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SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Bamberg County

Honorable Walton J. McLeod, IV, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JIMMIE MCMILLAN,

APPELLANT

APPELLATE CASE NO. 2025-001894

RECORD ON APPEAL

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THE FOLLOWING EXHIBIT IS ON FILE WITH THIS COURT:

STATE’S EXHIBIT NO. 1 (CD)

STATE OF SOUTH CAROLINA	)	
	)	COURT OF GENERAL SESSIONS
COUNTY OF BAMBERG	)	2025-GS-05-00014
	)	
	)	
	)	
	)	
THE STATE,	)	
PLAINTIFF,	)	
	)	
vs.	)	TRANSCRIPT OF RECORD
	)	
JIMMIE LEE MCMILLAN, JR.,	)	
DEFENDANT.	)	
_____	)	

September 2-3, 2025
Bamberg, South Carolina

B E F O R E:

THE HONORABLE WALTON J. MCLEOD, IV, JUDGE.

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Attorney for the Defendant

PENNY M. JOHNSON
Court Reporter III

I N D E X

(PW) - Denotes Plaintiff's Witness

(DW) - Denotes Defense Witness

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

P R O C E E D I N G S

1
2 THE COURT: Good afternoon, ladies and gentlemen. My
3 name is Walton McLeod. I'm a circuit judge here in Bamberg
4 County today, actually, from the Columbia area. We're here
5 for a week of General Sessions court or criminal court. We
6 have a criminal trial that's ready to proceed forward. We
7 will start it this afternoon. I think we'll probably finish
8 it tomorrow. We've got a few things we've got to get
9 through here.

10 During the jury qualification process, if anyone needs
11 to leave the room or go to the restroom, please, just raise
12 your hand and we'll get that need met.

13 First thing we'll do to start this process is go
14 through roll call. So before we can begin roll call, if you
15 would stand up. I need to administer a quick oath before
16 you go through the roll call questions.

17 (WHEREUPON, the jury panel was sworn.)

18 THE COURT: Was anyone unable to take the oath?

19 (There was no response.)

20 (WHEREUPON, roll call was conducted.)

21 THE COURT: All right. Ladies and gentlemen, I now
22 have certain questions to ask you to determine your
23 qualifications as jurors in this court. These questions
24 determine your general eligibility to serve and State law
25 requires that I ask these questions.

1 Now, some of the questions may be personal in nature.
2 I don't want anybody to suffer any sort of embarrassment
3 today, so if there's a question I ask and you're not
4 entirely comfortable standing up and sharing it, that's
5 okay, but make a mental note of it and come speak with me
6 privately at the end of all the questions. I will remind
7 you of that at the very end. It's important that we get
8 accurate responses to all of these questions.

9 Is there any member of this jury panel that is not a
10 citizen of the United States or a resident of Bamberg
11 County? If so, please, stand.

12 (There was no response.)

13 THE COURT: Is there any member of this jury panel
14 unable to read, write, speak or understand the English
15 language or have less than a sixth grade education or its
16 equivalent? If so, please, stand.

17 (There was no response.)

18 THE COURT: Is there any member of this jury panel
19 unable because of mental or physical infirmities to render
20 efficient jury service? For example, does any member of
21 this panel have a medical condition that would prevent you
22 from serving on a jury this week?

23 As I said earlier, I expect to pick this jury in the
24 next short while and start the trial this afternoon and we
25 expect to finish it tomorrow. So we're looking at a day and

1 a half in reality. We'll start by 9:30. We take breaks. I
2 won't make you go longer than an hour and a half without
3 getting a break. Oftentimes, it's less than that. I can
4 tell you that the courtroom has air conditioning.

5 But is there anyone who has some medical condition that
6 would prevent them from serving on a jury for the next day
7 and a half? If so, please, stand.

8 Yes, sir.

9 PROSPECTIVE JUROR: I'm under therapy. George Kinsey,
10 112.

11 THE COURT: I'll just speak with you at the very end.

12 Has any member of this jury panel been convicted by
13 guilty plea or trial at a state or federal court of record
14 of a crime punishable by imprisonment for more than one year
15 and your civil rights have not been restored by pardon or
16 amnesty? Punishable by more than one year means that you
17 could have received a sentence of more than one year
18 regardless of what sentence you, actually, may have
19 received.

20 If this applies to anyone, please, stand.

21 (There was no response.)

22 THE COURT: Is there any member of this jury panel a
23 clerk or deputy clerk of court, constable, sheriff or other
24 commissioned law enforcement officer, probate judge, county
25 commissioner, magistrate or other county officer or employed

1 within the walls of any courthouse? If so, please, stand.

2 PROSPECTIVE JUROR: We're connected by a hall.

3 THE COURT: The assessor, right? You're juror number
4 what?

5 PROSPECTIVE JUROR: 23.

6 THE COURT: I'll get back to you.

7 Thank you.

8 Any member of this jury panel previously served on jury
9 duty in circuit court, not to be confused with magistrate,
10 municipal or even federal court? Anyone serve on jury duty
11 in circuit court this calendar year, 2025? If so, please,
12 stand.

13 (There was no response.)

14 THE COURT: Any member of this jury panel serve as a
15 member of the Bamberg County Grand Jury in the past several
16 years? If so, please, stand.

17 (There was no response.)

18 THE COURT: Now, we'll move on to jury exemptions.
19 State law provides for several exemptions for jury service.
20 An exemption does not mean you're not qualified to serve, it
21 simply means you have the right to say I choose not to
22 serve.

23 Those of you who are 65 years of age or older may be
24 exempted from jury service. However, if you are over the
25 age of 65, you represent a pool of tremendous talent because

1 of your life experiences. Certainly, I would encourage you
2 to stay with us if you can. But if you're over the age of
3 65 and you wish to be exempted, you may do so.

4 Does this apply to anyone?

5 (There was no response.)

6 THE COURT: Another exemption concerns prior jury
7 service. No person is required to serve as a juror more
8 often than once every three calendar years. Therefore, if
9 any member of the jury panel has served on jury duty during
10 the last two calendar years, you may be exempt from service
11 this week if you choose to be exempted.

12 Has anyone served on circuit court jury duty in this
13 courthouse in the last two and a half years?

14 Go ahead and stand up so I can get your numbers?

15 PROSPECTIVE JUROR: 133. I served last year.

16 THE COURT: You did?

17 PROSPECTIVE JUROR: Yes, sir.

18 THE COURT: Okay, I'll check that out.

19 Yes, sir, your number?

20 PROSPECTIVE JUROR: 143.

21 THE COURT: When were you a juror?

22 PROSPECTIVE JUROR: About two years ago.

23 THE COURT: 143?

24 PROSPECTIVE JUROR: Yes, sir.

25 THE COURT: Okay, we'll check that out, too.

1 Also, persons who've served as grand jurors during the
2 past five years can be exempted from jury service. Has
3 anybody served on the Grand Jury in the past five years?

4 (There was no response.)

5 THE COURT: All right. The next exemption deals with
6 those of you who have legal custody of young children.
7 Please listen carefully to this exemption. It has several
8 parts, all of which must apply for you to be exempted on
9 this basis.

10 You may be exempted from jury service if you have a
11 child under the age of seven years, you have the legal
12 custody of your child or children, you're the principle
13 care, custody and control of your child or children and
14 you're unable to make arrangements for the adequate care of
15 your child or children while performing jury duty. If all
16 of these requirements apply to you, then you may be exempted
17 on this basis.

18 Would this apply to anyone here today?

19 Your number?

20 PROSPECTIVE JUROR: Juror #73.

21 THE COURT: I'll speak with you at the end.

22 Yes, ma'am.

23 PROSPECTIVE JUROR: 170.

24 THE COURT: Yes?

25 PROSPECTIVE JUROR: 181.

1 THE COURT: All right. Thank y'all.

2 All right. You're the primary caretaker of a person 65
3 years of age or older and you're unable to provide adequate
4 care for the person while performing jury duty, you may be
5 exempt from service. If this exemption applies to you,
6 please, stand.

7 (There was no response.)

8 THE COURT: Along those same lines, if you're the
9 primary caretaker of a severely disabled person who is
10 unable to care for himself or herself and cannot be left
11 unattended and you're unable to provide to adequate care for
12 the person while performing jury service, you may be exempt
13 on that basis as well. Does this apply to anyone?

14 (There was no response.)

15 THE COURT: Now, the next exemption involves those of
16 you who may be attending school at this time or working in
17 some capacity with a school. If this exemption applies to
18 you and you wish to be exempt, we will transfer your service
19 to another term of court at a time which will not conflict
20 with your school responsibilities.

21 Is there any member of this jury panel who is a
22 full-time student, school teacher, school crossing guard,
23 school bus driver or who serves in any other school-related
24 function who's unable to serve on jury duty this week as a
25 result of that school involvement? If so, please, stand.

1 Your number, sir?

2 PROSPECTIVE JUROR: 79.

3 THE COURT: Okay, I'll speak with you at the end.

4 Is there any member of this jury panel who's employed
5 with the Department of Corrections at a penitentiary?

6 PROSPECTIVE JUROR: Orangeburg County Detention Center.

7 THE COURT: But that's not with the State Department of
8 Corrections. I don't think that applies.

9 What was your juror number, ma'am?

10 PROSPECTIVE JUROR: 56.

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

18 (There was no response.)

19 THE COURT: Now, ladies and gentlemen, that concludes
20 the statutory list of qualifications and exemptions for jury
21 service. It may be that you are qualified and no exemption
22 applies to you, but jury service this week would constitute
23 an extreme hardship on you for a particular reason. I
24 cannot permanently excuse a qualified juror from jury
25 service, but under extreme and compelling circumstances, I

1 may excuse a juror from this term of court and transfer the
2 juror to another term of court, particularly jurors who have
3 not been previously transferred.

4 Now, please, understand that general inconvenience is
5 not a sufficient reason to transfer you to another term of
6 court. To justify transfer to another term of court,
7 service this week must constitute an extreme hardship on you
8 for a particular reason.

9 Anyone have a hardship for today or tomorrow they need
10 to discuss?

11 (There was no response.)

12 THE COURT: All right. One other question I've learned
13 to add in, anyone going to Disney World this week? Anyone
14 flying out of town tomorrow and it just occurred to you that
15 you have airline tickets?

16 (There was no response.)

17 THE COURT: Juror #133, you're free to go. We've
18 confirmed your service.

19 All right. If I can speak with Jurors #112, 23, 143,
20 73, 170, 181 and 79. And if someone else had a thing they
21 didn't want to share with the whole group and they wanted to
22 speak with me in private about, now would be the time to
23 come forward.

24 (WHEREUPON, Court has discussion with jurors that came
25 forward.)

1 THE COURT: I appreciate your patience. Several people
2 who came up to me were excused, several people I told to
3 hold off a minute. So the additional people, Juror #170,
4 you're excused, 189, you're excused, 87, excused, 47,
5 excused, 79, excused and 181 and 198.

6 Thank you.

7 (Pause.)

8 THE COURT: We're ready to select the jury for our
9 case.

10 Is the State ready to proceed?

11 MR. MILLER: The State is ready to proceed, Your Honor.

12 THE COURT: You may call the case.

13 MR. MILLER: Thank you, Your Honor. May it please the
14 Court.

15 Your Honor, the State calls indictment
16 2025-GS-05-00014, State of South Carolina vs. Jimmie Lee
17 McMillian, Jr. This is true billed indictment for arson in
18 the second degree.

19 THE COURT: Ladies and gentlemen, the State has called
20 the first case. The indictment provides that on January
21 2nd, 2025, the Defendant, Mr. Jimmie Lee McMillian, Jr., did
22 willfully and maliciously set forth to or cause to be burned
23 that resulted in damage to an institution or facility
24 involving the property being the Bamberg County Detention
25 Center in violation of South Carolina law.

1 The indictment charges the Defendant, Mr. McMillian,
2 with arson in the second degree. I remind you of the fact
3 that the Defendant was arrested, charged and indicted in
4 this case is not evidence in this case and cannot be
5 considered by you of evidence in this case nor does it
6 create any presumption or inference of guilt. This document
7 is simply the formal written instrument which contains the
8 charge made against the Defendant. It is the formal
9 document by which this case is brought into this Court.

10 Now, the Defendant has pled not guilty to this
11 indictment and that plea puts the burden on the State to
12 prove the Defendant guilty. A person charged with
13 committing a criminal offense in South Carolina is never
14 required to prove himself innocent. No matter what the
15 seriousness of the charge may be, the Defendant will always
16 be presumed to be innocent of the crime for which the
17 indictment was issued unless guilt has been proven by
18 evidence satisfying you of that guilt beyond a reasonable
19 doubt.

20 Now, I've got several questions I need to go over with
21 you, ladies and gentlemen. But before I do that, I'd like
22 to allow the attorneys to stand up and introduce themselves
23 and their legal team at this time.

24 MR. MILLER: My name is David Miller. I am the Deputy
25 Solicitor for the Second Judicial Circuit, that covers

1 Aiken, Bamberg and Barnwell County. To my right is Senior
2 Assistant Solicitor Leigh Staggs, who, also, works with our
3 office and will be assisting with this case. This is Agent
4 Shawn Murray from SLED, who is the investigating officer on
5 the case. And our investigator, Calvin Coach.

6 MS. GRESHAM: Good afternoon, ladies and gentlemen. My
7 name is Megan Gresham. I'm an attorney and I represent
8 Jimmie McMillian, Jr.

9 THE COURT: Ladies and gentlemen, I have a list of
10 questions here to go over with you. There's no wrong answer
11 to these questions, but if you hear a question that applies
12 to you, just stand up, tell me your juror number and give me
13 your response to the question.

14 Is anyone on this jury panel related by blood or
15 marriage or have a close personal, social or business
16 relationship with the Defendant in this matter, Mr. Jimmie
17 Lee McMillian, Jr., who just stood up for you? If so,
18 please, stand.

19 Yes, sir.

20 PROSPECTIVE JUROR: I may be kin to him.

21 THE COURT: May be?

22 PROSPECTIVE JUROR: I think so.

23 THE COURT: You think you might be cousins with him?

24 PROSPECTIVE JUROR: My great-grandmother.

25 THE COURT: Great-grandmother, so we're talking fourth

1 cousins.

2 What's your juror number?

3 PROSPECTIVE JUROR: 135.

4 THE COURT: 135. Regardless of whether he's your
5 fourth cousin or whether he's of no kin at all, do you
6 believe you can be a fair and impartial juror in this case?

7 PROSPECTIVE JUROR: Yes, sir.

8 THE COURT: Now, the following is a list of possible
9 witnesses in this case. Please listen carefully.

10 Special Agent Shawn Murray with South Carolina Law
11 Enforcement Division, Lieutenant John Roberts of SLED,
12 Lieutenant Chris Morris of SLED, Captain Moses Cheatham of
13 the Bamberg County Detention Center, Lieutenant Loretta
14 Moore of Bamberg County Detention Center, Officer J'Nae
15 Pardue of the Bamberg County Detention Center, Officer
16 Christopher Gantt of the Bamberg County Detention Center,
17 Officer Nyaeisha Thornton of the Bamberg County Detention
18 Center, Chief Gary Williams of Bamberg Fire Department,
19 Sergeant Alex Still of Bamberg Fire Department. Also,
20 Jimmie McMillian, Jr.

21 Is anyone related by blood or marriage to any of the
22 people I just listed or have a close personal, social or
23 business relationship with any of the potential witnesses
24 I've called off?

25 Tell us your juror number.

1 PROSPECTIVE JUROR: 157.

2 THE COURT: Who do you know on this list?

3 PROSPECTIVE JUROR: Chief Gary Williams.

4 THE COURT: The fact that you know Chief Gary Williams,
5 does that affect your ability to be a fair and impartial
6 juror?

7 PROSPECTIVE JUROR: No.

8 THE COURT: Thank you.

9 Yes, sir.

10 PROSPECTIVE JUROR: I'm involved as a firefighter here
11 in the county as well as a former employee for the ambulance
12 service.

13 THE COURT: And the fact that you are involved in a lot
14 of matters in Bamberg County, would that affect your ability
15 to be a fair and impartial juror?

16 PROSPECTIVE JUROR: No.

17 THE COURT: All right. Your juror number?

18 PROSPECTIVE JUROR: 84.

19 THE COURT: Thank you.

20 Yes, ma'am.

21 PROSPECTIVE JUROR: Shawn Murray cuts my grass.

22 THE COURT: Tell me your juror number.

23 PROSPECTIVE JUROR: 83.

24 THE COURT: And who cuts your grass?

25 PROSPECTIVE JUROR: Shawn Murray.

1 THE COURT: The fact that you know Mr. Murray, would
2 that affect your ability to be a fair and impartial juror?

3 PROSPECTIVE JUROR: No, sir.

4 THE COURT: Anyone else?

5 (There was no response.)

6 THE COURT: Is anyone related to or close personal
7 friends with any attorneys from the solicitor's office or
8 the solicitor's legal team or related or personal friends
9 with anyone from the Bamberg County Detention Center,
10 Bamberg County Sheriff's Office, Bamberg Police Department
11 or the South Carolina Law Enforcement Division? If so,
12 please, stand.

13 Tell me your juror number.

14 PROSPECTIVE JUROR: 157. My mom is a manager at the
15 police department.

16 THE COURT: The fact that your mom works at the police
17 department, would that affect your ability to be fair and
18 impartial?

19 PROSPECTIVE JUROR: No.

20 THE COURT: Anyone else?

21 (There was no response.)

22 THE COURT: Are any of you or your relatives or close
23 friends employed at or formerly employed at some sort of law
24 enforcement? If so, please, stand.

25 Yes, ma'am, your juror number?

1 PROSPECTIVE JUROR: 131. My father, my best friend.

2 THE COURT: Are any of them in Bamberg?

3 PROSPECTIVE JUROR: One best friend was, she's in
4 parole now.

5 THE COURT: The fact that you have friends and family
6 who are employed in law enforcement, would that affect your
7 ability to be a fair and impartial juror?

8 PROSPECTIVE JUROR: No.

9 THE COURT: Any of you have any formal or informal
10 legal training? That would include, but not be limited to
11 law school, college or business law courses, paralegal
12 training, law enforcement training or training in the course
13 of employment? If so, please, stand.

14 Yes, ma'am, your number?

15 PROSPECTIVE JUROR: 121. Paralegal.

16 THE COURT: The fact that you've had some training as a
17 paralegal, would that affect your ability to be a fair and
18 impartial juror?

19 PROSPECTIVE JUROR: No.

20 THE COURT: Thank you, ma'am.

21 Have any of you potential jurors ever been a witness in
22 a criminal case before?

23 (There was no response.)

24 THE COURT: Are any of you a member of or donate money
25 to or receive assistance from law enforcement or victim

1 advocacy groups? These groups would include, but not be
2 limited Mothers Against Drunk Driving, South Carolina Law
3 Enforcement Officers Association, South Carolina Coalition
4 Against Domestic Violence and Sexual Assault, the State
5 Office of Victims Assistance, the South Carolina Victims
6 Assistance Network and any neighborhood watch group or any
7 other similar organization as well as the Innocent Project
8 or Defendants Rights Organizations.

9 If this applies to you in any way, please, stand.

10 (There was no response.)

11 THE COURT: Have any of you or a close friend been an
12 alleged victim of a violent crime?

13 (There was no response.)

14 THE COURT: This case involves a Defendant accused of a
15 violent crime. Do any of you feel so strongly about the
16 topic that you would be unable to render a fair and partial
17 decision based on the facts presented?

18 (There was no response.)

19 THE COURT: Do any of you believe that just because a
20 Defendant was charged with a crime that he must be guilty?

21 (There was no response.)

22 THE COURT: Do you any of you by virtue of past
23 dealings with the State of South Carolina or for any reason
24 have any bias for or against the State in a criminal case?

25 (There was no response.)

1 THE COURT: Has any member of this jury panel been
2 exposed to any kind of news reports regarding this case?

3 (There was no response.)

4 THE COURT: Does any member of this jury panel know of
5 any reason whatsoever why he or she should not serve as a
6 juror in this case with particular emphasis being placed on
7 your ability to be fair and impartial to both the State and
8 the Defendant?

9 Yes, sir, come tell me that in private.

10 (WHEREUPON, the Court had a discussion with prospective
11 juror.)

12 THE COURT: Ladies and gentlemen, we're going to put
13 together a list of potential selectees. It will take a few
14 minutes. We'll get you in the air conditioning as soon as
15 possible.

16 We'll take a very short break.

17 (WHEREUPON, a short break was taken.)

18 THE CLERK: Okay. I'm going to call your name and
19 number. When I call your name and number, if you would step
20 forward. If you are seated, then please move over to my
21 left over here. If you are excused, you may return back to
22 your seat.

23 220, James Wilson.

24 (Juror #220, a white male, came forward.)

25 THE CLERK: What says the State?

1 MR. MILLER: Please present the juror.

2 MS. GRESHAM: Please excuse this juror.

3 THE CLERK: You may have a seat.

4 #143, Laquentin Odom.

5 (Juror #143, a black male, came forward.)

6 THE CLERK: What says the State?

7 MR. MILLER: Please excuse Mr. Odom from the trial of
8 this case.

9 THE CLERK: You may return to your seat.

10 #155, Steven Proctor.

11 (Juror #155, a white male, came forward.)

12 THE CLERK: What says the State?

13 MR. MILLER: Please present the juror.

14 MS. GRESHAM: Please excuse the juror.

15 THE CLERK: You can have a seat.

16 #146, Kendrick Owens.

17 (Juror #146, a black male, came forward.)

18 THE CLERK: What says the State?

19 MR. MILLER: Please present the juror.

20 THE CLERK: The Defense?

21 MS. GRESHAM: Seat this juror.

22 THE CLERK: 42, Donna Deering.

23 (Juror #42, a white female, came forward.)

24 THE CLERK: What says the State?

25 MR. MILLER: Please present the juror.

1 THE CLERK: Defense?

2 MS. GRESHAM: Seat this juror.

3 THE CLERK: #22, Tori Bunch.

4 (Juror #22, a white female, came forward.)

5 THE CLERK: What says the State?

6 MR. MILLER: Please present the juror.

7 THE CLERK: Defense?

8 MS. GRESHAM: Please seat this juror.

9 THE CLERK: 205, Joe E. Varn.

10 (Juror #205, a black male, came forward.)

11 THE CLERK: What says the State?

12 MR. MILLER: Please present the juror.

13 MS. GRESHAM: Please seat this juror.

14 THE CLERK: 20, Porcelain Brown.

15 (Juror #20, a black female, came forward.)

16 THE CLERK: What says the State?

17 MR. MILLER: Please present the juror.

18 THE CLERK: The Defense?

19 MS. GRESHAM: Please excuse this juror.

20 THE CLERK: 83, Elizabeth Hicks.

21 (Juror #83, a black female, came forward.)

22 THE CLERK: What says the State?

23 MR. MILLER: Please present this juror.

24 MS. GRESHAM: Please excuse this juror.

25 THE CLERK: 65, Angela Glover.

1 (Juror #65, a black female, came forward.)
2 THE CLERK: What says the State?
3 MR. MILLER: Please present the juror.
4 THE CLERK: The Defense?
5 MS. GRESHAM: Please seat this juror.
6 THE CLERK: 66, Bettie Glover.
7 (Juror #66, a black female, came forward.)
8 THE CLERK: What says the State?
9 MR. MILLER: Please present the juror.
10 THE CLERK: The Defense?
11 MS. GRESHAM: Please seat this juror.
12 THE CLERK: 182, Roy Spell.
13 (Juror #182, a white male, came forward.)
14 THE CLERK: What says the State?
15 MR. MILLER: Please present the juror.
16 THE CLERK: The Defense?
17 MS. GRESHAM: Please seat this juror.
18 THE CLERK: 7, Roy Beard.
19 (Juror #7, a black male, came forward.)
20 THE CLERK: What says the State?
21 MR. MILLER: Please present the juror.
22 THE CLERK: The Defense?
23 MS. GRESHAM: Please seat this juror.
24 THE CLERK: 172, Dillon Sandifer.
25 (Juror #172, a white male, came forward.)

1 THE CLERK: What says the State?

2 MR. MILLER: Please present the juror.

3 THE CLERK: The Defense?

4 MS. GRESHAM: Please excuse this juror.

5 THE CLERK: 223, Ashley Zeigler.

6 (Juror #223, a white female, came forward.)

7 THE CLERK: What says the State?

8 MR. MILLER: Please present the juror.

9 THE CLERK: The Defense?

10 MS. GRESHAM: Please seat this juror.

11 THE CLERK: 139, Justin Moore.

12 (Juror #139, a white male, came forward.)

13 THE CLERK: What says the State?

14 MR. MILLER: Please present the juror.

15 THE CLERK: The Defense?

16 MS. GRESHAM: Please seat the juror.

17 THE CLERK: 78, William Harden.

18 (Juror #78, a white male, came forward.)

19 THE CLERK: What says the State?

20 MR. MILLER: Please present the juror.

21 THE CLERK: The Defense?

22 MS. GRESHAM: Please excuse this juror.

23 THE CLERK: 17, Audrey Brown.

24 (Juror #17, a black female, came forward.)

25 THE CLERK: What says the State?

1 MR. MILLER: Please present the juror.
2 THE CLERK: Defense?
3 MS. GRESHAM: Please seat this juror.
4 THE CLERK: 8, Sheral Beard.
5 (Juror #8, a black female, came forward.)
6 THE CLERK: What says the State?
7 MR. MILLER: Please present the juror.
8 THE CLERK: The Defense?
9 MS. GRESHAM: Please seat this juror.
10 THE COURT: All right. That's our first 12.
11 First alternate.
12 Two alternates, strikes are one and two.
13 Go ahead.
14 THE CLERK: 157, Olivia Proveaux.
15 (Juror #157, a white female, came forward.)
16 THE CLERK: What says the State?
17 MR. MILLER: Please present the juror.
18 THE CLERK: The Defense?
19 MS. GRESHAM: Please excuse this juror.
20 THE CLERK: 134, Tyron Moncrieft.
21 (Juror #134, a black male, came forward.)
22 THE CLERK: What says the State?
23 MR. MILLER: Please present the juror.
24 THE CLERK: The Defense?
25 MS. GRESHAM: Please seat the juror.

1 THE CLERK: 34, Anthony Corley.

2 (Juror #34, a black male, came forward.)

3 THE CLERK: What says the State?

4 MR. MILLER: Please present the juror.

5 THE CLERK: The Defense?

6 MS. GRESHAM: Please seat this juror.

7 THE COURT: Ms. Gresham, any issue with jury selection?

8 MS. GRESHAM: No, Your Honor.

9 THE COURT: The State?

10 MR. MILLER: None from the State, Your Honor.

11 THE COURT: Ladies and gentlemen, you have been chosen
12 as the jury for our case this week. First thing I'm going
13 to have you do, they'll escort you back to the jury room,
14 which is air conditioned, and refresh yourselves. What I
15 want you to do is sit down and just choose somebody to serve
16 as your foreman or forelady. It cannot be an alternate,
17 which were the last two people chosen. So from the first 12
18 jurors, choose somebody to be your foreman or forelady.

19 There should be a notepad in there. Write it on the
20 notepad and hand it to the bailiff and then I'll get you
21 back into the courtroom for some further instructions.

22 So you can head on back to the jury room now.

23 (WHEREUPON, the jury exits the courtroom at 3:27 p.m.)

24 THE COURT: You were not selected for the jury. I'm
25 sorry it didn't work out for you. If you need a work

1 excuse, the clerk of court will accommodate that. You can
2 come speak to her at the end of it.

3 Thank you for your patience. I know it's a little
4 warm, but we were able to get the jury selected. You are
5 otherwise excused from any jury commitments for the rest of
6 the week.

7 Thank you very much.

8 (WHEREUPON, the remaining jury panel were released at
9 3:29 p.m.)

10 THE COURT: I've talked about scheduling with some of
11 the lawyers here. I know you're out on bond, Mr. McMillian,
12 but just to be very clear, we will -- we picked the jury for
13 your trial. We have not sworn them yet. They will be sworn
14 first thing in the morning and we'll move on. But if you do
15 not show up, we will try the case in your absence. Do you
16 understand that?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Okay. I just wanted to make sure we were
19 clear.

20 Anything else for the record on State vs. McMillian?

21 MR. MILLER: Nothing from the State, Your Honor.

22 MS. GRESHAM: Nothing from the Defense, Your Honor.

23 THE COURT: All right. I'll see you tomorrow morning.

24 (WHEREUPON, trial was adjourned for the day.)
25

1 WEDNESDAY, SEPTEMBER 3, 2025

2 THE COURT: Counsel, are we ready to begin? Any issues
3 for the record beforehand?

4 MS. GRESHAM: No, sir.

5 MR. MILLER: Your Honor, Defense counsel wanted to
6 sequester the witnesses.

7 MS. GRESHAM: Oh, yes.

8 THE COURT: Okay. So whoever our witnesses are, we can
9 sequester them.

10 Let's go ahead and bring the jurors in.

11 (WHEREUPON, the jury entered the courtroom at 9:33
12 a.m.)

13 THE COURT: Good morning, ladies and gentlemen. I hope
14 everybody had a nice night. We're about to begin the trial
15 of the case of the State vs. Jimmie Lee McMillian, Jr. I've
16 got some introductory remarks to give you, but before I do
17 that, I'll ask the Clerk of Court to now swear you in.

18 (WHEREUPON, the jury was sworn.)

19 THE COURT: Ladies and gentlemen, before we begin the
20 actual trial of the case, I thought it might be helpful if I
21 explained to you, basically, how a trial proceeds. First,
22 the State will make an opening statement. An opening
23 statement is not evidence. It's simply an outline to help
24 you understand what that party expects the evidence will
25 show. The Defendant may if he wishes present an opening

1 statement, but does not have to for reasons that I will
2 explain.

3 Following opening statements, you will hear the
4 testimony and evidence in the case. This will consist of
5 testimony from the State's witnesses as well as any physical
6 exhibits which may be introduced into evidence.

7 Following the completion of the testimony, the
8 attorneys will have an opportunity to make what are called
9 closing arguments, or summation to you. This is an
10 opportunity for the attorneys to summarize the case from
11 their respective points of view. Again, these arguments are
12 not evidence.

13 Following the closing arguments by the attorneys, I
14 will instruct you on the law in South Carolina as it
15 pertains to the issues that have arisen in this case. When
16 I have completed my instructions to you, you will then be
17 permitted to begin your deliberations in order to reach a
18 verdict.

19 Now, you are the jury in this case. Let me take a
20 minute to explain something about your duty as jurors. At
21 the end of the trial, I'll give you more detailed
22 instructions and those instructions will control your
23 deliberations. It will be your duty to decide from the
24 evidence what the facts are. You and you alone are the
25 judges of the facts. You will hear the evidence, decide

1 what the facts are and apply those facts to the law which I
2 will give to you. This is how you will reach a verdict. In
3 doing so, you must following the law whether you agree with
4 it or not.

5 The evidence will consist of the testimony of
6 witnesses, documents and other things received into evidence
7 as exhibits and any facts on which the lawyers agree and
8 which I may instruct you to accept. You should not take
9 anything I may say or do during the trial as indicating what
10 I think of the evidence or what your verdict should be.

11 Now, this is a criminal case brought by the State of
12 South Carolina. The State has charged the Defendant with
13 arson. The charges against the Defendant is contained in
14 the indictment. The indictment is not evidence of anything.
15 It is simply the description of the charge made by the State
16 against the Defendant.

17 The Defendant has pled not guilty to the charge and is
18 presumed innocent unless and until proven guilty beyond a
19 reasonable doubt. Proof beyond a reasonable doubt is proof
20 that leaves that you firmly convinced of the Defendant's
21 guilt. A Defendant has the right not to testify and never
22 has to prove innocence or present any evidence. The burden
23 of proof is always upon the State of South Carolina.

24 Now, the following things are not evidence and you must
25 not consider them as evidence in deciding the facts of the

1 case. One, statements and arguments of the attorneys. Two,
2 questions and objections of the attorneys. Three, any
3 testimony that I instruct you to disregard. Four, the
4 allegations contained in the indictment. And any questions
5 or responses heard in the jury selection process.

6 Evidence may be direct or circumstantial. Direct
7 evidence is testimony by a witness about what the witness
8 personally saw, heard or did. Circumstantial evidence is
9 indirect evidence. That is it is proof of one or more facts
10 from which one can find another fact. You are to consider
11 both direct and circumstantial evidence. The law permits
12 you to give equal weight to both, but it is up to you to
13 decide how much weight to give any evidence.

14 There are rules of evidence which control what can be
15 received into evidence. When a lawyer ask a question or
16 offers an exhibit into evidence and a lawyer on the other
17 side thinks it is not permitted by the rules of evidence,
18 that lawyer may object. If I overrule the objection, the
19 question may be answered or the exhibit may be received. If
20 I sustain the objection, the question cannot be answered or
21 the exhibit cannot be admitted.

22 Whenever I sustain an objection to a question or deny a
23 motion to admit an exhibit into evidence, you must ignore
24 the question or the existence of the exhibit and you must
25 not guess what the answer would have been or what the

1 exhibit might have shown.

2 Sometimes it may be necessary for me to request that
3 you leave the courtroom while I discuss the attorneys' legal
4 questions that come up during trial. If this occurs, you
5 should not speculate about our discussions or the reason you
6 were asked to leave the room. This is simply a procedure
7 that the law requires when certain legal issues arise.

8 There, also, may be occasions when I ask the attorneys
9 to approach the bench so that I can discuss a legal issue
10 with them in private. I'll do this as often as possible so
11 that you will not be required to leave the courtroom more
12 than is absolutely necessary.

13 Again, if I ask the attorneys to step up to the bench
14 or if I ask you to leave the courtroom, please don't think
15 that anybody is trying to hide anything from you or keep
16 anything from you. This is simply a procedure used by all
17 lawyers and by all courts to determine and decide legal
18 questions.

19 Now, deciding the facts of the case, you may have to
20 decide which witnesses to believe and which witnesses not to
21 believe. You may believe everything a witness says or in
22 part or none of it. In deciding what to believe, you may
23 consider a number of factors, including the following: The
24 witness's ability to see, hear or know the things testified
25 to; the quality of the witness's memory; the witness's

1 manner while testifying; whether the witness has an interest
2 in the outcome of the case or any motive, bias or prejudice;
3 whether the witness was contradicted by anything the witness
4 said or wrote before the trial or by other evidence or how
5 reasonable was the witness's testimony considered in light
6 of other evidence which you believed.

7 Now, until I advise you to begin your deliberations,
8 you must not discuss this case with anyone, including your
9 fellow jurors, friends, family members or anyone involved in
10 the case. This would include discussions face-to-face or by
11 telephone, e-mail, text, blogs, any other media form
12 whatsoever of communication. It's important that you not do
13 any independent research about this case or the law or any
14 research about anyone in this room, frankly. Everything you
15 need to hear to fulfill your role as jurors will come from
16 the witness stand. There's no need for you to consult any
17 outside sources whatsoever while you are serving as a juror.

18 It's important to keep an open mind and not decide any
19 issue in the case until all the evidence has been presented,
20 the parties have made their closing arguments and I've
21 instructed you on the law in this case. Now, it's your
22 solemn responsibility to determine the guilt or innocence of
23 the Defendant and your verdict must be based solely on the
24 evidence as it is presented to you in this trial and on the
25 law as I instruct you at the close of the trial.

1 I don't think I see anyone with any sort of notepads
2 out there, but if you happen to have one, please don't take
3 any notes. Please keep your attention focused on the
4 witness stand and the questions and the witness's answer.

5 If anyone needs a break for some reason while we're in
6 the middle of a witness and you can't make eye contact with
7 me, just wave your hand. If you need a break, just let me
8 know. We won't go longer than an hour and a half without a
9 break. I suspect we'll get a break before then. But if
10 something comes up, just let me know.

11 At this time, please give your complete and undivided
12 attention to the attorneys in this matter as they make
13 opening statements.

14 MR. MILLER: Thank you, Your Honor. May it please the
15 Court?

16 THE COURT: Yes, sir.

17 OPENING STATEMENT BY THE STATE

18 MR. MILLER: Ms. Gresham.

19 Ladies and gentlemen of the jury, a jury trial is one
20 of the foundations of our criminal justice system. A jury
21 trial is important to protect everyone's rights. Mr.
22 McMillian has the right whenever the State brings a charge
23 against him alleging that he committed a crime, he has the
24 absolute right to say to the State, prove it. And the way
25 we prove it is by presenting to you folks the evidence that

1 has been gathered in the case.

2 It's a very important right. It puts the burden on us
3 to prove him guilty beyond a reasonable doubt. But just
4 because it is a very important right does not mean that it
5 is very complicated in this particular matter. You're going
6 to see Jimmie McMillian setting a fire inside the Bamberg
7 County jail.

8 Everybody on January 2nd, 2025 was locked away in their
9 cells. He was in there with seven other people. Each one
10 of them in an individual cell. And one of those people that
11 was there is a guy Jeffrey Augustine. Jeffrey Augustine was
12 mad. Jeffrey Augustine was acting out. Jeffrey Augustine
13 said he was going to burn down the jail.

14 You're going to hear from Officer Gantt, who Jeffrey
15 Augustine had this interaction with, this argument with.
16 And when Officer Gantt walks out of the pod and closes the
17 door, almost immediately, you're going to see Jimmie
18 McMillian pop open the door of his cell. He's the only one
19 who could get out of his cell and get into that open area in
20 the pod.

21 You're going to see after a few minutes him come out
22 and he searched for items and puts them right in front of
23 Jeffrey Augustine's cell. And you're going to see him go to
24 another cell and get something from that inmate in that
25 cell. And he goes back and he hands it to Jeffrey

1 Augustine. There's two flaps on each of these cells. One's
2 about here and the other is closer to the ground. He hands
3 that item to Augustine.

4 And inside Augustine's cell, Augustine sets one of
5 these food containers on fire and sticks it out the bottom
6 flap where McMillian has piled up all of the other trash and
7 starts the fire.

8 But that wasn't enough. You're going to see Jimmie
9 McMillian go and pull an entire trash bag full of trash that
10 was in the trash can in the pod and he brings it over and he
11 sets it on top of everything else that's already burning.
12 And Jeffrey Augustine hands that object, that lighter back
13 to him and he lights the bag on fire. Then he goes into his
14 cell and closes the door and waits for the excitement to
15 start.

16 You're going to see it. It's on video. He set the
17 Bamberg County jail on fire. He did it. Jeffrey Augustine
18 did it. The person who gave him the lighter that he gave to
19 Augustine and took back from Augustine, all of them are
20 responsible for this fire in the jail. But without Jimmie
21 McMillian, the fire doesn't happen. Because Jeffrey
22 Augustine was locked in cell B8 and the lighter was in cell
23 B1. B1 couldn't get out. B8 couldn't get out. But B6
24 could. So without Jimmie McMillian, this fire does not
25 happen inside the Bamberg County Detention Center. And

1 you're going to see it.

2 The video is ten minutes and 51 seconds long. When you
3 go back in the jury room at the end of the trial, you're
4 going to have the ability to watch that video as many times
5 as you want to watch it. It will be sent back with a
6 computer. The video is on the computer. You can watch it
7 over and over. But you'll see it in the courtroom.

8 Ladies and gentlemen, you're going to see Jimmie
9 McMillian, along with Jeffrey Augustine and the person in B1
10 and the person in the other cell all participate in this.
11 The Judge is going to explain the law to you, that the hand
12 of one is the hand of all. Whenever people get together and
13 they decide that they are going to commit a criminal act
14 together, they're all responsible for that act.

15 Today, it's Jimmie McMillian's time in court, it's his
16 day in court. And he deserves that, he deserves that day in
17 court.

18 Ladies and gentlemen, at the end of this trial, which,
19 frankly, may be before lunch, you're going to be asked to go
20 back into the jury room and you're going to be asked to
21 determine what the facts are. And I submit to you that
22 there's not going to be a whole lot of discussion necessary
23 because you're going to watch it. And we're going to be
24 asking you to find Jimmie McMillian guilty of arson.

25 Thank you.

OPENING STATEMENT BY THE DEFENSE

MS. GRESHAM: Good morning, ladies and gentlemen of the jury. When most of us think about arson, we think about buildings burning down. That is not what you are going to see here today. What you're going to see is a very small fire in front of the cell of an inmate named Jeffrey Augustine in the Bamberg County Detention Center.

The State told you that there was a video, but you're not going to see Jimmie set fire to anything. You're going to see him with a shirt over his head, collect trash and put it in front of Jeffrey Augustine's cell. And you're going to see Jeffrey Augustine set the trash on fire. Then Augustine takes the bag of trash that Jimmie brought and drops that on the fire. Just like Augustine said he would, he tried to burn down the jail, not Jimmie. That's it.

There's a lot that the State wants you to believe you will see. I submit that you will see some of those things, but not all of them.

Moments after the fire, Officer Gantt, who I expect you will hear from today, puts out the fire with a fire extinguisher. The fire department doesn't have to come. It's a fire extinguisher. The Government will attempt to convince you that there was damage to the jail as a result of this fire, but they will not be successful. And if they are not, you must return a verdict of not guilty.

1 My name is Megan Gresham and I represent Jimmie
2 McMillian. He sits today before you an innocent man,
3 cloaked in the presumption of innocence. He remains an
4 innocent man throughout this entire trial until and unless
5 the State overcomes its burden, overcomes that presumption
6 by putting witnesses on the stand and introducing evidence
7 that convinces you beyond a reasonable doubt -- you're going
8 to hear those words a lot today, I'm sorry. Beyond a
9 reasonable doubt that Jimmie is guilty of arson in the
10 second degree.

11 That's a lot of legal words. What that means is the
12 State has the burden to prove Jimmie guilty. Jimmie has an
13 absolute Constitutional right to remain silent, call no
14 witnesses or present any evidence. The Government with all
15 its resources and power and might has that burden. And they
16 must meet that burden beyond a reasonable doubt.

17 Like the Judge told you, reasonable doubt is the kind
18 of doubt that leaves you firmly convinced of Jimmie's guilt.
19 During this trial, you're not to leave your common sense and
20 life experiences at the door. You are all reasonable people
21 with experiences that will aid you in making this decision.
22 You get to decide what information is credible. You get to
23 decide what witnesses to believe. You can decide to believe
24 a witness or not, or part of what a witness says or not
25 another part. You decide the facts.

1 The State makes it sound like an open and shut case.
2 My job today is to make sure you get the entire story and to
3 show you the weaknesses in the State's case. Because if any
4 one of those weaknesses does not leave you firmly convinced
5 of Jimmie's guilt, that is a not guilty verdict. It is you
6 and your fellow jurors alone who will return the verdict
7 that decides the State has proven beyond a reasonable doubt
8 that Jimmie willfully and maliciously set fire to the
9 Bamberg County Detention Center causing damage.

10 The word verdict is from the Latin word veredictum, to
11 speak the truth. At the conclusion of this trial, I will
12 come back before you to ask you to return a verdict that
13 does just that, not guilty.

14 Thank you.

15 THE COURT: The State may call its first witness.

16 MR. MILLER: Thank you, Your Honor. The State calls
17 Officer Christopher Gantt.

18 THE CLERK: Would you please state your name, please?

19 THE WITNESS: Christopher Gantt.

20 CHRISTOPHER GANTT,

21 after being duly sworn, testified as follows:

22 THE WITNESS: Yes, ma'am.

23 THE CLERK: Thank you, sir.

24 DIRECT EXAMINATION

25 BY MR. MILLER:

Christopher Gantt - Direct by Mr. Miller

1 Q Officer Gantt, where do you work?

2 A Orangeburg County Sheriff's Office.

3 Q And how long have you worked for Orangeburg County
4 Sheriff's Office?

5 A Since June the 2nd.

6 Q What are you doing for the sheriff's office right now?

7 A Right now, I am in training to become a police officer.

8 Q And prior to going to work for the Orangeburg County
9 Sheriff's Office, did you work in law enforcement in any
10 capacity?

11 A Yes, sir, I have worked at Bamberg County Detention
12 Center.

13 Q And what did you do for the Bamberg County Detention
14 Center?

15 A I was the lead officer of care, custody and control.

16 Q So were you working at the Bamberg County Detention
17 Center on the night of January 2nd, 2025?

18 A Yes, sir.

19 Q Were you the shift supervisor that evening?

20 A Yes, sir.

21 Q Did you have any interactions with Jeffrey Augustine
22 that night?

23 A Yes, sir. He had called for us to talk to Officer
24 Jordan and then he started to get upset and I had talked to
25 him.

1 Q If you could just speak up a little bit. I've got
2 terrible hearing. So you said that Jeffrey Augustine wanted
3 something and you let one of the other officers handle it,
4 but he got upset?

5 A Yes.

6 Q So you went in to talk to him, correct?

7 A Yes, sir.

8 Q Do you recall what cell he was in?

9 A Yes, sir, he was in B8.

10 Q And what about the Defendant, Mr. McMillian, do you
11 remember what cell he was in?

12 A B6.

13 Q So let's go back to this interaction with Mr.
14 Augustine. You said he got upset because he wanted
15 something and y'all didn't have it or didn't give it to him,
16 did he make any threats at that point in time?

17 A Yes, sir, he said he was going to burn down the
18 jailhouse.

19 Q What did you do?

20 A I told the control room to pop the door open and went
21 in his room. I didn't see nothing that he could light the
22 jail house on fire with, so I closed the door back.

23 Q You said you told the control room to pop the door.
24 What does that mean?

25 A To pop the door mean to open up the cell door. So I

1 let control know to open up B8 for me. So they did open B8
2 for me and I did stand right there in the doorway looking to
3 see if I could spy anything that would in my mind be able to
4 get to make sure he didn't have nothing to set the jail on
5 fire.

6 Q So did you leave the pod after that?

7 A Yes, sir. I was leaving the pod and then he was still
8 starting, so I tried to close his flaps, but the flaps would
9 not close. So I just left out.

10 Q At some point after you left the pod, did you become
11 aware that a fire had started?

12 A Yes, sir.

13 Q And how did you become aware of that?

14 A The fire alarm was going off and control let me know
15 there was a fire in the Bravo unit.

16 Q What did you do when you heard that there was a fire in
17 the Bravo unit?

18 A I grabbed a fire extinguisher and I went inside Bravo
19 unit. And right in front of B8, I had put the fire out.

20 Q What did you do after you extinguished the fire?

21 A After I extinguished the fire, I notified control for
22 control to call all the people that needed to be called that
23 day. I told control to open up the rec yard for me and I
24 let the people out.

25 Q So you said you told them to start contacting the

1 people that needed to be contacted. Who are you talking
2 about?

3 A Fire department, police, the captain, the lieutenant.

4 Q The captain and the lieutenant of the jail?

5 A Yes, sir.

6 Q Okay. And why would y'all call the police officers in?

7 A It's protocol.

8 Q So you said you had them pop the door to the recreation
9 yard, why did you open up the door to the recreation yard?

10 A Because I had needed somewhere to put the inmates where
11 the fire could be contained. So I had to pop the door for
12 them to go outside.

13 Q So when you talk about the recreation yard, is that a
14 secure area?

15 A Yes, sir.

16 Q After you asked control to pop the door to the
17 recreation yard, what did you do next?

18 A I let out everybody. I opened up each cell and let
19 them out one by one.

20 Q And who was the last person that you removed from B
21 pod?

22 A Jeffrey Augustine out of B8.

23 Q And why did you wait to take him out last?

24 A Because he was the person that had said he was going to
25 burn down the jailhouse and the fire had started right in

1 front of his cell.

2 Q Was Jeffrey Augustine searched after he was removed
3 from his cell?

4 A I did a little pat-down and put him inside a holding
5 cell.

6 Q Did you find anything on him that could start a fire?

7 A No, sir.

8 Q At that point in time whenever you had gotten everybody
9 out onto the recreation yard and you got Augustine, patted
10 him down and you've taken him to the holding cell, did you
11 have any idea that Jimmie McMillian had been involved in
12 setting this fire?

13 A No, sir.

14 Q I want to show you what's been marked for
15 identification as State's Exhibit No. 1 and ask if you can
16 identify this item?

17 A Yes, sir. This is the CD of the Bravo unit that had B
18 unit on it that I had signed this morning.

19 Q Okay. And does State's Exhibit No. 1 fairly and
20 accurately represent the activities surrounding the fire in
21 B pod on the night of January 2nd, 2025?

22 A Yes, sir.

23 MR. MILLER: Your Honor, at this time, the State would
24 move to introduce State's Exhibit No. 1.

25 THE COURT: Any objection?

1 MS. GRESHAM: I do have an objection. It's to hearsay
2 -- not hearsay, I'm sorry, lack of foundation. We may need
3 to take this up outside of the presence of the jury.

4 THE COURT: Y'all approach.

5 (WHEREUPON, a bench conference was held in the presence
6 of the jury, but outside the hearing of the jury.)

7 MR. MILLER: Your Honor, we're going to leave this
8 exhibit marked for identification and we'll take up the rest
9 of it at the break.

10 THE COURT: Okay.

11 BY MR. MILLER:

12 Q After the night this fire occurred, after January the
13 2nd of 2025, did you ever work in the B pod again?

14 A Yes, sir.

15 Q And what kind of damage could you see whenever you went
16 back to work in the B pod as a result of this fire?

17 A There was damage to the floor and damage to the cell
18 door.

19 Q And what was done to repair that damage from the fire?

20 A Nothing. We just tried to clean it up as best I can.

21 Q And the last time you worked in B pod, if you recall,
22 could you still see where the fire had been burning?

23 A Yes, sir.

24 MR. MILLER: Please answer any questions Ms. Gresham
25 might have for you.

1 CROSS-EXAMINATION

2 BY MS. GRESHAM:

3 Q Good morning, Officer Gantt.

4 A Good morning, how are you?

5 Q I'm good. How are you?

6 A I'm fine.

7 Q When did you leave the Bamberg County Detention Center?

8 A I went to Orangeburg June the 2nd.

9 Q You were the lead officer, you said, the lead security
10 officer at the Bamberg County Detention Center?

11 A Yes, ma'am.

12 Q And you were a shift supervisor?

13 A Yes, ma'am.

14 Q You talked to Jeffrey Augustine and he got upset,
15 correct?

16 A Yes, ma'am.

17 Q He said that he was going to burn down the jail?

18 A Yes, ma'am.

19 Q Did he, also, threaten to hurt you and your kids?

20 A I believe so.

21 Q But you didn't testify to that, correct?

22 A No, ma'am.

23 Q So you would agree that he stated he will set the jail
24 on fire, he wanted to kill me and my kid, he going to beat
25 my butt, Jeffrey Augustine, right?

- 1 A Yes, ma'am.
- 2 Q You agree with all of that?
- 3 A Yes, ma'am.
- 4 Q He made that threat. You checked his cell, correct?
- 5 A Yes, ma'am.
- 6 Q And you only did that by opening the door and looking
- 7 in, right?
- 8 A Yes, ma'am.
- 9 Q You did not go inside his cell?
- 10 A No, ma'am.
- 11 Q There could have been a lighter under the mattress,
- 12 right?
- 13 A Yes, ma'am.
- 14 Q Do you have a lighter? Do you smoke?
- 15 A No, ma'am, I do not smoke.
- 16 Q Okay. And you put out the fire with a fire
- 17 extinguisher, correct?
- 18 A Yes, ma'am.
- 19 Q No fire department necessary to put the fire out?
- 20 A No, ma'am.
- 21 Q Were you investigated for your role in the fire?
- 22 A Yes, ma'am.
- 23 Q And what did that involve? Did that involve you going
- 24 on leave or suspension?
- 25 A No, ma'am.

1 Q No?

2 A No.

3 Q They just -- what did they do?

4 A I was off for the next two days.

5 Q Okay.

6 A As I recall.

7 Q Were you supposed to be off or did they tell you to be
8 off?

9 A Supposed to be off.

10 Q So you were pretty mad at Augustine after he made those
11 threats to you, right?

12 A No, ma'am.

13 Q It didn't bother you at all?

14 A No, ma'am.

15 Q So why did you write an incident report about it?

16 A That was the proper channels to go just to cover myself
17 if he did went through with the threats.

18 Q Did you believe Augustine might follow through with
19 that threat?

20 A Possibility.

21 Q Why did you believe that?

22 A Anybody can go through with whatever they say they
23 going to do.

24 Q You didn't search any other cells at the time that
25 Augustine made that threat about burning the jail down, did

1 you?

2 A No, ma'am.

3 Q You didn't do a shake down of each separate pod?

4 A No, ma'am.

5 Q And you were segregated from the camera system,
6 correct?

7 A Explain that.

8 Q Well, all the folks that came out to investigate the
9 fire, they kept you aware from the camera system, correct?

10 A Yes, ma'am.

11 Q And that's because you're the only one with access to
12 the camera system?

13 A Yes, ma'am.

14 Q And they were investigating you for the fire because of
15 what Jeffrey Augustine said?

16 A Yes, ma'am.

17 Q Now, the dorm was never closed down for repainting, was
18 it?

19 A Not to my knowledge.

20 Q They didn't replace the door?

21 A Not to my knowledge.

22 Q They didn't replace the flaps on the door?

23 A I do not know.

24 Q What did you say on direct exam, I couldn't quite hear
25 you? Did I hear you say they tried to clean it up?

1 A Yes, ma'am.

2 Q But you didn't take any pictures of it? We don't know
3 what that looked like, right?

4 A No, ma'am, I did not take pictures.

5 Q So the only pictures we have of the alleged damage to
6 the door are the ones that were taken the evening of the
7 incident, right?

8 A I believe so.

9 Q Jimmie McMillian's cell door was already open during
10 the time of the fire, correct?

11 A It was closed.

12 Q It was what?

13 A It was closed.

14 Q So Jimmie's cell door was closed and it just magically
15 opened?

16 A I believe so, yes, ma'am -- not magically opened. It's
17 a way that people can, like, jimmy the locks so when a
18 person do walk through the unit, it may appear closed. So
19 in the control room, the board will say it's closed, but
20 it's, actually, opened. Jimmy the lock just means they
21 stuff stuff in the keyhole.

22 Q And did you look at Jimmie's door ever to see if he had
23 done that?

24 A No, ma'am.

25 Q So you have no idea how his door got to be opened?

1 A No, ma'am.

2 Q He had water in his cell or didn't have water in his
3 cell, are you familiar with any of that?

4 A I do not know, ma'am.

5 Q Who was working in the control room?

6 A Jeanette Purdue.

7 Q And did she notify you about a fire?

8 A Yes, she did.

9 Q Before or after the fire alarm?

10 A I believe at the same time.

11 Q Around the same time?

12 A Yes, ma'am.

13 Q But you're not sure because you didn't write a report,
14 did you?

15 A I didn't report what, ma'am?

16 Q About what happened?

17 A I believe I did.

18 Q You did the incident report with Jeffrey Augustine,
19 right, but you didn't write an incident report about the
20 fire and everything like that, right?

21 A I'm not sure.

22 Q And you let the inmates out into the rec yard?

23 A Yes, ma'am.

24 Q Now, the rec yard, does it open to the street?

25 A No, ma'am.

1 Q Could you throw a lighter from the rec yard into some
2 area outside the detention center?

3 A I'm not a hundred percent sure. The rec yard is like a
4 cement wall just like this and it's like a gate right on top
5 of it.

6 Q So you don't know if an inmate in the rec yard could
7 have thrown a lighter over the wall?

8 A No, ma'am.

9 Q You don't know?

10 A No, ma'am.

11 Q And how long did you work at the Bamberg County
12 Detention Center?

13 A About a year.

14 Q Okay. Now, the threatening of your kids and
15 threatening to beat you up, you didn't recognize any of the
16 other people that investigated this incident, did you?

17 A I believe I did, but I do not remember.

18 Q This happened in January, right?

19 A Yes, ma'am.

20 Q And you don't remember all this stuff just a few months
21 later?

22 A No, ma'am.

23 Q Now, it's possible that Jimmie was kind of intimidated
24 by the other people in this pod, right?

25 A No, ma'am.

1 Q You don't think so?

2 A No, ma'am.

3 MS. GRESHAM: Just one moment, Your Honor.

4 (Pause.)

5 MS. GRESHAM: I do have a few more questions.

6 THE COURT: Okay.

7 BY MS. GRESHAM:

8 Q How long was Jeffrey Augustine a problem for?

9 A Probably as soon as he got to Bravo unit.

10 Q As soon as he got to Bravo unit?

11 A Yes, ma'am.

12 Q When did you first talk about him being a problem?

13 A I do not recall.

14 Q You were the only person with Augustine after the fire,
15 right?

16 A No, sir.

17 Q Who else was there?

18 A Me and Officer Jordan, he was in training.

19 Q So when you took Augustine to the holding cell; is that
20 what you said?

21 A Yes, ma'am.

22 Q There was someone else with you?

23 A Yes, sir, all times, yes, ma'am.

24 Q Did the damage affect the workings of the jail, the
25 alleged damage?

1 A Yes, ma'am.

2 Q The damage to the door, did that affect anything? Did
3 it prevent you from opening the flap or anything?

4 A No, ma'am.

5 Q You could still open the door?

6 A Yes, ma'am.

7 Q The floor was fine, you could still walk on it?

8 A I believe so, yes, ma'am.

9 MS. GRESHAM: I have no further questions. Thank you.

10 THE COURT: Redirect?

11 REDIRECT EXAMINATION

12 BY MR. MILLER:

13 Q How many people showed up from outside agencies, the
14 fire department, police officers, SLED, about how many
15 people showed up that night because of the fire?

16 A I didn't count, but probably, like, 20 people.

17 Q Initially, whenever the fire was put out and the
18 investigation began, you couldn't look at the video, could
19 you?

20 A No, sir, I couldn't.

21 Q And that was because Jeffrey Augustine said you set
22 this fire, didn't he?

23 A That's what I was told.

24 Q So once the video was seen, you were no longer under
25 investigation, were you?

1 A No, sir.

2 MR. MILLER: No further questions.

3 THE COURT: Recross?

4 RECROSS-EXAMINATION

5 BY MS. GRESHAM:

6 Q The video was recovered around January 9th, correct?

7 A I do not remember.

8 Q But you returned to work before you saw the video?

9 A I never saw the video until this morning.

10 Q You never saw the video until this morning?

11 A Yes, ma'am.

12 MS. GRESHAM: Thank you. No further questions.

13 THE COURT: The witness is excused.

14 MR. MILLER: May he be released?

15 THE COURT: Y'all approach real quick.

16 (WHEREUPON, a bench conference was held in the presence
17 of the jury, but outside the hearing of the jury.)

18 THE COURT: Next witness.

19 MS. STAGGS: The State calls Alex Still.

20 THE CLERK: Please raise your right hand and place your
21 left hand on the Bible.

22 ALEX STILL,

23 after being duly sworn, testified as follows:

24 THE WITNESS: Yes, ma'am.

25 THE CLERK: Thank you, sir.

1 DIRECT EXAMINATION

2 BY MS. STAGGS:

3 Q Officer Still, where do you work?

4 A I work at Erhardt Police Department.

5 Q How long you been there?

6 A About three weeks now.

7 Q And where were you working before you were at Erhardt

8 PD?

9 A Bamberg City Police Department.

10 Q How long were you with Bamberg City?

11 A Almost four years.

12 Q Were you working on January the 2nd of this year?

13 A Yes.

14 Q And why did you go to the jail on that day?

15 A Got called to assist the fire department at the jail
16 where there was a fire.

17 Q And when you got there, was that fire still burning?

18 A No, it was out at the time.

19 Q It had already been put out?

20 A Yes.

21 Q So what did you do when you got to the jail?

22 A I went into the pod with the officers and once we seen
23 the fire was out and the inmates were out the room, I
24 secured it with crime scene tape. At that point in time, it
25 was determined by the chief and the captain that we would

1 call in SLED. So we secured the scene until SLED arrived.

2 Q Okay. And you could see what cell the fire was set in
3 front of?

4 A Yes.

5 Q Did you search that cell?

6 A Yes.

7 Q So in addition to the crime scene tape and waiting on
8 SLED, you went ahead and searched it?

9 A Yes.

10 Q And do you know whose cell that was?

11 A Christopher Augustine.

12 Q Jeffrey Augustine?

13 A Yeah, Jeffrey Augustine.

14 Q What, if anything, did you find in the search of that
15 cell that might relate to the fire?

16 A We located four or five burnt cigarette butts that had
17 already been smoked inside the cell.

18 Q Did you find a lighter?

19 A No.

20 Q Or matches?

21 A No.

22 Q Or anything that could light something?

23 A No.

24 Q And so you searched Mr. Augustine's cell, but did you
25 have any knowledge at the time of the involvement of any

1 other inmates?

2 A No, at the time, we couldn't get into the camera
3 system.

4 Q Okay. So you didn't know anything about Mr. McMillian
5 being involved?

6 A No.

7 Q And did you search any of the other inmates?

8 A No.

9 Q You didn't search Mr. McMillian.

10 A No.

11 MS. STAGGS: I don't have any more questions for you,
12 Officer Still. Please answer any questions the Defense may
13 have.

14 THE COURT: Cross-examination.

15 CROSS-EXAMINATION

16 BY MS. GRESHAM:

17 Q Good morning, Officer Still.

18 A Good morning.

19 Q Were you present during one of the witness interviews
20 with SLED?

21 A Yes, I was there.

22 Q So you were there when Officer Gantt was interviewed?

23 A Yes.

24 Q And did Officer Gantt say anything to you about Jeffrey
25 Augustine threatening to beat his butt or kill him and his

1 kids?

2 A Yes.

3 Q Are you familiar with the SLED interview notes? Have
4 you looked at them?

5 A No.

6 Q You haven't looked at them?

7 A Not the SLED interview notes, no.

8 Q Did you put that in your incident report?

9 A I do not remember at this time.

10 Q Would you like to review it?

11 A Yes.

12 MS. GRESHAM: May I approach the witness?

13 THE COURT: Yes, ma'am.

14 BY MS. GRESHAM:

15 Q Officer Still, take a few moments to review that and
16 let me know when you're done.

17 MS. STAGGS: Your Honor, I'd just like to ask what
18 we've handed the witness?

19 MS. GRESHAM: Oh, I'm so sorry.

20 THE WITNESS: No, I didn't document it.

21 BY MS. GRESHAM:

22 Q Now, in your incident report, you listed damage, right,
23 damage to property?

24 A Yes.

25 Q And the only damage that you listed was to jail clothes

1 and goods, correct?

2 A Yes.

3 Q You didn't list any damage to the jail itself?

4 A I didn't notice any at the time.

5 Q You didn't notice any damage --

6 A No, I just collected at the evidence and then let SLED
7 crime scene process it.

8 Q But you didn't see any damage to the jail?

9 A No.

10 Q There wasn't a combustion source in Jeffrey Augustine's
11 cell, correct?

12 A No.

13 Q And you searched that cell?

14 A Yes.

15 Q You did not search the other cells, correct?

16 A No, at the time, I had no reason to.

17 Q At the time, you had no reason to?

18 A We couldn't get to the camera system, so we didn't know
19 anybody else was involved except for him.

20 Q You weren't sure about what the combustion source was?

21 A We searched the cell of Jeffrey Augustine where the
22 fire took place.

23 Q Say that again.

24 A We searched the cell where Jeffrey Augustine's cell
25 [sic] took place and we located cigarette butts. We had no

1 source for burning the cigarettes, that's why we couldn't
2 locate nothing else.

3 Q So you thought the cigarette butts that you found in
4 Jeffrey Augustine's cell was the combustion source?

5 A No, we knew something lit those cigarettes, we didn't
6 know what did.

7 Q Okay. But not knowing what lit the cigarettes or what
8 lit the fire, you didn't search anything else on that pod,
9 right?

10 A No.

11 Q You didn't search outside?

12 A No.

13 Q In the rec yard?

14 A No.

15 Q You didn't search beyond the wall of the rec yard?

16 A No.

17 Q You weren't even supposed to be there, were you? You
18 were taking an inmate to the jail?

19 A No, I --

20 Q An arrestee, I'm sorry?

21 A I was on the way to the jail with the arrestee when
22 this all came out.

23 Q So you left the arrestee with another officer and you
24 went to investigate the fire?

25 A We took the arrestee into the jail and locked him in a

1 cell.

2 MS. GRESHAM: That's all the questions I have. Thank
3 you.

4 THE COURT: Redirect?

5 MS. STAGGS: Yes, Your Honor, briefly.

6 REDIRECT EXAMINATION

7 BY MS. STAGGS:

8 Q The Bamberg Police Department wasn't in charge of this
9 investigation, right?

10 A No, we turned it over to SLED.

11 Q So SLED was in charge?

12 A Yeah.

13 Q And so are you an arson investigator?

14 A No.

15 Q You're not trained to investigate arsons in any way?

16 A No, ma'am.

17 MS. STAGGS: No further questions, Your Honor.

18 THE COURT: Recross?

19 MS. GRESHAM: Briefly.

20 RECROSS-EXAMINATION

21 BY MS. GRESHAM:

22 Q If you're not an arson investigator, why did you go
23 into the B pod to investigate?

24 A To secure the scene, ma'am.

25 MS. GRESHAM: Thank you.

1 THE COURT: All right. The witness is excused.

2 Ladies and gentlemen, let's take a mid-morning break.
3 The bailiffs will help you get to the jury room. We'll try
4 to get you back in here in about 15 minutes. Please don't
5 discuss the case or anything about the case while you're in
6 the jury room.

7 Thank you.

8 (WHEREUPON, the jury exits the courtroom at 10:27 a.m.)

9 THE COURT: Real quick, Ms. Gresham.

10 MS. GRESHAM: Yes, Your Honor. There are two theories
11 under which the video can be admitted, one being the
12 authentication saying this video fairly and accurately
13 depicts. The question that was asked was the events,
14 activities surrounding B pod that night. And this witness,
15 Officer Gantt, clearly could not testify as to whether the
16 video fairly and accurately depicts the activities
17 surrounding what happened in B pod that night because he
18 wasn't there.

19 The other theory under which --

20 THE COURT: In that theory, though, would anybody be
21 able to ever respond to any video if they weren't there when
22 the event on the video took place?

23 MS. GRESHAM: Absolutely not because the video comes in
24 during hearsay exception to business records. In this case,
25 this witness could not be the custodian of a business record

1 because he was specifically excluded from being near the
2 camera system. He did not retrieve the video -- he could
3 testify that it was kept in the ordinary course of business
4 and he could testify that the events that are envisioned on
5 the video are in the ordinary course of business, but he
6 can't be a custodian because he was excluded.

7 THE COURT: Okay.

8 MS. GRESHAM: The custodian is the IT company who
9 retrieved the video.

10 THE COURT: Mr. Miller, you want to respond to that?

11 MR. MILLER: Yes, sir. Your Honor, State vs. Gray,
12 Court of Appeals opinion from 2022 specifically talks about
13 surveillance video. And in that case, they said the
14 personal knowledge of a homeowner about the security system
15 was sufficient to authenticate surveillance video that
16 showed the shooting and prosecution for murder and
17 possession of a weapon during the commission of a violent
18 crime even though the owner was not contemporaneously
19 watching his monitor at the time of the shooting or at the
20 scene of the shooting where the owner testified that he was
21 familiar -- he owned the system and was familiar with it and
22 he knew from his knowledge of the system, of the security
23 system, that's what this is.

24 The burden of authentication is not high. There are a
25 number of cases that talk about the true point of

1 authentication is the threshold matter for the Court to
2 determine, is this what it purports to be? This is the
3 surveillance video from inside the B pod that night. And
4 this officer was aware of it because this officer was the
5 supervisor. He was working that night. He was in the B
6 pod. He had an interaction with Jeffrey Augustine, all of
7 which you can see on the video.

8 I mean, at some point, it almost becomes
9 self-authenticating only from the standpoint of the stuff
10 that he's testified about, you can see on the video. You
11 see him come back in after -- you see him come in and put
12 out the fire. You see him come back in and open up the rec
13 yard door. You see him start letting all of the other
14 inmates out.

15 So he wasn't there staring at the screen whenever
16 McMillian is running through the pod gathering all of his
17 trash up and Augustine is lighting the initial trash on
18 fire, but we know it's the surveillance and he knows what he
19 was doing at the beginning of the video and he knows what he
20 was doing when he came back into the pod. He can say it's a
21 fair and accurate -- and the way that the question -- or the
22 way the question was phrased was is it a fair and accurate
23 representation of the events surrounding the fire in the B
24 pod on January 2nd, 2025.

25 THE COURT: Is there audio on the video?

1 MR. MILLER: There is no audio.

2 THE COURT: So you can't hear what anybody is saying?

3 MR. MILLER: No, sir.

4 THE COURT: Okay. What were your second ground, Ms.
5 Gresham?

6 MS. GRESHAM: Authentication and hearsay.

7 THE COURT: Based upon the witness's testimony of him
8 being present at the detention center that night, I believe
9 he testified he reviewed the video this morning --

10 MR. MILLER: Yes, sir.

11 THE COURT: Or sometime prior to his testimony. I
12 haven't seen the video, so I'm going off what you're telling
13 me, but I think under Rule 901, it is the proponent's claim
14 that this is what it says -- the witness's testimony that
15 this is the video satisfied the authentication requirement.

16 From a business records standpoint, there's no verbal
17 statements you can hear from the video. I don't think it
18 even get to business record. I think this is just the video
19 from -- this is if it were a body cam with no sound. This
20 is just a video of the scene at that time. I don't know if
21 there's anything in the video of anything aggravating. I
22 haven't heard about it. So I will admit State's Exhibit No.
23 1 subject to Defendant's objection.

24 MS. GRESHAM: Thank you, Your Honor.

25 MR. MILLER: Your Honor, when we call our next witness,

1 I'll just move to introduce it at that point in time subject
2 to Defense's objection.

3 THE COURT: Okay. Five minutes.

4 (WHEREUPON, a short break was taken.)

5 THE COURT: Is the State ready to call their next
6 witness?

7 MR. MILLER: We are, Your Honor.

8 THE COURT: Let's bring the jury in.

9 (WHEREUPON, the jury enters the courtroom at 10:41
10 a.m.)

11 THE COURT: All right. Ladies and gentlemen, we'll
12 pick up with the next witness in the State's case in chief.

13 MR. MILLER: Thank you, Your Honor. The State calls
14 Lieutenant John Roberts of the South Carolina Law
15 Enforcement Division.

16 THE CLERK: Will you please state your name for the
17 record?

18 THE WITNESS: John Roberts.

19 JOHN ROBERTS,

20 after being duly sworn, testified as follows:

21 THE WITNESS: Yes, I do.

22 THE CLERK: Thank you, sir.

23 DIRECT EXAMINATION

24 BY MR. MILLER:

25 Q Lieutenant Roberts, who do you work for?

1 A I work for the South Carolina Law Enforcement Division,
2 more commonly called SLED.

3 Q And what do you do for SLED?

4 A I'm a lieutenant in the arson investigation unit.

5 Q And how long have you been working for SLED?

6 A So in February, it was 20 years. So slightly over 20
7 years now with SLED, almost 13 right now in the arson unit.

8 Q And how long have you been a lieutenant there?

9 A Not quite 13 years, about three, maybe four. I don't
10 know. I lose track of time the closer I get to 25.

11 Q Do you recall responding to the Bamberg County
12 Detention Center on January the 2nd of 2025 for an arson
13 investigation?

14 A Yes, I do.

15 Q And when you came into the -- when you responded, who
16 did you respond with?

17 A So I responded with Agent Chris Morris, who was the
18 case agent. He was up that night and it was close,
19 relatively close for me, so I went.

20 Q You said that you work in the arson unit. What do you
21 do as part of working in the arson unit?

22 A So as a lieutenant, I supervise three or four guys,
23 who, actually, go out and do fire investigations. In
24 addition to that -- or prior to that, I was one of the guys
25 that had to be supervised to go out and do fire

1 investigations.

2 Fire investigation is exactly what it sounds like.

3 It's going out to some place where something has been burned
4 and trying to determine where the fire started and how it
5 started.

6 Q Do you have any kind of specialized training or
7 education to do that job in the arson unit?

8 A I do. I have a Bachelor's in chemistry degree from
9 Texas A&M in Corpus Christi that I got back in the 1900's.
10 After that, I came to SLED and I worked in the lab for about
11 seven years. I was in the forensics lab, so I did gunshot
12 residue and I did fire debris analysis. So all the things
13 that I started collecting and submitting to the lab when I
14 became an arson agent, I, actually, worked on that evidence
15 and learned how to analyze it and testify in court.

16 When I got into the arson unit, I went through their
17 training program, which is about two years, more or less.
18 Over those two years, I attended a bunch of fires, worked a
19 bunch of fires, practiced writing reports. And at some
20 point in those two years, I was cleared to work my own
21 cases.

22 Through the years, I've been certified by a couple of
23 different national and international boards to be a fire
24 investigator. Like I said earlier, I've been doing this
25 about 13 years.

1 Q Have you ever been qualified as an expert witness in
2 the State of South Carolina?

3 A I have.

4 Q Approximately how many times?

5 A I am approaching eight right now.

6 MR. MILLER: Your Honor, at this point, I would offer
7 Lieutenant Roberts as an expert in fire origin and cause
8 investigation subject to any voir dire by the Defense.

9 MS. GRESHAM: None, Your Honor.

10 THE COURT: Ladies and gentlemen, a person testifying
11 cannot give opinion testimony, but testifies to what they
12 personally saw, heard, sensed by smell or something of that
13 nature. However, there is an exception when someone is
14 qualified because of knowledge, education or experience.
15 They are permitted to give their opinion in certain areas if
16 the Court qualifies them that way.

17 This witness will be qualified in the area of fire
18 origin --

19 MR. MILLER: Origin and cause investigations.

20 THE COURT: Origin and cause investigations and may
21 give opinion testimony in that area. It doesn't mean you
22 have to accept the opinion, but it's evidence for you to use
23 in any way you see fit.

24 Proceed.

25 MR. MILLER: Thank you, Your Honor.

1 BY MR. MILLER:

2 Q Lieutenant Roberts, could you explain to the jury kind
3 of the process of investigating a fire? So you go out to
4 fires, what do you do when you get there?

5 A So fires, be it houses, vehicles, commercial
6 structures, whatever they are, they get investigated pretty
7 much the same way. They may differ in ways burned and how
8 much is burned, but the way that we investigate them at SLED
9 is the same way. We use a very systematic approach. It's a
10 lot like making cookies. If you have a cookie recipe that
11 you enjoy and everybody else enjoys, you make those cookies
12 the same way every single time.

13 That's the way we do fire investigations. We pull up,
14 we walk around the building or the car or whatever it is and
15 we make sure that things are safe enough for us to go into
16 it. We take pictures of the outside. Then we go to the
17 inside and we take pictures of that. So we work from the
18 outside to the inside. And we work from the least amount of
19 damage to the most amount of damage.

20 Now, sometimes there are scenes that we go to where it
21 is a just a big, black spot of burned ash on the ground.
22 And there is not much we can do with that, but we don't
23 skimp on it. We go and we do the same investigation on
24 those things that we would do on anything else. So we work
25 from least to most.

John Roberts - Direct by Mr. Miller

1 We try to determine where the fire started. Typically,
2 where a fire starts is where the most damage is. It burned
3 there the longest, so that kind of follows logic. The least
4 amount of damage is where the fire wasn't. So it's pretty
5 easy if you have, say, a house that's burned on one side of
6 the house and not on the other, it's safe to say this side
7 of the house is not where the fire started. We work
8 backwards to where it's most damage and work that part of
9 the house to see exactly where it started.

10 To do that, we use what's called manual labor. We take
11 three or four agents like me and we put on masks to keep us
12 from dying of cancer and we put on glasses to keep our
13 eyeballs from getting damaged by anything that's in there
14 and we use shovels so we dig through the floor of whatever
15 structure we're looking at. We have to see the floor
16 because we need to see if anything has been poured or if
17 anything is left on the ground that we may be able to take
18 into evidence.

19 Once we get done with that, we take a whole other round
20 of pictures. Hopefully, we can determine where the fire
21 started and we can determine the cause.

22 Q So when you came to conduct this investigation or to
23 supervise Agent Morris with conducting the investigation,
24 you were present with him throughout the time at the Bamberg
25 County Detention Center?

1 A Yes, sir, I was.

2 Q And I want to show you what's been marked for
3 identification as State's Exhibit No. 2 and ask you if you
4 recognize that?

5 A Yes, sir, I do.

6 Q And what is that document?

7 A This is a diagram that David Morris created of the B
8 unit of the Bamberg County Detention Center.

9 Q And I think it says it's not to scale, but aside from
10 it not being to scale, is it a fair and accurate
11 representation of the B unit?

12 A Yes, sir, it is.

13 Q And there's a, I don't know, I guess you'd call it an
14 icon on there right in front of cell B8, what is that?

15 A It's a fire icon, like a little campfire.

16 Q And why would that be put onto a diagram of that type?

17 A So one of the things that we do when we pick up a fire
18 investigation is we do a sketch. In this case, Bamberg
19 County Detention Center had a very nice diagram already
20 posted on one of the walls. You'll find them in hotels and
21 big commercial structures. It's the emergency exit plan.
22 That tells us all we need to know about any structure that
23 we go into that has one of those. So we borrowed that and
24 made a copy of it.

25 Now, the one that was at the jail had everything on it.

1 We didn't really need everything, we just needed B unit. So
2 we found B unit on this diagram and we made a copy of it on
3 this. And what this is is so that if we have to come to
4 court or if I have to show somebody exactly what I was
5 doing, I can point to this thing and show them.

6 Because like most people, I'm a visual learner. I have
7 to see it. It's not enough for somebody to tell me the
8 story, I need to see what's happening. That's why TV works
9 as good as it does. So I have to see it. This is one of
10 those things we use to show things to people so that they
11 understand what I was doing when I was doing it.

12 MR. MILLER: Your Honor, at this time, the State would
13 move to introduce State's Exhibit No. 2.

14 MS. GRESHAM: No objection, Judge.

15 THE COURT: State's Exhibit No. 2 is admitted without
16 objection.

17 (WHEREUPON, State's Exhibit No. 2 was admitted into
18 evidence.)

19 BY MR. MILLER:

20 Q Lieutenant Roberts, I'm going to show you what has been
21 previously marked for identification as State's Exhibit Nos.
22 3, 4 and 5 and ask if you can identify those items?

23 A I can.

24 Q And what are those?

25 A So State's Exhibit No. 3 is the door to cell B8. It's

1 a full shot of the whole door showing where the pass-through
2 hatches are and the handle. Walls on either side and about
3 two feet in front of the door.

4 State's Exhibit No. 4 is a close-up of the bottom
5 pass-through hatch of the same cell door showing in greater
6 detail the pass-through hatch and the floor in front of it.

7 State's Exhibit No. 5 is the top pass-through hatch on
8 the same door.

9 MR. MILLER: Your Honor, at this time, the State would
10 move to introduce State's Exhibit Nos. 3, 4 and 5.

11 MS. GRESHAM: No objection, Your Honor.

12 THE COURT: State's Exhibit Nos. 3, 4 and 5 admitted
13 into evidence.

14 (WHEREUPON, State's Exhibit Nos. 3, 4 and 5 were
15 admitted into evidence.)

16 BY MR. MILLER:

17 Q Now, Lieutenant Roberts, as you look at these
18 photographs, these were photographs taken the night of the
19 fire?

20 A That's correct.

21 Q And what damage did you note in those photographs?

22 A So when we came in, we took pictures of everything
23 around before we moved anything. We shut the door so that
24 we could see if there were any fire patterns on the door or
25 on the wall. Because what happens -- forgive me, I have to

1 talk with my hands.

2 What happens when a fire starts, a fire starts low or
3 it starts on whatever it starts and it burns up and it burns
4 out. So if you start a fire in front of the door, you
5 should see where the fire moved up the door and then maybe
6 moved out to the sides of it. Unless the door was open and
7 then it just goes right in that doorway.

8 So in this case, what we had was a closed, at this
9 point, metal door with two little pass-through hatches,
10 hatches have little clasp locks on them so that they can be
11 locked so they can't be opened from the inside. One was
12 open when we got there. The bottom one was open when we got
13 there. I can't remember whether the top one was open or
14 not. I would have to go back and look at the other photos,
15 but in this photo, it's closed. You can pass food or
16 whatever through those hatches. What we noted was there was
17 a lot of fire extinguisher material left on the bottom
18 hatch.

19 In addition, if you look really closely, you can see
20 where somebody used their hands to shut the hatch because
21 there's two sets of fingerprints on either side of the door.
22 So on the bottom hatch, we've got some fire extinguisher and
23 some smoke left over on that. And then on the top hatch, we
24 just have smoke. There's smoke damage where the fire was
25 below it. It flowed upwards and smoke condensed and landed

1 on that cooler than air door and left smoke.

2 Q In State's Exhibit Nos. 4 and 5, does that show the
3 materials and the damage you're talking about?

4 A It does. It's just closer-up views of the material.

5 Q Was there any damage noted to the floor where the fire
6 was burning?

7 A There is some fire debris on the floor where things
8 were left over from burning. So if you've ever burned wood,
9 not all the wood burns up all the time. Same thing with
10 anything else that you burn, usually, there's something left
11 that you can look at. In this case, it's fire debris on the
12 ground. It's, also, fire extinguisher chemical left on the
13 ground.

14 Q This might seem like a silly question, but you
15 responded that night. Is the Bamberg County Detention
16 Center in Bamberg County?

17 A It is.

18 Q At some point during the course of the investigation,
19 did you obtain or were you able to watch the video of what
20 happened inside the building?

21 A I got to view it after, like, several days after.

22 Q And the video, you watched what was on that video. How
23 did you and Agent Morris characterize this fire as -- well,
24 first of all, I guess I need to ask you. Explain to the
25 jury the different characterizations of fire.

1 A So when we go and work a fire, there's four
2 classifications that we can give a fire. There's
3 undetermined, not enough left to look at, not enough to
4 figure out where it started, not enough to figure what
5 started it. Undetermined.

6 We have accidental, somebody left something cooking on
7 the stove. They fell asleep, they didn't mean for it go,
8 but it did. Electrical faults are sometimes accidental.

9 Natural, lightening strikes, earthquakes, things that
10 are not man set, manmade. And then there's incendiary.
11 Incendiary means that it was intentionally set, a fire that
12 was intentionally set in a place where a fire shouldn't have
13 been.

14 In this case, after we conducted our investigation, we
15 determined that the fire was incendiary. It was set at the
16 base of that door where a fire should not have been.

17 MR. MILLER: Thank you, Lieutenant Roberts. Please
18 answer any questions that Ms. Gresham might have for you.

19 THE WITNESS: Yes, sir.

20 CROSS-EXAMINATION

21 BY MS. GRESHAM:

22 Q How are you, Lieutenant Roberts?

23 A I'm good. How are you?

24 Q I'm good. How are you? So you peer reviewed the arson
25 report in this case, correct?

1 A Yes, ma'am.

2 Q That report was primarily written by Agent Morris?

3 A Yes, ma'am.

4 Q Were you present during the interviews that formed the
5 opinions that are in that arson report?

6 A No, ma'am.

7 Q So when the solicitor asked you if you were present
8 during everything that Agent Morris did, that's not entirely
9 true?

10 A He said present in everything Chris Morris did that
11 night.

12 Q Okay. But you weren't present for the interviews that
13 he did?

14 A No, ma'am.

15 Q We don't have a picture of the door before the fire, do
16 we?

17 A I don't, no, ma'am.

18 Q We don't have a picture of the door after the fire?

19 A Yes, ma'am.

20 Q I mean, after the clean up?

21 A No, ma'am, because whatever was cleaned up was done
22 after I left.

23 Q Now, I'd like to talk to you about these pictures.

24 A Yes, ma'am.

25 Q So first off, I'd like to talk to you about State's

1 Exhibit No. 4.

2 A Yes, ma'am.

3 Q Now, you said that a lot of this white stuff on the
4 picture was fire extinguisher residue, correct?

5 A Yes, ma'am.

6 Q So that can be wiped away, as you can see with the
7 handprint, right?

8 A That's correct.

9 Q So this handprint right here shows how the fire
10 extinguisher residue can be cleaned up?

11 A That's correct.

12 Q The other item of damage that was noted in the arson
13 report was soot deposition, correct?

14 A Yes, ma'am.

15 Q Is that what you're referring to in the picture of the
16 top hatch?

17 A Yes, ma'am.

18 Q So State's Exhibit No. 5 showing soot deposition, now,
19 soot to me is something that can be wiped off. Is that not
20 the case?

21 A It can be.

22 Q Okay.

23 A There are some soot depositions that can't be wiped
24 off.

25 Q I'd like to show the jury what's in State's Exhibit No.

1 5 showing soot deposition allegedly. And you don't know if
2 this soot deposition can be wiped off, do you?

3 A That, I didn't test.

4 Q And as far as the floor, you did not observe any damage
5 to the floor itself, did you?

6 A Define damage.

7 Q Well, something that cannot be picked up or swept up?

8 A No, ma'am, all I saw was fire debris and fire
9 extinguisher residue.

10 Q And the extinguisher residue can be wiped up, as we
11 established?

12 A That's correct.

13 Q And the residue can be picked up and thrown away,
14 right?

15 A Yes, ma'am.

16 Q Now, you reviewed this report before it was submitted,
17 correct?

18 A Yes, ma'am.

19 Q That's why it says peer reviewed by you?

20 A Yes.

21 Q Because you're the lieutenant and you have a lot of
22 experience, right?

23 A Yes.

24 Q You did not include in the report anything about a
25 lighter being passed to Mr. Augustine?

1 A Do you mind if I look at the report and check?

2 Q I don't mind.

3 A (Witness reviews report.)

4 Q My specific question is we heard in opening statement
5 that Mr. McMillian passed a lighter to Mr. Augustine. I
6 would like for you to find in the report where it says that
7 that happened.

8 A It doesn't say that he passed a lighter, but it does
9 say, and I'll quote, While J. McMillian, Jr. collected the
10 trays, he, also, obtained an unknown object from the
11 detainee in cell B1, Tyrek Bryant, and later gave it to J.
12 Augustine less than ten seconds after J. McMillian, Jr.
13 passed J. Augustine the unknown objection. J. Augustine
14 placed a Styrofoam tray that was on fire, figure 5 in the
15 report, onto the pile of trays in front of his door.

16 Q Okay. And is there anything in there that says Mr.
17 McMillian got it back from Mr. Augustine?

18 A No, ma'am.

19 Q Is there anything in there that says Jimmie McMillian
20 used a combustible device to set fire to the trash bag?

21 A In the conclusion, and I'll quote again, J. McMillian,
22 Jr. further aided with the fire incident when he provided an
23 additional fuel load, a trash bag to grow the fire.

24 Q But it does not say that he set fire to the trash bag
25 itself, correct?

1 A No, ma'am.

2 Q It doesn't say that Jimmie caused any burning
3 whatsoever other than collecting trash?

4 A Define caused.

5 Q Well, I'm asking you if that report says Jimmie set
6 fire to anything in the Bamberg County Detention Center?

7 A It says that he placed a bag on a fire that was present
8 already to aid to further fuel the fire.

9 Q But he did not set fire to the bag, right, according to
10 the report?

11 A No, ma'am.

12 Q Thank you. Now, the conclusion in the report is
13 totally different than what we heard -- or what I've
14 described to you in opening statements, right? That Jimmie
15 retrieved a lighter from Mr. Bryant, that he provided it to
16 Mr. Augustine, that Mr. Augustine provided it back to Jimmie
17 and then Jimmie took it back inside his cell. That's not in
18 the conclusion, right?

19 A I'm not exactly sure what was said in opening
20 arguments. I can read the conclusion again.

21 Q That's okay. This report could have been updated if
22 y'all had wanted to do that, right?

23 A If we had information to update it, yes, ma'am.

24 Q You didn't examine the hatches of the other doors in B
25 pod, did you?

1 A We took photos of them.

2 Q You did? This was the hatch of the door we're looking
3 at, not the door itself, right?

4 A On B8?

5 Q Yes.

6 A There are two hatches.

7 Q There's no alleged damage to the door itself?

8 A I'd have to check the photos again.

9 Q Well, you've read the conclusion, in the damage
10 section, did that say there was damage to the door?

11 A The conclusion concluded that there was a fire set at
12 the base of the door.

13 Q Right, but does it say there was damage to the door?

14 A I'll quote from the report, Small access doors in cell
15 door B8 displayed fire damage in the form of soot deposition
16 and discolor on the exterior.

17 Q And that's the hatches to the door, right?

18 A The hatches are a part of the door.

19 Q Right. But I'm talking about the part of the door that
20 is not a hatch?

21 A So the frame around the hatch?

22 Q Correct.

23 A That is not described in the report, no, ma'am.

24 Q As being damaged?

25 A Correct.

1 Q So there was no up and out damage like you descried in
2 your testimony?

3 A No, ma'am. But if you want an explanation for that.

4 Q No, you answered the question. Concrete doesn't burn,
5 does it?

6 A No.

7 Q Steel doesn't burn?

8 A Steel melts.

9 Q And this steel did not melt, right?

10 A No, ma'am, based on the size of the fire that was
11 underneath that hatch, there was not enough heat.

12 MS. GRESHAM: One moment, Your Honor.

13 (Pause.)

14 MS. GRESHAM: No further questions for the witness at
15 this time, Your Honor.

16 THE COURT: Redirect?

17 REDIRECT EXAMINATION

18 BY MR. MILLER:

19 Q I'd like to know why there was no up and out damage.

20 A The bottom hatch was open and it shielded the other
21 half of the door, the upper part of the door from most of
22 the soot damage.

23 Q So noted in the report was soot damage, is that the
24 damage from the smoke?

25 A Yes, sir.

1 Q Discoloration?

2 A Also, from smoke.

3 Q So that is damage to the burned area, correct?

4 A That's correct.

5 Q And the doors are part of the building, correct?

6 A Yes, sir.

7 Q Hatches are part of the door, correct?

8 A Yes, sir.

9 Q What about the paint blistering off the floor if it's
10 concrete?

11 A If it's a painted floor, then it's part of the
12 building.

13 Q And that fire sitting there caused the paint to peel
14 up, didn't it?

15 A Yes, sir. I don't recall whether there was paint
16 blistered on the floor or not.

17 Q Y'all didn't remove all that stuff that night?

18 A No, sir.

19 Q So you didn't try to clean it up?

20 A No, sir.

21 Q Is there any requirement in an arson case that a
22 percentage of the building has to burn or that there has to
23 be a certain amount of damage?

24 A No, sir.

25 Q Or is it any amount of damage caused by a set fire?

1 A That's correct.

2 Q And you saw the video of inside the B pod?

3 MS. GRESHAM: Objection, Your Honor, that's outside the
4 scope of redirect. I didn't talk about the video at all.

5 THE COURT: Purpose of the question?

6 MR. MILLER: I was going to inquire as to what he saw
7 happen on the video.

8 THE COURT: There's been questions about what damage
9 was present.

10 MR. MILLER: And there was, also, a line of questioning
11 about what he might have seen and put in his report from the
12 video whenever she was asking all the questions about well,
13 did you see him take a lighter from this person and give it
14 to this person, did you see him set the fire?

15 THE COURT: Overruled.

16 BY MR. MILLER:

17 Q So when you were reviewing the video and you saw what
18 you saw on the video -- how many times did you watch it?

19 A I watched it twice the day that I was shown the video
20 and I watched it once since then.

21 Q And did you need to watch it any more times to
22 establish the origin and cause of the fire?

23 A No, sir, I did not.

24 Q But you didn't go through it second by second looking
25 for things, did you?

1 MR. MILLER: No further questions.

2 THE COURT: Recross.

3 MS. GRESHAM: Thank you, Your Honor.

4 RE CROSS-EXAMINATION

5 BY MS. GRESHAM:

6 Q On redirect, the solicitor asked you about paint
7 blistered on the floor. Is there anything in that report
8 about blistered paint on the floor?

9 A No, ma'am.

10 Q And the solicitor, also, asked you about soot damage
11 and discoloration -- or smoke damage and discoloration; is
12 that right?

13 A Yes, ma'am.

14 Q And that's the damage that we allegedly see on the two
15 hatches?

16 A Yes, ma'am. Except for the bottom and that's mostly
17 fire extinguisher.

18 Q So this one is the fire extinguisher, right?

19 A Yes, ma'am.

20 Q That's the bottom hatch. And then this one is the top
21 hatch, right?

22 A That's correct.

23 Q And you told me on cross-examination that the fire
24 extinguisher could be wiped away?

25 A Yes, ma'am.

1 Q And soot may or may not be able to be wiped away?

2 A Yes, ma'am.

3 MS. GRESHAM: Your Honor, I don't have any more for
4 this witness. At this time, the State would move to
5 introduce State's Exhibit No. 1 subject to Defense Counsel's
6 objection.

7 THE COURT: Okay. And the witness can leave?

8 MR. MILLER: Yes, Your Honor. We don't have any reason
9 for him to stay.

10 (WHEREUPON, State's Exhibit No. 1 was admitted into
11 evidence.)

12 MS. GRESHAM: May I approach?

13 THE COURT: Sure.

14 (WHEREUPON, a bench conference was held in the presence
15 of the jury, but outside the hearing of the jury.)

16 THE COURT: Yes, sir.

17 MR. MILLER: If the witness can step down.

18 THE COURT: Oh, I'm sorry. The witness is excused.

19 MR. MILLER: Your Honor, at this time, the State rests.

20 THE COURT: Ladies and gentlemen, the State has rested
21 their case. I've got some matters to take up with the
22 attorneys. If you'll just head on back to the jury room and
23 wait for instructions.

24 Please don't discuss the case with anyone. I'll be
25 back with you shortly.

1 (WHEREUPON, the jury exits the courtroom at 11:15 a.m.)

2 THE COURT: Yes, ma'am.

3 MS. GRESHAM: Your Honor, I have a motion for directed
4 verdict.

5 THE COURT: Very well.

6 MS. GRESHAM: In the first instance, one of the
7 elements of arson in the second degree is damage. There has
8 been no evidence that there was actual damage caused to the
9 Bamberg County Detention Center. The code defines damage as
10 an application of fire or explosive that results in burning,
11 charring, blistering, scorching, smoking, singeing,
12 discoloring or changing the fiber or composition of a
13 building, structure or any property specified in this
14 section.

15 Lieutenant Roberts testified to what they believed was
16 damage, which was the deposition of fire extinguisher
17 material on the bottom hatch of the door and soot deposition
18 on the top hatch of the door, all of which could be wiped
19 away. So I don't think there is enough evidence to support
20 that element of the crime.

21 I do have another motion, Your Honor. Do you want to
22 take them up one by one or both at the same time?

23 THE COURT: If it's brief, let's just go ahead and hear
24 them both.

25 MS. GRESHAM: Okay. The indictment in this case, Your

1 Honor, reads that Jimmie McMillian did all of the elements
2 of the crime, to-wit: By setting a fire inside the Bamberg
3 County Detention Center. There has been absolutely no
4 evidence that he set fire to anything. There has been
5 testimony that he collected trash. There has been testimony
6 that he got a lighter and that he passed it to someone.
7 There has been testimony that he put a bag of trash down.
8 But there's been no evidence to show that he willfully and
9 maliciously did that and no evidence to show that he set
10 fire to anything.

11 To set fire to something is not defined, but I have a
12 definition from the Cambridge English dictionary, which says
13 to cause something or someone to start burning. He did not
14 use anything to start a burning.

15 THE COURT: We only accept the Webster's Dictionary in
16 court.

17 MS. GRESHAM: We do?

18 THE COURT: I'm just kidding.

19 MS. GRESHAM: I didn't know.

20 THE COURT: What about the part about cause to be
21 burned?

22 MS. GRESHAM: I don't think he caused anything to be
23 burned. He did not apply ignition source to anything. So I
24 think the State is limited by their indictment to pursue
25 only setting fire to something. I have some case law on

1 that, Your Honor, if you want to see it.

2 THE COURT: Sure. If you have an extra copy.

3 MS. GRESHAM: I have extra copies. This is a case that
4 was decided in July of this year, the State vs. Dunn (ph).

5 THE COURT: It's an arson case?

6 MS. GRESHAM: It is not. It's a CSC with a minor case.
7 Chief Justice Kittredge starts by saying indictments matter.
8 In criminal trials where the weight of the Government comes
9 to [indiscernible] individual sentencing. The foundational
10 part of that sentence is Constitutional right to due
11 process.

12 In this case, what happened was there were two --

13 I have another copy for the State, I'm sorry.

14 In this case, there were two alleged CSCs with a minor
15 at two different locations. The State in its indictment
16 said to-wit: By performing fellatio. We all know that
17 sexual battery includes a lot more than fellatio.

18 But in this case, there was no evidence of fellatio,
19 but there was evidence of other sexual batteries. The
20 Defense objected and said the indictment put him on notice
21 on what you were proceeding about, which was fellatio. You
22 didn't present evidence of that. You presented evidence of
23 other sexual batteries so the indictment cannot move
24 forward.

25 THE COURT: Mr. Miller.

1 MR. MILLER: First of all, Your Honor, the damage
2 issue, Lieutenant Roberts was very clear about there is no
3 oh, it's not damage because you can clean it up. It is
4 defined by the section as an application of fire or
5 explosive that results in burning. We established concrete
6 and metal door won't burn. Charring, blistering, scorching,
7 smoking, singeing, discolored or changing the fiber or
8 composition of a building.

9 It's discolored. He testified that it is discolored.
10 The fact that they can put the color back to its normal
11 state is immaterial because this fire caused the
12 discoloration on that door. That is the definition of
13 damage.

14 And, Your Honor, there was a case back in 1997 that was
15 -- I'm pulling it right now. In the interest of Christopher
16 Key, which is found at 328 South Carolina 545. It's a 1997
17 case. And in that case, the Court says that -- I'm sorry,
18 I'm on the last page of the opinion. Moreover, many states
19 -- and in this case, there was a very similar situation
20 where they were saying well, it did something to the side of
21 the building, but it didn't catch the building on fire,
22 whenever this kid, apparently, intentionally threw a lit
23 cigarette into a planter and the planter was beside the
24 building. And the trial court said that was enough to
25 satisfy arson by definition.

1 And the Supreme Court said no, it is not -- I'm sorry,
2 the Court of Appeal said no, that is not sufficient under
3 the way the statute was written. And it says many states
4 have eliminated the need to determine whether a burning has
5 occurred by amending their arson statutes to require only
6 damage to the building and not a burning. The South
7 Carolina legislature has not done so. The South Carolina
8 legislature came back and in 2002, they did so. They
9 completely rewrote the arson section. They added subsection
10 D to the statute, which before that, there was not a
11 subsection D in the statute to define what damage was.

12 So whenever the legislature amended the statute and
13 they said damage includes discoloring, this is exactly the
14 kind of case that the legislature responded to the Court of
15 Appeals, responded to the opinion and said we're going to
16 make sure that's not a problem, that that's not an issue.

17 So as far as the damage goes, there is the photographs.
18 There is the testimony --

19 THE COURT: Would you be so kind as to show me the
20 photographs? I mean, I know they were submitted. I saw
21 them at a distance, but I didn't really get up close enough.
22 We didn't have them on the projector.

23 MR. MILLER: These are the three photographs.

24 THE COURT: Okay. So this stuff on the floor?

25 MR. MILLER: The white powder on the floor is the fire

1 extinguisher material. But, Your Honor, Officer Gantt
2 testified during his testimony that after they made an
3 effort to clean all of this stuff up, he could still see
4 exactly where the fire was in front of cell B8. Whenever he
5 came back to work later on, whenever he -- up until the last
6 day that he was at Bamberg County jail, he could see where
7 the fire was. He could still see the remnants of the damage
8 caused by the fire that McMillian set.

9 THE COURT: Okay.

10 MR. MILLER: So as to the other motion, Your Honor, Ms.
11 Gresham -- well, first of all, Your Honor, I think there's
12 sufficient evidence with the video, which I understand the
13 Court has not seen yet, but there is sufficient evidence to
14 send it to the jury on whether or not he actually started
15 the fire.

16 But here's what we agree on, there was a fire burning
17 in front of Jeffrey Augustine's cell and he picked up a bag
18 of trash and set it on top of the burning pile of trash in
19 front of Jeffrey Augustine's cell.

20 THE COURT: Which takes me back to when I asked about
21 cause to be burned.

22 MR. MILLER: Right. But in addition, Your Honor, and
23 more -- I guess more to the point, it said that -- the
24 indictment reads that Jimmie Lee McMillian, Jr., did in
25 Bamberg County, South Carolina on or about January 2nd,

1 2025, along with another. This isn't a CSC case where it's
2 a sole bad actor. That's why we were talking about the hand
3 of one being the hand of all. It doesn't matter if he took
4 the lighter and lit it, although I would submit to the Court
5 and I would submit to the jury when they watch the video
6 that he absolutely did. But it doesn't matter because he
7 was acting in concert with Jeffrey Augustine to set this
8 fire.

9 I guess the danger of this -- and it's not the first
10 time that I've done it, but I guess the danger of not
11 publishing the video earlier to the jury is I didn't want
12 them to have to sit here throughout the 11-minute video when
13 I was going to be discussing it in my closing argument. But
14 the video shows what the video shows.

15 THE COURT: Yes, ma'am.

16 MS. GRESHAM: I think we can agree the video shows
17 Jimmie putting a bag on top of a burning fire. However,
18 this indictment requires to show that he set a fire inside
19 the Bamberg County Detention Center. That fire was already
20 set. The use of the statutory language proceeding to-wit is
21 discussed in this case. It says, At trial -- in footnote
22 seven under section three, At trial, the State argued the
23 phrase to-wit meant for example and that, therefore, the CSC
24 indictment required the State prove that only a sexual
25 battery occurred, not fellatio in particular. The State's

1 loose interpretation of indictment must be rejected for it
2 would not provide the accused adequate notice of the
3 specific event being charged resulting in an
4 unconstitutional guessing game.

5 So he has to show that he set the fire. There's been
6 no evidence whatsoever, not even in the video. There's no
7 evidence he set a fire.

8 THE COURT: What about what he piled on?

9 MS. GRESHAM: Right, but that fire was already burning.

10 THE COURT: Right.

11 MS. GRESHAM: Regarding the damage case, in that case
12 that was quoted by the solicitor, in re: Christopher Key
13 said that usually singeing, smoking, scorching or
14 discoloring by the heat, however, is not enough. So the
15 statute was amended to add a definition that allowed for
16 discoloring. It doesn't say by the heat. But South
17 Carolina law, it's pretty clear that that's what it is to
18 mean. So I think that's the meaning we should give it.
19 Discoloring by the heat. There was no testimony that that
20 stuff could not be wiped off.

21 So I think we've got two solid directed verdict issues.
22 And the one of not setting the fire I think is the biggest
23 one.

24 THE COURT: I mean, I just read the indictment as the
25 plain language. I mean, it alleges acts -- I mean, it kind

1 of alleges hand of one, hand of all.

2 MS. GRESHAM: Kind of alleges what, I'm sorry?

3 THE COURT: I mean, along with another. I mean, you
4 can kind of sense the hand of one, hand of all doctrine
5 applying in the indictment just on the language.

6 MS. GRESHAM: Well, Your Honor, respectfully, regarding
7 the hand of one, hand of all, I don't think you can apply
8 that here because there's no evidence that there was
9 preplanning of this fire.

10 THE COURT: I guess I need to look at the video before
11 I can rule on this before it goes to the jury, if it goes to
12 the jury. But if they're acting in concert, I mean, it may
13 not have been a long orchestrated scheme, but, clearly, it
14 sounds like they were -- one person was locked in his cell,
15 another was not is what I heard from the evidence today.
16 There had to be some sort of coordination, at least, an
17 inference of coordination.

18 Go ahead.

19 MS. GRESHAM: State v. Washington says that a finding
20 of a prior arranged plan or scheme is necessary for criminal
21 liability to attach to the accomplice who does not directly
22 commit a criminal act. When an act is done, then it says,
23 you know, hand of one, hand of all. So there has to be a
24 prior arranged plan or scheme and there's no evidence of
25 that.

1 THE COURT: I don't have that in front of me, but I,
2 also, think prior arranged scheme could mean the moment
3 before. I mean, malice doesn't have to -- you know, it
4 doesn't have to be a grand plan in a murder case, it just
5 has to exist at the time of the act.

6 MS. GRESHAM: That's true for malice, Your Honor --

7 THE COURT: Well, I'm just making the analogy.

8 MS. GRESHAM: We can't equate malice to a prior
9 arranged plan or scheme for the purposes of hand of one,
10 hand of all.

11 THE COURT: Okay.

12 Would you address that?

13 MR. MILLER: Your Honor, that may be applicable in that
14 particular case, but the fact of the matter is if your law
15 clerk and I are robbing the liquor store and there is a plan
16 to rob the liquor store and somebody gets killed by your law
17 clerk, then they're going to -- then I'm going to be liable
18 under the hand of one for the murder.

19 But at the same point in time, if I just walk into the
20 liquor store with no plan whatsoever and I pull out a gun
21 and point it at the cashier, but your law clerk jumps over
22 the counter and opens the drawer and takes the money, then
23 that is hand of one, hand of all robbery, too. Even though
24 he doesn't have the gun, there's no plan necessary.

25 Not to mention, Your Honor -- and I will concede, we

1 can watch the video right now, but on the video itself,
2 literally, as soon as the officer walks out, as soon as
3 Gantt walks out of the pod, he pops open the door. He sits
4 there for a minute. I don't know what he was doing while he
5 was inside his cell because you can't see in there, but you
6 very clearly see the door open. And then you see him walk
7 out and he starts running around the pod gathering all this
8 stuff and putting it all under the door. Why else is he
9 doing that?

10 MS. GRESHAM: The only other thing I want to say is the
11 hand of one, hand of all, I'm not aware of it being applied
12 in any situation that doesn't involve a burglary or a
13 robbery.

14 THE COURT: Burglary and robbery, it applies to that.
15 I've done that. I think I need to look at that video before
16 the jury sees it. I think it's tough for me to make a
17 ruling on directed verdict if I haven't put eyeballs on the
18 specifics.

19 Why don't y'all just come up and show me?

20 Everyone else, just take a break.

21 (WHEREUPON, a short break was taken while the Court
22 viewed video.)

23 THE COURT: Anything else?

24 MS. GRESHAM: Your Honor, I'd like to point out the bag
25 of trash was handed to Augustine, but he's the one who drops

1 it in. So Jimmie doesn't even drop it on the fire.

2 And then I wanted to point out a case about to-wit,
3 that should, also, include with a coconspirator, accomplice
4 liability and it doesn't.

5 THE COURT: Okay. I'll deny the motions for a directed
6 verdict. At this stage, I'm concerned with the existence of
7 evidence, not its weight. I find there's circumstantial
8 evidence reasonably tending to prove the guilt where a jury
9 may find him guilty, they may not. It will be a fact the
10 jury can decide based upon the evidence that's been
11 submitted.

12 MS. GRESHAM: Thank you, Your Honor.

13 THE COURT: Let's go ahead and inform your client of
14 his rights.

15 Madam Clerk, please place him under oath.

16 JIMMIE MCMILLIAN, JR.,

17 after being duly sworn, testified as follows:

18 THE COURT: Mr. McMillian, at this time, I'm going to
19 explain to you some of your rights. If you do not
20 understand anything I say, please let me know. If you want
21 me to explain anything in more detail, please let me know
22 that as well.

23 Do you understand that?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: All right. We've now reached the stage of

1 the trial where you may present your defense. You have the
2 right to claim the protections given to you by the Fifth
3 Amendment to the Constitution of the United States. This
4 amendment states in part no person shall be compelled in any
5 criminal case to be a witness against himself. This means
6 you cannot be required to testify in this case. You have
7 the right to testify on your own behalf, however, no one can
8 make you testify. This is a personal right and no one can
9 waive this right except you.

10 If you decide to testify, you will be subject to the
11 same rules that govern other witnesses and you may be
12 examined and cross-examined on any relevant issue in this
13 case. In addition, if you have any convictions involving
14 dishonesty or false statements or for crimes punishable by
15 imprisonment for more than one year and this Court
16 determines that the probative value of admitting this
17 evidence outweighs its prejudicial effect, the solicitor
18 will be able to introduce your record and attack your
19 credibility.

20 Do you understand that, sir?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: If you decide to testify, this decision on
23 your part must be freely, voluntarily and intelligently made
24 with the knowledge of the protections give to you by the
25 Fifth Amendment and the consequences of your decision to

1 testify.

2 If you decide not to testify, I will instruct the
3 jurors that they cannot give the fact that you did not
4 testify any consideration whatsoever, that there is to be
5 absolutely no prejudice to you because you did not testify.
6 It is left entirely up to you whether or not you testify.
7 You may talk about this with your attorney, family member or
8 a friend or anyone else, but the final decision will be left
9 entirely up to you.

10 Do you understand what I've explained to you?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Do you wish to discuss this any more with
13 your attorney?

14 MS. GRESHAM: Your Honor, can we discuss this over
15 lunch? It's almost noon.

16 THE COURT: I realize that, but if the answer was no, I
17 was going to rest on the record and let the jury know we
18 would start this afternoon. I can't do that. But I, also,
19 think you're entitled to talk to your client, too. I was
20 just thinking about scheduling.

21 Okay. What we'll do is we can go ahead and take lunch
22 now. We will come back and go into closing arguments.

23 Anything else from the State?

24 MR. MILLER: No, Your Honor.

25 THE COURT: Because the jury is already back there, is

1 there any objection to me going back there and saying it's
2 lunch, come back at 1:00 p.m. and we'll continue the trial
3 from there?

4 MS. GRESHAM: No objection.

5 MR. MILLER: No objection.

6 THE COURT: All right. We'll recess for lunch at this
7 time.

8 (WHEREUPON, a lunch break was taken.)

9 THE COURT: First order of business, Ms. Gresham, what
10 are your client's intentions?

11 MS. GRESHAM: Your Honor, I believe he intends not to
12 testify.

13 THE COURT: Mr. McMillian, just to be clear, you're
14 still under oath. You don't intend to testify, correct?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Do you have any additional witnesses you're
17 going to call?

18 MS. GRESHAM: No, Your Honor.

19 I would ask that I be allowed to renew my motions after
20 ---

21 THE COURT: What I was going to say was let's go ahead
22 and rest now. We'll rest for the record. You can renew all
23 motions. Then when we bring in the jury, I'll say we've
24 heard from the State, now, we'll have a chance to hear from
25 the Defense. Then you can stand up and rest in front of

1 them and we'll go right into closing arguments.

2 MS. GRESHAM: Thank you.

3 THE COURT: So are you resting?

4 MS. GRESHAM: Yes, Your Honor, the Defense rest.

5 THE COURT: Very well.

6 MS. GRESHAM: And I renew all my prior motions.

7 THE COURT: All right. The record will reflect that
8 all your objections and directed verdict motions are hereby
9 renewed. Those rulings stand.

10 I just sent out the jury charge. I want to make sure
11 y'all look at that. I have the hand of one, hand of all
12 charge in it. State v. Edwards is, actually, a case that
13 involves arson and the hand of one, hand of all. I'm not
14 saying it's glaringly similar to what we have here today,
15 but just for your information. The arson charge, I cite to
16 the statute.

17 Why don't you state for the record what you're asking
18 for?

19 MS. GRESHAM: Yes, Your Honor, for the record, what I'm
20 asking for is that the arson charge that quotes the statute
21 be abridged to only include as the active verdict, being set
22 fire to. I'm asking the other options in the statute, like,
23 aiding, counseling, procuring or causing to be omitted. I
24 object to the jury charge as written.

25 THE COURT: We talked about this in chambers. I just

1 want to make sure we're getting on the record what we
2 discussed.

3 Mr. Miller, this has to do with Defendant's contention
4 that to-wit language, that limits the indictment and what
5 you can argue in your closing -- or what I can charge on the
6 law.

7 MR. MILLER: Yes, sir.

8 THE COURT: Respond to that.

9 MR. MILLER: Your Honor, I don't think that the case is
10 applicable -- that's been cited is applicable in this case
11 because of the fact that it is a hand of one case. Clearly,
12 as the video shows, a fire was set in the Bamberg County
13 jail. A fire was set by Jeffrey Augustine and we contend a
14 second fire was, also, set by Mr. McMillian. But it really
15 doesn't matter whether he, actually, set a second fire or
16 not because the indictment alleges that he was, along with
17 another, responsible for this arson fire.

18 And all of the things that are in the indictment -- and
19 this is another point that came up. In the statute for CSC,
20 first of all, it is very unlikely that you're going to have
21 a hand of one charge in a CSC case, hopefully. But in the
22 CSC context, it says he committed sexual battery upon
23 whoever and that term has a whole lot of different meanings.
24 Sexual battery can be comprised of multiple different
25 things. That's not the case here.

1 The fact of the matter is, in this case, the statute
2 itself, which the language is quoted from the statute that
3 aiding, abetting, procuring, counseling, all of these things
4 that are included in this statute, they are separate and
5 distinct things. In the case that was cited from Ms.
6 Gresham, you, actually, had victim of a sexual battery.
7 Well, what is a sexual battery. In that to-wit section,
8 they chose to say a sexual battery was X thing, but then at
9 trial, they attempted to prove that it was, in fact, a Y or
10 a Z thing. And that's where the problem came in in that
11 case.

12 Here, we have alleged that he, being Mr. McMillian,
13 along with Mr. Augustine committed this act. And the act
14 that they committed together under the hand of one was
15 setting a fire in the Bamberg County Detention Center. That
16 is what they did. They is completely consistent with the
17 statute and it is -- the to-wit section is not limiting that
18 oh, only Jeffrey -- only Jimmie McMillian was the person who
19 set a fire in the detention center. It is Jimmie McMillian
20 and Jeffrey Augustine together combined for this unlawful
21 purpose of setting this fire in the Bamberg County Detention
22 Center.

23 THE COURT: My charge as it is now is what I would
24 describe as the general arson charge. In looking at the
25 factual scenario, what I'm dealing with here today, I don't

1 believe the language in the indictment -- I think the
2 language in the indictment gives proper notice to the
3 Defendant of everything that the Defendant will have to
4 prepare for and answer to if called to trial. I don't see
5 the language of to-wit setting the fire inside the Bamberg
6 County Detention Center as increasing -- or excuse me, I
7 don't see it as limiting the indictment -- limiting on what
8 they can argue and put in evidence and then arguing to the
9 jury or charge on the law.

10 I mean, I think the indictment is, essentially, a
11 paraphrase of the statutory language, which I think meets
12 the requirement of the notice that a defendant needs any
13 time they're indicted on how they're to defend the case. I
14 understand Ms. Gresham's point. I don't think -- I think
15 this situation is distinguishable dealing with an arson
16 scenario involving several persons on video committing the
17 alleged conduct.

18 So the objection is noted. The record will reflect the
19 objection, but I'm going to charge it as is.

20 MS. GRESHAM: Your Honor, the objection mentioned along
21 with the other one, because I believe it's enlarging what
22 he's on trial for, the hand of one is the hand of all, I do,
23 also, object to that charge --

24 THE COURT: You're talking about the one I just handed
25 you?

1 MS. GRESHAM: Yes.

2 THE COURT: That will be the exception you have to the
3 charge. I need you to take a minute to look through the
4 rest. That should be it. Everything else is general.

5 So the objection is to the arson charge and, also, to
6 hand of one?

7 MS. GRESHAM: Yes. I believe they go together.

8 THE COURT: I think the evidence --

9 MS. GRESHAM: I understand your ruling.

10 THE COURT: Okay.

11 Yes, sir.

12 MR. MILLER: I just have two requests as it relates to
13 the arson section of the charge. On Page 9, the first
14 sentence of the second paragraph I think can be omitted.

15 THE COURT: Malicious means hatred, ill will or
16 hostility towards another person?

17 MR. MILLER: I think all of the rest of that paragraph
18 is correct. I do think maliciously can mean with hatred,
19 ill will or hostility towards another person, but it doesn't
20 have to be directed towards another person to be malicious.
21 And in this case, there was no -- it wasn't directed towards
22 another person. It was directed towards the jail.

23 And, finally, on Page 10 --

24 THE COURT: I thought there was testimony of a threat
25 towards the officer himself?

1 MS. STAGGS: That was Augustine.

2 THE COURT: Augustine. There was testimony, but not
3 from this Defendant?

4 MR. MILLER: Correct.

5 THE COURT: Any objection to removing that sentence?

6 MS. GRESHAM: I do object to removing that sentence,
7 Judge. I think it accurately encompasses the law and what
8 malicious means.

9 THE COURT: Mr. Miller, what's next?

10 MR. MILLER: Your Honor, I think that the rest of it is
11 accurate, but there's not any requirement under the law that
12 says that you can't commit a malicious act unless it's
13 directed at an individual. I mean, we have malicious injury
14 to property.

15 THE COURT: Okay.

16 MS. GRESHAM: You could omit toward another person.

17 MR. MILLER: Yeah, Your Honor, I wouldn't have a
18 problem saying maliciously means with hatred, ill will or
19 hostility, period. It just doesn't have to be directed
20 towards another person.

21 THE COURT: All right. I think that's by agreement.

22 MR. MILLER: And, finally, Your Honor, on Page 10, the
23 last sentence of the arson charge, I just don't know --
24 there's not any allegation as to dwelling, even though it
25 is.

1 THE COURT: But it's addressed just as well and the
2 building is designed for human occupancy.

3 MR. MILLER: Correct. I would just say that last
4 sentence there --

5 THE COURT: That got left in there for a trial
6 involving a house.

7 MR. MILLER: Right.

8 THE COURT: So I can take that out.

9 (Pause.)

10 THE COURT: Okay. Those two corrections have been
11 made.

12 Anything else?

13 MS. GRESHAM: Nothing from the Defense, Your Honor.

14 MR. MILLER: Nothing from the State, Your Honor.

15 THE COURT: Ms. Gresham, I don't know if you've had a
16 trial with me, but I give a copy of the written charge to
17 the jury.

18 MS. GRESHAM: Okay.

19 THE COURT: Are we ready to proceed?

20 MR. MILLER: The State's ready.

21 MS. GRESHAM: The Defense is ready.

22 THE COURT: All right. When I bring them in, I'll just
23 say you'll have the opportunity now to hear from the Defense
24 and you can rest.

25 Let's bring the jury in, please.

1 (WHEREUPON, the jury enters the courtroom at 1:25 p.m.)

2 THE COURT: All right. Ladies and gentlemen, welcome
3 back. I hope y'all had a nice lunch. When we left, the
4 State had rested their case. We'll now have the opportunity
5 to hear from the Defense.

6 MS. GRESHAM: Yes, Your Honor, the Defense rests.

7 THE COURT: Very well. The Defense has rested their
8 case. The parties have presented their evidence in this
9 case. It's now time for the attorneys to make their closing
10 arguments.

11 The arguments of the attorneys are not evidence in this
12 case. Their statements and arguments are meant to help you
13 understand the evidence and apply the law to the evidence.
14 You should disregard any remarks, statement or argument
15 which is not supported by the evidence presented during the
16 trial or the law that I will explain to you after the
17 arguments.

18 At this time, please give your complete and undivided
19 attention to the attorneys as they make closing arguments.

20 CLOSING ARGUMENT BY THE STATE

21 MR. MILLER: May it please the Court?

22 THE COURT: Yes, sir.

23 MR. MILLER: Ms. Gresham.

24 Ladies and gentlemen, we didn't quite make it before
25 lunch, but as I told you, a pretty short case. None of the

1 witnesses testified for very long and one of the reasons for
2 that is because, really, what you need for this case is in
3 State's Exhibit No. 1. It's the video. And I'm going to
4 publish that for you now so that you can see what the video
5 shows. If anybody gets tired, let the Judge know.

6 (WHEREUPON, State's Exhibit No. 1 was played for the
7 jury.)

8 MR. MILLER: Ladies and gentlemen, this is B pod, B1,
9 B2, B3, B4, B5, B6, B7, B8. Officer Gantt, exactly like he
10 testified, talks to Augustine, has him open the door, looks
11 inside, doesn't see anything that he could set a fire with.
12 Goes to leave, but Augustine is still causing a commotion,
13 so he comes back and tries to shut the flaps on his door.

14 Look at B6. Check out his feet. As soon as he walks
15 out the door, here comes Jimmie McMillian. So everyone
16 else's doors are shut. Nobody else can get out.

17 Ladies and gentlemen, the Judge is going to tell you
18 what constitutes an arson. It is a willful and malicious
19 burning that causes damage to property. It is an arson
20 second because the property that was damaged is a building
21 that is designed for human occupancy. That's all it is.

22 The damage that we are talking about in terms of a
23 arson is set forth in the Judge's charge and in the law that
24 says the application of fire or explosive, this case, it's
25 fire, that results in burning, charring, blistering,

1 scorching, smoking, singeing, discoloring or changing the
2 fiber or composition of a building. It doesn't say and, it
3 doesn't have to do all those things. All you need is one.

4 And it doesn't matter for the purposes of the statute
5 whether well, they can clean it up. All they have to do is
6 get a little paint out. All they've had to do is maybe
7 replace the paint on the floor. That's not the point. The
8 point is if you set a fire and that fire causes
9 discoloration or the soot, the smoking, that fire has just
10 become an arson fire because it caused damage under the law
11 to this building. Never mind the danger of setting a fire
12 in a building that seven other people are locked in and
13 can't get out.

14 Look, he's running around. He came running out of his
15 cell. He dropped garbage right in front of the cell. And
16 there's some more.

17 I'm going to go back and show you this again real quick
18 because watch what happens when he gets to B1. When he gets
19 to B1, he's going to take an object from the person in B1
20 and he's going to go hand it to Augustine. And he's going
21 to hand it to Augustine through the top flap. And then
22 Augustine, who's got this trash collected up in front of his
23 cell, Augustine is going to light the first fire inside his
24 cell and he's going to set the burning carton on top of this
25 debris. That's when Jimmie McMillian handed him the

1 lighter, the ignition source.

2 So he reaches in the top, there you go, just handed it
3 to him. He's going around still collecting up stuff for
4 Jeffrey Augustine to burn. And here comes the -- out the
5 bottom flap, there you go. That's not enough, so he goes
6 and gets the bag of trash. And he sets the bag of trash.
7 And again, watch what he does, because this is significant.
8 He goes back after he puts the bag down. Watch him. Look
9 at Jeffrey Augustine's arm. He reaches out as far as he
10 can. He's reaching out that flap. That bag is falling over
11 towards the ground.

12 When he runs -- first of all, you're going to see him
13 hand him the black object that was used to set the first
14 fire. And when he turns around to run away, look at where
15 the bag is burning. He set that fire. He set the second
16 one. And when he gets back to this door right here, when he
17 goes back into his cell, you can see the object is in his
18 right hand. He leans over, Augustine's hand is nowhere near
19 there and the right hand side of that bag is on fire. Went
20 pretty quick. And the fire continues to burn.

21 I talked to you this morning about the hand of one
22 being the hand of all. It really doesn't matter if Jimmie
23 McMillian struck that flame, set that particular bag on
24 fire. You can look at what Jimmie McMillian did from the
25 time that hatch opens on his door until they all get taken

1 out of there, again, by Officer Gantt. They were acting
2 together to start this fire. He was aiding in the starting
3 of the fire. He was helping. And when two people or more
4 people gather for an illegal purpose, it doesn't matter
5 which one did what, they're all responsible for the outcome.
6 That's what's going on here. That fire is burning for about
7 two and a half minutes before Officer Gantt can get back in
8 with a fire extinguisher and put that fire out.

9 There's Augustine at about 6 minutes and 25 seconds.
10 He throws a blanket out to try to add more fuel to the fire.
11 He, basically, almost put it out at that point. Now, you
12 can see the smoke filling up the room, the ash flying in
13 front of the camera whenever Gantt comes in and puts the
14 fire out.

15 There's about five more minutes of this video. As I
16 told you before, you're going to have the ability to
17 actually watch this video in the jury room on this computer,
18 but the reason I want you to see the video is to see what
19 happens after this, everything that Officer Gantt does.

20 So yes, when Jeffrey Augustine said I think Officer
21 Gantt is the one that set the fire, I was in my cell, they
22 didn't have this video. But when they got it, there wasn't
23 really any question about what went on. Yes, it is
24 important. No, it is not complex. You see what happened.
25 You see who did what.

1 Did it burn down the jail? No. But it didn't need to
2 be an arson. Did it endanger people's lives? Absolutely.
3 If that fire had kept going without Officer Gantt or the
4 other officers realizing what was going on -- you'll see the
5 people when they come walking out the cells, they've all got
6 coverings over their faces. They're all coughing, spitting.
7 It's a room filled with smoke. You're going to find out
8 when you look at all of this video and all the evidence
9 together, you're going to find out every single thing that
10 Officer Christopher Gantt testified to is proven by this
11 video.

12 You'll, also, have copies of these exhibits. Here is a
13 diagram of the B unit. The camera is over here, so you can
14 see B1, B2, B3, B4 on the right-hand side of the screen and
15 on the left-hand side of the screen, you see up here.
16 You're going to see Officer Gantt come through, get this
17 door open, then go back and start letting people out of the
18 room. He told you, he didn't let Augustine out until the
19 end because he had already had a problem with Augustine.
20 And if he ended up dealing with Augustine being a problem,
21 all those other people were still locked up while he's
22 having to deal with that. He did exactly the right thing as
23 quickly as it could be done.

24 And then Jeffrey Augustine said he was the one that set
25 the fire. No chance. Didn't happen. Jimmie McMillian set

1 the fire. If Jimmie McMillian doesn't come out of that
2 cell, there is no fire at the Bamberg County jail that
3 night. Jeffrey Augustine couldn't start a fire. He didn't
4 have any way to start a fire. If he did, he wouldn't have
5 had to get it from Jimmie McMillian. He wouldn't have had
6 to take it from the guy in B1.

7 Why didn't they find the lighter in Jeffrey Augustine's
8 cell? Because it wasn't there. Jimmie McMillian took it
9 with him and he took it into his cell. And when he does get
10 escorted out, that's B6 -- excuse me, that's B5. That's B6.
11 Watch what happens, there's goes old Jimmie running out to
12 the yard. Nobody stopped him. Nobody searched him. Nobody
13 had time to. That's why there wasn't a lighter in B8, in
14 Jeffrey Augustine's cell. Jimmie McMillian had it the whole
15 time.

16 Ladies and gentlemen, Ms. Gresham said something in her
17 opening about the word verdict meaning to speak the truth.
18 I absolutely agree with that. Your verdict in this case
19 based upon the facts of this case can only be that he is
20 guilty. You can see it with your own eyes. If you want to
21 watch it multiple times, if you want to pause it, if you
22 want to go back and just see certain portions of it, you
23 can. But at the end of the day, watching it over and over
24 ain't going to change what happened. And that is that he
25 left his cell, he and him alone ran all through that pod

1 gathering up everything that they could find that would burn
2 and he and Jeffrey Augustine set it on fire.

3 That's an arson. It's an arson in the second degree.
4 And the only true verdict, the only verdict that does speak
5 the truth in this case is guilty.

6 Thank you very much.

7 MS. GRESHAM: May it please the Court, Your Honor?

8 THE COURT: Yes, ma'am.

9 CLOSING ARGUMENT BY THE DEFENSE

10 MS. GRESHAM: Ladies and gentlemen of the jury, many of
11 us in high school read the book Fahrenheit 451 by Ray
12 Bradbury. In that book, the main character, Guy Montag, is
13 a fireman. But in the future, all the buildings are made of
14 concrete and steel. Concrete and steel don't burn. So what
15 did firemen do in the future? Well, they burned books. Why
16 did they burn books? So that only one story, one narrative
17 is heard by the people. That's why in an entire jail filled
18 with inmates, staff, law enforcement and other first
19 responders, we only heard from two witnesses today.

20 Let's talk about those witnesses. First up was Officer
21 Gantt. He couldn't remember, he didn't know. He left out
22 important details from his incident report. He didn't tell
23 anyone -- or in the incident he said that Jeffrey Augustine
24 threatened to beat my butt and he threatened to kill me and
25 my children. He didn't tell anyone else that.

1 He didn't know if a lighter could be thrown over the
2 wall and he worked there. He didn't search Jeffrey
3 Augustine's cell, he just looked in it. He didn't know why
4 Jimmie's cell was popped so he could be out. He let all of
5 the inmates out together to the rec yard. That was pretty
6 shotty police work or security guard work. Pretty shotty.
7 You know one thing that he said that you should believe,
8 that Jeffrey Augustine said he would burn the jail down.
9 Not Jimmie McMillian.

10 Next, you heard from Alex Still. He was a Bamberg
11 Police officer, who just happened to be there. He was
12 transporting an inmate. He found no combustion source in
13 Jeffrey Augustine's cell, but he didn't look anywhere else.
14 He didn't search the other inmates. He didn't search
15 Jimmie. And most importantly, he testified -- and I wrote
16 this down because I thought it was important -- he saw no
17 damage. If there's no damage, there's no arson. Let me
18 repeat that, if there is no damage, there is no arson. And
19 if there's no arson, then the hand of one, hand of all
20 thrown out the window because there has to be an arson.

21 Next you heard from Lieutenant Roberts. Now, he was an
22 expert witness, a lieutenant at SLED. His report is totally
23 different from what the solicitor told you. I handed him
24 his report and I asked him where in this report do you see
25 Jeffrey Augustine handing a lighter back to Jimmie? It's

1 not there. Where do you see Jimmie carried a lighter into
2 his cell? It's not there either. It contradicts that
3 Jimmie had anything to do with setting the fire.

4 Now, I want to talk to you about arson in particular.
5 Arson in the second degree requires a lot of different
6 things. First, it requires that the person willfully and
7 maliciously do the act. Not they only intentionally did the
8 act, but, also, with the intent to cause harm or evil. And
9 the Judge is going to charge you on the meaning of those
10 words and I want you to pay attention to that. Was this act
11 done willfully and maliciously by Jimmie? Jimmie had a
12 shirt over his head. Could he have seen there was fire
13 going? Think about that when you watch the video.

14 And then you have to set fire to something. Now,
15 indictments are important. Indictments are the document
16 that tells the Defendant what he is charged with and what he
17 has to come to court to defend against. I believe you'll
18 get a copy of the indictment. In the indictment says the
19 statute, but then it says something extra --

20 MR. MILLER: Objection, Your Honor.

21 THE COURT: Approach real quick.

22 (WHEREUPON, a bench conference was held in the presence
23 of the jury, but outside the hearing of the jury.)

24 MS. GRESHAM: Ladies and gentlemen, like I was saying,
25 the indictments are important. It's a document that tells

1 the Defendant what he's here in court today to defend
2 against. In this case, the Judge has already published the
3 indictment to you and I'll read it again. That Jimmie Lee
4 McMillian, Jr., did in Bamberg County, South Carolina on or
5 about January 2nd, 2025, along with another willfully and
6 maliciously set fire to burn or cause to be burned or did
7 aid, counsel or procure burning that resulted in damage to
8 an institution or facility or a structure designed for human
9 occupancy, including a local or municipal building, whether
10 the property within itself or another. To-wit: Setting a
11 fire inside the Bamberg County Detention Center, all in
12 violation of South Carolina law.

13 The Judge is going to charge you on the law. The
14 indictment told Jimmie that he's here today to defend
15 setting a fire. Not aiding in setting a fire, not helping
16 in setting a fire. Setting a fire in the Bamberg County
17 Detention Center and it had to cause damage.

18 So this is where the rubber hits the road. We don't
19 have pictures of the door from before. This door to B8, we
20 have no idea what it looked like before this incident. We
21 don't have pictures of other doors to compare it to.
22 Officer Gantt told you they never closed up shop to repair
23 or repaint the door. Who knows if they even wiped it off?
24 Because remember what Lieutenant Roberts said, that damage
25 to the lower hatch was fire extinguisher chemicals. You can

1 see the handprints where someone put their hand there. It
2 could be wiped off.

3 The only other damage mentioned in the arson report is
4 soot deposition to the upper hatch. And that's State's
5 Exhibit No. 5. Lieutenant Roberts said it may or may not be
6 able to be wiped away. We don't know which this was because
7 we have no pictures of the door today aside from the
8 incident. How easy would it have been for anyone, with all
9 the Government with its might and power and resources to
10 have taken pictures to show you the damage. They didn't do
11 that. Instead, they want you to guess and that is
12 reasonable doubt.

13 The solicitor would have you believe any discoloration
14 constitutes arson. For example, this fire extinguisher
15 chemical could be discoloration. What are we doing now,
16 just drawing pictures of a fire? It could be wiped away.
17 It is not damage. This is what Ray Bradbury warned us
18 about, that when power like the Government has here controls
19 the story, the truth disappears. You are the truth tellers
20 today, the fact finders.

21 The video does show Jimmie collecting trash. It shows
22 him passing an object from Tyrek Bryant's cell to Jeffrey
23 Augustine. He returned to the bag of trash. And this is
24 very, very important. When you watch the video in the jury
25 room, watch what happens with that bag of trash. He hands

1 it to Jeffrey Augustine. Jeffrey Augustine drops it on the
2 fire. I submit that you will have a very hard time seeing
3 everything in this video the solicitor wants you to see.

4 This was a fire no bigger than a bag of rubbish, a fire
5 that didn't burn concrete and didn't melt steel. It didn't
6 injure anyone. And most importantly, it was a fire that
7 caused no damage. It's a nuisance, not an arson.

8 Earlier today, I asked you to use your experiences and
9 common sense along with the law the Judge charges you to
10 make a decision today. That decision has to speak the
11 truth. That decision is not guilty.

12 Thank you.

13 CHARGE ON THE LAW

14 THE COURT: Okay, members of the jury, it is now my
15 duty as the trial judge to instruct you on the law
16 applicable to this case. And in that regard, it is your
17 duty as jurors to accept and apply the law as I now state it
18 to you.

19 Furthermore, it is your exclusive duty to decide all
20 the issues of fact in this case and determine the effect,
21 value, weight and truth of the evidence. All the parties
22 have the right to expect that you will carefully consider
23 and evaluate the evidence and apply the law of this case to
24 it so that in the end, all the parties will receive a fair
25 and impartial trial.

1 Now, during this trial, you and I have separate duties
2 to perform. As the trial judge, it is my responsibility to
3 preside over this trial and rule upon the admissibility of
4 the evidence offered during the trial. You as members of
5 the jury are to consider only the evidence before you. If
6 you have any preconceived ideas as to what the law is or
7 what you think the law ought to be and it does not agree
8 with what I now tell you the law is, you are obligated under
9 your oath to abandon those preconceptions because you are
10 sworn to accept the law as I now state it to you.

11 In this trial, you are the sole and exclusive judge of
12 the facts. Do not infer that I have an opinion about the
13 facts of this case from anything I have said or done during
14 the course of this trial. The law simply does not permit me
15 to have an opinion about the facts. As jurors, it is your
16 duty and your duty alone to determine the effect, value,
17 weight and truth of the evidence presented during this
18 trial.

19 The evidence from which you are to decide the facts of
20 this case are one, sworn testimony of witnesses both on
21 direct and cross-examination; two, the exhibits which have
22 been admitted into evidence; and three, any facts which all
23 the attorneys have agreed and stipulated.

24 Evidence may be direct or circumstantial. Direct
25 evidence is testimony by a witness about what the witness

1 personally saw, heard or did. Circumstantial evidence, on
2 the other hand, is indirect evidence. Stated differently,
3 it is proof of one or more facts on which one can find
4 another fact. You may consider both direct and
5 circumstantial evidence equally.

6 Crimes may be proven by circumstantial evidence. The
7 law makes no distinction between the weight or value to be
8 given to either direct or circumstantial evidence. However,
9 to the extent the State relies on circumstantial evidence,
10 all the circumstances must be consistent with each other and
11 when taken together point conclusively to the guilt of the
12 accused beyond a reasonable doubt. If the circumstances
13 merely portray the Defendant's behavior as suspicious, the
14 proof has failed.

15 The State has the burden of proving the Defendant
16 guilty beyond a reasonable doubt. This burden rest with the
17 State regardless of whether the State relies on direct
18 evidence, circumstantial evidence or some combination
19 thereof.

20 Now, what is not evidence? I remind you the following
21 things are not evidence and you must not consider them as
22 evidence in deciding the facts of the case, statements and
23 arguments of the attorneys, questions and objections of the
24 attorneys, any testimony I instructed you to disregard.

25 While the argument of counsel is a beneficial part of

1 every trial, you should remember that statements made by
2 counsel are not evidence. In presenting argument, counsel
3 often refer to evidence. However, you should base your
4 verdict on the evidence as you remember it. Therefore, if
5 there are any conflicts between the recollection of counsel
6 about the evidence and your own recollection, you should
7 rely upon your own understanding of the evidence.

8 I remind you the fact that the Defendant was arrested,
9 charged and indicted in this case is not evidence and cannot
10 be considered by you as evidence of guilt in this case nor
11 does it create any presumption or inference of guilt.

12 Furthermore, it is your job as jurors to determine the
13 credibility of believability of the witnesses who testified
14 in this case. You must evaluate the evidence and determine
15 which evidence convinces you of its truth.

16 In determining the believability of witnesses who have
17 testified in this case, you may believe one witness over
18 many or many over one. You may believe a part of the
19 testimony of a witness and reject the remaining part. You
20 may believe the testimony of a witness in its entirety or
21 reject it in full. You may consider whether the witness has
22 an interest in the result of the trial, whether the witness
23 is prejudiced toward either party, the opportunity for the
24 witness to have seen the matters and things about which the
25 witness may testify and the way the witness acts on the

1 witness stand.

2 Now, the rules of evidence ordinarily do not permit
3 witnesses to testify to opinions or conclusions. An
4 exception to this rule exist for witnesses we call expert
5 witnesses. A witness who by education and experience has
6 become an expert in some art, science, profession or calling
7 may state an opinion as to relevant and material matter in
8 which the witness claims to be an expert and may, also,
9 state the reasons for the opinion.

10 You should consider any expert opinion received in
11 evidence in this case like any other evidence, give it the
12 weight you think it deserves. If you decide the opinion of
13 an expert witness is not based on sufficient education and
14 experience or if you conclude that the reasons given in
15 support of the opinion are not sound or that the opinion is
16 outweighed by other evidence, you may disregard the opinion
17 entirely. An expert witness's testimony is to be given no
18 greater weight than that of other witnesses simply because
19 the witness is an expert. Further, you are not required to
20 accept an expert's opinion even though it is not
21 contradicted.

22 Now, the Defendant has pled not guilty to this
23 indictment. And that plea puts the burden on the State to
24 prove the Defendant guilty. A person charged with
25 committing a criminal offense in South Carolina is never

1 required to prove his or her innocence. I charge you that
2 is an important rule of the law that a defendant in a
3 criminal trial, no matter what the seriousness of the charge
4 may be will always be presumed to be innocent of the crime
5 for which the indictment was issued unless guilt has been
6 proven by evidence satisfying you of that guilt beyond a
7 reasonable doubt.

8 The presumption of innocence does not end when you
9 begin your deliberations, but it accompanies the Defendant
10 throughout the trial unless you reach a verdict of guilt
11 based on evidence satisfying you of that guilt beyond a
12 reasonable doubt.

13 The presumption of innocence is like a robe of
14 righteousness placed about the shoulders of the Defendant
15 which remains with the Defendant unless it has been stripped
16 from the Defendant by evidence satisfying you of the
17 Defendant's guilt beyond a reasonable doubt.

18 The presumption of innocence is not mere legal theory.
19 It's not just a legal phrase. It's a substantial right to
20 which every defendant is entitled unless you, the jury, are
21 satisfied from the evidence of the Defendant's guilt beyond
22 a reasonable doubt.

23 Now, the State has the burden of proving the Defendant
24 guilty beyond a reasonable doubt. Some of you may have
25 served as jurors in civil cases where you were told that it

1 was only necessary to prove that a fact is more likely true
2 than not true, such as by the greater weight or
3 preponderance of the evidence. In criminal cases, the
4 State's proof must be more powerful than that. It must be
5 beyond a reasonable doubt as to each element of each
6 offenses charged.

7 What is a reasonable doubt in the law? A reasonable
8 doubt is the kind of doubt that would cause a reasonable
9 person to hesitate to act. Proof beyond a reasonable doubt
10 is proof that leaves you firmly convinced of the Defendant's
11 guilt. There are very few things in this world that we know
12 with absolutely certainty. And in criminal cases, the law
13 does not require proof that overcomes every possible doubt.

14 If based on your consideration of the evidence you are
15 firmly convinced that the Defendant is guilty of the crime
16 charged, you must find the Defendant guilty. If on the
17 other hand, you think there is a real possibility that the
18 Defendant is not guilty, you must give the Defendant the
19 benefit of the doubt and find him not guilty. Mere
20 suspicion, however strong, is not enough to sustain a
21 conviction. Suspicion requires a belief or opinion as to
22 guilt based upon facts or circumstances which do not amount
23 to proof.

24 I remind you that the fact that the Defendant elected
25 not to testify is not a factor to be considered by you in

1 any way in your deliberations and in your consideration of
2 the question of whether the Defendant is guilty or not
3 guilty. It must not be considered in any manner whatsoever
4 against him. An accused has the Constitutional right to
5 remain silent and the assertion of that right cannot be
6 considered by you in your deliberations. Under your oath,
7 you are to reach no inference and draw no conclusion
8 whatsoever from the fact that the Defendant elected not to
9 testify. His decision not to testify should not even be
10 discussed in the jury room.

11 In order to establish criminal liability, criminal
12 intent is required. The dictionary defines intent as the
13 state of a person's mind that directs his actions towards
14 the specific act. Criminal intent must be shown by the
15 State beyond a reasonable doubt.

16 Criminal intent is always a matter that must be
17 determined by the jury from the circumstances surrounding
18 the situation. There is no way to prove intent to a
19 mathematical certainty. There is no medical science that
20 can dissect a person's brain and determine what the person
21 had in mind. So the law says that criminal intent may be
22 inferred from the circumstances shown to have existed. This
23 is how you make a determination of whether or not the
24 element requiring intent was present. Criminal intent is a
25 mental state, a conscious wrongdoing. It is up to you to

1 determine what the Defendant intended to do based on the
2 circumstances shown to have existed.

3 I'm going to explain to you the law as it applies to
4 the charge against the Defendant. Arson second degree,
5 South Carolina Code 16-11-110. In order to prove second
6 degree arson, the State must first prove beyond a reasonable
7 doubt the Defendant willfully and maliciously caused an
8 explosion, set fire to, burned, cause to be burned, aided,
9 counseled or procured the burning of certain properties.

10 Willfully means that it was not done by accident, but
11 was done knowingly or intentionally. It must be shown that
12 the burn was by the willful act of some person and not as a
13 result of a natural or accidental cause. Second degree
14 arson requires no result in bodily injury or threat to human
15 safety.

16 Maliciously means hatred, ill will or hostility. A
17 person who intentionally does a wrongful act without legal
18 justification or excuse does the act maliciously. A
19 malicious burning is an act done with a condition of mind
20 that shows a heart bent on mischief showing a design to do
21 an intentional wrong act toward another or toward the public
22 without any legal justification or excuse. This malice need
23 not be expressed, but may be inferred.

24 Burning means actual combustion of some portion of a
25 piece of property. It is not necessary that the property be

1 consumed or destroyed. South Carolina Code Section
2 16-11-110(d) provides that damage means an application of
3 fire or explosive that results in burning, charring,
4 blistering, scorching, smoking, singeing, discoloring or
5 changing the fiber or composition of a building, structure
6 or any property specified in this section.

7 Next, the State must prove beyond a reasonable doubt
8 that the property which was burned was a dwelling house, a
9 church, other place of worship, a public or private school
10 facility, manufacturing plant or warehouse, a building where
11 business is conducted, an institutional facility or any
12 structure designed for human occupancy, including local and
13 municipal buildings.

14 The hand of one is the hand of all. If a crime is
15 committed by two or more people who are acting together and
16 committing a crime, the act of one is the act of all. A
17 person who joins with another to commit an unlawful act is
18 criminally responsible for everything done by the other
19 person which happens as a probable or natural consequence of
20 the acts done in carrying out a common plan or purpose.

21 For example, two people can be guilty of killing
22 another person when only one of the two had a gun, there was
23 only one bullet and only one of the fired the shot that
24 caused the death. If two or more people are together,
25 acting together, assisting each other in committing the

1 offense, the act of one is the act of all, or as it is
2 sometimes said, the hand of one is the hand of all.

3 Prior knowledge that a crime is going to be committed
4 without more is not sufficient to make the person guilty of
5 that crime. Mere knowledge that another person is going to
6 commit a crime, even if the Defendant is present when the
7 crime is committed is not sufficient to convict the
8 Defendant as a principal. Guilt as a principal is shown by
9 action or constructive presence at the scene as a result of
10 a prior arrangement. Therefore, a finding of a prior
11 arranged plan or common scheme is necessary for finding of
12 guilt as a principal.

13 The State must prove beyond a reasonable doubt by
14 competent evidence the theory of the hand of one is the hand
15 of all. A principal in a crime is one who either actually
16 commits the crime or who is present aiding, abetting or
17 assisting in the committing of the crime.

18 When a person does an act in the presence of and with
19 the assistance of another, the act is done by both. Where
20 two or more or acting with a common plan or intent are
21 present at the commission of a crime, it does not matter who
22 actually commits the crime, all are guilty. The hand of one
23 is the hand of all.

24 Present at the commission of a crime means to be
25 sufficiently near to aid and abet and assist in the

1 commission of the crime. Have a mere presence at the scene
2 of a crime is not sufficient to convict one as a principal
3 on the theory of aiding and abetting.

4 Intent is, also, a necessary element for there must
5 have been a common design or intent to commit the crime and
6 the crime must have been committed pursuant thereto with the
7 person aiding and abetting by some overt act. Intent means
8 intending the result which actually occurs, not accidentally
9 or involuntary. Intent may be shown by acts and comments of
10 the Defendant in other circumstances which you may naturally
11 and reasonably infer intent. The State must prove these
12 elements beyond a reasonable doubt.

13 Now, the verdict in this case cannot be based upon
14 sympathy, passion, prejudice or emotion or some other
15 consideration not found in the evidence. I charge you that
16 as jurors, you must decide the issues involved in this
17 proceeding based solely upon the evidence which you hear
18 during the course of the trial. Your verdict must be
19 without bias and without prejudice to any party. You cannot
20 allow yourselves to be governed by sympathy, by prejudice,
21 by passion, by public opinion or some other consideration
22 not found in the evidence.

23 Now, let me say something about your deliberations.
24 Deliberation is defined as careful consideration weighing up
25 with a view to decision. The genius of our jury system is

1 it allows 12 good men or women from 12 different
2 backgrounds, life experiences and perspectives to consider
3 the evidence, talk about it and, ultimately, reach a
4 verdict.

5 We call them deliberations for a reason, you're to
6 consider the evidence in this case carefully and
7 deliberately and discuss it in a calm, thorough and
8 courteous manner. Listen to the views of all your fellow
9 jurors, consider other people's points of view and talk
10 through and discuss the evidence. And remember, if you're
11 something deliberately, you are not in a big hurry. You
12 should not be in a hurry here. This case is very important
13 to all the parties and this trial is their only day in
14 court.

15 When you retire to the jury room, you should discuss
16 the case with your fellow jurors to reach agreement if you
17 can do so. Your verdict must be unanimous. Each of you
18 must decide the case for yourself, but you should do so only
19 after you have impartially considered all the evidence,
20 discussed it fully with the other jurors and listened to the
21 views of your fellow jurors.

22 Do not be afraid to change your opinion if the
23 discussion persuades you that you should, but do not come to
24 a decision simply because other jurors think it is right.
25 It is important that you attempt to reach a unanimous

1 verdict, but, of course, only if each of you can do so after
2 having made your own decision. Do not change an honest
3 belief about the weight and effect of the evidence simply to
4 reach a verdict. In other words, do not change your opinion
5 solely for the sake of reaching a unanimous verdict.

6 Now, I will give you a copy of these instructions in
7 written form during your deliberations. You may refer to
8 the instructions to guide your decisionmaking. You must
9 consider the instructions as a whole and not follow some and
10 ignore others. Please return the instructions to the Court
11 at the time your verdict is rendered.

12 There are two possible verdicts you may find in this
13 case, guilty or not guilty. There is no significance
14 whatsoever in the order in which I state these possible
15 verdicts. It's simply one must be stated first. Ladies and
16 gentlemen, your verdict must be a unanimous one.

17 Madam Forelady, when the jury agrees on a verdict, you
18 will write the verdict on the verdict form, knock on the
19 jury room door and inform the bailiff that you have reached
20 a verdict. At that time, we will receive you back into the
21 courtroom.

22 Now, I'd ask that you return to the jury room, but do
23 not begin your deliberations until you are told by the clerk
24 or bailiff to do so. There are some matters which must be
25 discussed with the attorneys before you begin your

1 deliberations. So at this time, please, head on back to the
2 jury room. Do not discuss the case.

3 Thank you.

4 (WHEREUPON, the jury exits the courtroom at 2:13 p.m.)

5 THE COURT: Any issues with the charge other than the
6 previous exceptions?

7 MS. GRESHAM: Other than the previous exceptions, no.

8 THE COURT: Any exceptions from the State?

9 MR. MILLER: None from the State, Your Honor.

10 THE COURT: I'd like to get the alternates brought back
11 to the courtroom. If the attorneys will get the evidence
12 together, we'll send it back.

13 (WHEREUPON, Court's Exhibit No. 1 was marked for
14 identification.)

15 (WHEREUPON, the jury began deliberations at 2:20 p.m.)

16 THE COURT: Mr. Moncrieft and Mr. Corley, you are our
17 two alternates. We ended up not losing anybody in the last
18 24 hours, so we're not going to need you for deliberations.
19 I hope your experience was a good experience. You're free
20 to go at this time, but you're certainly welcome to stay. I
21 just want to thank you for your service.

22 THE COURT: We'll be in recess.

23 (WHEREUPON, court was in recess awaiting a verdict.)

24 THE COURT: I understand we have a verdict. Anything
25 before we bring in the jury?

1 MR. MILLER: Nothing from the State, Your Honor.

2 MS. GRESHAM: Nothing from the Defense.

3 THE COURT: All right. Let's bring the jury in,
4 please.

5 (WHEREUPON, the jury enters the courtroom at 3:15 p.m.)

6 THE COURT: Madam Forelady, I understand you have a
7 verdict; is that correct?

8 THE FORELADY: Yes.

9 THE COURT: Is your verdict unanimous?

10 THE FORELADY: Yes.

11 THE COURT: Madam Clerk, you may publish.

12 THE CLERK: Your Honor, we have case number
13 2025-GS-05-00014, State of South Carolina, County of Bamberg
14 vs. Jimmie Lee McMillian, Jr., Defendant. We, the jury, as
15 to indictment 2025-GS-05-00014 for the charge of arson
16 second degree unanimously find beyond a reasonable doubt
17 Defendant, Jimmie Lee McMillian, Jr. guilty. Signed by
18 Ashley Zeigler, Jury Foreman, September 3, 2025.

19 THE COURT: Any matters for the jury before they are
20 released?

21 MS. GRESHAM: If we could poll the jury, Your Honor.

22 THE COURT: Very well.

23 THE CLERK: Ladies and gentlemen of the jury, if this
24 is your verdict, please, indicate by raising your right
25 hand.

1 (WHEREUPON, all jurors raised their hands.)

2 THE CLERK: Judge, all hands are raised.

3 THE COURT: Anything else from the Defense?

4 MS. GRESHAM: No, Your Honor.

5 THE COURT: Anything before the State before the jury
6 is released?

7 MR. MILLER: Nothing from the State, Your Honor.

8 THE COURT: All right. Ladies and gentlemen, when you
9 come in on Monday -- well, Tuesday morning, you never know
10 what's going to be waiting for you when you show up for jury
11 duty. We appreciate your patience. I hope serving on a
12 jury for the past two days was a good experience for you.
13 Just know that the justice system has a hard time working
14 unless we have people like you who come forward and serve as
15 jurors in these cases.

16 So thank you for your service over the last 48 hours.
17 You are free to go at this time. I don't know if you have
18 all your stuff out of the jury room, but if you need to go
19 back to the jury room, I'm sure they'll escort you out
20 there. You're free to stay, but you're free to go at this
21 time.

22 Madam Forelady, I need for you to sign the verdict
23 form.

24 (WHEREUPON, the jury was released.)

25 THE COURT: Any posttrial motions?

1 MS. GRESHAM: I renew my previous motions and
2 objections.

3 THE COURT: Counsel, would y'all approach real quick?
4 (WHEREUPON, a bench conference was held.)

5 THE COURT: Anything else from the State?

6 MR. MILLER: Nothing from the State.

7 THE COURT: Anything else from the Defense?

8 MS. GRESHAM: Yes, Your Honor, I make a motion for a
9 new trial on lack of evidence as to element of damages as
10 well as regarding the indictment as being the one setting
11 the fire.

12 THE COURT: I find that there was adequate evidence to
13 submit the case to the jury based upon renewing a directed
14 verdict. I'll deny the motion for a new trial. I think the
15 evidence was sufficient that the jury weighed in coming up
16 with their decision. Your motion is preserved, but it is
17 denied.

18 MS. GRESHAM: Yes, Your Honor.

19 THE COURT: Thank you.

20 (Pause.)

21 THE COURT: Mr. Miller, are we ready to proceed?

22 MR. MILLER: Yes, Your Honor.

23 THE COURT: All right. So we just finished -- the jury
24 returned a verdict on the Defendant of guilty of arson in
25 the second degree.

1 What does the State have as far as any input on
2 sentencing?

3 MR. MILLER: Your Honor, the Defendant has a prior
4 record that consist of a 2013 public disorderly conduct and
5 trespassing, failure to comply, 2014, simply possession of
6 marijuana, 2020, malicious injury to personal property under
7 \$2,000.

8 Your Honor, I do think it's relevant to sentencing in
9 this matter that the Defendant was actually in the Bamberg
10 County Detention Center and was charged with attempted
11 murder. And because of the fact that there was an issue
12 that arose and I was able to sit down and personally speak
13 to the victim in the case. And after speaking to her, the
14 attempted murder charge was dismissed. Once I was able to
15 decipher everything that she was saying, it was pretty clear
16 to me that Mr. McMillian was present when somebody else shot
17 at the vehicle that this lady was in. But when the shots
18 happened, the person who shot ran in one direction, Mr.
19 McMillian ran in the other direction. She actually
20 affirmatively said he wasn't the person that shot at me. He
21 ran away. He didn't run off with him.

22 So his underlying charge that he was in the jail for
23 whenever this event occurred has been dismissed and it
24 wasn't a part of any type of agreement for cooperation or
25 anything like that. Apparently, to us, he was not guilty of

1 the attempted murder.

2 Having said that, Your Honor, I do -- it was a series
3 of poor decisions on his part, I think it's safe to say that
4 led to this charge, however, Your Honor, you've seen the
5 video. This absolutely could have not have occurred but for
6 him. And he does have a very minimal prior record. He does
7 -- I just say, he actually was in the jail on something that
8 he was ultimately -- that was ultimately dismissed.

9 I know that -- Ms. Gresham and I talked about it and I
10 can go back and look to see, he was arrested October 15th of
11 2024 legally. He obviously can't get credit for time served
12 prior to the commission of the crime, however, Your Honor,
13 given the circumstances, the State would certainly
14 understand if, in fact, the Court wanted to take into
15 account that he had spent that time in jail --

16 THE COURT: How long of a time was that?

17 MR. MILLER: October of 15th of 2024 and this happened
18 on January 2nd of 2025. I know prior to -- if you don't
19 count -- obviously, you're not giving him credit for it, but
20 he has 183 days in custody from the time of the event until
21 the time that he bonded out.

22 THE COURT: And after January 2nd, how long was it --

23 MR. MILLER: Your Honor, I would say in fairness that
24 he should get credit for, at least, another month and a half
25 because he was in jail for that long. He doesn't get credit

1 for it, but you could take that into account in your
2 sentence. He's legally not entitled to any credit for that
3 time, but --

4 THE COURT: He was in on a violent offense and he
5 picked up a new violent offense?

6 MR. MILLER: Well, no, sir, he was in on a violent
7 offense -- well, I guess he did, but he wasn't actually out
8 on bond when he picked up the new --

9 THE COURT: That's true. That's true.

10 MR. MILLER: So he would be entitled to the credit from
11 October the 15th of '24, which is two and a half months. He
12 wouldn't be entitled to that credit under normal
13 circumstances, but --

14 THE COURT: Okay.

15 MR. MILLER: I'm not sure I'm being clear about that.

16 THE COURT: I may have another question for you. Do
17 you have -- and I don't know what Mr. Augustine's prior --

18 MR. MILLER: His prior history was not insignificant.
19 He, also, had some mental health issues that I think we were
20 all pretty shocked at what a turn around he had made since
21 he had spent four months in Bamberg County.

22 (Pause.)

23 MR. MILLER: He was sentenced to six years, Your Honor,
24 Mr. Augustine was, when he pled guilty on June 16th of this
25 year.

1 THE COURT: Okay.

2 Ms. Gresham.

3 MS. GRESHAM: May it please the Court. Mr. McMillian
4 is 30 years old. He's from Bamberg. He has lots of family
5 that care about him. They're not able to be here today
6 because of his sister having a seizure in the car earlier.

7 I think the argument that but for Mr. McMillian this
8 would never have happened doesn't get to really the root of
9 it. Jeffrey Augustine is the one who said I'm going to burn
10 this jail down. And all of it was placed in front of his
11 cell for Jeffrey Augustine to ignite a fire. I don't think
12 Mr. McMillian is as culpable as Mr. Augustine.

13 I think what Mr. Miller was getting at is he was
14 arrested on January 15th on this charge. He spent three
15 months in detention prior to that for the previous offense.
16 That offense got dismissed. So that time is sort of wasted
17 time. I would, also, encourage you to consider giving him a
18 little credit for it, not officially, but in your thinking.

19 The actual time that he does get credit for, Mr. Miller
20 said 183 days from the event. The time from his arrest is
21 170. I don't want to deprive him of 13 days, but I don't
22 want to cause a problem either. The time from the arrest
23 was 170. The time from the date of the incident was 183.

24 THE COURT: Okay.

25 MR. MILLER: He was in custody from the date of the

1 offense for 183 days before he bonded out.

2 MS. GRESHAM: That's correct.

3 MR. MILLER: He absolutely can get credit for that.

4 THE COURT: From January 2nd till --

5 MR. MILLER: Correct, he bonded out on July 3rd.

6 THE COURT: So we can agree on that?

7 MR. MILLER: We all agree on that, Your Honor.

8 THE COURT: So the rest will be 90 days or so on top of
9 it that he can't get credit for?

10 MR. MILLER: Yes, sir.

11 MS. GRESHAM: Your Honor, the thing I wanted to add was
12 there was some concern about whether he popped his door or
13 if he stuffed something into the door jam. Mr. McMillian
14 tells me that he didn't have water in his cell. Officer
15 Gantt was the one who would pop his door so he could get
16 water.

17 THE COURT: Okay. All right. We can all agree that
18 183 days is appropriate at a bare minimum?

19 MR. MILLER: Yes, sir.

20 MS. GRESHAM: Yes, Your Honor.

21 THE COURT: We talked about culpability and just from
22 my watching the video, hearing the evidence -- and it's
23 football season, so I'm just going to try to come up with an
24 appropriate analogy. Augustine may have been the coach and
25 the general manager, but Mr. McMillian is the quarterback.

1 I mean, he made it happen. I mean, he was running all over
2 the field, so to speak. Going to the other doors, jail
3 doors and getting material to put on the fire. So we've
4 split a lot of hairs on what got burned, how it was started,
5 but Mr. McMillian is involved at every level.

6 He doesn't have a particularly bad criminal record, but
7 I don't think his conduct is any less than Mr. Augustine's.
8 How he got the door open, I don't know. Everyone knows you
9 can't -- if you're in your cell, you're in your cell. I
10 mean, it's not -- I don't think it's an open door policy at
11 any detention center for that matter.

12 Does Mr. McMillian wish to be heard, Ms. Gresham?

13 MS. GRESHAM: He does, Your Honor.

14 THE COURT: Yes, sir, happy to hear from you.

15 THE DEFENDANT: Your Honor, me, personally, I don't
16 think that this incident fully amounts -- like you see on
17 the video, like you said, I was making trash or whatever.
18 But no type of evidence leaning to me being accused of arson
19 occurred. I never started the fire. Never gave him the
20 lighter. None of this even happened. So how am I getting
21 charged with arson?

22 THE COURT: Okay.

23 MS. GRESHAM: And I have answered that question.

24 THE COURT: Okay.

25 THE DEFENDANT: I can omit to getting the trash. I can

1 admit to whatever -- but he admitted --

2 MS. GRESHAM: He pled to arson --

3 THE DEFENDANT: He admitted to it, so why am I getting
4 the same time as somebody that's already admitted to doing.

5 THE COURT: Okay.

6 THE DEFENDANT: I did my time. I did seven months.

7 THE COURT: All right. I don't blame you for being
8 frustrated for being in the position you're in. I think the
9 law on hand of one, hand of all is pretty clear. It's a
10 fact that -- I think I've heard enough. The video speaks
11 for itself. You appeared to me to be acting in coordination
12 and concert with another person. We can agree to disagree.
13 I don't expect you to admit it. On one hand, I think your
14 view is it was just a little fire in the jail --

15 THE DEFENDANT: No, I --

16 THE COURT: And I'm not trying to put words in your
17 mouth. Yes, somebody pled guilty to something for their
18 role, but I think the evidence here showed you certainly had
19 a role in it.

20 The detention center is not in top shape, but we can't
21 fix that in this room. And regardless of whatever anybody
22 wants to say about the detention center, it's our detention
23 center. And if you're housed at the detention center, you
24 need to understand that if you set fire to the detention
25 center, there's nothing minimal about that. Did anybody get

1 hurt? No. But setting a combustible fire, there's just no
2 universe when that's acceptable in my view.

3 (Pause.)

4 THE COURT: All right. I've tried to give some credit
5 by adjusting what I think is the appropriate sentence here a
6 little bit down. It's an odd number, I recognize, but on
7 the charge of arson second degree with credit for 183 days,
8 the sentence is 78 months in the Department of Corrections.

9 That's all. Court is in recess.

10 (WHEREUPON, Court's Exhibit No. 2 was marked for
11 identification.)

12 (WHEREUPON, the proceedings were concluded.)

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1 CERTIFICATE OF REPORTER

2

3

4 STATE OF SOUTH CAROLINA)

5 COUNTY OF BAMBERG)

6

7 I, PENNY M. JOHNSON, Official Court Reporter for the
8 Second Judicial Circuit of the State of South Carolina, do
9 hereby certify that the foregoing is a true, accurate, and
10 complete Transcript of Record of the proceedings had and the
11 evidence introduced in the hearing of the captioned case,
12 relative to appeal, in the Court of General Sessions for
13 Bamberg County, South Carolina, on the days of September
14 2-3, 2025.

15 I do further certify that I am neither of kin, counsel,
16 nor interest to any party hereto.

17

18

February 13, 2026

19

20

21

Penny M. Johnson
Penny M. Johnson
Official Court Reporter

22

23

24

25

WITNESSES

Shawn Murray - South Carolina Law Enforcement



DOCKET NO. 2025GS0500014

The State of South Carolina

County of Bamberg

BAMBERG COUNTY COURTHOUSE

JANUARY TERM 2025

Law Enforcement Case #:

DWM

ARREST WARRANT NUMBER

2025A0510100010

THE STATE

vs.

JIMMIE LEE MCMILLAN, JR

ACTION OF GRAND JURY

True Bill

CDR : 2551



Foreperson of Grand Jury

Date: January 23, 2025

Indictment For

Arson

VERDICT

Guilty

SC Code: §16-11-110(B)



Foreperson of Petition

Date: 4-3-25

Bill Weeks, Solicitor

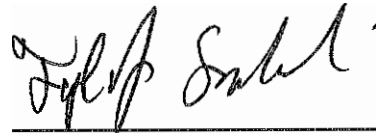
STATE OF SOUTH CAROLINA)
)
COUNTY OF BAMBERG)

INDICTMENT FOR
Arson
§16-11-110(B)

At a term of the Bamberg County Grand Jury convened on January 23, 2025, the Grand Jurors of Bamberg County present upon their oath:

That **JIMMIE LEE MCMILLAN, JR** did, in Bamberg County, South Carolina, on or about January 2, 2025, along with another, wilfully and maliciously set fire to, burn, or cause to be burned, or did aid, counsel, or procure a burning that resulted in damage to an institutional facility, or a structure designed for human occupancy including a local or municipal building, whether the property of himself or another, to wit: setting a fire inside the Bamberg County Detention Center, all in violation of Section 16-11-110(B), of the South Carolina Code of Laws (1976), as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



Bill Weeks, Solicitor

FILED
BAMBERG COUNTY, SC
2025 SEP 03 PM03:51
JANNIE C. JOHNSON
CLERK OF COURT

STATE OF SOUTH CAROLINA

SENTENCE ORDER

IN THE COURT OF GENERAL SESSIONS

COUNTY OF BAMBERG

STATE

VS.

Jimmie Lee Mcmillan, Jr

AKA: SSN: XXX-XX-XXXX

RACE: Black SEX: Male

DOB: [REDACTED]

) INDICTMENT/CASE#: 2025GS0500014

) AW#: 2025A0510100010

) Date of Offense: 01/02/2025

) S.C. Code §: 16-11-110(B)

) CDR Code #: 2551

) Range of Offense: 3 -25 years

In disposition of the above indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS

TO: Arson - 2nd degree

Range of Offense Pled: 3 -25 years

In violation of § 16-11-110(B) of the S.C. Code of Laws, bearing CDR Code # 2551

☐ NON-VIOLENT ☒ VIOLENT ☒ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ § 17-25-45
(CSC w/minor 1st or CSC w/minor 3rd)
The charge is: ☒ As indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand JuryThe plea is: ☐ w/o Rec/Negotiations ☐ Negotiated ☐ RecommendationDavid Warren Miller
Solicitor69553
SC Bar #Megan K. Gresham
Attorney For Defendant 100461
SC Bar #The Defendant is committed to the ☒ SCDC ☐ County Detention Center ☐ Home Incarceration Program
for a determinate term of 78 days/months/years/Time Served ☐ YOA NTE years and/or shall pay a fineof \$; provided that upon the service of days/months/years/Time Served and or paymentof \$; plus costs and assessments as applicable*; the balance is suspended with probation for months/years and subject to SCDPPPS standard conditions of probation, which are incorporated by reference.☐ The sentence shall run CONCURRENT or ☐ CONSECUTIVE to sentence on: ☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by SCDC.183 days/month ☐ To include time spent on monitored house arrest prior to trial and sentencing.

SPECIAL CONDITIONS:

☐ PTUP☐ No Contact with Victim☐ Domestic Violence Intervention Program☐ Hold for Inpatient Treatment☐ Sex Offender Registry pursuant to S.C. Code § 23-3-430☐ SAC/MHC if necessary☐ Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135☐ Other: ☐ RESTITUTION See Separate Order (20% per S.C. Code § 24-21-490 (B))

§14-1-206 (Assessments 107.5%)

§14-1-211 (A)(1)(Conv. Surcharge)

§14-1-211 (A)(2)(DUI Surcharge)

§56-5-2995 (DUI Assessment)

§56-1-286 (DUI Breath Test)

§14-1-212 (Law Enforce. Funding)

§14-1-213 (Drug Court Surcharge)

§34-11-70(b)and(c), and 34-11-90(c)and(d) (Admin Fraud Check Court Costs)

§50-21-114 (BUI Breath Test Fee)

§56-5-2942(J) (Vehicle Assessment)

3% to County (if paid in installments)

☐ Appointed PD or appointed other counsel, Proviso requires \$500 be paid to Clerk during probation and shall be collected before any other fees☐ §17-3-30(B) Unpaid Application Fee to be paid to the Public Defender Fund[Signature]
Clerk of Court/Deputy Clerk[Signature]
Court Reporter

Fine/Costs and Assessments are to be paid to the

Clerk of Court within days/months

Restitution \$

FINE: \$

\$100

\$100

\$12

\$25

\$25

\$150

\$41

\$50

\$40/ea

TBD

\$500

TBD

TOTAL

\$ 100.00\$ 25.00\$ 3.75\$ 3.75\$ 128.75\$ 3.75\$ 3.75\$ 3.75\$ 3.75\$ 3.75\$ 3.75\$ 3.75\$ 128.75SCCA217B
01/27/20252765
Judge Code9/13/2025
Sentence Date[Signature]
Presiding Judge

CERTIFICATE OF COUNSEL FOR APPELLANT

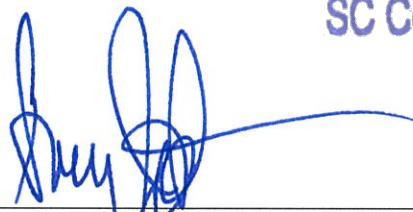
Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

Respectfully Submitted,

RECEIVED

Jun 25 2026

SC Court of Appeals



Gary H. Johnson
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S.C. 29211-1589

This 25th day of June, 2026.

ATTORNEY FOR APPELLANT