along with the pictures?

09:42 24 A Based off the search warrants that they had
09:42 25 already completed and the search warrants that I

09:42 1 requested that they go back and complete as well and
09:42 2 collect that evidence and submit it to trace lab, the
09:42 3 evidence that was found from the search warrants
09:42 4 initially and the additional search warrant came
09:42 5 back -- a lot of those came back as, depending on the
09:42 6 item, came back as gasoline found.

09:42 7 Q Tell me about the fire. How did the fire in this
09:42 8 house start, where, was it more than one fire, what
09:42 9 happened?

09:42 10 A Inside of this structure, you had multiple points
09:42 11 of origin is how we would phrase that. But multiple
09:42 12 fires is what you would say. And what we look for and
09:43 13 how we work is based off the scientific method. You
09:43 14 know, you think that once you leave high school or
09:43 15 college, that scientific method would be of no more use
09:43 16 to you. But in my line of work, it is. I use it every
09:43 17 day.

09:43 18 And basically with that scientific method, we want
09:43 19 to use a systematic approach. And with that systematic
09:43 20 approach, whether we're looking at photographs or
09:43 21 working the scene, there is a way that we go about
09:43 22 working that scene. And just looking through pictures
09:43 23 is what I was given to examine, I determined that there
09:43 24 was four separate and unconnected points of origin
09:43 25 inside of that structure. One being, as you can see, I

09:43 1 think it's already been presented to you is the door.

09:43 2 You have seen the picture. At the base of the door.

09:43 3 What we look for also is consistency.

09:43 4 As you can see from the pictures you have already
09:43 5 seen, and we'll see them again here today, what is
09:43 6 consistent inside of this structure. You can take
09:43 7 everything inside of this structure, but once you look
09:43 8 at what is consistent to you and what is consistent to
09:43 9 me is the fact that the path that the victim in this
09:44 10 case would have traveled from the bedroom out of the
09:44 11 front door.

09:44 12 And if you can look at that, you will see the
09:44 13 consistency of burned clothing throughout the
09:44 14 structure. But you also have things that are not
09:44 15 consistent, and that's where you come up with different
09:44 16 and unconnected points of origin.

09:44 17 For instance, the bottom of the door. There is a
09:44 18 picture that you will see on the other side of the room
09:44 19 in close proximity to the TV where you have -- it
09:44 20 almost looks like a ghost flame or a ghost sitting on
09:44 21 the wall. I believe y'all seen that as well. That is
09:44 22 another point of origin. And I can explain that more
09:44 23 in detail once we look at the picture.

09:44 24 Once you travel outside of the bedroom down the
09:44 25 hallway, as you travel her path of exiting the

09:44 1 structure, you will also see that by the door that
09:44 2 leads into the garage, you have flip-flops that are
09:44 3 burned. That is not consistent with her travel, her
09:44 4 travel from the bedroom and out the front door. So
09:44 5 that would be a separate and unconnected point of
09:44 6 origin.

09:44 7 Also you have to the left side of the living room,
09:44 8 there is an end table with a couch and then an end
09:44 9 table. And then you have what appears to be a bra
09:45 10 right there at the end table. That is another separate
09:45 11 and unconnected point of origin. Because if you look
09:45 12 at that picture, and we'll look at it here in just a
09:45 13 second. You have an electrical cord that's plugged
09:45 14 into the wall. Now, if I'm stripping clothes as I'm
09:45 15 coming out of a house and I'm throwing things, how do
09:45 16 you expect that bra to land on that cord? Draped over
09:45 17 the top, correct? So underneath that bra is underneath
09:45 18 that cord, and you can see where the heat from that
09:45 19 cord and the rubber on that cord has dripped down. So
09:45 20 that would say that bra was underneath that cord prior
09:45 21 to, which was not consistent again with her path of
09:45 22 travel out of that door, which leads us to a
09:45 23 determination that there is yet another separate and
09:45 24 unconnected fire inside of that structure.

09:45 25 Q Okay. Let's take a look at those photos you're

09:45 1 talking about. They are all in evidence.

09:45 2 Start with State's Exhibit 43.

09:46 3 A In this picture, I'll point out a few things for
09:46 4 you. One, this is, of course, the kitchen area.

09:46 5 Directly in front of you on the countertop is a red --

09:46 6 I'm sure this may have been pointed out to you already,

09:46 7 but there is a red top. That red top would be what

09:46 8 would be connected to the end of that gasoline

09:46 9 container. It is placed on the kitchen counter.

09:46 10 What we also want to see in this photograph is

09:46 11 that is the interior door that goes to the exterior

09:46 12 garage. And just at the bottom portion of that door is

09:46 13 where the location of the flip-flops is located.

09:47 14 And as you can tell, the pictures you have seen

09:47 15 already, that is not her path of exit out of the front

09:47 16 of that structure.

09:47 17 Q And number 44?

09:47 18 A Another shot, another angle from -- another

09:47 19 photograph from the kitchen area just, again,

09:47 20 reflecting on the top that would be connected to the

09:47 21 top of that gasoline container.

09:47 22 Q 49?

09:47 23 A This would be the photograph that I was mentioning

09:47 24 earlier that you have the couch, the location of the

09:47 25 couch, the end table, and then that bra, what appears

09:47 1 to be a bra located on the floor. And the paper there,
09:47 2 that obviously that you can see, is under the foot of
09:47 3 the end table is also burned. With that, you can see
09:47 4 the electrical cord that is plugged into the wall above
09:47 5 that bra that has burned. And with that, if you're
09:48 6 throwing items in that direction, you would believe
09:48 7 that the bra would be on top of the electrical cord and
09:48 8 not beneath it. And that would lead us to believe that
09:48 9 that is a separate unconnected fire inside the
09:48 10 structure.

09:48 11 Q I think this is a little bit closer view of that.
09:48 12 Number 50?

09:48 13 A Yes, sir. Just a better view of how that bra
09:48 14 burned beneath that cord. And again, with this, you
09:48 15 just look for consistency of her path of travel and the
09:48 16 things that are not where they should be if she is
09:48 17 exiting the structure.

09:48 18 Q 21?

09:48 19 A This is just outside of the kitchen. That would
09:48 20 be her path of exit going out towards the front of the
09:48 21 structure. In this picture right there at the gas can,
09:48 22 you can see a marker. That was her clothing. As well
09:48 23 as in the far top right, you can see another yellow
09:48 24 marker. And that is that interior door that leads to
09:49 25 the garage where those flip-flops were located. As you

09:49 1 can see, that is not consistent with her path of travel
09:49 2 from the structure.

09:49 3 Q 40?

09:49 4 A Those are the flip-flops that are located and the
09:49 5 mat that is located at the side door that leads to the
09:49 6 garage.

09:49 7 Q 39?

09:49 8 A A distant shot standing over top of the flip-flops
09:49 9 at the door that leads to the garage.

09:49 10 Q 38?

09:49 11 A This, of course, had been moved at the time, but
09:49 12 you can actually see the charring on the bottom of the
09:49 13 mat. And the flip-flops are, of course, inside of
09:49 14 that.

09:49 15 Q 25?

09:49 16 A This would be the location inside of the bedroom.
09:49 17 And this is what I'm talking about, that ghost kind of
09:49 18 sooting. With an ignitable liquid pool, when it is
09:50 19 poured, you have an inverted V. And what we look for
09:50 20 in fire investigation is everything that we are taught
09:50 21 is you look for that V pattern. And what they mean by
09:50 22 the V pattern is you actually have a V shape. So that
09:50 23 V shape will come up, and regardless of just about any
09:50 24 fire you go to, you will see that V-shape pattern. And
09:50 25 at the point of that pattern is where the fire would

09:50 1 have originated from.

09:50 2 So in an ignitable liquid pool fire, that is
09:50 3 opposite. You turn the V on its axis and put it the
09:50 4 other direction. So you have an ignitable liquid pool
09:50 5 here. The ignitable liquid is lit with an open flame.
09:50 6 And then due to it being a pool, however big it may be,
09:50 7 it starts out wide and then goes to a point, which is
09:50 8 exactly what you can see in this picture.

09:50 9 And with an ignitable liquid pool fire, you have
09:50 10 the fumes that are burning. So if you do some research
09:51 11 on this subject, you could actually see the ignitable
09:51 12 liquid on floor level or wherever it may be, there's
09:51 13 actually a gap in between and then you have the flames.
09:51 14 So the fumes are actually what's burning. And the
09:51 15 fumes and the heat that is derived from that will
09:51 16 actually evaporate the liquid.

09:51 17 This is, of course, a linoleum flooring. So you
09:51 18 may see no sign whatsoever that there was something on
09:51 19 that floor because it evaporated it due to the heat. I
09:51 20 believe a sample was collected here as well that came
09:51 21 back as gasoline.

09:51 22 Q This is a bigger view of that 24.

09:51 23 A Again, you can see how the V-shape pattern and how
09:51 24 that soot is deposited on the wall. How it's wide at
09:51 25 the bottom and goes up to a point, that is a textbook

09:51 1 example of what an ignitable liquid pool fire would
09:51 2 look like.

09:51 3 Q 23?

09:51 4 A Another sample that was taken just up from where
09:51 5 the -- you see the ignitable liquid pool fire. I
09:51 6 believe that was taken as a comparison sample.

09:52 7 Q 22?

09:52 8 A That's standing at the door leading into the
09:52 9 bedroom where the TV was located. This is, again, if
09:52 10 you want to research this after this trial is over,
09:52 11 ignitable liquid pool fires and what they leave, that's
09:52 12 textbook.

09:52 13 Q 17?

09:52 14 A This would be the closet door which is located
09:52 15 behind me here. That would be the fire which, in this
09:52 16 case, was the biggest fire inside of this structure
09:52 17 which caused a little bit of heat damage, a little bit
09:52 18 of smoke damage. You can actually see the portion of
09:52 19 this one as well. You can actually see that V-shape
09:52 20 pattern in a better view here. But this will be
09:52 21 located at the closet door, at the bottom of that
09:52 22 closet door. This closet door is a hollow core door.
09:52 23 What that means is it's not solid wood. It basically
09:52 24 has dividers in there, and you can actually hear the
09:52 25 difference from knocking on this solid wood rather than

09:52 1 knocking on that door, the difference between a hollow
09:53 2 core door and a solid wood door. And you can actually
09:53 3 see in a better picture the V-shape pattern that will
09:53 4 come up off this fire to the bottom of this door. This
09:53 5 fire has potential to cause a lot of damage. But with
09:53 6 fire, it's not about how many fires you set. It's
09:53 7 about what's in contact with the fire that you set that
09:53 8 sustains that combustion or what materials you have
09:53 9 around it that would lead you to sustain that fire and
09:53 10 keep that fire growing rather than putting itself out.

09:53 11 Q 16?

09:53 12 A Just another view of the bottom of that door. And
09:53 13 you can see where the soot runs across the bottom. The
09:53 14 fire is starting to travel across the bottom of the
09:53 15 hollow core door, traveled up inside of the door. And
09:53 16 you can tell by this picture as well that door was
09:53 17 cracked. It was not closed.

09:53 18 You can also see in this photograph that shadowing
09:53 19 effect that I told you about from ignitable liquid pool
09:53 20 fire. You can see that as well to the right of the
09:54 21 door. And actual due to you having more combustible
09:54 22 material in the area, you can actually start to see it
09:54 23 char, the linoleum floor, because it has more substance
09:54 24 there, more combustible material, more material period
09:54 25 in order for that to burn which sustained combustion

09:54 1 for a period of time.

09:54 2 Q 35?

09:54 3 A Again, we're looking for that V-shape pattern and
09:54 4 how it starts out wide due to that ignitable liquid
09:54 5 pool at the bottom portion of this and extending up the
09:54 6 door. As you can tell, that just about matches up
09:54 7 perfectly with how the door would have been positioned
09:54 8 at the time of the fire.

09:54 9 Q 15?

09:54 10 A Just another view of them opening the door. You
09:54 11 can see that this fire did generate some heat based off
09:54 12 the blinds that are located to the left of this door,
09:54 13 they started to melt. What you have is once the fire
09:54 14 builds, its path of least resistance, of course, is up
09:54 15 and out. Water is a little bit different. You know,
09:55 16 it's down and out whereas fire is up and out.

09:55 17 So you have this heat layer starting to form
09:55 18 inside of this room, and it just didn't have enough
09:55 19 material or enough, you know, combustible material in
09:55 20 close proximity to it to sustain the fire. And,
09:55 21 therefore, it can't form that heat layer at ceiling
09:55 22 level in order to generate more heat inside of that
09:55 23 room and build the fire.

09:55 24 Q 14?

09:55 25 A This is also inside of the bedroom. They have

09:55 1 already removed the door at this point at the top
09:55 2 right. There is a pile of clothing there at the foot
09:55 3 of the bed, and there is a little -- you can see the
09:55 4 white piece there. I may have already shown you this
09:55 5 or I can come up there and point it out to you,
09:55 6 whichever one you want me to do. But there is a little
09:55 7 white piece where the pink portion of that clothing is,
09:55 8 if you all can see that. They collected this piece of
09:55 9 evidence, and I was able to examine this piece of
09:55 10 evidence. It was actually the top portion of a
09:56 11 lighter. It's located right here. That piece of
09:56 12 evidence was collected by the sheriff's office. And I
09:56 13 was able to examine that piece of evidence, actually
09:56 14 the top portion of a lighter. You can still -- you may
09:56 15 still be able to do it, but when I examined it, you can
09:56 16 actually push it and hear it hissing because it would
09:56 17 retract the liquid out of the bottom in order to start
09:56 18 the flame out of the top.

09:56 19 Q Number 11?

09:57 20 A This is just outside of the bedroom door at the
09:57 21 end of the hallway. As you can see, the gasoline
09:57 22 container there located at the end of the hallway, the
09:57 23 nozzle, of course, still intact. Also that is a smoke
09:57 24 detector that is not in its original location.

09:57 25 Q 12?

09:57 1 A Again, just a close-up of that gasoline container.
09:57 2 What they do with these gasoline containers now, I have
09:57 3 old ones at my house. I do not have these safety
09:57 4 nozzles in place. If you have ever messed with a
09:57 5 safety nozzle, it is very difficult to get gas to come
09:57 6 out of it. And that's its purpose. The purpose for it
09:57 7 is to eliminate spills. That's what its purpose is.
09:57 8 So if you have it in the back of your truck, you kick
09:57 9 it over in the garage or in the building, this is in
09:57 10 place in order to help eliminate spills. And that is
09:57 11 the sole purpose of these safety nozzles today. They
09:57 12 are very difficult, for the most part, unless you work
09:58 13 with them on a normal basis. If you cut grass every
09:58 14 two weeks, you may be able to work these nozzles a
09:58 15 little bit better, but they are -- first time they are
09:58 16 very difficult to deal with.

09:58 17 Q Number 4?

09:58 18 A This is what I want to show you with consistency
09:58 19 of her path of travel. As you can see, this is the
09:58 20 couch. The end table would be in this direction where
09:58 21 the bra is located. This is her path of exit and where
09:58 22 she was located on the front porch. This is her path
09:58 23 of travel. And as you can see, here is the water
09:58 24 bucket or the pitcher, and this is her path of travel
09:58 25 out of the structure. Burned hair, burned clothes,

09:58 1 clothes, burned clothes, and out the front door. The
09:58 2 bra that is located burned is, you know, six to
09:58 3 eight feet to the left of this picture.

09:58 4 Q Number 5?

09:58 5 A Just another. Investigators in this case have
09:59 6 flipped the couch at this point looking for pieces of
09:59 7 evidence. But her path of travel, you can see it going
09:59 8 down the hallway, coming right out the door. This is
09:59 9 standing in the front door. So her path of travel
09:59 10 leading back to the back bedroom. The location of that
09:59 11 bra would be over here.

09:59 12 Q Number 6?

09:59 13 A Again, another shot with markers in place.
09:59 14 Another photograph of markers in place of where her
09:59 15 path of travel would have been out the front door.

09:59 16 Q Number 3?

09:59 17 A This is a picture after the fire. The defendant,
09:59 18 as you can see here, the hair, the front portion of the
09:59 19 top of his head, is singed. As you can see, it kind of
09:59 20 balls up a little bit. If anybody has ever burned the
09:59 21 hair on their arm or on their head, you can tell that
09:59 22 this portion of his head is singed.

10:00 23 Q 53?

10:00 24 A In this photograph, it's a little bit more
10:00 25 difficult to see. There may be something that you guys

10:00 1 can look at a little bit later. But if you look at the
10:00 2 hair on this arm, you can see it in the actual
10:00 3 photograph if you look at it close enough. The hair on
10:00 4 this arm is intact. But if you look around the side
10:00 5 portion of his arm on this side, the hair at the bottom
10:00 6 portion of his arm here is also singed. To my
10:00 7 understanding, the defendant in this case is
10:00 8 right-handed.

10:00 9 Q 54?

10:00 10 A Another shot. And you can see it a little bit
10:00 11 better here. You have hair up here that is not singed,
10:00 12 and then as you get closer to the wrist area, singed
10:00 13 hair on his arm, on his right hand and right arm area.

10:00 14 Q What would singed hair with consistent with?

10:00 15 A Singed hair would be consistent with somebody who
10:00 16 had an open flame in their hand and lighting any type
10:01 17 of ignitable liquid. Bending over and lighting
10:01 18 ignitable liquid.

10:01 19 Q When you light gas, what does it tend to do? Is
10:01 20 it highly flammable?

10:01 21 A Yes, sir, it is. It has a very low flash point.
10:01 22 And when people describe gasoline fires, they say
10:01 23 woosh. You know, that's how they describe that. And
10:01 24 that's exactly what it sounds like. When you bend over
10:01 25 and light an ignitable liquid pool fire, that's exactly

10:01 1 what it does, woosh. And it comes back on you. And if
10:01 2 you're bend over right-handed and light an ignitable
10:01 3 liquid, that would be the injuries that you would
10:01 4 expect to sustain.

10:01 5 Q Did you review the victim's injuries?

10:01 6 A Yes, I did.

10:01 7 Q And based on your training and experience, would
10:01 8 you opine that these injuries are from a grilling
10:01 9 accident?

10:01 10 A No, sir.

10:01 11 Q Would you have an opinion as to whether they were
10:01 12 self-inflicted?

10:01 13 A In the work that I do in eight and a half years
10:02 14 working for SLED, I have never had anyone set
10:02 15 themselves to fire to try to kill themselves. As you
10:02 16 can imagine, that would be very, very painful. What we
10:02 17 work and what we tend to see is people who want to die
10:02 18 that direction, they will set a fire inside of a
10:02 19 structure and then commit suicide by shooting
10:02 20 themselves because they do not want to endure that
10:02 21 pain. And it is based off people who have burn
10:02 22 injuries just, you know, minor first or second-degree
10:02 23 burns, the amount of rehab that they have to go
10:02 24 through, that's a very, very painful process.

10:02 25 So what we tend to see in the fires that I have

10:02 1 worked involving suicide, they will set a fire inside
10:02 2 of the structure and then shoot themselves so they
10:02 3 don't have to live through that.

10:02 4 Q Did the defendant's lack of injuries tell you
10:02 5 anything?

10:02 6 A The defendant's lack of injuries?

10:02 7 Q Yeah.

10:02 8 A That the fact that, you know, it was initially
10:03 9 brought up this was a grill fire. That is not the
10:03 10 case.

10:03 11 Q Let me show you the gas can. This is State's
10:03 12 Exhibit Number 105.

10:03 13 A Yes, sir.

10:03 14 Q Can you explain to us how that works again.

10:03 15 A This is the cap that you saw in the photograph
10:03 16 laid on the kitchen counter. What this portion is
10:03 17 made, it's to sit on the lip of whatever you may be
10:03 18 filling. So it may be, you know, the lawnmower tank on
10:03 19 your John Deere. It may be the tank on your weed
10:03 20 eater. If you need it to use for a car, then you use
10:03 21 it for a car. But you have to get everything lined up
10:03 22 and twisted just right in order to press down. And you
10:03 23 can hear it pop doing it. But in order for it to press
10:03 24 down, how far you have to press down in order for this
10:03 25 to be exposed in order for the gas to come out. Then

10:03 1 it's twisted. And that's the safety portion of it
10:04 2 where once it's twisted in the right position, no
10:04 3 matter what you do, you cannot push that down. So it
10:04 4 actually has to be twisted. And it's spring loaded.
10:04 5 And then you have to pull it down. You can hear it pop
10:04 6 and go back, but you actually have to twist it and put
10:04 7 it back into the safety position. But this is no more
10:04 8 than to sit on the lip of whatever gas container you're
10:04 9 filling.

10:04 10 Q Is it possible to pour gas out of there without
10:04 11 having to stick it down in a gas tank of, say, a
10:04 12 vehicle?

10:04 13 A Absolutely.

10:04 14 Q Like you want to fill your lawnmower up?

10:04 15 A Yes.

10:04 16 Q How would you do it?

10:04 17 A Only thing you have to do is, again, as you can
10:04 18 see it's on both sides as well, but you just have to
10:04 19 twist it and push it and hold it in that spot and then
10:04 20 tilt it over in order for the gasoline to come out.

10:04 21 Q Do you need two hands to operate it to get gas to
10:04 22 come out of it that way?

10:04 23 A Of course, you're going to have one on the handle.
10:04 24 But it takes some pushing just to -- the amount of
10:04 25 tension that's on that spring in order to get it to

10:05 1 push down.

10:05 2 Q I guess when I say two hands, you need one hand to
10:05 3 hold the gas can and one hand to slide that thing down
10:05 4 and then you can pour?

10:05 5 A Yes, absolutely, and then pour. Yes, sir.

10:05 6 Q So if you want to pour it on something on the
10:05 7 ground, it's easily done by somebody, particularly if
10:05 8 you got big hands?

10:05 9 A Yes, sir.

10:05 10 Q Okay. Thank you. That's all the questions I
10:05 11 have. If you will answer anything Mr. Cole may have
10:05 12 for you.

10:05 13 A Yes.

10:05 14 Thank you.

10:05 15 THE COURT: Mr. Cole?

10:05 16 MR. COLE: Thank you, Your Honor.

10:05 17 CROSS-EXAMINATION

10:05 18 BY MR. COLE:

10:05 19 Q Agent Vaughn, I want to start out looking at the
10:05 20 State's Exhibit, the gas can that we just looked at,
10:05 21 State's Exhibit 105. And, again, Agent Vaughn, with
10:05 22 this, if you were going to pour something out onto the
10:05 23 ground, could you show the jury again where you would
10:05 24 have to -- what you would have to do to the nozzle of
10:06 25 that?

10:06 1 A This is the locked safety position. This is where
10:06 2 it would normally be if you want to prevent it from
10:06 3 coming out. But you would have to twist it and then
10:06 4 push down in order for this to be exposed, and that is
10:06 5 where the gasoline would come out of.

10:06 6 Q So when you push that down, and that doesn't get
10:06 7 pushed down very easily, right, it's kind of hard to
10:06 8 do?

10:06 9 A Absolutely.

10:06 10 Q And if you were pushing that down, if you were
10:06 11 doing that to pour gas out, then could you show us
10:06 12 exactly -- the gas doesn't come out the very end, does
10:06 13 it?

10:06 14 A No, sir.

10:06 15 Q Where does it come out?

10:06 16 A It comes out of this little portion. It just
10:06 17 exposes it, and it comes out on the side here.

10:06 18 Q So if you had your hand on that, it is quite
10:06 19 possible that you would get gasoline on your hand if
10:06 20 you were trying to pour it out?

10:06 21 A I guess it depends on how you're pouring it and
10:06 22 how fast you were pouring it.

10:06 23 Q So if you were pouring it fast and had your hand
10:06 24 around the whole thing, there is definitely a portion
10:06 25 of the end of this where gas is coming out of?

10:06 1 A I would think if you use this gasoline container,
10:07 2 you would know where the gas would come out. And I
10:07 3 don't like having gags on me because of the way it
10:07 4 smells, so I would be more here than pulling here in
10:07 5 order to keep gas -- because normal everyday people
10:07 6 that I know of do not like having the gas smell on
10:07 7 them.

10:07 8 Q That's if you were deliberating doing a normal
10:07 9 everyday activity like burning leaves or something, you
10:07 10 would probably be careful with it?

10:07 11 A Yes, sir.

10:07 12 Q Would you say that gasoline was highly
10:07 13 combustible?

10:07 14 A It's highly flammable, yes.

10:07 15 Q Highly flammable?

10:07 16 A Yes.

10:07 17 Q But it is combustible?

10:07 18 A Yes, sir.

10:07 19 Q And in layman's terms and you testified earlier
10:07 20 that it flames up; is that correct?

10:07 21 A Very rapidly.

10:07 22 Q And it's fumes that actually burn; is that
10:07 23 correct?

10:07 24 A Yes, sir.

10:07 25 Q And if you were -- so if you're pouring something

10:07 1 out onto the ground, the fumes are not necessarily
10:07 2 going to go to the ground, they're going to be coming
10:07 3 back up; isn't that correct?

10:07 4 A Yes, sir.

10:08 5 Q The red cap on the photograph --

10:08 6 A Yes, sir.

10:08 7 Q -- that we saw earlier that's on that gas can,
10:08 8 that red cap, does it really have -- if you take that
10:08 9 red cap off, that doesn't mean you can just turn it
10:08 10 over and pour it, correct?

10:08 11 A That's correct.

10:08 12 MR. COLE: No further questions, Your Honor.

10:08 13 MR. WAGNER: Nothing further, Your Honor. We'd
10:08 14 ask this witness be excused.

10:08 15 THE COURT: Any objection?

10:08 16 MR. COLE: No objection, Your Honor.

10:08 17 THE COURT: Thank you, sir. You are excused.

10:08 18 MR. WAGNER: Your Honor, can we have a couple
10:08 19 minutes to check the exhibits?

10:09 20 (Pause.)

10:09 21 MR. WAGNER: Your Honor, with that, the State
10:09 22 rests.

10:09 23 THE COURT: All right.

10:09 24 Mr. Bailiff, would you take our jury to the jury
10:09 25 room, please.

10:09 1 (WHEREUPON, the jury exited open court at
10:10 2 10:09 a.m.)
10:10 3 THE COURT: All right. The State has rested.
10:10 4 Any motions?
10:10 5 MR. COLE: Yes, your Honor. May it please the
10:10 6 court. I would move at this time for a directed
10:10 7 verdict in favor of the defendant, my client, on all
10:10 8 the charges. I'll go through them one by one.
10:10 9 First on the charge of attempted murder, we move
10:10 10 for a directed verdict because the State has failed to
10:10 11 prove -- failed to produce evidence of the specific
10:10 12 intent to kill in this case. We have seen evidence
10:10 13 that has come along in this case, but we haven't seen
10:10 14 any evidence, I don't think, of intent, period. We
10:10 15 haven't seen the evidence of intent of malice. We
10:10 16 haven't seen -- and then even going farther with
10:10 17 attempted murder, we haven't seen evidence that my
10:11 18 client had specific intent to kill the victim. I think
10:11 19 that is an essential element of the crime of attempted
10:11 20 murder. Without that evidence being offered by the
10:11 21 State, then I believe he's entitled to a directed
10:11 22 verdict on that charge.
10:11 23 On the charge of CDVHAN, again, I think the issue
10:11 24 here is the intent. Obviously, Ms. Cook had severe
10:11 25 injuries, Your Honor, but there is no -- the proof that

10:11 1 has been -- the proof that has been presented that my
10:11 2 client caused these injuries is basically excited
10:11 3 utterance statements from Ms. Cook that were done. And
10:11 4 we have seen they were done under trauma of an event
10:11 5 and then also drugs that caused alteration of memory.

10:12 6 And also, Your Honor -- and then her statements
10:12 7 were, "He did this to me. I know he did it," but there
10:12 8 is no evidence of intent there. For somebody to say,
10:12 9 "He blew me up," or, "He did this to me," there's no
10:12 10 evidence of -- somebody could have done it to you but
10:12 11 not intended to do that to you. So I don't believe
10:12 12 there's any evidence of intent here in the CDVHAN.

10:12 13 For the arson, there's no evidence that's been
10:12 14 presented that my client willfully and intentionally
10:12 15 set the fire to the home. There has been evidence
10:12 16 presented that someone willfully and intentionally set
10:12 17 fire to the home if you believe some of the expert
10:12 18 evidence that was brought up, but there's none of
10:12 19 that -- there were two people in that home, and there's
10:12 20 been no evidence tying my client to the one that
10:12 21 willfully and intentionally set fire to this home.

10:12 22 Same way with malicious injury. He would have to
10:12 23 have willfully and intentionally done some injury to
10:12 24 the property, and I think that same analysis goes with
10:12 25 that, that there is no evidence that he's willfully and

10:12 1 intentionally done so. So I would move for a directed
10:13 2 verdict on all four counts.

10:13 3 THE COURT: Mr. Wagner? Ms. Simmons?

10:13 4 MS. SIMMONS: Your Honor, as you're aware, on
10:13 5 directed verdict, you're considered with only the
10:13 6 existence or nonexistence of the evidence. And in
10:13 7 *State vs. Lollis*, 541 S.E.2d 254, the case should be
10:13 8 submitted to the jury even if the evidence is
10:13 9 circumstantial if there's any substantial evidence
10:13 10 which proves the guilt of the accused.

10:13 11 Your Honor, as to the CDVHAN, the element of
10:13 12 extreme indifference is the fire itself. The element
10:13 13 of great bodily injury is Ms. Cook's injury that
10:13 14 Dr. Shaver has testified would have been ultimately
10:13 15 fatal. She is a household member, Your Honor. The
10:13 16 victim said that the defendant set her on fire to
10:13 17 several people at the scene.

10:13 18 And, further, the statements he made to Bryan
10:13 19 Evans indicating that they were arguing and then she
10:13 20 was on fire, and to use the words Mr. Evans testified
10:13 21 to yesterday, he "torched the bitch." I mean, that is
10:14 22 specific intent, Your Honor.

10:14 23 And that, again, is our argument on the attempted
10:14 24 murder as well. Malice can be proved by a depraved
10:14 25 heart. She was burned. She was doused with gas. And

10:14 1 malice can be express or implied. In this case, I
10:14 2 believe we certainly have presented enough evidence to
10:14 3 imply malice. And intent can be inferred by the facts
10:14 4 and circumstances. And I believe that those facts and
10:14 5 circumstances are present in this case.

10:14 6 As to the arson, Danny Delmarco has testified that
10:14 7 the dwelling was not in this condition. Serious bodily
10:14 8 injury has been testified to by Dr. Shaver. The victim
10:14 9 said the defendant set her on fire, and we just had a
10:14 10 SLED arson expert testify that the defendant had singe
10:14 11 marks on his hair and right hand that is consistent
10:14 12 with leaning over something to light it.

10:14 13 And, Judge, as to the malicious injury to
10:14 14 property, they are intentional fires. The SLED agent
10:14 15 has testified to that. The value has been established,
10:14 16 and the defendant has been identified as the person who
10:15 17 set Ms. Cook on fire by her and the testimony of
10:15 18 Mr. Evans.

10:15 19 THE COURT: Mr. Cole?

10:15 20 MR. COLE: Your Honor, if I may briefly respond
10:15 21 especially on the issue of intent. And I think that's
10:15 22 what this motion hinges most fully on is that the State
10:15 23 is attempting, especially in the attempted murder
10:15 24 charge, attempting to prove intent by the act itself,
10:15 25 which I understand is permissible in some instances.

10:15 1 However, in this case, I believe they have gone so far
10:15 2 that they're making a conclusory argument. Well, this
10:15 3 act happened; therefore, he must have had the specific
10:15 4 intent to kill. This act, you know, the fire happened.
10:15 5 Ms. Cook was burned, very severely; therefore, he must
10:15 6 have had the specific intent to kill. But I don't
10:15 7 see -- I don't think -- there needs to be some type of
10:15 8 further evidence as to that specific intent element of
10:15 9 that charge most of all. And then also for the other
10:16 10 charges, I believe that it is basically a conclusory
10:16 11 argument that there has been no evidence of intent
10:16 12 presented as to any of the arguments. There's
10:16 13 certainly been evidence of damage. There's been
10:16 14 evidence of injuries. I would argue there's been no
10:16 15 evidence that my client committed those things. But
10:16 16 even if they did, I believe the intent element is not
10:16 17 there and the evidence has not been presented. There's
10:16 18 been circumstantial evidence, and it's certainly not
10:16 19 been substantial enough to submit it to the jury.

10:16 20 THE COURT: All right.

10:16 21 I have heard the testimony and viewed the evidence
10:16 22 submitted in the case. Mr. Cole, I believe there is
10:16 23 sufficient evidence for this to be a jury question so
10:16 24 I'm going to deny your motions for directed verdict on
10:16 25 these charges. I believe your arguments go more toward

10:16 1 the weight of the evidence rather than the existence of
10:16 2 the evidence so we would proceed with the case.

10:16 3 Mr. Cole, would you and your client stand, please.
10:17 4 Madam Clerk, would you put Mr. Drotning under
10:17 5 oath.

10:17 6 (WHEREUPON, the defendant was sworn.)

10:17 7 THE COURT: All right. Mr. Drotning, at this time
10:17 8 I'm going to explain to you some of your rights. If
10:17 9 you do not understand anything I say, please let me
10:17 10 know and I will explain it in more detail. If you
10:17 11 answer the question, I will assume that you understood
10:17 12 the question.

10:17 13 Do you understand?

10:17 14 THE DEFENDANT: Yes, your Honor.

10:17 15 THE COURT: We have reached the stage in the trial
10:17 16 where you may present your defense. You have the right
10:17 17 to claim the protections given to you by the Fifth
10:17 18 Amendment of the Constitution of the United States.
10:17 19 This amendment states in part no person shall be
10:17 20 compelled in any criminal case to be a witness against
10:17 21 himself. This means that you cannot be required to
10:17 22 testify in this case.

10:17 23 On the other hand, you have the right to testify
10:17 24 on your own behalf should you choose to do so.
10:17 25 However, no one can make you testify. This is a

10:18 1 personal right, and no one can waive this right except
10:18 2 you.

10:18 3 If you decide to testify, you will be subject to
10:18 4 the same rules that govern other witnesses, and you may
10:18 5 be examined and cross-examined on any relevant issue in
10:18 6 this case. In addition, if you have any convictions
10:18 7 involving dishonesty or false statement or for crimes
10:18 8 punishable by imprisonment for more than one year and
10:18 9 this court determines that the probative value of
10:18 10 admitting this evidence outweighs its prejudicial
10:18 11 effect to you, the solicitor would be able to introduce
10:18 12 your record to attack your credibility.

10:18 13 If you decide to testify, this decision on your
10:18 14 part must be freely, voluntarily, and intelligently
10:18 15 made with the knowledge of the protections given to you
10:18 16 by the Fifth Amendment and the consequences of your
10:18 17 decision to testify.

10:18 18 If you decide not to testify, I will instruct the
10:18 19 jurors that they cannot give the fact that you did not
10:18 20 testify any consideration whatsoever and that there is
10:19 21 to be absolutely no prejudice to you because you did
10:19 22 not testify.

10:19 23 It is left entirely up to you whether or not to
10:19 24 testify. You may talk to your attorney, your family,
10:19 25 friends, or anyone else, but the final decision will be

10:19 1 left entirely up to you.

10:19 2 Do you understand what I have explained to you?

10:19 3 THE DEFENDANT: Yes, your Honor.

10:19 4 THE COURT: Do you have any questions for your
10:19 5 attorney?

10:19 6 THE DEFENDANT: No, your Honor.

10:19 7 THE COURT: Okay. We're going -- Mr. Cole, we're
10:19 8 going to take a break to give you an opportunity to
10:19 9 discuss this with your client, and then we will resume.
10:19 10 We'll take a break for about ten minutes.

10:19 11 MR. COLE: Thank you, Your Honor.

10:19 12 (WHEREUPON, a recess was taken from
10:32 13 10:19 a.m. to 10:32 a.m.)

10:32 14 THE COURT: All right. Let's go back on the
10:32 15 record.

10:32 16 Mr. Cole, Mr. Drotning.

10:32 17 Mr. Drotning, have you been able to discuss
10:32 18 whether or not to testify with your attorney?

10:32 19 THE DEFENDANT: Yes, sir.

10:32 20 THE COURT: Do you need to talk to your lawyer
10:32 21 anymore about this issue?

10:32 22 THE DEFENDANT: No, your Honor.

10:32 23 THE COURT: And do you wish to testify in the
10:32 24 case?

10:32 25 THE DEFENDANT: No.

10:32 1 THE COURT: Okay.

10:32 2 Anything you want to put on the record, Mr. Cole?

10:33 3 MR. COLE: No, your Honor.

10:33 4 THE COURT: Okay. Mr. Cole, do you intend on
10:33 5 calling any witnesses?

10:33 6 MR. COLE: No, your Honor, I do not.

10:33 7 THE COURT: Okay. All right. Anything further
10:33 8 before we bring our jury back in?

10:33 9 MR. WAGNER: No, sir.

10:33 10 THE COURT: Okay. All right. Well, let me ask
10:33 11 you this. Mr. Cole has submitted proposed charges, one
10:33 12 of which is a charge on identification out of Judge
10:33 13 Ralph King Anderson's charge book. The other charge
10:33 14 that Mr. Cole has submitted is a -- it looks like a
10:33 15 standard credibility of witness charge, which is very
10:33 16 closely in line with the court's standard charge.

10:33 17 So, Ms. Simmons, Mr. Wagner, whichever one of you
10:33 18 wants to address this issue, do you have any objection
10:34 19 to the identification charge?

10:34 20 MS. SIMMONS: Your Honor, we don't have an
10:34 21 objection to the credibility of witnesses. We do
10:34 22 object to the identification charge because we do
10:34 23 believe that it's been conclusively established that
10:34 24 the defendant was at the scene by multiple witnesses.
10:34 25 I think -- Judge, I think it also has the

10:34 1 potential to confuse the jury when read in concert with
10:34 2 all the court's other charges.

10:34 3 THE COURT: Mr. Cole?

10:34 4 MR. COLE: Yes, your Honor. I understand that
10:34 5 this is -- there's no photo lineup identification or
10:34 6 anything like that where normally this would be a
10:34 7 charge. However, I think it is appropriate in this
10:34 8 case because of as far as identification of who
10:34 9 committed this act. We're not saying that he was not
10:35 10 identified at the scene, but the identification that
10:35 11 was attempted to be made by the out-of-court statements
10:35 12 of Ms. Cook that my client committed this act, so
10:35 13 that's why I believe this charge is appropriate.

10:35 14 And then, certainly, on the credibility of
10:35 15 witnesses charge, I would accept the court's charge in
10:35 16 lieu of that.

10:35 17 THE COURT: All right. I want to read the
10:35 18 identification charge again that you have submitted.

10:36 19 (Pause.)

10:36 20 THE COURT: The first part of this charge says,
10:36 21 "An issue in this case is the identification of the
10:36 22 defendant as the perpetrator of the crime charged."
10:36 23 There's no allegation -- Mr. Cole, is there any
10:36 24 allegation that a third party is involved in the case?

10:36 25 MR. COLE: No, your Honor, but the other side

10:36 1 would be that my client was not the perpetrator, that
10:37 2 someone else set the fire. Not necessarily be a third
10:37 3 party, but the other person in the house, Ms. Cook.

10:37 4 THE COURT: Okay. Mr. Cole, you're correct in
10:37 5 that this charge ordinarily is used where the issue in
10:37 6 the case is a photo lineup or where there is an
10:37 7 allegation of a mistaken identification of the
10:37 8 defendant. I'm going to decline to charge that. I'll
10:37 9 note that for the record. I believe that this charge
10:37 10 is not designed for this type of factual situation. I
10:37 11 understand why you're requesting it, Mr. Cole, but I
10:37 12 believe there is a strong likelihood that this could be
10:38 13 confusing to the jury, and this charge isn't tailored
10:38 14 to this factual situation so I'm going to decline to
10:38 15 charge it.

10:38 16 Anything further? And I have my standard charges
10:38 17 which -- let me go through that very quickly.

10:38 18 We have the general charge on the responsibilities
10:38 19 of the jury; direct and circumstantial evidence;
10:38 20 reasonable doubt; credibility of witnesses that we have
10:38 21 already discussed; presumption of innocence; intent;
10:38 22 charge, arrest, indictment not evidence; failure of the
10:38 23 defendant to testify; and then a conclusion charge
10:39 24 about their deliberations.

10:39 25 So anything else?

10:39 1 Then I have the specific statutes on the specific
10:39 2 charges.

10:39 3 Anything else?

10:39 4 MR. WAGNER: No, sir, not from us.

10:39 5 MR. COLE: No, your Honor, no objections to those
10:39 6 charges just mentioned. I would, however, Your Honor,
10:39 7 just for the record like to very respectfully object to
10:39 8 the court not doing the identification charge for the
10:39 9 purpose of protecting the record.

10:39 10 THE COURT: Thank you, Mr. Cole.

10:39 11 All right. Let's get our jury.

10:39 12 MR. COLE: I'm sorry, Your Honor. One other thing
10:39 13 before the jury comes in. Also, just it's always a
10:39 14 strange situation to me in a case like this, but just
10:39 15 in case, I would like to, because this is the close of
10:39 16 the evidence now, I would like to renew my motion for
10:39 17 directed verdict for the same reasons as stated before.

10:39 18 THE COURT: Okay. So noted for the record,
10:40 19 Mr. Cole. I'll continue to deny your motion. And
10:40 20 since the defendant is not putting up any testimony,
10:40 21 the State will do their closing in full, then,
10:40 22 Mr. Cole, you will have the last word, last argument,
10:40 23 and then I'll charge the jury.

10:40 24 Madam Clerk, you will need to be prepared to get
10:40 25 the jury lunch.

10:41 1 All right. Let's get our jury.

10:41 2 (WHEREUPON, the jury entered open court at

10:42 3 10:41 a.m.)

10:42 4 THE COURT: All right.

10:42 5 Mr. Cole, does the defense have any evidence?

10:42 6 MR. COLE: The defense rests, Your Honor.

10:42 7 THE COURT: Okay. Thank you.

10:42 8 All right. Ladies and gentlemen, the testimony

10:42 9 evidence in the case is concluded. Each side has

10:42 10 rested; therefore, we are proceeding to the next stage

10:42 11 of the trial.

10:42 12 What happens next is called closing arguments.

10:42 13 The State will go first. They will present their

10:42 14 closing argument. Then the defense will present their

10:42 15 closing argument, after which I will then give you the

10:42 16 law in the case.

10:42 17 So, Mr. Wagner.

10:42 18 MR. WAGNER: Thank you, Judge.

10:42 19 This is the last time you will hear from me. I

10:42 20 appreciate y'all being here spending three days with us

10:43 21 listening to all the testimony, all the witnesses and

10:43 22 all the cans we had to open, spent an hour doing that

10:43 23 yesterday. Anyways, it had to be done, and I

10:43 24 appreciate y'all being here.

10:43 25 First thing I want to do is just go over the law

10:43 1 with you. When I sit down and after the defense goes,
10:43 2 the judge is going to charge you on the law in this
10:43 3 case. And I'm going to go over it with you and explain
10:43 4 in every case and every charge that's made in South
10:43 5 Carolina, there's certain things they call elements
10:43 6 that must be met, and we must prove them for that
10:43 7 charge to apply. And so I'm going to go over those
10:43 8 with you briefly, then I'm going to go over with you
10:43 9 briefly kind of the highlights of what the witnesses
10:43 10 said, what I think is important for y'all to remember.
10:43 11 I know it's a lot of witnesses over the course of
10:43 12 several days, and they go pretty fast. But I'm not
10:43 13 going to belabor the point. I know everybody is tired,
10:43 14 and I'm not going to be long, so bear with me.

10:43 15 But I'm going to start with the attempted murder
10:43 16 charge. We have got to prove to you -- I think it's
10:44 17 easy just to read along with you so you can see it,
10:44 18 too. This is basically I think what the judge is going
10:44 19 to charge you, too.

10:44 20 But to prove attempted murder, you have got to
10:44 21 prove a person with the intent to kill somebody, i.e.,
10:44 22 poured gasoline on the victim and set her on fire, with
10:44 23 malice aforethought. Which malice is generally defined
10:44 24 as basically a hatred, an ill will, a general reckless
10:44 25 disregard to human life. There are a number of ways to

10:44 1 look at it, but basically you're doing a wrongful act
10:44 2 with no just cause.

10:44 3 You can infer the intent. It can be shown by acts
10:44 4 and conduct of the defendant as well as other
10:44 5 circumstances which you can naturally infer from the
10:44 6 intent. In this case, when you've got a guy who is
10:45 7 charged with pouring gasoline all over the victim and
10:45 8 setting her on fire causing burns to 60 percent of her
10:45 9 body. She spent eight months in the burn unit. We
10:45 10 heard what the doctor said, what she all went through.
10:45 11 That grievous bodily injury there, you can infer the
10:45 12 intent was not to bake her a birthday cake, so to
10:45 13 speak. He intended to kill her.

10:45 14 You have got arson second degree, which is
10:45 15 basically willfully and maliciously set fire to causing
10:45 16 an explosion to a building, thereby causing grievous
10:45 17 bodily injury to the victim during the course of that.

10:45 18 Arson generally occurs -- you have got to have a
10:45 19 burning, fire damage of some sort. You can take a look
10:45 20 at the door and the pictures and tell, you know, the
10:45 21 fire did not get out of control. I think it was meant
10:45 22 to. But this is an arson case. We had four different
10:46 23 fires. They were intentionally set. An arson expert
10:46 24 testified to that this morning. Gasoline scattered
10:46 25 throughout the house. Came back on the samples. This

10:46 1 is an arson case. And she did get seriously burned.

10:46 2 Criminal domestic violence of a high and
10:46 3 aggravated nature is the third charge you're going to
10:46 4 have to consider. It's basically causing, offering, or
10:46 5 attempting to cause physical harm or injury to a member
10:46 6 of the defendant's household with the apparent present
10:46 7 ability to complete the account under circumstances
10:46 8 creating fear and eminent peril. The offense was
10:46 9 committed under circumstances manifesting extreme
10:46 10 indifference to the value of human life and great
10:46 11 bodily injury results.

10:46 12 And I submit to you pouring gasoline on Katie Cook
10:46 13 and setting her on fire was extreme indifference to her
10:46 14 well-being. She was his wife at the time. She was a
10:47 15 family member. And it basically put her in fear and
10:47 16 put her in danger of great bodily -- she about died.

10:47 17 And the last, and it's probably the least
10:47 18 important charge as far as it goes is malicious injury
10:47 19 to real property. He set fire to a rental property
10:47 20 belonging to his landlord who testified, I think it was
10:47 21 yesterday or the day before, did roughly over \$8,000
10:47 22 damage. The check is in evidence, copy of the check
10:47 23 and a copy of the bill from the place. But the way the
10:47 24 law reads in South Carolina, if it's more than \$2,000
10:47 25 but less than \$10,000 worth of damage, that's this

10:47 1 charge.

10:47 2 Back on the arson charge, we had gasoline found at
10:47 3 several different points in the house, mostly around
10:47 4 that door and the doorjamb going up, outside in the
10:48 5 kitchen near the trash can, as well as over by the TV
10:48 6 where it flared up the wall. You've got at least three
10:48 7 different points where gasoline tested positive on
10:48 8 those fires.

10:48 9 One of the other points of gasoline was the sample
10:48 10 that Sergeant Philpott took down out of that gas can.
10:48 11 He took a sample out of here after they got this in
10:48 12 evidence. Took it in from, as you saw in the pictures,
10:48 13 from the hallway. Took a sample of that sent it down
10:48 14 there. And that was the other sample that tested
10:48 15 positive.

10:48 16 So we know for a fact this was full of gasoline.
10:48 17 It's still got some in it. We know her burns are
10:48 18 gasoline related. We know there's only two people in
10:48 19 the house. There's Katie Cook, and there was the
10:48 20 defendant.

10:49 21 We know what Katie Cook said immediately after
10:49 22 this event to Brandy Towe, the short-haired lady, the
10:49 23 paramedic that showed up. What did she tell Brandy
10:49 24 Towe? "He done this to me. He blew me up." To Barry
10:49 25 Owens, now the detective, the first officer who arrived

10:49 1 at the scene, "He did this to me and it was on
10:49 2 purpose." To Paramedic Harley Chapman, "He lit me on
10:49 3 fire." And then to the nurse at the burn unit after
10:49 4 she had been medevaced to Augusta and she was waking
10:49 5 up, that's what she said to her. She shook her head
10:49 6 yes when she asked her if she had been strangled. She
10:49 7 shook her head yes to having gas poured on her. She
10:50 8 shook her head yes to her husband did it and wrote down
10:50 9 his name. All those things.

10:50 10 She couldn't talk, but the sheriff's office was
10:50 11 able to get her writing and what she put. We have all
10:50 12 seen this. She had presence of mind to write her
10:50 13 mama's name down. She had the presence of mind, which,
10:50 14 again, I go to the fact that everybody that's testified
10:50 15 in this case had the wherewithal to address it, the
10:50 16 knowledge to address it, said this is not any kind of
10:50 17 self-inflicted wound.

10:50 18 As a matter of fact, on this item in evidence you
10:50 19 will be able to see, she asked about her cats. All
10:50 20 that she had been through at that point in time, she
10:50 21 worried about her cats. And strikes me, I submit to
10:50 22 you, it's not indicative of somebody that wanted to
10:50 23 burn themselves up to be worried about their cats and
10:51 24 their mother.

10:51 25 We know for a fact from statements of the

10:51 1 employers, the guys that worked -- the Vietnamese guy.
10:51 2 I have a hard time pronouncing his name. Daohcuang
10:51 3 Xayachack said that defendant was possessive when he
10:51 4 worked with him, didn't want other men looking at his
10:51 5 wife, laid out of work a lot, didn't show up for work a
10:51 6 lot. His boss testified he had to fire him.

10:51 7 He applied for unemployment benefits. First time
10:51 8 it didn't work out. Second time, just days before this
10:51 9 incident, it didn't work out again. Or the exact day.
10:51 10 I can't remember exactly what he said, but he was
10:51 11 denied the second time.

10:51 12 Tried to work it out where he could come back for
10:52 13 a job, but the defendant didn't want it. He wanted to
10:52 14 get his unemployment benefits. He couldn't understand
10:52 15 why they wouldn't pay him.

10:52 16 They were behind on their rent. You heard from
10:52 17 the landlord two months behind on the rent at that
10:52 18 point. And in the four days -- tried to work out a
10:52 19 payment. Four days from the date of this incident,
10:52 20 when this happened, that rent was due, they were going
10:52 21 to try to work something out. I submit to you they
10:52 22 didn't have any way to get -- they were running short
10:52 23 on money. They were fighting. The victim testified
10:52 24 they were in just a bad spot with her marriage. She
10:52 25 was going to be leaving, moving home.

10:52 1 He was desperate. You know, he had to do
10:52 2 something. And what he chose to do was the most awful
10:52 3 thing he could have chosen to do. He poured gasoline
10:52 4 on her after he had choked her out and set her on fire.

10:52 5 How do we know? I mean, there's nobody there that
10:52 6 actually saw it. Katie's memory was sketchy. As the
10:53 7 doctor told you, it's not unusual. She was in and out
10:53 8 of consciousness for a long time, for months. She went
10:53 9 through -- he went through the debridement process what
10:53 10 they had to do with her just on a daily basis. And
10:53 11 they basically said they scrape all the dead flesh
10:53 12 away. And it causes so much blood loss, they had to
10:53 13 inject her with multiple, multiple transfusions
10:53 14 basically trying to keep her alive as long as they
10:53 15 could to try to save her. Which, thank the Lord, they
10:53 16 were able to do. The damage was extensive. We all saw
10:53 17 that.

10:53 18 She said that she moved down here, thought it was
10:53 19 going to be a fresh start. She said he was jealous and
10:53 20 possessive, too. They were like strangers in their own
10:53 21 house. She said when it was bad, it was pretty awful.
10:54 22 He kept her keys and her phone, hid them from her for
10:54 23 days. She wasn't able to call her mother. She wanted
10:54 24 to go back home to Minnesota. And, obviously, that's
10:54 25 basically what she told us, that was her intent. She

10:54 1 was going to be leaving.

10:54 2 Remember what she said. She said when she, I
10:54 3 guess, woke up from the fire. And one of the things
10:54 4 that we don't know is exactly how quick she woke up
10:54 5 after she was set on fire. Whether it was just
10:54 6 instantaneous or whether she burned for a little bit,
10:54 7 we don't know because we don't really know whether she
10:54 8 got out of the house ahead of him or not.

10:54 9 But when she woke up, her arms were glowing, is
10:54 10 what she said. And he looked at her. Said he didn't
10:54 11 looked concerned, he didn't look worried, and he didn't
10:54 12 look panicked. He just kind of stared at her.

10:54 13 At some point in time, he ran outside and flagged
10:54 14 down the guy that was passing by. The guy didn't know
10:54 15 him at all. The guy said he was very erratic. He was
10:54 16 scared to roll down the window really and talk to him
10:55 17 because he had the wife and kid in the car. But his
10:55 18 demeanor had suggested something was wrong with him.

10:55 19 And that guy called 911. This defendant did not.
10:55 20 His wife had been burned practically to death, and he
10:55 21 didn't call 911. This passer-by did.

10:55 22 When Barry Owens got there, you know, that's what
10:55 23 she told him. Scott Arnold. They all checked the
10:55 24 grill. Everybody that went there checked that grill,
10:55 25 and they all testified that it was basically

10:55 1 undisturbed. It was cold. There was dew on the grill.
10:55 2 Hadn't been used. Wasn't a bed of charcoal in there
10:55 3 like somebody was ready to start it. There wasn't
10:55 4 steaks, hot dogs, hamburgers setting out there to be
10:55 5 grilled. They weren't grilling. It wasn't a grilling
10:55 6 accident.

10:55 7 You heard from a doctor who said it was not
10:55 8 consistent with a grilling accident. Those injuries
10:55 9 were not, what they say, was not consistent with an
10:56 10 injury that was self-inflicted. We heard from Agent
10:56 11 Vaughn from SLED today who also testified that that's
10:56 12 not a grilling accident, nothing is consistent with
10:56 13 that.

10:56 14 The grill was never used. We know that.
10:56 15 Defendant made that up on the fly. He had to come up
10:56 16 with something. You know, he snapped, whatever he did.
10:56 17 Whatever caused him, whatever the malice in his heart
10:56 18 that caused him to pour the gasoline on his wife, set
10:56 19 her body on fire, caused him to do that. He had to
10:56 20 come up with a story, and he had to come up with it
10:56 21 quick, and it was a grilling accident. And that thing
10:56 22 backfired on him when they checked it out and it wasn't
10:56 23 true.

10:56 24 What did the defendant say that helps us make --
10:56 25 helps you. What he said. Here is what he said about

10:57 1 the grilling accident. They were trying to start the
10:57 2 grill with gasoline and it blew up. He told that to
10:57 3 Brandy Towe, the short-haired paramedic who testified
10:57 4 up here. She was one of the first responders there
10:57 5 within minutes.

10:57 6 "My house is on fire," is what he told the guy out
10:57 7 there in the car, the 911 caller. That guy never even
10:57 8 saw Katie Cook. It was dark over there, and he just
10:57 9 saw the defendant being erratic, telling him, "My house
10:57 10 is on fire."

10:57 11 And then you have got Bryan Evans. Bryan from the
10:57 12 Aryan Nation. I submit to you Bryan may not be who you
10:57 13 want as a neighbor. I know I wouldn't. Bryan has got
10:57 14 a criminal record. A bad criminal record. But Bryan
10:57 15 didn't get any deals for what he did up here and what
10:57 16 he came up here and testified to the other day. He
10:57 17 didn't get any benefit from it. As a matter of fact,
10:57 18 he was already doing his time when he contacted the
10:58 19 officer and said, look, this is weighing on me. I want
10:58 20 to tell you what the defendant told me. He came in
10:58 21 here and said it. What did he say? "I torched that
10:58 22 bitch." I think you can believe Bryan. I think you
10:58 23 can believe him because he's got nothing to gain from
10:58 24 it, coming in here, risk going out there. Bryan is the
10:58 25 type of guy we'll probably see him again in court. And

10:58 1 somebody getting labeled as a snitch for coming in here
10:58 2 to testify, it took some guts for the guy to do that.
10:58 3 Whether you like him or not -- I submit most people
10:58 4 aren't going to like him -- but he told the truth.
10:58 5 That's what the defendant told him, "I torched that
10:58 6 bitch."

10:58 7 Remember Chief Oliver. He came in there. He was
10:58 8 the fire chief with 30 years experience. He
10:58 9 immediately recognized there was something going on in
10:59 10 that house as far as potential arson and a crime scene.
10:59 11 He got everybody out. Ike Lewis, who is now with the
10:59 12 sheriff's office, who was a paramedic volunteer
10:59 13 fireman, came on there, on the scene. He was one of
10:59 14 the first ones there, too. He testified that, you
10:59 15 know, basically the extent of her burns. And he said
10:59 16 to her, you know, why would he set -- said to him, "Why
10:59 17 would he set me on fire? I'm a nice person. Why would
10:59 18 he set me on fire? He did this to me." Because she
10:59 19 thought she was dying. And she was. You know, she
10:59 20 didn't, but she was dying at the time most likely.

10:59 21 She asked him to hold her hand, which he did. You
10:59 22 can see that in the pictures. He said, "That's my hand
10:59 23 holding her hand." And she was scared. I tell you,
10:59 24 that's not indicative of the kind of person that just
10:59 25 wanted to burn themselves up. That didn't happen.

10:59 1 What happened to her is what she told everybody at the
10:59 2 scene. Her husband did this to her.

11:00 3 We heard from Dr. Shaver, who was very
11:00 4 informative. I think I learned more listening to
11:00 5 Dr. Shaver yesterday about burns than I think I ever
11:00 6 knew before. About what kind of condition she was in
11:00 7 and the seriousness of her injuries, all the way down
11:00 8 to being able to point out how much trouble, like
11:00 9 through the urine was going through, and how much they
11:00 10 were having to do to try to keep her alive.

11:00 11 And I submit to you, the bottom line is it wasn't
11:00 12 a grilling accident. That was not true. It wasn't
11:00 13 self-inflicted. Nothing was consistent about that.
11:00 14 She didn't say that. He told everybody else that it
11:00 15 was a grilling accident except Bryan Evans when he
11:00 16 said, "I torched the bitch." He admitted to what he
11:00 17 did.

11:00 18 So what we've got here is four charges. I believe
11:00 19 every element of those four charges have been proven
11:01 20 here with the testimony in court: Attempted murder,
11:01 21 second-degree arson, criminal domestic violence of a
11:01 22 high and aggravated nature, and malicious damage to
11:01 23 property.

11:01 24 The judge is going to be charging you on those
11:01 25 same charges here shortly. We have got to prove each

11:01 1 of those elements beyond a reasonable doubt. I think
11:01 2 we have done that. I submit to you we have. It's not
11:01 3 a who done it. Obviously it wasn't on camera. Most of
11:01 4 these cases are not on camera. Most cases don't
11:01 5 actually have eyewitnesses.

11:01 6 But through the circumstances of this case,
11:01 7 through everything that you know. You know they were
11:01 8 having trouble. You know he lost his job. You know
11:01 9 they were having financial trouble. She was going to
11:01 10 be leaving him. And this happened. And it's a whole
11:01 11 thing.

11:01 12 I appreciate y'all being here. Probably gone on a
11:01 13 little bit longer than I intended to. I appreciate
11:02 14 y'all sitting here with us for three days. I
11:02 15 appreciate y'all listening to a case like this. I know
11:02 16 it's not easy.

11:02 17 I won't able to address anything the defense
11:02 18 attorney says. I would like to tell you all that
11:02 19 everything I just told you, everything I said or
11:02 20 Ms. Simmons has said in this case, anything the lawyers
11:02 21 say is not evidence. The evidence came from the
11:02 22 witness stand and what's here put into evidence, these
11:02 23 exhibits, the pictures and stuff like that. This is
11:02 24 just argument. Same applies to the defense. So I
11:02 25 won't be able to respond to anything they say, but I

11:02 1 hope I've covered everything.

11:02 2 On any case like this, you're never going to know
11:02 3 every single thing that happened. Some things we'll
11:02 4 probably never know exactly why it happened, why did he
11:02 5 do it, you know. The important thing I think to
11:02 6 realize is he did do it. He's had his day in court.
11:02 7 He's had several days in court. This is a day in court
11:02 8 for Katie Cook, too. This is her day in court.

11:03 9 And we're here always, what Ms. Simmons and I do,
11:03 10 we're here in every single case to seek justice. And
11:03 11 justice in this case, I submit to you, demands a guilty
11:03 12 verdict on all four charges. Thank you.

11:03 13 THE COURT: Mr. Cole?

11:03 14 MR. COLE: Your Honor, I have a matter of law.

11:03 15 THE COURT: Madam Bailiff, would you take the jury
11:03 16 out.

11:03 17 (WHEREUPON, the jury exited open court at
11:03 18 11:03 a.m.)

11:03 19 THE COURT: Yes, sir.

11:03 20 MR. COLE: Your Honor, I did not want to object
11:04 21 during the solicitor's closing argument. However, I
11:04 22 believe I will have to object to it now. I believe
11:04 23 that at the beginning, one of his demonstrative
11:04 24 exhibits that he showed to the jury that listed the
11:04 25 elements of the charges had an incorrect element that I

11:04 1 think is very significant. That it had on there for
11:04 2 attempted murder, it had that the specific intent to
11:04 3 cause grievous bodily harm was an element of that. And
11:04 4 I believe that the case law is clear -- now at least
11:04 5 the case law is clear that specific intent to kill is
11:04 6 an element of attempted murder.

11:04 7 I understand that the court is going to charge the
11:04 8 jury that the court will charge -- is responsible for
11:04 9 the law and not to pay attention to what either party
11:04 10 says. However, I believe with the State, with them
11:04 11 taking it upon themselves to go through the elements
11:05 12 and to state their opinion of the law to the jury, I
11:05 13 believe they need to get it accurate, at least
11:05 14 something that is so important as an element of a
11:05 15 crime.

11:05 16 And so, Your Honor, I would object to that at this
11:05 17 time. And I believe it was up on the screen. It can't
11:05 18 be unseen by the jury so I would move for a mistrial
11:05 19 because I think that's highly prejudicial to the jury,
11:05 20 and they have seen that now, and they're not going to
11:05 21 be able to unsee it.

11:05 22 THE COURT: Mr. Cole, as you just noted, I'm going
11:05 23 to charge the jury on the law. And I have already
11:05 24 instructed the jury that the law comes from the court
11:05 25 not from the attorneys. And the court is going to give

11:05 1 the jury the proper definition of attempted murder. So

11:05 2 I would deny your motion for a mistrial.

11:05 3 MR. COLE: Thank you, Your Honor.

11:05 4 THE COURT: Okay. Now, while we have the jury
11:05 5 out, Mr. Cole, I have thought about your argument that
11:05 6 you made earlier on the identity issue, identification
11:06 7 charge.

11:06 8 So we pulled up a case, and I think this will be
11:06 9 the proper way of handling that. The charge you put
11:06 10 forth earlier, as I stated, really is not applicable to
11:06 11 the facts of this case. It deals with lineups and
11:06 12 third-party identification. But this issue was dealt
11:06 13 with, and I'll point out the case of *State vs. Simmons*,
11:06 14 which can be found at 417 S.E.2d 92, involved a single
11:06 15 witness identification issue.

11:06 16 The court suggested and used this words, "We hold
11:06 17 this to be the better procedure." And I'm going to
11:06 18 inject this sentence in my presumption of innocence
11:06 19 charge which says, "The burden of proving the identity
11:06 20 of the defendant rests with the State." And that's in
11:06 21 line with the holding of that case. And the court said
11:07 22 the trial judge could have charged that and that would
11:07 23 have clarified the issue.

11:07 24 So, Mr. Cole, I wanted to inform you of that on
11:07 25 the record. In line with that case, I am going to

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11:07 1 charge that with presumption of innocence.

11:07 2 MR. COLE: Thank you, Your Honor.

11:07 3 THE COURT: Mr. Wagner, do you have any questions?

11:07 4 MR. WAGNER: No, sir. That would be fine, Your
11:07 5 Honor.

11:07 6 THE COURT: All right. Let's get our jury back
11:07 7 in, and then we'll proceed with Mr. Cole's argument.

11:07 8 (WHEREUPON, the jury entered open court at
11:08 9 11:07 a.m.)

11:08 10 THE COURT: All right.

11:08 11 Mr. Cole?

11:08 12 MR. COLE: May it please the court, Your Honor.

11:08 13 Ladies and gentlemen of the jury, I, too, want to
11:08 14 thank you for being here with us this week. Again,
11:08 15 thank you for taking all the time that you have taken
11:08 16 out of your schedule to listen to this because, as I
11:08 17 stated earlier, your role is so important because you
11:08 18 are the ones that get to dispense justice in this case.
11:08 19 And we'll talk about that a little further in a minute.

11:08 20 I know y'all don't want to sit here and listen to
11:08 21 me talk forever so I'm going to try to be brief;
11:08 22 however, I want to go back through some of the
11:08 23 testimony that the State has presented. And in going
11:08 24 through that, I think you will see in all of this that
11:08 25 there are reasons to doubt the State's evidence. There

11:09 1 are reasons to doubt the State's claim.

11:09 2 And in that, that is, a reasonable doubt, a
11:09 3 reasonable doubt that my client is guilty of these
11:09 4 charges. And as you know, the State must prove my
11:09 5 client's guilt beyond a reasonable doubt on all these
11:09 6 charges.

11:09 7 So, first of all, I would say that I agree with
11:09 8 the solicitor's closing argument in a statement that he
11:09 9 said many times. We don't know. We don't know. We
11:09 10 don't know.

11:09 11 If you look at the evidence that has been
11:09 12 presented to this court, there are a lot of things that
11:09 13 we don't know. There are a lot of things that raise
11:09 14 doubts. There are a lot of things that don't seem to
11:09 15 make sense. I want to go through that just briefly.

11:09 16 First we heard from Katie Cook. Now, believe me,
11:09 17 I am extremely sympathetic to Ms. Cook. Ms. Cook has
11:09 18 suffered horrific injuries. You saw the testimony of
11:10 19 what she suffered. Horrific injuries that no one
11:10 20 should suffer, no one should have to deal with. And
11:10 21 I'm thankful that she's here today.

11:10 22 However, when we look at her testimony, I want to
11:10 23 point out a couple of things. She testified that she
11:10 24 had been to Alcoholic Anonymous. She admitted in her
11:10 25 testimony that the smoke detectors in the house

11:10 1 frequently caused problems when they were cooking in
11:10 2 the house. The stove frequently caused problems with
11:10 3 the smoke detectors.

11:10 4 Other testimony showed and the exhibits that the
11:10 5 State presented showed that there was a pan on the
11:10 6 stove that had not been washed. There was recent
11:10 7 cooking that had been going on.

11:10 8 The most important thing I think that Ms. Cook
11:10 9 said, and the thing that gives us the biggest reason to
11:11 10 doubt is that she said she does not remember what
11:11 11 happened. When questioned, she said she does not
11:11 12 remember my client doing any harm to her. She
11:11 13 testified that he was there, but, of course, he was
11:11 14 there. He lived in the home. They lived there
11:11 15 together. But her testimony was that she did not
11:11 16 remember.

11:11 17 Another witness, Jan Oliver, the Seneca fire
11:11 18 chief, he testified that he examined the scene,
11:11 19 examined the home. He found no gasoline on the walls,
11:11 20 no gasoline on the floors. He testified that firemen
11:11 21 got to the scene before him, that firemen went into the
11:12 22 scene before him.

11:12 23 When a fireman -- what we want a fireman to do
11:12 24 when they come to a scene and there is a fire, we want
11:12 25 them to put out a fire. They're not necessarily going

11:12 1 in there thinking about evidence, keeping things the
11:12 2 way they were. They are there to get everybody out
11:12 3 safely and put out a fire. And that's what we want
11:12 4 them to do.

11:12 5 However, if they went there before him, and I
11:12 6 think the testimony showed that they were the first
11:12 7 ones inside the home, we don't know and we didn't hear
11:12 8 from any of them that nothing was moved in the home,
11:12 9 that the evidence in the home was not tampered with.

11:12 10 And I want to show you just a couple of the
11:12 11 State's exhibits. We have got so many pictures it's
11:13 12 hard to get through all of them. I'll get them to you
11:13 13 in just a second.

11:13 14 Just a couple of these exhibits, for example, to
11:13 15 show things that don't really make sense to me.

11:13 16 You see this photograph of the living room of the
11:13 17 home. Now we see it. I want you to pay attention to
11:13 18 this photograph. The couch. It's flipped right side
11:13 19 up where we would think it would usually be. If you
11:14 20 look over at the chair sitting there, the blanket is
11:14 21 down in the chair. The blanket up on the top folded
11:14 22 over. The blanket in the chair is folded to the side.

11:14 23 Look at this photograph. The couch is turned
11:14 24 over. Obviously someone had turned it over. Someone
11:14 25 had messed with things. And I think it's interesting

11:14 1 when you look at those two pictures, if we go back to
11:14 2 this first one, that there are items on the end table.
11:14 3 There's no evidence, no indication that this couch was
11:14 4 flipped over by anyone, you know, flipping it, running
11:14 5 out of the house, flipping it, doing something, trying
11:14 6 to destroy the house, flipping it. Wouldn't you think
11:15 7 the stuff on the end table would have been knocked
11:15 8 over?

11:15 9 Another photograph of this chair. We see the
11:15 10 blanket still on the back of the chair, but the blanket
11:15 11 that was folded over the side of the chair previously
11:15 12 is all down in the chair now. So we have that that has
11:15 13 been messed with.

11:15 14 So just a few things that I noticed in the
11:15 15 photographs that show that there was something going on
11:15 16 in this scene, that things were moved around. When you
11:15 17 couple that with testimony that we had firefighters
11:15 18 that went in there before everything happened, then
11:15 19 that makes you think was the crime scene, the supposed
11:15 20 crime scene, preserved? Was the evidence preserved?
11:15 21 What happened when they went in there?

11:15 22 Now, I certainly would not think -- would not
11:15 23 accuse the firemen or the police of going in there and
11:15 24 tampering with anything on purpose. However, I have
11:15 25 said when the firemen first went in there, they were

11:16 1 trying to go in there and put out the fire. They were
11:16 2 trying to make sure everything was safe. They weren't
11:16 3 going in there worrying about potential keeping
11:16 4 evidence the way it needed to be kept.

11:16 5 Another witness, Brandy Towe, with EMS. She
11:16 6 testified at that my client said, "Help her. Help
11:16 7 her." That shows he was concerned about her. It's not
11:16 8 the testimony of somebody that just set a person on
11:16 9 fire. He said, "Help her. Help her." Her testimony
11:16 10 said she did not do any type of alcohol test or drug
11:16 11 test on Ms. Cook. She found both of them on the porch.
11:16 12 I think, again, that shows he was trying to help her.
11:16 13 He wouldn't be on the porch helping somebody that he
11:16 14 just set on fire.

11:16 15 The passer-by, Matthew Cehula, he said Drotning
11:16 16 ran up to his car and he was kind of scared and
11:17 17 startled like anybody would be if someone runs up to
11:17 18 your car and says, "My house is on fire. My house is
11:17 19 on fire," trying to flag them down. He's clearly
11:17 20 showing concern.

11:17 21 The State has said he didn't call 911. Someone
11:17 22 else did. Well, if the house is going up in flames,
11:17 23 he's running out of the house and he didn't have a
11:17 24 phone on him, he couldn't get back to the phone in the
11:17 25 house. If he didn't have a phone on him, what's the

11:17 1 next thing you do? Try to flag somebody down. Try to
11:17 2 get somebody to come and help. That's exactly what he
11:17 3 did.

11:17 4 A person who had just done something to -- commit
11:17 5 a horrific crime, would they be running and flagging
11:17 6 people trying to get the police there? No. They would
11:17 7 be running away.

11:17 8 We have Isaac Lewis from the Oconee County
11:17 9 Sheriff's Office. You remember the testimony. When he
11:17 10 first asked Ms. Cook if she remembered, at first she
11:17 11 said no. Then later she said yes. Again, there was no
11:18 12 test. He didn't test her for drugs or alcohol. Again,
11:18 13 he found both of them on the porch again showing that
11:18 14 he was trying to help her.

11:18 15 Sergeant Owens from the Oconee County Sheriff's
11:18 16 Office, again, no drug or alcohol test done on
11:18 17 Ms. Cook. He did a sweep of the home, he testified.
11:18 18 He testified that he did not see any gasoline or any
11:18 19 accelerant on the walls or the floors of the home
11:18 20 anywhere.

11:18 21 Then we get to the SLED agent, Agent Moskal, who
11:18 22 was obviously a very intelligent man, very learned man.
11:18 23 However, he didn't go to the scene of the crime. To be
11:18 24 honest, what he did was he analyzed these things in the
11:18 25 boxes that were in paint cans. He analyzed things that

11:18 1 the police had sent down to him.

11:18 2 Now, we already know there's some doubts about the
11:19 3 integrity of the scene of the crime and who got in
11:19 4 there first and what was moved around, whatever. And
11:19 5 then he even testified there were problems with the way
11:19 6 things were packaged. He testified there was
11:19 7 supposedly a hair that was packaged in an incorrect way
11:19 8 so he could not even test the hair for accelerants or
11:19 9 gasoline. That raises the question, that raises the
11:19 10 doubt that if that was packaged incorrectly, was
11:19 11 everything else packaged correctly? I would say the
11:19 12 results don't make much sense and show that things
11:19 13 might not have been packaged correctly.

11:19 14 There were pieces of burnt carpet -- if you go
11:19 15 back and look at the exhibits -- pieces of burnt carpet
11:19 16 that were put in one of those gas (sic) cans, tested.
11:19 17 No gas or accelerant found on those. There was my
11:19 18 client's shirt that he freely gave over to be tested.
11:20 19 It was not tested for gasoline. It was not tested for
11:20 20 accelerants.

11:20 21 If he was pouring gas on somebody, especially
11:20 22 running through a house, wouldn't you think it would
11:20 23 splash up and be all over his shirt? Or at least the
11:20 24 fumes that Agent Moskał testified to, the fumes can get
11:20 25 into fabric and test positive.

11:20 1 Another thing that doesn't make sense, they tested
11:20 2 supposedly my client's shorts. Tested negative for
11:20 3 gasoline negative, negative for any type of
11:20 4 accelerants. But my client's underwear tested positive
11:20 5 for it. Now, there's no evidence that my client
11:20 6 changed shorts. There's no evidence that the police
11:20 7 found any other shorts in the house that he might have
11:20 8 taken off trying to hide things. There's no evidence
11:20 9 of that. So that just doesn't make sense.

11:20 10 And even if we were going to believe that somehow
11:21 11 gas got on his underwear and gas didn't get on his
11:21 12 shorts, Agent Moskal testified that fumes could make
11:21 13 fabrics test positive. Also, we know he was trying to
11:21 14 help Ms. Cook when he was seen on the scene. He was
11:21 15 with her on the porch. So just by being close to her,
11:21 16 he could have got gasoline on him somehow and gotten
11:21 17 onto his underwear.

11:21 18 And then if you look at some of the other
11:21 19 exhibits, and I want to you look at those. There were
11:21 20 supposedly these control samples. Now, when you do a
11:21 21 control sample, the point of that is you test the
11:21 22 control sample, and it's supposed to test negative.
11:21 23 It's supposed to make sure that your test is right. It
11:21 24 tests negative.

11:21 25 Well, you have supposedly a piece of floor that

11:21 1 was not burned which was one control sample. And then
11:21 2 we had a hair that was supposedly a hair that was not a
11:22 3 hair of my client and was not a hair of Ms. Cook. It
11:22 4 was another control sample. Neither -- I'm sorry, both
11:22 5 of those tested positive for accelerants. Both of them
11:22 6 tested positive. Both of the control samples, the
11:22 7 things that's supposed to be negative so you know the
11:22 8 test was right, those tested positive. The floor that
11:22 9 was not burned tested positive for gasoline and a
11:22 10 petroleum product. The control hair tested positive
11:22 11 for a heavy alkaline material which was described and
11:22 12 in the report that's part of the evidence like oil.
11:22 13 There's supposed to be negative control samples.

11:22 14 All of this raises the question: Were these
11:22 15 samples even packaged correctly? Did the fumes, were
11:22 16 they able to get out of these cans and get into other
11:23 17 things? And how do we really know anything from that
11:23 18 test?

11:23 19 The other SLED agent, Agent Boehm, said my
11:23 20 client's shirt tested positive for blood, for
11:23 21 Ms. Cook's blood, and then for someone else's blood.
11:23 22 But we don't know. Again, we don't know whose blood
11:23 23 that was.

11:23 24 She testified DNA can be present on something,
11:23 25 test positive on something, even after it's washed. So

11:23 1 this could have been from something in the past. The
11:23 2 shirt could have been washed, worn before, and then
11:23 3 tested on it. Even if it was from that time, it's on
11:23 4 his shoulders, so that's consistent with him trying to
11:23 5 help Ms. Cook if she was bleeding somewhere and got
11:23 6 blood on her.

11:23 7 Pieces of a pillow contained her blood. Again,
11:24 8 this could be something previous. It could have been
11:24 9 why she testified. It can still show up after it was
11:24 10 washed. It could have been from a previous time where
11:24 11 she had a cut on her during her sleep or some other
11:24 12 reason she bled a little in her sleep. There's no
11:24 13 evidence that we've seen of blood all over the house,
11:24 14 no evidence that she's pouring blood. If that was the
11:24 15 case, we would expect to find blood all over the
11:24 16 carpet, on the walls, things like that just like we
11:24 17 would have expected to find the gasoline. So, again,
11:24 18 her tests raises doubts.

11:24 19 My client's employer, Mr. Spielmann, he testified
11:24 20 he saw no evidence of any violence between these two.
11:24 21 Testified he didn't know much about their personal
11:24 22 lives. But he did testify, again, he had taken both of
11:24 23 them to Alcoholics Anonymous.

11:25 24 Danny Delmarco, the landlord, obviously he
11:25 25 testified that there was damage caused to his

11:25 1 apartment. But his testimony, he said he had no idea
11:25 2 who caused that damage. He was just testifying that
11:25 3 damage was caused.

11:25 4 And we have Bryan Evans, the jailhouse snitch that
11:25 5 testified. Now, I think it's very clear what's going
11:25 6 on with him. He's a career criminal, extensive
11:25 7 criminal record, and he's saying that my client told
11:25 8 him some things when he was in a cell. And he
11:25 9 testified the way they've got those cells, the way they
11:25 10 had them at the old jail over there, you had four
11:25 11 people in a cell, four cells in a cell block, 16 guys
11:25 12 all together, cramped in together. If any of you have
11:25 13 been down to that jail, you know how cramped it was.
11:25 14 16 people cramped in together, and my client decides
11:25 15 he's going to tell this nut what happened. He says
11:25 16 other people heard but they just didn't come forward.
11:26 17 I think it's clear what was going on. He got wind --
11:26 18 when you get into the jail, things get -- rumors go.
11:26 19 He got wind what my client was charged with. He knew
11:26 20 he was facing some serious charges, and he's a career
11:26 21 criminal and knew how to work the system.

11:26 22 He was charged at that time with burglary first
11:26 23 degree. That alone carries a maximum of life in prison
11:26 24 and a mandatory minimum of 15 years. He was charged
11:26 25 with two counts of distribution of meth third offense

11:26 1 on both counts. Mandatory minimum of ten years,
11:26 2 maximum of 30 years on each charge. He was also
11:26 3 charged with escape, escape from prison or escape from
11:26 4 a jail. Altogether he was looking at a maximum
11:26 5 sentence of life in prison plus 60 years. So, in
11:27 6 effect, life. Worse than life, if that's possible.

11:27 7 Yet, after he made this statement -- he made a
11:27 8 statement to Investigator Arnold that testified. After
11:27 9 he made this statement to Investigator Arnold, some of
11:27 10 his charges were dropped, and he got a sweetheart deal,
11:27 11 a plea deal. He pled guilty. Instead of getting life,
11:27 12 he got 40 months, a little over three years. He's
11:27 13 homeless. He got to stay in a hotel this week, which
11:27 14 would be pretty good if you're homeless. So he got a
11:27 15 good deal.

11:27 16 Add to that this is obviously a deranged man.
11:27 17 He's coming in here with tattoos of swastikas all over
11:27 18 his hands, other Nazi symbols. He admitted he's a
11:27 19 member of the Aryan Brotherhood, an extremely violent
11:27 20 prison gang, white supremacist gang. He's a wanna be
11:27 21 Nazi, the way I think about those people. And in his
11:27 22 own sick head, he's sitting up here talking about how
11:28 23 he's a protector of white women. So I think his
11:28 24 testimony is wholly not credible. Shouldn't be given
11:28 25 any weight at all. We know what's going on with him.

11:28 1 The testimony of Nurse Lamb and Dr. Shaver. They
11:28 2 said her injuries were not consistent with
11:28 3 self-inflicted wound in their opinion. However, they
11:28 4 didn't examine the scene of the crime, remember. Their
11:28 5 job was to treat Ms. Cook and her injuries. So their
11:28 6 opinion is not consistent with being self-inflicted.

11:28 7 However, even if we believe, then, that Ms. Cook
11:28 8 did not do this to herself, that does not mean my
11:28 9 client did it. She could have set something else on
11:28 10 fire, like this door, turned around, flames up all over
11:28 11 her back, especially when we're dealing with gasoline.

11:28 12 There's testimony there's four different fires in
11:28 13 the house. She could have set the fire not intending
11:29 14 to set herself on fire, trying to set the house on
11:29 15 fire, and, unfortunately, tragically suffered these
11:29 16 injuries.

11:29 17 Also the testimony of Dr. Shaver said that the
11:29 18 medications given to her altered her memory at the
11:29 19 time. There are several medications that could have
11:29 20 done that and just the trauma itself, so I would
11:29 21 suggest to you her memory and her statement she made at
11:29 22 the time are unreliable. Instead, the statements that
11:29 23 she made here in open court is that she can't remember.

11:29 24 Another thing that I thought was interesting
11:29 25 Dr. Shaver said, he said that if you were -- that the

11:29 1 fumes -- and we've heard that from several of these
11:29 2 expert witnesses -- that fumes of gasoline burn. That
11:29 3 when you pour gas, fumes come up.

11:29 4 Dr. Shaver even said he had a case where somebody
11:29 5 was pouring gas with a cell phone, cell phone caused a
11:30 6 spark, and it blew them up.

11:30 7 This goes along with what Mr. Vaughn, the SLED
11:30 8 expert, said today. First of all, I want to make it
11:30 9 clear. He didn't go to the scene of the crime, of the
11:30 10 alleged crime, when it happened, the scene of the
11:30 11 incident. But in doing his investigation, looking at
11:30 12 some of this other evidence, said there's multiple
11:30 13 points of origin of the fire, four separate fires,
11:30 14 which doesn't make any sense if you're going to go
11:30 15 along with the State's belief, the State's suggestion
11:30 16 that my client would have set her on fire. But would
11:30 17 he set her on fire four different times?

11:30 18 He didn't go to the scene of the incident. He
11:30 19 doesn't know if things were moved around or not again.
11:30 20 But he did testify, along with Dr. Shaver's testimony,
11:30 21 that fumes burn, that gasoline is highly combustible.

11:30 22 So we have this exhibit right here, this gas can.
11:31 23 And those fumes burn. It's highly combustible. So I
11:31 24 know many of have you seen a gas can like this before.
11:31 25 And he showed -- now, this cap right here on top

11:31 1 doesn't really do anything to keep the gas out. This
11:31 2 is just a cap. It goes on the top. All right.

11:31 3 What you have to do -- I'm not going to do it
11:31 4 because there's still gas in here. But what you have
11:31 5 to do, you take this cap off. He testified you turn it
11:31 6 over, no gas is going to come out. You have to pull
11:31 7 this down. You have to pull this down like he said.
11:31 8 It's hard to pull down. So you have got two hands.
11:31 9 Pull this down, turn it over enough to where gas is
11:31 10 going to come out. If you're pulling it down, it's
11:31 11 coming out the sides here, too. You're going to get
11:32 12 gas all over your hands.

11:32 13 If you're chasing somebody through a house trying
11:32 14 to set them on fire, and you're chasing something
11:32 15 through the house, you got somehow both hands on this,
11:32 16 you're having to pull this down with one hand. And
11:32 17 then you have a broken lighter that they found. We
11:32 18 don't even know how this broken lighter works. But you
11:32 19 have got this broken lighter they found. So I guess
11:32 20 he's got an extra hand somewhere with this broken
11:32 21 lighter trying to pour and set on fire and chase
11:32 22 somebody through the house all at the same time, yet he
11:32 23 gets no gasoline on himself. The flames, even though
11:32 24 we know the fumes burn, if he's running towards
11:32 25 somebody, the fumes are coming back at him. He doesn't

11:32 1 get burned himself. The testimony is he has no burn
11:32 2 marks. He doesn't get gasoline all over the house. He
11:32 3 doesn't get gasoline all over the walls. The State's
11:32 4 theory just does not make sense in this case.

11:32 5 Now, I'll agree with the State that we don't know
11:33 6 exactly what happened. And I think that's the problem.
11:33 7 That's the issue here. We don't know what happened.
11:33 8 The issue is that in the United States, in this forum
11:33 9 of justice that we have that's the best in the world,
11:33 10 for somebody to be convicted of a crime, the State has
11:33 11 to prove what happened beyond a reasonable doubt. The
11:33 12 State has to prove each and every element of the crime
11:33 13 that the judge is going to instruct you on beyond a
11:33 14 reasonable doubt.

11:33 15 In this case the State has not done that. We have
11:33 16 been through the testimony. To recap, no gasoline
11:33 17 found in the home. No accelerant found in the home
11:33 18 when the people first went in there. We have got
11:33 19 problems with the tests that we've looked at. No drug
11:33 20 or alcohol test was done on Ms. Cook. No burn marks
11:33 21 were found on my client. No testimony, no evidence at
11:34 22 all of any fingerprints. There's no testimony, no
11:34 23 evidence that they even tried to take any fingerprints
11:34 24 off this gas can. Tried to take any fingerprints
11:34 25 anywhere. They didn't present any testimony of that.

11:34 1 Again, as I was saying, if he would have been
11:34 2 doing what they're saying he was doing, even if it
11:34 3 would have been possible, there is no way he could have
11:34 4 done that without catching himself on fire, without
11:34 5 getting gas all over the walls and all over the house
11:34 6 where when the first responders came in, they would
11:34 7 have seen that immediately.

11:34 8 At the end of the day, there were two people in
11:34 9 that home, my client and Ms. Cook. Ms. Cook has
11:34 10 testified that she does not remember him doing any harm
11:34 11 to her. There's been no evidence of any motive that he
11:34 12 would have to do any harm to her. No evidence of any
11:35 13 violent behavior that he had towards her. No evidence
11:35 14 of his intent to kill.

11:35 15 The judge is going to instruct you on the law that
11:35 16 for attempted murder, you have to have the specific
11:35 17 intent to kill that person. That has not been
11:35 18 presented.

11:35 19 If you've ever been, and they don't have one in
11:35 20 this courthouse but a lot of them do. And if you go to
11:35 21 the supreme court in Washington, D.C., there is a
11:35 22 statue out front, the justice statue. I know you all
11:35 23 have seen it. It's the woman out there. She has got a
11:35 24 blindfold on, and she's got the scales of justice
11:35 25 weighing it out. That's kind of a symbol, a picture of

11:35 1 our justice system. Blind justice. Just looking at
11:35 2 the evidence.

11:35 3 This case is emotional. This case -- Ms. Cook has
11:35 4 suffered, as I said, unbelievably. However, I would
11:36 5 ask you to put the blindfold of justice on. Beyond all
11:36 6 the emotion. Beyond the horrible photographs, the
11:36 7 horrible injuries that we've seen. Put the blindfold
11:36 8 of justice on and say -- and look at the evidence, look
11:36 9 at what was presented and say, did the State prove each
11:36 10 and every element of these charges beyond a reasonable
11:36 11 doubt. Look at it with your reason. Look at it with
11:36 12 your rational mind. Look at it for yourself and see,
11:36 13 are you doing the just thing. Because that's what
11:36 14 you're called to do. You're called to have that
11:36 15 blindfold of justice on. You're called to hold those
11:36 16 scales in each one of your hands individually and say,
11:36 17 did the State prove these things beyond a reasonable
11:36 18 doubt based on the evidence that was presented here in
11:36 19 court. Do that. And make sure you know that you and
11:36 20 only you have the power to do that. I told you before,
11:37 21 you have the power to give justice.

11:37 22 I will submit to you not to let anyone else tell
11:37 23 you how to look at the evidence. Not let anyone else
11:37 24 tell you what justice is. Me or the other side or
11:37 25 anyone. Look at the evidence, look at it rationally,

11:37 1 reasonably what was presented, and you will see the
11:37 2 State has failed to prove the elements of these crimes
11:37 3 beyond a reasonable doubt. And when you see that, you
11:37 4 will have to find my client not guilty. Thank you.
11:37 5 Thank you for your service.

11:37 6 THE COURT: Ladies and gentlemen, we have come to
11:37 7 the point in this trial where I instruct you on the
11:37 8 law. My instructions will be somewhat lengthy. They
11:37 9 will be in three parts. First, the instructions on
11:38 10 general rules that define and control the jury's
11:38 11 duties. Second, the instructions that state the rules
11:38 12 of law you must apply, i.e., what the State must prove
11:38 13 to make its case. Third, some rules for your
11:38 14 deliberations.

11:38 15 The general rules begin with your duties as
11:38 16 jurors. It is your duty to find the facts from all the
11:38 17 evidence in the case. To those facts you must apply
11:38 18 the law as I give it to you. You shall not be
11:38 19 concerned with what the law should be but what it is.
11:38 20 And you must not be influenced by any personal likes or
11:38 21 dislikes, opinions, prejudices or undue sympathy. That
11:38 22 means you must decide the case solely on the evidence
11:38 23 before you in accordance with the law, the very thing
11:38 24 you took an oath promising to do at the beginning of
11:38 25 the trial.

11:38 1 It is your responsibility and yours alone to
11:38 2 determine the facts of this case. I would, therefore,
11:38 3 charge you that if during the course of this trial or
11:39 4 during this charge you have been given or left with the
11:39 5 impression or feeling that I have a personal feeling
11:39 6 about the facts of this case or that I favor one side
11:39 7 or the other, I would specifically instruct you to
11:39 8 disregard that impression. Under our constitution, I
11:39 9 am not allowed to have an opinion about the facts of
11:39 10 the case. You should not be influenced by any
11:39 11 objections or the court's ruling on them. You and you
11:39 12 alone are the judges of the facts.

11:39 13 You determine the facts by evaluating or weighing
11:39 14 the evidence that you have heard during the trial.
11:39 15 What is evidence? Evidence in the sworn testimony from
11:39 16 witnesses and any exhibits that have been entered into
11:39 17 evidence. The statements by the attorneys are not
11:39 18 evidence. What they have said in opening statements,
11:39 19 closing arguments, and at other times in intended to
11:39 20 help you interpret the evidence, but it is not
11:39 21 evidence.

11:39 22 There are two types of evidence which are
11:39 23 generally presented during a trial: Direct evidence
11:39 24 and circumstantial evidence. Direct evidence directly
11:40 25 proves the existence of a fact and does not require

11:40 1 deduction. Circumstantial evidence is proof of a chain
11:40 2 of facts and circumstances indicating the existence of
11:40 3 a fact.

11:40 4 Crimes may be proven by circumstantial evidence.
11:40 5 The law makes no distinction between the weight or
11:40 6 value to be given to either direct or circumstantial
11:40 7 evidence. However, to the extent the State relies on
11:40 8 circumstantial evidence, all the circumstances must be
11:40 9 consistent with each other, and when taken together,
11:40 10 point conclusively to the guilty of the accused beyond
11:40 11 a reasonable doubt. If the circumstances merely
11:40 12 portray the defendant's behavior as suspicious, the
11:40 13 proof has failed.

11:40 14 The State has the burden of proving the defendant
11:40 15 guilty beyond a reasonable doubt. The burden rests
11:40 16 with the State whether the State relies on direct
11:40 17 evidence, circumstantial evidence, or some combination
11:40 18 of the two.

11:41 19 What is a reasonable doubt in the law? A
11:41 20 reasonable doubt is the kind of doubt that would cause
11:41 21 a reasonable person to hesitate to act. Some of you
11:41 22 may have served as jurors in civil cases where you were
11:41 23 told that it is only necessary to prove that a fact is
11:41 24 more likely true than not true such as by the greater
11:41 25 weight or preponderance of the evidence.

11:41 1 In criminal cases, the State's proof must be more
11:41 2 powerful than that. It must be beyond a reasonable
11:41 3 doubt. Proof beyond a reasonable doubt is proof that
11:41 4 leaves you firmly convinced of the defendant's guilt.

11:41 5 There are very few things in this world that we
11:41 6 know with absolute certainty. And in criminal cases,
11:41 7 the law does not require proof that overcomes every
11:41 8 possible doubt. If, based on your consideration of the
11:41 9 evidence, you are firmly convinced that the defendant
11:41 10 is guilty of the crime charged, you must find the
11:41 11 defendant guilty.

11:41 12 If, on the other hand, you think there is a real
11:41 13 possibility that the defendant is not guilty, you must
11:41 14 give the defendant the benefit of the doubt and find
11:42 15 him not guilty.

11:42 16 A reasonable doubt may arise from the evidence or
11:42 17 from a lack of evidence. The defendant is entitled to
11:42 18 every reasonable doubt that may arise in the case. If,
11:42 19 upon any issue of fact essential to a conviction and a
11:42 20 verdict of guilty of an offense, if you have any
11:42 21 reasonable doubt as to how that issue should be
11:42 22 resolved, it is your duty to resolve that doubt in
11:42 23 favor of the defendant. Suspicion, however strong, is
11:42 24 not enough to sustain a conviction. The evidence
11:42 25 presented by the State must be substantial evidence

11:42 1 that tends to prove the guilt of the Defendant beyond a
11:42 2 reasonable doubt.

11:42 3 As judges of the facts, you are the sole judges of
11:42 4 the credibility, that is, the believability of the
11:42 5 witnesses who have testified in this case. In
11:42 6 determining their credibility, you may take into
11:42 7 consideration many things such as: The appearance and
11:43 8 manner of the witness on the stand, sometimes referred
11:43 9 to as the demeanor of the witness; was the witness able
11:43 10 to see, hear, or know the things about which the
11:43 11 witness testified; how well was the witness able to
11:43 12 recall and describe those things; did the witness have
11:43 13 a cause or reason to be biased and prejudiced in favor
11:43 14 of the testimony he or she gave; how reasonable was the
11:43 15 witness' testimony considered in the light of all the
11:43 16 evidence in the case; was the witnesses' testimony
11:43 17 contradicted by what the witness had said or done at
11:43 18 another time or by the testimony of another witness or
11:43 19 by other evidence? These are some of the factors you
11:43 20 may consider in deciding whether to believe testimony.

11:43 21 As jurors, you have a right to believe all of the
11:43 22 testimony of a witness or none of the testimony of a
11:43 23 witness. You have a right to believe a portion of the
11:43 24 testimony of a witness and discard the rest. You may
11:43 25 believe the testimony of one witness over the many or

11:43 1 the many over the one.

11:44 2 Most certainly, you do not determine the matter of
11:44 3 credibility or believability by counting up the number
11:44 4 of witnesses who may have testified on behalf of the
11:44 5 parties in this case. Your sole objective is to find
11:44 6 the truth. It does not matter whether the truth comes
11:44 7 from a witness for the State or a witness for the
11:44 8 defendant.

11:44 9 The defendant has pled not guilty on these
11:44 10 indictments, and that plea puts the burden on the State
11:44 11 to prove the defendant guilty. A person charged with
11:44 12 committing a criminal offense is never required to
11:44 13 prove himself innocent.

11:44 14 I charge you that it is an important rule of law
11:44 15 that a defendant in a criminal trial, no matter what
11:44 16 the seriousness of that charge may be, will always be
11:44 17 presumed to be innocent of the crime for which the
11:44 18 indictment was issued unless guilt has been proven by
11:44 19 evidence satisfying you of that guilt beyond a
11:44 20 reasonable doubt.

11:44 21 The presumption of innocence does not end when you
11:45 22 begin your deliberations, but it accompanies the
11:45 23 defendant throughout the trial until you reach a
11:45 24 verdict of guilt based on evidence satisfying you of
11:45 25 that guilt beyond a reasonable doubt.

11:45 1 Presumption of innocence is like a robe of
11:45 2 righteousness placed about the shoulders of the
11:45 3 defendant which remains with the defendant until it has
11:45 4 been stripped from the defendant by evidence satisfying
11:45 5 you of the defendant's guilt beyond a reasonable doubt.

11:45 6 The presumption of innocence is not mere legal
11:45 7 theory. It is not just a legal phrase. It is a
11:45 8 substantial right to which every defendant is entitled
11:45 9 unless you, the jury, are satisfied from the evidence
11:45 10 of the defendant's guilt beyond a reasonable doubt.

11:45 11 The burden of proving the identity of the
11:45 12 defendant rests with the State. In order to establish
11:45 13 criminal liability, criminal intent is required. For
11:45 14 example, the mental state required to be proven by the
11:45 15 State for a particular crime might be purpose, intent,
11:46 16 knowledge, recklessness, or criminal negligence.

11:46 17 Criminal intent must be proven by the State beyond
11:46 18 a reasonable doubt. Criminal intent is always a matter
11:46 19 that must be determined by the jury from the
11:46 20 circumstances surrounding the situation. There's no
11:46 21 way to prove intent to a mathematical certainty. There
11:46 22 is no way for medical science to dissect a person's
11:46 23 brain and determine what the person had in mind, so the
11:46 24 law says that criminal intent may be inferred from the
11:46 25 circumstances shown to have existed.

11:46 1 This is how you make a determination of whether or
11:46 2 not the element requiring intent was present. It is
11:46 3 not necessary to establish intent by direct and
11:46 4 positive evidence, but intent may be established by
11:46 5 inference in the same way as any other fact, taking
11:46 6 into consideration the acts of the parties and all of
11:46 7 the facts and circumstances of this case.

11:46 8 Criminal intent is a mental state, a conscious
11:46 9 wrongdoing. It is up to you to determine what the
11:47 10 defendant intended to do based on the circumstances
11:47 11 shown to have existed.

11:47 12 Criminal intent can arise from action or a failure
11:47 13 to act. It may arise from negligence, recklessness, or
11:47 14 an indifference to duty or consequence that is
11:47 15 considered by the law to be the equivalent of criminal
11:47 16 intent.

11:47 17 The indictments charge the defendant with
11:47 18 attempted murder, criminal domestic violence of a high
11:47 19 and aggravated nature, arson second degree, and
11:47 20 malicious damage to property greater than \$2,000 but
11:47 21 less than \$10,000.

11:47 22 I remind you that the fact that the defendant was
11:47 23 arrested, charged, and indicted in this case is not
11:47 24 evidence in this case and cannot be considered by you
11:47 25 as evidence of guilt in this case, nor does it create

11:47 1 any presumption or inference of guilt. These documents
11:47 2 are simply the formal written instruments which contain
11:47 3 the charges made against the defendant. They are the
11:47 4 formal documents by which this case is brought into
11:48 5 court.

11:48 6 I instruct you and emphasize that the fact that
11:48 7 the defendant did not testify is not a factor to be
11:48 8 considered by you in any way in your deliberation and
11:48 9 in your consideration on the question of guilt or
11:48 10 innocence of the defendant. It must not be considered
11:48 11 by you in any manner whatsoever. A defendant has the
11:48 12 constitutional right to remain silent, and the
11:48 13 assertion of this right must not be considered by you
11:48 14 in your deliberations. I repeat, under oath, you are
11:48 15 to draw no conclusion whatsoever from the fact that the
11:48 16 defendant in this case did not testify. The fact that
11:48 17 this defendant did not testify should not even be
11:48 18 discussed in the jury room.

11:48 19 The State is required to prove its case and to
11:48 20 prove the guilt of the defendant. The burden of proof,
11:48 21 as I've told you, is on the State. The burden of proof
11:48 22 remains on the State to prove guilt beyond a reasonable
11:48 23 doubt.

11:48 24 You have heard testimony in this case from persons
11:49 25 described as experts, persons who, by education and

11:49 1 experience, have become an expert in some field, and
11:49 2 they may state an opinion on matters in that field and
11:49 3 the reasons for that opinion.

11:49 4 Expert testimony should be judged just as any
11:49 5 other testimony. You may accept it or reject it and
11:49 6 give it as much weight as you think it deserves
11:49 7 considering the witness' education and experience, the
11:49 8 reasons given for the opinion, and all other evidence
11:49 9 in the case. You do not have to believe the testimony
11:49 10 of an expert simply because that person was an expert.

11:49 11 The defendant is charged with attempted murder.
11:49 12 In order to prove this crime, the State must prove that
11:49 13 the defendant attempted to kill another person with
11:49 14 malice aforethought, either express or implied.

11:49 15 Malice is hatred, ill will, or hostility toward
11:49 16 another person. It is the intentional doing of a
11:49 17 wrongful act without just cause or excuse and with an
11:50 18 intent to inflict an injury under circumstances that
11:50 19 the law will infer an evil intent.

11:50 20 Malice aforethought does not require that malice
11:50 21 exist for any particular period of time before the act
11:50 22 is committed, but malice must exist in the mind of the
11:50 23 defendant just before and at the time the act is
11:50 24 committed. Therefore, there must be a combination of
11:50 25 the previous evil intent and the act.

11:50 1 Malice aforethought may be express or inferred.

11:50 2 The terms "express" and "inferred" do not mean

11:50 3 different kinds of malice but merely the manner in

11:50 4 which the malice was shown to exist, that is, either by

11:50 5 direct evidence or by inference from the facts and

11:50 6 circumstances which are proved.

11:50 7 Express malice is shown when a person speaks words

11:50 8 which express hatred or ill will for another or when

11:50 9 the person prepared beforehand to do the act which was

11:51 10 later accomplished. For example, lying in wait for a

11:51 11 person or any other acts of preparation going to show

11:51 12 that the deed was within the defendant's mind would be

11:51 13 express malice.

11:51 14 Malice may be inferred from conduct showing a

11:51 15 total disregard for human life. If facts are proved

11:51 16 beyond a reasonable doubt sufficient to raise an

11:51 17 inference of malice to your satisfaction, this

11:51 18 inference would be simply an evidentiary fact to be

11:51 19 considered by you, the jury, along with other evidence

11:51 20 in the case, and you may give it the weight you decide

11:51 21 it should receive.

11:51 22 A specific intent to kill is an element of

11:51 23 attempted murder. Intent means intending the result

11:51 24 which actually occurs, not accidentally or

11:51 25 involuntarily. Intent may be shown by acts and conduct

11:51 1 of the defendant and other circumstances from which you
11:51 2 may naturally and reasonably infer intent.

11:52 3 Evidence of the character of the act, the
11:52 4 character of instrument used, the manner in which it
11:52 5 was used, the purpose to be accomplished, and the
11:52 6 resulting wounds or injuries may be considered in
11:52 7 determining the intent with which the act was
11:52 8 committed.

11:52 9 Intent may also be inferred when it is
11:52 10 demonstrated that the defendant voluntarily and
11:52 11 willfully commits an act, the natural tendency of which
11:52 12 is to destroy another's life.

11:52 13 The defendant is also charged with criminal
11:52 14 domestic violence of a high and aggravated nature. It
11:52 15 is unlawful to cause physical harm or injury to a
11:52 16 person's own household member or offer to attempt to
11:52 17 cause physical harm or injury to a person's own
11:52 18 household member with apparent present ability under
11:52 19 the circumstances reasonably creating fear of imminent
11:52 20 peril.

11:52 21 Criminal domestic violence of a high and
11:52 22 aggravated nature occurs if a person commits an assault
11:52 23 and battery which involves the use of a deadly weapon
11:52 24 or results in serious bodily injury to the victim, or
11:53 25 an assault with or without an accompanying battery

11:53 1 which would reasonably cause a person to fear imminent
11:53 2 serious bodily injury or death. A household member
11:53 3 means a spouse, a former spouse, persons who have a
11:53 4 child in common, or a male and female who are
11:53 5 cohabitating or formerly have cohabited. To prove
11:53 6 criminal domestic violence of a high and aggravated
11:53 7 nature, the State must prove all of these elements
11:53 8 beyond a reasonable doubt.

11:53 9 Defendant is also charged with arson second
11:53 10 degree. In order to prove arson second degree, the
11:53 11 State must first prove beyond a reasonable doubt that
11:53 12 the defendant willfully and maliciously caused an
11:53 13 explosion, set fire to, burned, caused to be burned,
11:53 14 aided, counseled or procured the burning of certain
11:53 15 properties.

11:53 16 Willfully means that it was not done by accident
11:53 17 but was done knowingly or intentionally. It must be
11:53 18 shown that the burning was by the willful act of some
11:54 19 person and not as a result of a natural or accidental
11:54 20 cause.

11:54 21 Maliciously means with hatred, ill will, or
11:54 22 hostility towards another person. A person who
11:54 23 intentionally does a wrongful act without legal
11:54 24 justification or excuse does so maliciously.

11:54 25 A malicious burning is an act done with the

11:54 1 condition of mind that shows a heart bent on mischief
11:54 2 showing a design to do an intentional wrong act toward
11:54 3 another or toward the public without any legal
11:54 4 justification or excuse. This malice need not be
11:54 5 express but may be inferred.

11:54 6 Burning means the actual combustion of some
11:54 7 portion of a piece of property. It is not necessary
11:54 8 that the property be consumed or destroyed. Charring
11:54 9 of the material of which the property is constructed or
11:54 10 a change in the fiber or composition of the structure
11:54 11 is required for a burning. Singeing, smoking,
11:55 12 blistering, scorching, or discoloring by the heat,
11:55 13 however, is not enough to constitute burning.

11:55 14 Next, the State must prove beyond a reasonable
11:55 15 doubt that the property which was burned was a dwelling
11:55 16 house, a church, or other place of worship, a public or
11:55 17 private school facility, a manufacturing plant or
11:55 18 warehouse, a building where business is conducted, an
11:55 19 institutional facility, or any structure designed for
11:55 20 human occupancy, including local and municipal
11:55 21 buildings. A dwelling house is a building in which a
11:55 22 person ordinarily sleeps.

11:55 23 Finally, the State must prove beyond a reasonable
11:55 24 doubt that the explosion or burning directly or
11:55 25 indirectly resulted in serious bodily injury to a

11:55 1 person.

11:55 2 The defendant is also charged with malicious
11:55 3 injury to real property. The defendant is charged with
11:55 4 the statute of greater than \$2,000 and less than
11:55 5 \$10,000.

11:55 6 The State must prove beyond a reasonable doubt
11:56 7 that the defendant willfully and maliciously cut,
11:56 8 mutilated, defaced or otherwise injured a tree, house,
11:56 9 outside fence, fixture of another person, or committed
11:56 10 any other trespass on the real property of another
11:56 11 person.

11:56 12 Willfully means voluntarily and intentionally with
11:56 13 the specific intent to do something the law forbids.

11:56 14 Maliciously means involving malice. Malice is
11:56 15 hatred, ill will, hostility toward another person. It
11:56 16 is the intentional doing of a wrongful act without just
11:56 17 cause or excuse with an intent to inflict an injury or
11:56 18 under circumstances that the law will infer evil
11:56 19 intent.

11:56 20 The malice may be express or inferred. These
11:56 21 terms, "express" and "inferred," do not mean different
11:56 22 kinds of malice but merely the manner in which the
11:56 23 malice may be shown to exist, that is, either by direct
11:56 24 evidence or by inference from the facts and
11:56 25 circumstances which are proved.

11:56 1 Express malice is shown when a person speaks words
11:57 2 or expresses hatred or ill will for another or when the
11:57 3 person prepared beforehand to do the act which was
11:57 4 later accomplished. Malice may be inferred from
11:57 5 conduct showing a total disregard for human life.

11:57 6 The State must also prove beyond a reasonable
11:57 7 doubt that the injury to the property or the property
11:57 8 loss is worth more than \$2,000 but less than \$10,000.
11:57 9 The State must also prove these dollar figures beyond a
11:57 10 reasonable doubt.

11:57 11 Ladies and gentlemen, we have reached the point
11:57 12 where I'm getting ready to send you to the jury room.
11:57 13 This has been a long instruction on the law. I have
11:57 14 given you a lot of law, but I want to leave you with
11:57 15 some final thoughts.

11:57 16 You were chosen as jurors because both sides
11:58 17 believed that you could be fair and impartial in
11:58 18 deciding this case. I instruct you to make use of your
11:58 19 life experiences, your good common sense, and your
11:58 20 sense of logic and reason in evaluating the evidence in
11:58 21 this case.

11:58 22 You are not partisans or advocates for either
11:58 23 side. You have no friends to reward nor any enemies to
11:58 24 punish. You are the judges of the facts. Your sole
11:58 25 interest is to find the truth from the evidence

11:58 1 presented in this case.

11:58 2 Be courteous with one another. Listen to the
11:58 3 views of your fellow jurors. Take the amount of time
11:58 4 necessary for you to thoroughly evaluate the evidence.
11:58 5 This case is important to both sides, and this is their
11:58 6 only day in court.

11:58 7 Now, Mr. Foreman, I'm going to go over the verdict
11:58 8 form with you. The verdict form is two pages, and it
11:58 9 breaks it down by the four charges.

11:58 10 The first is indictment for attempted murder.

11:58 11 "We, the jury, unanimously find on indictment number
11:58 12 2014-GS-37-742 that the defendant, Jacob Daniel
11:59 13 Drotning, is," and it gives you two choices, two
11:59 14 blanks. One, not guilty; two, guilty of murder.

11:59 15 Now, let me say at the outset, don't place any
11:59 16 significance on the order in which these choices are
11:59 17 placed on the page. One simply had to go on the form
11:59 18 before the other. But you will check the appropriate
11:59 19 box depending on the decision that the jury makes.

11:59 20 Then the second is indictment number
11:59 21 2014-GS-37-743, arson second degree. You have the same
11:59 22 choices.

11:59 23 Turn to the second page. And then it's broken
11:59 24 down, indictment 2015-GS-441, criminal domestic
11:59 25 violence high and aggravated nature. You have the same

11:59 1 two choices.

11:59 2 And, finally, indictment 2015-GS-37-442, malicious
11:59 3 injury to property. You have the same choices.

11:59 4 And these are all distinct charges, and you would
11:59 5 make a decision on each charge separately.

12:00 6 When you have reached a verdict, Mr. Foreman, you
12:00 7 will sign it above the line where your name appears and
12:00 8 date it. Your verdict must be unanimous.

12:00 9 So I'm going to have you retire to the jury room.
12:00 10 Do not begin your deliberations until I send the
12:00 11 verdict form back along with the exhibits.

12:00 12 So, Madam Bailiff, if you will take our jury to
12:00 13 the jury room.

12:00 14 (WHEREUPON, the jury exited open court at
12:00 15 12:00 p.m.)

12:00 16 THE COURT: All right. Any exceptions to my
12:00 17 charge from the State?

12:01 18 MR. WAGNER: No, sir.

12:01 19 THE COURT: Any exceptions from the defense?

12:01 20 MR. COLE: No, your Honor.

12:01 21 THE COURT: All right. This is what I'd like.
12:01 22 I'd like the attorneys to come forward, count the
12:01 23 exhibits, make sure they're all there before we send
12:01 24 them back to the jury with the verdict form.

12:01 25 (WHEREUPON, a recess was taken from 12:01 p.m. to

12:07 1 12:07 p.m.)

12:07 2 THE COURT: Are all of the exhibits accounted for?

12:07 3 MS. SIMMONS: Yes, your Honor.

12:07 4 MR. COLE: Yes, your Honor.

12:07 5 MR. WAGNER: Yes.

12:07 6 THE COURT: All right. Mr. Bailiff, would you

12:07 7 take the exhibits, along with the verdict form, back to

12:07 8 the jury.

12:07 9 Bring the alternate back out here and instruct the

12:07 10 foreman that the jury may begin deliberations.

12:08 11 We'll now go into recess.

12:08 12 (Court in recess, pending verdict, from 12:08 p.m.

02:05 13 until 2:05 p.m.)

02:05 14 THE COURT: Let's go back on the record. We have

02:05 15 received a question from the jury that asks for the

02:05 16 definition of all charges. It says, "Request

02:05 17 definition of all charges."

02:05 18 So I will reread the statute, the four individual

02:05 19 charges, to the jury.

02:05 20 Let's make this a court exhibit.

02:05 21 My only question is, since malice is defined in

02:05 22 all of the charges, do you want me to do as I did the

02:05 23 first time and simply read the entire statute or just

02:05 24 give malice one time? I can do it either way.

02:05 25 MR. WAGNER: Your Honor, I think that would be

02:05 1 fine, however you want to do it.

02:05 2 THE COURT: Since we did it one way, it's going to
02:06 3 repeat the malice definition.

02:06 4 But, Mr. Cole, unless you have any objection to
02:06 5 that.

02:06 6 MR. COLE: There's no objection to that since it's
02:06 7 repetitive.

02:06 8 THE COURT: So I'll just do it the way we did it
02:06 9 before. But malice is redefined in each statute.

02:06 10 All right. Mr. Bailiff, if you will get our jury.

02:07 11 (WHEREUPON, the jury entered open court at
02:07 12 2:07 p.m.)

02:07 13 THE COURT: Mr. Foreman, I am in receipt of your
02:07 14 question requesting the legal definitions of the
02:07 15 charges. So I will reread the statutes to you of the
02:07 16 four charges.

02:07 17 First is the charge of attempted murder. The
02:07 18 defendant is charged with attempted murder. In order
02:07 19 to prove this crime, the State must prove the defendant
02:07 20 attempted to kill another person with malice
02:07 21 aforethought, either express or implied.

02:07 22 Malice is hatred, ill will, or hostility toward
02:07 23 another person. It is the intentional doing of a
02:07 24 wrongful act without just cause or excuse and with an
02:07 25 intent to inflict an injury or under circumstances that

02:07 1 the law will infer an evil intent.

02:07 2 Malice aforethought does not require that malice
02:08 3 exist for any particular time before the act is
02:08 4 committed, but malice must exist in the mind of the
02:08 5 defendant just before and at the time the act is
02:08 6 committed. Therefore, there must be a combination of
02:08 7 the previous evil intent and the act.

02:08 8 Malice aforethought may be express or inferred.
02:08 9 The terms "express" and "inferred" do not mean
02:08 10 different kinds of malice but merely the manner in
02:08 11 which the malice may be shown to exist, that is, either
02:08 12 by direct evidence or by inference from the facts and
02:08 13 circumstances which are proved.

02:08 14 Express malice is shown when a person speaks words
02:08 15 which express hatred or ill will for another or when
02:08 16 the person prepared beforehand to do the act which was
02:08 17 later accomplished. For example, lying in wait for a
02:08 18 person or any other acts of preparation going to show
02:08 19 that the deed was within the defendant's mind would be
02:08 20 express malice. Malice may be inferred from conduct
02:08 21 showing a total disregard for human life.

02:09 22 If facts are proved beyond a reasonable doubt
02:09 23 sufficient to raise an inference of malice to your
02:09 24 satisfaction, this inference would simply be an
02:09 25 evidentiary fact to be considered by you, the jury,

02:09 1 along with other evidence in the case. And you may
02:09 2 give it the weight you decide it should receive.

02:09 3 A specific intent to kill is an element of
02:09 4 attempted murder. Intent means intending the result
02:09 5 which actually occurs, not accidentally or
02:09 6 involuntarily. Intent may be shown by acts and conduct
02:09 7 of the defendant and other circumstances from which you
02:09 8 may naturally and reasonably infer intent.

02:09 9 Evidence of the character of the act, the
02:09 10 character of the instrument used, the manner in which
02:09 11 it was used, the purpose to be accomplished, and the
02:09 12 resulting wounds or injuries may be considered in
02:09 13 determining the intent with which the act was
02:09 14 committed.

02:09 15 Intent may also be inferred when it is
02:09 16 demonstrated that the defendant voluntarily and
02:10 17 willfully commits an act, the natural tendency of which
02:10 18 is to destroy another's life.

02:10 19 The second charge is criminal domestic violence of
02:10 20 a high and aggravated nature. It is unlawful to cause
02:10 21 physical harm or injury to a person's own household
02:10 22 member or offer or attempt to cause physical harm or
02:10 23 injury to a person's own household member with apparent
02:10 24 present ability under circumstances reasonably creating
02:10 25 fear of imminent peril.

02:10 1 Criminal domestic violence of a high and
02:10 2 aggravated nature occurs if a person commits an assault
02:10 3 and battery which involves the use of a deadly weapon
02:10 4 or results in serious bodily injury to the victim or an
02:10 5 assault with or without an accompanying battery which
02:10 6 would reasonably cause a person to fear imminent,
02:10 7 serious bodily injury or death.

02:10 8 A household member means a spouse, a former
02:11 9 spouse, persons who have a child in common, or a male
02:11 10 and female who are cohabitating or formerly have
02:11 11 cohabited.

02:11 12 To prove criminal domestic violence of a high and
02:11 13 aggravated nature, the State must prove all elements
02:11 14 beyond a reasonable doubt.

02:11 15 The third charge is arson second degree. In order
02:11 16 to prove second-degree arson, the State must first
02:11 17 prove beyond a reasonable doubt that the Defendant
02:11 18 willfully and maliciously caused an explosion, set fire
02:11 19 to, burned, caused to be burned, aided, counseled or
02:11 20 procured the burning of certain properties.

02:11 21 Willfully means that it was not done by accident
02:11 22 but was done knowingly or intentionally. It must be
02:11 23 shown that the burning was by the willful act of some
02:11 24 person and not as a result of a natural or accidental
02:11 25 cause.

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Jury Charge

02:11 1 Maliciously means with hatred, ill will, or
02:11 2 hostility toward another person, a person who
02:12 3 intentionally does a wrongful act without legal
02:12 4 justification or excuse does the act maliciously.

02:12 5 A malicious burning is an act done with a
02:12 6 condition of mind that shows a heart bent on mischief,
02:12 7 showing a design to do an intentional wrong act toward
02:12 8 another or toward the public without any legal
02:12 9 justification or excuse. This malice need not be
02:12 10 express but may be inferred.

02:12 11 Burning means actual combustion of some portion of
02:12 12 a piece of property. It is not necessary that the
02:12 13 property be consumed or destroyed. Charring of the
02:12 14 material of which the property is constructed or a
02:12 15 change in the fiber or composition of the structure is
02:12 16 required for a burning. Singeing, smoking, blistering,
02:12 17 scorching, or discoloration by heat, however, is not
02:12 18 enough to constitute burning.

02:12 19 Next, the State must prove beyond a reasonable
02:12 20 doubt that the property which was burned was a dwelling
02:12 21 house, a church or other place of worship, a public or
02:13 22 private school facility, a manufacturing plant or
02:13 23 warehouse, a building where business is conducted, an
02:13 24 institutional facility, or any structure designed for
02:13 25 human occupancy including local and municipal

02:13 1 buildings. A dwelling house is a building in which a
02:13 2 person ordinarily sleeps.

02:13 3 Finally, the State must prove beyond a reasonable
02:13 4 doubt that the explosion or burning directly or
02:13 5 indirectly resulted in serious bodily injury to a
02:13 6 person.

02:13 7 And the last charge is malicious injury to real
02:13 8 property. The defendant is charged with malicious
02:13 9 injury to real property. The State must prove beyond a
02:13 10 reasonable doubt that the defendant willfully and
02:13 11 maliciously cut, mutilated, defaced, or otherwise
02:13 12 injured a tree, house, outside fence, or fixture of
02:13 13 another person, or committed any other trespass on the
02:13 14 real property of another person.

02:13 15 Willfully means voluntarily and intentionally with
02:14 16 the specific intent to do something the law forbids.

02:14 17 Maliciously means involving malice. Malice is
02:14 18 hatred, ill will, or hostility toward another person.
02:14 19 It is the intentional doing of a wrongful act without
02:14 20 just cause or excuse and with an intent to inflict an
02:14 21 injury or under circumstances that the law will infer
02:14 22 an evil intent.

02:14 23 Malice may be express or inferred. These terms,
02:14 24 "express" and "inferred," do not mean different kinds
02:14 25 of malice, but merely the manner in which malice may be

02:14 1 shown to exist, that is, by direct evidence or by
02:14 2 inference from the facts and circumstances which are
02:14 3 proved.

02:14 4 Express malice is shown when a person speaks words
02:14 5 which express hatred or ill will for another or when
02:14 6 the person prepared beforehand to do the act which was
02:14 7 later accomplished. For example, lying in wait for a
02:14 8 person or any other acts of preparation going to show
02:14 9 the deed was within the defendant's mind would express
02:14 10 malice. Malice may be inferred from conduct showing a
02:14 11 total disregard for human life.

02:14 12 The State must also prove beyond a reasonable
02:15 13 doubt that the injury to the property or the property
02:15 14 loss is worth more than \$2,000 but less than \$10,000.

02:15 15 Those are the legal definitions of the four
02:15 16 charges that are before the court.

02:15 17 So, Mr. Foreman, I'm going to have you retire to
02:15 18 the jury room and resume your deliberations.

02:15 19 JURY FOREMAN: Thank you, Your Honor.

02:15 20 (WHEREUPON, the jury exited open court at
02:15 21 2:15 p.m.)

02:15 22 THE COURT: Any exceptions from the State?

02:15 23 MR. WAGNER: No, sir.

02:15 24 THE COURT: Any exceptions from the defense?

02:15 25 MR. COLE: No, your Honor.

02:15 1 THE COURT: All right. We will go back into
02:15 2 recess while they deliberate.

02:15 3 (Court takes up other matters, pending verdict,
02:29 4 from 2:15 p.m. until 2:29 p.m.)

02:29 5 THE COURT: Mr. Wagner, I have been informed by
02:29 6 the bailiff that we have a verdict.

02:31 7 Mr. Bailiff, would you get our jury for us,
02:31 8 please, sir.

02:31 9 (WHEREUPON, the jury entered open court at
02:31 10 2:31 p.m.)

02:31 11 THE COURT: Mr. Foreman, I understand the jury has
02:31 12 reached a verdict.

02:32 13 JURY FOREMAN: Yes, we have, Your Honor.

02:32 14 THE COURT: Would you hand that to the bailiff,
02:32 15 please, sir.

02:32 16 Madam Clerk, would you publish the verdict.

02:32 17 THE CLERK: In the matter of the State of South
02:32 18 Carolina versus Jacob Daniel Drotning, we, the jury,
02:32 19 unanimously find on indictment number 2014-GS-37-742,
02:32 20 attempted murder, that the defendant, Jacob Daniel
02:32 21 Drotning, is guilty of attempted murder.

02:32 22 We, the jury, unanimously find on indictment
02:32 23 number 2014-GS-37-743, arson second degree, that the
02:32 24 defendant, Jacob Daniel Drotning, is guilty of arson
02:32 25 second degree.

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Verdict

02:33 1 We, the jury, unanimously find on indictment
02:33 2 number 2015-GS-37-441, criminal domestic violence of a
02:33 3 high and aggravated nature, that the defendant, Jacob
02:33 4 Daniel Drotning, is guilty of criminal domestic
02:33 5 violence of a high and aggravated nature.

02:33 6 We, the jury, unanimously find on indictment
02:33 7 number 2015-GS-37-442, malicious injury to property,
02:33 8 that the defendant, Jacob Daniel Drotning, is guilty of
02:33 9 malicious injury to property.

02:33 10 Ladies and gentlemen of the jury, if this was your
02:33 11 verdict and remains your verdict, please indicate so by
02:33 12 raising your right hand.

02:33 13 Let the record reflect that all members of the
02:33 14 jury have affirmed their verdict.

02:33 15 THE COURT: All right.

02:33 16 Anything from the State before I dismiss the jury?

02:33 17 MR. WAGNER: No, sir.

02:33 18 THE COURT: Anything from the defense before I
02:33 19 dismiss the jury?

02:33 20 MR. COLE: No, your Honor.

02:34 21 THE COURT: Ladies and gentlemen of the jury,
02:34 22 thank you for your service this week. This will
02:34 23 conclude your jury duty for this week.

02:34 24 This has been a long case, and I realize this has
02:34 25 been an inconvenience to you on your daily lives, but

02:34 1 our system could not function without our citizens
02:34 2 being willing to serve as jurors. It's a very
02:34 3 important part of our system. And on behalf of the
02:34 4 South Carolina Judicial Department, I thank you for
02:34 5 your service.

02:34 6 Mr. Foreman, I need for you to conform the
02:34 7 indictments, but the rest of you are dismissed.

02:34 8 (WHEREUPON, the jury exited open court at
02:36 9 2:34 p.m.)

02:36 10 THE COURT: Mr. Cole, would you and your client
02:36 11 come forward.

02:36 12 MR. COLE: Prior to that, I do have a motion I
02:36 13 would like to make.

02:36 14 THE COURT: Okay. Be happy to hear you, Mr. Cole.

02:36 15 MR. COLE: Your Honor, I would move at this time
02:36 16 for a new trial first based on the fact that a
02:36 17 reasonable jury could not have found my client guilty
02:36 18 on these charges based mostly on the lack of evidence
02:36 19 of specific intent, intent in general on all four of
02:36 20 the charges, restate all of the same reasons for my
02:36 21 motion for directed verdict.

02:36 22 I'd also move for a new trial based on the court's
02:36 23 refusal to grant a mistrial as to the issue of the --
02:36 24 the issue on the first day of the jury pool and the
02:37 25 alleged victim having contact with a member of the jury

02:37 1 pool.

02:37 2 Also move for a new trial based on the court's
02:37 3 failure to grant a mistrial on the issue of the juror
02:37 4 that was dismissed that spoke or had some conversation
02:37 5 with his mother about this case.

02:37 6 And also, Your Honor, would move for a new trial
02:37 7 based on the court's failure to grant a mistrial based
02:37 8 on my earlier objection to the State's prejudicial
02:37 9 closing argument.

02:37 10 THE COURT: Mr. Cole, I want to take your motions
02:37 11 one at a time.

02:37 12 I believe, as the court ruled earlier, this was a
02:37 13 factual issue. It was a jury question submitted to the
02:37 14 jury, and I'm going to deny your motion for a new trial
02:37 15 on that basis.

02:37 16 And as to the motions for mistrial, those would be
02:37 17 continued to be denied, but your motions for new trial
02:37 18 are noted for the record.

02:37 19 MR. COLE: Thank you, Your Honor.

02:38 20 THE COURT: All right. Procedurally, what we'll
02:38 21 do here is we will allow, Mr. Wagner, if you have any
02:38 22 persons wishing to speak for the State. I want to give
02:38 23 Mr. Cole and his client last word on this.

02:38 24 So anyone that you would like to speak on behalf
02:38 25 of the victim or the State.

02:38 1 And then I'm going to turn it over to you,
02:38 2 Mr. Cole, for anything you would like to present.

02:38 3 MR. WAGNER: Thank you, Your Honor.

02:38 4 Your Honor, briefly I'll go into his record. It's
02:38 5 mostly out of state because he came from out of state.

02:38 6 Your Honor, he's got a conviction for a false
02:39 7 identification to specific peace officers. I'm not
02:39 8 sure if that's from -- that's from Minnesota. He was
02:39 9 convicted on that charge, 1999. Motor vehicle
02:39 10 registration attempt to escape tax back in 1994.
02:39 11 Receiving stolen property, 1997. And felony-level
02:39 12 theft, 1997. Burglary third degree, 2000. Theft or
02:39 13 use, transfer movable property with no consent, 1997.
02:40 14 Driving while impaired, 2005. Emergency telephone
02:40 15 calls to interfere with 911 call in 2012. I do believe
02:40 16 that actually related to our victim in this case, was
02:40 17 related to that. That was also in Minnesota. That's
02:40 18 his prior conviction record.

02:40 19 I know from the solicitor's office standpoint, we
02:40 20 think -- I know both Ms. Simmons and I, this is -- if
02:40 21 it's not the worst case we have ever seen, it's awful
02:40 22 close to it with what he did to Katie Cook. I have got
02:40 23 a picture down here that's a little blurry, but it's
02:40 24 one that was given in discovery. It was one of the
02:40 25 ones that we chose not to use just because of the

02:40 1 graphic nature of it. For court purposes, we found one
02:41 2 that was a little bit less graphic, but we'd like to
02:41 3 hand that up so you could at least just take a look at
02:41 4 it.

02:41 5 But he not only sentenced her, basically, with
02:41 6 what he did to eight months in the burn unit, 49
02:41 7 surgeries, umpteen dozens of pints of blood and
02:41 8 whatever else she has had to go through, but he has
02:41 9 also sentenced her, I think, to many more future
02:41 10 surgeries and troubles, as the doctor said, related to
02:41 11 that, too. So her troubles because of what he did are
02:41 12 not over and are not going to be over for some time. I
02:41 13 hope they're over much sooner. I know the doctor, they
02:41 14 were very positive. And like I say, we all know she's
02:41 15 very lucky to be alive.

02:41 16 I believe also Sheriff Crenshaw would like to say
02:41 17 something, and I think the victims may. Let me check.

02:41 18 The victim's father would like to speak.

02:42 19 THE COURT: Whichever order you would like to
02:42 20 present them.

02:42 21 MR. WAGNER: I'll ask the Sheriff to go ahead and
02:42 22 talk next.

02:42 23 SHERIFF CRENSHAW: Thank you, Your Honor. In
02:42 24 looking at this case, Judge, the sheriff's office, you
02:42 25 know, we can't begin to imagine the pain, the fear that

02:42 1 the victim in this case has gone through and is going
02:42 2 through.

02:42 3 Obviously, the doctors have helped to alleviate
02:42 4 some of that pain, but I think we're at a point now
02:42 5 that we can help alleviate her fear. This -- she
02:42 6 should never have to look over her shoulder and wonder
02:42 7 if this defendant is out in the public looking for her.

02:42 8 He showed her no mercy on the day this incident
02:42 9 occurred. If he's asking the court for mercy today, we
02:42 10 would respectfully request the court to impose the
02:43 11 maximum sentence consecutively.

02:43 12 This defendant -- in my law enforcement history,
02:43 13 one of the best indicators of future behavior is past
02:43 14 behavior. Since this defendant's arrest two years ago,
02:43 15 I have a list here of numerous disciplinary issues that
02:43 16 he's caused my staff in the jail. Most recently
02:43 17 showing, again, no mercy to a victim of another
02:43 18 prisoner that was laying defenseless on the ground,
02:43 19 kicking him in the head.

02:43 20 So on behalf of the sheriff's office, we would
02:43 21 respectfully request the maximum sentence be imposed.
02:43 22 Thank you.

02:44 23 MR. COOK: Your Honor, my name is Dan Cook, and
02:44 24 this is my wife. And it's been a long journey ever
02:44 25 since the first phone call we got over two years ago.

02:44 1 And every single organ had shut down. We almost lost
02:44 2 her twice. And they told us there were a group of
02:44 3 100 -- there were five to six nurses with over
02:44 4 100 years of experience, and they said she will not
02:44 5 walk out of this hospital. That was it.

02:44 6 So after about 36 hours, we can't explain it.
02:45 7 They couldn't explain it. But she survived. She went
02:45 8 into septic shock one other time, and she survived
02:45 9 that. They said that they gave her the hardest and the
02:45 10 baddest drugs that they can give, and she wasn't going
02:45 11 to make it. They asked us to make peace. They asked
02:45 12 me to call Scott Arnold. They said the charges will
02:45 13 probably be changed from attempted murder to murder.

02:45 14 So we went through that whole process, my wife,
02:45 15 Ruby, and I. And there's nothing -- words can't
02:45 16 explain what Katie has gone through, what our family
02:45 17 has gone through, what our friends have gone through.
02:45 18 But for the grace of God, our family and friends, we're
02:45 19 here today.

02:45 20 I would like to say, too, I was in Vietnam for a
02:45 21 year in the late '60s. As bad as things were, I
02:45 22 wouldn't have done this to my worst enemy.

02:46 23 Her future, we don't know. She has -- we pray
02:46 24 that everything goes well, and she has future
02:46 25 surgeries. But, in my opinion, if she loses one breath

02:46 1 when she's 80 years old, I think it should be changed
02:46 2 from attempted murder to murder at that time.

02:46 3 And for those reasons, that person, right there,
02:46 4 he deserves the maximum sentence available by law and
02:46 5 the justice system. Thank you. Thank you.

02:46 6 THE COURT: Thank you, sir.

02:47 7 MR. WAGNER: That's all we've got, Judge.

02:47 8 THE COURT: Thank you, Mr. Wagner.

02:47 9 All right, Mr. Cole.

02:47 10 MR. COLE: Your Honor, may it please the court.

02:47 11 I want to tell you a little bit about Jacob
02:47 12 Drotning, Your Honor. He does have family up in
02:47 13 Minnesota, a mother and father, some siblings. They're
02:47 14 not here today, but he does have some family.

02:47 15 He came down here. And, Your Honor, the truth is
02:47 16 he's an alcoholic, has an alcohol problem. He -- the
02:47 17 truth is, Your Honor, that he was very intoxicated the
02:47 18 night of this incident, and he has no memory of what
02:47 19 happened in this incident.

02:47 20 He's told me he had no ill will towards the victim
02:47 21 prior to this and has none now. He's extremely
02:47 22 regretful that these injuries happened to her, and he
02:47 23 hopes and prays that she will recover in the future.

02:47 24 He himself was burned very severely as a child
02:48 25 over a large portion of his body so he understands, to

02:48 1 some extent, how bad an injury like that could be. So
02:48 2 he is remorseful to the family, remorseful to the
02:48 3 victim, Your Honor, and I would ask the court for
02:48 4 mercy, to consider a concurrent sentence in this matter
02:48 5 because all of these charges did stem -- all of these
02:48 6 convictions stem from the same event, series of events,
02:48 7 so I would ask the court to consider a concurrent
02:48 8 sentence and consider his lack of criminal record
02:48 9 compared to a lot of people that we see.

02:48 10 So we'd just ask the court for mercy, Your Honor.

02:48 11 THE COURT: Anything you would like to say,
02:48 12 Mr. Drotning?

02:48 13 THE DEFENDANT: I am very regretful of everything
02:48 14 that's happened to Catherine. I can't imagine the hell
02:48 15 that she's been through, and I'm very happy that she
02:48 16 pulled through. That's all I have to say.

02:49 17 THE COURT: Thank you, Mr. Drotning.

02:54 18 I will say that in 25 years of practicing law and
02:54 19 now on the bench, I have never had a factual situation
02:54 20 like this. This is simply a terrible, terrible factual
02:54 21 situation. The injuries inflicted on this lady are
02:54 22 horrific.

02:54 23 And, Mr. Cole, I appreciate what you're saying,
02:54 24 that your client may have been intoxicated at the time,
02:54 25 but this incident is not typical. This incident, this

02:54 1 goes way beyond what you normally see in these type of
02:54 2 cases.

02:54 3 I can only imagine the suffering that this lady
02:54 4 has been through. Hearing the doctor describe the
02:54 5 process of treatment for someone who's been injured in
02:55 6 this manner made everyone in the courtroom, I'm sure,
02:55 7 uncomfortable. It was just an awful sounding process.

02:55 8 And, ma'am, I can just -- my heart goes out to you
02:55 9 for what you've suffered. I wish you the best.

02:55 10 I'm thankful that the medical staff was able to
02:55 11 keep this lady alive.

02:55 12 So if there's nothing further, on indictment
02:55 13 2014-GS-37-742, attempted murder, the defendant will be
02:55 14 confined to the Department of Corrections for a term of
02:55 15 30 years.

02:55 16 Then on the indictment for arson second degree,
02:55 17 2014-GS-37-743, he will be confined to the Department
02:55 18 of Corrections for a term of 20 years consecutive.

02:55 19 Then on 2015-GS-37-441, he will be confined to the
02:56 20 Department of Corrections for a term of 20 years
02:56 21 concurrent.

02:56 22 And on 2015-GS-37-442, he would be confined to the
02:56 23 Department of Corrections for a term of five years
02:56 24 concurrent.

02:56 25 Good luck to you, sir.

02:56

1

MR. COLE: Thank you, Your Honor.

02:56

2

MR. WAGNER: Thank you, Your Honor.

3

(WHEREUPON, proceedings concluded at 2:56 p.m.)

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END OF REQUESTED TRANSCRIPT OF RECORD

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Certificate of Reporter

I, Diane L. Marcengill, Official Court Reporter for the Tenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of a portion of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Circuit Court for Oconee County, South Carolina, on the 20th day of October 2016.

This transcript may contain quoted material. Such material is reproduced as read by the speaker.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

March 5, 2017



Diane L. Marcengill, BPR, CRR
Circuit Court Reporter
Certified Realtime Reporter

STATE OF SOUTH CAROLINA)
 COUNTY OF OCONEE)
 STATE OF SOUTH CAROLINA,)
 vs.)
 JACOB DANIEL DROTNING,)
 Defendant.)

IN THE COURT OF GENERAL SESSIONS
 OF THE TENTH JUDICIAL CIRCUIT

**MOTION FOR RECONSIDERATION
 OF SENTENCING**

Indictment Nos.: 2014GS3700742, 743
 2015GS3700441, 442

FILED OCONEE, SC
 BEVERLY H. WHITFIELD
 CLERK OF COURT
 2016 OCT 31 PM 12: 25

TO: DEPUTY SOLICITOR DAVID WAGNER

YOU WILL PLEASE TAKE NOTICE that the Defendant, by and through his undersigned attorney, will move this Honorable Court to reconsider its sentencing of the Defendant on the above referenced indictments and impose concurrent sentences instead of consecutive sentences.

This Motion is based on the following:

1. The Defendant was convicted of Attempted Murder, Criminal Domestic Violence of a High and Aggravated Nature, Arson Second Degree, and Malicious Injury to Real Property.
2. The Court sentenced the Defendant to 30 years on the Attempted Murder charge and 20 years on the Arson Second Degree charged to be served consecutively.
3. The Court also sentenced the Defendant to 10 years on the Criminal Domestic Violence of a High and Aggravated Nature charge and 5 years on the Malicious Injury to Real Property charge to be served concurrently with each other and with the other above referenced charges.
4. The Defendant's convictions on these charges are based on allegations that he severely injured a person by setting fire to that person and that the same fire also damaged a dwelling house.

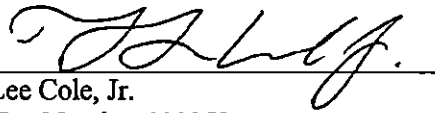
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5. Although these convictions are the result of separate and distinct offenses under the law, they are essentially based upon the same act and they were committed at times so closely connected in point of time that they may be considered as one offense pursuant to S.C. Code Ann. Sec. 17-25-50.
6. If these convictions are considered as one offense, the sentence for said convictions should be concurrent instead of consecutive.

I SO MOVE.



G. Lee Cole, Jr.
SC Bar Number 100352
COX & COLE, ATTORNEYS AT LAW
Post Office Box 315
Williamston, South Carolina 29697
Tel. (864) 847-9289
Fax (864) 847-7895
LeeCole@CoxandCole.com

ATTORNEY FOR THE DEFENDANT

October 28, 2016

Williamston, South Carolina

FILED OCONEE, SC
BEVERLY H. WHITFIELD
CLERK OF COURT

STATE OF SOUTH CAROLINA
COUNTY OF OCONEE 2016 NOV -2 PM 4: 15

IN THE COURT OF COMMON PLEAS

State of South Carolina,

Indictment Nos. 2014GS3700742, 743
2015GS3700441, 442

v.

Jacob Daniel Drotning,

ORDER DENYING DEFENDANT'S MOTION
FOR RECONSIDERATION OF SENTENCING

Defendant.

After careful consideration of the filings of Defendant and review of the record, the Court is unable to discover any material fact or principle of law that either has been overlooked or disregarded and further finds no error of law or fact not appropriately considered. "Where the indictment charges the defendant with the commission of separate and distinct crimes, each involving distinct elements not included in the other, then it is entirely proper for the court to impose sentences on each count for which the defendant is convicted." *Legare v. State*, 333 S.C. 275, 283, 509 S.E.2d 472, 476 (1998).

Accordingly, the Defendant's Motion for Reconsideration of Sentencing, pursuant to Rule 59, SCRCP, ¹ is DENIED.

AND, IT IS SO ORDERED.

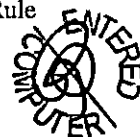


R. SCOTT SPROUSE
Judge, Tenth Judicial Circuit

Walhalla, South Carolina
November 2, 2016

¹ The Court, in its discretion, has determined this Motion on the filings, without oral argument, pursuant to Rule 59(f), SCRCP.

C. Copies: DEF. ATTY. - mailed
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STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Oconee County

Honorable R. Scott Sprouse, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JACOB DROTNING,

APPELLANT

APPELLATE CASE NO 2016-002288

FINAL BRIEF OF APPELLANT

KATHRINE H. HUDGINS
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Did the trial judge err in allowing the State to prosecute Appellant for both attempted murder and criminal domestic violence of a high and aggravated nature when prosecution for both violates double jeopardy?

STATEMENT OF THE CASE

In July of 2014, the Oconee County Grand Jury indicted Appellant Drotning for attempted murder and arson second degree, indictments #2014-GS-37-742, 743. (R. p. 420, 422). In May of 2015 the Oconee County Grand Jury indicted Appellant for criminal domestic violence of a high and aggravated nature and malicious injury to property, indictments #2015-GS-37-441,442. (R. p. 424, 426). On October 17, 2016, Appellant proceeded to jury trial before the Honorable R. Scott Sprouse. Gregory Lee Cole, Jr. represented Appellant at trial. David R. Wagner, Jr. and Lindsey Satterfield Simmons prosecuted the case. The jury returned verdicts of guilty as charged. Judge Sprouse sentenced Appellant to thirty (30) years for attempted murder, twenty (20) years consecutive for arson, ten (10) years concurrent for criminal domestic violence of a high and aggravated nature and five (5) years concurrent for malicious injury to property. On October 28, 2016, Appellant filed a motion to reconsider sentence. The motion was denied on November 2, 2016. A timely notice of intent to appeal was served on November 11, 2016. This appeal follows.

ARGUMENT

The trial judge erred in allowing the State to prosecute Appellant for both attempted murder and criminal domestic violence of a high and aggravated nature when prosecution for both violates double jeopardy.

The Oconee County Grand Jury indicted Appellant for attempted murder, criminal domestic violence of a high and aggravated nature [CDVHAN], arson second degree and malicious injury to property. Prior to trial Appellant argued that he should not be prosecuted for both attempted murder and CDVHAN. (R. p. 49-51). The trial judge ruled, “These cases are – my understanding of what the law is, the CDV high and aggravated has an element that is not present in the attempted murder charge. And, as Ms. Simmons correctly stated, the test is whether the greater of the two offenses includes all of the elements of the lesser offense. That’s been the long-standing law. And clearly, the attempted murder charge does not have the household member element that’s present in the CDV high and aggravated. So, Mr. Cole, I’m going to deny your motion on that on that [sic] basis.” (R. p. 52, line 16 – p. 53, line 1). The trial judge erred.

In Jivers v. State, 304 S.C. 556, 406 S.E.2d 154 (1991), the South Carolina Supreme Court held that where conduct supporting a criminal domestic violence conviction was the same conduct supporting a later charge of assault and battery with intent to kill, subsequent prosecution for assault and battery with intent to kill violated the double jeopardy clause. In Jivers the Court wrote:

Here, since there is no dispute that the conduct that supported the ABIK charge was the same conduct that supported the criminal domestic violence charge, petitioner's subsequent prosecution for ABIK was clearly a violation of the double

jeopardy clause. See also Grady v. Corbin¹, 495 U.S. 508, 110 S.Ct. 2084, 109 L.Ed.2d 548 (1990) (double jeopardy clause bars any subsequent prosecution in which the government, to establish an essential element of an offense charged in that prosecution, will prove conduct that constitutes an offense for which the defendant has already been prosecuted).

304 S.C. at 560, 406 S.E.2d at 157 (1991). The “same conduct” test applied in Jivers, however, is no longer the proper test. In State v. Easler, the South Carolina Supreme Court held that the same elements test announced in Blockburger v. United States, 284 U.S. 299, 52 S.Ct. 180, 76 L.Ed. 306 (1932), is the only test for determining a double jeopardy violation. Under the Blockburger test, prosecuting Appellant for both CDVHAN and attempted murder violates double jeopardy.

“The Double Jeopardy Clause of the Fifth Amendment, applicable to the States through the Fourteenth, provides that no person shall ‘be subject for the same offence to be twice put in jeopardy of life or limb.’ It has long been understood that separate statutory crimes need not be identical either in constituent elements or in actual proof in order to be the same within the meaning of the constitutional prohibition. 1 J. Bishop, *New Criminal Laws* 1051 (8th ed. 1892); Comment, *Twice in Jeopardy*, 75 *Yale L.J.* 262, 268-269 (1965).” Brown v. Ohio, 432 U.S. 161, 164, 97 S. Ct. 2221, 2225, 53 L. Ed. 2d 187 (1977). No person shall be subject for the same offense to be twice put in jeopardy of life or liberty, nor shall any person be compelled in any criminal case to be a witness against himself. S.C. Const. art. I, § 12.

In Stevenson v. State, 335 S.C. 193, 198, 516 S.E.2d 434, 436–37 (1999) (fn#3, #4 omitted), the South Carolina Supreme Court wrote:

The Double Jeopardy Clause protects against a second prosecution for the same offense after acquittal or conviction, and protects against multiple punishments

¹ Grady v. Corbin was overruled by United States v. Dixon, 509 U.S. 688, 113 S.Ct. 2849, 125 L.Ed.2d 556 (1993).

for the same offense. Brown v. Ohio, 432 U.S. 161, 97 S.Ct. 2221, 53 L.Ed.2d 187 (1977); State v. Easler, 327 S.C. 121, 489 S.E.2d 617 (1997). In Blockburger v. United States, the United States Supreme Court held where the same act or transaction constitutes a violation of two distinct statutory provisions, “the test to determine whether these are two offenses or only one is whether each provision requires proof of an additional fact which the other does not.” 284 U.S. at 304, 52 S.Ct. at 182.

Stevenson v. State, 335 S.C. 193, 198, 516 S.E.2d 434, 436–37 (1999)

The indictment for attempted murder alleges, “That Jacob Daniel Drotning did in Oconee County, South Carolina, on or about May 16, 2014, did unlawfully with malice aforethought and with the intent to kill, attempted to kill Catherine Cook, to wit: defendant did light the victim on fire using gasoline causing burns over 60% of her body. This is in violation of 16-3-29 of the South Carolina Code of Laws (1976) as amended.” (Supp. R. p. 6). The indictment for CDVHAN alleges:

That defendant, Jacob Daniel Drotning did in Oconee County, South Carolina on or about May 16, 2014, cause, offer, or attempt to cause physical harm or injury to Catherine Cook, a household member of the Defendant, with the present ability under the circumstances reasonable creating fear or imminent peril and Jacob Daniel Drotning intentionally committed an assault and battery which involved the use of a deadly weapon, or resulted in serious bodily injury, and/or an assault, with or without an accompanying battery, which would reasonably cause fear of imminent serious bodily injury or death, to wit: defendant did light the victim on fire using gasoline causing burns over 60% of her body. All in violation of 16-25-0065, Code of Laws of South Carolina (1976), as amended. Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

(Supp. R. p. 2). The indictments for attempted murder and CDVHAN appear very similar with the exception that CDVHAN alleges a household member.

S.C. Code Ann. § 16-25-65, the CDVHAN statute provides:

A) A person who violates Section 16-25-20(A) is guilty of the offense of domestic violence of a high and aggravated nature when one of the following occurs. The person:

- (1) commits the offense under circumstances manifesting extreme indifference to the value of human life and great bodily injury to the victim results;
- (2) commits the offense, with or without an accompanying battery and under circumstances manifesting extreme indifference to the value of human life, and would reasonably cause a person to fear imminent great bodily injury or death; or
- (3) violates a protection order and, in the process of violating the order, commits domestic violence in the first degree.

S.C. Code Ann. § 16-25-20 provides:

A) It is unlawful to:

- (1) cause physical harm or injury to a person's own household member; or
- (2) offer or attempt to cause physical harm or injury to a person's own household member with apparent present ability under circumstances reasonably creating fear of imminent peril.

S.C. Code Ann. § 16-3-29, the attempted murder statute, provides:

A person who, with intent to kill, attempts to kill another person with malice aforethought, either expressed or implied, commits the offense of attempted murder. A person who violates this section is guilty of a felony, and, upon conviction, must be imprisoned for not more than thirty years. A sentence imposed pursuant to this section may not be suspended nor may probation be granted.

The trial judge found there was no double jeopardy violation because attempted murder does not include the element of a household member. CDVHAN, however, includes all of the elements of attempted murder. CDVHAN requires that one commit the offense, against a household member, under circumstances manifesting extreme indifference to the value of human life and great bodily injury to the victim results or commits the offense, against a household member, with or without an accompanying battery and under circumstances manifesting extreme indifference to the value of human life, and would reasonably cause a person to fear imminent great bodily injury or death. The extreme indifference requirement of CDVHAN is the

equivalent of the malice requirement of attempted murder. Attempted murder does not require an element not found in CDVHAN.

If the State had proceeded only on the CDVHAN charge, after acquittal or conviction, the State could not have then proceeded to trial on attempted murder. “The Double Jeopardy Clause ‘protects against a second prosecution for the same offense after acquittal. It protects against a second prosecution for the same offense after conviction. And it protects against multiple punishments for the same offense.’ North Carolina v. Pearce, 395 U.S. 711, 717, 89 S.Ct. 2072, 2076, 23 L.Ed.2d 656 (1969) (footnotes omitted). Brown v. Ohio, 432 U.S. 161, 165, 97 S. Ct. 2221, 2225, 53 L. Ed. 2d 187 (1977). The fact that Appellant received concurrent sentences for CDVHAN and attempted murder is not dispositive of the double jeopardy issue. Ball v. United States, 470 U.S. 856, 105 S.Ct. 1668, 84 L.Ed.2d 740 (1985).

CONCLUSION

Based on the above argument this Court should reverse the convictions for attempted murder and CDVHAN and remand for a new trial on one of the offenses.



Kathrine H. Hudgins
Appellate Defender


ATTORNEY FOR APPELLANT

This 8th day of February, 2018.

CERTIFICATE OF COUNSEL FOR APPELLANT

The undersigned certifies that to the best of my ability this Final Brief of Appellant complies with Rule 211(b), SCACR, and the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

February 8, 2018



Kathrine H. Hudgins
Appellate Defender

S.C. Commission on Indigent Defense
Division of Appellate Defense
Post Office Box 11589
Columbia, South Carolina 29211-1589

ATTORNEY FOR APPELLANT

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Oconee County
Honorable R. Scott Sprouse, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JACOB DROTNING,

APPELLANT

CERTIFICATE OF SERVICE

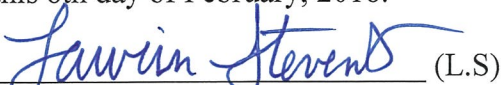
The undersigned hereby certifies that a true copy of the Final Brief of Appellant in the above referenced case has been served upon J. Benjamin Aplin, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; this 8th day of February, 2018.



Kathrine H. Hudgins
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 8th day of February, 2018.



Notary Public for South Carolina
My Commission Expires: July 5, 2027.

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM OCONEE COUNTY

Court of General Sessions

The Honorable R. Scott Sprouse, Circuit Court Judge

Appellate Case No. 2016-002288

THE STATE,

Respondent,

v.

JACOB DANIEL DROTNING,

Appellant.

FINAL BRIEF OF RESPONDENT

ALAN WILSON
Attorney General

V. HENRY GUNTER, JR.
Assistant Attorney General

Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

DAVID R. WAGNER
Solicitor, Tenth Judicial Circuit

100 South Main St.
Anderson, SC 29624
(864) 260-4046

ATTORNEYS FOR RESPONDENT

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<p style="padding-left: 40px;">Appellant’s Double Jeopardy argument is not preserved for appellate review. Error preservation concerns aside, Appellant’s prosecution for attempted murder and criminal domestic violence of a high and aggravated nature did not violate the Double Jeopardy Clause where each offense requires proof of distinct elements the other does not.</p>	
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STATEMENT OF ISSUE ON APPEAL

Appellant's Double Jeopardy argument is not preserved for appellate review. Error preservation concerns aside, Appellant's prosecution for attempted murder and criminal domestic violence of a high and aggravated nature did not violate the Double Jeopardy Clause where each offense requires proof of distinct elements the other does not.

STATEMENT OF THE CASE

Appellant was indicted during the July 2014 term of the Grand Jury for Oconee County for attempted murder (2014-GS-37-00742) and arson in the second degree (2014-GS-37-00743). Appellant was later indicted during the May 2015 term of the Grand Jury for Oconee County for criminal domestic violence of a high and aggravated nature (CDVHAN) (2015-GS-37-00441) and malicious injury to property (2015-GS-37-00442). Appellant proceeded to a jury trial before the Honorable R. Scott Sprouse from October 17-20, 2016, in Walhalla, South Carolina. At the conclusion of trial, the jury found Appellant guilty as indicted. He was sentenced by Judge Sprouse to thirty years' imprisonment for attempted murder, twenty years' imprisonment for arson in the second degree, ten years' imprisonment for CDVHAN, and five years' imprisonment for malicious injury to property, with Appellant's arson sentence to be served consecutive to his sentence for attempted murder, with all other sentences running concurrently. Appellant timely filed a notice of appeal and subsequently submitted a brief. This Brief of Respondent follows.

STATEMENT OF FACTS

Background Facts

Katie Cook and Appellant were married in April of 2009 and moved to South Carolina in May of 2013. R. p. 71. Cook testified that by May of 2014, she and Appellant's relationship had significantly deteriorated. R. p. 73. She testified, "We were like strangers in the house. He had just lost his job. I just lost my job. Neither one of us was working so we couldn't pay bills or rent. There was a lot of resentment." R. p. 73. Cook stated that, as a result of an incident with Appellant on May 16, 2014, she suffered burns to sixty percent of her body. R. p. 76. Cook recalled of the incident:

I was in the hallway, and I looked down at my arms and they were glowing. And I was terrified. And when I looked up, I saw him standing there. And he didn't look concerned, and he didn't look worried. And he didn't even look panicked. He didn't look anything. And that's when I knew that if I was going to get help. I had to get it myself.

R. p. 76. Cook identified Appellant as the individual who watched her burning on the ground. R. p. 77. Cook subsequently ran to a neighbor's home and passed out on their porch. R. p. 76.

When she arrived at the burn unit at the Joseph M. Still burn center in Augusta, Georgia, Cook had third-degree burns on sixty percent of her body. R. p. 80. Cook suffered burns so severe that her organs went into shock and began to shut down. R. p. 80. She noted her wounds "should have been fatal." R. p. 80. Cook was in a medically induced coma for four months. R. p. 80. She subsequently needed forty-seven surgeries for her wounds and incurred medical expenses in excess of ten million dollars. R. p. 81.

On the evening of May 16, 2014, Isaac Lewis of the Seneca Fire Department responded to the scene of a fire. R. pp. 88-89. At the time of Lewis's arrival, he was told to take over responsibility for treating Cook. R. p. 89. Lewis observed Cook had extensive second-degree and third-degree burns covering an area from the bottom of her head to the bottoms of her feet. R. p.

90. Lewis stated Cook and Appellant were the only people at the home when he arrived. R. p. 90. Lewis asked Cook if she remembered what happened and, after hesitating, she replied. "Yes, I do. He set me on fire. Why would he do this to me? I'm a nice person. Why would he do this to me?" R. p. 91. Lewis clarified that by "he," Cook was referring to Appellant, who was her husband. R. p. 91. While Lewis was treating Cook, Appellant kept repeating "I'm sorry. I'm sorry." R. p. 92. Appellant stated Cook's injuries were caused by the grill outside flaming up while he was trying to light it. R. p. 92.¹

Brandy Towe, a volunteer EMT, also responded to the scene of the fire on May 16, 2014. R. pp. 98-99. Towe observed severed second-degree and third-degree burns covering sixty percent of Cook's body. R. p. 99. Towe testified Cook was "absolutely" at risk of imminent death. R. p. 100. Cook told Towe, "He done this to me. He blew me up." R. pp. 100-01. Appellant told Towe the fire started because he was pouring accelerant on the grill from a gas can. R. p. 101. Towe testified that her observations at the scene did not support Appellant's assertion the grill was the cause of Cook's injuries. R. p. 101.

Chief Jan Oliver of the Seneca Fire Department was the ranking firefighter at the scene. R. p. 115. Chief Oliver testified he observed:

Inside the house, once you enter the front door, just a few feet inside the door, there were burn marks on the floor. You go back a little further into the room, there is a couch turned over. And just behind and beside it, there's burn marks on the floor there. There was a rug in the kitchen that had been burnt. You go back down the hall towards the back bedroom, there is another burn mark close to one of the hall. And then at the far end where the room was, when you enter the room, to the right is a closet. The bottom half of the door had been burnt and some of the tiles in the floor.

R. pp. 115-16. Chief Oliver also noticed a gas can sitting outside the room where the fire originated. R. p. 116. The smoke detectors located nearby were laying on the floor with the

¹ Appellant later told Bryan Evans, an individual who was housed with Appellant at the Oconee County Detention Center, that he poured gasoline on Cook and "torched the bitch." R. pp. 194-95.

batteries removed. R. p. 117, 119. Chief Oliver located a grill on a patio outside the home with a layer of dew on top of it. R. p. 117. Chief Oliver testified there was no evidence that the grill was used inside the home and in turn started the fire. R. p. 118. Similarly, Sergeant Scott Arnold of the Oconee Sheriff's Office noted the grill was cool and there was no evidence whatsoever it had been used that night. R. p. 136. Sergeant Arnold also noted:

Once I entered in later, found out their bedroom, the bedroom all the way down to the end to the left, I noticed that the closet door had a lot of burns at the bottom area, and the floor had burned, had a small area burned also. And also noticed that - - we found a broken lighter in the floor.

R. p. 138.

Appellant's Motion to Dismiss Based Upon the Merger Doctrine

Prior to trial, Appellant made a motion to dismiss the CDVHAN charge because it merged with the charge of attempted murder. R. p. 49. Defense Counsel argued that there was not really an extra element in the CDVHAN charge and it would therefore be a lesser-included offense of attempted murder. R. p. 50. Defense Counsel concluded his argument by stating, "So I think that it would be - - the merger doctrine would apply in this situation so I would ask for the charge of CDVHAN to be dismissed." R. p. 50. The trial judge found:

These cases are - - my understanding of what the law is, the CDV high and aggravated nature has an element that is not present in the attempted murder charge. And as Ms. Simmons correctly stated, the test is whether the greater of the two offenses includes all of the elements of the lesser offense. That's been long-standing law. And, clearly, the attempted murder charge does not have the household member element that's present in the CDV high and aggravated. So, [Defense Counsel], I'm going to deny your motion on that on that basis.

R. pp. 52-53.

ARGUMENT

Appellant's Double Jeopardy argument is not preserved for appellate review. Error preservation concerns aside, Appellant's prosecution for attempted murder and criminal domestic violence of a high and aggravated nature did not violate the Double Jeopardy Clause where each offense requires proof of distinct elements the other does not.

Appellant asserts the trial judge erred in allowing the State to prosecute Appellant for both attempted murder and criminal domestic violence of a high and aggravated nature because the prosecution of both charges violates the Double Jeopardy Clause. This argument lacks merit. As a threshold matter, Appellant's argument is not preserved for appellate review where he failed to make a double jeopardy argument to the trial judge. Error preservation concerns aside, CDVHAN and attempted murder both require proof of an element that the other does not. Further, it is preposterous to suggest the legislature did not intend for attempted murder and CDVHAN to be two distinct offenses.

Initially, Appellant's argument is not preserved for appellate review. Appellant's arguments below were based on the merger doctrine. Specifically, Defense Counsel contended the elements of CDVHAN "merged" with attempted murder.² This is a separate and distinct argument from the Double Jeopardy argument being made before this Court. Appellant offered no substantive argument whatsoever at trial on the Double Jeopardy Clause. The appellate court will not consider any issues or arguments that were not presented to or passed upon by the trial court, and an appellant is limited on appeal solely to the grounds raised during trial. State v.

² Interestingly, Defense Counsel's argument that the elements of CDVHAN merged into attempted murder is plainly incorrect, as both crimes are felonies, thus barring the application of the merger doctrine. See State v. Plath, 277 S.C. 126, 284 S.E.2d 221 (1981) (finding the doctrine of merger is not applicable where both crimes at issue are felonies), overruled on other grounds by State v. Short, 333 S.C. 473, 511 S.E.2d 358 (1999); State v. Woods et al., 189 S.C. 281, 303, 1 S.E.2d 190, 200 (1939) (Baker, J. dissenting) ("In the commission of felonies, although they are interlinked, and both consummated, there is no merger of the crimes, and one committing two or more felonies in the consummation of one of the felonies may be tried and convicted of either of the felonies. It is only where the criminal act constitutes both a felony and misdemeanor that there is a merger of the lesser crime into the greater, and there can be no conviction except for the felony.").

Fleming, 254 S.C. 415, 421, 175 S.E.2d 624, 627 (1970); see State v. Patterson, 324 S.C. 5, 19, 482 S.E.2d 760, 767 (1997) (“Appellant is limited to the grounds raised at trial.”); see also State v. Thomason, 355 S.C. 278, 288, 584 S.E.2d 143, 148 (Ct. App. 2003) (“[A] party cannot argue one theory at trial and a different theory on appeal.”). Appellant’s argument is thus not preserved for appellate review.

Error preservation concerns notwithstanding, Appellant’s Double Jeopardy argument lacks merit. Through their Double Jeopardy Clauses, the United States Constitution and the South Carolina Constitution offer protection to citizens from being subjected to double jeopardy for the same offense. See U.S. Const. amend. V (“No person shall be . . . subject from the same offense to be twice put in jeopardy of life or limb”); S.C. Const. art. I, C (“No person shall be subject for the same offense to be twice put in jeopardy of life or liberty”). The guarantee against double jeopardy offers three separate constitutional protections: (1) protection against a second prosecution for the same offense after acquittal; (2) protection against prosecution for the same offense after conviction; and (3) protection against multiple punishments for the same offense. State v. Cuccia, 353 S.C. 430, 434, 578 S.E.2d 45, 48 (Ct. App. 2003).

The proper manner of determining if two charges constitutes the same offense is application of the “same elements” test pursuant to Blockburger v. United States, 284 U.S. 299 (1932).

Our United States Supreme Court has declared:

If the same act or transaction constitutes a violation of two distinct statutory provisions, the test to be applied to determine whether there are two offenses or only one, is whether each provision requires proof of a fact which the other does not. In subsequent applications of the [Blockburger] test, we have often concluded that two different statutes define the same offense, typically

because one is a lesser included offense of the other.

Rutledge v. United States, 517 U.S. 292, 298 (1996) (internal quotation marks and citations omitted); see also State v. Norton, 286 S.C. 95, 332 S.E.2d 531 (1985) (noting that when a single act combines requisite elements of two distinct offenses, the defendant may be indicted and punished for each offense). Ultimately, the existence of double jeopardy depends on whether the legislature intended to create one crime or more than one. Missouri v. Hunter, 459 U.S. 359, 365-68 (1983).

S.C. Code Ann. §16-25-65, South Carolina's CDVHAN statute, provides:

(A) A person who violates Section 16-25-20(A) is guilty of the offense of domestic violence of a high and aggravated nature when one of the following occurs. The person:

- (1) commits the offense under circumstances manifesting extreme indifference to the value of human life and great bodily injury to the victim results;
- (2) commits the offense, with or without an accompanying battery and under circumstances manifesting extreme indifference to the value of human life, and would reasonably cause a person to fear imminent great bodily injury or death; or
- (3) violates a protection order and, in the process of violating the order, commits domestic violence in the first degree.

S.C. Code Ann. §16-25-65(A)

S.C. Code Ann. §16-25-20 provides:

(A) It is unlawful to:

- (1) cause physical harm or injury to a person's own household member; or
- (2) offer or attempt to cause physical harm or injury to a person's own household member with apparent present ability under circumstances reasonably creating fear of imminent peril.

S.C. Code Ann. §16-25-20

Distinguishably, S.C. Code Ann. §16-3-29, South Carolina's attempted murder statute, provides:

A person who, with intent to kill, attempts to kill another person with malice aforethought, either expressed or implied, commits the offense of attempted murder. A person who violates this section is guilty of a felony, and, upon conviction, must be imprisoned for not more than thirty years. A sentence imposed pursuant to this section may not be suspended nor may probation be granted.

S.C. Code Ann. §16-3-29

A review of the elements of both crimes emphatically proves that a prosecution for both offenses would pass constitutional muster under the Blockburger test. First, Appellant's contention that CDVHAN includes all the elements of attempted murder is simply not correct. Attempted murder requires that one, with intent to kill, attempts to kill another person with malice aforethought. CDVHAN imposes no requirement that one attempted to kill another person with malice aforethought. CDVHAN simply requires that one causes physical harm or injury to a person's own household member under circumstances manifesting extreme difference to the value of human life and great bodily injury to the victim results, and the offense is committed with or without accompanying battery and under circumstances manifesting extreme indifference to the value of human life; and would reasonably cause a person to fear imminent great bodily injury or death. For CDVHAN there is no requirement that one attempts to kill another, as imposed by attempted murder. Further, attempted murder requires the element of specific intent, while CDVHAN imposes no such requirement. See State v. King, Op. No. 27744 (S.C. Sup. Ct. filed October 25, 2017) (Shearouse Adv. Sh. No. 40 at 22-45) (holding the offense of attempted murder includes a "specific intent to kill" as an element). Second, as was correctly noted by the trial judge, attempted murder does not include the element that one attempted to cause harm or injury to a person's own household member. Each offense, therefore, requires distinct elements that the other does not. The legislature clearly intended to create two crimes in the codification of attempted murder and CDVHAN rather than one. Appellant's Double

Jeopardy argument is thus without merit. Appellant's convictions and sentences should be affirmed.

CONCLUSION

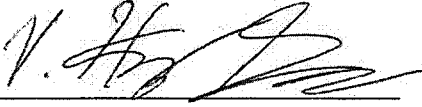
For all the foregoing reasons, it is respectfully submitted that the judgment and conviction of the lower court be affirmed.

Respectfully submitted,

ALAN WILSON
Attorney General

V. HENRY GUNTER, JR.
Assistant Attorney General

DAVID R. WAGNER
Solicitor, Tenth Judicial Circuit

BY: 
V. Henry Gunter, Jr.
Bar # 102259

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

ATTORNEYS FOR RESPONDENT

February 8, 2018

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM OCONEE COUNTY
The Honorable R. Scott Sprouse, Circuit Court Judge

Appellate Case No. 2016-002288

THE STATE,RESPONDENT

v.

JACOB DANIEL DROTNING,APPELLANT.

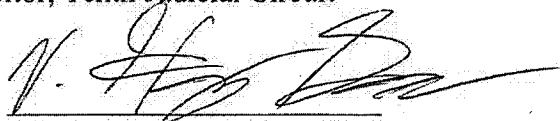
CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b),
SCACR.

ALAN WILSON
Attorney General

V. HENRY GUNTER, JR.
Assistant Attorney General

DAVID R. WAGNER
Solicitor, Tenth Judicial Circuit

BY: 
V. HENRY GUNTER, JR.
S.C. Bar No. 102259

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211-1549
(803) 734-3727

ATTORNEYS FOR RESPONDENT

February 8, 2018

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM OCONEE COUNTY

Court of General Sessions

The Honorable R. Scott Sprouse, Circuit Court Judge

Appellate Case No. 2016-002288

THE STATE,Respondent,

v.

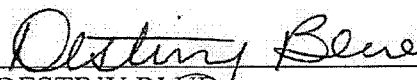
JACOB DANIEL DROTNING,Appellant.

PROOF OF SERVICE

I, Destiny Blue, certify that I have served the Final Brief of Respondent on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to: Katherine H. Hudgins, Esquire, South Carolina Commission on Indigent Defense, Division of Appellate Defense, P.O. Box 11589, Columbia, South Carolina 29211

I further certify that all parties required by Rule to be served have been served.

This 8th day of February, 2018.


DESTINY BLUE
Legal Assistant

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State, Respondent,

v.

Jacob Daniel Drotning, Appellant.

Appellate Case No. 2016-002288

Appeal From Oconee County
R. Scott Sprouse, Circuit Court Judge

Unpublished Opinion No. 2019-UP-217
Submitted March 5, 2019 – Filed June 19, 2019

AFFIRMED

Appellate Defender Kathrine Haggard Hudgins, of Columbia,
for Appellant.

Attorney General Alan McCrory Wilson, Senior Assistant Deputy
Attorney General William M. Blich, Jr. and Assistant
Attorney General Vann Henry Gunter, Jr., all of Columbia;
and Solicitor David Rhys Wagner, Jr., of Anderson, for
Respondent.

PER CURIAM: Affirmed pursuant to Rule 220(b), SCACR, and the following authorities: *State v. Wilson*, 345 S.C. 1, 5, 545 S.E.2d 827, 829 (2001) ("In criminal cases, the appellate court sits to review errors of law only."); *Herron v. Century BMW*, 395 S.C. 461, 466, 719 S.E.2d 640, 642 (2011) ("[A] party is not required to use the exact name of a legal doctrine in order to preserve the issue."); *id.* ("[T]he issue must be sufficiently clear to bring into focus the precise nature of the alleged error so that it can be reasonably understood by the [trial court]."); *id.* at 470, 719 S.E.2d at 644 ("We are mindful of the need to approach issue preservation rules with a practical eye and not in a rigid, hyper-technical manner."); *State v. Jolly*, 405 S.C. 622, 626, 749 S.E.2d 114, 116 (Ct. App. 2013) ("A defendant may be severally indicted and punished for separate offenses without being placed in double jeopardy whe[n] a single act consists of two distinct offenses." (quoting *State v. Brandt*, 393 S.C. 526, 538, 713 S.E.2d 591, 597 (2011))); *id.* at 626-27, 749 S.E.2d at 117 ("The test for determining [if] there are two offenses is whether each of the statutory provisions requires proof of a fact that the other does not."); *id.* at 627, 749 S.E.2d at 117 ("Thus, to determine [if] double jeopardy has been violated, the court must examine whether the offenses have the same elements."); S.C. Code Ann. § 16-3-29 (Supp. 2014) ("A person who, with intent to kill, attempts to kill another person with malice aforethought, either express or implied, commits the offense of attempted murder."); *State v. King*, 422 S.C. 47, 61, 810 S.E.2d 18, 25 (2017) (noting "attempted murder requires a specific intent to kill"); S.C. Code Ann. § 16-25-20(A) (Supp. 2014) ("It is unlawful to: (1) cause physical harm or injury to a person's own household member; or (2) offer or attempt to cause physical harm or injury to a person's own household member with apparent present ability under circumstances reasonably creating fear of imminent peril."); S.C. Code Ann. § 16-25-65(A) (Supp. 2014) ("A person who violates [s]ection 16-25-20(A) is guilty of the offense of criminal domestic violence of a high and aggravated nature when one of the following occurs. The person commits: (1) an assault and battery which involves the use of a deadly weapon or results in a serious bodily injury to the victim; or (2) an assault, with or without an accompanying battery, which would reasonably cause a person to fear imminent serious bodily injury or death."); *In re Matthews*, 345 S.C. 638, 651, 550 S.E.2d 311, 317 (2001) ("[The South Carolina Supreme Court] ha[s] expressly held the [d]ouble [j]eopardy [c]ause of the South Carolina Constitution does not afford broader protection than its federal counterpart.").

AFFIRMED.¹

HUFF, THOMAS, and KONDUROS, JJ., concur.

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1220 SENATE STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

July 08, 2019

The Honorable Beverly H. Whitfield
PO Box 678
Walhalla SC 29691-0678

REMITTITUR

Re: The State v. Jacob D. Drotning
Lower Court Case No. 2014GS3700742, 2014GS3700743,
2015GS3700441, 2015GS3700442
Appellate Case No. 2016-002288

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court is enclosed.

Very truly yours,

V. Claire Allen, Deputy

CLERK

Enclosure

cc: David Rhys Wagner, Jr., Esquire
Alan McCrory Wilson, Esquire
Kathrine Haggard Hudgins, Esquire
Vann Henry Gunter, Jr., Esquire
The Honorable R. Scott Sprouse

496 STATE OF SOUTH CAROLINA

COUNTY OF DOONEE

JACOB DROENG

IN THE COURT OF COMMON PLEAS

FILED DOONEE COUNTY, SC
BEVERLY H. WHITFIELD
CLERK OF COURT

CIVIL ACTION COVERSHEET

2018 (12) PM 12:18 2019 -CP-37 504

vs.

STATE OF SOUTH CAROLINA

Defendant(s)

Submitted By: JACOB DROENG

Address: 386-REDEMPTION WAY
McGORMACK CORRECTIONAL INST.
McGORMACK SC 29899

SC Bar #: _____
Telephone #: _____
Fax #: _____
Other: _____
E-mail: _____

NOTE: The coversheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing cases that are NOT E-Filed. It must be filled out completely, signed, and dated. A copy of this coversheet must be served on the defendant(s) along with the Summons and Complaint. This form is NOT required to be filed in E-Filed Cases.

DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

- JURY TRIAL demanded in complaint. NON-JURY TRIAL demanded in complaint.
- This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
- This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
- This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

- | | | | |
|---|--|--|--|
| <p>Contracts</p> <input type="checkbox"/> Constructions (100)
<input type="checkbox"/> Debt Collection (110)
<input type="checkbox"/> General (130)
<input type="checkbox"/> Breach of Contract (140)
<input type="checkbox"/> Fraud/Bad Faith (150)
<input type="checkbox"/> Failure to Deliver/Warranty (160)
<input type="checkbox"/> Employment Discrim (170)
<input type="checkbox"/> Employment (180)
<input type="checkbox"/> Other (199) _____ | <p>Torts - Professional Malpractice</p> <input type="checkbox"/> Dental Malpractice (200)
<input type="checkbox"/> Legal Malpractice (210)
<input type="checkbox"/> Medical Malpractice (220)
Previous Notice of Intent Case #
20____-NI-_____
<input type="checkbox"/> Notice/ File Med Mal (230)
<input type="checkbox"/> Other (299) _____ | <p>Torts - Personal Injury</p> <input type="checkbox"/> Conversion (310)
<input type="checkbox"/> Motor Vehicle Accident (320)
<input type="checkbox"/> Premises Liability (330)
<input type="checkbox"/> Products Liability (340)
<input type="checkbox"/> Personal Injury (350)
<input type="checkbox"/> Wrongful Death (360)
<input type="checkbox"/> Assault/Battery (370)
<input type="checkbox"/> Slander/Libel (380)
<input type="checkbox"/> Other (399) _____ | <p>Real Property</p> <input type="checkbox"/> Claim & Delivery (400)
<input type="checkbox"/> Condemnation (410)
<input type="checkbox"/> Foreclosure (420)
<input type="checkbox"/> Mechanic's Lien (430)
<input type="checkbox"/> Partition (440)
<input type="checkbox"/> Possession (450)
<input type="checkbox"/> Building Code Violation (460)
<input type="checkbox"/> Other (499) _____ |
| <p>Inmate Petitions</p> <input checked="" type="checkbox"/> PCR (500)
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<input type="checkbox"/> Habeas Corpus (530)
<input type="checkbox"/> Other (599) _____ | <p>Administrative Law/Relief</p> <input type="checkbox"/> Reinstate Drv. License (800)
<input type="checkbox"/> Judicial Review (810)
<input type="checkbox"/> Relief (820)
<input type="checkbox"/> Permanent Injunction (830)
<input type="checkbox"/> Forfeiture-Petition (840)
<input type="checkbox"/> Forfeiture-Consent Order (850)
<input type="checkbox"/> Other (899) _____ | <p>Judgments/Settlements</p> <input type="checkbox"/> Death Settlement (700)
<input type="checkbox"/> Foreign Judgment (710)
<input type="checkbox"/> Magistrate's Judgment (720)
<input type="checkbox"/> Minor Settlement (730)
<input type="checkbox"/> Transcript Judgment (740)
<input type="checkbox"/> Lis Pendens (750)
<input type="checkbox"/> Transfer of Structured Settlement Payment Rights Application (760)
<input type="checkbox"/> Confession of Judgment (770)
<input type="checkbox"/> Petition for Workers Compensation Settlement Approval (780)
<input type="checkbox"/> Incapacitated Adult Settlement (790)
<input type="checkbox"/> Other (799) _____ | <p>Appeals</p> <input type="checkbox"/> Arbitration (900)
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<input type="checkbox"/> Magistrate-Criminal (920)
<input type="checkbox"/> Municipal (930)
<input type="checkbox"/> Probate Court (940)
<input type="checkbox"/> SCDOT (950)
<input type="checkbox"/> Worker's Comp (960)
<input type="checkbox"/> Zoning Board (970)
<input type="checkbox"/> Public Service Comm. (990)
<input type="checkbox"/> Employment Security Comm (991)
<input type="checkbox"/> Other (999) _____ |
| <p>Special/Complex /Other</p> <input type="checkbox"/> Environmental (600)
<input type="checkbox"/> Automobile Arb. (610)
<input type="checkbox"/> Medical (620)
<input type="checkbox"/> Other (699) _____
<input type="checkbox"/> Sexual Predator (510)
<input type="checkbox"/> Permanent Restraining Order (680)
<input type="checkbox"/> Interpleader (690) | <input type="checkbox"/> Pharmaceuticals (630)
<input type="checkbox"/> Unfair Trade Practices (640)
<input type="checkbox"/> Out-of State Depositions (650)
<input type="checkbox"/> Motion to Quash Subpoena in an Out-of-County Action (660)
<input type="checkbox"/> Pre-Suit Discovery (670) | | |

Submitting Party Signature: _____

Date: 9-9-19

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRPC, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

FORM 5

STATE OF SOUTH CAROLINA
FILED OCONEE COUNTY, SC
BEVERLY H. WHITFIELD
CLERK OF COURT

IN THE COURT OF COMMON PLEAS

County of Oconee)
2019 SEP 12 PM 12:19)
Jacob Daniel Drothing 370157)
Full name and prison number (if any) of Applicant)

v.)

State of South Carolina)

APPLICATION FOR

POST-CONVICTION RELIEF

2019 CP37. 564

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention McCormick Correctional Inst.
386 redemption way, McCormick, SC 29899
2. Name and location of Court which imposed sentence Oconee County,
Court house, Walhalla, SC
3. Name(s) of co-defendant(s) (if any) n/a
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
(a) # 2014G53700742 attempted murder (30yrs), # 2015G53700441 COV-HAN (20yrs)
(b) # 2014G53700743 2nd degree arson (20yrs), # 2015G53700442 malicious injury to property (5yrs)

(c) _____

5. The date upon which sentence was imposed and the terms of the sentence:

(a) October 21st 2016 30 yrs attempted murder, consecutive

(b) 20 yrs 2nd degree arson, 20 years COV HAN and

(c) 5 years malicious destruction of property concurrent.

6. Check whether a finding of guilty was made:

(a) after a plea of guilty _____

(b) after a plea of not guilty _____

(c) after a plea of nolo contendere _____

7. Did you appeal from the judgment of conviction or the imposition of sentence?

yes _____

8. If you answered "yes" to (7), list:

(a) the name of each Court to which you appealed:

i. South Carolina Court of Appeals _____

ii. _____

iii. _____

(b) the result in each such Court to which you appealed:

i. denied _____

ii. _____

iii. _____

(c) the date of each such result:

i. June 19, 2019 _____

ii. _____

iii. _____

(d) if known, citations of any written opinion or orders entered pursuant to such results:

i. n/a _____

ii. _____

iii. _____

9. If you answered "no" to (7), state your reasons for not so appealing:

(a) n/a _____

(b) n/a _____

- (c) n/a
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) ineffective assistance of counsel
- (b) Prosecutorial misconduct due to jury tampering
- (c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) failure to investigate case, was unprepared for trial
- (b) prosecution's witness had direct contact with all jurors
- (c) prior to trial on multiple occasions
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? yes
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? no
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? no
- (d) any other petitions, motions or applications in this or any other Court? no
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. Direct appeal
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. _____
- ii. n/a
- iii. _____
- iv. n/a

(c) the disposition thereof:

- i. _____
- ii. _____ *n/a*
- iii. _____
- iv. _____

(d) the date of each such disposition:

- i. _____
- ii. _____ *n/a*
- iii. _____
- iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

- i. _____
- ii. _____
- iii. _____ *n/a*
- iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

_____ *n/a*

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

- i. _____
- ii. _____ *n/a*
- iii. _____

(b) the proceedings in which each ground was raised:

- i. _____ *n/a*
- ii. _____
- iii. _____