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SC Court of Appeals

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM UNION COUNTY

John C. Hayes, III, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

CRYSTAL GAIL CALICUTT,

APPELLANT

APPELLATE CASE NO. 2015-002608

RECORD ON APPEAL

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State of South Carolina.,)
)
 County of Union.)

In the Court of General
 Sessions of Union
 Case No.: 2014-GS-44-00092

State of South Carolina.,)
)
 Plaintiff.,)
)
 -vs-)
)
 Crystal Gail Calicutt.,)
)
 Defendant.)

Transcript of Record

December 8, 9, 10, 2015
 Union, South Carolina

B E F O R E:

The Honorable John C. Hayes, III., Judge; and a jury.

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I-N-D-E-X - CON'TE-X-H-I-B-I-T-S

	<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EVD.</u>
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2				
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I-N-D-E-X - CON'TE-X-H-I-B-I-T-S

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Court Reporter's Note: All Exhibits received into evidence and marked were filed with the Union County Clerk of Court's Office.

NOTE: Amended Exhibit Sheet submitted to Union Clerk of Court to reflect a Court Exhibit received into evidence but was not received by the Court Reporter of record to place a Court Exhibit Sticker on it during trial. (Page 287 of Transcript of Record.)

1 (COURT IN SESSION TUESDAY, DECEMBER 8, 2015 AT 10:23
2 AM.)

3 THE COURT: Members of the jury panel, I'm John Hayes;
4 I'm from Rock Hill and I am a circuit court judge. Judge
5 Dan Hall and I are two judges who are permanently assigned
6 to York and Union counties which is the Sixteenth Judicial
7 Circuit. We do rotate throughout the state but this is our
8 home circuit so I'm over in Union an awful lot. I always
9 enjoy being here.

10 We are starting today a term of criminal court;
11 technically its called General Sessions Court but it's
12 criminal court. In just a moment the Clerk will call the
13 roll, Clerk Al, and who is also your probate judge - he's
14 wearing two hats right now - will call the roll and he will
15 ask for certain information and if you'll just respond with
16 that information we appreciate it. Try to use a good
17 strong voice, you don't need to shout, but we do want to
18 hear what you have to say so kind of project your voice out
19 if you would.

20 After the roll is called I will have certain matters
21 to go over with you; certain questions regarding your
22 eligibility to serve. There are certain qualifications for
23 service as a juror; there are certain things that
24 disqualify individuals from serving as a juror and there
25 are certain exemptions; that is, some people particularly

1 those at a certain age have a right to stay and serve if
2 they want or be excused if they want. So right now if
3 you'll give the clerk your attention and answer with the
4 information he seeks.

5 Have they been sworn in? Have you sworn them in?

6 All right. All of you stand and raise your right hand
7 if you would.

8 (WHEREUPON, JURY SWORN AT 10:25 AM.)

9 THE COURT: Thank you. You may be seated.

10 CLERK AL: I'll call the roll.

11 (JURY ROLL CALL AT 10:25 AM.)

12 THE COURT: Thank you, Mr. Clerk.

13 Members of the jury panel, I'm now going to go over
14 those qualifications, disqualifications and exemptions that
15 apply to jury service. If you need to discuss any of these
16 with me once I get through going over the list I will
17 invite those of you who need to talk to me about anything
18 that comes up in your mind that you need to talk to me
19 about after hearing my list of qualifications and
20 disqualifications and exemptions. You will be able to form
21 a line there between the two sides and a deputy or a
22 bailiff will stand there at the breach in the bar and have
23 you come up one at a time for me to discuss whatever your
24 situation may be. I will step down by the court reporter;
25 we have to put it on the record, and the attorneys have the

1 right to gather around me and hear what you have to say;
2 but you won't have to stand up in front of everyone.

3 First, in order to serve as a juror in this particular
4 type court you must fall into one of the following
5 categories. You need not fall into all three but you must
6 fall into one. You must either be a qualified elector;
7 that is, a registered voter, or hold a valid South Carolina
8 driver's license; or, hold a South Carolina Department of
9 Public Safety Identification card. If you do not fall -
10 hold one of those please come forward in just a moment.

11 If any of you are not a United State's citizen, or, if
12 you live in a county other than Union County, South
13 Carolina please come forward in just a moment.

14 If any of you work in this court house or hold any --

15 (JURORS COMING FORWARD.)

16 THE COURT: Not right yet. Not right yet. Not right
17 yet.

18 (JURORS RETURN TO SEATS.)

19 THE COURT: Thank you. That's okay.

20 If any of you work in the courthouse here in Union
21 County, or, if any of you hold any elected office in Union
22 County please come forward in just a moment.

23 If any of you hold a constable's license either with
24 or without pay please come forward in just a moment.

25 If any of you have been convicted or pled guilty in a

1 state or a federal court to a crime for which you could
2 have received punishment that exceeded one year and if your
3 civil rights have not been restored by pardon or amnesty,
4 please come forward in just a moment.

5 I call to your attention that that has to do with
6 offenses that carry a potential penalty of one year or
7 more, or in excess of one year. It has nothing to do with
8 any sentence one may have actually received.

9 If any of you have any physical or mental health
10 issues that would prevent you from serving with us as a
11 juror this week please come forward.

12 If any of you have less than a sixth grade education
13 or it's equivalent, or, if you're unable to read, write,
14 speak or understand the English language, please come
15 forward.

16 If any of you are sixty-five or older you have an
17 exemption. If you are sixty-five or older and wish to be
18 excused please come forward. You have an absolute right to
19 be excused; however, you have an absolute right to serve
20 and if you wish to serve just remain seated.

21 If any of you have served on a circuit court jury
22 within the last three calendar years, or, if you have
23 served on a circuit court or statewide grand jury within
24 the last five calendar years, please come forward in just a
25 moment.

-11-

1 If any of you take care of a child under the age of
2 seven; that is, if you are the primary care giver for a
3 child under the age of seven and do not work outside the
4 home, or, if you are the care giver for anyone of any age;
5 that is, if you take care of someone who because of a
6 mental or physical problem they cannot take care of
7 themselves and you spend your time not at a job but that
8 you spend your time taking care of someone who cannot take
9 care of themselves, please come forward in just a moment.

10 If any of you are a teacher or a student and serving
11 with us would interfere with that, please come forward and
12 we can transfer you to another time.

13 Finally, if any of you have any compelling reason why
14 you could not serve with us as a juror this particular
15 week, please come forward. So I'm now going to step down
16 and ask one of the bailiff's or deputies to station
17 themselves there at the breach and if you'll come up one at
18 a time I'll chat with you.

19 (COURT LEFT THE BENCH.)

20 THE COURT: Yes, sir, your name and number?

21 (WHITE MALE COMES FORWARD.)

22 A. My name is Robert Adams and I'm juror number two and
23 I'm currently under the weather. I just feel like I
24 can't focus.

25 THE COURT: I'll transfer you to another term. You

1 just step right over here. I hope you feel better.

2 THE COURT: Yes, sir.

3 (WHITE MALE COMES FORWARD.)

4 A. I have glycoglycemia, makes it tough cause I got to
5 eat ever two hours.

6 THE COURT: Okay. I'll excuse you.

7 MADAM COURT REPORTER: Judge, get his name and number.

8 THE COURT: I'm sorry, your name and number?

9 A. I don't know the number. My name is Louise Aste.

10 THE COURT: Thank you.

11 MADAM COURT REPORTER: Can you all call the name and
12 number before they come up please, so I can get it for the
13 record.

14 Excuse me, Judge.

15 THE COURT: That's okay. Your name and number?

16 (BLACK MALE COMES FORWARD.)

17 A. One twenty-eight. James Holmes. I don't know, tried
18 something last year.

19 THE COURT: You'll be excused.

20 He's excused.

21 JUROR ONE TWENTY-EIGHT: Thank you.

22 THE BAILIFF: Juror Number Thirteen, Louis Aste.

23 THE COURT: We've already taken care of him.

24 THE BAILIFF: Juror 2-0-4, Gene Pardue.

25 (WHITE MALE COMES FORWARD.)

1 THE COURT: Aste was excused.

2 JUROR 2-0-4: How you doing, sir. I served on
3 Magistrate court a couple of months ago and I'm sixty-six
4 years old.

5 THE COURT: All right. If you're sixty-six you can be
6 excused.

7 JUROR NUMBER 2-0-4: Thank you.

8 THE COURT: He'll be excused. Did you get his name and
9 number?

10 MADAM CLERK: What was his number?

11 MADAM COURT REPORTER: 2-0-4

12 THE BAILIFF: Juror Number Seventy, Leardice Eison,
13 Junior.

14 (BLACK MALE COMES FORWARD.)

15 MADAM COURT REPORTER: Seventy.

16 THE COURT: Yes, sir, your name?

17 A. Leardice Eison, Junior.

18 THE COURT: Eison?

19 JUROR NUMBER SEVENTY: I'd like permission to be
20 excused because of my job duties. I'm a truck driver and
21 I'm working in Aiken and I'm self-employed.

22 THE COURT: You in Aiken all the time or just for this
23 week?

24 JUROR NUMBER SEVENTY: Well right now due to the rain
25 and everything I work in logging.

1 THE COURT: I'll excuse you.

2 He'll be excused. You can leave.

3 THE BAILIFF: Juror Number One forty.

4 JUROR NUMBER SEVENTY: All right. Appreciate it.

5 THE BAILIFF: Juror Number One Forty, Annie R. Jeter.

6 (BLACK FEMALE COMES FORWARD.)

7 MADAM COURT REPORTER: One forty.

8 THE COURT: Yes, ma'am, your name and number?

9 JUROR NUMBER ONE FORTY: My name is Annie Jeter. My
10 number is One forty. I have several medical issues. I'm a
11 diabetic I have to take fluid pills I'm having to
12 constantly run back and forth to the bathroom. I have bad
13 spasms.

14 THE COURT: She'll be excused.

15 JUROR NUMBER ONE FORTY: Thank you.

16 THE BAILIFF: Juror Number Eighteen, Justin Beheler.

17 (WHITE MALE COMES FORWARD.)

18 THE COURT: Good morning. Your name again?

19 JUROR EIGHTEEN: Justin Beheler. I have severe
20 anxiety and depression disorder.

21 THE COURT: Are you on medication for it?

22 JUROR NUMBER EIGHTEEN: Yes, sir.

23 THE COURT: I'll excuse you.

24 He'll be excused.

25 THE BAILIFF: Juror Number One thirty. Kenneth W.

1 Howell.

2 (WHITE MALE COMES FORWARD.)

3 THE COURT: Good morning.

4 JUROR ONE THIRTY: I've been caught with a CDV charge.

5 THE COURT: Mr. Howell.

6 JUROR ONE THIRTY: I also have COPD. Just smothered,
7 closed in.

8 THE COURT: We won't get that closed in.

9 CDV, Criminal Domestic Violence in Magistrate Court?

10 JUROR ONE THIRTY: Lord, eighteen years ago.

11 THE COURT: You can stay with us. Just have a seat.

12 He'll remain with us.

13 THE BAILIFF: Juror Number Two fifty-four, Jerry
14 Smith.

15 (WHITE MALE COMES FORWARD.)

16 THE COURT: Yes, sir, your name?

17 JUROR NUMBER TWO FIFTY-FOUR: Jerry Smith. I have no
18 judgment, can't read and write.

19 THE COURT: Where do you work?

20 JUROR TWO FIFTY-FOUR: Finishing.

21 THE COURT: What do you do?

22 JUROR TWO FIFTY-FOUR: System printer.

23 THE COURT: And do you take care of your own money?

24 JUROR TWO FIFTY-FOUR: My wife does.

25 THE COURT: Can you read the paper?

1 JUROR TWO FIFTY-FOUR: Some.

2 THE COURT: Do you watch television? Can you
3 understand the news? Things that come on the television?

4 JUROR NUMBER TWO FIFTY-FOUR: Yes.

5 THE COURT: Okay. I'll let you stay with us. Thank
6 you.

7 THE BAILIFF: Juror number Eighty-one, Dennis Frost.

8 (WHITE MALE COMES FORWARD.)

9 THE COURT: Your name again?

10 JUROR NUMBER EIGHTY-ONE: Dennis Frost. The reason I
11 ask to be excused, I had two heart attacks. I got
12 prostrate, kidney problems. I can't set long.

13 THE COURT: I'll excuse you.

14 He'll be excused.

15 THE BAILIFF: Juror Number Two Thirty-seven, Tabatha
16 Salters.

17 (BLACK FEMALE COMES FORWARD.)

18 THE COURT: Yes, ma'am. Ms. Salters, what's your
19 situation?

20 JUROR NUMBER TWO THIRTY-SEVEN: I apologize for
21 earlier. I transferred down in Sumter, South Carolina so
22 I live in Sumter, South Carolina.

23 THE COURT: How long have you lived in Sumter?

24 JUROR NUMBER TWO THIRTY-SEVEN: I just moved there the
25 end of April.

-17-

1 THE COURT: You haven't changed your driver's license?

2 JUROR NUMBER TWO THIRTY-SEVEN: No. I haven't changed
3 anything really.

4 THE COURT: You need to get those changed but I'll
5 excuse you.

6 JUROR NUMBER TWO THIRTY-SEVEN: Yes, sir. Thank you.

7 THE COURT: You need to get those changed.

8 JUROR NUMBER TWO THIRTY-SEVEN: Yes, sir.

9 THE BAILIFF: Number Two-fifty, Erica Smith.

10 (BLACK FEMALE COMES FORWARD.)

11 THE COURT: Good morning, Ms. Smith.

12 JUROR NUMBER TWO FIFTY: I have two nephews I provide
13 for. If I get picked the mother can't work right now.

14 THE COURT: Start over again. You have a nephew that
15 you help?

16 JUROR NUMBER TWO-FIFTY: That I take care of and if I
17 get picked right now his mother can't work right now
18 because I'm over here. I get picked she can't go to work
19 and I'm missing work I'm providing for her.

20 THE COURT: I'll have to let you stay with us. This
21 will be a short week so I'll have to let you stay.

22 She'll stay with us.

23 THE BAILIFF: 1-0-5, Lisa Green.

24 (BLACK FEMALE COMES FORWARD.)

25 THE COURT: Good morning.

1 JUROR NUMBER 1-0-5: I can't stand up. I been sick,
2 my legs and I hurt real bad on my left side.

3 THE COURT: You have what on the left side?

4 JUROR NUMBER 1-0-5: On my left I got tight muscles I
5 can't sit too long, stand too long, I can't cross my legs.

6 THE COURT: I'll excuse you. She'll be excused.

7 THE BAILIFF: Number Fifty eight, Debra Davis.

8 (WHITE FEMALE COMES FORWARD.)

9 THE COURT: Good morning, Ms. Davis.

10 JUROR NUMBER FIFTY-EIGHT: I'm disabled. I sleep with
11 a sleep pap machine. Couldn't do something over night.

12 THE COURT: You won't be here over night so you'll
13 stay with us. Thank you.

14 JUROR NUMBER FIFTY-EIGHT: Thank you.

15 THE BAILIFF: One eighty-seven, Terrance Mills.

16 (BLACK MALE COMES FORWARD.)

17 THE COURT: Hey, Mr. Mills.

18 JUROR NUMBER ONE EIGHTY-SEVEN: I just started my job.
19 I just stared it yesterday, third shift.

20 THE COURT: We'll transfer you. Step over here.
21 He'll be transferred to another time.

22 THE BAILIFF: Number Thirty, Gary Breitenbach.

23 (WHITE MALE COMES FORWARD.)

24 THE COURT: Good morning. Sir, your name again.

25 JUROR NUMBER THIRTY: Gary Breitenbach. I've a

1 enchronologist, diabetic doctor appointment on Thursday.
2 My job depends on me keeping - I'm a truck driver.

3 THE COURT: Well I can transfer you to another time.
4 He'll be transferred. You can just step over to the
5 desk there.

6 THE BAILIFF: Number Twenty-four, Lewis Boulware.

7 (WHITE MALE COMES FORWARD.)

8 THE COURT: Good morning, Mr. Boulware. How are you?

9 JUROR NUMBER TWENTY-FOUR: It was around '86, '87 I
10 was charged with delinquency to a minor.

11 THE COURT: You'll be excused. Thank you.

12 He's excused.

13 THE BAILIFF: Number Twenty-nine, Brittany Brannon.

14 (BLACK FEMALE COMES FORWARD.)

15 MADAM CLERK: What was that number again?

16 MADAM COURT REPORTER: Twenty-nine.

17 THE COURT: Ms. Brannon.

18 JUROR NUMBER TWENTY-NINE: How you doing?

19 THE COURT: Fine.

20 JUROR NUMBER TWENTY-NINE: I haven't served any jail
21 time. I was convicted CDV two years ago.

22 THE COURT: Magistrate's Court?

23 JUROR NUMBER TWENTY-NINE: It's magistrate court.

24 THE COURT: You can stay with us then.

25 JUROR NUMBER TWENTY-NINE: Okay.

1 THE BAILIFF: Two seventy-seven, Wanda Vanderford.

2 (BLACK FEMALE COMES FORWARD.)

3 THE COURT: Good morning.

4 JUROR NUMBER TWENTY-NINE: I work for DSS and I have
5 court tomorrow. Here's my docket.

6 THE COURT: Okay. We'll transfer you to another time.
7 In advance tell 'em that you're gonna be - step right over
8 there.

9 She'll be transferred.

10 THE BAILIFF: Ninety-three, Nathan Gibson.

11 (WHITE MALE COMES FORWARD.)

12 THE COURT: Mr. Gibson.

13 JUROR NUMBER NINETY-THREE: Hey, how you doing?

14 I got a crushed pelvis and I ain't in too good a shape
15 to sit around too long.

16 THE COURT: I'll excuse you.

17 He'll be excused.

18 JUROR NUMBER NINETY-THREE: Thank you, sir.

19 THE BAILIFF: One eighty-five, Carry Means.

20 (BLACK FEMALE COMES FORWARD.)

21 THE COURT: Ms. Means?

22 JUROR NUMBER EIGHTY-FIVE: Yes.

23 THE COURT: Ms. Means, what's your situation?

24 JUROR NUMBER EIGHTY-FIVE: I got panic disorder and
25 depression.

1 THE COURT: I'll excuse you.

2 She'll be excused.

3 THE BAILIFF: Number 1-0-4, Sherry Gray.

4 (WHITE FEMALE COMES FORWARD.)

5 THE COURT: Good morning.

6 JUROR NUMBER 1-0-4: I'm self employed and nobody can
7 do this office that's in Charleston called today. As long
8 as it's not a long time.

9 THE COURT: Start over, you're going so fast I can't
10 keep up with you.

11 JUROR NUMBER 1-0-4: I'm self employed and we have
12 four stores. I'm kind of pulled in between all of 'em.
13 It's a lady's clothing store and its our busy time right
14 now.

15 THE COURT: You want to be transferred to another
16 time?

17 JUROR NUMBER 1-0-4: I can.

18 THE COURT: This will be a short week, this is a short
19 three day week so you might end up with a five day week.

20 JUROR NUMBER 1-0-4: That's what I'm saying, if it's
21 short. As long as it's short. I got to be there this week
22 in Charleston.

23 THE COURT: The weekend?

24 JUROR NUMBER 1-0-4: Yeah, we're busy the week, next
25 week.

1 THE COURT: This won't interfere. What's the name of
2 your shop? All my children but one lives in Charleston.

3 JUROR NUMBER 1-0-4: Can I go?

4 THE COURT: No, you can still have a seat.

5 JUROR NUMBER 1-0-4: Thank you.

6 THE BAILIFF: Number Sixty-four, Michael Donald.

7 (WHITE MALE COMES FORWARD.)

8 THE COURT: Your name?

9 JUROR NUMBER SIXTY-FOUR: Michael Donald. Can I serve
10 with a high school diploma?

11 THE COURT: Yes. Yeah. Thank you.

12 (COURT RETURNS TO THE BENCH.)

13 THE COURT: All right. The jury is qualified. We're
14 gonna take a break 'till - We can't get our list together
15 until we know who all is left so it'll take us a few
16 minutes to get our list together and then I will go over
17 with you when you come back in some questions regarding our
18 first trial. And as I understand it it will probably be
19 the only trial of the week. We'll draw the jury for that
20 trial in just a little bit so we'll break - It's about
21 eleven ten so we'll break until eleven thirty and then draw
22 our first jury panel. So don't get too far away and make
23 sure you're back ready to go at eleven thirty. Thank you.

24 (COURT IN RECESS AT 11:10 AM.)

25 (COURT BACK IN SESSION AT 11:37 PM.)

1 THE COURT: Thank you. You may take your seats.

2 Mr. Solicitor, you can call your first case.

3 SOLICITOR ANTHONY: Yes, sir. Thank you, your Honor.

4 The first case this morning is the State versus
5 Crystal Gail Calicutt. This is 2014-44-9-2. This is an
6 indictment for third degree arson and it has been True
7 Billed by the Grand Jury, and I am handing the Indictment
8 up to the Court at this time.

9 THE COURT: All right. Mr. Delaney, you represent Ms.
10 Calicutt?

11 MR. DELANEY: I do, your Honor.

12 THE COURT: And she's entered a plea of not guilty?

13 MR. DELANEY: She does.

14 THE COURT: All right. You can be seated.

15 Members of the jury panel, this is the case of the
16 State versus Crystal Gail Calicutt, and I just ask you to
17 sit down but Ms. Calicutt, would you stand up again and
18 turn and let the jury see who you are?

19 (DEFENDANT STOOD.)

20 THE COURT: This is Ms. Calicutt. You may have a
21 seat.

22 She's charged with the offense of arson in the third
23 degree. It's alleged in the charge against her, the
24 Indictment, that on or about November 24th, 2013 she did
25 cause an explosion or set fire to or burn some property at

1 Church Street, Buffalo, South Carolina in violation of
2 the laws of this state.

3 Again, she has pled not guilty and this places the
4 burden on the state to prove her guilt beyond a reasonable
5 doubt before the jury could convict here.

6 First, she is represented by Mr. Erik Delaney. The
7 State is represented by Mr. John Anthony.

8 (MR. DELANEY AND SOLICITOR ANTHONY STOOD.)

9 THE COURT: All right. You may be seated.

10 First, do any of you know anything - Any of you
11 related to or know Ms. Calicutt; if so, please stand?

12 No one stands. Yes, ma'am, your name and number?

13 Yes, ma'am, okay.

14 A. One Fifty-five, Casey Kitchens.

15 (WHITE FEMALE STANDS.)

16 THE COURT: All right. Do you know Ms. Calicutt?

17 JUROR ONE FIFTY-FIVE: I know of her.

18 THE COURT: All right. Would that affect your ability
19 to be fair and impartial in this trial?

20 JUROR NUMBER ONE FIFTY-FIVE: No, sir.

21 THE COURT: Okay. You can remain with us. But thank
22 you. Have any of you or a member of your family been
23 represented by or worked with either the solicitor's office
24 in any fashion; been a witness for; worked with victim's
25 assistance or been prosecuted by the Solicitor's Office,

1 or, have you any of you been represented by Mr. Delaney; if
2 so, please stand?

3 No one stands.

4 Were any of you members of the --

5 MADAM COURT REPORTER: Judge, somebody held up their
6 hand back there in the back.

7 THE COURT: All right. You got to stand. I can't
8 see; it's dark back there plus my vision. All right.
9 Let's everybody be quiet.

10 Your name and number?

11 A. Daniel Young, Number Three hundred.

12 (WHITE MALE STANDS.)

13 THE COURT: All right. What's your situation?

14 JUROR NUMBER THREE HUNDRED: My brother-in-law is a
15 captain of the detectives over on the Public Safety Office.

16 THE COURT: All right. In Buffalo or in Union?

17 JUROR NUMBER THREE HUNDRED: Union.

18 THE COURT: All right. Would that affect your ability
19 to be fair and impartial in this trial?

20 JUROR NUMBER THREE HUNDRED: No, sir.

21 THE COURT: Okay. All right, you can be seated.

22 Well I'm glad you got to be very reflective on it so
23 that's good because it makes - -

24 Were any of you members of the Grand Jury which passed
25 on this indictment at an earlier time; if so, please stand?

1 No one stands.

2 Do you any of you know of any - anything about this
3 case? Heard about it from any source whatsoever? Or have
4 any of you formed or expressed an opinion about any matter
5 or issue which would be involved in this case; if so,
6 please stand?

7 No one stands.

8 All right, yes, ma'am.

9 (WHITE FEMALE STANDS.)

10 A. I had heard about the case because the lady sitting
11 there is insured by my company.

12 THE COURT: All right. Your name and number?

13 A. Patricia Epps, Number Seventy-one.

14 THE COURT: Would you in spite of that information be
15 able to take that information out of your mind and be fair
16 and impartial and base your verdict solely on the law and
17 the evidence in this case?

18 JUROR NUMBER SEVENTY-ONE: I can't say for sure but --

19 THE COURT: All right. Well I'll excuse you then.
20 Don't leave just sit down. Thank you. But again, I
21 appreciate that information.

22 Have any of you or a member of your immediate family
23 been charged with or the victims of what you would consider
24 an arson event or any violent crime; if so, please stand?

25 No one stands.

1 Are any of you - and the gentleman's that's already -
2 we've already chatted with does not have to stand up again
3 - but anybody else have a relative or a real close friend
4 who is involved in law enforcement or in the prosecution of
5 criminal cases at any level; if so, please stand?

6 No --

7 (WHITE MALE STANDS.)

8 THE COURT: Okay, yes, sir, your name and number?

9 A. Michael Gault. Family.

10 THE COURT: All right. How close a family?

11 MR. GAULT: My wife's cousin.

12 THE COURT: All right. And, Mr. Gault be
13 participating in this trial or --

14 A. No, sir, your Honor.

15 THE COURT: But he does work for the solicitor's
16 office?

17 SOLICITOR ANTHONY: He does yes, sir.

18 THE COURT: All right. Well I'll excuse you from
19 serving. Just have a seat. What's your number?

20 A. Two forty-three.

21 THE COURT: And your name again?

22 A. Jonathan Shields.

23 THE COURT: Shields. Okay. I'm sorry.

24 JUROR NUMBER TWO FORTY-THREE: Yes, sir.

25 THE COURT: Are any of you or a member of your

1 immediate family contributors to or members of
2 organizations such as Mother's Against Drunk Drivers;
3 Student's Against Drunk Driver's; Citizen's Against
4 Violence; Trooper's Association, Sheriff's Association, or
5 Fraternal Order of Police; if so, please stand?

6 No one stands.

7 Do any of you have any religious or theological or
8 psychological, philosophical reasons or moral views which
9 would prevent you from being fair and impartial in a trial
10 of this particular case; if so, please stand?

11 No one stands.

12 The following is a list of possible witnesses. And I
13 say possible witness because I don't believe all these
14 people will testify. But even if they don't testify their
15 names may come up during the trial so if any of you know
16 any of these individuals, and particularly if you are
17 related to them, but if you are related or know any of
18 these individuals; belong to the same church or fraternal
19 or sonority organizations or anything like that please
20 stand.

21 Kay Corbett, Danny Gowan, Bryan Gardin, Joshua Falls,
22 Sabrina Falls, Rhonda Johnson,. From the Union County
23 Sheriff's Office Corporal Russell Vinson, Lieutenant Al
24 Black, Sergeant Scott Ruby, Investigator Scott Coffey,
25 Captain Robbie Hines. Then from the State Law Enforcement

1 Division Agents Brian Wright, Brad Keller, Daren Vaughn,
2 Hue Tang, and Lieutenant Chris Johnson. Victoria Parker,
3 Gale Poland, and I've already ask you about Ms. Calicutt.
4 Any of you know any of those individuals; related to them?

5 All right. What I will do is I'm gonna go through and
6 ask each of you to give me your name and number and then
7 tell me why you're standing. That is, I know so and so and
8 then just remain standing because I'm gonna come back and
9 ask all of you a question about your ability to be fair and
10 impartial.

11 (MULTIPLE JURORS STOOD.)

12 THE COURT: We'll start here and work our way back and
13 then come over here and work our way back.

14 Yes, ma'am, your name and number and why you're
15 standing.

16 A. Judy Bogan, Number Twenty-two. Investigator Coffey
17 attends our church.

18 (WHITE FEMALE RESPONDS.)

19 THE COURT: All right. Yes, ma'am, the next lady.

20 A. My husband is friends with Bryan Garden and they
21 belong to the same fire department.

22 THE COURT: All right. Your name and number?

23 A. One eleven, Amy Griffith.

24 (WHITE FEMALE RESPONDS.)

25 THE COURT: All right. We'll go to this lady.

1 Your name and number?

2 A. Coffey and Sabrina are --

3 (WHITE FEMALE RESPONDS.)

4 THE COURT: Are you cousins?

5 A. Uh-huh. I don't know how far.

6 THE COURT: Okay. Now the lady in the blue.

7 A. I went to school with --

8 (WHITE FEMALE RESPONDS.)

9 THE COURT: All right. Give me your name and number.

10 A. Sorry. Jamie Hughes, Juror One Thirty-four. I went
11 to school with Sabrina and Josh. Also I - my child is in
12 the same class as Coffey's child and I've known him for a
13 long time.

14 THE COURT: All right. Now back in the back. We've
15 already talked once.

16 A. Daniel Young, I'm Number Three hundred. In my former
17 job as a corrections officer I worked with Scott and several
18 of the other officers listed. And Joshua Falls was one of
19 my inmates that was in - -

20 (WHITE MALE RESPONDS.)

21 THE COURT: He was one of your what?

22 A. An inmate that's been in the Detention Center in which
23 I worked.

24 THE COURT: Okay. All right. Now, yes, sir.

25 A. John Prince, Juror Number Two thirteen. Danny Gowan

1 is a friend of mine and I graduated from high school with
2 him.

3 ((WHITE MALE RESPONDS.))

4 THE COURT: All right. Yes, ma'am. This lady here in
5 the white.

6 A. All right. Celeste West and I forgot my number. But
7 Russell Vinson is my husband's best friend.

8 (WHITE FEMALE RESPONDS.)

9 THE COURT: All right.

10 A. Cindy Head, One eighteen. I know Bryan Gardin. I was
11 a nurse at the plant where he was employed.

12 (WHITE FEMALE RESPONDS.)

13 THE COURT: All right. Now there is somebody behind
14 you.

15 A. Brittany Brannon, my number is Twenty-nine and I went
16 to school with Joshua and Sabrina Falls and we're good
17 childhood friends.

18 (BLACK FEMALE RESPONDS.)

19 THE COURT: Did you get that, Madam Court Reporter?

20 MADAM COURT REPORTER: Yes, sir.

21 THE COURT: All right.

22 SOLICITOR ANTHONY: Was that twenty-nine?

23 MADAM COURT REPORTER: Yes, sir, that last one.

24 SOLICITOR ANTHONY: Okay. Thank you.

25 THE COURT: All right.

1 JUROR NUMBER TWENTY-NINE: Twenty-nine.

2 MADAM COURT REPORTER: You said your number was
3 twenty-nine?

4 MADAM COURT REPORTER: Yes, sir, twenty-nine.

5 SOLICITOR ANTHONY: Thank you.

6 THE COURT: All right. The nine of you who are
7 standing if any of you could not be fair and impartial
8 because of this - knowing this individual please raise your
9 right hand.

10 None do. All right. Well, yes, ma'am, Number Twenty-
11 nine does raise her right hand so I'll excuse you. None of
12 the others do so you'll be excused but the rest will remain
13 in the pool.

14 Anything further from the State?

15 MR. DELANEY: John.

16 May we approach, your Honor?

17 (BENCH CONFERENCE OFF THE RECORD OUT OF THE HEARING OF
18 THE JURY AT 11:48 AM.)

19 THE COURT: I misspoke so I'm gonna - The same
20 question regarding the two individuals whose name I either
21 mispronounced or looked over. Kay Corbett and then Captain
22 Robbie Hines. I think I said Hughes, Robbie Hines. So if
23 you haven't already said you know those individuals, if you
24 do please stand at this time.

25 All right. Now, we'll start right here with this lady

1 and then we'll work our way back. And even though the
2 second lady stood before we still have to get your name and
3 number every time so your name and number and who you're
4 standing for.

5 A. Melissa Justice, One Forty-nine, I know Ms. Corbett
6 from the high school. I never had her class. And I also
7 know Robbie Hines. He goes to church at my church one
8 time.

9 (WHITE FEMALE STANDS.)

10 THE COURT: All right. Just remain standing please.
11 Yes, ma'am, again your name and number.

12 A. Jamie Hughes, One Thirty-four, Ms. Kay taught me for
13 three years in high school. I was president of a club she
14 was over. She also has sub for me in the last couple of
15 years with Union County Schools.

16 (WHITE FEMALE RESPONDS.)

17 THE COURT: All right. Yes, ma'am.

18 A. Emily Cannon, Juror Thirty-eight. I know Captain
19 Hines. Scott is one of my friends.

20 (WHITE FEMALE RESPONDS.)

21 THE COURT: All right. Let's go to this gentleman
22 back in the very back, on that side. Yes, sir.

23 A. Ms. --

24 THE COURT: All right. Let's start over, somebody
25 coughed. What's your name and number?

1 A. Two seventy-two. Ms. Corbett was a teacher of mine.

2 (BLACK MALE RESPONDS.)

3 THE COURT: All right. Yes, sir.

4 A. Richard Matthews, Number One seventy-four; long time
5 friends with the Corbett's.

6 (WHITE MALE RESPONDS.)

7 THE COURT: All right. Yes, sir.

8 A. Yes, sir. Two fourteen, Robert Proctor, and I know
9 Detective Hines and I'm not sure about Bryan Garden. I
10 believe I went to school with both of 'em.

11 (WHITE MALE RESPONDS.)

12 THE COURT: All right. The second gentleman, you
13 stand back up please. Yeah. All right.

14 Of the five of you who - six of you who are standing
15 if you could not be fair and impartial based on your
16 knowing that particular person that you've commented on,
17 please raise your right hand?

18 All right. Your name again.

19 A. Jaime Hughes.

20 (WHITE FEMALE RESPONDS.)

21 THE COURT: All right. Ms. Hughes will be excused.

22 Just have a seat; the rest will have a seat and nobody
23 else raised their hand.

24 Any further questions from the State?

25 SOLICITOR ANTHONY: No, sir.

1 THE COURT: Defense?

2 MR. DELANEY: No, your Honor.

3 THE COURT: Do any of you know of any reason
4 whatsoever why you could not or should not serve as a fair
5 and impartial juror in the trial of this case; if so,
6 please stand?

7 No one stands.

8 Now the way we draw jury's in this court is as
9 follows: If you hear your name called please just stand
10 there where you are. The Solicitor will say either present
11 the juror or excuse the juror. If you hear the words
12 excuse the juror just simply have a seat. If you hear the
13 words present the juror turn and face the table where Ms.
14 Calicutt and her attorney are seated and Mr. Delaney will
15 say either swear the juror. If you hear those words please
16 step over here and the bailiff will make sure you have a
17 seat in the jury box. If he says excuse the juror again
18 that means you simply take your seat.

19 And the strikes will be five and five?

20 SOLICITOR ANTHONY: I believe their five and ten.

21 THE COURT: Five and ten for arson. Okay.

22 Strikes are five and ten. We'll draw one alternate
23 and the alternate strikes will be one for the State and two
24 for the Defense. So please if you hear your name called
25 just stand up and follow those instructions. Thank you.

1 THE CLERK: All right, the first juror. Number Two
2 fifty-four, Jerry Smith. Please stand.

3 (WHITE MALE STANDS.)

4 THE CLERK: What says the State?

5 SOLICITOR ANTHONY: Please present the juror.

6 THE CLERK: The Defense?

7 MR. DELANEY: Please excuse the juror.

8 THE CLERK: Okay. You can have a seat.

9 Juror Number One fifty-seven, Troy Knox.

10 (WHITE MALE STANDS.)

11 THE CLERK: What says the State?

12 SOLICITOR ANTHONY: Please present the juror.

13 THE CLERK: What says the Defense?

14 MR. DELANEY: Please swear the juror.

15 THE CLERK: Okay.

16 THE COURT: You can come forward. When you do come
17 forward bring with you any personal belongings that you
18 might have so you won't have to go back and get them.

19 THE CLERK: And I've been ask to warn you when you
20 take a seat the chairs in the jury box are a bit wobbly.
21 You're not gonna fall but it might feel like it.

22 Juror Number Two sixty-nine, Kenneth Thomas.

23 (WHITE MALE STANDS.)

24 THE CLERK: What says the State?

25 SOLICITOR ANTHONY: Please present the juror.

1 THE CLERK: What says the Defense?
2 MR. DELANEY: Please swear the juror.
3 THE CLERK: All right. You can come on down please.
4 Juror Number Two fifty-eight, Frank Sparks, Junior.
5 (WHITE MALE STANDS.)
6 THE CLERK: What says the State?
7 SOLICITOR ANTHONY: Please present the juror.
8 THE CLERK: What says the Defense?
9 MR. DELANEY: Please swear the juror.
10 THE COURT: All right. You can come on down please.
11 Juror Number Twenty-two, Judy Bogan.
12 (WHITE FEMALE STANDS.)
13 THE CLERK: What says the State?
14 SOLICITOR ANTHONY: Please present the juror.
15 THE CLERK: What says the Defense?
16 MR. DELANEY: Please swear the juror.
17 THE CLERK: Come on down please.
18 Juror Number Two seventy-eight, Tiffany Vaughan.
19 (WHITE FEMALE STANDS.)
20 THE CLERK: What says the State?
21 SOLICITOR ANTHONY: Please present the juror.
22 THE CLERK: What says the Defense?
23 MR. DELANEY: Please swear the juror.
24 THE CLERK: All right. Come on down please.
25 Juror Number Thirty-seven, Beth Candler.

1 (WHITE FEMALE STANDS.)
2 THE CLERK: What says the State?
3 SOLICITOR ANTHONY: Please present the juror.
4 THE CLERK: What says the Defense?
5 MR. DELANEY: Please swear the juror.
6 THE CLERK: Come on down please.
7 Juror Number One forty-three, Elbony Jeter.
8 (BLACK FEMALE STANDS.)
9 THE CLERK: What says the State?
10 SOLICITOR ANTHONY: Please present the juror.
11 THE CLERK: What says the Defense?
12 MR. DELANEY: Please swear the juror.
13 THE CLERK: All right. Come on down please.
14 Juror Number One sixty-six, Benjamin Little.
15 (BLACK MALE STANDS.)
16 THE CLERK: What says the State?
17 SOLICITOR ANTHONY: Please present the juror.
18 THE CLERK: What says the Defense?
19 MR. DELANEY: Please swear the juror.
20 THE CLERK: Come on down please.
21 Juror Number Sixty, Jacqueline Dawkins.
22 (BLACK FEMALE STANDS)
23 THE CLERK: What says the State?
24 SOLICITOR ANTHONY: Please present the juror.
25 THE CLERK: What says the Defense?

1 MR. DELANEY: Please excuse the juror.
2 THE CLERK: All right, you can have a seat.
3 Juror Number Two ninety-four, Catherine Wilson.
4 (WHITE FEMALE STANDS.)
5 THE CLERK: What says the State?
6 SOLICITOR ANTHONY: Please excuse the juror.
7 THE CLERK: You can have a seat.
8 Juror Number One forty-eight, Mr. Jones.
9 (BLACK MALE STANDS.)
10 THE CLERK: What says the State?
11 SOLICITOR ANTHONY: Please present the juror.
12 THE CLERK: What says the Defense?
13 MR. DELANEY: Please swear the juror.
14 THE CLERK: Come on down.
15 Juror Number Two hundred, Theodore Odell.
16 (WHITE MALE STANDS.)
17 THE CLERK: What says the State?
18 SOLICITOR ANTHONY: I'm sorry, what was that number
19 again?
20 THE CLERK: Juror Number Two hundred, Theodore Odell.
21 SOLICITOR ANTHONY: Two hundred. Please present the
22 juror.
23 THE CLERK: What says the Defense?
24 MR. DELANEY: Please excuse the juror.
25 THE COURT: Okay. You can have a seat.

1 Juror Number Two twenty-two, Stanley Rice.
2 (BLACK MALE STANDS.)
3 THE CLERK: What says the State?
4 SOLICITOR ANTHONY: Please present the juror.
5 THE CLERK: What says the Defense?
6 MR. DELANEY: Please swear the juror.
7 THE CLERK: Okay. You can come on down.
8 Juror Number One fifty-five, Casey Kitchens.
9 (WHITE FEMALE STANDS.)
10 THE CLERK: What says the State?
11 SOLICITOR ANTHONY: Please excuse the juror.
12 THE CLERK: Thank you. You may have a seat.
13 Juror Number Fifty-two, Johnny Crosby.
14 (BLACK MALE STANDS.)
15 THE CLERK: What says the State?
16 SOLICITOR ANTHONY: Please excuse the juror.
17 THE CLERK: You can have a seat.
18 Juror Number Two twenty-nine, Nancy Robinson.
19 (WHITE FEMALE STANDS.)
20 THE CLERK: What says the State?
21 SOLICITOR ANTHONY: Please present the juror.
22 MR. DELANEY: Please swear the juror.
23 THE CLERK: Come on down.
24 Juror Number Fifteen, Sharon Barrett.
25 (BLACK FEMALE STANDS.)

1 THE CLERK: What says the State?

2 SOLICITOR ANTHONY: Please excuse the juror.

3 THE CLERK: Okay. You may have a seat.

4 Juror Number Twenty-seven, Janette Braddy.

5 (WHITE FEMALE STANDS.)

6 THE CLERK: What says the State?

7 SOLICITOR ANTHONY: Please present the juror.

8 THE CLERK: What says the Defense?

9 MR. DELANEY: Please swear the juror.

10 THE CLERK: Come one down.

11 THE COURT: Strikes will be one for the State and two
12 for the Defense on the alternates.

13 THE CLERK: Okay. How many alternates? One.

14 Juror Number Two fourteen, Robert Proctor.

15 (WHITE MALE STANDS.)

16 THE CLERK: What says the State?

17 SOLICITOR ANTHONY: Please present the juror.

18 THE CLERK: What says the Defense?

19 MR. DELANEY: Please excuse the juror.

20 THE CLERK: You may have a seat.

21 Juror Number Two thirty-four, Ms. Rogers.

22 (BLACK FEMALE STANDS.)

23 THE CLERK: What says the State?

24 SOLICITOR ANTHONY: Please present the juror.

25 THE CLERK: What says the Defense?

1 MR. DELANEY: Please swear the juror.

2 THE COURT: All right. Come on down.

3 THE COURT: All right. Anything from the State
4 involving the striking of the panel?

5 SOLICITOR ANTHONY: No, sir.

6 THE COURT: Anything from the Defense?

7 MR. DELANEY: No, your Honor.

8 THE COURT: All right. Those of you who were not
9 chosen I'm gonna allow you to leave.

10 Do they need to call in tonight?

11 SOLICITOR ANTHONY: Let - Yes. If you would just ask
12 them to call.

13 THE COURT: All right. If you'll call back in
14 tonight. I think this is the only case we will try but I
15 can't guarantee it. So call back tonight after six o'clock
16 and you will receive instructions about whether or to call
17 back. Whether you're excused for the week or whether you
18 are to report so just whatever instructions you receive
19 please follow. If it says call back call back. If it says
20 report at a certain time please be here at that time. And
21 of course if it says you're excused for the week you know
22 what that means. So please leave and leave quietly so I
23 can start talking to this panel. Thank you so much.

24 (JURY DISMISSED AT 12:15 PM.)

25 THE COURT: Those of you who were chosen we're gonna

1 take a break for lunch. I'm not gonna have you sworn in.
2 I'll give you some instructions now and when you come back
3 from lunch I'll give you some further instructions.

4 We found that's a long lunch hour but we have some
5 legal matters to take up outside of your presence before we
6 can actually start into the meat of the trial. So it
7 sounds like an extra long lunch hour, we have work to do
8 and we need a lunch hour. Now, you are on the jury and
9 you're not sworn in and before you leave for lunch I have a
10 few things to tell you.

11 Don't try to make up your own mind and don't discuss
12 this case among yourselves until I instruct you to jointly
13 deliberate and return a unanimous verdict. Prior to that
14 time you don't have all the tools you will need to make a
15 fair and reasonable decision. Do not let anyone discuss
16 this case with you outside the courtroom. If anyone tries
17 to discuss this case with you tell them cannot as you are
18 serving as a juror. And if anyone tries to discuss this
19 case with you tell them you cannot as you're serving as a
20 juror and report back to me if anyone tries to discuss this
21 case with you.

22 Do not let yourself be exposed to any news coverage if
23 there is any. Don't listen to anything, watch anything or
24 read anything that could remotely deal with this trial.
25 You must base your verdict solely on the law and the

1 evidence in the trial. Unless it's absolutely necessary do
2 not go by the address where this occurred. I don't know
3 that the site will have any evidentiary value but things
4 may have changed since 2013 so that's - don't do any sort
5 of independent investigations. Don't do any independent
6 research. Don't try to find out anything about this case
7 through any method whatsoever. Particularly do not use any
8 technical device such as Seri or Google, or anything like
9 that to learn anything about this trial or about me or
10 about court procedure or about the solicitor; about Mr.
11 Delaney, about Ms. Calicutt. You got to base your verdict
12 solely on the law and the evidence so don't access any
13 information whatsoever through any source including
14 electronic sources and devices while you're on the trial -
15 while you're on the jury.

16 Don't even go on Face book or tweet to somebody or do
17 an instagram saying Hey, I'm serving on a jury. That
18 sounds innocent enough and it is. However someone may
19 respond by saying something that's inappropriate or would
20 not be healthy for your service as a juror in this
21 particular trial. So don't be going on line and talking
22 about the case or talking about even the fact that you're
23 serving as a juror.

24 Ms. Bogan, I'm gonna ask you to be the Forelady. When
25 you come back in you'll take the foreperson's seat. The

1 only assigned seating is for the forelady and the
2 alternate. Everyone else just - whenever you come in just
3 sit where you happen to come in in the line.

4 Anything else the State wants me to cover before
5 lunch?

6 SOLICITOR ANTHONY: No, sir.

7 THE COURT: The Defense?

8 MR. DELANEY: No, your Honor.

9 THE COURT: All right. When you leave by this exit
10 the bailiff will show you how to get in and out while
11 you're serving as the juror and it's not quite twelve
12 thirty but I'm gonna ask you to be back at two o'clock. We
13 may run a minute or two late depending on how long I have
14 to take up matters outside your presence but hopefully
15 we'll be able to start pretty promptly at two o'clock. So
16 have a pleasant lunch and we'll see you back then. Thank
17 you.

18 (PETIT JURY EXITS COURTROOM ON LUNCH RECESS AT 12:20
19 PM.)

20 THE COURT: All right, the jury's dismissed.

21 We have several motions in liming. The first by the
22 Public Defender's - counsel for the def - Ms. Calicutt Mr.
23 Delaney, is a motion to determine whether the State has
24 complied with Rule 5 and Brady.

25 SOLICITOR ANTHONY: We have, your Honor, we've turned

1 over all Rule 5 and Brady to them.

2 THE COURT: All right. The next has to do with any
3 record Ms. Calicutt may have if she testifies. Any
4 impeachment.

5 SOLICITOR ANTHONY: Your Honor, Ms. Calicutt has two
6 convictions the State will qualify for impeachment under
7 the rules. She has a shoplifting, an enhanced shoplifting
8 conviction from this past October. And she has an
9 obtaining drugs by fraud conviction from 2008. In regards
10 to both of those I will propose as a method of impeachment
11 that I just ask her in those years she was convicted of a
12 crime that carried over a year.

13 THE COURT: All right. Any - -

14 MR. DELANEY: No objection to that, Judge.

15 THE COURT: Okay. Motion to sequester the witnesses.
16 We'll do that except for the case agent for the State.

17 Any prior - Any prior offenses on your lay witnesses?

18 SOLICITOR ANTHONY: There are. I provided the NCIC's
19 of probably the only two lay witnesses I have who had prior
20 offenses. I think Mr. Delaney and I can probably get
21 together before they testify and come into an agreement on
22 that. And then if we can't we'll just raise it to the
23 court at that time if that's agreeable.

24 MR. DELANEY: That's agreeable to me, your Honor.

25 THE COURT: All right. Number Five we'll skip cause

1 that has to do with statements and I think we've got some
2 issues there.

3 MR. DELANEY: I would withdraw that last; the Lyle
4 evidence.

5 THE COURT: Okay. And the last one was a motion to
6 determine whether there is any Lyle or prior bad act and
7 that's been withdrawn. So we're down to determination of
8 the existence and admissibility of any statements.

9 SOLICITOR ANTHONY: Your Honor, if we could just go
10 back a moment to sequestration.

11 THE COURT: Yes, sir.

12 SOLICITOR ANTHONY: I first of all I'd ask that it be
13 reciprocal.

14 THE COURT: Well it'd be reciprocal.

15 SOLICITOR ANTHONY: And then this case was basically
16 investigated by two agents. It was investigated by SLED
17 and the Sheriff's office so I would ask that Agent Keller
18 and Investigator Coffey both be allowed to stay in the
19 courtroom.

20 THE COURT: Any objection?

21 MR. DELANEY: No objections.

22 THE COURT: All right. They can stay.

23 SOLICITOR ANTHONY: Now of course I would ask that Ms.
24 Corbett the victim be allowed to stay.

25 THE COURT: Of course the victim has the absolute

1 right to stay.

2 SOLICITOR ANTHONY: Okay. Other than that if I can
3 just have a second; we just need to get the exhibits marked
4 and we'll be ready to do the hearing.

5 THE COURT: Okay. Do you need a break or we just be
6 at ease for five minutes?

7 SOLICITOR ANTHONY: If we can just be at ease I think
8 that'll be fine.

9 THE COURT: Okay.

10 (COURT AT EASE AT 12:24 PM.)

11 (WHEREUPON, STATE'S EXHIBITS ONE AND TWO PREMARKED FOR
12 IDENTIFICATION.)

13 (COURT BACK IN SESSION AT 12:27 PM.)

14 SOLICITOR ANTHONY: All right. I think we're ready,
15 your Honor.

16 THE COURT: Tell me what the issue is.

17 SOLICITOR ANTHONY: Yes, sir. Just for the record Ms.
18 Calicutt actually gave four statements. She gave an
19 additional statement to Agent Vaughan with SLED on November
20 25th of 2013. She then was questioned by Lieutenant Black
21 from the Sheriff's office on November 26 and then give a
22 followup - there was a followup question on the 26th by
23 Agent Vaughan. I'm sorry, by Agent Keller on the 26th.

24 It's my understanding that there is not a Denno
25 hearing requested on those statements although the State

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1 does intend to introduce those statements at the trial.

2 There was another statement taken from her on December
3 the 9th and that questioning then was conducted by Agent
4 Vaughan and Agent Keller. And it is my understanding that
5 is the statement that the defense is requesting the Denno
6 hearing on.

7 MR. DELANEY: That's correct, your Honor.

8 THE COURT: All right. Call your first witness.

9 SOLICITOR ANTHONY: We call Agent Keller.

10 THE COURT: Come up and be sworn.

11 (WHEREUPON, BRAD KELLER,

12 BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

13 THE COURT: Come up here and have a seat.

14 DIRECT EXAMINATION - IN CAMERA

15 AGENT BRAD KELLER BY SOLICITOR ANTHONY:

16 Q. Would you state your name please?

17 A. William Brad Keller.

18 Q. All right. And, Mr. Keller, how are you employed?

19 A. I'm employed with the South Carolina Law Enforcement
20 Division in the arson investigative unit.

21 THE COURT: Why don't you pull it around a little bit
22 more so you won't have to keep - there you go.

23 A. Okay.

24 Q. And how long have you been employed as an arson
25 investigator with SLED?

1 A. In the Arson Unit since January of 2005.

2 Q. And were you working in that capacity back in late
3 November and December of 2013?

4 A. Yes, sir, I was.

5 Q. And did you come to investigate a fire on November
6 24th of 2013 at Church Street in Buffalo?

7 A. Yes, sir, I did.

8 Q. And during the course of your investigation into
9 that fire who did you develop was a suspect as being the
10 one who set the fire?

11 A. Ms. Calicutt.

12 Q. Okay. And on December the 9th of 2013 did you conduct
13 an interview with Ms. Calicutt?

14 A. Yes, sir, I did.

15 Q. Where was the interview conducted?

16 A. At the Union County Sheriff's Office.

17 Q. And who was present for that interview?

18 A. Myself and I believe we were - Myself and Agent Daren
19 Vaughn I believe we were in the office of Investigator
20 Scott Coffey which is downstairs but it was happening in
21 his office downstairs.

22 Q. Okay. And at the time that you conducted this
23 interview had Ms. Calicutt been charged with any crime at
24 that time?

25 A. No, sir, she had not.

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1 Q. And when she - Did she come voluntarily to the
2 sheriff's office?

3 A. Yes, sir.

4 Q. All right. And just met you there?

5 A. Yes, sir.

6 Q. All right. Well when you began this interview with
7 her what did - How did you begin the interview or what did
8 you begin the interview by telling her?

9 A. Typically with most of my cases I would advise
10 somebody especially when we're at the sheriff's office
11 environment and not at somebody's house; on the side of the
12 street, I go ahead and knowing I have to I advise them of
13 their Miranda Rights. I have our standard form from our
14 agency that I read to them, you know, encourage them to
15 read along with me and make sure that they understand it
16 and had them initial in the appropriate places and then
17 sign at the bottom.

18 Q. I'm handing you what's been marked for identification
19 as State's Exhibit Number One. I'd ask if you recognize
20 that form.

21 A. Yes, sir, I do.

22 Q. And what is that?

23 A. That is just our Miranda Waiver Form.

24 Q. Okay. And who does - Does it indicate that that form
25 in particular was used to advise?

1 A. Crystal G. Calicutt. It has her date of birth and
2 social security number and phone number at the top and it
3 bears her initials and signature.

4 Q. Okay. And do you do anything on that form to indicate
5 where you are taking the statement?

6 A. Yes. At the top where it says place of the Union
7 County Sheriff's Office.

8 Q. And then when is - What's the initial date on that
9 advisory form?

10 A. 12/9 of 2013 so December 9th of 2013.

11 Q. At what time?

12 A. At 02:36 pm.

13 Q. And what is the list that runs down the middies of
14 that page? What are those?

15 A. Those are just the standard advisement of rights.

16 Q. Okay.

17 A. So - And their printed out with a line beside them.
18 And on the line beside them you would have the opportunity
19 to initial it if they had been explained to you. And then
20 also you have two other questions that are added by our
21 agency in bold letters that say "Do you understand these
22 rights and do you wish to talk at this time" it says.

23 Q. And how did you use that form to advise Ms. Calicutt
24 of her rights?

25 A. I showed her the form. I explained the form to her.

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1 I went through each of the steps with her; ask her did she
2 understand the rights and wished to talk at this time. And
3 then I explained the waiver of the rights meaning that I
4 had taken the time to explain to her what her rights were
5 and advised - and then go through all of those. And she
6 signed at the bottom that she understood and that it was
7 freely and voluntarily and not coerced.

8 Q. Okay. And then was anything done aside - along side
9 of each of the rights on the form is there anything done to
10 indicate that she acknowledged and understanding of it?

11 A. Yes, sir, she initialed.

12 Q. Okay.

13 Q. All right. So the CC's running down beside each
14 right, that is her initials?

15 A. Yes, sir, it is.

16 Q. And then when it says "Do you understand these rights
17 and do you wish to talk at this time" what was done that
18 indicated acknowledgment of those facts?

19 A. In her same handwriting, or, excuse me, in our
20 presence she wrote yes out. The word yes, Y-e-s,
21 and not just y or n but yes. And then at the bottom
22 actually on the Waiver of Rights underlined coercion and,
23 you know obviously not a definition of coercion but I
24 explained to her kind of what we would do as being coercion
25 that I did not force her or make her say something that she

1 did not, you know, want to say. I underlined that to make
2 sure she understood that and she initialed it stating that
3 she did understand what that was.

4 Q. Okay. And then what does the Waiver actually say? If
5 you would just read the - -

6 A. Waiver or Rights says "I have read this statement of
7 my rights and understand what my rights are. Am willing to
8 talk now without a lawyer present. I understand and know
9 what I am doing. No promises or threats have been made to
10 me and no pressure or coercion of any kind has been used
11 against me."

12 Q. And after reading that what did she do?

13 A. She signed at the appropriate spot at the listed
14 place.

15 Q. Okay. Then did anybody sign a witness to her signing
16 that waiver?

17 A. Agent Daren Vaughn.

18 Q. All right. When you spoke to Ms. Calicutt how did
19 she appear to you in regards to competency and awareness of
20 what was going on around her?

21 A. She gave competent answers to the questions that were
22 ask. She was aware she actually wrote her own statement
23 for us. She signed this. There is no indication that she
24 was under the influence, tired, you know, not feeling well
25 or anything else at that time?

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1 Q. Okay. And did you promise her anything if she would
2 talk to her or talk to you? I'm sorry.

3 A. No, sir.

4 Q. Did you make any promises to her or did you make any
5 threats against her if she wouldn't talk to you?

6 A. No, sir.

7 Q. And to the best of your knowledge did the statement
8 she gave - was the statement she gave you freely and
9 voluntarily given?

10 A. Yes, sir, and she did complete the entire statement in
11 her own handwriting.

12 Q. Okay. So once you gave her the Miranda Warnings
13 what happened? Just give us - If you would just tell us
14 how the questioning proceeded and how the statement came to
15 be taken.

16 A. After she was given the Miranda Rights and she signed
17 the Waiver Agreements to speak with us we just had a
18 discussion just about the - this was actually a subsequent
19 interview from the initial one. There had been several
20 interviews that had taken place during this time and I
21 believe if my memory serves me correctly is that the
22 purpose of this interview was is that earlier on she had
23 said that she was not under the influence of anything at
24 the time of the fire. And later, you know, we found from
25 another party that indicated that she was and at that point

1 in time we just questioned her was she and she said that
2 yes she was under the influence of something that evening
3 but she stated that it did not impair her judgment; that
4 she had left that out when she talked to us previously.

5 Q. Okay. And then aside from just the part of the
6 statement that covered her using substances, was there
7 mention made of her getting a call from her boyfriend at
8 the time and then calling her boyfriend's sister?

9 A. I believe there were several statements. I believe
10 there was - I'm not looking at the statement here in front
11 of me.

12 Q. All right. Well let me give you that. I'm sorry.

13 A. I just want to make sure since there's so many of
14 'em.

15 Q. All right. I'm gonna hand up what's been marked for
16 identification as State's Exhibit Number Two.

17 A. Thank you, sir.

18 Q. Was there some discussion had of who she contacted
19 after she left the house that was the subject of an arson?

20 A. Yes, sir.

21 Q. And then did she also during this conversation give
22 you some information about some candles being present at
23 the house?

24 A. Yes, sir, she did.

25 Q. Okay. And what - Was that the first time - Just to

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1 give the Court some context, what was the importance of
2 some candles being left at the house?

3 A. Cause the very first time we spoke with Ms. Calicutt
4 which was around the date of the 25th of November, she was
5 asked and she stated that nothing was burning in the house.
6 There was no smoking, nothing left on at that time and she
7 had been talked to numerous times in between there and
8 again ask was there something that could have happened.
9 You know that she had left out hadn't thought about
10 specifically a mention of candles and other things before
11 and she indicated no which said this time which would have
12 been about the fourth encounter with her in speaking to a
13 reference to the fires when she actually brought up the
14 candles.

15 Q. Okay. And did she just during your conversation with
16 her did she tell you where the candles had been located in
17 the residence that burned down?

18 A. She indicated in a general area. She just - What she
19 told us was kind of on there was in the living room or what
20 you would call the front left room was the living room of
21 the house, there was like a furnace she said kind of on
22 that wall over where the furnace was.

23 Q. All right. And then there's also reference made in
24 the statement she gave you to her using drugs that night?

25 A. Yes.

1 Q. All right. Well did you - When you begin to talk to
2 her, was there a conversation first before the statement
3 was actually taken?

4 A. Oh, yes, sir. I mean pretty much all of everything
5 that is documented in this statement was discussed during
6 the interview.

7 Q. Okay.

8 A. And the statement is basically the record that we
9 have of that interview. So once we got done and all of
10 these issues that came up during the interview I ask her if
11 she would mind putting that in a written statement for us
12 and this was the statement that she generated.

13 Q. All right. And was there some information taken from
14 her before she actually wrote the statement as far as
15 information recorded on the form that you hold there?

16 A. Oh, you mean at the top of the form?

17 Q. Yes, sir.

18 A. Yes, sir. Yes, sir, I apologize. Yes, sir, at the
19 top of the Voluntary Statement Form it just has all of her
20 particulars. Kind of like it mirrors the Miranda Waiver
21 sheet when we fill them out. The date and time on the
22 statement form is 12/9 of '13 which is December 9th, 2013
23 at 02:36 pm. It says "Interview Agent as Brad Keller and
24 Agent Daren Vaughan." The statement was witnessed by Scott
25 Coffer and William B. Keller which is me. And Ms. Calicutt

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1 signed at the bottom and signed at an additional line
2 stating she was given a copy of the statement.

3 Q. Okay. And then after you took that preliminary
4 information, the actual writing in the statement part of
5 the form, who wrote that?

6 A. Ms. Calicutt.

7 Q. All right. And then after that it was signed by her?

8 A. Yes, sir, it was.

9 Q. All right. And during the course of this interview
10 once again did anything come up that made you think that
11 Ms. Calicutt was in some way not aware of what she was
12 telling you or not capable of appreciating what she was
13 saying?

14 A. No, sir.

15 Q. All right.

16 SOLICITOR ANTHONY: Thank you. That's everything on
17 direct. Well just for the record.

18 Q. If you would just go ahead and read the statement that
19 you took from Ms. Calicutt.

20 A. Where she started writing?

21 Q. Yes, sir.

22 A. It says "Josh called told me to get out of the house.
23 I left out of the house. I then called his sister to see
24 if she would go get Josh. He was running from the police.
25 His sister and I talked for seventeen minutes. She said

1 that's how long our conversation lasted. I forgot to
2 mention the long red candles we lit earlier that day when I
3 gave my statement before. I have then put little pieces
4 together of what may have happened. No I have not went
5 over my story with anyone. This is the truth what I'm
6 saying before I was shocked about everything that was going
7 on. I understand now that what I left out was a big deal.
8 No I didn't say I took anything cause honestly I forgot all
9 about taking anything but I was not messed up to where I
10 didn't know what was going on. I was aware of my
11 surroundings. I didn't have anything to do with the house
12 fire. If I don't know of any house fire" oh, that's an
13 abbreviation for and "and I don't know of anyone who does
14 but I hope they find out who done it."

15 Q. Okay. All right. Now after that statement was taken,
16 was Ms. Calicutt allowed to leave?

17 A. Yes, sir, she was.

18 Q. Okay. And then was there - When was the next time
19 you saw Ms. Calicutt?

20 A. I believe it was the following day.

21 Q. Okay. And what happened the following day?

22 A. The following day and again I'm not looking at the
23 case part of the arrest warrant but I believe the following
24 day she was taken into custody on December 10th I believe.

25 Q. Okay. And was she ask - Was she remarandized that

AGENT BRAD KELLER: DIRECT BY SOLICITOR ANTHONY - IN CAMERA

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1 day?

2 A. Yes, sir, cause she actually was in custody that day.

3 I used the same sheet right underneath the place just
4 wrote UCDC which was an abbreviation for Union County
5 Detention Center recorded the day that's 12/10 of 2013
6 which was December 10th, 2013 and the time recorded was at
7 17:10 which would be 05:10 in the afternoon.

8 Q. Okay. And then there's a second set of initials on
9 that form; is that correct?

10 A. Yes, sir.

11 Q. And how did that second set of initials on this form
12 rights get on the form?

13 A. And basically what that was is just since we had just
14 spoken to her yesterday I had the exact same form with me.
15 I put that line underneath it and explained to her, you
16 know, the same as that form that she had had yesterday that
17 we explained to her is and everything - nothing had
18 changed. I read the stuff over to her again and ask her to
19 initial on the lines beside that if she wished to speak
20 with me.

21 Q. Okay. And just for the record if yo would just go
22 through on that form the rights you advised of her both on
23 the 10th and on the 9th.

24 A. Okay. It says "Before we ask you questions you must
25 understand your rights. You have the right to remain

1 silent. Anything you say can be used in court as evidence
2 against you. You're entitled to talk to a lawyer now and
3 have him present now or at anytime during questioning. If
4 you cannot afford an attorney one will be appointed for you
5 without cost. If you decide to answer questions now
6 without a lawyer present you will still have the right to
7 stop answering questions at any time. You also have the
8 right to stop answering questions at any time until you
9 talk to a lawyer." Then in bold underneath that it says
10 "Do you understand these rights and do you wish to talk at
11 this time?"

12 Q. And on the 10th when you advised her of those rights
13 did she appear to understand what you were saying to her?

14 A. Yes, she did.

15 Q. Did you have any reason to think at that point in
16 time she was under the influence of any kind of
17 intoxicating substance?

18 A. No, sir.

19 Q. And you - Where were you located when you advised
20 her of these rights?

21 A. That one was at the Union County Detention Center.

22 Q. And after you advised her of her rights on the 10th
23 what happened in regards to having a conversation with her
24 then?

25 A. We just ask her - I mean basically that was a

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1 formality. I mean we had talked to her the day before.
2 She didn't have anything else to add and since we were
3 there speaking with her that day I wanted to be covered
4 with having her mirandized. I ask her, you know, is there
5 anything else that she would like to add? Is there
6 anything else that she's thought about? She said she
7 didn't have anything else to say.

8 Q. All right.

9 A. And those may not be her exact verbatim words but she
10 did not add anything to any discussions we had had in the
11 past. Nothing that would have been documented or reported
12 anyway.

13 Q. Okay.

14 SOLICITOR ANTHONY: Thank you. That's everything I
15 have.

16 CROSS-EXAMINATION - IN CAMERA

17 AGENT BRAD KELLER BY MR. DELANEY

18 Q. Officer, what I heard the only thing that wasn't
19 reflected in her statement that she wrote that you said was
20 part of the conversation was where she put the candles in
21 the house; is that correct?

22 A. Yeah. Yes, sir, that was just her statement. I mean
23 that was kind of more of us sitting in the interview room.
24 I said where were they and she was trying to show me like
25 if I was there. She didn't give a specific. Like she

AGENT BRAD KELLER: CROSS BY MR. DELANEY - IN CAMERA

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1 didn't say, you know, three inches from this wall here but
2 she said towards that back wall to where behind where the
3 furnace was.

4 Q. Okay.

5 MR. DELANEY: No further questions, Judge.

6 THE COURT: Okay.

7 MR. DELANEY: We do not have a motion at this time.

8 THE COURT: Okay. You can step down.

9 (WITNESS LEAVING WITNESS STAND.)

10 THE COURT: Hand that to the court reporter.

11 SOLICITOR ANTHONY: If Mr. Delaney doesn't have
12 anything else I just have two brief matters to - for the
13 record pretrial.

14 THE COURT: Regarding this?

15 SOLICITOR ANTHONY: No, sir, regarding something else.

16 THE COURT: You don't - You have not --

17 MR. DELANEY: No further argument. I have no motions
18 as far as --

19 THE COURT: Okay. You're not moving to suppress the
20 statement?

21 MR. DELANEY: Right. Not moving to suppress the
22 statement, your Honor.

23 THE COURT: All right. Well even so I do find that it
24 was freely voluntarily and - freely voluntarily and
25 intelligently given after Ms. Calicutt had been advised of

1 her Fifth and Sixth Amendment rights as pursuant to
2 Miranda. That she had the right to remain silent, that if
3 she spoke and gave a statement it could be used in court
4 against her. That she had the right to have a lawyer
5 present; that if she could not afford one the State would
6 appoint one to represent her. And that she could stop - At
7 no expense to her and that she could stop answering
8 questions at any time. That in either - on either date was
9 any indication of intoxication or pressure of any kind.
10 That she appeared competent, not tired, not under the
11 influence, that no promises or threats were made. And I
12 find that the statements are - comply with the
13 Constitutional requirements of the Fifth and Sixth
14 Amendment and the statutory - not the statutory - the case
15 law requirements of the Supreme Court and Miranda.

16 All right, what's your other matter?

17 SOLICITOR ANTHONY: First of all, is there any - I'd
18 just inquire if there is any reciprocal Rule 5 material that
19 needs to be shared with the State.

20 MR. DELANEY: There's not, your Honor.

21 THE COURT: All right.

22 SOLICITOR ANTHONY: And then the only other thing is
23 before we get started there are a set of phone records that
24 the State has secured as part of this investigation in the
25 case. Those records are Ms. Calicutt's phone records.

1 They've been turned over in discovery. It's my
2 understanding that the Defense will stipulate as to the
3 admissibility of those records without an authenticating
4 witness without the requirement that the State call an
5 authenticating witness.

6 MR. DELANEY: That's correct, your Honor.

7 THE COURT: All right. Anything else?

8 SOLICITOR ANTHONY: No, sir, that's everything I have.

9 THE COURT: Anything, Mr. Delaney?

10 MR. DELANEY: I guess this may be the appropriate
11 time.

12 I would ask your Honor for this trial to allow my
13 client to stay out --

14 THE COURT: She can stay out on bond as long as there
15 is a bond in place; as long as the bond person will remain
16 on the bond she can remain out during trial.

17 MR. DELANEY: Thank you, your Honor.

18 THE COURT: All right. Well we'll be at ease 'till
19 two o'clock.

20 (COURT IN LUNCH RECESS AT 12:50 PM.)

21 (COURT BACK IN SESSION AT 02:06 PM.)

22 THE COURT: Take your seats. All right, is the State
23 ready?

24 SOLICITOR ANTHONY: Yes, sir.

25 THE COURT: The Defense?

1 MR. DELANEY: Yes, your Honor.

2 THE COURT: All right. Bring in the jury.

3 (JURY REENTERS COURTROOM AT 02:06 PM.)

4 THE COURT: Now that everybody is comfortably seated
5 I will ask you to stand and raise your right hand.

6 (PETIT JURY SWORN AT 02:07 PM.)

7 THE COURT: You may be seated. Thank you.

8 Members of the jury panel, I'm gonna chat with you
9 just for a few more minutes and then I'll turn the case
10 over to the attorneys. Ms. Calicutt has as to the charge
11 entered a plea of not guilty which places on the State the
12 burden of proving her guilt beyond a reasonable doubt. She
13 is presumed innocent and need not prove her innocence. The
14 State must prove her guilt beyond a reasonable doubt before
15 she could be found guilty.

16 The attorneys have the right but not obligation to now
17 in a moment come before you and make opening statements.
18 They are not arguing their case; they are giving you sort
19 of an outline or a blue print of the trial. Later at the
20 end of the trial they will have an opportunity to come back
21 before you and argue to you and try to persuade you as to
22 why your verdict should be a certain verdict. That's not
23 what they're doing now.

24 I have three primary jobs in a trial such as this.
25 One is I'm the logistics person. I make sure we take

1 breaks; that we - that one person talks at the time, that
2 you can see the things you need to see; the mechanical part
3 of the trial. I also rule on questions of the
4 admissibility of evidence. If one side believes certain
5 evidence should be admitted into the record for your
6 consideration and the other based on some rule or case law
7 believes that evidence is inadmissible I have to rule on
8 it.

9 My third job is that I am the sole judge of the law in
10 this case. You must take accept and apply the law as I
11 charge it; even if you think I charge the law in error or
12 even if you think the law should be different. Your oath
13 requires you to take accept and apply the law as I charge
14 it. In doing this you may believe one witness as opposed
15 to several. Let me back up. You are not to infer from
16 anything I say or do at any time during the trial as being
17 an indication of an opinion of mine on the facts. That is
18 solely your job to examine the evidence and give to the
19 evidence the effect the value the weight and the truth you
20 believe it should have.

21 In doing this you can believe one witness as opposed
22 to several; several witnesses as opposed to one. You may
23 believe all part or none of a witnesses testimony. Use
24 your common sense your sense of logic your sense of reason.
25 Use your experiences in life as you analyze the evidence.

1 As judges of the facts you necessarily must judge the
2 credibility; that is, the believability of the witnesses
3 who testify. In assessing believability use those things
4 I've talked about. Use the things that you in your day to
5 day life find as being indicators of truthfulness in an
6 individual. And you can use certain evaluators. A
7 witnesses' demeanor. How they act on the stand. Are they
8 hesitant or straightforward in responding to questions.
9 Look at the consistencies or inconsistencies in a
10 witnesses' testimony. Look at the opportunity the witness
11 had to know those things about which the witness testified.
12 And you can consider any bias or prejudice; that is,
13 whether a witness wish to help or hurt one side or the
14 other. All of these things you consider determine the true
15 facts apply the law as I charge it and you will be in a
16 position to return a verdict that speaks the truth.

17 I've already talked to you about not making up your
18 mind or doing any independent research. I told you about
19 not letting yourself be exposed to anything outside of the
20 courtroom. You don't need to take notes. If you - We take
21 breaks about every hour and a half. Let me back up again.

22 If you can't see or you can't hear let me know.
23 Either cup your ear or give me a voice raising gesture or a
24 nudging gesture and I will correct the problem. We take
25 breaks about every hour and a half. I find that's a good

1 comfort level, however, if at anytime any of you need a
2 break, simply raise your right hand and with no questions
3 ask we'll take a break. We want to move the case along but
4 we're not in such a hurry that we won't take a break if we
5 need to. And I extend that to counsel and Ms. Calicutt
6 also.

7 Madam Forelady, you will be the liaison between the
8 jury and myself; preside over the jury's deliberations and
9 ultimately sign the jury's unanimous verdict.

10 Counsel.

11 SOLICITOR ANTHONY: Thank you, your Honor.

12 OPENING STATEMENT BY SOLICITOR ANTHONY

13 SOLICITOR ANTHONY: Good afternoon y'all. My name is
14 John Anthony and I'm the Deputy Solicitor here in Union and
15 I'm the man representing the state in this case.

16 Back on November the 26th of 2013 the Defendant in
17 this case Crystal Calicutt was interviewed about some
18 allegations that she might a set the house on fire that's
19 the subject of this arson. And when she got to talking
20 about her personal situation she said that it was sort of
21 like the Jerry Springer show. And when you hear the
22 evidence in this case you might think that yourself. That
23 it might have sort of a reality TV type of aspect to it
24 because Ms. Calicutt was involved in a love triangle.

25 There was this man named Josh Falls and Josh Falls was

OPENING STATEMENT: BY SOLICITOR ANTHONY

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1 seeing two women. He was seeing Ms. Calicutt but then he
2 was also seeing this other woman named Rhonda Johnson. And
3 Rhonda Johnson had set him up in this house on Church
4 Street in Buffalo. And that's where he was staying but he
5 was spending time there with Ms. Calicutt.

6 So on the night of November 23rd of 2013 Josh Falls
7 left the house to go on a date with Rhonda Johnson and he
8 left Crystal Calicutt there. And he told Crystal Calicutt
9 that he was gonna take her to Greenville later on that
10 night but that he was gonna go out with Ms. Johnson and get
11 some money from her and he was gonna come back and pick her
12 up and the two of them were gonna go to Greenville.

13 Well Mr. Falls was gone for over three hours and
14 finally after midnight that night Ms. Calicutt got a call
15 from Mr. Falls. And Mr. Falls told her that he was being
16 chased by the police and for her to get out of the house.
17 So Ms. Calicutt made a call. She made a call to Mr. Falls'
18 sister. She started to leave the house but she got to
19 thinking. She got to thinking about what Mr. Falls might
20 really be up to that night. And was Mr. Falls really being
21 chased by the police or was he about to bring that other
22 woman back to that house and did he just want her gone.

23 So, eventually Ms. Calicutt realized Mr. Falls was
24 telling her the truth. He really was being chased by the
25 police that night and they really did, they did meet up

1 later that night and they went off and they spent two days
2 together before they came back to Union. Well in the
3 meantime after Ms. Falls left that house about twenty
4 minutes after she left that house a witness saw the house
5 on fire.

6 The Buffalo Fire Department got called; they made it
7 there in eight minutes, but the house was a total loss. So
8 a SLED agent came, an arson investigator from SLED came
9 processed the house figured out where the fire started. So
10 about two days later Ms. Calicutt and Mr. Falls come back
11 to Union. Mr. Falls turns himself in. They both are
12 interviewed by the investigators about this fire and all of
13 a sudden the investigators realized the last person who was
14 at that house was Ms. Calicutt. So Ms. Calicutt is
15 interviewed and she's interviewed four times. And when we
16 got - When she got to the fourth interview she admitted
17 that she had been taking pills that night but she hadn't
18 been before. And through four interviews she never could
19 account for how that fire could have started accidentally.
20 She never could account for it in a way that's consistent
21 with what the investigators knew about the fire set.

22 She never could explain how it was that all of a
23 sudden she just let - she left that house and everything
24 was good and then within just a few minutes somebody was
25 calling in a fire and that house was burning to the ground.

OPENING STATEMENT: BY SOLICITOR ANTHONY

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1 Now, this is kind of a complicated case. Times are
2 gonna be important in this case. We're gonna have some
3 phone records that we will need to tell you about in this
4 case, so, there's gonna be a lot of parts and it will be my
5 job at the end to come back and try to take all this
6 evidence and present it to you in a way where you can know,
7 where you can be convinced that Ms. Calicutt is actually
8 the person who set that house on fire. That it was an
9 intentional fire and she's the one who did it.

10 But as you listen to the evidence there's three things
11 I want you to think about. And these are words that you
12 probably have heard maybe if you've watched movies about
13 crime or Law and Order. It's the kind of words that you
14 use when you talk about crime. But the first word is
15 motive. Just why - Who would want to burn the house down?
16 Why would Ms. Calicutt want to burn the house down?

17 The second word is opportunity. Who would have the
18 ability, who would be in a position where they could burn
19 that house down? The third word is deception. Who - Look
20 at what Ms. Calicutt said; look at how many times she was
21 interviewed. Look at how the story changed and ask
22 yourself why would a person who didn't have anything to
23 hide have so many stories. And the witnesses that we call
24 will be laying the ground, laying the ground work for y'all
25 to think about those three things.

1 We'll call some people who actually saw the fire; some
2 people who put out the fire. We'll call the other two
3 people in the love triangle. They'll testify, Mr. Falls
4 and Ms. Johnson. We'll call some sheriff's deputies who
5 were involved in what happened that night and the
6 investigation that night. We'll also call the SLED agent
7 who investigated the fire scene and who took some
8 statements from Ms. Calicutt.

9 So, we'll present all of that and we thank that at the
10 end of this you're gonna be able to put those three parts
11 of this case together. And when you hear this evidence you
12 may thinks some of it does kind of sound crazy; kind of
13 does sound like Jerry Springer. But what I want you to
14 remember is there is one person for whom this was
15 absolutely not the least bit funny because that house that
16 burnt down, it wasn't Josh Falls house. He was just
17 renting it. He was renting it from this lady over here Ms.
18 Corbett.

19 Ms. Corbett owned that house. And we believe the
20 evidence is gonna show that Crystal Calicutt made a
21 decision that night that cost Ms. Calicutt - or I'm sorry,
22 cost Ms. Corbett her family home. Her family home is gone
23 because of what Crystal Calicutt did early in the morning
24 of November the 24th, 2013. So we just ask that you listen
25 to the evidence and we believe that at the end of the day

OPENING STATEMENT: BY MR. DELANEY

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1 you'll be able to add up the fact that Ms. Calicutt had the
2 motive to do this. She had an opportunity to do this; she
3 was deceptive after it happened and we believe at the end
4 of the day once you've heard all this evidence you'll add
5 it up and you'll be convinced that you've heard enough
6 proof to convict her of third degree arson. Thank y'all
7 very much.

8 MR. DELANEY: May it please the Court.

9 THE COURT: Yes, sir.

10 OPENING STATEMENT BY MR. DELANEY

11 MR. DELANEY: Good afternoon. My name is Erik Delaney
12 I'm with the Public Defender's Office here in Union County.
13 Crystal Calicutt is my client in this case.

14 First, I just want to thank y'all for your service.
15 And, you know, before we get into this, you know, once we
16 get into this trial, I think the focus is gonna be but
17 before, you know, thank you for your service.
18 Its important that you all are here. This system doesn't
19 work without y'all.

20 Today I agree with the Solicitor on some things as far
21 as today that this trial is important to Ms. Corbett. But
22 I would submit to y'all, ladies and gentlemen, this trial
23 it is extremely important for my client Ms. Calicutt. Are
24 there gonna be some I guess you could say Jerry Springer
25 regarding the TV show referenced? Is it gonna be some of

1 that? Sure there's gonna be some of that. But that
2 doesn't make this case any less important, any less
3 important for my client. My client comes in this courtroom
4 under a presumption of innocence.

5 What does that mean? That means that up until this
6 point what we have is a charge, a charge of arson. We have
7 allegations that have been made. But it's gonna be up to
8 y'all, you twelve collectively, to remove that cloak. That
9 cloak of innocence from my client only you twelve
10 collectively can do that. And that's what I would ask you
11 all, ladies and gentlemen, to not make any rush to
12 judgments.

13 The State's gonna get to go first. They're gonna get
14 to call some witnesses this afternoon. I would expect
15 that's gonna go into somewhat tomorrow. The Solicitor and
16 myself we're gonna be able to ask questions. When the
17 State's done with their witnesses I expect you're gonna
18 hear from a few witnesses from the defense.. You're gonna
19 hear as you already heard that my client gave some
20 different statements freely and voluntarily. She came, she
21 met with the authorities and gave some different
22 statements. I agree with that.

23 Now, I disagree with what you're gonna hear with all
24 of these inconsistencies in these statements and that's
25 gonna be for you all to decide. But I contend, ladies and

OPENING STATEMENT: BY MR. DELANEY

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1 gentlemen, you're gonna hear something that's going to be
2 consistent with every one of the statements she gave to the
3 police. And what is that? She didn't start this fire.
4 That's what's gonna be consistent to every one of these
5 statements. That's what you're gonna hear.

6 Crystal Calicutt she doesn't have to say a word in
7 this trial. Doesn't have to say a thing. You're going to
8 hear from Judge Hayes that she has a constitutional right
9 to remain silent. She doesn't have to take the stand. You
10 might ask yourself why, why is that. And that's because
11 the State they have the burden. The State must prove this
12 case beyond a reasonable doubt. That's the standard. The
13 burden of proof is on them. And what do they have to
14 prove, what do they have to show? What I am going to want
15 you to think about in this case and the Solicitor and
16 myself will get to talk to you at the very end of this case
17 after everything has been presented we're gonna get the
18 chance to do what they call closing arguments. And you're
19 gonna hear me say it then, you're gonna hear me say it now
20 and the thing I want you to focus on in this trial is
21 evidence. What does the evidence show in this case? What
22 doesn't it show? What is just opinion from this stand?
23 What backs up these opinions? That's what I want you to
24 think about. That's what I want you to scrutinize.

25 Reasonable doubt. What is it? It's been defined as

1 the kind of doubt that would leave a reasonable person
2 hesitant to act. It's been described as the kind of doubt
3 that would leave a reasonable person not firmly convinced.
4 So what you're gonna have to do at the end of this trial
5 after all of the evidence has been presented, what you're
6 going to have to do is ask yourselves are you firmly
7 convinced? Firmly convinced of my client's guilt. Firmly
8 convinced. And what I contend, ladies and gentlemen, is no
9 way. Thank you.

10 THE COURT: Call your first witness.

11 SOLICITOR ANTHONY: Yes, sir. We call Ms. Corbett.

12 (WHEREUPON, KAY CORBETT,
13 BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

14 DIRECT EXAMINATION

15 KAY CORBETT BY SOLICITOR ANTHONY:

16 Q. Would you state your name please?

17 A. My name is Kay Corbett.

18 Q. Ms. Corbett, where do you live?

19 A. Currently I live in Union County in the city of
20 Union on Crestview Drive.

21 Q. And are you presently employed?

22 A. No. I'm retired.

23 Q. And how were you employed before you retired?

24 A. I was employed with Union County schools. Started
25 out at Union High School and then Union County High School.

KAY CORBETT: DIRECT BY SOLICITOR ANTHONY

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1 Q. And how long did you - What did you do with the Union
2 County school?

3 A. I came here as a teacher. My first teaching
4 experience was at Wade-Hampton High in Greenville and then
5 I moved back here because of my parents illness and I
6 taught French, English. The last three years I taught
7 Bible History and Creative Writing also.

8 Q. And how long were you a school teacher here?

9 A. Forty-five years.

10 Q. And do you own property at Church Street in
11 Buffalo?

12 A. Yes I do.

13 Q. And is that in Union County?

14 A. Yes.

15 Q. And how did you come to own that property?

16 A. That was my parents home. It's the only home they
17 ever owned. It was my home for the first twenty-five years
18 of my life until I married. And my dad at sixty-three; my
19 mom at eighty-five and I did not sell the home after her
20 death. I kept it doing remodeling and used it for rent
21 cause I have one child and after college he decided on
22 post-graduate work and he wanted to do it with loans and
23 working at a restaurant. When he got into the program he
24 found out there would be no restaurant work because he had
25 weekend work as well as during the week and so that money

1 was sent to help subsidize his loans.

2 Q. Okay. And I want to take you now - Well, the home
3 that you own there on Church Street in Buffalo, how would
4 you describe it? What kind of house was it?

5 A. It was a mill house in a textile village. Four rooms.
6 Front bedroom was mine, back bedroom my parents, a sitting
7 room with a piano cause my piano teacher lived two doors
8 down. It was a piano, sofa, chair, warm morning heater.
9 And a kitchen and then a walk in closet and a little side
10 porch. And it was a typical mill house. They were so
11 proud of it because it was the only home they had ever
12 owned.

13 Q. Now I want to take you now to November of 2013. What
14 was the status of the property at that time the first of
15 November of 2013?

16 A. After my mother's death we went in and put new storm
17 windows. We updated the counters in the kitchen and te
18 floor; updated the bathroom. A new air conditioning.
19 Painted inside. And I had recently bought my mom a new
20 stove also. We left some things intact in the bathroom
21 because my mother is my son's only grand - living
22 grandparent; the only ones he ever knew, that one. And he
23 wanted the claw foot bathtub that was traditional in those
24 homes. He wanted that and a wardrobe with a cedar lining
25 and those two things were left in the home along with the

KAY CORBETT: DIRECT BY SOLICITOR ANTHONY

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1 new updates. The air conditioning and that kind of thing.
2 Heaters or whatever.

3 Q. Well in November of 2013 who was living there?

4 A. Josh Falls.

5 Q. And how did you know Josh Falls? How did you come to
6 meet him?

7 A. A lady named Sandra Johnson who is a massage
8 therapist here in Union called me and she said I want you
9 to talk to Rhonda. There is a young man - -

10 Q. And who is Rhonda?

11 A. Rhonda Johnson. Excuse me - and she I did not know
12 then - she had rented the home herself but it turned out
13 she was Josh's girlfriend.

14 Q. Okay. And you say Rhonda had rented the home. You
15 mean in the - - -

16 A. Previously.

17 Q. - - - past Rhonda Johnson rented the house from you?

18 A. Uh-huh, previously.

19 Q. Okay.

20 A. Before Josh.

21 Q. And did you come to make an agreement with Josh Falls
22 about him renting the home?

23 A. Yes. I have a lease. It's signed and dated
24 specifically one person only. We talked about I had
25 neighbors that was still there. The Varner's who were on

1 one side but she's a Ramsey now but she was a teacher;
2 still lived in her family home. Bought it like I did my
3 mom's home. My music teacher was right below me. My momma
4 had two sisters that lived across the street so I wanted a
5 nice quiet renter and he said he understood that; there
6 would be no partying and that kind of thing.

7 Q. And when did you rent the house to Mr. Falls?

8 A. The lease started in October.

9 Q. Of 2013?

10 A. That's correct.

11 Q. Okay. Now did you know Ms. Calicutt?

12 A. No.

13 Q. During the time that Josh Falls was renting the home
14 from you, did you have any knowledge during that time that
15 she was spending time at your house?

16 A. No I did not.

17 Q. And I want to take you now to the early morning of
18 November 24th of 2013. Did you receive or have any
19 communication with anybody about your house early that
20 morning?

21 A. Yes. I received a call from Barbara Varner Ramsey who
22 lived next door; just referred to her, that was her family
23 home. She bought it and kept it sort of like I did,
24 updated it. She said - I can almost remember the exact
25 words - Your mother's house is on fire. I have to go.

KAY CORBETT: DIRECT BY SOLICITOR ANTHONY
CROSS BY MR. DELANEY

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1 And that was - And I jumped in my car came to Buffalo and
2 it was gone when I got there.

3 Q. Thank you.

4 SOLICITOR ANTHONY: That's everything on direct.

5 CROSS-EXAMINATION

6 KAY CORBETT BY MR. DELANEY:

7 Q. Good afternoon, Ms. Corbett.

8 A. Good afternoon.

9 Q. The house, obviously an older house. Correct?

10 A. Yes. These were mill homes.

11 Q. Built in the - what, early forties?

12 A. I have no sense of things like that about time. I
13 just know that I lived in it for twenty-five years.

14 Q. Okay. And that house had some old wood floors; is
15 that correct?

16 A. Yes it did.

17 Q. Pine?

18 A. Yes.

19 Q. Okay. Any electrical work done in the house anytime
20 recently?

21 A. My - I was still working and my husband had retired
22 and he did the work there because I was working and I know
23 that they did some things but I couldn't swear to what
24 because my husband has alzheimers and I can't question him
25 about what all he did. I do know I have bills and things

BRYAN GARDIN: CROSS BY MR. DELANEY
BRIAN GARDIN: DIRECT BY SOLICITOR ANTHONY

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1 where we did windows but I do know he had an electrician
2 there. I cannot tell you what was done.

3 Q. And how many years ago would you say that was
4 approximately?

5 A. When the work was done?

6 Q. Yeah.

7 A. I moved back up three or four years before Josh.

8 Q. Okay. Thank you, Ms. Corbett.

9 MR. DELANEY: That's all I have.

10 THE COURT: Redirect?

11 SOLICITOR ANTHONY: No. No redirect.

12 THE COURT: Ms. Corbett, you can step down and be
13 excused or have a seat back there. We appreciate your
14 time. Thank you.

15 (WITNESS LEAVING WITNESS STAND.)

16 THE COURT: Call your next witness.

17 SOLICITOR ANTHONY: The next witness would be Mr.
18 Gardin.

19 THE CLERK: Place your left hand on the Bible and
20 raise your right hand.

21 (WHEREUPON, BRYAN GARDIN,
22 BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

23 DIRECT EXAMINATION

24 BRYAN GARDIN BY SOLICITOR ANTHONY:

25 Q. Would you state your name please?

BRYAN GARDIN: DIRECT BY SOLICITOR ANTHONY

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1 A. Bryan Gardin.

2 Q. And, Mr. Gardin, where do you live?

3 A. I live at Sweetwater Drive, Buffalo.

4 Q. And how are you employed?

5 A. Milliken.

6 Q. What do you do at Milliken?

7 A. Style changer.

8 Q. How long have you worked for Milliken?

9 A. Fifteen years.

10 Q. And aside from being employed with Milliken are you
11 also a member of the Buffalo Fire Department?

12 A. Yes, sir, I am.

13 Q. And what is your role in Buffalo Fire Department?

14 A. Chief.

15 Q. And how long have you been the chief there?

16 A. Five years.

17 Q. And how long have you been a fireman?

18 A. Since 1989.

19 Q. Well I want to take you back now to the morning of
20 November 24th, 2013. Did you receive a call out to
21 Church Street in Buffalo?

22 A. Yes, sir, we did.

23 Q. What time did y'all - the fire department get called
24 out to that scene?

25 A. I think it was 12:42, 43.

1 Q. And what time did you arrive?

2 A. The arrive time was three or four minutes after the
3 call came in.

4 Q. All right. Did you - Let me ask you, would you - Did
5 you prepare a report that documented those times?

6 A. Yes, sir.

7 Q. All right. And would looking at that report possibly
8 refresh your recollection as to those? Would it help you
9 to look at that report ---

10 A. Yes, sir.

11 Q. --- to know for sure what the times were?

12 A. Yes, sir.

13 Q. Okay. I'm gonna hand up - I'm gonna hand you a
14 document and ask if you - you just tell me what that is.

15 A. This is a run report.

16 Q. What's a run report?

17 A. That- See we put our times, runs - And I think
18 you have the other sheet - for our records.

19 Q. Okay. And is that for this call?

20 A. Yes, sir.

21 Q. Okay.

22 A. This is a --

23 Q. Okay. And after reviewing that run report what is
24 your recollection as to when y'all were called out, the
25 fire department was called out?

BRYAN GARDIN: DIRECT BY SOLICITOR ANTHONY

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1 A. We was called out at 12:43.

2 Q. Okay. And what time did you get there?

3 A. The department ---

4 Q. Yeah.

5 A. --- for the whole --

6 Q. Yes.

7 A. 12:53. I'm sorry. We arrived, yeah, 12:53. 12:51.

8 I'm sorry.

9 Q. 12:51?

10 A. Yeah. It's right there.

11 Q. Okay. So the fire department arrived at 12:51?

12 A. Yes, sir.

13 Q. Okay. Now, when the call came out how did you get
14 there? How did you get to the fire scene?

15 A. My personal vehicle.

16 Q. Okay. And did you - When you headed over to the fire
17 scene, did you do anything to make sure there were gonna be
18 fire trucks headed over there?

19 A. Yes, sir.

20 Q. And how did you handle that?

21 A. When I was headed that way I kind of stopped on 215
22 and looked back toward the fire house. The guys were
23 getting in the truck. I proceeded on.

24 Q. Okay.

25 A. I got there.

- 1 Q. Okay. And were you the first person to arrive?
- 2 A. Fire Department standpoint yes, sir.
- 3 Q. All right. And when you got there was there already
- 4 some - a fire fighter there?
- 5 A. Yes, sir.
- 6 Q. And who was that?
- 7 A. Danny Gowan.
- 8 Q. And Danny Gowan, what fire department does he
- 9 belong to?
- 10 A. Kelly Kelton.
- 11 Q. All right. And what else was going on when you got
- 12 there?
- 13 A. Pretty much I was trying to establish what - relayed
- 14 the message to the firemen's what we had.
- 15 Q. All right. Well, as far as when you got there what
- 16 was the condition of the home at
- 17 A. Fully involved.
- 18 Q. When you say fully involved what does that mean?
- 19 A. Pretty much the house is non-fire able at the time
- 20 to go in.
- 21 Q. Okay. Where could you observe fire coming from the
- 22 house when you got there?
- 23 A. The front of the house.
- 24 Q. All right. And as far as the sides of the house,
- 25 which side? Was it coming from both sides or one side?

BRYAN GARDIN: DIRECT BY SOLICITOR ANTHONY

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1 Where was it?

2 A. The front left and right.

3 Q. Both sides?

4 A. Yes, sir.

5 Q. Okay.

6 A. What we call A and B and D side of the house.

7 Q. All right. And was - Other than Mr. Gowan was anybody
8 else out that you observed around the fire scene?

9 A. Just Danny, Danny Gowan at the time.

10 Q. All right. And so what was your job, as the chief
11 what do you do when you get called to a fire?

12 A. My job is to make sure the guys do what they're
13 supposed to do and go home safe.

14 Q. All right. So, when you arrive there was there any
15 kind of impediment there at the residence to fight the
16 fire? Was there anything you had to deal with to get in to
17 take it on?

18 A. Yeah. The D side of the house we couldn't fight
19 because the power line was down.

20 Q. Okay. And which side? If you're looking at the house
21 which side is D side?

22 A. It would be to the right side.

23 Q. Okay. And how did you decide to respond to that
24 situation?

25 A. I had notified the city of Union to get utilities

1 out there before we could get to D side.

2 Q. And initially how many trucks responded to the fire?

3 A. Buffalo three; two engines and a service unit and I
4 had two other departments responding.

5 Q. Well just in the minutes right after you got there,
6 how many fire trucks showed up?

7 A. Two.

8 Q. Two? Okay. And what did - Did one of the trucks
9 go somewhere trying to connect to a water supply?

10 A. Yes, sir.

11 Q. And where did that truck go?

12 A. To the Methodist Church down the street.

13 Q. All right. And what was the purpose of going to the
14 Methodist Church?

15 A. To lay a line from the hydrant back to the first
16 engine.

17 Q. And then the other truck that appeared what - where
18 did it go? Where did it locate itself?

19 A. The second engine to lay the line?

20 Q. Yes, sir.

21 A. It staged out there on the scene.

22 Q. Okay. When you say on the scene, you mean near the
23 house?

24 A. Yes, sir.

25 Q. All right. And what just as far as the way the

BRYAN GARDIN: DIRECT BY SOLICITOR ANTHONY

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1 operation was conducted, the truck that went down to the
2 Methodist Church and laid a hose, where did it run the hose
3 to?

4 A. It went from the Methodist Church laid a line from the
5 hydrant back to the first end engine.

6 Q. To what now?

7 A. It supplied the first end engine.

8 Q. So it supplied the truck that was up there near the
9 house?

10 A. It was the one that we committed to fight the fire
11 with.

12 Q. Okay. And how many hoses were deployed to fight the
13 fire?

14 A. Three.

15 Q. And how were those hoses used?

16 A. The engine - Two engines, three quarters tack line,
17 and one was on the B side of the house. The other one was
18 for protecting the neighbors house next door.

19 Q. How was the hose used to protect the neighbor's house?

20 What specifically did you all do?

21 A. So that house wouldn't get so hot. It had vinyl
22 siding on it.

23 Q. So you just put water on the neighbor's house?

24 A. Trying to spray it, yeah.

25 Q. All right. And then you said one hose was put to the

- 1 B side of the house?
- 2 A. Both hose were.
- 3 Q. Both hose were?
- 4 A. Yeah.
- 5 Q. Okay.
- 6 A. The neighbor's and then a tack --
- 7 Q. I'm sorry.
- 8 A. To the neighbor's house.
- 9 Q. Uh-huh.
- 10 A. Then one was a tack line.
- 11 Q. Okay. And the tack line was actually placed on the
- 12 house itself?
- 13 A. Yes, sir.
- 14 Q. Okay. And then were you able eventually to put a
- 15 hose over on the other side?
- 16 A. Yes, sir, once the city of Union cut the power line
- 17 loose.
- 18 Q. Uh-huh. And then aside from those three hoses was
- 19 there anything else that you all did to put water on the
- 20 home trying to put out the fire?
- 21 A. Yes, sir, we used a loose gun off the top of the
- 22 first end engine.
- 23 Q. And what - When you say the gun, what is that?
- 24 A. The loose guns, what it does it sprays water from
- 25 the top of the truck out. That pretty much kind of knocked

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1 it back down once we did that.

2 Q. All right. So once you knocked the fire down what
3 was the next step that you all took?

4 A. They pretty much after the ceiling collapsed and it
5 kind of pretty much knocked it down, they went in kind of
6 inside and pretty much knocked the hot spots out.

7 Q. All right. And how many - I mean aside from the
8 Buffalo Fire Department how many other departments
9 responded to the fire?

10 A. Two.

11 Q. Which two were those?

12 A. Cross Keys and Bonham.

13 Q. Approximately how many firemen showed up to fight this
14 fire?

15 A. All together eighteen.

16 Q. And how long did it take to get the fire under
17 control?

18 A. Forty-five, fifty minutes.

19 Q. And without going back to when you arrived without
20 saying what you were told, did you receive some information
21 about a possible cause of the fire?

22 A. Yes, sir, I did.

23 Q. And after you received that information did you
24 contact anybody else to come to the scene?

25 A. The Sheriff's Department.

1 Q. Now after the fire department personnel went in and
2 put out the hot spots what else were you all required to
3 do? The fire department personnel, what else were they
4 required to do that night as far as trying to maintain the
5 fire scene?

6 A. We maintain the fire scene. I make sure everything
7 was okay. I talked to a deputy and he done another search
8 around the house to make sure everything was fine.

9 Q. And then is there any kind - Were there any kind of
10 requirements as far as you needing to preserve the scene
11 'till somebody else could there?

12 A. Yes, sir, we preserved the scene for the Sheriff's
13 office that notified us that the SLED Department was on the
14 - that would be there the following morning.

15 Q. And did you all do anything as far as putting up some
16 kind of tape?

17 A. Yes, sir, we put up yellow tape and I had three guys
18 to stand by 'til SLED got there.

19 Q. All right. And then once SLED got there were the
20 fire department personnel still there while they did their
21 investigation?

22 A. Yes, sir.

23 Q. And altogether when was it that everybody got to
24 leave from the fire department?

25 A. I think it was about twelve, twelve thirty, something

BRYAN GARDIN: DIRECT BY SOLICITOR ANTHONY

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1 'till one. I can't remember.

2 Q. The next day afternoon?

3 A. The next day yes, sir

4 (WHEREUPON, STATE'S EXHIBIT NUMBERS THREE THROUGH
5 ELEVEN, PREMARKED FOR IDENTIFICATION.)

6 Q. Okay. I'm gonna hand you a set of pictures that's
7 been marked for identification as State's Exhibits Three
8 through Eleven. And I'd ask that you just look through
9 these and let me know if you know what those are photos of.

10 A. That's the house fire on Church Street.

11 Q. Okay. And when were those photos, when do those
12 photos appear to be taken?

13 A. The - They - When SLED got there.

14 Q. Okay. The morning after the fire?

15 A. Yes, sir.

16 Q. And do those photos fairly and accurately depict
17 the location of the house ---

18 A. Yes, sir.

19 Q. --- after the fire was put out?

20 A. Yes, sir.

21 Q. Okay.

22 SOLICITOR ANTHONY: We would move Three through
23 Eleven into evidence.

24 MR. DELANEY: Without objection.

25 THE COURT: In without objection.

BRYAN GARDIN: DIRECT BY SOLICITOR ANTHONY

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1 (WHEREUPON, STATE'S EXHIBIT NUMBERS THREE THROUGH
2 ELEVEN, IDENTIFIED AND MARKED, RECEIVED INTO EVIDENCE.)
3 BY SOLICITOR ANTHONY:

4 Q. I'm gonna show you just a few photos. I'm gonna give
5 you this pointer, Chief Garden, if you would when I ask you
6 questions you can use that pointer to point out some things
7 on these pictures.

8 Can y'all cut the lights please?

9 (COURTROOM LIGHTS TURNED DOWN.)

10 (WHEREUPON, STATE'S EXHIBITS THREE THROUGH ELEVEN
11 PUBLISHED TO THE JURY AT 02:50 PM.)

12 Q. All right. I'm showing you right now Exhibit Four.

13 Can you tell me what that is, what we're looking at
14 there?

15 A. That's the A side of the house. That's the street
16 address side of the house where your mailbox is at.

17 Q. Okay. When you call something the A side, what is
18 that?

19 A. That's the street side of the address side.

20 Q. The front?

21 A. The front.

22 Q. Okay. And now I'm gonna show you Exhibit Three and
23 ask you do you recognize what that's a photo of?

24 A. That's the same - That's the house on Church Street.

25 Q. All right.

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1 A. That's the B side of the house.

2 Q. All right. And can you from that picture you said
3 that a hose was put on that side?

4 A. Yeah, the hose was put on this side. There was a
5 neighbors house back this way.

6 Q. All right. And then I'm gonna see if I can get this.

7 Okay. You mentioned going - one of the trucks went to
8 the Methodist Church. Can you - On that picture can you
9 point out the Methodist Church?

10 A. Right there.

11 (WITNESS INDICATED WITH POINTER ON EXHIBIT.)

12 Q. Okay. So it's just down at the bottom of the hill?

13 A. Yes, sir.

14 Q. Or about half way down the hill?

15 A. Yes, sir.

16 Q. Okay.

17 A. The hydrants probably about right in there.

18 (WITNESS INDICATED WITH POINTER ON EXHIBIT.)

19 Q. Okay. And when you arrived going - Just once again,
20 staying with Number Three, when you arrived what - show the
21 jury what part of the house was on fire.

22 A. From here back this way to the front of the house.

23 (WITNESS INDICATED WITH POINTER ON EXHIBIT.)

24 A. And the other side.

25 Q. All right. And I'm gonna show you now Exhibit Seven.

BRYAN GARDIN: DIRECT BY SOLICITOR ANTHONY
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1 And what do we see there?

2 A. That's the back of the house. That's C side.

3 Q. Okay. And then can you also see what you all call
4 D side in that picture?

5 A. D side's right there.

6 (WITNESS INDICATED WITH POINTER ON EXHIBIT.)

7 Q. Okay. Now you said there was one side of the house
8 that you had trouble accessing because of a power line.
9 Which side?

10 A. This power line was right in here.

11 (WITNESS INDICATED WITH POINTER ON EXHIBIT.)

12 Q. And the neighbor's home that y'all put the hose on,
13 can you see that from there?

14 A. Right there.

15 (WITNESS INDICATED WITH POINTER ON EXHIBIT.)

16 Q. Okay.

17 SOLICITOR ANTHONY: If I can have one moment.

18 (PAUSE.)

19 SOLICITOR ANTHONY: All right. Well, thank you.

20 That's everything on direct.

21 CROSS-EXAMINATION

22 BRYAN GARDIN BY MR. DELANEY:

23 Q. You were the first fire fighter from Buffalo to
24 arrive; is that right?

25 A. Yes, sir.

BRYAN GARDIN: CROSS BY MR. DELANEY

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1 Q. And it was a Danny Gowan that was another fire
2 fighter that was already there?

3 A. Yes, sir.

4 Q. Okay. I think you testified you arrived around
5 approximately 12:51. Correct?

6 A. Yes, sir.

7 Q. Okay. And when you arrived fire was coming out both
8 sides of the house?

9 A. Yes, sir.

10 Q. And --

11 A. A, B, and D side.

12 Q. Okay. And was it coming up through the roof at that
13 time as well?

14 A. Yes, sir. It just worked its way through the roof.

15 Q. Okay. Now you - Were you able to determine what
16 side the fire started on?

17 A. Not at that time no, sir.

18 Q. Okay. Did you get any reports from any eyewitnesses
19 at that time as far as what they saw?

20 A. No, sir.

21 Q. And you said that this fire was engulfed in this house
22 when you arrived. Right?

23 A. Yes, sir.

24 Q. And as a fire chief you know in a matter of minutes,
25 five minutes, a house can be engulfed by fire. Correct?

1 A. Yes, sir.

2 Q. Okay. You are familiar with - I'm sure you are
3 familiar with the term called flash over?

4 A. Yes, sir.

5 Q. And that's when the heat, everything builds up and
6 it ignites and a room will just go. Correct?

7 A. Correct.

8 Q. Okay.

9 A. Rock sheet.

10 Q. Okay. I guess this time of year when it gets colder
11 out that's when individuals start heating or some
12 individuals will start heating their home with these space
13 heaters. Correct?

14 A. Yes, sir.

15 Q. Electrical heaters. Right?

16 A. Yes, sir.

17 Q. And that would be one of, I guess, right up there on
18 the list one of the main causes of house fires of these
19 electrical heaters in the winter. Correct?

20 A. Yes, sir, it's possible.

21 (02:56 PM TRAIN WHISTLE HEARD.)

22 Q. And you stated that you made a call to the sheriff's
23 department? You made a call to the sheriff's department?

24 A. Yes, sir.

25 Q. And that was because ---

BRYAN GARDIN: CROSS BY MR. DELANEY

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1 (TRAIN WHISTLE GETTING LOUDER.)

2 Q. --- you got word that the individual living in the
3 house --

4 SOLICITOR ANTHONY: Your Honor, objection. That calls
5 for hearsay.

6 THE COURT: I sustain the objection.

7 (TRAIN WHISTLE GETTING LOUDER.)

8 BY MR. DELANEY:

9 Q. You called the sheriff's department. Right?

10 A. Had the sheriff's office dispatched to my location
11 yes, sir.

12 Q. And that was based on some information you were
13 getting then. Right?

14 A. Yes, sir.

15 Q. Okay.

16 MR. DELANEY: No further questions. Thank you.

17 THE COURT: Redirect.

18 SOLICITOR ANTHONY: If I can have one moment.

19 (TRAIN WHISTLE HEARD LOUDER.)

20 SOLICITOR ANTHONY: No redirect.

21 THE COURT: You can step down and be excuse. We
22 appreciate your time. Thank you.

23 (WITNESS LEAVING WITNESS STAND.)

24 THE COURT: Call your next witness.

25 SOLICITOR ANTHONY: We call Mr. Gowan.

DANNY GOWAN: DIRECT BY SOLICITOR ANTHONY

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1 THE CLERK: If you'd raise your right hand and place
2 your left on the Bible.

3 (WHEREUPON, DANNY GOWAN,
4 BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

5 DIRECT EXAMINATION

6 DANNY GOWAN BY SOLICITOR ANTHONY:

7 A. Danny Gowan.

8 Q. Okay. Let me - If you would, state your name please?

9 A. Danny Gowan.

10 Q. And, Mr. Gowan, where do you live?

11 A. Union.

12 Q. And how are you employed?

13 A. EMT.

14 Q. And who do you work for?

15 A. AmbuStar Incorporated.

16 Q. And how long have you worked for them?

17 A. A little over a year.

18 Q. And how were you employed before that?

19 A. My own trucking business.

20 Q. Now I want to take you back to November of 2013. Were
21 you active on the fire department at that time?

22 A. Yes I was.

23 Q. And which fire department was that?

24 A. Kelly Kelton.

25 Q. And how long had you been a fireman?

DANNY GOWAN: DIRECT BY SOLICITOR ANTHONY

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1 A. I been in and out of fire and rescue since 2004.

2 Q. And I want to take you now back to the early morning
3 of November 24th of 2013. Where were you at that time?

4 A. I was at my Chief's house. At that time I was
5 assistant chief at Kelly Kelton Fire Department and I was
6 sitting in my vehicle with him. He was standing outside
7 and we were discussing fire department matters and we
8 looked up and I seen the smoke up there on Church Street.

9 Q. Okay. Well where were you? Where did the Chief of
10 the fire department live?

11 A. Jen Circle.

12 Q. Okay. And was anybody with you at that time besides
13 Mr. Lemons?

14 A. My girlfriend at the time.

15 Q. All right. And you said that you looked up and saw
16 some smoke?

17 A. Yes.

18 Q. And where was the smoke coming from?

19 A. It was raising above the trees ---

20 Q. Okay.

21 A. --- from up the hill.

22 Q. Okay. Could you say which street though that it
23 was coming - - -

24 A. North Church Street.

25 Q. It was on Church Street. Okay. So once you saw this

1 smoke what did you do?

2 A. I told my chief at the time I said, that looks like
3 a structure fire. I said I'm gonna go up here and look and
4 see and check it out.

5 Q. And did you do that?

6 A. Yes I did.

7 Q. Well when you got up the street what did you discover?

8 A. I discovered the house was on fire. At that time I
9 placed a call to 911 over the radio.

10 Q. All right. Well when you saw the house was it
11 actually - You said you saw smoke at a distance but when
12 you actually got up to it were there flames?

13 A. Yes.

14 Q. Where were they coming from?

15 A. Coming out from under the eve of the roof.

16 Q. And once you saw that the house was on fire what did
17 you do?

18 A. I placed a call to 911.

19 Q. And what time did you make your 911 call?

20 A. It was 12:40; 12:42.

21 Q. And at that time did you see anybody around the house?

22 A. No.

23 Q. Did you see any vehicles coming out from around the
24 house?

25 A. No we didn't.

DANNY GOWAN: DIRECT BY SOLICITOR ANTHONY

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1 Q. Well once you called 911 what did you do and what did
2 your girlfriend do?

3 A. I told her to go tell Steve and Barbara Ramsey which
4 lived next door to get out of their house. And at that
5 time Bryan had come up -

6 Q. When you say Bryan, you mean Chief Gardin?

7 A. Chief Gardin.

8 Q. Okay.

9 A. And I was trying to get my turn out gear on and I ask
10 him if he wanted me to help and he said yeah. And after I
11 got my gear on I went to go to pull the power meter.

12 Q. Let me just back you up. Where were you in the time -
13 from the time you called it in to the time Chief Gardin got
14 there, where were you positioned?

15 A. Across the street from the house.

16 Q. All right. And during that time did you ever see
17 anybody around the home?

18 A. No.

19 Q. And did you ever have any contact with any of the
20 neighbors, any of the people that live around there while
21 you were waiting on Chief Gardin?

22 A. No.

23 Q. And you said that you went to pull the power meter?

24 A. I went to pull the power meter.

25 Q. Okay. What happened when you went to do that?

1 A. The power line snapped and it was arching all over the
2 place so I changed my mind on that.

3 Q. And once Chief Garden and the Buffalo Fire Department
4 fire engines got there how did you participate in fighting
5 the fire?

6 A. I pulled the attack line off the truck and one of
7 their firemen assisted me and we started fighting the fire.

8 Q. Which part of the house did you go to?

9 A. I went to the back corner on the - If you're looking
10 at the house I went to the back corner on the left hand
11 side.

12 Q. And you took a hose back there?

13 A. Yes.

14 Q. All right. And how long did you stay there to work?

15 A. I would say fifteen, twenty minutes maybe.

16 Q. Were you there until the fire was basically subdued?

17 I mean and the fire being basically beat down and put
18 out while you were there?

19 A. Yes.

20 Q. All right.

21 SOLICITOR ANTHONY: If I can have one moment.

22 Q. When you arrived did it appear to you that one part
23 of the house was more involved? When you were driving up
24 the street and seeing it before you called in did it appear
25 to you that one part of the house was more involved than

DANNY GOWAN: DIRECT BY SOLICITOR ANTHONY
CROSS BY MR. DELANEY

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1 any other?

2 A. Yes.

3 Q. Where did it seem to be concentrated?

4 A. If you looking at the house the left front room looked
5 like it was more involved.

6 Q. All right.

7 SOLICITOR ANTHONY: If I can have one moment.

8 All right. Thank you. That's everything on direct.

9 THE COURT: Wait just a second. Mr. Delaney may have
10 some questions.

11 CROSS-EXAMINATION

12 DANNY GOWAN BY MR. DELANEY:

13 Q. Just a couple of questions the solicitor just ask you.

14 You got there the left side, the left side of the
15 house appeared to be - that's where the flames were coming
16 from?

17 A. Yes.

18 Q. When you arrived? Okay. And when you got there I
19 guess almost immediately you get there on scene that's when
20 you dial 911?

21 A. I've never dialed 911. I called it in on the radio.

22 Q. Called it in on the radio? Okay. And that was
23 roughly what, 12:43? Is that what you said?

24 A. 12:40, 12:42.

25 Q. Twelve - Say it again.

DANNY GOWAN: CROSS BY MR. DELANEY
REDIRECT BY SOLICITOR ANTHONY

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1 A. 12:40, 12:42.

2 Q. 12:40, 12:42? Okay. And how long did it take you
3 when you saw the smoke coming up from the Church Street
4 area how long did it take you to get from where you were
5 at?

6 A. Approximately a minute and a half, two minutes.

7 Q. A minute and half, two minutes.

8 MR. DELANEY: All right. Thank you.

9 THE COURT: Anything else?

10 SOLICITOR ANTHONY: If I could have just one moment.

11 REDIRECT EXAMINATION

12 DANNY GOWAN BY SOLICITOR ANTHONY:

13 Q. Have you reviewed the report from that documents the
14 call time on this call you made, Mr. Gowan?

15 A. I never.

16 Q. I want to show you - just show you this.

17 A. I wasn't on that fire department at the time.

18 Q. Do you remember us looking - taking a look at that
19 last week?

20 A. Yeah.

21 Q. All right. And what is that?

22 A. That's a communications report that's made up when
23 ever you call in.

24 Q. Okay.

25 A. A call whether it be a phone or by radio I would say.

DANNY GOWAN: REDIRECT BY SOLICITOR ANTHONY

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1 Q. Okay. And in looking at that report what - does that
2 report - In looking at that report when does it appear you
3 made that call?

4 A. 12:42.

5 Q. 12:42. Okay.

6 SOLICITOR ANTHONY: All right. That's everything on
7 redirect.

8 MR. DELANEY: Nothing, your Honor.

9 THE COURT: You can step down and be excused. We
10 appreciate your time.

11 (WITNESS LEAVING WITNESS STAND.)

12 THE COURT: Call your next witness.

13 SOLICITOR ANTHONY: May we approach a minute?

14 THE COURT: Yes, sir.

15 (BENCH CONFERENCE OFF THE RECORD OUT OF THE HEARING
16 OF THE JURY.)

17 THE COURT: We'll take our afternoon break at this
18 time. We'll send for you in about ten, twelve minutes.

19 (JURY EXITS COURTROOM ON RECESS AT 03:09 PM.)

20 (COURT IN RECESS AT 03:09 PM.)

21 (COURT BACK IN SESSION AT 03:23 PM.)

22 THE COURT: Is the State ready?

23 SOLICITOR ANTHONY: If Mr. Delaney and I could have
24 just a couple of more minutes. We're trying to resolve an
25 impeachment issue.

JOSHUA FALLS: DIRECT BY SOLICITOR ANTHONY

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1 THE COURT: All right.

2 (PAUSE.)

3 SOLICITOR ANTHONY: Your Honor, I think we're ready.

4 THE COURT: Okay. Bring in the jury.

5 (JURY REENTERS COURTROOM AT 03:25 PM.)

6 THE COURT: Call your next witness.

7 SOLICITOR ANTHONY: Yes, sir. We call Mr. Falls.

8 THE CLERK: Place your right hand and put your left on
9 the Bible.

10 (WHEREUPON, JOSHUA FALLS,
11 BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

12 DIRECT EXAMINATION

13 JOSHUA FALLS BY SOLICITOR ANTHONY:

14 Q. Would you state your name please?

15 A. Joshua Falls.

16 Q. And, Mr. Falls, where do you live?

17 A. Now?

18 Q. Yes, sir.

19 A. Cudd Lane.

20 Q. And who do you live with?

21 A. Rhonda Johnson.

22 Q. And I want to take you back now to November 23rd of
23 2013. Where were you living at that time?

24 A. At Church Street in Buffalo, South Carolina.

25 Q. And who were you - What was your arrangement to get

JOSHUA FALLS: DIRECT BY SOLICITOR ANTHONY

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1 to live in that property? Who were you renting it from?

2 A. Kay Corbett.

3 Q. And when had you moved in?

4 A. October 1st.

5 Q. And who had arranged for you to rent that home?

6 A. Rhonda. Rhonda Johnson.

7 Q. And I need you to speak up just a little bit.

8 A. Rhonda Johnson.

9 Q. Okay. And who paid your rent?

10 A. Rhonda.

11 Q. Now did anybody live there with you?

12 A. Rhonda stayed, came in and out but most of the time
13 it was Crystal.

14 Q. And as far as Rhonda, you said sometimes Rhonda would
15 be there and sometimes Crystal would be there. What was
16 the nature of the relationship you had with the two of
17 them?

18 A. I mean both of 'em was girlfriends.

19 Q. All right. And what did the two women, what had you
20 said to the two women or to your knowledge what did the two
21 women know about each other?

22 A. Pretty much everything.

23 Q. And had even one of the women gotten pregnant by you?

24 A. Yeah, Rhonda.

25 Q. Rhonda? And on November - in November of 2013 was

1 Rhonda pregnant?

2 A. Yes. That's what she told me.

3 Q. Was Crystal pregnant?

4 A. No.

5 Q. Had Crystal said anything to you about wanting to
6 have a child?

7 A. Uh-huh. Yes, sir.

8 Q. And what was --

9 A. Yes.

10 Q. What did she say to you?

11 A. Well when me and Crystal first got together Crystal
12 was supposed to had got pregnant by me then but it didn't
13 happen.

14 Q. And - But it was your understanding was she still
15 wanting to have a child with you?

16 A. Yes.

17 Q. I want to take you now to the - to November 23rd of
18 2013. Where had Crystal - Where was Crystal that day?

19 A. The day of the house fire?

20 Q. The day of the 23rd.

21 A. She was at my house on Church Street.

22 Q. And did the two of you make - you and Crystal, did the
23 two of you make any plans for that night?

24 A. Yes.

25 Q. What was the plan?

JOSHUA FALLS: DIRECT BY SOLICITOR ANTHONY

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1 A. We was planning on going to Greenville.

2 Q. And what were you all gonna do in Greenville?

3 A. Go dancing.

4 Q. And had Crystal brought anything to your house to
5 prepare to go to Greenville?

6 A. Yes.

7 Q. What had she brought?

8 A. She - In the first she had a couple of outfits that
9 I had bought her. But there was something that she didn't
10 have that didn't match so what I told her was I said just
11 go to your house, use the car, and get all your things and
12 that's what she did. Never had time to unpack. Left it
13 all there in the suitcase.

14 Q. All right. And so she brought some clothes to your
15 house to wear that night?

16 A. Yes.

17 Q. Okay.

18 A. Well like I said, some she had. Clothes already
19 I had bought but it was something that she didn't have
20 that didn't match right so she wanted to go to her house
21 and get her some more clothes so I just told her to go
22 ahead and get all of her clothes and bring 'em back.

23 Q. And what did you tell her about how you all were
24 gonna be able to pay to make this trip to Greenville?

25 A. I was gonna get money from Rhonda.

- 1 Q. And that day had Crystal been taking anything?
- 2 A. Both of us have.
- 3 Q. What had the two of y'all been taking that day?
- 4 A. Subutex.
- 5 Q. And what is that again?
- 6 A. Subutex. It's a generic for Suboxone.
- 7 Q. And when you left with Ms. Johnson that night what
- 8 was Ms. Calicutt's condition?
- 9 A. Both of us was highly high cause we had been
- 10 smoking marijuana at the same time and them pills they very
- 11 dangerous and they get you to a point that I would say some
- 12 people will hallucinate on it.
- 13 Q. All right. And when you left to go with Ms. Johnson,
- 14 was there still pills and marijuana at your house?
- 15 A. Yes.
- 16 Q. And how did you meet with Ms. Johnson that night?
- 17 A. She came and met me at the house.
- 18 Q. And what was she driving?
- 19 A. She was driving a - the Dodge Ram.
- 20 Q. And did you have a vehicle at your house?
- 21 A. Yes, I had a burgundy Toyota, Corolla.
- 22 Q. And how had you gotten that Toyota Corolla?
- 23 A. Rhonda.
- 24 Q. And where was that car kept routinely?
- 25 A. Most of the time it would be in the back yard.

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1 Q. At your house on Church Street?

2 A. Yes, on Church Street.

3 Q. So when the two of you left at your house were you
4 in separate vehicles still?

5 A. Me and Rhonda?

6 Q. Yes.

7 A. Yes.

8 Q. Okay. And where did you go?

9 A. We met, we followed each other to Buena Vista
10 Apartments.

11 Q. And once you got to Buena Vista what happened there?

12 A. Well we supposed to been meeting up with Byrd, Dennis
13 Byrd, and he was gonna come with us and he was gonna go
14 meet Rhonda's friend Kim. Well he backed out on me so we
15 left the truck there and Rhonda road with me in the Toyota
16 Corolla.

17 Q. Where did the two of you go after you left the
18 apartments?

19 A. We went to - Our first stop was McDonald.

20 Q. And what did you do there?

21 A. I got two cheeseburgers and barbeque sauce.

22 Q. And then where did you go?

23 A. We left there and went straight to Shady's.

24 Q. And what happened when you got to Shady's?

25 A. When we got to Shady's we sat in the parking lot for

1 a few minutes while I ate the hamburger but before I ate
2 the hamburger I realized I didn't have my barbeque sauce so
3 we went back to McDonald's and came back to the parking
4 lot.

5 Q. The Shady's parking lot?

6 A. Yes.

7 Q. And so once you eat the hamburger in the Shady's
8 parking lot what did you do then?

9 A. Then me and Rhonda went in paid ten dollars for the
10 donation and when I looked over to the left is when I seen
11 Crystal's aunt Donna. So at that moment we instantly
12 turned around.

13 Q. All right. And so once - So you left Shady's?

14 A. Yes.

15 Q. When you left Shady's where did you go?

16 A. We went to AJ's in Buffalo.

17 Q. And what did you do there?

18 A. We shot a couple of games of pool and I called - I
19 had called a partner of mine Adrian to bring me some weed
20 over there.

21 Q. And how long did you stay at AJ's?

22 A. I don't remember the exact time we got there but
23 twelve o'clock they closed.

24 Q. Okay. And when you all - When you left AJ's where
25 did you go then?

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1 A. Me and Rhonda went to Josh Garner's house.

2 Q. And where is that?

3 A. I don't know the name. It's in Buffalo. I don't
4 know the name of the street. I think it's Pine Street.

5 Q. Okay. And once you got to Mr. Garner's house what
6 did you decide to do then?

7 A. Well the original plan was to go to his house and
8 smoke a blunt with him. And when I got through with the
9 blunt me and Rhonda was gonna depart.

10 Q. I'm sorry.

11 A. Me and Rhonda was gonna depart from one another.

12 Q. All right.

13 A. And that's when I was gonna go get Crystal.

14 Q. Well when you got to Mr. Garner's house did you
15 decide to go somewhere else from there?

16 A. Yes.

17 Q. Where did you go?

18 A. We had to go to the 'Lil' Cricket to get wraps. The
19 top 'Lil' Cricket was closed so we went to the other one.

20 Q. And after you went to the second 'Lil' Cricket when
21 you left it where did you go?

22 A. Back to Josh and Rhonda's.

23 Q. Okay. Now while all this is going on, what is
24 going on between you and Crystal?

25 A. Nothing.

1 Q. Is there contact between the two of you?

2 A. Yeah.

3 Q. Okay. How --

4 A. Every move, every time that me and Rhonda would
5 park anywhere and if I could get a second I would call
6 Crystal.

7 Q. And what were you telling her?

8 A. I mean I just tell her where I'm at and what I'm
9 doing and how long I be.

10 Q. And as you were - After you went to the second
11 'Lil' Cricket as you're going back to Mr. Garner's, what
12 happened then?

13 A. Well when we was pulling down in up his road Al
14 Black was sitting there.

15 Q. And who does Al Black work for?

16 A. Al Black work for the Union County Police Department.

17 Q. Okay. And what - Where exactly was he sitting
18 again?

19 A. At that moment he was sitting right across from
20 Wesley Pruitt's house.

21 Q. All right. And so what happened?

22 A. We went on around him pulled off in the church - in
23 Josh Garner's house and I told Rhonda and Josh to go on in
24 the house.

25 Q. And what happened then?

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1 A. Al Black started asking me who I was so I wouldn't
2 tell him who I was so I ask him who he was and he wouldn't
3 tell me who he was. So we battled back and forth with the
4 mind game and then I told him my name was Josh. I said who
5 are you? He said you know who I am. That's when he cut
6 his interior light on and he said I'm Al Black. He said
7 let me talk to you for a minute. I said you got a warrant?
8 He said no. I said well I don't talk to the police without
9 a warrant. I walked in the front door of Josh's house and
10 went straight out the back door.

11 Q. And why was it you ran out of the back door?

12 A. Because the police was wanting to talk to me and I
13 didn't - I mean I had already knew my house that my door
14 had been kicked in two weeks prior.

15 Q. All right. So once you run out the back door - and
16 this is Mr. Garner's house you run out the back door of;
17 is that correct?

18 A. Yes.

19 Q. Once you run out the back door what do you do?

20 A. I jump over the bannister, I turn to the left and
21 I run straight into the woods. When I got in the woods I
22 dropped low and called Crystal and I told Crystal to get
23 out my house. I told her the police was looking for me.

24 Q. And was there any particular reason you were worried
25 about her being in your house?

1 A. If I come in - I mean I didn't want her to get
2 jammed up being there and she telling them where I'm at.

3 Q. Okay. And so once you call Ms. Calicutt what happened
4 then? What did you do then?

5 A. I then started to run on through behind where
6 she pulls in the house and ran down behind Foster - Not
7 Foster Park but the pond and from there I ran all the way
8 back up behind Buffalo Street. And that's when I cut
9 behind all the houses on 215 and I commenced to run from
10 there.

11 Q. I'm sorry.

12 A. I commenced to run from there to the fire department.

13 Q. And while you were doing this what - were you doing
14 anything as far as trying to contact people?

15 A. Yes.

16 Q. What were you doing?

17 A. I was trying to call Crystal and tell Crystal to get
18 her momma to come pick me up. If I'm not mistaken I called
19 my sister also. And I don't think my sister could come
20 pick me up at that time.

21 Q. I'm sorry.

22 A. I don't think my sister could come pick me up at
23 that time.

24 Q. All right.

25 A. Well maybe Crystal called. I can't remember exactly

JOSHUA FALLS: DIRECT BY SOLICITOR ANTHONY

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1 how it went.

2 Q. All right. Were you calling other people ---

3 A. Yes.

4 Q. --- trying to arrange for rides?

5 A. Yeah. Yes. Yes.

6 Q. Okay. And were you able to do that?

7 A. Yes. I succeeded.

8 Q. I'm sorry.

9 A. I succeeded at that.

10 Q. Okay. And who picked you up?

11 A. Adrian Parham.

12 Q. Adrian Parham?

13 A. Uh-huh.

14 Q. Okay. And where were you picked up?

15 A. I was picked up beside the fire department.

16 Q. And while you were running did you have any contact
17 with Crystal? Did you have - After you made the first call
18 to her, did you have another call with her where she told
19 you anything about your house?

20 A. Yes.

21 Q. Okay. What did she say?

22 A. She said that it went over the scanner that there
23 was a structure house fire on Church Street. But they
24 didn't call the right house number out so - And then she
25 said that by the time she got to her momma's front yard she

1 heard a big boom. She turned around and she looked and it
2 looked like my house was sitting on top of a mountain on
3 fire. So then at that time I told her to get her mom to
4 come pick me up. Her mom wouldn't bring her to pick me up
5 so I got her to get her mom to take her to my momma's house
6 and get my mother's car. And then she picked me up on
7 Raymond Crawford.

8 Q. And so you were - What - When your ride showed up to
9 pick you up, what were you doing at that point in time?

10 A. Waiting.

11 Q. Were you talking to anybody when your ride showed
12 up?

13 A. I think my phone had went dead.

14 Q. All right. But did you have this conversation about
15 your house being on fire that you just described which you
16 just described which you had with Crystal, was that before
17 you got your ride or after you got your ride?

18 A. Repeat that again.

19 Q. The conversation that you just described having with
20 Ms. Calicutt.

21 A. Uh-huh.

22 Q. Was that before you got your ride or after you got
23 your ride?

24 A. Well like I said she called. When she called me
25 before she came to pick me up and told me about the house

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1 fire.

2 Q. Well I mean your ride from Mr. Barham at the fire
3 department, was that conversation before the ride, before
4 you got -

5 A. When the agent picked me up I got in the car with
6 him and I said man, listen, Crystal's called me on the
7 phone and told me my house is on fire.

8 Q. Okay. So it was before?

9 A. Yeah.

10 Q. Okay. And then where did Mr. Barham take you?

11 A. He took me to Raymond's Crossing.

12 Q. Okay. And who lives there?

13 A. No one. I just got dropped off there because it
14 was close to my mom's.

15 Q. All right. And then after you got dropped off at
16 Raymond's Crossing who was the next person who gave you a
17 ride?

18 A. Maybe it was - Maybe ten, fifteen minutes later
19 that's when Crystal pulled up in my momma's jeep.

20 Q. And where did Ms. Calicutt take you?

21 A. I think I got in the driver's seat so I was driving.

22 Q. Or where did the two of you go?

23 A. We went to hit the interstate and we went to I think
24 it was Greenville Hospital. I can't remember which one it
25 was.

1 Q. Okay.

2 A. And we stayed in the parking lot.

3 Q. All right. And was it Greenville or Greenwood?

4 A. It might a been Greenwood.

5 Q. Okay. And where was - How long were you out of
6 Union County?

7 A. I think the house fire happened, was it Saturday?
8 Was it a Saturday? I can't - I turned myself in on Monday
9 morning.

10 Q. On Monday?

11 A. Yes.

12 Q. All right. And were you with Ms. Calicutt the whole
13 time?

14 A. Yes.

15 Q. And while you were with her did she talk about the
16 house fire?

17 A. Yeah. Yeah, we spoke about it.

18 Q. And what did she say?

19 A. The first thing she said she said they gonna think
20 I did it cause I was the last person at the house.

21 Q. And did she tell you what she had left on when she
22 left the house?

23 A. No. I had already knew what I left on when I left.

24 I knew I had the heater on and I had a lamp on with
25 a hat over it, a toboggan.

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1 Q. And where were those located at the house?

2 A. Those was in the - in our bedroom, in my bedroom.

3 Q. In the bedroom?

4 A. Uh-huh.

5 Q. Was the gas turned on the house?

6 A. No.

7 Q. All right. And when you came back to Union the
8 next day with Ms. Calicutt, did you - where did you go to?

9 Where did the two of you go?

10 A. When we came back to Union?

11 Q. Yeah.

12 A. I went and turned myself in.

13 Q. Okay. So - And where did you do that?

14 A. Union County jail.

15 Q. And at that time were you questioned about the fire?

16 A. Yes.

17 Q. And gave a statement about the fire?

18 A. Yes.

19 Q. Now, Mr. Falls, you have a criminal record; is that
20 correct?

21 A. Yes, sir.

22 Q. All right. And I'm gonna just ask you about a few
23 of these convictions that you have. In 2014 you were
24 convicted of resisting arrest and failure to stop for a
25 blue light?

1 A. Yes, sir.

2 Q. Right? And then in 2011 you were convicted of
3 criminal domestic violence.

4 A. Yes, sir.

5 Q. is that correct? In 2009 you were convicted of high
6 and aggravated assault and battery?

7 A. Yes, sir.

8 Q. And 2006 you were convicted of a high and aggravated
9 criminal domestic violence?

10 A. Yes, sir.

11 Q. And then in 2005 you were convicted of distribution
12 of marijuana and distribution of marijuana in proximity
13 of a school?

14 A. Yes, sir.

15 Q. Okay. After this incident occurred did you continue
16 to see Ms. Calicutt?

17 A. Yes.

18 Q. And the bag that she brought to your house that night
19 did you ever see that bag again?

20 A. I seen one that was almost identical to it at an
21 abandoned house we stayed in.

22 Q. I'm sorry.

23 A. At that abandoned house we used to stay in off and on.

24 Q. All right.. So you saw - Its either the same bag or
25 an identical bag.

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1 A. It was an identical bag.

2 Q. All right. And when you gave that statement to the
3 police the day that you surrendered yourself at the jail,
4 did you give them a phone number?

5 A. Yes.

6 Q. Okay. Do you recall what that is?

7 A. 426-0216.

8 Q. Okay.

9 SOLICITOR ANTHONY: If I can have just one moment.

10 (PAUSE.)

11 Q. I'm gonna just show you a document, Mr. Falls.

12 Do you recognize this statement I'm handing you?

13 A. Uh-huh.

14 Q. Okay. I'm gonna direct your attention to the second
15 page. I just ask you, I want you to go about a little over
16 half way down. I ask you just to read that - I don't mean
17 to read it out loud - just read it to yourself and I'll ask
18 you - I have a question for you.

19 (WITNESS COMPLIES.)

20 Q. Okay. Does that refresh your recollection about what
21 Ms. Calicutt told you she had left on?

22 A. Yeah, but like I said, I knew what I had left on when
23 I left the house.

24 Q. Uh-huh.

25 A. And when we - We started talking about what was left

JOSHUA FALLS: DIRECT BY SOLICITOR ANTHONY

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1 on and what could a started the house fire and she said
2 that that's what she recalled that was still on.

3 Q. Okay. Cause she told you and you put in the
4 statement that Crystal said the only thing left on in the
5 house was a tall heater and a lamp that were on a desk in
6 the right corner of my bedroom?

7 A. Yes, sir.

8 Q. And that's what she told you too. Okay. So you
9 remembered that being on but then she also said it was on?

10 A. Yes.

11 SOLICITOR ANTHONY: If I could have just one more
12 moment.

13 (PAUSE.)

14 Q. Just a couple of more things. You were advised - Like
15 when you were out - When you were out with Ms. Calicutt the
16 two days after the fire, you had some contact with people
17 with the sheriff's office. Correct?

18 A. Yes.

19 Q. And had you been told - When you turned yourself in
20 at the sheriff's office that next Monday, you knew at that
21 point in time you did have a warrant for you?

22 A. Yes.

23 Q. Okay. And when you left and ran out of the back of
24 Mr. Garner's house on that - early that Saturday morning,
25 what - where was the car? Where was the red or the

JOSHUA FALLS: DIRECT BY SOLICITOR ANTHONY
CROSS BY MR. DELANEY

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1 burgundy Toyota?

2 A. Parked in the front yard at Josh Garner's house.

3 Q. Okay. And it was left there in that yard?

4 A. Well I ran, yeah.

5 Q. All right. All right.

6 SOLICITOR ANTHONY: Thank you. That's everything on
7 direct.

8 CROSS-EXAMINATION

9 JOSHUA FALLS BY MR. DELANEY:

10 Q. Good afternoon, Mr. Falls, how you doing?

11 A. I'm doing all right. How you doing?

12 Q. Good. A couple of questions I got for you. Starting
13 back beginning that day Crystal came over earlier that day.
14 Correct?

15 A. Uh-huh.

16 Q. And you recall that the both of y'all were doing some
17 cleaning in the house; is that right?

18 A. Yeah.

19 Q. Okay. You remember if you had any candles on while
20 you were cleaning?

21 A. Yeah, we had candles.

22 Q. Okay. Now you had testified a little earlier
23 regarding Rhonda Johnson and Crystal Calicutt that they - I
24 think your testimony was - and correct me if I'm wrong -

- 1 that they had pretty much knew everything about each
2 other; is that right? Is that what you testified to?
3 A. About the relationships, yes. I mean in full details
4 you know.
5 Q. Right. They didn't know everything. Right?
6 A. No.
7 Q. Okay. For instance Rhonda Johnson wasn't aware,
8 didn't know that the purpose of you spending time with her
9 that night was to get some money to take Crystal out.
10 Correct?
11 A. No she didn't know that.
12 Q. And that was the plan. Right?
13 A. Yes.
14 Q. Okay. And the plan was for the two of y'all to go
15 dancing or go to a club in the Greenville area. Right?
16 A. Yes.
17 Q. And - -
18 A. You mean me and Crystal?
19 Q. Yeah. I'm sorry, you and Crystal. Right?
20 A. Yeah.
21 Q. And you needed to get some money to do that. Right?
22 A. Yes.
23 Q. And to go to the club you're not going to the club
24 in Greenville at eight, nine, ten o'clock. Correct?
25 A. I mean at the time frame I mean like I said I left

JOSHUA FALLS: CROSS BY MR. DELANEY

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1 the house at nine thirty.

2 Q. Right. But its not - -

3 A. Because I knew it was gonna take a little bit of time
4 so when I got through I was coming back to get Crystal and
5 we was gonna leave.

6 Q. Right. I guess it's not unusual clubs, dance clubs,
7 they're open pretty late. Right?

8 A. Yes, I suppose.

9 Q. Not unusual for you to go to the club at twelve, one,
10 two am. Right?

11 A. You're right.

12 Q. Okay. And while you were with Rhonda you were
13 talking to - You said when you got some time you would call
14 Crystal. Right?

15 A. Yes.

16 Q. And when you talked to Crystal, Crystal wasn't upset
17 with you. Right?

18 A. No.

19 Q. She wasn't yelling at you. Right?

20 A. No.

21 Q. She wasn't saying, Josh, where are you at?

22 A. No.

23 Q. She knew what you were doing. Right?

24 A. Yes.

25 Q. Okay. The gas at the house was turned off. Right?

1 A. No. We never had it turned on.

2 Q. Okay. And how would you heat your house?

3 A. With heaters, little small heaters, electrical
4 heaters.

5 Q. Electrical heaters?

6 A. Yes.

7 Q. How many electrical heaters did you have in the house?

8 A. I had maybe six.

9 Q. Six electrical heaters in the house?

10 A. Maybe six.

11 Q. Where - The best that you can recall where were
12 those electrical heaters throughout the house?

13 A. I think we had two in the bedroom. There was one
14 right at - in the bathroom. And I might a had one or two
15 that wasn't plugged up cause I couldn't plug everything up
16 one time cause it had tripped the breaker.

17 Q. And you had testified and I think you had told the
18 police when you gave your statement over two years ago,
19 that when you left the house around nine o'clock that night

20 ---

21 A. Nine thirty.

22 Q. --- you recall a space heater, electrical heater
23 was on. Correct?

24 A. Yes.

25 Q. And you also recall putting I guess a skull cap over a

JOSHUA FALLS: CROSS BY MR. DELANEY

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1 lamp?

2 A. I kept it there.

3 Q. Okay. That's where you would keep your skull cap ---

4 A. Yeah.

5 Q. --- is over the lamp?

6 A. Any time I would - Most of the time when I cut the
7 lamp on I would take the skull cap off unless I wanted the
8 room to be dim. But I wouldn't leave it on there too long
9 because I was scared it would a caused a fire.

10 Q. But it would be used at times you'd have to pay
11 attention to it to dim the lighting in the room. Correct?

12 A. Yes.

13 Q. Okay. And you had moved into that house - began
14 renting that house from Ms. Corbett approximately ---

15 A. October.

16 Q. --- beginning October? And Crystal she would not
17 drive over to your house park in the front or anything
18 like that. Correct?

19 A. Who?

20 Q. Crystal.

21 A. Crystal doesn't have a car.

22 Q. Okay. Let me put it another way. Crystal used a
23 back way to get to the house. Would that be accurate?

24 A. I mean I don't know about the back way.

25 Q. Well I guess if you go out your back door there is a

- 1 little cut through and down a hill.
- 2 A. There's been a couple of times that she'd use it.
- 3 Q. Okay. You're familiar with that route?
- 4 A. Yeah.
- 5 Q. Okay. And that's a route where you don't have to
- 6 walk the road. You don't have to walk Church Street to
- 7 get up to your house. Correct?
- 8 A. It cuts over to the next street.
- 9 Q. Okay. And that's probably would you say ---
- 10 A. Towards Church Street.
- 11 Q. --- from where you were living on Church Street to
- 12 where Crystal was living at the time approximately what
- 13 would you say what, a ten minute walk or so?
- 14 A. Yeah.
- 15 Q. Okay. And you called Crystal that night and you
- 16 were trying to remember the house that you were at what was
- 17 the guy's name when you saw - -
- 18 A. Josh Garner.
- 19 Q. I'm sorry.
- 20 A. Josh Garner.
- 21 Q. Okay. You had just got to Josh Garner's house and
- 22 that's where you had seen Officer Black. Correct?
- 23 A. The second time.
- 24 Q. Okay.
- 25 A. That was after we went back to the store and came

JOSHUA FALLS: CROSS BY MR. DELANEY

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1 back. That's when I seen Officer Black.

2 Q. Okay. And that time is when you went out the back
3 door and that's where you were going at that point. Right?

4 A. After we sat there and did the mind battle with one
5 another because I couldn't see who he was but I knew his
6 car.

7 Q. Okay.

8 A. And I knew his voice. And a few minutes later that's
9 when - when I told him who I was is when he cut his
10 interior light on and told me who he was.

11 Q. And this Josh Garner he lived over - he lives over -
12 at that time he lived over in Pine Street area of Buffalo;
13 is that correct?

14 A. Yes, sir.

15 Q. And that would probably be approximately half a mile
16 or less from where you were staying on Church Street.
17 Correct?

18 A. I suppose.

19 Q. Okay. Probably about the same distance from your
20 house to where Crystal was staying. Correct?

21 A. Yeah.

22 Q. Okay. And when you got out of Josh's house that
23 night the back door when your first calls or your first
24 call was to Crystal. Correct?

25 A. Yes, sir.

1 Q. And from what we heard is that was you telling
2 Crystal to get out of the house. Right?

3 A. Yes.

4 Q. Okay. Your concern that I think you had said she
5 could be potentially jammed up if the police come there
6 looking for you. Right?

7 A. Exactly.

8 Q. Okay. I guess you don't want her jammed up with
9 anything potentially they could look in to put on you.
10 Right?

11 A. Well I wasn't worried about anything in the house
12 because they had already kicked my door in two weeks prior
13 anyway so the only thing that was in my house was two pills
14 and maybe a quarter sack of weed.

15 Q. You kept that stash I guess above in the door of
16 the house?

17 A. Going to the bathroom.

18 Q. You said the police came a couple a weeks prior
19 looking for stuff in the house?

20 A. Yep.

21 Q. Drugs?

22 A. Yes.

23 Q. Okay. All right.

24 MR. DELANEY: Thank you, Josh.

25 THE COURT: Redirect?

JOSHUA FALLS: REDIRECT BY SOLICITOR ANTHONY

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1 SOLICITOR ANTHONY: Yes, sir, just briefly.

2 REDIRECT EXAMINATION

3 JOSHUA FALLS BY SOLICITOR ANTHONY:

4 Q. The candles that you referenced where were they?

5 A. When you come in the house there is a heater to the
6 left - I mean to the right. That's the gas heater. Like I
7 said I never had gas. I had a TV sitting on top of it.
8 Behind it is a shelf. Well we had a picture of a Lion
9 hanging up and there was I would say like - something that
10 would hold candles that would hang on the wall so we hung
11 one on each side and lite the candles while we was in the
12 process of cleaning the house.

13 Q. All right. And the space heater you were talking
14 about, did you have a space heater in the living room?

15 A. Yes I did and that was one of the ones that wasn't
16 plugged up at that time.

17 Q. Okay. Where was it located in the living room?

18 A. We usually keep it right there beside the heater as
19 soon as you walk in the door beside the big gas heater.

20 Q. Uh-huh.

21 A. I usually kept it right there in front of the little
22 tree.

23 Q. I'm sorry. In front?

24 A. I said I had a tree that was also beside the gas
25 heater where the TV was sitting on.

1 Q. Uh-huh.

2 A. I had a tree that sat there.

3 Q. Uh-huh.

4 A. Uh-hum.

5 Q. Okay. So it was where you kept the space heater next
6 to the gas heater?

7 A. Yeah.

8 Q. Okay. In the same area?

9 A. Yeah.

10 Q. Same corner of the room as the gas heater?

11 A. Yes.

12 Q. Okay. And this lamp that you talked about you said
13 it was in the bedroom?

14 A. Yes.

15 SOLICITOR ANTHONY: If I can have one moment.

16 (PAUSE.)

17 Q. Did that lamp in the bedroom that you talked about
18 the cap being on, did it have a shade on it?

19 A. Yeah.

20 Q. And the candles that you were referencing, do you
21 remember what time you would have lit those?

22 A. I would say maybe around six, seven o'clock. Now if
23 I was in the process of cleaning.

24 Q. All right.

25 SOLICITOR ANTHONY: That's everything on redirect.

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1 THE COURT: Mr. Delaney.

2 MR. DELANEY: Nothing further, your Honor.

3 THE COURT: You can step down and be excuse, Mr.
4 Falls, we appreciate your time. Thank you.

5 (WITNESS LEAVING WITNESS STAND.)

6 THE COURT: Call your next witness.

7 SOLICITOR ANTHONY: The next witness is Ms. Johnson.

8 THE CLERK: Place your left hand on the Bible and
9 raise your right hand.

10 (WHEREUPON, RHONDA JOHNSON,
11 BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

12 DIRECT EXAMINATION

13 RHONDA JOHNSON BY SOLICITOR ANTHONY:

14 Q. Would you state your name please?

15 A. Rhonda Johnson.

16 Q. Ms. Johnson, where do you live?

17 A. Union.

18 Q. And who do you live with?

19 A. I live with my sister, my children, her husband and
20 Joshua.

21 Q. When you say Joshua do you mean Mr. Falls?

22 A. Yes.

23 Q. Okay. Are you presently employed?

24 A. I am.

25 Q. And where do you work?

- 1 A. Plastic Omnium as well as seasonally at Belks.
- 2 Q. And what is Plastic Omnium?
- 3 A. We build the exterior for BMW, Volkswagen, SAAB, and
- 4 Audi cars.
- 5 Q. Where are they located? Where is that business
- 6 located?
- 7 A. They have several locations. They have Duncan and
- 8 Anderson as well as Sumter in South Carolina.
- 9 Q. And what is your job with them?
- 10 A. I'm their quality control technician for exterior
- 11 paints.
- 12 Q. How long have you worked in that job?
- 13 A. I think around sixteen months.
- 14 Q. All right. I'm gonna ask you now, gonna take you back
- 15 to November of 2013 what was your relationship at that time
- 16 with Mr. Falls?
- 17 A. I was dating him.
- 18 Q. And how long had the two of y'all been dating?
- 19 A. A few weeks, month.
- 20 Q. I'm sorry.
- 21 A. A few weeks to months. I mean I don't remember
- 22 specifically. I think we started dating in August.
- 23 Q. In August of 2013?
- 24 A. Yes.
- 25 Q. And what was your knowledge of the relationship that

RHONDA JOHNSON: DIRECT BY SOLICITOR ANTHONY

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1 Mr. Falls had with Ms. Callicutt at that time?

2 A. That she was an ex-girlfriend.

3 Q. So you were not aware he was still seeing her?

4 A. No.

5 Q. All right. And where was Mr. Falls living?'

6 A. At Church Street in Buffalo.

7 Q. And how had y'all - How had you been involved in
8 arranging for Josh to have that place to live?

9 A. I had previously lived there. I knew the owners and
10 I spoke with them because the house was open.

11 Q. And what had you done as far as making financial
12 arrangements for him to be able to live there?

13 A. I had paid his first month's rent and as well as
14 furnished the home.

15 Q. When you say furnished the home, what had you bought
16 to put in the house?

17 A. Everything that was in it basically. The living-room
18 suite, microwave, dishes, end table, lamps.

19 Q. And were you and Josh expecting at this time?

20 A. Yes.

21 Q. And did you - Was there anything you had brought to
22 Josh's house that would indicate that you were gonna have a
23 baby?

24 A. Yes, sir. I was a high risk pregnancy and only a
25 couple, two, three weeks pregnant at the time but I had had

1 an ultra sound and it would have been in the home.

2 Q. All right. Well I want to take you now to the day
3 or the day before the fire November 23rd, 2013. What was
4 your plan for that night? What were you planning on doing?

5 A. I was to have a double date with my friend Kimberly
6 Davis and one of Josh's friends.

7 Q. And where was that gonna occur?

8 A. We were going to Greenville because Kim lived up that
9 way and she knew of a place that we were gonna go.

10 Q. And so what happened as that night got started and
11 wore on, what had occurred between you and Josh?

12 A. I made several phone calls to him throughout the day
13 because we were getting later than planned to leave. Just
14 back and forth back and forth one reason after another why
15 we couldn't come; why it needed to be a little later,
16 things like that. Ended up meeting up with him. He had me
17 drive to some apartments that are over by Timkin.

18 Q. All right. Well let me just ask you this.

19 A. Uh-huh.

20 Q. Where did you meet up with him?

21 A. The first time?

22 Q. The first time.

23 A. The first time would a been on Church Street.

24 Q. And so you went to Church Street?

25 A. I did.

RHONDA JOHNSON: DIRECT BY SOLICITOR ANTHONY

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1 Q. Okay. And when you went over there did you - what
2 did you do as far as going in the house?

3 A. I only came up to the front door.

4 Q. When you went over there did you ever see Ms.
5 Calicutt?

6 A. No.

7 Q. And what did - After you went to Church Street and
8 talked to Josh, what did you do next?

9 A. I left from there, I believe I went up to first
10 Walmart parking lot and then over to those apartments
11 that's in front of Timkin.

12 Q. And where did Josh go?

13 A. Josh came up the street and I believe - He was pretty
14 readily behind me and came over there to the apartments.

15 Q. Okay. And what were you driving that night?

16 A. A blue Dodge; Ram pickup truck.

17 Q. And what was Josh driving?

18 A. A little red rental car.

19 Q. And what kind of car was it?

20 A. A Toyota or some kind. A real small one.

21 Q. And how did you or how had Josh gotten that car?

22 A. Because I had purchased him a vehicle and he had
23 wrecked it on October the 31st and that was the issued
24 rental car.

25 Q. And where was that car staying from the time he

1 had the wreck to the time that, you know, from this evening
2 on the 23rd?

3 A. Josh drove it.

4 Q. It was - stayed at his house?

5 A. Uh-huh.

6 Q. All right. Well after the two of you met up at those
7 apartments what happened then?

8 A. We left from there we went to the Murphy's Gas Station
9 from Murphy's Gas Station we went to McDonald's from
10 McDonald's we went over to Shady's parking lot to eat.
11 They had forgotten something from Josh's order. We went
12 back through the drive through at McDonald's then we went
13 back over to Shady's parking lot, ate. We went to go into
14 Shady's but they were having a benefit for the bartender
15 Allen who had passed away. It was extremely packed and I
16 believe there was someone in there Josh didn't particularly
17 care for; made a donation, left from there. Went down to -
18 there's a little pool place in Buffalo. I think it's
19 called AJ's. Oh, we went back by Murphy's again for Josh
20 to get something then we went to AJ's. We stayed at AJ's
21 until they closed; from AJ's we left and went by a friend
22 of his house that lives over by the Buffalo Mill Pond.
23 Q. And do you know that man's name?
24 A. I know his name is Josh but I think they call him
25 Chugs.

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1 Q. Okay.

2 A. Chugg. So we went from there - -

3 Q. Well when you say from there where do you mean?

4 A. From that guys house.

5 Q. Okay. Joshua?

6 A. Yeah, he came out and got in the car with us. They
7 needed to get something from 'Lil' Cricket so we drove to
8 the 'Lil' Cricket, the first one that's kind of like at the
9 top of the hill. When we got there there was a sign on the
10 door that they were closed. We left from that one and we
11 went to the other 'Lil' Cricket, the one that's right there
12 at the corner of Riley Road, and from there back to that
13 guy's house.

14 Q. So as y'all were going back to Josh's house what
15 happened?

16 A. When we pulled onto that road we passed an officer.
17 Mr. Black is his name, and we passed him. Josh saw him and
18 he was like you know that's Mr. Black. We pulled up in
19 that guy's driveway. Mr. Black had turned around and he
20 pulled up like at the end of the road and he wanted to
21 speak with Josh.

22 Q. And where did you go when this was going on?

23 A. I went first up onto the porch stood there for a
24 minute. Josh told me to go in the house; I went into the
25 house. I ended up coming back outside cause I was trying

1 to figure out what all was going on.

2 Q. And what did you see going on when you went back
3 outside?

4 A. He was just talking to him.

5 Q. Did - I mean, where was Josh?

6 A. Josh was standing at the bottom of - I guess its
7 maybe a step. I don't know he was just right there at the
8 door and Mr. Black was near the road.

9 Q. Still in his car?

10 A. At his car, yes.

11 Q. Okay. And so what happened between Josh and Mr.
12 Black?

13 A. Josh came into the house went down the hallway out
14 the back door and Mr. Black came up. He talked to me he
15 told me that I needed to call him and get him to come back.
16 I did make several phone calls to him. He told me that he
17 was gonna call a K 9 Unit to follow him. I called Josh and
18 told him that. Sometimes he answers sometimes he didn't.
19 Scott Ruby another officer he showed up to the scene.
20 Scott told me he said if you get him to come back I won't
21 charge him with resisting arrest. Tried again to talk to
22 him.

23 Q. And along with Sergeant Ruby did a deputy actually
24 come to the scene with a dog?

25 A. I believe he did. Now I went into the home because

RHONDA JOHNSON: DIRECT BY SOLICITOR ANTHONY

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1 it was quite cold and I got tired of standing out there.
2 And when I went into the home Mr. Black came in and he
3 stayed in there until I left.

4 Q. All right. And so after you go back into the house
5 and Investigator Black goes into the house there ---

6 A. Uh-huh.

7 Q. --- on Pine Street where Josh lives ---

8 A. Uh-huh.

9 Q. --- what was the next thing that happened?

10 A. Just stayed in there for - I can't really tell you
11 how long. Mr. Black stayed at the door. I sat in a chair.
12 That other guy I think he sat either on the couch or like a
13 small chair or something. It came over his Walkie Talkie
14 that a house was on fire on Church Street. When he called
15 out the address I was familiar with it and I ask him what
16 address was that, whose house is that? I believe he
17 either called back or they called it back in said it was
18 Church Street. I told him that was our house and that
19 I needed to go.

20 Q. Okay. And so what did you do then?

21 A. I got up and Mr. Black was parked behind the rental
22 car so Mr. Black followed me over onto Church Street.

23 Q. And the rental car, you had a key to it?

24 A. The keys were actually left in it.

25 Q. Still in it?

1 A. Josh had left 'em in it.

2 Q. Okay. And that car from the time it was stopped by
3 Mr. Black to the time that you left to drive it back over
4 to Church Street where was that car?

5 A. It was in the yard.

6 Q. And you said when you went over there what did
7 Investigator Black do?

8 A. I believe he followed me over there as well as some
9 other officers.

10 Q. All right. And when you got there who - what
11 personnel were there to respond to the fire when you
12 arrived?

13 A. There were a lot of people there. There were fire
14 trucks there. There were police officers there. When I
15 got there at the scene I went through my phone to find my
16 contacts. I called Ms. Corbett I told her that the home
17 was on fire. She told me she was already aware of it.

18 Q. And did you talk to investigators there at the scene
19 of the fire?

20 A. I did.

21 Q. And did you give a statement?

22 A. I did.

23 Q. And, Ms. Johnson, you have a conviction this year
24 for swindling; is that correct?

25 A. I do. Uh-huh.

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1 SOLICITOR ANTHONY: If I could have one moment.

2 All right. Thank you. That's everything on direct.

3 CROSS-EXAMINATION

4 RHONDA JOHNSON BY MR. DELANEY:

5 Q. Good afternoon, Ms. Johnson.

6 A. Hi, Mr. Delaney.

7 Q. Now Josh was driving that little red rental car.

8 He was driving it that night. Right?

9 A. He was.

10 Q. And you gave - Rhonda, you remember giving a
11 statement that night?

12 A. I do.

13 Q. Okay.

14 MR. DELANEY: May I approach, your Honor.

15 THE COURT: Yes, sir.

16 Q. Is that that you recollect the statement that you gave
17 back in November of 2013?

18 A. It is.

19 Q. Did you give any other statements in this
20 investigation?

21 A. I did. I don't recall if I signed that but I was
22 called up speak with a couple of the officers, Mr. Coffey
23 and someone else.

24 Q. But as far as you can recall that was the only
25 written statement that you gave?

1 A. I believe so.

2 Q. There's nothing in your statement there about you and
3 Josh going to Greenville that night. Correct?

4 A. No.

5 Q. Okay.

6 A. We didn't go to Greenville. It was our plans to go.

7 Q. Right. Nothing in there about those plans or anything
8 like that. Right?

9 A. No because when I was ask to give this statement I
10 was ask to give from what time I met up with Josh at the
11 apartment.

12 Q. Okay.

13 A. And that's exactly what I did.

14 Q. Now in the last two years since you gave that
15 statement have you besides today coming into court saying
16 that you all were going to Greenville that night? Besides
17 today coming in court saying that you all were going to
18 Greenville that night have you told anybody that?

19 A. I really don't remember.

20 Q. Okay. And how long were you at Chubbs? When you
21 got to - I guess it was Chubbs. Is that what you're
22 calling it?

23 A. No, I call him Josh.

24 Q. Okay.

25 A. I really don't call him anything. That's the only

RHONDA JOHNSON: CROSS BY MR. DELANEY

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1 time I've ever met him.

2 Q. Well when you got to Josh's house and Josh Falls ran
3 from the police out the back door how long were you there
4 for before you heard a call come in about the fire?

5 A. Briefly. I couldn't give you an estimate. Briefly.

6 Q. You said briefly. You said you were outside for a
7 little while. Right?

8 A. Yes I was.

9 Q. Okay. It got cold?

10 A. Uh-huh.

11 Q. And then that's when --

12 A. I didn't have a jacket on. I was quite cold and my
13 specific words to the officer was I'm pregnant I'm cold I'm
14 not standing out here.

15 Q. Okay. And that's when you decide to move inside the
16 house. Correct?

17 A. Yes.

18 Q. Okay. And you started talking to Investigator Black
19 inside the house at that time?

20 A. Yes, sir, I did.

21 Q. Okay. And that's when you heard at some point the
22 call go out that there was a fire in Buffalo. Right?

23 A. Yes, sir.

24 Q. Okay. And you made - You testified earlier about
25 something about a ultra sound in the home.

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1 A. Yes.

2 Q. As far as are you talking about a picture?

3 A. Yes.

4 Q. And that's no where in your statement. Correct?

5 A. Was it relative at the time?

6 Q. Well did you in the last two years since that
7 statement did you go and tell anybody that?

8 A. Probably. I don't know. It was quite an ordeal
9 because I ended having a miscarriage with that child.

10 Q. Okay. And I'm not sure if I heard it correctly, you
11 were convicted a little earlier this year of - What was the
12 charge?

13 A. It's called swindling.

14 Q. Okay. Thank you.

15 A. Do you need me to explain that?

16 Q. No further questions. No.

17 MR. DELANEY: Thank you.

18 A. Your welcome.

19 THE COURT: Redirect?

20 SOLICITOR ANTHONY: No redirect. Thank you.

21 THE COURT: All right. You can step down and be
22 excused. We appreciate your time.

23 A. Thank you.

24 THE COURT: Thank you.

25 (WITNESS LEAVING WITNESS STAND.)

1 THE COURT: Call your next witness.

2 SOLICITOR ANTHONY: May I approach?

3 THE COURT: Yes, sir.

4 (SIDE BAR OFF THE RECORD.)

5 THE COURT: Members of the jury panel, the rest of the
6 witnesses' are not as I understand it from everyone with
7 exception to are from out of town and either for some
8 reason either out of town or not available this afternoon
9 so we're gonna stop for the day and start back at nine
10 thirty in the morning. So have a pleasant evening and
11 we'll see you back at nine thirty in the morning. Keep in
12 mind what I told you not to do about discussing the case,
13 reading anything or going on line. Thank you. See you in
14 the morning at nine thirty.

15 (JURY EXITS COURTROOM ON EVENING RECESS AT 04:19 PM.)

16 THE COURT: Just for planning purposes, what does it
17 look like tomorrow?

18 SOLICITOR ANTHONY: We have - I'm expecting six
19 witnesses to call starting in the morning. And I would
20 expect my entire evidence to run either right up to lunch
21 time or maybe just a little past.

22 THE COURT: Okay.

23 MR. DELANEY: And I think I will have two, three; two
24 or three that I probably will be calling.

25 THE COURT: All right. Okay, well we'll see you all

1 at nine thirty.

2 SOLICITOR ANTHONY: Thank you, your Honor.

3 THE COURT: Have a pleasant evening.

4 (COURT IN EVENING RECESS AT 04:20 PM.)

5 (COURT BACK IN SESSION WEDNESDAY, DECEMBER 9, 2015 AT
6 09:40 AM.)

7 THE COURT: Is the State ready?

8 SOLICITOR ANTHONY: Yes, sir. I just have one thing
9 I wanted to put on the record before we start.

10 THE COURT: Is the Defense ready?

11 MR. DELANEY: Yes, your Honor.

12 THE COURT: All right. Go ahead, Mr. Anthony.

13 SOLICITOR ANTHONY: Just to let the court know, there
14 is a - with Lieutenant Black will be I guess our fourth
15 witness this morning testifying. We'll get to him before
16 the morning break, just in case we do I want to go ahead
17 and put on the record that the State will seek to introduce
18 through him a interview that he did with Ms. Calicutt.
19 That interview was done pursuant to a polygraph examination
20 that he gave her. We have redacted all of the tape of that
21 examination except for the interview part where Mr. Black
22 ask her questions about the night in question; what she was
23 doing that night. I have given Mr. Delaney a copy of that.
24 I don't believe there is any objection to that redacted
25 tape coming in in front of the jury but I just wanted to

1 put it on the record that that would be part of the State's
2 presentation when he testifies.

3 MR. DELANEY: There is no objection from us.

4 THE COURT: Thank you. I appreciate your clearing
5 that up.

6 SOLICITOR ANTHONY: Yes, sir.

7 THE COURT: Bring in the jury.

8 (JURY REENTERS COURTROOM AT 09:41 AM.)

9 THE COURT: Good morning. You need the witnesses to
10 speak up; is that what you're telling me?

11 MADAM FORELADY: Uh-huh. Yes, sir.

12 THE COURT: Okay. All right. Let's try to make sure
13 the witnesses get closer to the microphone. I know Mr. -
14 Is it Fuller? Mr. Falls yesterday spoke - I could hear him
15 pretty good but he did speak fairly on low key. So lets
16 try to keep our witnesses - probe 'em to keep their voices
17 up.

18 SOLICITOR ANTHONY: Yes, sir.

19 THE COURT: Thank you. All right, call your next
20 witness.

21 SOLICITOR ANTHONY: All right. The first witness
22 would be Ms. Falls. Would you get her please.

23 THE CLERK: Put your left hand on the Bible and raise
24 your right hand.

25 (WHEREUPON, SABRINA FALLS,

SABRINA FALLS: DIRECT BY SOLICITOR ANTHONY

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1 BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

2 DIRECT EXAMINATION

3 SABRINA FALLS BY SOLICITOR ANTHONY:

4 Q. Would you state your name please?

5 A. Sabrina Falls.

6 Q. And, Ms. Falls, where do you live?

7 A. Wilbur Street.

8 Q. In what town?

9 A. Union, South Carolina.

10 Q. Are you employed?

11 A. Yes.

12 Q. Where do you work?

13 A. Sterilite.

14 Q. And what do you --

15 A. In Clinton.

16 Q. In Clinton?

17 A. Uh-huh.

18 Q. And what do you do there?

19 A. I'm an inspector and packer.

20 Q. Now are you related to Josh Falls?

21 A. Yes.

22 Q. And do you know Crystal Calicutt?

23 A. Yes.

24 Q. How do you know Ms. Calicutt?

25 A. She and my brother was together.

SABRINA FALLS: DIRECT BY SOLICITOR ANTHONY

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1 Q. And I want to take you back now to the early morning
2 of November the 24th of 2013. Did you get a call early
3 that morning from Josh?

4 A. Yes.

5 Q. And what did Josh want you to do when he called you?

6 A. Come and pick him up.

7 Q. And why did he want you to pick him up?

8 A. Cause he was running from the officer.

9 Q. And what did you tell him when he called you?

10 A. No.

11 Q. Okay. And then after you hung up with Josh, did you
12 get a call from anybody?

13 A. Uh-huh. Crystal ---

14 Q. And --

15 A. --- Calicutt.

16 Q. I'm sorry.

17 A. Crystal Calicutt.

18 Q. And what did Ms. Calicutt tell you?

19 A. She was wanting to know why Josh was making her
20 leave out the house.

21 Q. And she wanted to know why Josh was making her leave
22 out of the house?

23 A. Uh-huh. She was wondering why he was wanting her
24 to leave.

25 Q. Okay. Did she tell you how she had learned that Josh

1 had wanted her to leave, what had happened between her and
2 Josh to cause her to think he wanted her leave?

3 A. Well he was out with Rhonda and she was wondering was
4 he making her leave to bring Rhonda in and I was telling
5 her no he would do it to Rhonda but he wouldn't do it to
6 her.

7 Q. All right. And how had she spoken to Josh?

8 A. They was talking on the phone.

9 Q. On the phone?

10 A. Uh-huh.

11 Q. Okay. And did she tell you what she was doing, when
12 she called you what did she say she was doing?

13 A. She was laying down.

14 Q. She had what?

15 A. Laying down.

16 Q. Okay. She had been laying down?

17 A. Uh-huh.

18 Q. And what was she doing when she called?

19 A. She was getting up. She had got up and getting ready
20 to leave.

21 Q. And then did she tell you when she actually left the
22 house did she tell you what was going on then?

23 A. She was leaving the home. She went out the back door
24 and she was on the way home.

25 Q. Okay.

SABRINA FALLS: DIRECT BY SOLICITOR ANTHONY

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1 A. She was walking home.

2 Q. Okay. And when you were talking to her she was
3 telling you this?

4 A. Yeah, she was leaving out the back door.

5 Q. Okay. And how soon after she called did she tell you
6 she was walking out the back door?

7 A. Seconds.

8 Q. All right. And you said that while y'all were talking
9 Crystal got to asking you why Josh might want to get her
10 out of the house?

11 A. Yeah, she got what he hadn't told her he was
12 running from the police, you know, maybe the police would
13 come by the house.

14 Q. Uh-huh.

15 A. And he was telling her to leave but she was thinking,
16 I mean she's his girlfriend and he was out with another
17 girl so she was thinking maybe he would make her leave to
18 bring her there maybe.

19 Q. All right. And how did you respond when she mentioned
20 this?

21 A. No, he would do Rhonda like that but he wouldn't do
22 you like that.

23 Q. And during the time that you were talking to Ms.
24 Calicutt did she say she heard anything?

25 A. Yeah, she said she heard on a big boom.

1 Q. And after she said she heard the boom what what did
2 she tell you ---

3 A. She turned around.

4 Q. --- was going on.

5 A. She turned around and she said I believe Josh's house
6 is on fire.

7 Q. And what point in the conversation did this happen?
8 Was it towards the start, end, where would you say?

9 A. Maybe in the middle.

10 Q. And then when the conversation ended did she tell you
11 what was going on when she got off the phone; what she was
12 doing when she got off the phone?

13 A. She was almost at home and she was gonna get her
14 momma to take her to meet my brother.

15 Q. And then this conversation that you had with her
16 where she was talking about the boom and leaving the house,
17 how long did it last?

18 A. With the conversation?

19 Q. Yeah.

20 Q. Probably maybe about five, ten minutes longer maybe.
21 I'm not sure.

22 Q. Could it have been as much as seventeen ---

23 A. Yeah.

24 Q. --- minutes?

25 A. Minutes or so, uh-huh.

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1 Q. All right. Then did you hear from her later on ---

2 A. Uh-huh.

3 Q. --- that night?

4 A. Uh-huh.

5 Q. Okay.

6 THE COURT: You need to say yes or no.

7 A. Yes. I'm sorry.

8 Q. And what - How did you hear from her again that
9 night?

10 A. She called or I called her one. She had went to my
11 grand mamma's and her and my cousin had an altercation at
12 the end of the road cause she had went by my grandmother's
13 house that time of morning.

14 Q. Okay. And did she tell you - Did she tell you
15 anything else other than that she had been to your
16 grandma's when she called you that time?.

17 A. No.

18 Q. What was she still out trying to do?

19 A. She was trying to find my brother.

20 Q. And, Ms. Falls, you got a forgery conviction from
21 2012?

22 A. Yes.

23 Q. And do you remember your phone number at that time?

24 A. Yes.

25 Q. What was your phone number?

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1 A. It was -2465.

2 Q. All right.

3 SOLICITOR ANTHONY: If I could have one moment.

4 All right. Thank you. That's everything on direct.

5 THE COURT: Wait just a minute. This gentleman here

6 has ---

7 A. Okay.

8 THE COURT: --- may ask you questions if he

9 decides.

10 A. Okay.

11 CROSS-EXAMINATION

12 SABRINA FALLS BY MR. DELANEY:

13 Q. Good morning, Ms. Falls.

14 A. Good morning.

15 Q. You know who I am don't you?

16 A. Yes.

17 Q. Okay. And we spoke a month ago or something like
18 that?

19 A. Maybe so. I think so.

20 Q. And - -

21 MR. DELANEY: May I approach, your Honor?

22 THE COURT: Yes, sir.

23 Q. Sabrina, does that look familiar to you?

24 A. Yes.

25 Q. And that's a - That's the written statement that you

SABRINA FALLS: CROSS BY MR. DELANEY

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1 gave to the Solicitor's office to law enforcement a couple
2 a months ago?

3 A. Yes.

4 Q. Cause after in November of 2013 you never talked to
5 anybody in the police department. Right?

6 A. No, sir.

7 Q. Okay. And that continued for approximately the last
8 two years; is that correct?

9 A. Yes.

10 Q. So just recently you came in and you spoke to - was it
11 one of these officers here?

12 A. Yes, sir.

13 Q. Okay. And you gave them that statement. Correct?

14 A. Yes.

15 Q. Okay. And just take a second, Sabrina, if you can
16 look and you just look over that statement.

17 A. Uh-huh.

18 (WITNESS COMPLIES.)

19 A. Okay.

20 Q. Anything - Anything anywhere in that statement about
21 what you just testified to regarding Crystal telling you or
22 asking you why or if it was true why Josh was wanting to
23 get her out of the house?

24 A. I didn't put it down because after I had wrote the
25 statement I had spoke with Crystal and we was just talking

1 about it then. That's when it came to mind that she did
2 make that statement and that's why I haven't - that's why I
3 didn't put it on the paper again.

4 Q. Now Crystal when you were talking with her that night
5 she wasn't - she wasn't upset was she?

6 A. No.

7 Q. Okay. She wasn't mad, she wasn't cussing out your
8 brother was she?

9 A. No.

10 Q. You stated and you said that you remember her she
11 said she was leaving out the back door; is that correct?

12 A. Yes.

13 Q. And she stayed on the phone with you it sounds like
14 with her walk home; is that correct?

15 A. Yes.

16 Q. Okay. Do you remember her still being on the phone
17 when she got home?

18 A. I'm not sure if she was home. She said she was at
19 home. I'm not sure if she was but she said she was at home
20 she was gonna get her mother to take her to meet my
21 brother.

22 Q. Okay. So her mother was there at the house?

23 A. Yes.

24 Q. Okay. And you remember I guess in your statement you
25 remember Crystal calling you back and saying she heard

SABRINA FALLS: CROSS BY MR. DELANEY
REDIRECT BY SOLICITOR ANTHONY

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1 something over the scanner about a fire?

2 A. Yes.

3 Q. Okay. Thank you, Sabrina.

4 A. Uh-huh.

5 MR. DELANEY: No further questions.

6 THE COURT: All right. Any redirect?

7 SOLICITOR ANTHONY: Yes, sir.

8 REDIRECT EXAMINATION

9 SABRINA FALLS BY SOLICITOR ANTHONY:

10 Q. You said it was actually a conversation you had with
11 Ms. Calicutt that reminded you what she said that night?

12 A. Yes.

13 Q. And she didn't say anything bad about Josh that night
14 when she called you. Did she say anything? Was she angry
15 with Rhonda?

16 A. No. She never said - she wasn't angry with either
17 one. She was just wondering, you know, why was she
18 having to leave. I mean he told her but she was still, you
19 know, it was just the wonder I guess.

20 Q. All right. Thank you.

21 SOLICITOR ANTHONY: That's everything.

22 THE COURT: Mr. Delaney.

23 MR. DELANEY: Nothing, your Honor.

24 THE COURT: You can step down and be excused. We
25 appreciate your time. If you're just on your out hand that

CORPORAL RUSSELL VINSON: DIRECT BY SOLICITOR ANTHONY

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1 back to Mr. Delaney. Thank you.

2 A. Okay.

3 THE COURT: Thank you.

4 (WITNESS LEAVING WITNESS STAND.)

5 SOLICITOR ANTHONY: We would call Corporal Vinson.

6 (WHEREUPON, STATE'S EXHIBIT NUMBER TWELVE, PREMARKED
7 FOR IDENTIFICATION.)

8 THE CLERK: Put your left hand on the Bible and raise
9 your right hand.

10 (WHEREUPON, RUSSELL VINSON,
11 BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

12 DIRECT EXAMINATION

13 CORPORAL RUSSELL VINSON BY SOLICITOR ANTHONY:

14 Q. Would you state your name please?

15 A. Russell Vinson.

16 Q. And, Mr. Vinson, how are you employed?

17 A. With the Union County Sheriff's Office.

18 Q. How long have you been with the sheriff's office?

19 A. I been with the sheriff's office twelve years.

20 Q. How long have you been in law enforcement all
21 together?

22 A. Approximately fifteen.

23 Q. Okay. And what's your job with the sheriff's office?

24 A. K-9 handler, blood hound handler and also patrol.

25 Q. And how long have you been the K-9 handler with the

CORPORAL RUSSELL VINSON: DIRECT BY SOLICITOR ANTHONY

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1 sheriff's office?

2 A. Over five years.

3 Q. I want to take you back now to November 24th of 2013.

4 Did you receive a call out to Pine Street in
5 Buffalo?

6 A. I did.

7 Q. And what was the reason for that call?

8 A. Went out to the call Lieutenant Al Black was at the
9 house and the suspect that we had some warrants on had run
10 out the back door and they called me to come track him with
11 a blood hound.

12 Q. And so at that time was the blood hound with you when
13 you went out there?

14 A. Yes, sir, I was on duty and he - she was with me in
15 the vehicle.

16 Q. And what's your blood hounds name?

17 A. Her name is Jo Jo.

18 Q. And how old at the time was Jo Jo?

19 A. About three and a half.

20 Q. And what kind of training have you and Jo Jo gone
21 through in order to get her to where she could track
22 scents?

23 A. We purchased Jo Jo at nine weeks of age; started
24 training her at that time and we would run five to six -
25 about four to five days a week we would approximately run,

1 you know, three to four tracks a day. We started her out
2 up 'till she was eight months of old and eight months of
3 age we started using her on real calls. And at that point
4 in time we just trained like once a month from that point
5 on up 'till up to current date.

6 Q. And what kind of - Have you and Jo Jo gone to any
7 classes where you received instructions in how to work
8 together?

9 A. Yes, we attend a fifty hour blood hound seminar the
10 first of December and every year. Currently it's actually
11 going on this week.

12 Q. And so at three and a half years old the two of y'all
13 been to three of those?

14 A. Correct.

15 Q. Okay. And what does that training consist of?

16 A. The first thing you do on Sunday afternoon is we go in
17 and you do a eight hour scent class where they basically
18 teach you scent and how scent works. And then the rest of
19 the week we go out and we lay trails and track people.

20 Q. All right. And are you actually in that class this
21 week?

22 A. Yes. Actually I'm actually - This is my first year
23 being an instructor in the school.

24 Q. Okay. And what kind - And so you been to that class
25 three times. What kind of dog is Jo Jo?

CORPORAL RUSSELL VINSON: DIRECT BY SOLICITOR ANTHONY

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1 A. She's a blood hound.

2 Q. And what kind of qualities do blood hounds have as far
3 as allowing them to track scents?

4 A. Over all of all the dogs blood hounds have the most
5 what we call scent recepticals. They have more than any
6 other breed of dog and able to smell better.

7 Q. Does Jo Jo do any other kind of detection? Do drug
8 detection; anything like that?

9 A. No. All she does is human tracking.

10 Q. And during the training that Jo Jo had up to that
11 eight month period how did you characterize her
12 development, he ability to track?

13 A. You start out slow just by doing little side tracks
14 and then you progress 'em up to stretch 'em out further and
15 'till you get to where you do hour old tracks. You know,
16 mile, two hour long and then you keep progressing to where
17 you do a day, two day old tracks and you just keep
18 stretching it out. And as you work that then you start
19 answering your calls you go through different scenarios and
20 you talk to different handlers and the stuff and problems
21 they have and the things they go in and you just start
22 developing and your training and you use that as you go
23 along.

24 Q. So you said you started basically Jo Jo started
25 tracking people in real cases at eight months?

CORPORAL RUSSELL VINSON: DIRECT BY SOLICITOR ANTHONY

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1 A. Eight months.

2 Q. Okay. And so at this point in time she had been
3 running for about three years?

4 A. Correct.

5 Q. Okay. And during that period of time approximately
6 how many tracks would you say she ran?

7 A. Training tracks at that point probably I'm gonna say
8 probably around twelve hundred training tracks and real
9 live tracks we probably had done about maybe a hundred and
10 fifty.

11 Q. How many people approximately? I know this is an
12 approximation but how many people - - -

13 A. Variety approximate at that time three and a half
14 years old we had probably caught about seventy-five people.
15 And I say catch, I mean that's suspects and we also do
16 missing people.

17 Q. Okay.

18 A. I like to call 'em finds because, you know, you do
19 missing as well. Not just suspects.

20 Q. All right.

21 SOLICITOR ANTHONY: Your Honor, at this time we submit
22 Corporal Vinson as an expert in the field of blood hound
23 tracking.

24 THE COURT: Any voir dire?

25 MR. DELANEY: No, your Honor.

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1 THE COURT: I find he is qualified.

2 BY SOLICITOR ANTHONY:

3 Q. What time - I'm gonna take you back now to the
4 actual incident when you got called out to Pine Street.

5 Approximately what time did you get there?

6 A. Approximately 12:40.

7 Q. Okay. And what did you do once you got there?

8 A. Once we get there, once I got there I talked to
9 Lieutenant Black and he showed me where our suspect had run
10 out the back door and then we put her on the track and
11 picked up his track and started tracking.

12 Q. And we'll show the jury this in a minute but just tell
13 us where you tracked?

14 A. Okay. The track actually started on Pine Street and
15 we went from the back door of the residence and went down
16 through a little open area, a field. He came down to a
17 creek went into a wooded area on the creek. We crossed
18 over that creek and we came upon to Buffalo Street and
19 crossed over Buffalo Creek into some houses on Main Street.
20 Well we went up parallel with the houses on Main Street and
21 then we crossed over onto Main Street and went down into
22 another wooded area right behind the "Lil" Cricket and we
23 run that wooded area behind the 'Lil' Cricket back down to
24 the end of Flat Drive and at Flat Drive is where our track
25 ended.

CORPORAL RUSSELL VINSON: DIRECT BY SOLICITOR ANTHONY

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1 Q. All right. I'm gonna show you what's been marked for
2 identification as State's Exhibit Number Twelve. And I'd
3 ask if you can tell me what that is.

4 A. This is an aerial map of where we actually started our
5 track on Pine Street in Buffalo. It also has the place on
6 Church Street where the house fire was at and also a
7 residence on Candler Drive.

8 Q. Okay. And does that over head shot does that fairly
9 and accurately depict the layout of the Buffalo area?

10 A. Yes it does.

11 Q. All right.

12 SOLICITOR ANTHONY: We move Twelve into evidence.

13 MR. DELANEY: Without objection.

14 THE COURT: In without objection.

15 (WHEREUPON, STATE'S EXHIBIT NUMBER TWELVE, IDENTIFIED
16 AND MARKED, RECEIVED INTO EVIDENCE.)

17 SOLICITOR ANTHONY: And I'd ask to publish it.

18 THE COURT: You may.

19 (STATE'S EXHIBIT NUMBER TWELVE PUBLISHED TO THE JURY
20 AT 10:03 AM.)

21 BY SOLICITOR ANTHONY:

22 Q. All right, I'm showing you Exhibit Twelve and what
23 I'm gonna do initially is just kind of focus in on the
24 chase area. All right. If you could just show the jury
25 where that residence is on Pine Street that you were

CORPORAL RUSSELL VINSON: DIRECT BY SOLICITOR ANTHONY

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1 initially called to.

2 A. This is Pine Street here.

3 (WITNESS INDICATED ON STATE'S EXHIBIT TWELVE.)

4 Q. Okay. And then just take the jury - With that laser
5 pointer just take them through where you followed Mr.
6 Falls.

7 A. Okay. We started here and come out in this little
8 area, this little open field wise and crossed over Pine
9 Street, back down into this wooded area and tracked him
10 across this creek. This is the creek that runs back down
11 into the main pond. We crossed over the creek and come up
12 over to Flat Drive. I meant Buffalo Street which there is
13 a dead end. This is the dead end on Buffalo Street. We
14 come over that dead end and come up behind these houses on
15 the Main Street and we run parallel up behind these houses
16 on Main Street all the way back up to here and then we
17 crossed over the main street and we went back into this
18 wooded area here which - where it says ATM is where the
19 'Lil' Crickets at. We run in behind this wooded area back
20 long down this way here all the way back down and we came
21 out on Flat Drive here.

22 Q. All right. And then what happened when you got to
23 that place?

24 A. We had lost the track and we received some information

25 --

CORPORAL RUSSELL VINSON: DIRECT BY SOLICITOR ANTHONY
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1 Q. And that's just where --

2 A. That's where it ended and we lost the track, the
3 scent, and we couldn't pick it up any more.

4 Q. All right. And where - Just a couple of other things.
5 I'll ask you about that diagram. Where is Church
6 Street located on that map?

7 A. It would be here.

8 Q. Okay. And then Candler Drive, is that indicated
9 on that?

10 A. It would be here.

11 (WITNESS INDICATED ON STATE'S EXHIBIT TWELVE.)

12 Q. And - We don't have this marked but if looking at
13 that view there can you tell where the fire department is?

14 A. The fire department would be here.

15 Q. All right.

16 A. And it's off of Bailey Road.

17 Q. All right. Thank you.

18 SOLICITOR ANTHONY: That's everything on direct.

19 THE COURT: All right. Do you want to take that down?
20 Or do you want him to leave that up?

21 MR. DELANEY: No, thank you.

22 CROSS-EXAMINATION

23 CORPORAL RUSSELL VINSON BY MR. DELANEY:

24 Q. You were dispatched, Officer, around 12:20; is that
25 correct?

CORPORAL RUSSELL VINSON: CROSS BY MR. DELANEY

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1 A. Correct.

2 Q. Okay. And that dispatch came from Lieutenant Black?

3 A. It either came from Lieutenant Black or my sergeant
4 which was actually on patrol that night as well and they
5 said they needed my assistance.

6 Q. And it sounded like it took y'all as far as to get
7 out there on the scene that night approximately twenty
8 minutes as your arrival time was 12:40?

9 A. Correct. I also do patrol so I think I was on another
10 call at the time.

11 Q. Sure. The area that your dog was tracking out there
12 that night, pretty short areas so to speak. Pretty small
13 areas so to speak. Correct?

14 A. I'm not sure. What you calling a small area?

15 Q. This wasn't a track that went on for - And we're not
16 talking miles or anything like that?

17 A. No.

18 Q. We're talking well under a mile. Correct?

19 A. Approximately the way we actually went probably
20 around a mile. Maybe just a little bit longer.

21 Q. Okay. And the distances we're talking about that you
22 were looking at on that map there, Pine Street where the
23 track started, where you lost the track at, where
24 Church Street is at; that's all a would you say a half mile
25 area there. Correct?

CORPORAL RUSSELL VINSON: CROSS BY MR. DELANEY

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1 A. Being within each other the way the crow flies yes.

2 Q. Okay. When you lost the track on Mr. Falls he was
3 pretty close to that Church Street area when the track
4 was lost; is that correct?

5 A. Approximately - I'm gonna say approximately five,
6 six hundred yards maybe.

7 Q. And you received information at some point that night
8 that he was picked up in a car in that area. Correct?

9 A. Correct.

10 Q. Okay.

11 MR. DELANEY: No further questions. Thank you.

12 THE COURT: Redirect?

13 SOLICITOR ANTHONY: No, no redirect.

14 THE COURT: You can step down and be excused. We
15 appreciate your time. Thank you.

16 (WITNESS LEAVING WITNESS STAND.)

17 THE COURT: Call your next witness.

18 SOLICITOR ANTHONY: We would ask that he be excused.

19 THE COURT: He's excused.

20 MR. DELANEY: No objection.

21 SOLICITOR ANTHONY: We call Agent Vaughn.

22 THE CLERK: Place your left hand on the Bible and
23 raise your right hand.

24 (WHEREUPON, DAREN VAUGHN,

25 BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

AGENT DAREN VAUGHN: DIRECT BY SOLICITOR ANTHONY

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1

2

DIRECT EXAMINATION

3

AGENT DAREN VAUGHN BY SOLICITOR ANTHONY:

4

Q. Would you state your name please?

5

A. Daren Vaughan.

6

Q. And, Mr. Vaughn, how are you employed?

7

A. I work for the South Carolina Law Enforcement Division where I'm assigned to the Arson Investigative Unit.

9

Q. And how long have you worked for SLED?

10

A. Eight years.

11

Q. How long have you been in law enforcement all together?

12

13

A. Ten years total.

14

Q. Were you working on November the 25th of 2013?

15

A. Yes, sir.

16

Q. And did you happen to come to Union on that day?

17

A. Yes, sir, I did.

18

Q. All right. What had brought you to Union?

19

A. I believe I was actually working another case that day but I knew Agent Keller was in town as well as

20

21

Investigator Coffey and there was an indication that an

22

individual was gonna turn himself into the Detention Center

23

and ask if I could help in any way and at that point they

24

said absolutely. And therefore I came to the Detention

25

Center that day.

AGENT DAREN VAUGHN: DIRECT BY SOLICITOR ANTHONY

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1 Q. And did you see Crystal Calicutt ---

2 A. Yes, sir.

3 q. --- at the Detention Center that day?

4 A. Yes, sir, I did.

5 Q. All right. And who did you go out to the Detention
6 Center with?

7 A. It was Investigator Coffey and Agent Brad Keller.

8 Q. And once you got out there who had Ms. Calicutt come
9 to the Detention Center with?

10 A. Josh Falls I believe.

11 Q. And so when the two of them arrived together what
12 did you and Agent Keller decide about who was gonna
13 interview who?

14 A. Well to be honest with you I had no idea about the
15 case whatsoever. I was not on scene when they worked the
16 fire scene that day so I had no details. I've worked an
17 extremely long time with Agent Keller. He was actually my
18 training officer so therefore we know how each other works
19 and things that need to get done so therefore I said is
20 there anybody you need me to talk to and at that point he
21 said well we're gonna go inside and talk to Josh Falls who
22 is in the Detention Center if you didn't mind sitting down
23 and speaking with Ms. Honeycutt.

24 Q. Well you mean Ms. Calicutt?

25 A. Ms. Calicutt. Not Honeycutt. Excuse me.

AGENT DAREN VAUGHN: DIRECT BY SOLICITOR ANTHONY

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1 Q. All right. So you interview Ms. Calicutt that day?

2 A. Yes, sir, I did in the parking lot at the Detention
3 Center.

4 Q. And where in the parking lot did you talk to her?

5 A. Inside of my state owned vehicle.

6 Q. And so what did you ask her about?

7 A. Just the details. I had no idea what was going on
8 in the investigation so I was trying to get her time line
9 as to things that were - the going on that day of the time
10 of the fire and prior to the fire.

11 Q. And so did the two of you just have - Well, if you
12 would just explain to the jury how your conversation with
13 her proceeded.

14 A. It was just a very casual conversation. I do recall
15 Ms. Calicutt she'd been, you know, very open to me and we
16 had a great conversation that day sitting in my truck. And
17 we actually, you know cut up somewhat and had, you know, a
18 conversation that, you know, she felt free to talk to me.
19 I did not read her her rights. Her rights were not given
20 to her because she was not under arrest and it was just,
21 you know, a information seeking interview rather than, you
22 know, accusing her of anything.

23 Q. And so after you talked to her, did you - what did you
24 decide to do to document what she had told you?

25 A. A written statement.

AGENT DAREN VAUGHN: DIRECT BY SOLICITOR ANTHONY

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1 SOLICITOR ANTHONY: If I could have one moment.

2 (WHEREUPON, STATE'S EXHIBIT NUMBER THIRTEEN PREMARKED
3 FOR IDENTIFICATION.)

4 Q. All right. I'm gonna hand you what's been marked for
5 identification as State's Exhibit Thirteen. And ask that
6 you take a look at that. Do you recognize that document?

7 A. Yes, sir, I do.

8 Q. And what is that?

9 A. That is Crystal Calicutt's statement as she gave it
10 to me that day.

11 Q. And how did you go about taking the statement from
12 her?

13 A. It is actually, and if you read the first part of the
14 statement it's something that I always do if I were to
15 write the statement for them I always give them the option
16 of whether or not they want to write it in their own
17 handwriting or would they like for me to write it for them.
18 In this case she advised that she wanted me to write it for
19 her. She was in my presence so the first line of the
20 statement says, "This statement is being prepared for me
21 with my permission and in my presence by Agent Vaughan of
22 SLED."

23 Q. And before you actually wrote out the information she
24 gave you, did you fill out anything on the top of the
25 sheet?

AGENT DAREN VAUGHN: DIRECT BY SOLICITOR ANTHONY

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1 A. Yes, sir. That is Ms. Calicutt's particulars as far
2 as social security number, date of birth, phone number;
3 that kind of thing.

4 Q. Okay. And so did you go - Since she had requested you
5 to write out the statement did you write out the things
6 that she had told you during the conversation?

7 A. Yes, sir, I did.

8 Q. And after you wrote that out what did you ask her to
9 do?

10 A. We always go back and read through the statement to
11 make sure everything is correct and if anything that needs
12 to be corrected, that it's not accurate as she wants it in
13 there, we'll go back and we'll mark that out and she'll
14 initial that but I believe in this statement there's one
15 correction that she initialed above and that's on the
16 second page. But after we read it to her - read it back to
17 her - she reads it as well to make sure everything is
18 correct, she signs at the bottom.

19 Q. And is that what happened in this case?

20 A. Yes, sir. She actually on the first page she signed
21 twice and on the back page page two of two she signed once.

22 Q. And then did you do anything, sign anything, to attest
23 that you were witnessing her signature?

24 A. Yes, sir. There's a line here at the bottom that is
25 a witness line and I put my signature there.

AGENT DAREN VAUGHN: DIRECT BY SOLICITOR ANTHONY

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1 Q. And does the statement that I've just handed up to
2 you that you've been testifying about does it still have
3 the same appearance as it did when you took it back on
4 November the 25th of 2013?

5 A. Yes, sir. And also on this statement it doesn't
6 even have the case number at the top because I was not even
7 aware of the case number at the time. It was just
8 information - information interview with Ms. Calicutt.

9 Q. All right.

10 SOLICITOR ANTHONY: Well, your Honor, at this time we
11 move Exhibit Thirteen into evidence.

12 MR. DELANEY: Without objection, your Honor.

13 THE COURT: In without objection.

14 (WHEREUPON, STATE'S EXHIBIT NUMBER THIRTEEN IDENTIFIED
15 AND MARKED, RECEIVED INTO EVIDENCE.)

16 BY SOLICITOR ANTHONY:

17 Q. And, Agent Vaughan, if you would at this time just
18 read the statement to the jury.

19 A. Okay. At the top it does have all her particulars. I
20 am conducting the interview, it gives a date and time which
21 was the 25th, 2013 at 05:16 pm. That would be the time
22 that the interview began and me as the interviewing agent.

23 "This statement is being prepared for me with my
24 permission and in my presence by Agent Vaughan of SLED. I
25 was at Joshua Falls house on Church Street the day of the

AGENT DAREN VAUGHN: DIRECT BY SOLICITOR ANTHONY

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1 fire. Rhonda Johnson came by and picked up Joshua. Rhonda
2 did not know I was at his house. Joshua was going to get
3 some money from Rhonda so we could go out later that night.
4 Joshua was calling me telling me where he was; where he was
5 at while I was getting ready to go out.

6 Joshua told me that he went to Shady's Bar and then
7 to AJ's to shoot pool. After leaving AJ's Joshua and
8 Rhonda went to Chugs who is Josh Gardner house. That's
9 where Joshua ran out the back door from the police. Joshua
10 called and said that I needed to get out of the house that
11 the police was all over the place. I left out of the back
12 door walked past the post office which is now a print shop.
13 I walked to my momma's house when I got on the front porch
14 I heard my daddy's fire whistle go off. I then heard
15 Church Street. I looked in that direction and could see
16 the house on fire.

17 I did not know it was Joshua's house until we rode up
18 there. I had been gone from Joshua's house five to ten
19 minutes before I saw it on fire. When I left the house
20 both doors were unlocked and none of the lights were on.
21 The only thing I remember leaving on was a table lamp and a
22 floor heater in the bedroom. This is the only room that
23 has a bed in it. After going up to Joshua's house and
24 seeing it on fire I went to Joshua grandma's house on
25 O'Shield Street. I then went to Joshua's momma's and got

AGENT DAREN VAUGHN: DIRECT BY SOLICITOR ANTHONY

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1 the keys to Joshua's momma's car. I then picked Joshua up
2 close to his grandma's house. We drove to Greenwood and
3 slept in the hospital parking lot. Sunday night we slept
4 at Shriner's Children's Hospital in Greenville.

5 Joshua was talking to the police the whole time saying
6 he was going to turn himself in today. I did not leave any
7 cigarettes or anything else burning. I know for a fact
8 that everything was off but the lamp and heater. The bed
9 was about three feet away from the heater. The heater is a
10 standup heater that is about three feet tall. I want to
11 know how the fire started because it makes no sense how the
12 fire started" --

13 Q. Can we have - I'm sorry.

14 A. Yes, sir.

15 Q. If you'd just stop for one second.

16 A. Yes, sir.

17 (PAUSE.)

18 Q. I don't have any more questions about the actual
19 statement ---

20 A. Okay.

21 Q. --- itself, Agent Vaughn. Just a couple of questions
22 about things you ask her.

23 A. Yes, sir.

24 Q. When you were asking - In the statement she talks
25 about things being left on.

AGENT DAREN VAUGHN: DIRECT BY SOLICITOR ANTHONY

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1 A. Yes, sir.

2 Q. Why were you asking about that, about what was left
3 on at the house?

4 A. Well typically in any fire investigation we want to
5 know if anything is left on in the house, you know, and
6 that will go as far as helping us determine origin and
7 cause of the fire. If there is an electrical malfunction
8 inside of the house we need to know what was on in order to
9 examine that further.

10 Q. All right. And then you made - You got in the
11 statement about the distance between the bed and the
12 heater.

13 A. Yes, sir.

14 Q. Why did you ask her about the distance between the bed
15 and the heater?

16 A. Because in any manufacturer's recommendations they
17 recommend that any heater, you know there is a lot of times
18 where you see on the news where people place space heaters
19 too close to furniture and it may cause a fire and an
20 ignition source for that fire, so, most manufacturer's
21 recommendations are three feet away from any type of
22 furniture or bedding so therefore I wanted to document how
23 close that heater was or how far away the heater was from
24 any type of ignitable material.

25 Q. All right. Well after you had this conversation and

1 took this statement from Ms. Calicutt, what did you do next
2 that day?

3 A. After I took the statement and she signed it I believe
4 Ms. Calicutt got out of my vehicle and smoked a cigarette I
5 believe is what happened.

6 Q. And who did you talk to next?

7 A. In the parking lot there was other people inside the
8 parking lot; I believe Rhonda may have been in the parking
9 lot at that time.

10 Q. Did you - Well as far as investigative people working
11 on the case, who would have been --

12 A. It would have been Agent Taylor and Investigator
13 Coffey at that point.

14 Q. Okay. And what decision like once you had talked to
15 her and realized she was the last person at the house
16 before the fire what decision was made about dealing
17 further with Ms. Calicutt?

18 A. Well I handed this statement over to Agent Keller who
19 is the lead investigator and they looked over the statement
20 and then proceeded on with their investigation.

21 Q. All right. And were you present - I want to take you
22 now ---

23 A. Yes, sir.

24 Q. --- to the 7th of December.

25 A. Yes, sir.

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1 Q. --- of 2013. Were you present when another statement
2 was taken from Ms. Calicutt?

3 A. Was that the fourth statement; is that correct?

4 Q. Yes, sir.

5 A. Yes, sir. Yes, sir, I was.

6 Q. All right. And that was - Who was there for that?

7 A. I believe we were in Investigator Coffey's office
8 here at the Sheriff's office and myself and Agent Keller.

9 Q. All right. And was another statement taken from Ms.
10 Calicutt at that time?

11 A. Yes, sir, and I believe it was in her handwriting.

12 Q. All right. And did you have any other involvement in
13 the case other than just being present for these two
14 statements that were taken from Ms. Calicutt?

15 A. That was it. That was the conclusion of my portion.

16 Q. All right. Thank you.

17 SOLICITOR ANTHONY: That's everything on direct.

18 CROSS-EXAMINATION

19 AGENT DAREN VAUGHN BY MR. DELANEY:

20 Q. Good morning.

21 A. Yes, sir.

22 Q. Just to - I want to start briefly with - it was some
23 testimony a few minutes ago about electrical space heaters;
24 is that correct?

25 A. Yes, sir.

AGENT DAREN VAUGHN: CROSS BY MR. DELANEY

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1 Q. And - Cause you wanted - As you said one thing you
2 wanted to know is what's on at that house. Correct?

3 A. Yes, sir.

4 Q. Extension cords with electrical heaters not a good
5 combination. Correct?

6 A. They can pose risk yes, sir.

7 Q. All right. And the risk is in electrical fire.
8 Correct?

9 A. Yes, sir.

10 Q. Electrical fires can start up in the walls of a
11 house. Correct?

12 A. They can start just about anywhere there's a
13 malfunction yes, sir.

14 Q. You had testified earlier when you talked to Ms.
15 Calicutt in the parking lot that day she wasn't nervous
16 was she?

17 A. No, sir.

18 Q. She wasn't in your car trying to be evasive was she?

19 A. No, sir.

20 Q. Your testimony was you guys had a open and great
21 conversation. Correct?

22 A. Yes, sir.

23 Q. Okay. And the last thing that you wrote on her
24 behalf that day is that I had nothing to do with that fire.

25 Correct?

1 A. Yes, sir, that is correct.

2 MR. DELANEY: Thank you, Officer.

3 THE COURT: Redirect?

4 SOLICITOR ANTHONY: No. No redirect.

5 THE COURT: All right. You can step down.

6 Can this witness be excused?

7 SOLICITOR ANTHONY: Yes, sir.

8 THE COURT: All right. You can be excused. Thank

9 you. Appreciate your time.

10 (WITNESS LEAVING WITNESS STAND.)

11 THE COURT: Call your next witness.

12 SOLICITOR ANTHONY: Lieutenant Black please.

13 (WHEREUPON, STATE'S EXHIBIT NUMBER FOURTEEN, PREMARKED
14 FOR IDENTIFICATION.)

15 THE COURT: You want to take a break and check on
16 your witness?

17 SOLICITOR ANTHONY: Yes, sir.

18 THE COURT: All right, we'll take a short refresher
19 break and see where our witness is.

20 (JURY EXITS COURTROOM ON RECESS AT 10:27 AM.)

21 (COURT IN RECESS AT 10:27 AM.)

22 (WHEREUPON, STATE'S EXHIBIT NUMBER FIFTEEN, PREMARKED
23 FOR IDENTIFICATION.)

24 (COURT RECONVENES AT 10:46 AM.)

25 THE COURT: Is the State ready?

LIEUTENANT AL BLACK: DIRECT BY SOLICITOR ANTHONY

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1 SOLICITOR ANTHONY: Yes, sir, we are.

2 THE COURT: Defense ready?

3 MR. DELANEY: Yes, your Honor.

4 THE COURT: Bring in the jury.

5 (WHEREUPON, STATE'S EXHIBIT SIXTEEN THROUGH THIRTY-
6 EIGHT, PREMARKED FOR IDENTIFICATION.)

7 (JURY REENTERS COURTROOM AT 10:46 AM.)

8 THE COURT: All right. Call your next witness.

9 SOLICITOR ANTHONY: Our next witness is Lieutenant
10 Black.

11 THE CLERK: Place your left hand on the Bible and
12 raise your right hand.

13 (WHEREUPON, ALLEN BLACK,
14 BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

15 DIRECT EXAMINATION

16 LIEUTENANT AL BLACK BY SOLICITOR ANTHONY:

17 Q. Would you state your name please?

18 A. Marion Allen Black.

19 Q. And, Mr. Black, how are you employed?

20 A. I'm employed with the Union County Sheriff's Office as
21 an investigator.

22 Q. And how long have you worked for the Sheriff's office?

23 A. I've worked for the Sheriff's office for ten years.

24 Q. And were you working in that capacity back in the
25 early morning of November the 24th of 2013?

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1 A. Yes, sir, I was.

2 Q. Did you see Josh Falls?

3 A. Yes, sir, we did.

4 Q. And how did you come to see Mr. Falls?

5 A. We had had a BOLO for Mr. Falls that was a be on the
6 look out for and we were checking his regular haunts, his
7 regular places where he would go and hang out, and I passed
8 him in the road and turned around on him.

9 Q. Now where were you when you passed him in the road?

10 A. On Pine Street in Buffalo.

11 Q. And which direction were you heading on Pine Street?

12 A. I was headed back out toward the lake, or the pond,
13 Mill Pond.

14 Q. Back out towards Main Street?

15 A. Yes, sir, toward Main Street, 215.

16 Q. And what - How did you come to meet or where was his
17 car in relation to your car?

18 A. He was coming up to or into Pine Street. It's kind
19 of like a one way road you can only go in and out that way.
20 And I had been in there because we knew that he had gone in
21 and out of that road and hung out with some people there
22 before so I was checking that location and they were coming
23 in as I was going out.

24 Q. And when you saw that car what did you do?

25 A. I had to go past a little bit because the road was

1 narrow where I was at and I went down the road a little
2 further to turn around and follow the car.

3 Q. And once you got turned around what happened then?

4 A. By the time I caught up to 'em they were already at a
5 residence on Pine Street and Mr. Falls was out of the car
6 and almost into a building and I stepped out of my car and
7 ask him to come over and talk to me. I told him I needed
8 to talk to him.

9 Q. When you first got out of your vehicle, when you
10 pulled up and got out of your vehicle, did you see Rhonda
11 Johnson?

12 A. No, sir, I did not.

13 Q. So just you and Mr. Falls?

14 A. Yes, sir.

15 Q. And what occurred after you told Mr. Falls you needed
16 to speak to him?

17 A. By the time I'd gotten out of my vehicle he was
18 already on the front steps of the location, the residence
19 there, and he told me that I needed to talk to somebody
20 inside. And he went to the door and went in and as I was
21 telling him to stop don't go in the house come talk to me
22 and he went inside the house.

23 Q. So what did you do once Mr. Falls went inside the
24 residence?

25 A. I went to the door of the residence, knocked on the

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1 door, someone there told me to come in and when I opened
2 the door I said where did Mr. Falls go? And they plainly
3 told me he'd ran out the back door.

4 Q. So what did you do once you'd been told Mr. Falls had
5 ran out the back door?

6 A. I got on the radio and told them that he had ran from
7 this location and that he was on the run.

8 Q. And when did you make that call?

9 A. Probably about 11:20. I'm sorry, 12:20 in the
10 morning.

11 Q. 12:20 am?

12 A. Yes, sir.

13 Q. Okay. So you made the call. Once you got in the
14 house could you see Ms. Johnson?

15 A. Yes, sir, she was sitting on a couch or a chair just
16 to my right inside the door.

17 Q. And did other deputies come to the scene?

18 A. Yes, sir. I think the first one on the scene behind
19 me was Sergeant Scott Ruby and the second one on the scene
20 shortly after that was Russell Vinson, Officer Russell
21 Vinson.

22 Q. And what did Russell Vinson bring?

23 A. Russell Vinson is the K-9 officer. He's the
24 tracking officer and he was the one that did the tracking
25 for us that night.

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1 Q. And then were there any efforts made by yourself or
2 any of the other deputies that came to the scene to get Mr.
3 Falls to come back?

4 A. Yes, sir. While we were waiting on the K-9 to
5 arrive on the scene Officer Ruby was either using Ms.
6 Johnson's phone or she had given him the phone number for
7 Josh Falls. We were trying to call him to get him to come
8 back to save us the effort of trying to track him down.

9 Q. Well when the - When Corporal Vinson got there what
10 did he start doing?

11 A. It takes him just a few minutes to unload the dog get
12 the dog on the leash and get all of his equipment ready and
13 to start track.

14 Q. And then once he started the track what did Sergeant
15 Ruby do?

16 A. Sergeant Ruby left to set up a perimeter. What we
17 try to do is set up a perimeter to contain the individual
18 to keep them from getting too far away; to give the dog a
19 chance to catch up to 'em on the track.

20 Q. And what did you do while that was going on?

21 A. I stayed there in case Mr. Falls double back to try
22 and get in the house or get the car and get away. I stayed
23 at the residence with Ms. Johnson and the owner's of the
24 residence.

25 Q. And the car that they were driving, that you had seen

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1 Mr. Falls in, what color; how would you describe that car?

2 A. It was a small red car the best of my recollection.

3 Q. And while you were there with Ms. Johnson where was
4 that car?

5 A. I had it blocked in. My vehicle was blocking their
6 vehicle from leaving.

7 Q. And then did you eventually leave that Pine Street
8 address?

9 A. Yes, sir. When the tracking dogs no longer could
10 track I usually do what we call call the track. In other
11 words say we're all done with this and at that time that's
12 when I left the scene.

13 Q. And what had you been advised was going on when you
14 left the scene aside from trying to track Mr. Falls?

15 A. While I was at the scene with Ms. Johnson and the
16 residents of the house there it came across the radio - we
17 always have a radio with us - and it came across the radio
18 that there was a fire in Buffalo and it was on Church
19 Street and they called out the fire department to fight the
20 fire.

21 Q. And when that was called out what did Ms. Johnson
22 want to do?

23 A. She wanted to leave but we wouldn't let her leave the
24 residence. We needed her to stay there while we were
25 looking for Mr. Falls.

1 Q. And then eventually once the tracking of Mr. Falls
2 was called off what was Ms. Johnson allowed to do?

3 A. She was allowed to leave the residence at that time.

4 Once Mr. Falls' track was complete she was allowed
5 to leave the residence and I was allowed to leave the
6 residence as well.

7 Q. Okay. And where did you and Ms. Johnson go at that
8 time?

9 A. We both went to the fire on Church Street.

10 Q. And when you got there to Church Street what was the
11 condition of the fire and the house?

12 A. The fire department had already finished fighting the
13 fire. They were there on the scene putting up hoses and
14 were stirring the coals and trying to attack hot spots is
15 that they call that to make sure the fire doesn't blaze
16 back up.

17 Q. And so the car, the red car, was not back on Church
18 Street after the fire was put out?

19 A. That's correct. It was with me over on Pine Street
20 the entire time.

21 Q. And did you have any other involvement in the
22 investigation of the fire that night?

23 A. No, sir, I did not.

24 Q. Okay. Well I want to take you now ahead a couple of
25 days to November the 26th of 2013. Did you see Ms.

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1 Calicutt on that day?

2 A. Yes, sir. I was ask to interview Ms. Calicutt.

3 Q. And did you - Before you interviewed her did you
4 advise her of any rights?

5 A. Yes, sir, she was read her Miranda.

6 Q. I'm gonna hand up what's been marked as State's
7 Exhibit Number Fifteen for identification. I'd ask if you
8 recognize that document.

9 A. Yes, sir. This is the original advisement of rights
10 that I gave her that day.

11 Q. And when you began to talk to her about that rights
12 form, what - Just describe the process you went through in
13 advising her of her Miranda warnings.

14 A. One of the key things that I talked about is the
15 word must and how important that is and how important it is
16 that she understand her rights. In fact I even underlined
17 it on the form when I'm talking to them about it. And then
18 I individually go through each right and I make a tic mark
19 it as we discuss it and at the end of that I ask the
20 individual in this case Ms. Calicutt if they fully and
21 completely understand their rights. And when I do that I
22 always put a line across all of the rights - As you can see
23 on the back that the line is there - that says "Do you
24 completely and fully understand these rights as I've read
25 them to you?" And then once they answer affirmatively I

1 had them read the waiver of the rights out loud. And
2 that's what the tic mark is beside that. So she actually
3 read the Waiver of Rights out loud to me.

4 Q. And there's some writing at the top of the page as to
5 place, date, and time. How did you fill that in?

6 A. I filled that in as we start the Advice of Rights
7 Form. It's the location, the date, and the time that we
8 start. And at the bottom after the individual signs, in
9 this case Ms. Calicutt, I sign the form validating the form
10 that I gave the rights and the time underneath to when we
11 completed the Rights Form.

12 Q. And if you would just go through the rights you
13 advised Ms. Calicutt of.

14 A. Okay. As I said I always make sure they understand
15 that the word must is important because it's imperative
16 that they must understand their rights that that gives both
17 of us obligations. Her obligation is to ask any questions
18 that she has as we go through the rights and my obligation
19 is to answer those questions. And then I go through the
20 rights and tell 'em that - make sure that they understand
21 they have the right to remain silent, anything they say
22 could and would be used against them in a court of law if
23 it's found to be unlawful. They have - If I might put my
24 glasses on.

25 "They have the right to talk to a lawyer for advice

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1 before we ask them any questions. And they have the right
2 to have the lawyer present during questioning if they wish.
3 If they cannot afford a lawyer one would be appointed for
4 them before any questioning if they wish. And if they
5 decide to answer questions without the lawyer present you
6 still have the right to stop answering at any time. That
7 they have the right to stop answering at any time until
8 they have a chance to talk to that lawyer."

9 Q. Okay. And then the Waiver that you had them sign, if
10 you would just read that for me.

11 A. Yes, sir. I actually have them read this out loud
12 just to make sure that they're paying attention to me.

13 "I have read this statement of my rights and I
14 understand what my rights are. I'm willing to make a
15 statement and answer questions. I do not want a lawyer at
16 this time. I understand and know what I am doing no
17 promises or threats have been made to me and no pressure or
18 coercion of any kind has been used against me."

19 Q. Okay. And that form that you have up there is that
20 in the same condition as it was when you advised Ms.
21 Calicutt of those rights on November 26th of 2013?

22 A. Yes, sir. Exactly.

23 Q. All right.

24 SOLICITOR ANTHONY: We move Sixteen into evidence.

25 MR. DELANEY: Without objection, your Honor.

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1 THE COURT: In without objection.

2 CORPORAL BLACK: It's Fifteen.

3 SOLICITOR ANTHONY: Fifteen. I'm sorry. We move
4 Fifteen in.

5 MR. DELANEY: Without objection, your Honor.

6 THE COURT: In.

7 (WHEREUPON, STATE'S EXHIBIT NUMBER FIFTEEN, MARKED AND
8 IDENTIFIED, RECEIVED INTO EVIDENCE.)

9 BY SOLICITOR ANTHONY:

10 Q. And before you began questioning Ms. Calicutt
11 specifically about the incident, did you ask her any health
12 related questions?

13 A. Yes, sir, I do because I want to make sure that
14 she's mentally and physically fit to talk to me, make sure
15 that she's not distracted, making sure that she hasn't got
16 any medical issues that might prohibit her from being able
17 to - well just endure the stress or questioning that might
18 happen during the interview.

19 Q. And did you ask her if she was pregnant?

20 A. Yes, sir, I do. I ask most females that.

21 Q. And what was her response when you ask her if she
22 was pregnant?

23 A. She actually told me that she kind of hoped she was
24 because she and Mr. Falls were trying to have a child.

25 Q. All right. And then did you go through a period of

LIEUTENANT AL BLACK: DIRECT BY SOLICITOR ANTHONY

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1 questioning Ms. Calicutt about this fire incident in
2 Buffalo?

3 A. Yes, sir, I did. I wanted to get her side of the
4 story; what happened, her narrative for what happened that
5 day; what she was doing, where she was at, and how she
6 might have been involved in the situation.

7 Q. And was there a recording made of that interview?

8 A. Yes, sir, there was.

9 Q. All right. I'm gonna show you a CD that's been marked
10 - This is what's been marked Number Fourteen. And I'd ask
11 if you've seen that CD before?

12 A. Yes, sir, I've reviewed this CD to make sure that it
13 was exactly as we went through that day. It has my
14 initials and the date that I reviewed it.

15 Q. Okay. And does that - the file on that CD fairly and
16 accurately reflect your conversation with Ms. Calicutt?

17 A. Exactly.

18 Q. All right.

19 SOLICITOR ANTHONY: We move Fourteen into evidence and
20 ask to publish it to the jury at this time.

21 MR. DELANEY: Without objection, your Honor.

22 THE COURT: In without objection and you may publish.

23 (WHEREUPON, STATE'S EXHIBIT NUMBER FOURTEEN,
24 IDENTIFIED AND MARKED, RECEIVED INTO EVIDENCE.)

25 THE COURT: Stop right here. Is there any way we

LIEUTENANT AL BLACK: DIRECT BY SOLICITOR ANTHONY

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1 can make that so it's understandable?

2 SOLICITOR ANTHONY: Yes, sir. I think we might have
3 another way to play it. We thought this would work but I
4 don't know if the jury can hear that.

5 THE COURT: I know I can't.

6 SOLICITOR ANTHONY: If we could have a few minutes I
7 think maybe we could do it in a way where they would be
8 able to hear it better.

9 THE COURT: All right. Go ahead.

10 SOLICITOR ANTHONY: Okay.

11 THE COURT: Fix it up.

12 (COURT AT EASE AT 11:04 AM.)

13 (STATE'S EXHIBIT NUMBER FOURTEEN PUBLISHED TO THE JURY
14 AT 11:08 AM/STOP AT 11:25 AM.)

15 BY SOLICITOR ANTHONY:

16 Q. Investigator Black, after you completed that interview
17 of Ms. Calicutt did you refer her to anybody else who was
18 working on the case?

19 A. Yes, sir, we had a case officer that was assigned. It
20 was Officer Scott Coffey and SLED was also involved in
21 that. He's here in the room, it's Brad Keller, as the
22 arson investigator.

23 Q. All right. And other than that the efforts and the
24 involvement you just testified to, did you have any other
25 involvement in the investigation of this arson?

LIEUTENANT AL BLACK: CROSS BY MR. DELANEY

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1 A. No, sir, I did not.

2 SOLICITOR ANTHONY: That's everything on direct.

3 CROSS-EXAMINATION

4 LIEUTENANT AL BLACK BY MR. DELANEY:

5 Q. In regarding - I guess I'll start with the recording
6 we just heard, Lieutenant, and you going back to when Ms.
7 Calicutt talked to you approximately two years ago. She
8 came in voluntarily to talk to you; is that correct?

9 A. That's correct.

10 Q. And she told you on November 26, 2013 that she had
11 absolutely nothing to do with that fire. Correct?

12 A. Yes, sir, that's on the report.

13 Q. Okay. Now, going back to - to the follow-ups on the
14 previous day. You - There was I guess you would say a
15 BOLO: is that correct?

16 A. Yes, sir, be on the look out.

17 Q. Beyond the look out for Josh Falls?

18 A. That's correct.

19 Q. And you were in the Buffalo Community of Union
20 County. Correct?

21 A. I was near the McDonald's when that came out but
22 yes, sir.

23 Q. And you having to do - see Josh Falls that night.
24 Correct?

25 A. That's correct.

LIEUTENANT AL BLACK: CROSS BY MR. DELANEY

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1 Q. Okay. And ultimately encountered him at this house
2 that night. Correct?

3 A. Yes, sir.

4 Q. Okay. You had a conversation with him as far as
5 saying, hey, we need to talk. Right?

6 A. That's correct. I ask him to come over to the car
7 with me.

8 Q. Okay. And did he do that?

9 A. No, sir, he didn't.

10 Q. And as we heard he proceeded to go into the house.
11 Correct?

12 A. Right, yes, sir.

13 Q. And went out the back door. Right?

14 A. That's what they told me from inside the house, yes,
15 sir.

16 Q. Okay. And at that point you at some point shortly
17 after that you get in touch with - Is it dispatch? Is that
18 who you call?

19 A. I called directly to Officer Ruby at that point to
20 let him know that he had ran.

21 Q. Okay. So you did a direct call to - you said to
22 Officer Ruby?

23 A. On the radio, yes, sir.

24 Q. Okay. And that was - I think your testimony about
25 12:20 am; is that correct?

LIEUTENANT AL BLACK: CROSS BY MR. DELANEY

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1 A. Yes, sir.

2 Q. Okay. Could be a few minutes before 12:20. Right?

3 A. The radios are pretty well timed out so it's about
4 12:20.

5 Q. All right. Could be 12:15; 12:17; 12:18; 12:19.
6 Right?

7 A. I have to go on what the radio's are saying ---

8 Q. Okay.

9 A. --- so to the best of my recollection and the best
10 of ---

11 Q. 12:20?

12 A. --- 12:20, yes, sir.

13 Q. And you talked to Officer Ruby. You gave a
14 description of Mr. Falls; is that right?

15 A. That description had already been given out. I just
16 used Mr. Falls name and said he was running.

17 Q. Okay. Did you tell Ruby - Do you remember telling
18 Ruby or K-9 anything that Mr. Falls as far as Mr. Falls
19 the type of clothing Mr. Falls was wearing that night?

20 A. I don't recall whether I told them anything about his
21 clothing I don't.

22 Q. Okay. You told them you recall Josh wearing a hat
23 that night?

24 A. I can't remember whether he was wearing a hat or not
25 and I'm sorry.

1 Q. Okay.

2 MR. DELANEY: No further questions at this time,
3 Lieutenant. Thank you.

4 THE COURT: Redirect?

5 SOLICITOR ANTHONY: If I could have one moment.

6 No redirect.

7 THE COURT: All right, you can step down and be
8 excused. We appreciate your time.

9 (WITNESS LEAVING WITNESS STAND.)

10 THE COURT: Call your next witness.

11 SOLICITOR ANTHONY: May we approach just a second?

12 THE COURT: Yes, sir.

13 (SIDE BAR AT 12:30 PM OFF THE RECORD OUT OF THE
14 HEARING OF THE JURY.)

15 THE COURT: I'm informed that even though we hadn't
16 been in here a long time the next witness is gonna be
17 fairly lengthy and it's probably advisable for us to take a
18 refresher break, so I'm gonna let you go to the jury room
19 and get refreshed. And, Madam Forelady, this time I'm
20 gonna let you tell the bailiff when you all are ready to
21 come back.

22 (JURY EXITS COURT ON RECESS AT 11:31 AM.)

23 THE COURT: We'll be at ease until we hear from the
24 jury.

25 (COURT IN RECESS AT 11:31 AM.)

AGENT BRAD KELLER: DIRECT BY SOLICITOR ANTHONY

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1 (COURT BACK IN SESSION AT 11:44 AM.)

2 THE COURT: Thank you, take your seats.

3 Is the State ready?

4 SOLICITOR ANTHONY: I'm sorry, your Honor, if I could
5 have two more minutes. I apologize.

6 (PAUSE.)

7 THE COURT: Mr. Delaney, are you ready?

8 (WHEREUPON, STATE'S EXHIBIT NUMBER THIRTY-NINE, FORTY
9 PREMARKED FOR IDENTIFICATION.)

10 SOLICITOR ANTHONY: Thank you for the indulgence,
11 your Honor. I think we're ready.

12 THE COURT: Bring in the jury.

13 (JURY REENTERS COURTROOM AT 11:48 AM.)

14 THE COURT: Call your next witness.

15 SOLICITOR ANTHONY: The next witness will be Agent
16 Keller.

17 THE CLERK: Raise your left hand.

18 (WHEREUPON, BRAD KELLER,
19 BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

20 DIRECT EXAMINATION

21 AGENT BRAD KELLER BY SOLICITOR ANTHONY:

22 Q. Would you state your name please?

23 A. William Brad Keller.

24 Q. And, Mr. Keller, how are you employed?

25 A. I'm employed in the - as a fire investigator with

1 the South Carolina Law Enforcement Division in the Arson
2 Investigative Unit.

3 Q. How long have you worked for SLED?

4 A. I've been with SLED since September of 2001 and in
5 the Arson Unit at SLED since January of 2005.

6 Q. And could you tell the jury what your education and
7 training is in fire investigation and fire behavior?

8 A. Yes, sir, thank you. Prior to coming to the South
9 Carolina Law Enforcement Division I was a fireman with
10 Boiling Springs fire district in Greenville County between
11 volunteering and paid service time from '97 'till 2001 when
12 I came to work at SLED. Since I came to work at SLED I've
13 attended numerous classes until I got enough certifications
14 where I eventually became credentialed as a certified fire
15 and explosive investigator through the National Association
16 of Fire Investigators through the national organization.
17 And then later on as a certified fire investigator through
18 the international Association of Arson Investigators and
19 also certified fire investigation instructor which is
20 another national certification. All of those
21 certifications are basically based on in NFPA 921 and they
22 just state that, you know, in short that I adhere to
23 principles that are nationally and internationally
24 recognized as the standard of care in fire investigation.

25 In addition to those classes and certifications I've

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1 also written and instructed lesson plans on fire
2 investigation through the South Carolina Criminal Justice
3 Academy, the South Carolina Fire Academy; through the South
4 Carolina Chapter of the International Association of Arson
5 Investigators; written classes specifically for the
6 Coroner's Association and for SCIAI which is the South
7 Carolina International Association of Identification which
8 is all the crime scene investigators teaching them about
9 how to work and process fire scenes.

10 And in addition on a frequent basis instructed lessons
11 on prosecution and fire investigation - or courtroom stuff
12 for courtroom testimony and prosecution for federal court
13 judges and the National District Attorney Association where
14 we do like a day long arson seminar or fire investigation
15 seminar where we actually do live scale burns where we
16 actually burn things and let them see actually how a fire
17 progresses and everything else. So that's basically my
18 background in fire investigation.

19 Q. So essentially - Well what is your current
20 responsibility right now in the Arson Investigation Unit at
21 SLED?

22 A. Currently I'm assigned to the Upstate area of South
23 Carolina which consist of twenty-three counties. Basically
24 from Akin if you draw a line all the way across up at
25 Chesterfield and the northern part of the state is where I

1 work along with basically three other investigators in the
2 Upstate. We have a K 9 that's assigned to the Upstate now.
3 In addition to responding to fires and investigating fires
4 doing followup investigation I also do the on call schedule
5 for everybody in the state. And I review reports for
6 everybody in the Unit as far as our fire investigative
7 reports go.

8 Q. And you mentioned I think when you were talking about
9 your credentials you mentioned three certifications you
10 have; is that right?

11 A. Yes, sir. And two, one of the certifications the
12 IAAI-CFI you have to actually - it - there is a whole
13 curriculum that you have to follow to gain points to
14 actually be able to even take the test. Or one of those is
15 that you have to have a minimum of five years full-time
16 work experience in that field before you're even allowed to
17 take the test, you know, to get that credential. But
18 there's only to my knowledge as of this, you know, today
19 there is only one other person in the public sector which
20 would be your law enforcement and fire service or anything
21 else that has those three certifications in the state of
22 South Carolina.

23 Q. Okay. And have you testified and been qualified as
24 an expert witness before in fire investigation and fire
25 behavior?

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1 A. Yes, sir, I have.

2 Q. How many times approximately have you been qualified
3 as an expert?

4 A. In court three times and that's the only three times
5 I've been called.

6 SOLICITOR ANTHONY: Your Honor, at this time we submit
7 Agent Keller as an expert in fire investigation and
8 behavior.

9 THE COURT: Any voir dire?

10 MR. DELANEY: No, your Honor.

11 THE COURT: All right. I find he is qualified.

12 BY SOLICITOR ANTHONY:

13 Q. Agent Keller, were you working - I'm taking you now
14 to the actual incident in question here. Were you working
15 on November 24th of 2013?

16 A. Yes, sir, I was.

17 Q. And did you come to investigate a fire scene at
18 Church Street in Buffalo?

19 A. Yes, sir.

20 Q. And why did you go out there or go to Buffalo that
21 day? What brought you to Buffalo?

22 A. We were requested by the Union County Sheriff's Office
23 and pretty much the only details I had that morning prior
24 to arriving was is that the occupant of the house was on
25 the run from the local sheriff's office for an unrelated

1 incident. While they were looking for him his house caught
2 on fire and suffered significant damage and they were
3 requesting us to conduct a fire investigation.

4 Q. And who specifically from the Sheriff's office ask
5 you to come?

6 A. Investigator Scott Coffey.

7 Q. And did you - You responded. Did anybody else from
8 SLED respond along with you?

9 A. Yes, sir. Agent Brian Wright who was on call that
10 weekend with one of our dogs also responded to assist.

11 Q. All right. And approximately what time did you get
12 to Buffalo?

13 A.. I arrived at the scene approximately 08:25 am.

14 Q. And what did you do initially when you arrived
15 there?

16 A. Basically when I get to the scene one of the major
17 items of importance for me obviously speaking with local
18 authorities is has the scene been secured. Just briefly,
19 the one thing that's a little bit unique about what we do
20 in fire investigation is kind of separate from most other
21 law enforcement is when we're called out we don't know if a
22 crime has been committed. It's not like well, you know, a
23 burglar or somebody is hurt. We're called out to look at a
24 burnt building, you know, whatever; it may be a residential
25 or commercial structure. And basically the sheriff's

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1 office, police department, whomever, is relying on us to
2 determine, you know, first and foremost has a crime
3 occurred.

4 In so far as that basically what they're looking for
5 us - for from us on anything is, you know, there's one of
6 four things that we can classify a fire. We can say that a
7 fire is either accidental; a fire is incendiary; a fire is
8 - was caused by - is natural in classification which would
9 be some act of God or a providential matter; lightening,
10 something of that nature, where it's undetermined. So
11 basically that is what the sheriff's office or anybody who
12 request our assistance is looking for is just to go to tell
13 them first and foremost has a crime occurred.

14 Q. And when you arrived there at the scene of the fire
15 been secured that night?

16 A. Yes, sir. It was secured with both crime scene
17 tape and members of the Buffalo Fire Department. Scott
18 Coffey was on scene and he has secured a search warrant
19 which gave us legal authority to conduct an investigation
20 there that day.

21 Q. All right. And what was the - When you got there and
22 reviewed the search warrant, what procedure did you all
23 follow as far as beginning to process the house and trying
24 to figure out whether this was an intentional fire?

25 A. Honestly in what we do and everything about our job

1 requires that we follow a systematic approach, or a
2 scientific method, and basically what that is is if you've
3 done something hundreds and numerous sometimes thousands of
4 times in your life, if you always do it the same way you
5 know that you did it right, so there's no steps left out in
6 that process; so, basically the way that I begin that
7 systematic approach in fire investigation as I started at
8 the front of the house and I conduct a walk around in what
9 I call a cursor inspection, looking at everything around
10 the house. What I'm looking for there is number one,
11 again, has it been secured or do I need to move the
12 barriers out a little bit further. Are there any hazards
13 to my health or anybody else? Obviously a fire
14 investigation is a little bit different too. I mean walls
15 can collapse; floors can collapse. I need to be aware if I
16 need to take care of those matters. And also do I need
17 more personnel to assist me in a task at hand that day.

18 While I'm doing this walk around of the structure I'm
19 taking photographs as I go of the exterior.

20 Q. And then once you do the walk around what's the next
21 step in the process?

22 A. Once I get done with the exterior inspection of the
23 house I'll complete the same task on the inside. And I
24 will work through the inside of the structure photographing
25 and documenting everything inside the house as I found it.

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1 There will be other photographs taken throughout the
2 investigation but the first thing that I have to document
3 is the condition of the structure as I found it that day,
4 cause obviously and again like other crimes that law
5 enforcement has called to investigate it's - access is
6 always limited to a scene but in a fire scene there's
7 firemen that are in there; they're putting water on the
8 scene and a lot of things change and I have to be able to
9 document how it was because the whole idea behind fire
10 investigation is is whatever structural or fire incident
11 you're looking at you are trying to return it to it's pre-
12 fire conditions. So, you want to be able to get a picture
13 of or put it back in a content - context so that you can
14 see what it looked like prior to that fire to determine
15 what actually occurred; where the fire started and what
16 could have ignited the fire.

17 Q. Well once you documented everything as it appears
18 post-fire, what do you do to get it back to that pre-fire
19 stage?

20 A. We begin layering away the fire debris throughout the
21 house. It's a very very long laboring intensive task.
22 It's done by hand and shovels mostly - removing big items
23 and then using the shovel and excavating basically in a
24 layer by layer method down to the floor making sure that we
25 try to protect anything we can that might be of value. But

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1 as we do that basically what we're doing is - and you'll
2 hear me talk about it several times throughout the
3 testimony - is, you know, we're working - I'm working in a
4 method of least damage to most damage. So basically it's a
5 very simple thing when you think of it. To me I try to
6 simplify it by saying if you've ever struck a match or seen
7 a match struck and then you blow it out you obviously have
8 one section of the match as burnt and one's that's unburnt.
9 That's basically what I'm looking for. You can tell that
10 there's obviously one area that has more damage. That's
11 where the fire was. And then there's an undamaged area.
12 That's a very simplistic way of saying what I'm looking
13 for. And I'm looking for the most damaged area inside that
14 structure in order to do that I have to document the least
15 damaged area. So I'm gonna be excavating the areas or
16 digging out the areas inside the house with the least
17 amount of damage because those directional patterns or the
18 way that the fire burns it leaves a foot print on
19 everything. Movement and intensity. It tells us where the
20 fire moved and, you know, the intensity of the fire at the
21 time in which it went there. So I'm looking from that
22 least damaged to the most damaged to get back to the area
23 of where the fire started at.

24 Q. Okay. And as part of your investigation do you put
25 together a schematic or a diagram of the residence in

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1 question?

2 A. Yes, I do.

3 Q. And did you do that with this dwelling in Buffalo?

4 A. I do it with every single arson I ever work.

5 Q. I'm gonna hand up what's been marked for
6 identification as Exhibit Thirty-eight.

7 I'd ask if you recognize that document?

8 A. Yes I do.

9 Q. Okay. And what is that?

10 A. That is the finished sketch of the house or what I
11 would say the single story dwelling located at Church
12 Street in Buffalo.

13 Q. And does that sketch fairly and accurately illustrate
14 the layout of the house and where you found things during
15 your investigation and your findings?

16 A. Yes it does. It's not all inclusive. Any sketch
17 that we put is the major things just to show reference
18 points between the photographs that are taken too. The
19 sketch is something that we always use to orient ourselves
20 and anybody that we may talk to. It alleviates return
21 trips to the scene instead of me talking to somebody and
22 saying, you know, where were you or what did you do? I can
23 show 'em a sketch that I prepared. Often times I don't
24 show them, you know, have a chance to show 'em the finished
25 sketch. It depends on when I talk to 'em but that way its

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1 easier than going back to the scene and having to walk them
2 through. I can show them this sketch. I use that and also
3 when I have - when I'm referencing photographs to show
4 where I'm at in the house.

5 SOLICITOR ANTHONY: And, your Honor, we move Thirty-
6 eight into evidence.

7 MR. DELANEY: Without objection.

8 THE COURT: In without objection.

9 (WHEREUPON, STATE'S EXHIBIT NUMBER THIRTY-EIGHT,
10 IDENTIFIED AND MARKED, RECEIVED INTO EVIDENCE.)

11 SOLICITOR ANTHONY: Ask to publish.

12 THE COURT: Okay.

13 SOLICITOR ANTHONY: We're gonna be referring back to
14 this a lot while you testify but I'll go ahead and just
15 show it to you to get started right now. I'm gonna go
16 ahead and give you a pointer.

17 (WHEREUPON, STATE'S EXHIBIT THIRTY-EIGHT PUBLISHED TO
18 THE JURY AT 12:04 PM.)

19 BY SOLICITOR ANTHONY:

20 Q. Okay.

21 A. That's good.

22 Q. If you would just take the jury initially through
23 the layout of this house.

24 A. First of all in any of our sketches I always have a
25 ledger up top that just tells the specific case number,

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1 where we at, the date and everything else. Also as you
2 would note any of the sketches that we render or produce
3 are gonna say not to scale because they're an accurate
4 representation but they are not to scale drawings.

5 The front side of this house: This would be the front
6 porch; is the side that faces Church Street. When I talk
7 about doing a cursory examination of the exterior I start
8 over on the front side document all the way around the
9 exterior of the house back to the front. When I said I
10 made entry into the house I walked in the house through
11 this front door which goes into the living room area.

12 Now this house here is somewhat easier to describe
13 than most that I look at. It's kind of what I say a
14 standard mill house. Most of the mill houses are generally
15 divided up into four rooms or a number of rooms. They
16 don't have a lot of dead spaces in mill houses or unused
17 areas like some newer constructions does. So for the
18 purposes of the investigation and how I describe the scene
19 I describe it as a living room or front left room. This is
20 the front right bedroom. Then you have a right rear
21 bedroom and a kitchen area. This was just kind of like a
22 utility area; had the water heater. This was the back
23 door. You had the door off the kitchen then the back door.
24 Then you had the little bathroom area right here and a door
25 that goes into the bathroom and then the little closet door

1 right there.

2 Also just for the reference throughout my testimony
3 here when I talk about anything is I talk about the fuel
4 load in a room when I'm considering what could have ignited
5 it in the room. And basically a fuel load's gonna go back
6 to anything that would burn under those given
7 circumstances. So it could be a couch, the clothing, you
8 know the items of furniture and all of those things that I
9 will show you here shortly leave those same directional
10 patterns or indicators that will show where the fire moved
11 throughout the house just like the structure itself does.

12 Q. And what I want to do now is show you some photos and
13 I'd ask that you just take a look at these and see if you
14 can identify them. It's Exhibits for identification
15 Sixteen through Thirty-seven.

16 A. Yes, sir, I do. These are photos that I took of
17 the scene.

18 Q. Okay. And are some of those before and some after
19 your excavation?

20 A. Yes, sir, that is correct.

21 Q. And these photos you just looked at Exhibit Sixteen
22 through Thirty-seven, do those fairly and accurately depict
23 what you saw and documented at the house on November the
24 24th of 2013?

25 A. Yes, sir, they do.

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1 Q. All right.

2 SOLICITOR ANTHONY: We move Sixteen through Thirty-
3 seven into evidence.

4 MR. DELANEY: Without objection, your Honor.

5 THE COURT: In without objection.

6 (WHEREUPON, STATE'S EXHIBIT NUMBERS SIXTEEN THROUGH
7 THIRTY-SEVEN, IDENTIFIED AND MARKED, RECEIVED INTO
8 EVIDENCE.)

9 Q. All right. I want to start showing you some of
10 these pictures now.

11 A. Briefly could you put the sketch up for one more
12 second; the diagram up for one more second?

13 Q. And that's ---

14 A. Yes, sir.

15 Q. --- Exhibit Thirty-eight.

16 A. And just to - I don't like to insult one's
17 intelligence and make you wait for an ending here but you
18 obviously see the big orange triangle. I identified that
19 as the area of origin. Through these photographs I'm gonna
20 show you how I came to that opinion that the fire -

21 MR. DELANEY: Your Honor, --

22 A. --- originated in --

23 THE COURT: Whoa, whoa. You got to wait until he's
24 ask --

25 SOLICITOR ANTHONY: Let me just ask you a question.

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1 THE COURT: Wait just a minute. Wait everybody.

2 The solicitor will ask you a question and then you'll
3 answer it.

4 SOLICITOR ANTHONY: All right.

5 THE COURT: Thank you.

6 Q. I'm gonna start off with some of these pictures.

7 I just showed you a bunch of pictures of the interior
8 but I want to start off with some of the pictures that we
9 showed Chief Gardin yesterday of the outside of the house.

10 I'm starting off with State's Exhibit Number Four,
11 and what are we - What are we looking at there?

12 A. That's the front of the house that faces Church
13 Street.

14 Q. That's just a head on view?

15 A. Yes, that's just a straight on view of you looking
16 at the front of the house.

17 Q. All right. I'm gonna show you now Exhibit Number
18 Nine. And what are we seeing there?

19 A. This would be as I started the walk around of the
20 exterior of the house. This would be the left - what I
21 call the left exterior side. I know fire departments refer
22 to them differently. I was with the fire department they
23 refer to them A B and C and D. I just say left, right,
24 rear exterior sides. It's a little bit easier for me to
25 follow. But this is, again, when I walk constantly.

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1 References is you have an unburned area and then you have
2 the significantly burned area. And I'm working from least
3 back to most damaged getting an indication of where the
4 fire originated; where I need to be concentrating my
5 efforts.

6 Q. So that photo would show --

7 A. The left side.

8 Q. It shows the left side. And as far as damage as
9 opposed - from front as opposed to the back of the house
10 what does it show?

11 A. Yeah, it's in this - in this particular fire scene
12 or in this case it is very very obvious that you have all
13 of the damage towards the front side and it is actually -
14 you can see kind of what we always say is a V shaped
15 pattern going back to the lowest and most intense area. On
16 this side it's going upwards and out.

17 Q. And I want to show you now - Just gonna show you
18 some photos taking you around the house.. I show you Number
19 Ten. What are we looking at there?

20 A. And that's the exterior of the house and basically
21 the left exterior side and the rear of the house showing
22 the corner just you can kind of get contacts on both of
23 those. But again you have unburned portions there. These
24 areas here is just basically in the later stage of the fire
25 where the fire has actually traveled into the attic area

1 and it's ventilating out the opposite end of the house.
2 That's the easiest path of the house for the fire to take
3 to get out so that's why you have the burning up towards
4 the ceiling height there. And also these are just more
5 ventilation patterns and anything else as far as where the
6 fire is actually ventilating out right there.

7 Q. Okay. I'm gonna show you Exhibit Number Eight.

8 What are we looking at there?

9 A. And that's the exact same - That's the rear of the
10 structure and this is the rear door that I reference in the
11 sketch that goes out the back. So if you go inside here
12 there's another door and you walk into the kitchen.

13 Q. I show you now Number Seven. What are we looking at
14 there?

15 A. And this is if you're looking at the house it's the
16 right exterior side. And then you have the rear of the
17 structure right there.

18 Q. And then Number Five.

19 A. Same thing there. That is a right exterior side.

20 Q. And so once again as far as damage what can you say
21 from that - -

22 A. The thing that's interesting about this damage that
23 is different from the other side of damage is, you know, on
24 closer inspection of some of the other photos you will see
25 that the fire damage here is actually wrapping around the

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1 exterior from when you actually had this - there was
2 covered front porch or a front porch there that actually
3 collapsed down. And when that collapsed down it starts
4 burning. That's why you have right here unlike you see on
5 the other side you have all this burning down all the way
6 actually on like the cinder block masonry foundation. It's
7 actually burning in that straight line up there and then it
8 creates - turns all of this exterior siding on the house
9 into a fuel load and it starts burning up the exterior.

10 Q. Now I want to show you Number Six. That might give
11 you a - -

12 A. Same type thing. You would just see the damage here
13 that we look at of where you actually had the collapse.
14 The fire progressed rather rapidly on the left side of the
15 house. It actually burns up into the covered porch which
16 is no longer there; collapses. Portions of it are left but
17 it collapses and actually burns down and up around the
18 outside.

19 Q. Now I want to show you now Number Eleven. What are
20 we looking at there?

21 A. Could you zoom in on that one?

22 Q. Yeah, sure.

23 A. Cause I believe that's the - Oh, just the lighting.

24 That's the right exterior side and the front. And
25 again that just - the shadows there on overhead don't make

1 it where you can see but there's actually some structural
2 members just from the over head that are laying right
3 there. They're somewhat - Here's some of 'em in the yard
4 from the covered porch that collapsed down right there.

5 Q. Okay. So when you're looking at the - this side
6 right here of the house, what is - what are we looking at
7 there when you go back to the actual diagram? Which room?

8 A. You're looking at this, what you just pointed to,
9 that is that right front bedroom.

10 Q. Okay. That's the bedroom? Okay. All right. Well
11 I want to show you now some interior photos. I want to
12 start out with Exhibit Sixteen and we'll show you - I'll be
13 showing you some excavated and some unexcavated. I'm
14 sorry, let me just go back very quickly.

15 When you're talking about damage to the outside of the
16 house; talking about the information you get from looking
17 at the house from the outside, can you say which side just
18 from viewing it from the outside - I'm showing you again
19 Number Three - which side of the house - of the front part
20 of the house had more damage?

21 A. From the - Solely from the exterior of the house the
22 only thing that you can say in my line of work which would
23 be definitive enough to render a conclusion is that the
24 fire originated on the front of the house. And that's
25 without going into further depth and looking through the

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1 scene ---

2 Q. Okay.

3 A. --- is that you had a fire that originated in the
4 front of the house.

5 Q. All right. Well I'll show you now Exhibit Sixteen.

6 And where are you to get this view that's Exhibit
7 Sixteen? Where would you be?

8 A. Standing on the front porch this is the right front
9 bedroom and this is the doorway that walks into the living
10 room. Behind it's the kitchen and then behind this one is
11 your other bedroom. But living room, front right bedroom.
12 This is the porch. You can see there, you know, the damage
13 and the kind of remaining structural members of that
14 covered porch that collapsed down into it.

15 Q. And is this picture before you excavated the scene
16 or after?

17 A. Yes, that is just as I'm beginning to walk inside
18 and just get a look around and see what everything looks
19 like.

20 Q. So going back to this drawing to get that view that
21 you just described where --

22 A. I was standing right about here shooting inside.

23 Q. Okay. I want to show you now and take you a little
24 farther in. I'm showing you now Exhibit Seventeen.

25 A. Flip it up. Yeah, there you go. And could you zoom

1 in a tiny bit more? A little bit more. Okay. That's
2 perfect.

3 Q. All right. What are we looking at there?

4 A. First of all what we're looking at here, again, this
5 is the kitchen in the background. You have the old kind of
6 fire place chimney here then you have - this is actually a
7 gas furnace. This gas furnace - the house did not have
8 natural gas service. At the time it was locked out so this
9 is just a gas furnace that was there; it was not being
10 used. On the top of that you'll see a good bit of damage
11 just to the top which is oxidation. But one of the biggest
12 things I look at here in the beginning picture is is look
13 at all of the fire debris that is laying inside of this
14 room. And with the exception of a few pieces they're very
15 small artifacts or very small sections, so, we had a lot of
16 fire that was in that room that consumed nearly most of all
17 of what we say combustible items and structural members
18 that were in that room when the fire burned up. Everything
19 fell down and was consumed.

20 Can you zoom out just a little bit on that photo
21 right there. Okay. Never mind, you can go on to the next
22 one.

23 Q. All right. I'm gonna show you now Exhibit Number

24 Eighteen. And what are we looking at - looking at
25 here?

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1 A. And zoom out for one second. Okay, that's good right
2 there. Okay. And again when I'm in this room anytime we
3 take pictures of the room so that we have kind of a three
4 sixty view of each room, I start in each corner and shoot
5 the corners of the rooms. And when you do that you put all
6 four pictures beside each other and it will be like a turn
7 around looking at the whole entire room inside. So when I
8 do that here basically what you notice is this is beginning
9 to get over where the kitchen is but all of your ceiling
10 joist have been - have either collapsed then the structural
11 work consumed in the fire. The framing was pretty
12 important too. The framing around this chimney was also
13 consumed in the fire but all of the remains of the sofa and
14 love seat that were at the front of the room are gone too.
15 So without beating through any debris you see no remains of
16 any furniture whatsoever in that room.

17 Q. All right. And just in retrospect to the diagram,
18 to see what we see on Exhibit Eighteen, where would you be?

19 A. I was shooting in the corners basically there, kind of
20 a wide angle but shooting in that corner.

21 Q. All right. I'm gonna show you now Exhibit Nineteen.

22 And what are we looking at here?

23 A. Okay. And that's kind of like another corner shot
24 but just because the way the house is situated but looking
25 back at this shot could you zoom in so that I can see this

1 area here a little bit more? Again, this just shows
2 another representation. This right here is actually one of
3 the walls, portions of a wall that collapsed. Most of your
4 ceiling joist have been consumed in the fire. And again
5 it's a very small pieces of fire debris that are in here.
6 The other things you will note is in the bedroom. The
7 right front bedroom right here the casing around this
8 fireplace is completely intact. So it's all still standing
9 it's completely framed out. You know all of the damage is
10 much higher. And like I said the fire progresses upwards
11 and outwards so anywhere with the fire damage gets higher
12 at or above ceiling level that puts its distance further
13 away from where the fire originated at which would be the
14 lowest and most intense fire damage.

15 Q. So when you shot this picture here, Number Nineteen,
16 where would you have been on this diagram?

17 A. I was standing right here to kind of get a better
18 shot across here because there was so much fire damage in
19 here that the flooring was kind of out so until I was able
20 to clear things out I didn't want to step and fall into a
21 hole so I kind of stood back over here to shoot that shot.

22 Q. So that shot actually came from the bedroom?

23 A. From the bedroom back into the living room.

24 Q. All right. And this item, this heater right here,

25 A. That's actually a table.

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1 Q. Table?

2 A. That's a metal frame table you'll see in just a
3 second.

4 Q. And this item I'm just pointing to right here what is
5 that?

6 A. That's - And that's unfortunately in our drawing
7 that's the closest thing that resembles like a brick
8 fireplace chimney so you have - This is the one in the
9 living room where all the wood framing burnt up off from
10 around it. And this is the one in the bedroom that is
11 still partially framed with wall studs.

12 Q. All right. And so if you would I'm gonna just
13 reference you back to Eight - or Nineteen right quick.

14 Where is that fire place at on that picture?

15 A. And then this is the fireplace with the wood framing.

16 And there is the metal table. And again like I said
17 this wasn't in use. This metal table is in front of it and
18 had numerous things on it so, yeah, this metal table in
19 front of the fireplace.

20 Q. We're gonna go now to Number Twenty. Now is this
21 excavated or pre-excavated shot?

22 A. This is after all of the fire debris has been
23 removed from the living room area. You'll notice we
24 actually put the furnace back up in place. The furnace is
25 still completely intact. The back of it's intact and

1 everything else. Large areas of the floor were either
2 really spongy or they have collapsed in a good - in
3 different portions of the bedroom. Zoom in right in this
4 area. And you'll see it later in a better picture. But
5 the window sill here you'll see on the other windows - and
6 I'll come back to it in a better picture, the window frame
7 is completely gone, burnt down just or the actual window
8 pane. You know sliding windows break down actually the
9 structure member which is the wood studs beneath that and
10 this is, you know that only window that is like that unlike
11 the others around the front portions of the house.

12 But in here the only thing that was found to the
13 remains of any of the furniture was a very few springs that
14 belong to the couch and love seat. Everything else was
15 completely consumed in the fire.

16 Q. Now I want - just to orient everybody to the diagram,
17 when you made that picture, Number Twenty, where would you
18 have been standing on Number Thirty-eight?

19 A. I would have been standing kind of right here shooting
20 across.

21 Q. All right. And I will go now to Twenty-one and what
22 - what is this a photo of?

23 A. Can you zoom out a little bit more? And that's the
24 corner and that's just showing another area. And that may
25 show the - Zoom in right here on this side. If you can

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1 move it over a little bit. Yeah, you start to see this,
2 this is part of that window frame. You'll see actually
3 here's the actual window frame, the casing at the bottom
4 and everything is gonna be intact. And on the front you
5 don't have any of that so - And the easiest way to describe
6 it too is when they get into a room that has significant
7 fire damage I keep dividing that room in half. And it's a
8 pretty standard practice so if - And to use an example on
9 the outside when I'm looking at the outside I ask myself do
10 I have more fire damage on the front of the back. So when
11 I decide they have more on the front than the back then I
12 go to the front and say do I have more damage on the left
13 side or the right side. And what I'm basically doing is
14 trying to get down to a manageable area or an area of
15 origin that I can tell where that fire occurred at. So
16 that's what I'm doing in this room in saying, you know, did
17 the fire happen? You know, in the front half of this
18 living room or in the back half closer to the kitchen. So
19 I'm using all of these directional indicators to tell me
20 where that fire started in the room.

21 Q. I'm gonna show you now - Well, just so we're clear
22 too, the hole in the floor on Twenty, is that also depicted
23 on ---

24 A. Yes.

25 Q. --- Twenty-one?

1 A. Yes, sir, it is.

2 Q. Show the jury where that hole is.

3 A. It's right here. And again, this hole diffrenciates
4 from a hole that's actually burnt through in the floor.
5 Basically what this is, this hole here in particular, you
6 can see from the edges around it that's just where there's
7 been so much fire damage, so much fuel load, that basically
8 it's reduced the floor to nothing. As soon as we stepped
9 on it it collapsed through so that's how bad the flooring
10 was in that room to where you had to actually step on the
11 floor joist that run underneath this or else you would have
12 fallen through. So somebody messed up and lets say stepped
13 through that, that's the reason that floor collapses in
14 those places.

15 Q. All right. I'm gonna show you now Number Twenty-two.

16 Where are we moving to when you take Twenty-two or
17 where are you shooting there?

18 A. Shooting into the kitchen area because one of the
19 things that I'm looking at again is document things and see
20 what potential accidental ignition sources. Obviously, you
21 know, cooking, you know cooking could have been an ignition
22 source. Somebody's cooking and, you know, our first
23 information everybody - nobody was home so this is in the
24 kitchen but one of the things that you note about the
25 kitchen is the first couple of, I think it's the first two,

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1 ceiling joist in the kitchen are consumed or are pretty
2 much consumed partially collapsed into the kitchen then
3 consumed. You also have fire damage in the kitchen that's
4 moving this way. You've got pretty much no cabinets left
5 up top. A lot of damage here. The further across you get
6 you get better - the cabinets are in better condition until
7 you get to the back the cabinets are in very good
8 condition. You can see it especially along the bottom row
9 of cabinets. And basically what I'm looking at is those
10 directional markers. They're saying the fire is
11 progressing this way. Just like I see from outside it's a
12 little bit easier because of all the white paint on the
13 outside. But you can see that the fire is moving from that
14 living room into the kitchen area.

15 Q. And then what could you say or what did you observe
16 about the damage to the living room when you compared the
17 area where you found the love seat and the couch and the
18 floor damage to the area around the heater there?

19 A. Well, it's not nearly as significant. The other thing
20 is that's important to note is, is notice the different
21 colors of the heater right there. Basic the most - the
22 damage that you have up here on the top of the heater this
23 takes a very very long time to occur or basically the later
24 stages of the fire. This is just called oxidation of the
25 metal and this is just where the actual roof collapsed when

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1 it actually was burning for as longer time and actually
2 ventilated through the front. It collapses down and it's
3 heavily oxidized. There is no indication that there is low
4 fire behind this furnace moving from left to right or
5 anything else. There's really not a huge indication
6 patterns, you know, of anything else other than the fall
7 down and it being in proximity to the fire. But again the
8 casing is gone but it's gone at a height that's consistent
9 with a fire. And again, in the room when the fire burns up
10 and out that's why I say I'm looking for directional
11 indicators. When a fire progressing follows the path of
12 least resistance, so when a fire burns up and hits the
13 ceiling it goes up and out. So a fire on the front of a
14 room goes up and out until it gets down to the other side
15 and then it starts to develop heat all the way to floor
16 level and it needs oxygen to burn. So if it doesn't have
17 oxygen it begins to put itself out. But it's got to fill
18 this entire four rooms before it can ever be noticed by
19 somebody on the outside. So it's not - when you're looking
20 at fire inside of a structure it's not just, you know, we
21 had a fire here that caused some big event that we would
22 have seen instantly. That doesn't occur. It always is
23 dependent on the structure it's in, you know, the time of
24 the year, you know, who would have seen it quicker.
25 Sometimes in the summer months people keep windows or doors

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1 open but in the winter where it's cold it would have been
2 tighter and it would have had to actually ventilate out
3 through the front window like it did here and burn across
4 that front porch. But this is what we're looking at is
5 those indication patterns. It's burning up and out.
6 That's why the fire damage gets higher and higher the
7 further away we get from the living room.

8 Q. So just to sum up this living room - the living room,
9 based on your analysis and what you talked about as far as
10 where you found the heaviest damage, what conclusion did
11 you draw about where the fire started in the house? And
12 also where it started in the living room as far as what
13 part of the living room it started.

14 A. Well the fire occurred in the living room area
15 specifically in the living room area in the front half of
16 the living room area. What I would call like the front left
17 quadrant where the area of where that sofa would be in the
18 living room.

19 Q. Okay. And that's what - going back to the diagram,
20 that's what you've indicated there.

21 A. Yes.

22 Q. Correct? Okay.

23 A. And that progression is basically the window when I
24 talked about it failing. The windows fails right there.
25 The fire burns along again upward and outward because now

1 it's got oxygen it burns upwards and out along this covered
2 porch down this area here until it collapses. At the same
3 time the fire is burning the path of least resistance, this
4 way and this way, that's why this is the least burned area
5 back here because it's the furthest away.

6 Q. All right, we're gonna move on to the next room now.

7 I'm gonna show you Exhibit Number Twenty-three.

8 And what are we looking at here?

9 A. And again can you zoom in ---

10 Q. Yeah, sure.

11 A. --- a little bit. Okay. This is from the living
12 room into the front right bedroom. And zoom in a little
13 bit more.

14 Q. Sure.

15 A. A little bit more. Okay, that's good. One of the
16 things you'll notice about the front right bedroom and
17 again getting back to why it was my opinion the fire
18 originated in the left front room or the living room is
19 when you get to the front right bedroom we still have large
20 artifacts or portions of the house structural members; some
21 ordinary combustible items, pieces of furniture that are in
22 here that are still intact. They're in that area, the much
23 larger sections whereas everything was pretty much removed
24 from the living room area by a shovel with the exception of
25 a few large pieces thrown out. This room is basically

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1 littered with larger pieces of ceiling joist and furniture
2 items inside that room.

3 Q. And so I take it this picture was made before you
4 excavated?

5 A. Yes. That was a picture before we excavated the
6 bedroom.

7 Q. And just to make sure we're all on the same page,
8 going back to Thirty-eight, if you're looking at the
9 diagram where would you have been to make that photo we
10 just looked at?

11 A. I was shooting it straight through here just to show
12 the conditions of the room.

13 Q. And then I'm gonna show you Twenty - I'm gonna show
14 you Forty. What are we looking at here? Pull it out a
15 little bit and pull it back in if you need me to.

16 A. You're gonna have to show - You're gonna have to
17 zoom in a little bit more. This is just to reference.
18 This is the right front bedroom. This is the right rear
19 bedroom but what you're seeing here in the right rear
20 bedroom is, is you still have the paneling on the wall
21 which is still intact. Can you zoom out one second?

22 Q. Uh-huh.

23 A. Right here on the floor you're starting to see the
24 remains of what we call ordinary combustible items which is
25 just normal clothing or whatever stuff was sitting in that

1 room right there on the floor. But notice it, you know,
2 it's right next to an open door way to that bedroom and a
3 lot of it is unburnt. All of this damage here when you
4 look up here at the top and probably on the next photo zoom
5 in a little bit up to the top. Unlike the kitchen area
6 which is a straight line. Like I said this house is laid
7 out as a box. All of your ceiling joist above here are
8 intact. And then when you actually start looking at it
9 you're getting more fire damages up higher actually getting
10 at or above and it's going actually above ceiling level
11 back here. Whereas in the kitchen which is right adjacent
12 to this this is - these front two ceiling joist are gone.
13 So I mean that's telling me that I'm in the right space.
14 Is that, you know, the fire was progressing, you know, from
15 the living room into the kitchen around this room. You know
16 not from the right front bedroom into this room. The
17 damage would have looked completely different.

18 Q. And this shot was taken - I'm gonna go back to the
19 diagram. Where would you have been on Number Thirty-eight
20 to get that shot?

21 A. Shooting from - Standing like right here shooting
22 straight across to get this corner.

23 Q. I'm sorry, what?

24 A. Standing right here towards the back of the bedroom.

25 Q. Uh-huh.

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1 A. Shooting across cause it's wide angle and it shows
2 inside this bedroom and this corner of the room there.

3 Q. All right. I want to show you now Number Twenty-four.

4 And I think - -

5 A. And that's just going back to show - That one may
6 be out of place but that one does show a good picture of
7 the back of the furnace there.

8 Q. Oh, okay.

9 A. That I can cover. If you zoom in. And that just
10 shows that the back of the furnace is in good condition. I
11 mean there is no indication, you know, around that furnace
12 the structural wood members around that furnace and
13 everything else are intact all the way above it. You know
14 we know the furnace was not operable at that time but, you
15 know, later on, you know, when we discuss some of the
16 interviews that that would come into play.

17 Q. All right. So that is going back to the living room?

18 A. Yes.

19 Q. Okay. All right. I'm gonna show you now Twenty-five.

20 A. Twenty-five. Again, we're in the front right bedroom
21 and again like I said before we actually have pieces of the
22 ceiling joist above the front right bedroom that are all
23 still intact. They are leaning across the framing
24 completely intact around the fireplace. We actually have
25 one space heater that's right here. It's right there

1 beside the little metal frame that's right there. We have
2 another one that was discovered melted down and it's
3 actually - Can you zoom in right there? I think you can
4 actually see the beginnings of it. The outlet in the wall
5 that they were plugged into. Keep zooming in, keep zooming
6 in. Right there's a stand. If you move the photo over.
7 And the other one will show it better but just to orient
8 you for later on is this shows us a standard duplex outlet
9 that had two plugs in it. For some reason it zooms in and
10 out. But there's two plugs that correspond to a lamp and
11 a heater. And again what I mentioned earlier just about
12 some ordinary items on the floor in that back bedroom that
13 shows a little bit better picture of that as well.

14 Q. Now I'm gonna show you Number Twenty-seven. Get this
15 out. Okay. Where are we?

16 A. That is standing in the living room looking into the
17 bedroom after all of the fire debris is excavated. Again
18 much bigger pieces. We have a lot less damage in this room
19 all the way around. Again this was what I was talking
20 about earlier you'll see on the left interior window sill.
21 You'll see on this window sill and the one adjacent there
22 this is the bottom of the window frames and the framing to
23 that window where as the one on the front window you do not
24 have it. But this is just after all the fire debris is
25 taken out; what was left in the room.

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1 Q. And this item right here, this item right here, this
2 item right here; what are those items?

3 A. All of those - this is just the bed, the bed frame.
4 This is like night table, and this is like the other little
5 tiny metal coffee table; glass coffee table that was
6 sitting there.

7 Q. And those items were all recovered from that room?

8 A. Yes.

9 Q. Okay. And I'm gonna show you now a close up of part
10 of that. This is Number Twenty-eight. Get that out.

11 What are we looking at right here?

12 A. That again is the window frame that I was just
13 wanting to look at to show the condition of that window
14 frame. If you can zoom in right there. The window frame
15 is still in good condition. This was a back wall here
16 where, you know, we found portions of, you know, like a
17 chest of drawers and everything else. And again, in
18 another picture you can actually see the plugs right there
19 where, you know, a lamp and heater were plugged into right
20 there.

21 Q. Okay. And that once again just so we're all on the
22 same page, when you look at Thirty-eight.

23 A. That would have been this chest of drawers right there
24 and that would have been looking at the window right behind
25 there.

1 Q. I'm gonna show you now Twenty-nine.

2 A. And that's just a better picture of the space
3 heater that's right there on the floor. But again as I'm
4 going throughout the house anytime I have to consider
5 something as a potential ignition source if its capable of
6 igniting a fire and given here what we're looking at here
7 is not a potential ignition source because number one it's
8 not in an area where the fire started. And number two, you
9 know, I'm required that to consider all of these things;
10 develop some ignition hypothesis of could this have started
11 the fire. And I do that in my head as cognitive experience
12 or thought experiments that I got through when I look at
13 these fire scenes. But when I look at this we have the
14 heater that's still intact right here, but we also have all
15 the wood framing around that's still in good condition. A
16 lot of times is heaters is if I need to I can discuss is
17 have a lot of safety mechanism. In particular do they
18 start fires? Yes they do. But heaters all have thermal
19 cutoff switches; they all have thermostats on hand and
20 anti-tilt devices so if you actually knock one over, you
21 know, they're gonna cut off and so just lay there on the
22 floor and burn for long periods of time. So - But the
23 biggest thing is that's not an issue here at all just
24 because this is not where the fire started. So again we
25 have good wood framing around all of this. You know a room

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1 beside it; we have ordinary combustibles four and a half
2 five feet away on the floor and all the fire damage is high
3 above the ceiling level here so we can definitely say that
4 heater is not any kind of fire cause.

5 Q. So going - just talking about the bedroom. How is it
6 that you know that this fire we're talking about started in
7 the living room as opposed to in the bedroom?

8 A. All of the directional patterns after - And this is
9 to sum this up and, you know, in twenty thirty minutes is
10 very quick cause this is five six hours, a very long
11 process, but each time you go through each room you're
12 evaluating everything. As you uncover, as you dig things
13 out, you're evaluating that evidence. You're looking at
14 all of the patterns that are left and fire leaves patterns
15 on every single thing throughout the house. And you see
16 that this is the most damaged portion of the room. So I
17 mean the fire has consumed everything in that area.
18 Another thing that's important to notice is is getting back
19 to what I talked about earlier about this being a cold
20 month of the year is actually, you know, a cold time. I
21 remember when I got there that morning it was very cold.
22 Typically when its very cold outside most people seek to
23 keep from having cold air come through so a lot of times in
24 at least the winter months, I mean I don't run into as many
25 windows open where I can see if there are windows or doors

1 open. That traps oxygen. If a fire becomes oxygen
2 deficient or it doesn't have oxygen it can no longer burn
3 and it'll start to self distinguish. If oxygen is
4 reintroduced to it then it can again begin to burn. But
5 also being oxygen deficient or lacking oxygen can slow the
6 progression of a fire; go a longer period of time.

7 What you're seeing here is is you've got the
8 significant damage to the front of the house but that's not
9 the biggest thing. Were this fire to have burnt very very
10 rapidly, a minute or so, you know just start - poof - and
11 burn very rapidly you know we could have had one thing that
12 was similar; we'd had a lot of damage to the front of the
13 house. But we wouldn't have had all this interior damage
14 to the back because what has to happen for that is, you
15 know, your fire has to fill this entire volume of these
16 four rooms and it starts to bank down. And that like I
17 said the soot and smoke particles just like the fire
18 deposit a foot print on everything. And you can see down
19 the floor level every room was, you know was burning.
20 Even, you know, to get that type of damage you had to have
21 a layer of smoke that has gone all the way down to floor
22 level like they teach you in school like elementriacal get
23 low, below the fire, eventually, you know, the fire gets
24 all the way down to the floor level. If oxygen is
25 introduced at that point in time once smoke gets all the

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1 way down to floor level, then everything can ignite at one
2 time and it burns much quicker because everything's
3 reached a temperature at which it's readily ignitable;
4 it'll burn much faster. At that point is when the front
5 window fails and that's why the fire takes off so much
6 quicker. A lot of times when people report hearing noises
7 or anything else a lot of times that's what it is, is that
8 window failing; the sudden introduction of oxygen into a
9 room which causes that. There are not very seldom or, you
10 know, or explosions or anything else but people describe
11 them that way.

12 Q. And just - You mentioned that there was another agent
13 who came to the scene with a K-9?

14 A. Yes, sir.

15 Q. And was that K-9 introduced to the home?

16 A. Yes, sir, he was.

17 Q. And was there - Did the K-9 make any indication in a
18 particular spot in the house?

19 A. Yes. The K-9 like anything else is a tool that we
20 use in fire investigation. The K-9 walked around the
21 entire house and it came up in the middle of the floor
22 there; right there where its indicated on the sketch and
23 alerted one time and a sample was taken from that area.

24 Q. And what was found from the taking of that sample?

25 A. The sample was submitted the lab and it came back

1 positive for terpenes.

2 Q. And what are terpenes?

3 A. Terpenes can either come from turpentine or it can
4 be indigenous to wood flooring.

5 Q. So when you say indigenous what do you mean?

6 A. And that's naturally occurred in older houses;
7 especially older mill houses. You know the knotty pine and
8 the really untreated wood that they used in there was a lot
9 more common. If I were to cut up a sample and send it to
10 the lab that's the only sample that we cut up but it comes
11 back because that was something that was naturally
12 occurring in that floor.

13 Q. All right. But based on your observations of the
14 scene, is there any possibility in your mind the fire could
15 have started in the bedroom?

16 A. No. Unequivocally the fire started in this front
17 living room area in the area of this couch on that front
18 wall.

19 Q. All right. I'm gonna show you a few more pictures
20 here, the rest of the house. I show you Number Thirty.

21 And where are we here on Number Thirty?

22 A. Again this is the kitchen area and this is just kind
23 of - to drive home that point when I walked back through I
24 continuously looked. I mean we have less fire damage in
25 here. We have portions of wall that are still intact. All

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1 of the ceiling, joist are still intact. And then you can
2 actually see in that back bedroom where you actually have
3 more of the walls and ceiling and in better condition.
4 When you zoom in on these when you start seeing wood was
5 squared off as is where it's protected that had less fire
6 damage obviously and didn't burn through that outer coating
7 to actually affect the studs so I mean you have less damage
8 there.

9 Q. Okay. And where would you be to get that view?

10 A. This - Just straight across like at that angle right
11 there into that bedroom from the kitchen. This is a
12 relatively small space. It is a mill house so it is - you
13 can capture quite a good bit in each of the photos.

14 Q. All right. And I'm showing you now Number Thirty-
15 nine.

16 What are we looking at here?

17 A. And again right here this is what I talked about
18 earlier. Again we have large artifacts or large pieces of
19 fire debris right there in front of me. Fire damage gets
20 higher. When you look over here the room over here on this
21 side the ceiling joists you're going into the kitchen this
22 one's consumed at the middle; this one's consumed - this
23 one's sagging as almost, you know, to the point where it's
24 fallen. This one's in worst condition. All of these
25 ceiling joist here in this right rear bedroom are still

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1 intact, you know, solid. You know they don't have - which
2 is just another indicator the fire is going this way.
3 Obviously these are consumed right here in this room.

4 And you may think and I have to consider well, why
5 don't all of the ceiling joist in this front right bedroom
6 are gone? Why aren't all the ceiling joist in the kitchen
7 gone? I mean it's a logical question and I have to be able
8 to answer that. And again that comes back to that window
9 failing at the front of the house because all of a sudden
10 that fire was oxygen deficient or it didn't have any oxygen
11 to burn but all of a sudden like we said fire is ---- it's
12 gonna follow the path of least resistance. That fire no
13 longer has to move to the front of the house to get oxygen.
14 It can move straight out this window that's right behind it
15 and go out onto that porch. And that's why we have - at
16 that point you have a transition phase in the fire. With
17 as much fire damage as you had here; had that front window
18 not failed; you'd probably put the whole - not probably,
19 the whole house would have burnt to the ground. But since
20 it did it's no longer burning towards the back of the
21 house. It's burning straight out that front window onto
22 the porch and straight across.

23 Q. All right. And now I show you Number Thirty-one.

24 Where are we?

25 A. This is after the fire was - The room was excavated

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1 and again this takes an incredibly long period of time with
2 a shovel to dig out all these things. But the floor is all
3 in good condition. These are the walls --

4 Q. And which room is this?

5 A. This is the right rear bedroom. This is the doorway.

6 If you'll zoom in right here. You have a protected
7 area. You'll see here - and when I say protected area that
8 almost looks like newer floors - that's where the clothes
9 and stuff were laying. It just protected it from the fire.
10 But right here the door's intact; the fire damage is up
11 higher. And could you scoot the photo this way a little
12 bit?

13 Q. Towards your right?

14 A. Towards you. Yeah, that way.

15 Q. Okay.

16 A. No. This way. I need to see over here that's not
17 on screen. That I want to zoom in right there.

18 Q. Okay.

19 A. And zoom in right there. And scoot it over. There
20 you go. All right, this right here, what that is, is that
21 is actually the remains of the top of that dresser. One of
22 the ways we measure the remains of the top of a dresser is
23 you can see on the other photograph and on that one too you
24 see the wires that are coming up off of it, and on the
25 photo in the other room you see the standard outlet that -

1 those are the only two plugs plugged in right there. So
2 and again it wasn't, you know, we're able to interview Josh
3 Falls, you know, the next evening that we knew what was
4 plugged in there at that time but, you know, I was able to
5 ask him the question what did you have plugged in right
6 there? And that was what corresponded to that was you
7 could tell it was the remains of a lamp, some type of, you
8 know, heater or something just the way it was melted down
9 but not knowing definitely but that's what was plugged in
10 there and we recovered them.

11 Q. And so this shot would have been taken from what place
12 on the diagram? Hold on, let me get it out.

13 A. I'm taking this again from this area here shooting in
14 this back room shooting up front. It just shows the
15 remains of that. Again the little heater we saw was right
16 there but this is the back - this is the right rear bedroom
17 like I said was the least damaged.

18 Q. I'm gonna show you now Number Thirty-two.

19 A. Just very briefly, the only thing I want to show
20 from this photo is as you can see it up closer this is the
21 fire damage coming from the living room. We burnt the
22 insides of the wall paneling off in the kitchen but it's
23 intact on the other side which just means the fire is
24 moving in that direction.

25 Q. So which wall are you looking at there?

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1 A. I'm looking at this wall. The inside of the kitchen
2 wall is burnt off but you can see the back side of the wall
3 in that bedroom that just shows the fire progression from
4 here around there and around that way.

5 Q. I'm showing you now Thirty-three. Where are we for
6 this picture here?

7 A. This is in the - the other view from the right rear
8 bedroom but this is looking towards the back of the house.
9 And again what you're seeing here is the condition of the
10 walls still intact. Also what you're seeing is even high
11 up you're seeing good protected areas of the wall studs.
12 Doors are still intact. The bulk of your major fire damage
13 is very high.

14 Q. Now if you walked through that door in that picture
15 where do you go to in the house?

16 A. You have the bathroom on the left and the closet on
17 the right.

18 Q. So just show the jury on Thirty-eight where you
19 would be.

20 A. You would have the bathroom on the left; closet on
21 the right.

22 Q. Okay. All right, I'm showing you now Thirty-four.

23 A. And that's just as you walk through the kitchen out
24 the back door.

25 Q. All right. That's the stove here?

1 A. Yeah, that's the stove there. It shows nothing. I
2 mean there was very easy to identify nothing was or had
3 been cooked on that recently.

4 Q. So where was - where were you looking?

5 A. I'm looking straight back through there. That just
6 shows the corner of the stove.

7 Q. All right, I'm showing you now Thirty-five. What are
8 we looking at there?

9 A. Again, that's out the - I believe that's out the
10 back door too. That's just showing unit; everything back.
11 The floor was in good condition. You know there was no
12 evidence of secondary fires throughout the house.

13 Q. All right. And that area there off to the left where
14 that TV and that dresser appeared to be, where is that on
15 the --

16 A. It's right there. The dresser right there. That's
17 just showing the floors. Another thing I have to consider
18 and look for is just make sure there is no secondary fires,
19 multiple fires inside the house. That's why it's so
20 important that I be down to floor level so that I can see
21 and I don't miss something that might be covered up in all
22 of this debris.

23 Q. And then Thirty-six, what's that a shot of?

24 A. It's just taking a picture of the water heater since,
25 you know, water heaters can be a potential ignition source

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1 of the fire. I just have to document it with photographs.
2 And you can see here just everything else that's in place
3 around it that that was not something that had to be
4 considered any further as being an ignition source for the
5 fire.

6 Q. Okay. And so that's the same room that we just ---

7 A. Yes.

8 Q. --- those last two pictures were the same room?

9 All right. And then Thirty-seven, let me see if I
10 can zoom this in a little bit better and tell what it is.

11 A. That's just the bathroom.

12 Q. Okay. That's the bathroom.

13 A. That was the initial pictures of the bathroom. The
14 bathroom had some collapse in it. And it wasn't much but
15 the one beam that fell down fell just so that it kind of
16 blocked the door from pushing in until we got it cleared
17 out so.

18 Q. So on Thirty-eight the - when you're looking into that
19 room where are you?

20 A. Either slide it down or scroll it. Zoom out.

21 Right there is the bathroom. I was just looking
22 through that window there.

23 Q. All right. Well after you went and spent the time
24 at and did all this processing of it, did you have
25 an opinion on whether or not you were dealing with an.

1 intentionally set fire?

2 A. On that day the only opinion that I could render was
3 that it was undetermined. And basically undetermined means
4 is that I did not have enough information available to me
5 at that time to make a decision. At that point in time
6 also I was operating under the idea that Josh Falls was the
7 sole occupant of the house. He was the last one there, he
8 supposedly left earlier in the evening, nine or so from
9 what was told by Ms. Johnson. So in my mind I had to find
10 Josh Falls and talk to Josh Falls and say, hey, what are
11 you doing before you left? Because again, he is the only
12 one that I knew to be there. She didn't have that much
13 information about the inside, so again, in that period of
14 time, you know, when they left the house to when the fire
15 was called in there are a lot of different potential
16 ignition sources that could have started the fire. The
17 more information you have to put in the closer you get to
18 the answering it. At that point in time I did not have
19 enough information.

20 Q. And so on November 25th did you come to Union?

21 A. Yes.

22 Q. The next day?

23 A. Yes.

24 Q. Why did you come to Union on the 24th?

25 A. I came to Union because Josh Falls had been in

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1 contact with the sheriff's office and that he was gonna
2 turn himself in and that he was gonna talk to us and, you
3 know, tell us, you know, whatever had happened supposedly.
4 So - And again we're thinking that's what happened. We
5 found out at that point in time that somebody had picked
6 him up and that that person was gonna drop him off. That's
7 why I ask Agent Vaughan to come with me just to interview
8 that person. So I went to Union that evening to interview
9 Josh Falls and find out, you know, what he was doing at the
10 house prior to when he left.

11 Q. And who did Falls come to the Detention Center with?

12 A. He arrived at the Detention Center with Ms. Calicutt.

13 Q. And when they got there how did you and Agent Vaughan
14 split up the responsibilities?

15 A. Again, really my only concern - I didn't know who
16 Scott - I didn't know who Josh Falls was with. My only
17 concern was at that point in time talk to Josh Falls.
18 First and foremost I had to find out what he was doing
19 inside the house.

20 THE COURT: Mr. Anthony, are you through with the --

21 SOLICITOR ANTHONY: Yes, sir. I'm sorry.

22 THE COURT: Turn the lights back on.

23 Go ahead.

24 AGENT KELLER: Me, your Honor?

25 THE COURT: No. Him. Mr. Anthony.

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1 SOLICITOR ANTHONY: All right.

2 Q. So, you decided once you met Mr. Falls out there who
3 decided who was gonna talk to who?

4 A. Myself and Scott Coffey wanted to talk to Josh Falls
5 inside the Detention Center.

6 Q. And then who was gonna talk to Ms. Calicutt?

7 A. Agent Vaughn was gonna interview Ms. Calicutt.

8 Q. All right. Now after you had your discussion with
9 Mr. Falls and Agent Vaughan had his discussion with Ms.
10 Calicutt what did you decide was the next step you needed
11 to take in the investigation?

12 A. Well the - It was at that point in time when looking
13 at the time frames given to me it was decided that Ms.
14 Calicutt would have the information on how the fire started
15 because at that point in time I mean Josh Falls basically
16 states is that Crystal was there. And that's what he says
17 and when he says that to me I had no idea somebody else was
18 there because when you look at that time frame that he was
19 giving it makes no sense to me and I didn't know what she
20 had to say that she would not have been able to tell me
21 exactly where that fire started because Josh Falls' initial
22 reaction was is that, you know, the only thing I can think
23 of that we left on in the house was this lamp that had a
24 beanie cap on it just to dim the lights. And then the
25 space heater. But when he was indicating to me where those

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1 were inside the house that's on the opposite - I'm looking
2 at a fire in the front living room. In the front living
3 room and where he's telling me, you know, he kept those
4 items, the lamp and the heater plugged in was on the back
5 wall of the bedroom. So I mean that could be further away
6 from where the fire started. Something else had to be in
7 that area. He couldn't tell me anything that was in that
8 area so I had to definitely talk to Ms. Calicutt now. But
9 what was so important about when Agent Vaughan interviewed
10 her and came out to me was the questions that he had ask
11 her because initially in talking to Ms. Calicutt she says I
12 was not smoking. You know didn't leave anything on and you
13 know one or the other I think both were ask were they
14 cooking and nobody said they were cooking. But - And she
15 talked about the, you know, how they used their space
16 heaters and where they were located. But she had no
17 indication of any fire in there where I'm finding the fire.
18 And not only that she, you know, give me an explanation
19 that she supposedly left at that point in time. And keep
20 in mind when I spoke with the fire department and how the
21 911 call came in cause this fire had burned long enough for
22 somebody several streets over to discover it right off and
23 then call 911. So I mean it wasn't something that happened
24 in a matter of minutes. This fire had to burn long enough
25 to actually breach out of a window and that somebody that

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1 was, you know, whether who it was that saw the fire it had
2 to burn long enough for somebody at that time of night to
3 see it. It wasn't something that was instantaneous.

4 Q. So what was - what arrangement was made or what plan
5 was - did you all come up with as far as reinterviewing Ms.
6 Calicutt?

7 A. And again that was just totally new information that
8 changed everything so it was decided that, you know, step
9 back and evaluate what the case - what we've seen and we
10 need to interview Ms. Calicutt the following day.

11 Q. And did Ms. Calicutt come to the sheriff's office
12 the next day?

13 A. Yes she did. And - -

14 Q. Did she talk to Investigator Black?

15 A. Yes, sir, she did.

16 Q. All right. And then after Lieutenant Black
17 interviewed her what contact was made with you?

18 A. After Lieutenant Black interviewed her Investigator
19 Coffey and myself spoke with her as well. And again all
20 that I do is fire investigation. A lot of my questions
21 therefore are specifically tailored around fire
22 investigation. A lot of times, you know, when I ask
23 somebody something they won't tell me or know unless I ask
24 specifically cause they might not think it would be
25 relevant to a fire starting. That's why we ask all of

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1 those specific questions. The very first night she was ask
2 by Agent Vaughan did you leave any candles, you know,
3 burning? Anything on? Were you smoking? All of these
4 questions that are kind of base line questions we go to
5 that we have to consider. When she's with Lieutenant Black
6 she's ask again about, you know, is there anything you
7 could think of that started the fire. She offers a new
8 piece of information then is that, you know, there's
9 nothing in the living room that could have started the
10 fire. And the only thing that was, you know, energized in
11 there was this surge protector with stuff plugged into it
12 and I unplugged it, you know, and never plugged it back up.

13 So again she's taking away any accidental ignition
14 sources in that living room so, I have absolutely, you
15 know, as far as what she's telling me does not line up with
16 what I am seeing at the scene.

17 Q. Well when --

18 A. She's even ask was she alone and she said she was
19 alone. So I mean - -

20 Q. When you spoke to her did you ask her if Mr. Falls had
21 come back to the house before she left?

22 A. Yes.

23 Q. And what did she say?

24 A. No.

25 Q. Did you ask her if she'd been under the influence of

1 any drugs that night?

2 A. Yes. And that is not with Ms. Calicutt. That is
3 every single person to, you know, I've ever talked to in a
4 fire investigation. Were you under the influence of any
5 alcohol or drugs, you know, at the time of the fire
6 especially somebody who is around the fire because people
7 can do things that they wouldn't have normally done sober
8 that could accidentally cause a fire. They're afraid to say
9 something thinking there's some criminal aspect to it. So
10 I mean that's the opportunity I give everybody. Tell me
11 now were you under the influence of anything? You know is
12 there something you may have done while under the influence
13 of something that you're not telling me because you think
14 I'll be in trouble. And I told her specifically then I'm
15 not looking for drug violations. I'm looking at a fire and
16 trying to find out what happened. I just needed to know
17 was she competent and coherent when she was talking to me.
18 And she said absolutely not she was not under the influence
19 of anything.

20 Q. And speaking about Mr. Falls, did she tell you that
21 she and Mr. Falls had been in contact that night? That he
22 had called her.

23 A. Yes.

24 Q. But never come back to the house?

25 A. Yes.

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1 Q. All right. And as far as this surge protector goes,
2 what did she tell you about the surge protector?

3 A. She said that it was in the living room and that when
4 she was vacuuming after she went through there it was
5 unplugged and she never plugged it back in.

6 Q. And did you in speaking to her did you speak to her
7 about possible accidental causes of the fire?

8 A. Yes.

9 Q. And was she ever able to give you any accidental
10 way that this fire could have - -

11 A. No she was not. It was, you know, were you smoking,
12 did you have candles burning, did you, you know, acci - I
13 mean did you accidentally do something that you can think
14 of that could have? Did you move the space heater you
15 forgot to tell us about? I was just looking for anything
16 because again I have to give all of these options out there
17 before I can, you know, look at my fire scene again in
18 light of that new evidence and determine what happened.
19 And again that is, you know, that time I spoke to her and
20 she said no there was not; that when she got home she saw
21 the fire and it happened. And I explained to her like I'm
22 explaining to you that that's impossible. I mean I
23 explained to her the time frame; how narrow that time frame
24 was and how it was just impossible and she was saying, you
25 know, that's all I got.

1 Q. Well after you spoke to her on the 26th, what was the
2 next thing you did in the investigation?

3 A. On the 26th I mean it was just a continue to look at
4 the information and try to verify everything that we have.

5 Q. Did you?

6 A. But Josh Falls we actually went back and spoke with
7 him again at the Detention Center.

8 Q. Okay.

9 A. Because one of the things that we left out was, you
10 know, that day before you left was, you know, were you and
11 Crystal Calicutt doing any type of drugs. And he says, you
12 know, yes we were. And she was very under the influence of
13 those drugs.

14 Q. And after having that interview with Mr. Falls, did
15 you want to speak to Ms. Calicutt?

16 A. Yes I did because she was bluntly not truthful. That
17 question was ask of her numerous numerous numerous times
18 and every possible way. Telling her she would get in no
19 trouble for telling me she was taking anything and she said
20 no, no, no, no, no I was not. So we definitely needed to
21 talk with Ms. Calicutt again and find out why she was not
22 being truthful about that because I need the truth in all
23 aspects not just what she chooses to.

24 Q. And did she - Did you come to interview her again?

25 A. Yes we did.

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1 Q. And when was that?

2 A. I believe it was on December the 9th.

3 Q. Where did you talk to her?

4 A. At the Union County Sheriff's Office.

5 Q. And who did you speak to her with?

6 A. Myself and Agent Vaughan had interviewed her. We used
7 - down that - Investigator Coffey's office in the sheriff's
8 office. He was present as well.

9 SOLICITOR ANTHONY: I need that. It would be One
10 and Two. Here they are. Thank you. Sorry about that.

11 Q. All right. I'm gonna show you what's been marked
12 for identification as State's Exhibit Number One. Ask if
13 you recognize that document?

14 A. Yes, sir, I do.

15 Q. All right. And what is that?

16 A. That is a *SLED Miranda Rights Waiver*.

17 Q. Okay. And did you use that in interviewing Ms.
18 Calicutt on December 9th?

19 A. Yes, sir, I did.

20 Q. And how did you use it?

21 A. To advise her of her *Miranda* rights. It also
22 documents who I'm advising of those rights; where we're at
23 and what was it based on?

24 Q. Okay. And did you indicate all those things on
25 that form?

1 A. Yes, sir, I did.

2 Q. Okay. And then how did you go about advising her her
3 rights on that day?

4 A. With everybody I set beside 'em I turn the paper
5 around facing them and I say, you know, I have to advise
6 you of your Miranda rights just so that you know since
7 you're in our office that, you know, what your rights are
8 and I encouraged her to read along with me and I read these
9 out to her, you know, starting at the beginning. When we
10 get down to the end I ask that she initial in the places to
11 say that I told her what her rights were and explained them
12 to her and also did indicate yes or no right here when it
13 ask the questions do you understand these rights and do you
14 wish to talk at this time to which she indicated yes to
15 both questions.

16 Q. Okay. And did she initial on the form; that set of
17 CC initials is that hers?

18 A. Yes, sir.

19 Q. Indicate she understood the rights you were giving
20 her?

21 A. Yes, sir, she did.

22 Q. Okay. And is that form which is Exhibit One, is it
23 still in the same condition it was in when you advised her
24 of her rights on November the 9th, 2013?

25 A. Yes, sir.

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1 Q. All right.

2 SOLICITOR ANTHONY: We move Number One into evidence.

3 MR. DELANEY: No, objection.

4 THE COURT: In without objection.

5 (WHEREUPON, STATE'S EXHIBIT NUMBER ONE, IDENTIFIED AND
6 MARKED, RECEIVED INTO EVIDENCE.)

7 BY SOLICITOR ANTHONY:

8 Q. And if you would just tell the jury how the interview
9 with Ms. Calicutt went that day.

10 A. The whole topic of the interview with Ms. Calicutt
11 that day was, you know, her being untruthful with us about
12 taking something, you know, during that day. I mean
13 obviously and not only that the way that it was reiterated
14 to us or told to us was that it wasn't like she just took
15 something. She was heavily under the influence of
16 something. And she stated that, you know, she didn't think
17 that was important and that's why she didn't tell us. And
18 we told her - I told her many times is that how many times
19 I ask you if it's definitely important to me so that we
20 could have talked about that and explore other things. And
21 I said we ask all pretty much the same questions over and
22 over again but a lot of it's centered around her not being
23 honest with us about taking - being under the influence at
24 the time of the fire.

25 Also throughout our initial contact with Ms. Calicutt

1 different ignition scenarios or different things that could
2 have ignited a fire have come up giving her could this have
3 happened; could this have happened, any of those things.
4 We've covered everything numerous times in every single
5 interview. She said nothing could have happened. All of a
6 sudden in this last interview on December 9th she says well
7 I had a candle burning in the living room. Also we, you
8 know, our initial is the fire started in the bedroom or it
9 could have been in the bedroom because that's where the
10 candle and the heater were to all of a sudden we've talked
11 about the bedroom, the living room where there is so much.
12 We've ask her about candles, cigarettes, everything else in
13 the past. She's mentioned nothing but all of a sudden in
14 this subsequent interview she goes oh I forgot to mention I
15 left candles burning.

16 Q. And what did she say - She said she burned candles
17 that day. What did she say she'd done subsequently to
18 leave?

19 A. Well in that's the reason why I ask her because
20 candles get into a whole different aspect of things just
21 because every candle is different. Most candles that are
22 manufactured today have approximate burn times on 'em.
23 There are some candles that will burn for thirty or forty
24 hours. You know there are some little small candles that
25 are, you know, an hour or two hour candles. There are

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1 little tea like candles and they'll have an approximate
2 burn times on 'em, so I wanted to get her to describe to me
3 what type of candles these were. So I'm like, you know,
4 it's the first I've heard of it but I have to know where
5 were the candles at. So she indicates that the candles
6 were towards the back wall of the living room near where
7 the - in the area of where like the brick fireplace was
8 along the back area.

9 And I said were these - and I remember using my hands
10 and I said were these the big round candles or, you know,
11 and she said no they were the skinny taller candles; they
12 were red. And I ask her about those and she even made the
13 comment that she thought she blew them out earlier in the
14 day, she didn't know, and I said - she said I don't see how
15 that could have started a fire. And I even explained to
16 her then I said that's on the wrong side of the room from
17 where I'm even saying the fire started at so that's not
18 really relevant. Even this late in the game that's not
19 relevant to me just because how did a candle mysteriously
20 get all the across the room even if it was lit and left on.
21 I mean it's just, you know, in that amount of time. I ask
22 several questions about that and ask her to write a
23 statement. I put that in the statement for her.

24 Q. And going back to the drugs, what did she tell you
25 she'd been taking that day ---

1 A. She had ---

2 Q. --- or using that day?

3 A. --- been taking some marijuana and another drug
4 that I have to ask about that Josh had give her. Suboxone
5 or Subutex that would - I think it was a generic of what
6 they have but that was a drug that Josh had along with some
7 marijuana during that day..

8 Q. All right. And did you do anything to have her
9 document what she was telling you during this interview
10 on December the 9th?

11 A. Yes, sir, I did. I had her complete a written
12 statement.

13 Q. And I'm handing up what's been marked for
14 identification State's Exhibit Number Two. Ask if you
15 recognize that document?

16 A. Yes, sir, I do.

17 Q. What is that?

18 A. This is a written statement completed by Crystal
19 Gail Calicutt in her own writing on a voluntary statement
20 form for one of our SLED voluntary statement forms.

21 Q. And does that statement in the same condition it was
22 in when it was taken on December 9th?

23 A. Yes.

24 Q. Okay.

25 SOLICITOR ANTHONY: We move Number Two into evidence.

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1 MR. DELANEY: Without objection.

2 THE COURT: In without objection.

3 (WHEREUPON, STATE'S EXHIBIT NUMBER TWO, IDENTIFIED AND
4 MARKED, RECEIVED INTO EVIDENCE.)

5 BY SOLICITOR ANTHONY:

6 Q. When - As far as the top part of the statement form
7 goes, was there any preliminary information taken from her
8 before she wrote out that statement?

9 A. Yes. It's just all of her particulars. Crystal
10 Gail Calicutt, of , female, social security number,
11 her current address telephone numbers for her and the date
12 and time which was December 9th, 2013 at 02:36 pm in Union
13 County Sheriff's Office.

14 Q. Okay. And if would what was the telephone number, the
15 cell number she gave for herself?

16 A. Her cell phone number is area code -0099.

17 Q. Okay. And did she give a number for her mother?

18 A. Yes she did.

19 Q. Okay. And what was that number?

20 A. Area code 1-8553.

21 Q. No. The - Well did she give another number?

22 A. For her dad she gave me another - and these are just
23 other numbers we could reach her at was a 864-441 --

24 Q. Okay. I'm sorry, that was the one that was the one
25 that just gave out - 553. That was what I had listed.

1 I'm sorry.

2 A. Okay.

3 Q. Okay. Well if you would, you have the statement up
4 there, if you would just read what she put in that
5 statement to the jury.

6 A. First of all the top of this just says, "I Crystal
7 Calicutt understand that I do not have to say anything and
8 I volunteer the following information on - of my own free
9 will for whatever purposes it may serve. I can read and
10 write and completed the ninth grade in school."

11 The part that she wrote in her handwriting says,

12 "Josh called told me to get out of house. I left out
13 of the house. I then called his sister to see if she would
14 go get Josh. He was running from the police. His sister
15 and I talked for seventeen minutes. She said that's how
16 long our conversation lasted. I forgot to mention the long
17 red candles we lit earlier that day when I gave my
18 statement before. I have then put little pieces together
19 of what may have happened. No I have not went over my
20 story with anyone. This is the truth what I'm saying
21 before I was shocked about everything that was going on. I
22 understand how that what I left out was or understand now"
23 - I'm sorry - "I understand now that what I left out was a
24 big deal. No I didn't say I took anything cause honestly I
25 forgot about taking anything and I was not messed up to

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1 where I didn't know what was going on. I was aware of my
2 surroundings. I didn't have anything to do with the house
3 fire and I don't know if anyone who does but I hope they
4 find out who done it."

5 Q. All right. Well, Agent Keller, after doing these
6 interviews and doing this final interview with Ms.
7 Calicutt, did you - or doing the forth interview with her -
8 did you make a decision as to whether this fire on Church
9 Street in Buffalo was an arson?

10 A. Yes, sir.

11 Q. And in your opinion what - what led you to form an
12 opinion as to whether or not it was an arson?

13 A. And this last and final statement did because like I
14 mentioned earlier from the very first time I arrived on
15 scene at 8:25 that morning I was evaluating this scene in
16 the context of the information that I had. You know I
17 covered every potential scenario that I could get. I mean
18 I knew the distance from her house; about how long it would
19 take to get there. I'm looking at the fire damage that I
20 see to the house that she was in and, you know, there is no
21 time frame that I could a lot based on when she left and
22 the records are just basically when Josh left and called
23 and told her to get out and supposedly she was there for
24 whatever time talking to Tabitha before she walked out the
25 door. But nothing that I could look at would give me any

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1 potential accidental ignition sources in that room. There
2 was nothing I found at the fire scene so I said I had to
3 look. So - And I mean early on the reason why I said it
4 was undetermined is because, you know, actually looking at
5 something, you know, there I didn't find any remnants but a
6 lighter is not gonna remain behind. You know a lighter
7 lighting available materials which is what is in that room
8 is what --

9 THE COURT: Is there any evidence of a lighter being
10 used in this case?

11 A. Its an ignition.

12 THE COURT: I know it's an ignition.

13 A. It's an ignition I have to --

14 THE COURT: But you're telling the jury that -
15 something about a lighter and I haven't heard anything
16 about a lighter.

17 A. I have to consider open flame as a potential ignition.

18 THE COURT: I understand that. But I haven't heard
19 anything about a lighter in this case so let's move on.

20 A. Okay.

21 BY SOLICITOR ANTHONY:

22 Q. Would you expect a fire to or how to be - to go from
23 just being set to fully engulfing a house in five to ten
24 minutes?

25 A. No.

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1 Q. And why is that? Briefly why would that be?

2 A. In those rooms and under those conditions there is
3 nothing at the fire scene that was observed in the damage
4 that would indicate that that was possible. Because if
5 that were to happen in the five to ten minute range, you
6 know, the entire back side of the house on the inside were
7 not have been burned it - All of your fire damage would
8 have been basically focused on the front side and vented
9 out that window. Everything inside of the fire scene
10 indicated that the fire developed for a long period of time
11 inside. You actually had a fire that developed a heavy
12 smoke there all the way down to floor level before it
13 actually developed enough heat to breach through that
14 window on the front. That sudden introduction of oxygen is
15 what allowed the fire to take off again. It would have
16 been, you know, some noise involved with that at the glass
17 breaking and then the oxygen being reintroduced with the
18 fire. And then that is actually the rapid fire that would
19 have been seen very quickly from those around but it would
20 not have been something that would have been a couple of -
21 it would have taken some time.

22 Q. Okay. Would you expect in talking about candles would
23 you have expected candles near the back of that living room
24 where Ms. Calicutt's said they were being an accidental
25 ignition source?

1 A. Not for the fire damage. Again, that we seeing the
2 damage would have been different. You know the fire would
3 not have easily breached out of that window on the front
4 room of the house. It would have traveled more quickly to
5 the kitchen area. But furthermore, even if the candles did
6 fall or were knocked off accidentally or anything else
7 happened right there, there was no fuel load or something
8 that would have been right around that area for them to
9 have ignited and burn in that room in that period of time.

10 Q. And would you have expected a cap placed on a lamp
11 to have - in the location where you found the lamp to have
12 been the cause of that fire?

13 A. No, sir, especially if there is a shade because the
14 window shade or the lamp shade would have allowed the heat
15 to dissipate out the bottom. It wouldn't have trapped it
16 inside and got hot enough, you know, especially since it
17 was on top of the shade but furthermore when we discussed
18 the beanie cap, toboggan, whatever it was, you know, that
19 was something that was left on there for long periods of
20 time before. So to say that, you know, that that happened
21 without her saying I smelled smoke, I smelled this, saw
22 this before I left, that it just magically and also there
23 was - that was not in the area where the fire originated in
24 that bedroom.

25 Q. Okay. So once you conducted these interviews you

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1 made an assessment of what you knew about the fire and what
2 Ms. Calicutt was telling you about what her activity was
3 that night, did you in consultation with Investigator
4 Coffey make any kind of decision about making a charge in
5 the case?

6 A. Yes, sir.

7 Q. And what was that decision?

8 A. That Ms. Calicutt would be charged with arson third
9 degree.

10 Q. Okay. And did you see Ms. Calicutt again during -
11 after a warrant was sought for her arrest?

12 A. Yes, sir.

13 Q. All right. And if you'd look at Exhibit One there's
14 two sets of signatures - of initials on that form. Could
15 you just briefly explain how they got there; how that
16 second set of the CC initial got on the form?

17 A. Yes, sir. On the 10th since I had just talked to her
18 the previous day and had this sheet in my possession the
19 entire time and not changed when Ms. Calicutt we met up
20 with her and at the Union County Detention Center I advised
21 her of her *Miranda Rights* again before we told her
22 everything about the charges and that was again at the
23 Union County Detention Center on December the 10th, 2013 at
24 05:10 pm.

25 Q. And you just went through the same process ---

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1 A. Same.

2 Q. --- of advising her of her rights?

3 A. Same exact thing.

4 Q. All right. And after you did that when you went to
5 speak to Ms. Calicutt did she have anything to add to what
6 she told you before?

7 A. No, she did not.

8 Q. Now, after you charged did you do anything in regards
9 to trying to secure the phone records of Ms. Calicutt?

10 A. Search warrants were sent for - A search warrant
11 was sent for her phone records, yes, sir.

12 Q. And who would - Who is that from? Who had her phone
13 records?

14 A. I think it was AT&T.

15 Q. Okay. And other than that did you do any kind of
16 any further investigation in the case?

17 A. No, sir.

18 Q. And is Ms. Calicutt here in the courtroom?

19 A. Yes, sir. She's seated right there.

20 Q. All right.

21 SOLICITOR ANTHONY: I'd ask the record reflect he's
22 pointed out the defendant. And that's everything on
23 direct.

24 (WITNESS INDICATED TO DEFENDANT CRYSTAL CALICUTT.)

25 THE COURT: All right. We'll break for lunch then

1 'till 2:45. Have a pleasant lunch and we'll see you back
2 at quarter 'till three.

3 (JURY EXITS COURTROOM ON LUNCH RECESS AT 01:25 PM.)

4 THE COURT: Anything before we break for lunch?

5 SOLICITOR ANTHONY: No, sir.

6 THE COURT: Defense?

7 MR. DELANEY: No, sir.

8 THE COURT: All right. Officer, you can step down
9 and have lunch. We'll be back at a quarter - whatever I
10 said.

11 (COURT IN LUNCH RECESS AT 01:25 PM.)

12 (COURT BACK IN SESSION AT 02:47 PM.)

13 THE COURT: You can come on back up, Agent Keller.

14 (WITNESS RETURNED TO WITNESS STAND.)

15 THE COURT: All right, is the State ready?

16 SOLICITOR ANTHONY: Yes, sir, we're ready.

17 THE COURT: Is the Defense ready?

18 MR. DELANEY: Yes, your Honor, we're ready.

19 THE COURT: You can bring in the jury.

20 Ready for Mr. Delaney's scorching cross-examination.

21 (JURY REENTERS COURTROOM AT 02:48 PM.)

22 THE COURT: Mr. Delaney, you may proceed.

23 MR. DELANEY: Thank you, your Honor.

24 CROSS-EXAMINATION

25 AGENT BRAD KELLER BY MR. DELANEY:

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1 Q. Good afternoon, Agent.

2 A. Keller.

3 Q. I said good afternoon, Agent.

4 A. Oh, I'm sorry. I couldn't hear you.

5 Q. I'm sorry. I'll speak up. Now you - you were the
6 - obviously you were the fire investigator who came into
7 this case. Right?

8 A. Yes, sir.

9 Q. You were there to investigate this fire. Correct?

10 A. Yes, sir.

11 Q. Okay. That gentleman was I guess the lead
12 investigator here in Union County. Correct?

13 A. And that's with SLED in assisting agencies so ---

14 Q. Okay.

15 A. --- we don't have the primary jurisdiction. We come
16 at their request to assist them in a speciality field
17 fire investigation.

18 Q. So Investigator Scott Coffey he was the lead
19 investigator here in Union County. Correct?

20 A. Yes, sir, he was.

21 Q. Again, with SLED you're coming in; your speciality
22 is you're looking at this fire scene. Right?

23 A. Yes, sir.

24 Q. Okay. One thing - And let me ask you - I'll back up
25 a little bit. As the investigator for SLED of this fire

AGENT BRAD KELLER: CROSS BY MR. DELANEY

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1 you prepared, generated, some different documents in this
2 case. Correct?

3 A. I generated an investigative report with attachments
4 of everything that I received during the investigation.

5 Q. Right. And you had the opportunity to review what's
6 in that packet. Correct?

7 A. Yes, sir, I did.

8 Q. Okay. Now, I'm confused and you have attachment One
9 available in your packet?

10 A. Let me make - cause some of 'em were turned into
11 evidence let me make sure. Attachment One being the fire
12 report?

13 Q. Yeah. That's the fire ---

14 A. Yes, sir.

15 Q. --- report?

16 A. Yes, sir, I do.

17 Q. Okay. Cause I heard - I mean obviously we heard a
18 lot of testimony from you about the origin of the fire.
19 Correct?

20 A. Yes, sir.

21 Q. Okay. And it was your testimony today that the origin
22 of the fire was in the living room. Correct?

23 A. Yes, sir, it was.

24 Q. Now the fire - What I'm confused is the fire report
25 that I have --

AGENT BRAD KELLER: CROSS BY MR. DELANEY

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1 SOLICITOR ANTHONY: Objection. The fire report is
2 hearsay.

3 MR. DELANEY: Your Honor, I would --

4 THE COURT: Who prepared the fire report?

5 MR. DELANEY: I don't know. I assumed the fire
6 report --

7 THE COURT: Well, lay a better foundation.

8 BY MR. DELANEY:

9 Q. Now you and obviously the jury's heard, you been
10 - you been qualified as an expert in this case. Right?

11 A. Yes, sir.

12 Q. And you were called in to investigate this fire
13 from SLED. Right?

14 A. Yes, sir.

15 Q. And did you generate this fire - this fire report
16 here?

17 A. No, sir, that was just something - That's what I
18 picked up from the fire department. That's why it says
19 attachment.

20 Q. Okay. So this fire report comes from what fire
21 department?

22 A. From the fire department - the responding fire
23 department.

24 Q. Okay.

25 A. It - It says just Buffalo Fire Department.

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1 Q. Okay. Now you've had an opportunity to review this
2 document. Correct?

3 A. Yes, sir.

4 Q. As part of your investigation you included this in
5 your packet from SLED. Correct?

6 A. Yes, sir.

7 Q. Okay.

8 MR. DELANEY: Your Honor, at this --

9 THE COURT: I over rule the objection.

10 Go ahead, you can ask him about it.

11 BY MR. DELANEY:

12 Q. Now, in this report here that I find out today was
13 made by the Buffalo Fire Department where did they have the
14 area of origin of the fire?

15 A. I would have to look. The primary reason we gather
16 the fire report is to get the time of the --

17 Q. Well, that's not my question.

18 A. That's why I said I have to --

19 SOLICITOR ANTHONY: Your Honor, may I be heard on this
20 just briefly?

21 THE COURT: All right, let the jury go to the jury
22 room just a minute.

23 (JURY EXITS COURTROOM AT 02:53 PM.)

24 THE COURT: Well it is hearsay but if it's part of
25 his record and part of what he used in his analysis I think

1 they got a right to cross-examine on everything he used in
2 reaching his opinion. Whether he included it or excluded
3 it I think they have a right to cross-examine him on it.

4 SOLICITOR ANTHONY: I would - I agree with that but
5 I don't think he said that he used this report in forming
6 his opinion.

7 THE COURT: Well he said he had --

8 Ask him the question again. I thought he said he
9 had it and - Let's read back what was his answer?

10 MADAM COURT REPORTER: Just a minute, Judge.

11 THE COURT: Wait, before you do that go back on the
12 record. I'm not sure that he has to have used it to rely
13 on. I think that if he had it and reviewed it then they've
14 got the right to ask him why he rejected it.

15 SOLICITOR ANTHONY: I think my position would be that
16 he needs to - he needs to have given it consideration in
17 forming his opinion before he can be ask about it.

18 THE COURT: Either positively or negatively.

19 SOLICITOR ANTHONY: Yes, sir. I think he has to still
20 give it consideration in forming his opinion.

21 THE COURT: Lay a foundation then.

22 MR. DELANEY: And, your Honor, I would just argue that
23 he's been qualified as an expert to give his opinion on
24 this fire and this is the fire - it's a fire report.

25 THE COURT: Well I know but I - it's something - What

AGENT BRAD KELLER: CROSS BY MR. DELANEY - IN CAMERA

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1 if a next door neighbor filled out a fire report and handed
2 it in. I mean there is no value, it's hearsay and so - But
3 if he uses it; if he reviewed it and relied on it; if he
4 reviewed on it and made - had a reason to disregard it but
5 if he just says I put it in my file - and I'm not trying to
6 coach him obviously cause he's gonna tell the truth which
7 ever one it was - you know we're bound by what happened.

8 But if he disregarded it you got a right to ask him
9 why. So you want to do that outside of asking - lay a
10 foundation.

11 MR. DELANEY: Sure.

12 CROSS-EXAMINATION - IN CAMERA

13 AGENT BRAD KELLER BY MR. DELANEY:

14 Q. Agent Keller, the packet you prepared for SLED you
15 testified it had various attachments in that file?

16 A. Yes, sir.

17 Q. And various reports; is that correct?

18 A. Yes, sir.

19 Q. Okay. And specifically attachment one is a fire
20 report; is that correct?

21 A. Yes, sir, it is.

22 Q. And you had an opportunity to review this report.
23 Correct?

24 A. Yes I received the report.

25 Q. Okay. And you received it and you reviewed it; is

1 that correct?

2 A. Yes, sir, but beyond the call, the received time,
3 that's pretty much the only thing I rely upon because if
4 they're asking me to come and render an opinion they didn't
5 know what started the fire so - I mean what I'm looking at
6 in my analysis going through everything else is I look at a
7 hard time that can be gone or a hard time that something
8 can be relied upon as something initiates the event. That
9 would be the time that is referenced in my - that I
10 referenced in a narrative report which you get off page one
11 of the fire department which it says on 11/24/2013 at
12 00:43. That and the arrival time so is pretty much the -
13 everything I look at in any fire report because again
14 anytime a fire - a fire department if they knew what
15 started the fire or where the fire started they don't call
16 me.

17 THE COURT: Well ask him if he reviewed the whole
18 report or whether he just looked at the add - the dates and
19 times.

20 A. Oh, I'm sorry. What you ask me to find I looked at
21 for the first time today.

22 MR. DELANEY: I mean I ask him when the jury was in,
23 your Honor, if he reviewed this report and he testified he
24 reviewed this report.

25 A. Well --

AGENT BRAD KELLER: CROSS BY MR. DELANEY - IN CAMERA

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1 MR. DELANEY: Now he's testifying that he's reviewed
2 a couple of things. Initially the time and that's it but
3 --

4 THE COURT: Well just ask him if he read the report.
5 BY MR. DELANEY:

6 Q. Did you read this report?

7 A. No, sir, not in its entirety from front to back. And
8 I can say unequivocally I never did. I mean I can sit and
9 most time with the fire --

10 THE COURT: We're not concerned about never. We're
11 concerned about this case.

12 A. Yes, sir.

13 THE COURT: So I'll sustain the objection if he didn't
14 review it. He can't be cross-examined on it so bring --

15 But we've got - Do you want to make it a part of the
16 record for Appellate review.

17 MR. DELANEY: I would, your Honor.

18 THE COURT: Okay. We'll make that as a Court's
19 Exhibit.

20 MR. DELANEY: Okay. Thank you.

21 THE COURT: All right. Bring in the jury.

22 MR. DELANEY: And, your Honor, I guess - would you
23 require me to do anything else at that time or we'll just
24 make it a part of the record now.

25 THE COURT: Yeah.

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1 MR. DELANEY: Okay.

2 (WHEREUPON, COURT'S EXHIBIT NUMBER ONE, IDENTIFIED BUT
3 NOT MARKED AND RECEIVED INTO EVIDENCE.)

4 (JURY REENTERS COURTROOM AT 02:53 PM.)

5 THE COURT: All right, you may continue.

6 MR. DELANEY: Thank you, your Honor.

7 CROSS-EXAMINATION - CONTINUES

8 AGENT BRAD KELLER BY MR. DELANEY:

9 Q. Agent Keller, part of your investigation we've heard
10 - I guess today or yesterday there was a - out of not
11 Buffalo - there was a fire - there was one particular fire
12 department fire fighter - Gardin - he was the first on
13 scene. Correct?

14 A. Yes, sir, that was my understanding.

15 Q. And you heard his testimony as far as where the fire
16 was coming from when he saw the house. Correct?

17 A. Yes, sir.

18 Q. Okay. And that would be on the I guess if you're
19 facing the house and the way you were describing it earlier
20 looking into the house that's the right side that first
21 right side of the house where you collected evidence.
22 Correct?

23 A. That's not what I heard. Him say when the fire
24 department talked to I understood to say the front left
25 side cause he said he attempted to pull the meter base and

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1 the meter base is on the right side. If the fire was
2 coming from the right side he couldn't have gotten near the
3 meter base.

4 Q. Okay. So you didn't hear his testimony yesterday that
5 it was not the way I questioned him but it was the left
6 side of the house as you're facing out in the street the
7 left side of the house where the bedroom that's where he
8 saw the fire. You didn't hear that testimony yesterday?

9 A. You just confused cause what I heard is from looking
10 at the house he said the fire was towards the left side.
11 And he said when he got there he wanted to go and get the
12 meter base to make sure that the powers disconnected from
13 the house cause obviously they're gonna put water on it.
14 The meter base and from my sketch and the photos is on the
15 right side of the house. And it doesn't matter what kind
16 of turn out gear or anything else you have on you wouldn't
17 a been able to approach and go to the right side of the
18 house if the fire was burning out that right side of the
19 house. It was on the left side of the house is what the
20 testimony that I listened to if looking at it from Church
21 Street like this the left side in front of the living room
22 then the bedroom's on the right side looking at it from the
23 front that's what I heard him say.

24 Q. I don't know if we're just getting caught up in
25 words or what now. If you're walking out the front door of

AGENT BRAD KELLER: CROSS BY MR. DELANEY

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1 that house --

2 THE COURT: Can I made a suggestion? Why don't you
3 - He looks at it from the front.

4 MR. DELANEY: Right.

5 THE COURT: Just why don't you use that same
6 orientation cause you're flipping it around and I think its
7 confusing ---

8 MR. DELANEY: Sure.

9 THE COURT: --- the jury. I don't know if it's
10 confusing the witness but let's just all look at it from
11 the same --

12 MR. DELANEY: Sure.

13 Q. The way you described it earlier when you testified
14 on direct was the scale you did the right side is that
15 front bedroom. Correct?

16 A. The right side. Yes, if you're looking at the front
17 of the house the right side is the front bedroom yes, sir.

18 Q. Testimony yesterday from the first fire fighter that
19 arrived on scene was that he saw fire on the right side of
20 the house. Correct?

21 A. That's not what I understood him to say nor the - I
22 understood him to say when he was ask there was on the left
23 side he attempted to go to the meter base which is on the
24 right side which he would not have even been able to see
25 the meter base if the fire was burning on the right side.

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1 Q. Okay. And as the fire investigator in this case you
2 - you're aware that there was some eyewitnesses - there was
3 some people and the neighbors that saw the fire. Correct?

4 A. Yes, sir.

5 Q. Do you know what side of the house was being
6 described? Was it the right - Was it the right side or the
7 left side or the middle that they were saying they saw fire
8 on?

9 SOLICITOR ANTHONY: Well I'd object to that question.

10 MR. DELANEY: I'll rephrase.

11 THE COURT: I sustain. That's hearsay. I sustain
12 that.

13 MR. DELANEY: I'll rephrase.

14 Q. The neighbor that saw the fire, saw a fire on the
15 right side of the house. Correct?

16 SOLICITOR ANTHONY: Well, objection. That's hearsay.

17 THE COURT: I sustain the objection. That's based on
18 hearsay.

19 BY MR. DELANEY:

20 Q. All right. We'll move off origin and we'll get into
21 the cause. Okay. You testified a little earlier before we
22 broke for lunch that - How much time did you spend there
23 investigating the fire? How many hours?

24 A. I don't know an exact time.

25 Q. Well --

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1 A. But I mean it was five, six hours. I mean if not a
2 little bit longer.

3 Q. Okay. And after that and after all the experience
4 that we have - we heard that you have in investigating
5 fires here today, it was your testimony to this jury that
6 that - at that time with the evidence showed at that fire
7 scene it was your conclusion that this fire was
8 undetermined. Correct?

9 A. Yes, sir, that day at the fire scene.

10 Q. Okay. At the fire scene. Right?

11 A. Yes, sir.

12 Q. Okay. Because you testified and I think we heard a
13 little earlier that there are some different I think it can
14 be incendiary if I'm saying that correctly. It can be
15 accidental, it can be natural causes, it could be
16 undetermined. Correct?

17 A. Yes.

18 (WITNESS ANSWERED IN A VERY LOW VOICE.)

19 Q. Okay.

20 THE COURT: All right, you got to answer questions.

21 A. Yes. I'm sorry. I - Yes, sir.

22 BY MR. DELANEY:

23 Q. And we have some other things I guess that are
24 undetermined in this case as far as heat source. Correct?

25 A. I - I don't understand that question because I mean

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1 if there's anything that's specifically as far as that
2 you're talking about that is - -

3 Q. Well, . . . Now the type of - I'll go on to the next -
4 The type of any item that was potentially ignited in this
5 case that's undetermined. Correct?

6 A. You mean the first material ignited?

7 Q. Sure.

8 A. It would have been available material; something - the
9 items that were available in that living room at that given
10 point.

11 Q. Right. But you weren't - As the investigator you
12 weren't able to determine anything were you?

13 A. The sofa, the available - that's a generic term used
14 in fire investigation. No matter what the cause may be is
15 available materials just means that there's something there
16 at the scene. Its not something somebody had to bring to
17 the scene with them, you know, they didn't have to carry it
18 inside or bring it with them to stage something. It was
19 something that was already there at that time.

20 Q. Right. And you can't say to this jury what that is.
21 Correct?

22 A. It was the sofa. The fire occurred at the sofa right
23 there inside the living room.

24 Q. Oh, so it's a sofa?

25 A. In the living room in the area of the sofa right

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1 there. Yes. And I can't tell you what was laid on it. I
2 mean some people have nothing on a sofa. Some people may
3 have, you know, pillows or throw blankets or whatever else
4 but that was the available material inside was right there
5 in the area of the sofa at the front of that room.

6 Q. Now go back to when I said heat source. You don't know
7 what I'm talking about, heat source?

8 A. Well in the context and I guess if that's a followup
9 question to your previous question about the first material
10 ignited?

11 Q. I'm asking you, Agent, what can you - I'll rephrase.

12 You don't know what started this fire. Correct?

13 A. There were no accidental ignition sources.

14 Q. Well let's talk about that then. Fire damage was as
15 we saw from the pictures in this house it was severe.

16 Correct?

17 A. Yes, sir.

18 Q. This fire was not suppressed by the fire department
19 until major damage occurred inside that house. Correct?

20 A. Yes, sir.

21 Q. Okay. Fire damage to the electrical system in that
22 home was extensive. Correct?

23 A. In the burn portion yes, sir.

24 Q. You sure? You cannot sit here today and rule out an
25 unidentified electrical fire can you?

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1 A. Yes I can, sir.

2 Q. You can rule that out?

3 A. Yes, sir.

4 Q. Without - With all the damage that was done without -
5 You can rule that out?

6 A. Yes, sir.

7 Q. How were you able to analyze the electrical system
8 if it's so damaged?

9 A. In looking at the electrical system you have to look
10 at what was a potential ignition source in that area at the
11 time of the fire. And just like we said the amount of time
12 that we're looking at here that I have to look at in what
13 is commonly referred to as ignition sequence of how the
14 fire started and progressed, you know, there's really no
15 such thing as an electrical fire. There are fires that are
16 attributed to human errors with electricity. A common
17 electrical system is designed to default to the breaker if
18 there is an electrical problem. Generally your electrical
19 issues that a lot of times in the media or somewhere else
20 you hear them say these are electrical problems they're due
21 to misuse by the owners. Somebody that over loads, you
22 know, something intentionally. But that's not technically,
23 you know, an electrical issue just because it's something
24 that's brought into the house as an electrical system after
25 the fact. There were none of those items that were

1 recovered from the living room in that area at that time.
2 But furthermore when you're examining and you have more
3 information available and that's why this case in the
4 investigation at the fire scene drug out so long is
5 typically when we have issues with electrical systems we
6 have people that are in the home especially, you know, if I
7 can account for somebody being in the home minutes before
8 the fire these are people that are experiencing lights that
9 are either dimming or getting brighter; they're smelling
10 wires burning, you know, there's smoke that an electrical
11 system will cut off because it doesn't just magically all
12 of a sudden one day in a common electrical system develop
13 enough heat that it can ignite a fire. You're body has a
14 built in smoke detector. Smoke is both an asphyxiant and
15 an irritant so anytime that you have smoke, I mean so many
16 times, you know, the common scenario is I smell, you know,
17 wires burning, you know, something like that. There's no
18 indication in all of the interviews of talking with Ms.
19 Calicutt or anybody else if there were any of those issues
20 going on in the house, you know, prior to that.

21 Q. Just to make sure I'm clear. You did not - You were
22 not able to examine all of the electrical circuits in that
23 home. Correct?

24 A. There was nothing energized in the living room that
25 could have ignited the fire. There was nothing in - and

AGENT BRAD KELLER: CROSS BY MR. DELANEY

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1 something has to be plugged in and energized in that room
2 to be able to examine it and there was nothing that was
3 identified. If nothing is plugged in in that room there's
4 nothing to examine for fault.

5 Q. Okay. Now, Agent, did you examine all of the
6 electrical circuits in that house?

7 A. There was nothing to examine in that room where the
8 fire occurred.

9 Q. Cause there was too much damage. Correct?

10 A. There was nothing energized other than the wires on
11 the wall.

12 Q. Didn't you just testify just a little earlier that
13 there was extensive damage to some of the electrical
14 circuits in that house; correct?

15 A. There was fire damage in all the ones in the walls
16 but in order for any of those to be active a switch
17 has to be thrown or something has to be plugged in which
18 completes a circuit which causes electricity to flow
19 through it so in a wall outlet or anything else and if
20 you're ask the very simple answer to that question is is if
21 it's a issue of over head lighting or something else and
22 the switch is on all the fire would have been in the attic.
23 There had to have been something that was plugged in and
24 energized at floor level to ignite that sofa or something
25 on that sofa or beside that sofa and there was nothing

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1 there that was present. And furthermore she testified the
2 only things that were present were attached to that surge
3 protector that she unplugged and never plugged back in. So
4 that again, you know, told me that there was nothing
5 energized in there to even consider in that ignition
6 sequence for the fire.

7 Q. And this will be the last time and I'll move on after
8 this. This is just a yes or no question. Yes or no, did
9 you examine all of the electrical circuits in the house.
10 Yes or no?

11 A. I examined all - Yes.

12 Q. That was yes?

13 A. I examined the ones that I found yes.

14 Q. Okay. All right. Well I promised I'd move on and I'm
15 gonna move on. AD K-9. What's that an abbreviation for?

16 A. That is something somebody else put in their report
17 misquoting and they're referencing an Accellerant detection
18 canine.. Its actually ADC usually because you spell canine
19 with a C.

20 Q. Okay. All right. Accelerates detection canine.
21 Accelerate detection dog. Correct?

22 A. Yes, sir.

23 Q. Okay. And when we say accelerate give me a few
24 examples of accelerates.

25 A. And the most common one that would come to mind to

AGENT BRAD KELLER: CROSS BY MR. DELANEY

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1 anybody else would be gasoline.

2 Q. Sure.

3 A. I mean if you were to just say it they would think
4 gasoline, diesel fuel, Kerosene; something of that nature.

5 Q. Sure. Sure. Okay. And, Officer, there's a ton of
6 - a whole lot of accelerates out there; different types of
7 accelerates. Correct?

8 A. Yes. And I mean it can be very simple as paper can be
9 an accelerate. I mean there is many things that can be
10 accelerates.

11 Q. Right. Well this dog that you bring in he's not
12 looking for paper is he?

13 A. No, sir, he's not.

14 Q. Okay. He's looking for accelerates. Correct?

15 A. Yes, sir.

16 Q. Okay. And this dog went through the entire house.
17 Correct?

18 A. Yes, sir.

19 Q. And he didn't find any accelerates did he?

20 A. No, sir.

21 Q. Okay. And again, it was your opinion that after you
22 left the scene that day after spending - I think it was
23 your testimony five to six hours - at the scene, it was
24 your opinion that this fire was undetermined. Correct?

25 A. Yes, sir.

AGENT BRAD KELLER: CROSS BY MR. DELANEY

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1 Q. Okay. Thank you. Now the next part I want to move
2 on, Agent, is you got I guess involved a little bit more
3 than just the fire investigation you did. You were
4 involved with a few - a couple of interviews; is that
5 correct?

6 A. Yes, sir, I was.

7 Q. Okay. Now when was your first - your first meeting
8 with Ms. Calicutt?

9 A. My first meeting would have been the one pursuant to
10 the interview with Lieutenant Black. I think it was - -

11 Q. That would have been on November the 25th. Does that
12 sound correct?

13 A. Yes sir, the 25th.

14 Q. Okay. You met with her along with a detective here;
15 is that correct?

16 A. Yes, with Detective Coffey.

17 Q. And that was after she was talking to Investigator
18 Black; is that correct?

19 A. Yes, sir.

20 Q. Okay. And she met with you willingly. Correct?

21 A. Yes, sir.

22 Q. In fact every time that she met with you either
23 yourself or Agent Vaughan she met with y'all willfully;
24 is that correct?

25 A. Yes, sir.

AGENT BRAD KELLER: CROSS BY MR. DELANEY

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1 Q. Okay. No one was forcing her to talk; is that right?

2 A. I can't do that. No, sir, no, sir.

3 Q. Okay. Now you ask her it sounds like on the 25th
4 about her taking some pills or if she was under the
5 influence of anything, intoxicated; is that correct?

6 A. Not about the pills but yes I ask her was she under
7 the influence of anything like drugs or alcohol.

8 Q. Okay.

9 A. It was a very generic question that day.

10 Q. Can include anything ---

11 A. Yes.

12 Q. --- your statement were her faculties impaired?

13 A. Yes, sir, exactly.

14 Q. You want to know that. Correct?

15 A. Yes, sir.

16 Q. And you already said that; right, earlier? That can
17 cause when someone is drunk, high, stoned, accidents can be
18 a little more prone to happen; a little more likely.

19 People can forget things. Correct?

20 A. Yes, sir.

21 Q. Okay. And I think you also - I heard you testify
22 earlier that that question is not uncommon. That can be a
23 difficult question to get an honest truthful response to
24 that. Correct?

25 A. I'm not sure I understand - understood that.

1 Q. I think you had testified that some people won't - do
2 not want to tell you that they were drunk or using
3 something; under the influence of some type of substance.
4 They would be hesitant to tell you that. There can be
5 embarrassment; just something - they can hide that from
6 you. Correct?

7 A. Sometimes, yes.

8 Q. All right. And the first time that you talked to
9 Crystal we heard she said that she wasn't under the
10 influence of anything. Right?

11 A. Yes, sir, the first time.

12 Q. Okay. Now when you talked to her in December she
13 told you she was didn't she?

14 A. Yes, sir, after confronted with information from Josh
15 Falls that she was.

16 Q. But you had confronted her with that information prior
17 to that. Correct?

18 A. No, sir. That was the whole reason for bringing her
19 into that other interview was to talk to her about that.

20 Q. Well you talked to Josh Falls about that way back in -
21 I think it was November 25th of 26th. Correct?

22 A. Yes, sir.

23 Q. Okay. Now you talked to Crystal, did - you talk to
24 Josh on the 25th and you talked to Crystal on the 25th.
25 You got that information that day. Right?

AGENT BRAD KELLER: CROSS BY MR. DELANEY

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1 A. I talked to Josh after speaking with Crystal and the
2 next time I was available to talk to her - Like I said, I
3 have twenty-three counties.

4 Q. Okay. Now, she didn't have to admit to anything to
5 you did she?

6 A. No, sir.

7 Q. She could have continued to deny I wasn't under the
8 influence of anything. She could have continued to do
9 that. Correct?

10 A. Yes, sir.

11 Q. Okay. It's not like you were confronting her with a
12 positive test result and took her blood or something like
13 that. I got this; it wasn't that type of scenario. Right?

14 A. That's correct.

15 Q. This was information you got from Joshua Falls.
16 Correct?

17 A. Yeah, just confirm or deny it.

18 Q. Right. And so you talked to Crystal about that and
19 she tells you yeah, I took some pills. Right?

20 A. Yes, sir.

21 Q. Okay. Now, candles. That was something that was
22 discussed in this lamp last meeting. Correct?

23 A. Yes, sir, the December 9th.

24 Q. And it sounds like that's something that you used
25 - Now let me ask you this. You used the fact that she was

1 under the influence of pills that impacted your
2 determination on this fire from undetermined to incineary?

3 A. No, sir.

4 Q. Okay. That didn't have any ---

5 A. No, sir.

6 Q. --- any - Okay. I wanted to make sure. Candles.
7 Did that have any impact in your decision making in this
8 case; how the candles came into play whether or not this
9 was undetermined or incineary?

10 A. No, sir, because I mean they were out of the area
11 where the fire originated at. And like I said where the
12 candles - and that was one of the reasons on the furnace I
13 described some of the damage as where the candles to have
14 been an issue.

15 Q. Right.

16 A. The burn patterns throughout the house would have
17 looked entirely different.

18 Q. Right. Well I think we're kind of think of - I'm
19 saying did it have an impact as far as when you heard that
20 from my client that made you look - it sounds like your
21 testimony was once you heard her bring up these candles and
22 it was your testimony that she was - you felt that she was
23 just trying to bring in certain things that could start a
24 fire. She was trying to just throw things at you; is that
25 correct?

AGENT BRAD KELLER: CROSS BY MR. DELANEY

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1 A. At that point in time that is the appearance but that
2 was not made the decision, no.

3 Q. Okay. Because - correct me if I'm wrong - she on
4 December the 9th she said, okay, I remember we had some
5 candles lit earlier that day when we cleaning. Right?

6 A. Yes. It's just a generic time.

7 Q. Okay. And she also told you that she blew out those
8 candles that day. Correct?

9 A. Yes, sir.

10 Q. Okay. So it's not like the type of situation where
11 all of a sudden, you know, two or three weeks later she's
12 coming in and telling you, oh, you know what now, I had
13 candles on it could be the candles. She was telling you
14 she blew those candles out. Right?

15 A. Yes, sir.

16 Q. Okay. And she was telling you that the best that
17 she could remember she didn't have any cigarettes in the
18 house going. Right?

19 A. Yes, sir.

20 Q. Okay. She could have told you, yeah, it was
21 cigarettes in every room, you know, burning and I ran out
22 the house. She didn't tell you that did she?

23 A. No, sir.

24 Q. Okay. And she told you she actually unplugged the -
25 she remembers unplugging a - some type of a surge protector

1 in the living room. Correct?

2 A. Yes, sir.

3 Q. Okay. And if she's going to be self-serving she's
4 gonna say I had that plugged in and had all kinds of stuff
5 going on. The stove was on. She didn't tell you any of
6 that did she?

7 A. Both of those questions with one answer, can I explain
8 cause that was like two parts?

9 Q. Sure.

10 A. The only thing was is the first part, no, people don't
11 always tell me everything. Obviously there's - never had a
12 fire investigated before I get all the answer. I can't
13 answer that blanket yes or no. But she never did mention
14 anything about those alternate scenarios. I just don't
15 want to mention that anybody would have known that because,
16 no, I mean commonly nobody would know to tell you those
17 things.

18 Q. Right. But if someone's trying to cover up from
19 your experience, you know, someone's trying to cover up
20 setting a fire they're gonna give you all types of
21 different alternatives and this is how it could happen, I
22 had this on or that on; it's a cigarette. Correct?

23 A. Sometimes.

24 Q. Okay. She wasn't doing that was she?

25 A. No, sir.

AGENT BRAD KELLER: CROSS BY MR. DELANEY

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1 Q. She was doing the opposite wasn't she?

2 A. I testified to what she told me so yeah.

3 Q. Okay. Now, is there - You have the SLED packet
4 with you?

5 A. Yes, sir.

6 Q. Okay. Do you remember doing - did you fill out a
7 form where you happen to mark a box where it has - I think
8 its where different types of potential motive? It can be
9 for financial purposes or for profit or for revenge. Do
10 you remember seeing that form?

11 A. I believe - I'm looking for that here.

12 Q. Because I had it. Actually I got it right here.

13 MR. DELANEY: May I approach, your Honor.

14 THE COURT: Yes, sir.

15 Q. Did you fill that out?

16 A. Yes, sir.

17 Q. Okay. There is a box there; I think the first one
18 that's checked there is something about the box checked it
19 says client consealment; is that correct?

20 A. Yes, sir.

21 Q. Okay. And a little bit below that there's a box
22 that's marked. Correct?

23 A. Yes, sir.

24 Q. All right. Why did - Rephrase that. Obviously you've
25 sat throughout this trial and sat in this courtroom.

1 Correct?

2 A. Yes.

3 Q. Okay. Did you talk to Rhonda Johnson at all in this
4 case? Did you interview her?

5 A. Yes, sir, the very first day that I got there
6 standing outside the house she was there and we spoke with
7 her.

8 Q. Okay. And did you hear - you heard her testimony
9 yesterday?

10 A. Yes, sir.

11 Q. Okay. Did she ever tell you that she had a picture
12 of an ultra sound inside the house?

13 A. The one that I talked to her outside of the house.

14 She didn't even know Crystal was in the house. She
15 just told me what they did the night before and that was
16 the one time that I talked to her.

17 Q. So -

18 A. So that day she didn't and then the next time I
19 heard was in court.

20 Q. Right. So the answer to that question is no?

21 A. No. Yes, sir.

22 Q. Okay. And the next part is the first time that you
23 heard that was over two years later yesterday. Correct?

24 A. Yes, sir.

25 Q. Okay. And you talked to Josh Falls. Correct?

AGENT BRAD KELLER: CROSS BY MR. DELANEY

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1 A. Yes, sir.

2 Q. You talked to Crystal as we know. Right?

3 A. Yes, sir.

4 Q. Okay. Pretty clear that Rhonda didn't know she was
5 being used that night to get some money off of her. Right?

6 A. That's correct.

7 Q. Okay. Where does revenge come in?

8 A. The revenge comes from the interviews with Josh Falls;
9 the interviews with Ms. Calicutt in which Josh Falls
10 describes their entire relationship and that, you know,
11 obviously Crystal knows that, you know, he's going out with
12 Rhonda and at one time, you know, Crystal - something came
13 up about Crystal potentially being pregnant was pregnant.
14 She was upset because Rhonda was pregnant because the
15 picture didn't come up the numerous times they talk to Josh
16 Falls. He said that, you know, Rhonda's pregnant, you
17 know, Rhonda's having my baby, you know, I love Rhonda
18 she's gonna be my baby's momma and stuff like that. But
19 that was the revenge aspect.

20 Q. Okay. So was that the decided - Cause you said it
21 wasn't the pills; wasn't the candle. Was it then the
22 conversations with Josh Falls that's what tipped the hand
23 here as far as from your determination of the evidence at
24 the fire scene of undetermined to incendiary in nature?
25 That's where that transition occurred?

1 A. No, sir.

2 Q. No?

3 A. It's just having the time to evaluate all of the
4 information along -

5 Q. What information?

6 A. All of the information gathered throughout the entire
7 investigation along with other information you know that we
8 waited on you know at that point in time.

9 Q. What did you wait on?

10 A. The phone record. Well just to look at the phone
11 records. To see the phone records as well.

12 Q. Okay. I'm glad you brought those phone record up.
13 Crystal brought her phone records. Right?

14 A. Yes, sir.

15 Q. Okay. She actually brought her own phone records into
16 you. Right?

17 A. Not to me. But they were given to the Union County
18 Sheriff's Office.

19 Q. Okay. So, it was - From my understanding it was from
20 after you spent five or six hours out there investigating
21 this fire scene it was I guess from the next couple of
22 weeks after that it was just everything that you were able
23 to gather that's what made you change your mind to it.

24 Correct?

25 A. Yes, sir.

AGENT BRAD KELLER: CROSS BY MR. DELANEY

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1 Q. It wasn't any additional actual physical evidence
2 at the fire scene. Correct?

3 A. No we never did return back to the fire scene.

4 Q. Right.

5 A. So no it wasn't something we went back to the fire
6 scene because then it was just an issue about us dealing
7 with looking at the fire scene where nobody had been home
8 and hours and hours. And the other scenario when you say
9 that I changed my mind. It wasn't immediately when I found
10 out that Crystal Calicutt was home I could not eliminate
11 her as having involvement in that fire because she was
12 there at the time, you know, that the fire was likely
13 initiated. So I had to be able to talk to her and evaluate
14 all the information that she gave me because like I said
15 initially the reason why it was undetermined at the scene
16 was I thought the last time somebody was at the house was
17 at nine o'clock or so that evening which causes me to have
18 to consider or ask an array of different things and how
19 that fire could have started.

20 Q. Right. Her being possibly when the last people - I
21 say possibly one of the last people in that house that is -
22 that was the deciding factor for you?

23 A. Yes, sir.

24 Q. Okay.

25 MR. DELANEY: Thank you, Agent.

AGENT BRAD KELLER: REDIRECT BY SOLICITOR ANTHONY

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1 THE COURT: Redirect?

2 SOLICITOR ANTHONY: Yes, sir. I just have a few
3 things.

4 REDIRECT EXAMINATION

5 AGENT BRAD KELLER BY SOLICITOR ANTHONY:

6 Q. I'm just gonna hand up a document. Could you just
7 take a look at that and tell me what that is?

8 A. That's a memorandum of interview.

9 Q. Okay. And is that the memorandum that you wrote up
10 documenting the conversation you had with Ms. Calicutt
11 after she spoke to Lieutenant Black?

12 A. Yes, sir, it is.

13 Q. Okay. And what's the date on that?

14 A. That is November 26, 2013.

15 Q. Okay. So you actually - You actually had your first
16 conversation with Ms. Calicutt on the 26th?

17 A. Yes, sir. And whatever its dated, like I said, I'd
18 have to refer back and whatever it's - -

19 Q. Okay. And Agent Vaughn didn't talk to her the day
20 before and you talked to her the next day?

21 A. Yes, sir, that's correct. I - Yeah, because he
22 talked to that night and we talked to Josh Falls so the
23 26th was the day that we talked to her.

24 Q. Okay. And just - there was some questioning about
25 this meter box.

AGENT BRAD KELLER: REDIRECT BY SOLICITOR ANTHONY

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1 A. Yes, sir.

2 Q. And I don't - I'm not gonna show you the picture but
3 did you indicate that on the diagram?

4 A. Yes, sir, I did in the red figure with "MB" inside
5 of it meaning meter base.

6 Q. Okay. So when the - I'll just show that to the jury.
7 That red - the red object "MB" the multi-sided object.

8 A. Looks like a stop sign.

9 Q. All right.

10 A. Looks kind of like a stop sign.

11 Q. Yeah, that's right. It looks like a stop sign.
12 That's the meter box?

13 A. Yes, sir.

14 Q. Okay. And I'm not gonna show you these photos but
15 just to make sure the record is clear, I'm gonna hand up
16 Thirty-nine and Forty. I think I may have ask you some
17 questions about these but I didn't move 'em into evidence
18 so I just would ask, are those the photos you took from
19 processing the scene that day?

20 A. Yes, sir, they are.

21 Q. Okay.

22 SOLICITOR ANTHONY: We move Thirty-nine and Forty
23 in please, your Honor. I'm just moving those two pictures
24 in. Thirty-nine and Forty.

25 MR. DELANEY: I didn't move 'em in.

AGENT BRAD KELLER: REDIRECT BY SOLICITOR ANTHONY

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1 SOLICITOR ANTHONY: I didn't move 'em in before.

2 Okay.

3 SOLICITOR ANTHONY: Thank you.

4 MR. DELANEY: Without objection, your Honor.

5 THE COURT: In without objection

6 (WHEREUPON, STATE'S EXHIBIT NUMBERS THIRTY-NINE AND
7 FORTY, IDENTIFIED AND MARKED, RECEIVED INTO EVIDENCE.)

8 SOLICITOR ANTHONY: If I could just have one moment.

9 (PAUSE.)

10 SOLICITOR ANTHONY: Just a couple of more things.

11 Q. When you go to a fire scene like you did in this case
12 and you initially say that causation was undetermined, does
13 that in any way convince you to or lock you into where you
14 can't change that opinion?

15 A. No. No, sir, it doesn't.

16 Q. And is that basically routine that you go to a fire
17 scene to process it then you do further investigation and
18 come to a conclusion?

19 A. Yes, sir, sometimes it's undetermined because I'm
20 waiting for samples from the lab and that's transparency on
21 my part just saying at that point in time that day until I
22 had all the information it was undetermined that day.

23 Q. Okay. And then in regards to electrical outlets, in
24 your experience do electrical outlets just spontaneously
25 catch fire?

AGENT BRAD KELLER: REDIRECT BY SOLICITOR ANTHONY
RE CROSS BY MR. DELANEY

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1 A. No, sir.

2 Q. And can you explain why that is?

3 A. No, sir. And something that has to be energized in
4 order to complete the circuits inside the outlet. If
5 nothing is plugged into them then there is no circuit
6 completed inside of that outlet in order for it to - it's
7 just basically open so you have to actually plug something
8 in - the two metal prongs complete the circuit inside and
9 cause electricity to flow. So you know with absolutely
10 nothing plugged in there's no current running to that area
11 because I mean anybody's house if power was constantly
12 supplied to every single outlet in everybody's house I mean
13 you would have you know electrical systems outside your
14 house as big as buses. I mean it's, you know, that's why
15 they're small because only what's being used at a
16 particular time is powered throughout the electrical
17 system.

18 Q. All right. Thank you.

19 SOLICITOR ANTHONY: That's everything on redirect.

20 MR. DELANEY: Just briefly, Judge.

21 RE CROSS-EXAMINATION

22 AGENT BRAD KELLER BY MR. DELANEY:

23 Q. You heard testimony yesterday Mr. Falls had I think he
24 said yeah, there would be six electric heaters, electric
25 space heaters in that house?

1 A. Yes, sir.

2 Q. Okay. And you heard him say he had some problems with
3 the electrical outlets with those heaters; is that correct?

4 A. Yes, sir, if you plugged all of 'em in at one time
5 that sometimes it would trip a breaker.

6 Q. Sure. All right. Thank you.

7 MR. DELANEY: No further questions.

8 THE COURT: You can step down and be excused.

9 We gonna take a short refresher break at this time.

10 (JURY EXITS COURTROOM AT 03:35 PM.)

11 THE COURT: Mr. Delaney, you want to come and get this
12 document? All right, we'll be at ease for a few minutes.

13 (COURT IN RECESS AT 03:36 PM.)

14 (COURT BACK IN SESSION AT 03:49 PM.)

15 THE COURT: All right. Bring in the jury.

16 (JURY REENTERS COURTROOM AT 03:50 PM.)

17 THE COURT: All right, call your next witness.

18 SOLICITOR ANTHONY: Yes, sir. The State's next
19 witness would be Lieutenant Johnson.

20 THE CLERK: Place your hand on the Bible and raise
21 your right hand.

22 (WHEREUPON, CHRIS JOHNSON,
23 BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

24 DIRECT EXAMINATION

25 LIEUTENANT CHRIS JOHNSON BY SOLICITOR ANTHONY:

LIEUTENANT CHRIS JOHNSON: DIRECT BY SOLICITOR ANTHONY

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1 Q. Would you state your name please?

2 A. Christopher L. Johnson.

3 Q. And, Mr. Johnson, how are you employed?

4 A. I'm a Lieutenant Supervisor Agent with the South
5 Carolina Law Enforcement Division.

6 Q. And what is your responsibility with SLED?

7 A. I currently supervise one of the fugitive units.
8 Also out of our unit we supervise and manage our wire
9 tapping and call analysis a portion of our intelligence
10 unit.

11 Q. And how long have you worked for the - How long have
12 you had this job doing the phone analysis to wire tapping?

13 A. I've been doing phone analysis approximately ten
14 years now.

15 Q. And how long have you worked for SLED?

16 A. Twelve years, sir.

17 Q. And you said you were over a fusion team?

18 A. A fugitive unit. We're assigned out of the fusion
19 center which is our intelligence unit.

20 Q. Okay. I got you. And what does - What does the
21 actual - What does your job actually involve?

22 A. Day to day we're working fugitives; anyone who has a
23 violent crime or warrant or anything of that nature. But
24 also we specialize in as well analyzing historical call
25 records for information as to where a suspect or - that we

LIEUTENANT CHRIS JOHNSON: DIRECT BY SOLICITOR ANTHONY .

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1 may be looking for may be or a victim or anything like
2 that.

3 Q. All right. And in your job do you regularly analyze
4 phone records?

5 A. Yes, sir.

6 Q. And have you had training in making interpretation of
7 various phone companies records?

8 A. Yes, sir.

9 Q. All right.

10 (WHEREUPON, STATE'S EXHIBIT NUMBER FORTY-TWO,
11 PREMARKED FOR IDENTIFICATION.)

12 Q All right, I'm handing up what's been marked for
13 identification as State's Exhibit Number Forty-two.

14 Would you advise the jury what that is?

15 A. Yes, sir, this is AT&T wireless's normal subpoena
16 compliance file.

17 Q. Okay. And what number are those records for?

18 A. It is listed as account number or I'm sorry Voice
19 usage for 864-3-0-1-0-0-9-9.

20 Q. Okay. And do those records contain any kind of
21 records of any other communications besides the phone
22 records?

23 A. No, sir, this is just for voice usage.

24 Q. All right.

25 SOLICITOR ANTHONY: Your Honor, at this time we would

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1 move Forty-two into evidence and ask to publish.

2 MR. DELANEY: That's without objection, your Honor.

3 THE COURT: In without objection.

4 (WHEREUPON, STATE'S EXHIBIT NUMBER FORTY-TWO,
5 IDENTIFIED AND MARKED, RECEIVED INTO EVIDENCE.)

6 SOLICITOR ANTHONY: All right.

7 Q. What I want to do is I want to show you these and
8 ask you just a few questions about 'em and then we'll try
9 to simplify it a little bit. There is a pointer up there
10 beside you. There you go. All right. I'm showing you
11 Exhibit Forty-two. And what I'll do is just try to take
12 you across the page and let you explain to the jury what
13 we're looking at here. First off, just starting from the
14 left. Do the records actually indicate the phone number
15 we're talking about?

16 A. Yes, sir, it does on the third line from the very top
17 it shows voice usage for. That's always your subscriber
18 number that you requested records for.

19 Q. Okay. And then just starting there on the left hand
20 side where it says connection date, what are we talking
21 about there?

22 A. That would be the date that the actual call made
23 connection with the AT&T network.

24 Q. Okay. And where it says connection time what is that?

25 A. That is their connection time. That is when the call

1 - when that person hits send and it actually makes a
2 connection with the network it logs that time. AT&T logs
3 their time in a universal time coordination which is
4 usually about - it is - not usually - it is five hours
5 ahead of Eastern Standard Time.

6 Q. Okay. So if something shows up at 02:15 on their
7 phone records it would be 09:15 ---

8 A. Right, the day before.

9 Q. --- on the

10 A. That 09:15 pm the day before.

11 Q. Eastern time?

12 A. Yes, sir.

13 Q. Okay.

14 A. The time is in military time.

15 Q. Okay. All right. And then the seizure time what is
16 that?

17 A. That is the time it takes for the call from the time
18 it connects till it is answered.

19 Q. Okay. And then the ET what is that?

20 A. That's the elapsed time or the duration of the call.
21 How long that call last.

22 Q. Okay.

23 A. Until the end button or its hung up.

24 Q. All right. And then I'll go - We'll do the originated
25 number. What is that?

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1 A. That's is where the call originates from. That's who
2 dials the line.

3 Q. Okay. And then the terminate number?

4 A. That would be who's receiving the call.

5 Q. Okay.

6 A. Whether it's outgoing or incoming would determine.

7 Q. And then there's two - The next two of these
8 abbreviations IMEI and IMSI what is that?

9 A. Yes, sir. The IMEI stands for the International
10 Mobile Equipment Identifier. It's basically the serial
11 number for your telephone. And then the IMSI is the
12 International Mobile Subscriber Identifier. That's
13 basically the serial number for your SIM card inside your
14 phone.

15 Q. Okay. And when it says - the next one here - the next
16 two are CT and Feature. What does that mean?

17 A. CT is basically another way of determining which way
18 the call was going, its connection type. Normally MO for
19 AT&T is Mobile Outgoing and M T is Motile Terminating which
20 would be an incoming call. That is supposed to be a second
21 way of identifying the direction of the call.

22 Q. Okay.

23 A. The Feature is any other feature that that phone may
24 have via it call waiting, caller ID, voice mail, anything;
25 the association of that call would show up in the Feature

1 section.

2 Q. Okay. And I note so I'll just show you one example of
3 that. There's a call down here at the bottom that has some
4 notation down here on the Feature line.

5 A. Yes, sir.

6 Q. What would that indicate?

7 A. If I'm may can I refer to my printout from AT&T?

8 Q. Sure.

9 A. Just to - I want to make sure I get it right for you.

10 CMH stands for Call Hold. Basically call waiting if
11 you put a call on hold to answer a call that would show up
12 as CMH. The sub CMH is basically the same thing except
13 it's enacted by the subscriber or invoked by the subscriber
14 as it's listed on here. And the NIOR is calling number
15 identity restrictive. Basically that person blocked their
16 caller ID or doesn't know caller ID to go across.

17 Q. All right. Well one thing I want to ask you about
18 with these records is a bit curious is, the call seem to
19 come in blocks of two like there is 2 - 02:15 and 16 to the
20 same number. And then 02:27, two calls to the same number.
21 03:55 two calls to the same number. 04:00 two calls to the
22 same number. And that is a pattern going down both these
23 pages of records; is that correct?

24 A. Yes, sir.

25 Q. And have you tried to figure out what would have

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1 caused that? What would cause the records to show up that
2 way?

3 A. Yes, sir. The fact that it indicates a D in
4 parenthesis beside it indicates that's the dialed digits
5 that were dialed by the phone. Most of the time what I
6 felt was the case was the 0-1-1 is a international country
7 code for dialing out of the country and I contacted AT&T
8 and they confirmed that that is their belief as well as the
9 reason it's showing up the way it is.

10 Q. Okay. So for some reason that code is showing up
11 with these calls?

12 A. Yes, sir. And then what it does is it attempted to
13 call out of country but then the second line is where it
14 basically kicked it back to the AT&T network within the
15 United States to complete the call.

16 Q. Okay.

17 A. For whatever reason.

18 Q. Okay. So when in making an assessment of these
19 calls we're basically treating them as one call. They just
20 show up ---

21 A. Yes, sir.

22 Q. --- in groups of two?

23 A. Yes, sir.

24 (WHEREUPON, STATE'S EXHIBIT NUMBER FORTY-ONE,
25 PREMARKED FOR IDENTIFICATION.)

1 Q. Okay. And I'm gonna show you now Exhibit Numbers
2 Forty-one and ask if you can identify this document?

3 A. Yes, sir. It appears to be a summary of the actual
4 AT&T records, just more of in a layman's format.

5 Q. Okay. And what is indicated on that summary chart
6 that you have?

7 A. It indicates the time, the duration, the originating
8 number, the terminating number and the feature.

9 Q. If a feature is involved it's indicated?

10 A. Yes, sir, instead of having the code it's listing
11 what the actual code would stand for.

12 Q. Okay. And -

13 A. And there's also some subscriber or there appears to
14 be names associated with the numbers on here.

15 Q. Okay. And do those at least as far as the - how the
16 record content is summarized on that page, is that a fair
17 accurate representation of the content of the records?

18 A. Yes, sir, it appears to be.

19 Q. Okay.

20 SOLICITOR ANTHONY: Your Honor, we move Forty-one in.

21 MR. DELANEY: No objection, your Honor.

22 THE COURT: In without objection.

23 (WHEREUPON, STATE'S EXHIBIT NUMBER FORTY-ONE,
24 IDENTIFIED AND MARKED, RECEIVED INTO THE RECORD.)

25 SOLICITOR ANTHONY: All right.

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1 Q. I'm just gonna ask you a few questions about this just
2 to try and make sure the jury understands it. So there
3 where the time is has there been an adjustment made on the
4 time?

5 A. Yes, sir. It appears to reflect Eastern Standard Time
6 instead of the Universal Time.

7 Q. And then the duration, what is that?

8 A. That is the duration of the call as it appears in the
9 minutes and seconds.

10 Q. And then the originated number and terminate number?

11 A. Again is the number that originated the call and where
12 the call terminated at.

13 Q. Okay. And I'm gonna ask you now just about some of
14 these particular calls. This 12:21 call what is the
15 duration indicated on that?

16 A. Seventeen minutes and four seconds.

17 Q. Okay. And there there is a feature notation there of
18 a call hold. What would have happened; what would that
19 feature indicate that had happened during that time?

20 A. Yes, sir. It would appear that while she was on that
21 conversation another call basically beeped in for lack of a
22 better term. Another call came in for her phone and she
23 placed that conversation on hold while she answered another
24 call.

25 Q. And that would be consistent if you're talking at

1 12:21 and get a call at 12:24?

2 A. That's correct.

3 Q. If you're talking for seventeen minutes that would be
4 consistent with having a call hold on a seventeen minute
5 call?

6 A. Yes, sir.

7 Q. Okay. And then on the other call where it shows up
8 as a call waiting, what would that indicate?

9 A. It would just indicate that that call was made while
10 the subscriber was on another call. And so in order for it
11 to complete it had the used call waiting feature otherwise
12 without call waiting it would have ringed busy.

13 Q. Okay. And if the person on the other end of that
14 call, the receiving person, hadn't picked up what would you
15 have anticipated would have happened?

16 A. If she hadn't picked up you would have seen a voice
17 mail.

18 Q. Okay.

19 A. It would have directed to voice mail or either it
20 would have just timed out.

21 Q. Or you wouldn't have anything?

22 A. Yes, sir.

23 Q. Okay. And so this number here at the 12:43 call
24 there's a number that was called, a 301 number, what does
25 that indicate, that AT&T VM?

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1 A. That is AT&T's voice mail number. Basically allowing
2 you to call from your phone to check your voice mail.
3 Sometimes it may end up - show up as a code that you
4 actually dial but on the call records it will show up as an
5 actual telephone number to complete the call.

6 Q. Okay. And these voice mail calls here there's four
7 where the voice mail feature seems to have been used. What
8 does that indicate about those calls?

9 A. That should indicate the call went to voice mail and
10 not answered by the subscriber.

11 Q. And then going down to the 12:44 call wait call what
12 would you take from that as being happening?

13 A. Well it's a combination of three calls it looks like
14 or I say the two calls. 12:44 you got two calls with the
15 same time but different durations. It appears that while
16 the subscriber was utilizing the call at 12:44 in sixteen
17 seconds. They received another call at 12:44 with the one
18 indicating forty-one seconds. And instead of placing the
19 first call on hold they terminated that call and accepted
20 the second call.

21 Q. But call waiting is activated while - -

22 A. Yes, sir, call waiting appears to be activated when
23 it came in but there was no call hold placed on the first
24 call so it appears that it was - the call was terminated in
25 order to answer the incoming call.

1 Q. All right.

2 SOLICITOR ANTHONY: If I can just have one moment.

3 (PAUSE.)

4 SOLICITOR ANTHONY: All right. Thank you.

5 That's everything on direct.

6 THE COURT: Okay. Any cross?

7 MR. DELANEY: No questions for the witness, Judge.

8 THE COURT: Okay. You can step down and be excused.

9 We appreciate your time. Thank you.

10 (WITNESS LEAVING WITNESS STAND.)

11 THE COURT: All right. Call your next witness.

12 SOLICITOR ANTHONY: May we approach?

13 THE COURT: Yes, sir.

14 (SIDE BAR OFF THE RECORD OUT OF THE HEARING OF THE
15 JURY AT 04:07 PM.)

16 THE COURT: Members of the jury panel, the State is
17 resting. Correct?

18 SOLICITOR ANTHONY: Yes, sir.

19 THE COURT: The State is resting so we've reached the
20 point in the trial where I have to take up some legal
21 matters outside your presence, so I'm gonna let you go out
22 for a few minutes while we take up some legal matters and
23 we'll send for you in just a few minutes.

24 (JURY EXITS COURTROOM AT 04:07 PM.)

25 THE COURT: Anything from the State at this point?

1 SOLICITOR ANTHONY: No, sir. If it satisfies the
2 Court we will rest subject to making a revision to one of
3 our exhibits.

4 THE COURT: Okay. Mr. Delaney.

5 MR. DELANEY: Your Honor, at this time the evidence
6 that's been presented up until this point the Defense would
7 make a motion for a directed verdict at this time.

8 THE COURT: All right. Well I've been doing some
9 research on that because I grew up in the world of
10 insurance defense where there's a little different
11 standard. But I've also found the case of State versus
12 Henry - Harry at 321 SOUTH CAROLINA 271. It's not directly
13 on point as far as facts but it leads me to conclude that
14 in this case there is some direct evidence, of course
15 there's a fire, so there is direct evidence that there was
16 a fire so there is direct evidence and there is substantial
17 circumstantial evidence that this was an arson case and
18 that Mr. Calicutt - that the jury could determine from that
19 combination of those two that Ms. Calicutt did in fact
20 commit this offense so I deny the motion for a directed
21 verdict.

22 All right, you ready to go forward with your
23 witnesses?

24 MR. DELANEY: Yes.

25 THE COURT: All right, I need to talk to Ms. Calicutt

1 for a minute.

2 Ms. Calicutt, can you hear me?

3 MS. CALICUTT: Yes, sir.

4 THE COURT: We've reached the point in the trial where
5 you have a right to present any witnesses you wish; that
6 is, you can present a defense but you don't have to because
7 you are presumed innocent of this charge and need not prove
8 your innocence. The State has to prove your guilt beyond a
9 reasonable doubt. But you can call witnesses if you wish.
10 You yourself have the right to testify or you can remain
11 silent. If you testify you will be under oath and have to
12 answer truthfully and the State would be able to ask you
13 about some offenses that we talked about yesterday. And if
14 you do testify and those prior - I think it was two
15 offenses ---

16 SOLICITOR ANTHONY: Yes, sir.

17 THE COURT: --- come out then I will tell the jury
18 that they cannot use those prior criminal - your prior
19 criminal record as any evidence that you committed this
20 crime but rather they can only use it to assess your
21 credibility; that is, whether to believe you or not.

22 If you exercise your constitutional right to remain
23 silent I will tell the jury that is what you have done. I
24 will tell them they cannot use that against you in any way
25 whatsoever; that they cannot discuss in the jury room the

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1 fact that you exercised your constitutional right to remain
2 silent. I will tell them they cannot even factor it into
3 their individual thought processes as they deliberate.

4 I will tell them they cannot in any way whatsoever use
5 your exercise of your constitutional right to remain silent
6 against you. And I will remind them that you are presumed
7 innocent and the State has to prove your guilt beyond a
8 reasonable doubt

9 Do you understand all that?

10 MS. CALICUTT: Yes, sir.

11 THE COURT: Do you have any questions about that?

12 MS. CALICUTT: No, sir.

13 THE COURT: Now this decision is yours. It's not
14 your attorneys or your friends or families. It's Crystal
15 Cathcart's decision. Do you understand that?

16 MS. CALICUTT: Yes, sir.

17 THE COURT: Have you decided whether you're gonna
18 testify or are you gonna exercise your right to remain
19 silent?

20 All right, we'll take about a ten minute break and -
21 We got to move forward and you've had since 2013 and I'm
22 not being pushy about it but we're in the middle of the
23 case. I will give you that opportunity to take about ten
24 minutes to think about it more, a little bit more, not that
25 I doubt that you've already thought about it some, and

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1 discuss it with your attorney. And there are some people
2 there behind you; I don't know whether they're here with
3 you or not but you certainly can talk with them too, so
4 we'll take about ten minutes.

5 (COURT IN RECESS AT 04:12 PM.)

6 (COURT BACK IN SESSION AT 04:22 PM.)

7 THE COURT: Is the State ready?

8 SOLICITOR ANTHONY: Just waiting to get the NCIC on
9 his witnesses.

10 THE COURT: Ms. Calicutt, your attorney tells me
11 you're exercising your right to remain silent?

12 MS. CALICUTT: Yes, sir.

13 THE COURT: Thank you.

14 All right, you ready now?

15 SOLICITOR ANTHONY: Yes, sir

16 THE COURT: All right. Bring in the jury.

17 (JURY REENTERS COURTROOM AT 04:24 PM.)

18 THE COURT: Members of the jury panel I told you the
19 State has rested and so the Defense can call witnesses if
20 it wishes.

21 Mr. Delaney.

22 MR. DELANEY: Thank you, your Honor. At this time the
23 Defense would call Violet Parker.

24 Ms. Parker, Mrs. Parker.

25 (WHEREUPON, VIOLET PARKER,

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1 BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

2 THE CLERK: Take the witness stand.

3 DIRECT EXAMINATION

4 VIOLET PARKER BY MR. DELANEY:

5 Q. Good afternoon.

6 A. Afternoon.

7 Q. Could you state your name for the Court please?

8 A. Violet Parker.

9 Q. Thank you, Mrs. Parker. Where - What is your address?

10 A. Church Street, Buffalo.

11 Q. Is that across the street from Church Street?

12 A. It is.

13 Q. How long have you lived there for, Mrs. Parker?

14 A. Eighteen years.

15 Q. Now, you're not overly excited to be here today?

16 A. No.

17 Q. Did I subpoena you to be here today?

18 A. Yes.

19 Q. Now, I'm gonna make it fairly brief. I want to direct
20 your attention, do you remember a little over two years ago
21 the evening or early morning hours of November the 24th,
22 2013?

23 A. I do.

24 Q. What do you remember about those early morning hours?

25 A. I was asleep and I was awoken by a noise. And when

1 I raised up I could see a bright orangish red light coming
2 through our bedroom window. I got up I went to the window
3 and I looked out.

4 Q. Okay. Now I'm gonna stop you right there.

5 A. Okay.

6 Q. What type of noise did you hear?

7 A. It was a popping noise.

8 Q. Okay.

9 A. Loud popping noise.

10 Q. Okay. And the best that you can recall approximately
11 do you remember what time that was?

12 A. Uh - I would say 12:25; 12:30. I don't know.

13 Q. And - Okay. And you - I think I heard you say you
14 got up after you heard the noise?

15 A. Yes, sir.

16 Q. Okay. And what did you see at that point?

17 A. When I went to the window?

18 A. Yeah. Just before you went to the window what was
19 your - What was going on in the room; what made you besides
20 the noise what was brought to your attention?

21 A. The brightness coming from the fire.

22 Q. Okay. And did you look out the window?

23 A. I did.

24 Q. Okay. And what did you see when you looked out the
25 window?

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1 A. The house was on fire.

2 Q. Okay. Could you tell was there - Did it seem that one
3 side may have been more on fire than the other? Do you
4 recall?

5 A. It was. The left side from where I was looking
6 through my bedroom window the left side, the kitchen and
7 the living room was on fire.

8 Q. Okay. And the left side?

9 A. Uh-huh.

10 Q. Okay. And when you say the left side, that would be
11 if you're looking at it it would be your right side but the
12 left side of the house?

13 A. Exactly.

14 Q. Okay. And did - When you looked out the window that
15 night did anything else catch your attention?

16 A. It did.

17 Q. What was that?

18 A. I saw a red - a small red car pull from the back to
19 the front and the person driving the car had on a white hat
20 and it appeared to be Josh Falls.

21 Q. Okay. And when you say went from around the back to
22 the side, what side of the house?

23 A. It came from the back yard around the side where the
24 fire was at and it pulled up to the road and it sped off up
25 the road.

1 Q. And you said that the person that you saw in that car
2 appeared to be Josh Falls; is that correct?

3 A. Yes, sir.

4 Q. Okay. Had you seen Josh Falls earlier that day?

5 A. Yes, sir.

6 Q. How so?

7 A. My husband works in the house, we own the house up
8 above us. He's a cabinet builder. And me and my grandson
9 had walked up - he was working on cabinets - walked up
10 there we talked to him for a little while. Well Josh was
11 on the front porch as we went up - it was later on in the
12 evening - and when we came back down he was on the porch
13 then too.

14 Q. Was Josh - From what you remember was he wearing
15 anything?

16 A. A white ball cap.

17 Q. The individual that you saw in the car by the fire
18 that night were they wearing anything?

19 A. A white ball cap.

20 Q. How bright was it out there that night when you looked
21 out?

22 A. It was really bright. Really.

23 Q. And after that did you wake your husband up?

24 A. I did.

25 Q. Okay. And I guess a few minutes after that did you

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1 all or did your husband take a brief video of the fire?

2 A. He did.

3 Q. Thank you, Mrs. Parker.

4 MR. DELANEY: That's all the questions I have. Please
5 answer any questions that the Solicitor has, okay.

6 MS. PARKER: You're welcome.

7 CROSS-EXAMINATION

8 VIOLET PARKER BY SOLICITOR ANTHONY:

9 Q. Good afternoon, Mrs. Parker.

10 A. Good afternoon.

11 Q. Now just to get the side straight. When you look out
12 your window you're across the street from - - -

13 A. Yes.

14 Q. - - - And when you look out your window it is
15 what, looking at the house it's the left side of the house
16 that's on fire; is that correct?

17 A. Exactly.

18 Q. Okay. And you knew the house to know that's the
19 living room of the house?

20 A. 'The living room and the kitchen.

21 Q. And the kitchen is back behind the living room?

22 A. Uh-huh.

23 Q. Okay. And you testified that you saw this car pull
24 out?

25 A. Yes, sir.

1 Q. Okay. Did the car - Was the car a familiar to you?

2 A. Yes, sir.

3 Q. Okay. Where had you seen the car?

4 A. In that yard.

5 Q. Okay. So this was the same - It was a red car.

6 Correct?

7 A. Yes, sir.

8 Q. All right. And you had seen that car. Did that car
9 basically - Had that car basically just stayed in that yard
10 for the past few weeks?

11 A. Yes, sir.

12 Q. Okay. And you associated that car as being Josh
13 Falls' car?

14 A. Yes, sir.

15 Q. Cause it was staying there at his house?

16 A. Yes, sir.

17 Q. And you were - You know that the car you saw that was
18 the same car that had been staying there at Josh's house?

19 A. Yes, sir. It looked like the same car to me.

20 Q. Okay. All right. And you said after this happened
21 you woke your husband up. Correct?

22 A. Yes, sir.

23 Q. All right. And obviously this is a pretty excitable
24 event I take it?

25 A. Yes, sir.

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1 Q. I mean you don't just wake up in the middle of the
2 night every night and see the house across the road in
3 flames do you?

4 A. No, sir, you don't.

5 Q. Okay. And so you got him up and then what did the two
6 of y'all do next?

7 A. We went to the front door went out on the porch. The
8 fire whistle was going off by that time. We went onto the
9 porch somehow or another he had got the camera and started
10 videoing the fire and we stood there the whole time.

11 Q. Okay. And you said you went out on the porch as the
12 whistle was going off.

13 A. Yes, sir.

14 Q. Okay. All right. And how long did it take you to get
15 on the porch?

16 A. Just a matter of - just seconds.

17 Q. Just seconds?

18 A. Uh-huh.

19 Q. Okay. Cause obviously this was a pretty - pretty big
20 deal and you wanted - you needed to get out there and see
21 what was going on?

22 A. Yes, sir.

23 Q. I mean it wasn't any reason to stop and do anything
24 else when you get up and see the neighbor's house on fire
25 is there?

1 A. Yes, sir.

2 Q. I mean the top priority is just being able to watch
3 that fire ---

4 A. Well --

5 Q. --- to see what's going on?

6 A. I - We just stood there. I mean the fire whistle
7 was going off and we were standing there. People was
8 coming from everywhere and.

9 Q. Okay. And so you and your husband went out on the
10 porch and the fire - to see the fire and get a better view
11 of the fire; is that correct?

12 A. Well we was on the porch, you know, right there
13 watching the fire so.

14 Q. Okay. And your husband starts taking a video of it?

15 A. Yes, sir.

16 Q. Okay. And how soon after y'all got out on the porch
17 did your husband get the camera and start talking the
18 video?

19 A. I'm really not real sure cause I don't even remember
20 him getting the camera until after it was videoed and we
21 looked at it.

22 Q. Okay.

23 A. There were people coming from everywhere and coming up
24 to us on the porch.

25 Q. Well, when y'all walked out and the fire whistle's

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1 going off ---

2 A. Uh-huh.

3 Q. --- how much time passed do you think - would you
4 say from the time the fire whistle goes off to the time he
5 starts shooting with the camera?

6 MR. DELANEY: Your Honor, at that time she says --

7 THE COURT: She said she didn't know when he started
8 so - But I'll let - I mean your question was how long was
9 it before he started filming.

10 SOLICITOR ANTHONY: Yes, sir.

11 THE COURT: And she didn't even know he was filming so
12 - but I'll let you ask the question. Go ahead.

13 BY SOLICITOR ANTHONY:

14 Q. If you know, how much time?

15 A. I don't know.

16 Q. Okay.

17 SOLICITOR ANTHONY: All right. Your Honor, I do have
18 just one matter I need to take up outside the presence of
19 the jury.

20 THE COURT: All right. Let me let you go to the jury
21 room just a minute while we take up a matter of law. It
22 won't be long I don't believe.

23 (JURY EXITS COURTROOM AT 04:36 PM.)

24 SOLICITOR ANTHONY: All right. If I can must make
25 a proffer.

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1 THE COURT: Okay.

2 SOLICITOR ANTHONY: All right.

3 DIRECT EXAMINATION - IN CAMERA

4 VIOLET PARKER BY SOLICITOR ANTHONY:

5 Q. This - The video of the fire, Ms. Parker, you've seen
6 that video?

7 A. I have.

8 Q. Okay. If I - If you saw that again do you think you
9 would recognize it?

10 A. Yes, sir.

11 Q. Okay. Well at this time I'm gonna play a clip for
12 you and I'll just ask you to watch this and see if you
13 recognize what I'm playing.

14 ((VIDEO PUBLISHED TO THE WITNESS AND THE COURT AT
15 04:38 PM.))

16 BY SOLICITOR ANTHONY:

17 Q. And, Mrs. Parker, did you recognize that?

18 A. Yes, sir.

19 Q. And what is that a clip of?

20 A. That house that was on fire.

21 Q. Okay. And is that the start of the video?

22 A. I don't think it is. I can't remember but I remember
23 that part.

24 Q. Okay. And you have seen it before?

25 A. The video?

VIOLET PARKER: CROSS BY SOLICITOR ANTHONY - IN CAMERA

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1 Q. Yes.

2 A. It's been a while ago since I saw it but I did see it
3 yes, sir.

4 Q. Okay. Would it refresh your recollection as to
5 whether that's the start of the video if you saw the whole
6 thing?

7 A. No because I don't remember when he started taking it.

8 Q. Okay. But would you remember if you saw the start of
9 it would you be able to see the start of it so I know
10 that's the start?

11 A. No, sir.

12 Q. As opposed to being the middle or the end?

13 A. No, sir.

14 Q. Okay. Why would that not help you?

15 A. Uh - I don't remember which one was the start and
16 which one - I know that house was - it's a matter of
17 minutes it was engulfed in fire. I mean it wasn't minutes
18 it was seconds till it was on fire and I remember that. I
19 remember Ms. Ramsey and them putting water on their house
20 to keep it from catching on fire. But I don't know which
21 is the start and which is not. I mean I remember the
22 video.

23 Q. Uh-hum. Okay.

24 SOLICITOR ANTHONY: If I can have just one moment.

25 (PAUSE.)

1 Q. Okay. But you can - You can say that what I just
2 showed you is part of - is part of that video of the house
3 burning?

4 A. Yes, sir.

5 Q. That you saw from your porch?

6 A. Yes, sir.

7 Q. And that fairly and accurately depicts what was going
8 on during the period of time of the video?

9 A. Yes, sir.

10 Q. Okay. All right.

11 SOLICITOR ANTHONY: Well I think we would --

12 THE COURT: Let's see if there are any questions -

13 SOLICITOR ANTHONY: Okay. Sorry.

14 MR. DELANEY: Are you asking me if I have any
15 questions for the witness?

16 THE COURT: Yes.

17 MR. DELANEY: I don't.

18 THE COURT: All right.

19 SOLICITOR ANTHONY: We would and until the jury comes
20 back in to ask to proffer that, make that a State's Exhibit
21 and proffer it to the jury.

22 THE COURT: Publish it you mean?

23 SOLICITOR ANTHONY: Publish it to the jury, yes, sir.

24 THE COURT: Any objection?

25 MR. DELANEY: Well I guess I just ask at this time

VIOLET PARKER: CROSS BY SOLICITOR ANTHONY

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1 was a proper foundation laid as far as Ms. Parker's
2 testimony?

3 THE COURT: Well I think it was but I mean you can
4 argue against that because she - even though she didn't
5 take it she was there at least at the time of the fire and
6 she said that depicted what she saw. So whether she
7 actually was the videographer or not I think she's -

8 MR. DELANEY: I have no argument, no argument, your
9 Honor.

10 THE COURT: All right. You can publish it when the
11 jury comes back.

12 SOLICITOR ANTHONY: Okay. Thank you.

13 THE COURT: All right. Bring the jury in.

14 (JURY REENTERS COURTROOM AT 04:43 PM.)

15 THE COURT: All right, you may proceed.

16 SOLICITOR ANTHONY: All right. Thank you.

17 CROSS-EXAMINATION - CONTINUED

18 VIOLET PARKER BY SOLICITOR ANTHONY:

19 Q. Mrs. Parker, did your husband make a video of the
20 fire?

21 A. Yes, sir.

22 Q. And are you aware of when he started shooting the
23 video?

24 A. No, sir.

25 Q. Okay. Did I just show you while the jury was out a

1 clip of that video?

2 A. Yes, sir.

3 Q. And what I showed you does that accurately depict what
4 at least part of the fire that night?

5 A. Yes, sir.

6 Q. Okay. Now you don't know when as far as what time
7 that video was shot I take it?

8 A. No, sir.

9 Q. And that's cause you didn't - you weren't aware when
10 your husband started shooting it?

11 A. No, sir.

12 Q. But what is on that video is what you saw from your
13 porch that night?

14 A. Yes, sir.

15 Q. Okay. All right.

16 SOLICITOR ANTHONY: Your Honor, I would move the
17 video - I will have it marked after I play it if that's
18 okay with the Court but I would move to admit the video
19 into evidence at this time.

20 THE COURT: Any objection?

21 MR. DELANEY: No, objection, your Honor.

22 THE COURT: In without objection and you can publish.

23 (WHEREUPON, STATE'S EXHIBIT NUMBER FORTY-THREE,

24 IDENTIFIED AND RECEIVED INTO THE RECORD.)

25 (WHEREUPON, STATE'S EXHIBIT FORTY-THREE PUBLISHED TO

VIOLET PARKER: REDIRECT BY MR. DELANEY

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1 THE JURY AT 04:44 PM.)

2 SOLICITOR ANTHONY: Your Honor, this will be marked
3 State's Exhibit Number Forty-three, just for the record.

4 (WHEREUPON, STATE'S EXHIBIT NUMBER FORTY-THREE,
5 RECEIVED INTO THE RECORD AND MARKED AS EXHIBIT.)

6 THE COURT: All right.

7 SOLICITOR ANTHONY: And that's all we have on cross.

8 MR. DELANEY: Just a few questions on redirect, your
9 Honor.

10 REDIRECT EXAMINATION

11 VIOLET PARKER BY MR. DELANEY:

12 Q. Once you woke up and looked out the window, that
13 video that we saw your husband took, was the fire a lot
14 bigger at that time than when you first looked out the
15 window?

16 A. It was.

17 Q. How fast did that fire move?

18 A. Really fast.

19 Q. And going back to the car, okay. You weren't able to
20 tell - Were you able to tell the make of the car?

21 A. No.

22 Q. Were you able to tell the model of the car?

23 A. No.

24 Q. Were you able to tell the year of the car?

25 A. No.

VIOLET PARKER: REDIRECT BY MR. DELANEY

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1 Q. Okay. From what we heard earlier you were able to
2 tell it was a small car?

3 A. Yes.

4 Q. Okay. What color was everything outside the house
5 that night?

6 A. It was bright, red, orange, yellow.

7 Q. And again, who appeared to you to be in that small
8 red car that night?

9 A. Josh Falls.

10 Q. Thank you, Mrs. Parker.

11 A. You're welcome.

12 MR. DELANEY: No more questions.

13 THE COURT: Redirect? I mean recross?

14 SOLICITOR ANTHONY: No, no recross.

15 THE COURT: All right, you can step down and be
16 excused. We appreciate your time. Thank you.

17 (WITNESS LEAVING WITNESS STAND.)

18 THE COURT: Call your next witness.

19 MR. DELANEY: Your Honor, at this time the Defense
20 rest.

21 THE COURT: All right, anything in reply?

22 SOLICITOR ANTHONY: No, sir.

23 THE COURT: All right. Members of the jury, you have
24 now heard all of the evidence in the case and received all
25 the exhibits. The next stage which we won't start until in

1 the morning will be my charge on the law and before that
2 the attorney's closing arguments. It's too late in the
3 afternoon, its almost five o'clock, so we're not gonna
4 start it. So we'll start back at ten in the morning.

5 Keep in mind, don't make up your mind yet because you
6 haven't heard their arguments and you haven't heard my
7 charge on the law. So don't try to make up your mind;
8 don't discuss the case among yourselves and all my
9 admonitions about what not to do still apply. So we'll see
10 you at ten in the morning. Have a pleasant evening.

11 (JURY EXITS COURTROOM ON OVER NIGHT RECESS AT 04:48
12 PM.)

13 THE COURT: All right. Anything from the State?

14 SOLICITOR ANTHONY: No, sir.

15 THE COURT: Defense?

16 MR. DELANEY: No, your Honor.

17 THE COURT: You don't want to renew your motion?

18 MR. DELANEY: Well, your Honor, at this time the
19 Defense would renew any objections that we made earlier in
20 this case.

21 THE COURT: All right. But I stand by the motions as
22 made. All right, we'll stop 'till ten in the morning. If
23 counsel will come back for a minute I think we're well on
24 our way to getting the charge, just so we can go over it
25 and see if there's anything that needs to be doctored and

1 other than that we'll reconvene at ten in the morning.

2 MR. DELANEY: Thank you.

3 (COURT IN EVENING RECESS AT 04:50 PM.)

4 (COURT BACK IN SESSION THURSDAY, DECEMBER 10, 2015

5 AT 10:00 AM.)

6 THE COURT: Take your seats. Good morning.

7 Is the State ready?

8 SOLICITOR ANTHONY: Yes, sir.

9 THE COURT: Is the Defense ready?

10 MR. DELANEY: Yes, your Honor.

11 THE COURT: All right. The State has the right to
12 last closing argument based on the fact that the defense
13 put up a witness and put in some evidence so are we ready
14 to proceed?

15 SOLICITOR ANTHONY: We'll waive opening on the law.

16 THE COURT: Okay. If the jury - Bring the jury in.

17 (JURY REENTERS COURTROOM AT 10:06 AM.)

18 THE COURT: Good morning. We're now in the position
19 where you will hear the closing summations by the attorneys
20 and then my charge and then I will have the - place the
21 case in your hands for your consideration.

22 All right, Counsel.

23 MR. DELANEY: Thank you, your Honor, may it please
24 the court.

25 THE COURT: Yes, sir.

CLOSING ARGUMENT: BY MR. DELANEY

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CLOSING ARGUMENT BY MR. DELANEY

1
2 MR. DELANEY: Good morning. I'm going to try to stay
3 somewhat near this but I think you all will see shortly if
4 you haven't already noticed I tend to walk around a little
5 bit. I'm gonna try to stay still.

6 I am a big college football fan. My wife would say
7 obnoxiously huge college football fan. In the last couple
8 of years there has been a big change in college football.
9 They've gone to this college football play off and there is
10 actually a college football playoff committee that's made
11 up of rightly enough twelve members. And these individuals
12 former coaches, players; Condolesa Rice is one of the
13 members of the playoff committee. But everybody on there
14 knows about football and what their job and what they're
15 charged to do is to go over evidence; evidence from the
16 season of all these teams throughout the country. And it
17 is their job, their charge with coming up with the four
18 best to play in the playoff.

19 They don't make their decision based on one game, one
20 huge upset. They look at the entire - the entire resume
21 for the entire year.

22 I bring that up and your job is here today and what
23 you're gonna be charged by the judge to do in this case is
24 to come up collectively, unanimously, with a decision and
25 you're gonna do that based upon the evidence. I feel bad;

1 I think I can speak for ever single person in this
2 courtroom, it's a shame Ms. Corbett's house burned down.
3 No doubt about it that's a shame. But you can't let
4 sympathy that we all have for her factor into your decision
5 making in this case. Your decision must be based on the
6 evidence, or, I submit the lack of evidence that was
7 presented to you throughout this trial.

8 What has the State successfully proved in this case?
9 They proved there was a house fire at Church Street in
10 Buffalo in November in 2013. Quite frankly, ladies and
11 gentlemen, that's where it stops. That's where their
12 momentum stops. Because as you heard the Union County
13 Sheriff's Office, the Buffalo Fire Department, arson expert
14 from SLED, all spent time out at this fire scene. And you
15 heard a lot of time. Hours at this fire scene. And what
16 did they come up with? I would submit zero. They came up
17 with zero evidence, zero, that Crystal Calicutt maliciously
18 and intentionally caused the fire at Church Street.
19 And I say maliciously and intentionally kind of important
20 because that's what she's on trial for. This is what this
21 case is about.

22 The investigator who we heard from in this case, the
23 arson expert, who spent five to six hours at the scene, who
24 used an accelerate detection K-9 over the entire house, who
25 has access to the best labs in the country, one day found

CLOSING ARGUMENT: BY MR. DELANEY

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1 it one day after this fire, one day after this house burned
2 down it could not be determined if this fire was an
3 accident or intentional. That was the day after the fire
4 after he had just completed all of his work. We heard the
5 scientific method that's employed; it was undetermined.
6 Yet over two years later the State is gonna ask you here
7 today to convict Ms. Calicutt for intentionally and
8 maliciously causing this fire.

9 And I ask you, ladies and gentlemen, and I'm going to
10 ask you to ask yourselves when you're talking about this
11 case in the jury deliberation room is this; what is that
12 based on, based on what? Well, we heard the keys from the
13 solicitor at the beginning of this case motive,
14 opportunity, deception. That's what we heard the keys were
15 gonna be; motive, opportunity, deception. And let's talk
16 about each one of those.

17 Motive: Where did they prove motive in this case?
18 What evidence was presented to you about motive other than
19 Josh Falls is dating, messing around with, seeing two
20 different women. That's the motive? Cause what I heard
21 motive is out there but it's for other parties. And from
22 what I heard, is the testimony you heard, the other woman
23 Rhonda Johnson she was the one being used that night not my
24 client. She was being used for money for Joshua Falls to
25 go out with Crystal Calicutt. And you heard Joshua Falls

CLOSING ARGUMENT: BY MR. DELANEY

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1 and they're gonna I'm sure make a big deal and say oh these
2 phone calls are suspicious. Well what about these phone
3 calls? You heard Joshua Falls say every time he talked to
4 Crystal Calicutt that night when he was out with Rhonda did
5 he say - was there any testimony that she was irate that
6 she was mad, that she was upset; you better come home
7 something's gonna happen duh duh duh, where are you at?

8 You had someone to come in from SLED who's an expert
9 at getting into people's phones. Anything about any text
10 messages that were sent? You better get you're a duda duda
11 home, duh duh duh. No, nothing.

12 You heard from Sabrina Falls who was talking to my
13 client for seventeen minutes. And did she once say
14 anything about my client being upset about her brother and
15 about some situation? No. Where's the motive? There was
16 no evidence presented for motive, ladies and gentlemen. I
17 would submit to you that what I saw someone had motive in
18 this courtroom. Someone had motive to lie in this
19 courtroom. And someone in my opinion said some things
20 during the first day of trial that didn't make a whole lot
21 of sense and that would be the lady that was being used
22 that night Rhonda Johnson. She brought up this and you
23 heard when I ask the arson investigator did he ever have
24 any mention, hear anything about this - this picture of the
25 - the picture of the ultra sound. This picture she said

CLOSING ARGUMENT: BY MR. DELANEY

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1 she had a picture of a ultra sound that she put in Joshua
2 Falls house. Did you hear Josh say anything about that?
3 Don't you think that's something important that the State
4 would have tried to get out of him if there is some truth
5 that. He had a picture of her baby, her unborn baby in the
6 house, just so Ms. Calicutt and it could be right in front
7 of her face. Oh, she'll come in over two years later and
8 nothing in her statement about that but two years later and
9 that's what she's telling y'all. An ultra sound after what
10 I heard a couple of weeks. I have a lot of nieces and
11 nephews; I don't remember my brother or sister coming home
12 with ultra sounds after one or two weeks. I think it takes
13 a little longer than that to get an ultra sound. So
14 there's motive to try to get Ms. Calicutt out of the
15 picture. This is Rhonda Johnson's opportunity.

16 Now, let's talk about opportunity. And I guess one
17 more comment before I go to opportunity on Rhonda Johnson
18 she ask the question of me and she ask the most questions
19 during the trial do I know what swindling is. Do I know
20 what a swindler is. Someone who practices law yeah I know
21 what a swindler is. A swindler is someone that lies and
22 cheats and deceives people. That's what a swindler is.

23 Opportunity: We heard throughout this trial Crystal
24 Calicutt was the last person in this house. She had the
25 opportunity. And we heard from Agent Keller after I would

CLOSING ARGUMENT: BY MR. DELANEY

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1 submit a whole lot o filibustering and some evasiveness we
2 finally, finally heard what tipped the scales. What tipped
3 the scales from him that this became an undetermined fire
4 from his investigation at the scene to then making that
5 next jump of charging my client with arson. What tipped
6 the scales for you? Ultimately what he said was that she
7 was the last person there. She had the opportunity.

8 (VERY LOUD TRAIN WHISTLE HEARD AT 10:19 AM.)

9 MR. DELANEY: Now, you're going to hear something
10 called mere presence. Just being someplace. Just being
11 present someplace where a crime occurred or where a
12 possible crime occurred that's not enough. Mere presence
13 alone, ladies and gentlemen, is not enough. And Judge
14 Hayes is gonna charge you that at the end of this case.

15 (PAUSE.)

16 MR. DELANEY: Deception: Motive, opportunity,
17 deception the keys to the State's case. Where do we see
18 deception? They would have never known that my client was
19 the last person to leave that house unless she voluntarily,
20 willfully came and told them. Every time you have her
21 statement you have the audio of her conversation. Four
22 different conversations she had; each time voluntarily she
23 came in she gave them that information.. She gave them the
24 information. She was consistent as I told you at the
25 beginning of this trial.. The same thing in each one of

CLOSING ARGUMENT: BY MR. DELANEY

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1 those, I had nothing to do with this fire in each one of
2 these statements.

3 Now I expect the State in a little bit is gonna tell
4 you, well, she didn't tell them she was using any pills in
5 the first one or the second one. She came in December 9th
6 and said I took some pills that night. And I'll submit to
7 you, ladies and gentlemen, that's the truth. I mean you
8 heard from law enforcement that's not some big shocker.
9 But you also heard from the arson investigator that's
10 something he wants to know because that increases the
11 likelihood of an accident happening of someone forgetting
12 to unplug something.

13 And as you heard she wasn't forced to say that. Again
14 she volunteered that information. They didn't have test
15 results. They had Josh Falls saying some things. And
16 we're gonna talk more about Josh Falls in a minute.
17 Because when I get down the State's gonna get a chance to
18 talk to you before the judge does. And I suspect they're
19 gonna be putting some stuff up on here; things that were
20 presented throughout this trial, pictures, phone records.
21 Oh, this is suspicious, ladies and gentlemen, this doesn't
22 look right, this doesn't add up.

23 Well, if you want to talk about suspicion - And we
24 need to stop - We just - let me just stop there.
25 Suspicion? Suspicion is not enough; suspicion is not

CLOSING ARGUMENT: BY MR. DELANEY

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1 enough. There needs to be a whole lot more than suspicion.
2 But if you want to talk about suspicion, if you want to
3 talk about opportunity, who's out there in this area?
4 Who's out there running from the police at this time? Who
5 in this time frame when this house gets set on fire, and as
6 you hear he's going out the back door 12:20. He's out
7 there and then there's a fire. Talk about suspicion. We
8 heard the K-9. They tracked him five to six hundred yards
9 from Church Street. Five or six hundred yards.

10 And we heard testimony he got picked up by someone the
11 first name Adrian - they gave a last name. Wouldn't you
12 like to hear from Adrian? They had his name. That's their
13 burden to call witnesses not the defense. We didn't have
14 to present one single witness in this case. But we
15 presented one didn't we? We presented one. Now who was
16 that witness? Who was that witness that we presented? I
17 would submit there was the truly one unbiased witness that
18 we got in this case. She didn't want to be here. But what
19 did she say? What did she say? Who did she say she saw on
20 the side of the house coming from the back beside of the
21 house in a small car? Who did she see? She said it
22 appeared to be Josh Falls. Talk about suspicion. And the
23 State went to a lot of lengths I submit in this trial to
24 try to say, Well --

25 And you heard the question on cross-examination of

CLOSING ARGUMENT: BY MR. DELANEY

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1 Ms. Parker - Mrs. Parker that well, you know, this this,
2 you know, Rhonda Johnson's car, you know, you heard was
3 over there with Al Black at the house, this little burgundy
4 car was there so no, that's got to be wrong. But what did
5 you hear her say? She couldn't tell the make of that car.
6 She couldn't tell the model of that car. What did she tell
7 you the color was when she looked out of that window of
8 everything that night? A bright red glow is what she said.

9 And who did she say she saw earlier that day with the
10 white cap on? Who did she say she saw in the car with the
11 white hat on, right by the house? Holy cow, that is
12 suspicion.

13 I talked to you a little bit at the beginning of this
14 case about the burden, the standard, and what you're gonna
15 have to apply to the facts. And Judge Hayes is going to
16 instruct you to these in just a few minutes. But again, if
17 you're in that jury deliberation room, ladies and
18 gentlemen, and you're not firmly convinced of my client's
19 guilt, if you're hesitant to act, cause he's gonna tell you
20 those are the definitions of reasonable doubt. Today the
21 State has the burden to present the case; they must prove a
22 charge beyond a reasonable doubt. I would submit they did
23 not come close to meeting their burden in this case, ladies
24 and gentlemen.

25 This legal system it takes - you know you watch, you

CLOSING ARGUMENT: BY MR. DELANEY
BY SOLICITOR ANTHONY

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1 watch the news, you read the papers, you know, there's all
2 these politicians that are going to be arguing certain
3 sides. This system, this system it's not perfect, but it's
4 the greatest system in the world. Because suspicion is not
5 enough in this system. Suspicion is not enough. You need
6 evidence to back that up. This system demands better. My
7 client Crystal Calicutt deserves better. And after your
8 deliberations, ladies and gentlemen, I'm gonna ask you to
9 find my client Crystal Calicutt not guilty. Thank you.

10 SOLICITOR ANTHONY: May it please the Court.

11 THE COURT: Yes, sir.

12 Can you give us one minute to print something?

13 (PAUSE AT 10:27 AM.)

14 SOLICITOR ANTHONY: Is the court ready for me?

15 THE COURT: Yes.

16 SOLICITOR ANTHONY: Okay. Thank you.

17 CLOSING ARGUMENT BY SOLICITOR ANTHONY

18 SOLICITOR ANTHONY: On Tuesday afternoon I ask
19 you all to think about three types of evidence that would
20 show that Ms. Calicutt burned down Kay Corbett's house.
21 Motive, opportunity and deception. And we don't have a
22 video tape in this case of Ms. Calicutt setting the fire.
23 We don't have a witness who says that they saw her do it.
24 If we had to have those things we wouldn't solve those
25 crimes and we certainly would not solve most arsons because

CLOSING ARGUMENT: BY SOLICITOR ANTHONY

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1 most arsonist are not gonna set fires where there's a
2 candle burning where people are gonna see it.

3 But the thing is you don't have to have eyewitnesses
4 in a case to convict somebody. You don't have to have
5 eyewitnesses to persuade that a person is guilty. You can
6 find somebody guilty based on circumstantial evidence. And
7 sometimes circumstantial evidence is more reliable than
8 what's called direct evidence where people tell you they
9 actually saw something. And in this case I think you'll
10 see is a good example of that because we have strong
11 circumstantial evidence to prove that Ms. Calicutt set this
12 fire. Evidence that should leave you firmly convinced that
13 she's guilty. So let me just run through some of this with
14 you.

15 First off, let me just talk a little bit about motive.
16 Crystal Calicutt loved Josh Falls. She told Al Black that
17 she wanted to have a baby with him. She went out on the
18 lamb with him. She got to his mother's house or got to his
19 mother's house got his mother's car and picked him up
20 stayed with him for two days. She held out for two days
21 with a fugitive and apparently that was fine because it was
22 Josh Falls. Now what do you think she thought about Rhonda
23 Johnson? Rhonda Johnson who was already gonna have a baby
24 with Josh Falls. Rhonda Johnson who already had a ultra
25 sound picture. What do you think Crystal was thinking that

1 night when Josh wouldn't come home because he was out with
2 Rhonda. She's sitting there and she's planning on having
3 their big night. She went home she got some clothes got
4 made up got to where she was looking good ready to go out
5 and go to the big town of Greenville with her man and time
6 keeps passing. And those calls from Josh keep coming but
7 he's not coming home. This is Saturday night this club in
8 Greenville is gonna be shutting down and this was supposed
9 to be her night and Josh is out with Rhonda Johnson.

10 And right there in that living room is the furniture
11 that Rhonda Johnson bought. And its no coincidence that
12 when you look at that diagram that Agent Keller did, which
13 will be back with you in the jury room, that where he put
14 the location of the fire - Here it is - where he put the
15 location of the fire. He's got the area of origin right
16 there right between the love seat and the couch. Right
17 there where that furniture is that Rhonda bought. So
18 Crystal Calicutt had a motive and that fire started right
19 where you'd expect - would have expected her to start it.

20 Now lets talk for a minute about opportunity. And I
21 want you to take a look at this. Can everybody see this?

22 Okay. Okay. Great. There's a lot of times in this
23 case so I thought it might be helpful to just do a little
24 time line and isolate some of these times. The key thing
25 is Crystal makes a seventeen minute call to Sabrina Falls

CLOSING ARGUMENT: BY SOLICITOR ANTHONY

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1 from 12:21 am to 12:38 am. This is all in that phone
2 record you'll have back in the jury room. And this is the
3 call that Sabrina Falls testified to it. She's walking out
4 Crystal says. When she called her she was talking out and
5 she was almost to her mother's house when she got off the
6 phone. Sabrina - Sabrina says Crystal - Crystal claims she
7 was walking out when she was called and she was almost to
8 her momma's house when she got off the phone.

9 Now Crystal tells Agent Vaughan in her first statement
10 and she tells Al Black though that it only took ten - five
11 to ten minutes to get to her mother's house. So Crystal
12 claims it's a five to ten minute walk to get from Josh's
13 house or from Josh's on Church Street to her momma's house.
14 But this call that supposedly book ends Crystal leaving the
15 house and gets to her momma's house that call takes
16 seventeen minutes. And that call is where motive and
17 opportunity come together because during that call - This
18 is what Sabrina testified to - that Crystal has started to
19 think that Josh is just trying to get me out of that house
20 so he can bring in that other woman. That's what she's
21 asking Sabrina. She's saying you think maybe he just wants
22 me out of there so he can bring in Rhonda and she's
23 thinking about that and that's what she's asking herself.
24 And that's what she's asking Josh's sister. So for some
25 reason it takes her seventeen minutes to make what is by

1 her own admission a five to ten minute walk. Now something
2 unusual happened during those seventeen minutes. And we
3 find out what happened during those seventeen minutes about
4 twenty minutes later at 12:42 when Danny Gowen the fireman,
5 the third guy that testified Tuesday afternoon, sees this
6 fire and calls it in.

7 Now it's important to see how Ms. Calicutt had an
8 opportunity to start the fire but it's also important to
9 see how other people didn't have the opportunity to start
10 the fire. Josh Falls - this is also on the phone records -
11 Josh Falls calls Crystal at 12:18 am, and this is the call
12 where he tells her to get out of the house. And so, three
13 minutes later, this call last two minutes, three minutes,
14 and so right after this call disconnects she calls Sabrina.
15 And then Al Black calls in that Josh is running at 12:20.
16 Well at 12:18 the red car that stays at Josh's house is
17 stopped on Pine Street. That's where that car is.

18 Now I don't know what Violet Parker saw that night
19 when she got up but she did not see Josh's little red car.
20 And she said, she was very clear on this, she knew that
21 car, that car stayed over there at that house. It'd been
22 over there at that house for weeks and she knew that car
23 and she said that the car she saw pulling out when she woke
24 up and saw the fire was that same car. There wasn't any
25 kind of ambiguity about what she was saying. She said she

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1 knew that it was the same car.

2 But, ladies and gentlemen, it could not have been the
3 same car cause that same car was stopped on Pine Street at
4 12:18 am. And Lieutenant Black testified that they didn't
5 go back to Church Street; that Rhonda Johnson was not
6 released in that car to go back to Church Street until
7 after the fire was basically out. So they didn't take that
8 car back to Church Street until after 12:51. The fire
9 department didn't get there until 12:51 so it was sometime
10 way after one o'clock in the morning before that car got
11 back to Church Street.

12 And the other thing that you need to notice about her
13 testimony, she testified that she got up or she saw the
14 fire between 12:25 to 12:30 and that's when she claims to
15 see this red car. But then she also said that as soon as
16 she got up they went out on the porch. She said it was - I
17 ask her how long did it take? She said seconds. I woke my
18 husband up and we just went straight out on the porch. And
19 she said - But then the other thing she said was that when
20 she went out on the porch the fire whistle was going off.
21 Well that can't be right because the fire whistle didn't go
22 off until 12:43. Danny Gowen saw the fire at 12:42 and he
23 actually called 911 and the fire alarm's going off at
24 12:43. So if Ms. Parker goes out seconds after seeing this
25 fire and the fire alarm's going off that means that she did

1 not see it between 12:25 and 12:30; she saw it or about the
2 same time that Danny Gowen saw it. And Danny Gowen who was
3 there like from the time he called the fire until the time
4 the Buffalo Fire Department showed up, he was there with
5 his gear on getting ready to help fight the fire and he
6 didn't see anybody. He said he didn't see anybody out
7 there.

8 The other thing you have to remember, and this takes
9 you back to Agent Keller's testimony, if the fire had just
10 been set immediately and then left by someone; that
11 somebody had just popped in over there after Crystal left
12 and set the fire, then it would not have been blazing at
13 the time like it was at the time that Danny Gowen saw it.
14 And even at the time that Ms. Parker when she claims to
15 have seen the fire. She says the house was ablaze when she
16 saw it. And I'll talk about this a little bit more in a
17 minute, but you would remember that Agent Keller testified
18 that that fire did not get to where it was starting to
19 consume that house and engulf that house in one or two or
20 even ten minutes. So, when it comes to Ms. Parker, the
21 bottom line is that Josh Falls did not have access to that
22 car. She had seen that car over there before. She saw -
23 She probably saw it that night; she probably saw it after
24 the fire. I really don't know what she saw but she didn't
25 see that red car and she didn't see Josh Falls. Josh Falls

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1 was on foot being chased. He had been - was being chased;
2 that's about 12:18 am. And he may have been picked up at
3 the Fire Department like he says or he may have been picked
4 up where the dog tracked, but either way, the dog never
5 tracked up Church Street. You know it never tracked back
6 to Ms. Corbett's house.

7 And the thing is, why would Josh Falls have even gone
8 back there? If you're running from the police the last
9 place you're gonna go is to your house. And just to go
10 back to motive, why would Josh Falls want to set where he
11 was living on fire? I mean that doesn't make any sense.
12 Just because you're running from the police doesn't mean
13 you go back to your house and burn it down. That's crazy.
14 So, Josh Falls did not have any motive, any motive at all,
15 to set that fire. The person who had a motive to set the
16 fire was Crystal Calicutt.

17 I want to talk just for a minute about deception. And
18 there are just a few things here that I think need to be
19 pointed out when you think about deception. Ms. Calicutt
20 says that she left the house and everything was fine. And
21 five to ten minutes later she gets to her mother's house
22 and she could look over to Church Street from her mother's
23 house on Candler Drive and see that Josh's house is on
24 fire. Well first of all that's inconsistent with the time
25 that there were phone calls to Sabrina Falls last. But

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1 then the other thing is as Agent Keller told y'all
2 yesterday the fire could not have spread to the degree to
3 where you could see it in five to ten minutes. If the fire
4 had reached the kind of intensity in the living room to
5 where you could see it in five to ten minutes, it would
6 have caused - it wouldn't have caused the kind of damage it
7 did to the rest of the house. And Agent Keller snowed that
8 just because that's his job. He knows burn patterns and he
9 knows that that fire didn't start and engulf in that house
10 and flames become visible in five minutes or ten minutes.
11 It took longer than that. It took basically until about
12 the time that Danny Gowen would have seen the fire. Danny
13 Gowen seeing the fire at 12:42 is consistent with Crystal
14 Calicutt setting the fire right about the time she's
15 talking to Sabrina Falls; starting to wonder why is he
16 trying to get me out of this house to try and bring that
17 other women in. And right there that's the time of
18 ignition that would be consistent with when that fire had
19 been observed.

20 Ms. Calicutt was ask repeatedly on November 26 about
21 whether she was taking drugs that night and she denied it.
22 And then on December the 9th after being confronted by what
23 Josh Falls had said she admitted she was taking pills and
24 marijuana. And then after three different interviews they
25 kept asking her about things that might have been left on.

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1 Then in the fourth interview she mentions those candles.
2 Although she says that she blew them out but she still just
3 trying to come up with a reason that that fire might have
4 started other than the real reason because she can't tell
5 them really why that fire started.

6 And then there's one last curious thing. Ms. Calicutt
7 said she walked to her momma's house and that her momma
8 took her to Josh's grandma's house and Josh's mother's
9 house. But the curious thing is that if you look at that
10 phone record that's in evidence between 12:42 and 12:43 she
11 and her mother trade these phone calls where they leave
12 voice mails for each other. Now she says that at 12:38
13 she's at her momma's house. But at 12:42 and 12:43 when
14 you look at this Exhibit here, you've got calls 12:42
15 Crystal Calicutt calls her momma, voice mail. 12:43 momma
16 calls Crystal, voice mail. 12:43 Crystal calls her momma,
17 voice mail. 12:43 momma calls Crystal, voice mail. You
18 got all these voice mails being left for each other which
19 is - I don't know what happened that morning after she left
20 Josh's house but I do know that you don't exchange voice
21 mails with somebody that you're riding around in a car
22 with. So, there you go. Maybe a little more deception.

23 So, when you look at the three things I ask you to
24 look at, motive: Who wanted to do that? Opportunity: Who
25 could have done it? Deception: Who's trying to hide

1 things about what happened? All those circumstances just
2 point one direction. They just point to Crystal Calicutt.

3 Now I want you to do - I want you to add one more
4 thing; one more thing to that little recipe I gave you. I
5 just want you add some common sense because that's what
6 jurors are supposed to do. Jurors are supposed to apply
7 common sense and reason to do so. And I just want you to
8 think, you know, how unlikely is it that Ms. Calicutt's
9 words or Ms. Calicutt leaves that house and everything's
10 find and then less than twenty minutes later its burning
11 down? What are the chances of that? Just apply your
12 common sense and think what are the chances of that?

13 You know we don't have to prove this beyond any
14 reasonable doubt. That is not what reasonable doubt means.
15 It doesn't mean that you have to be beyond any kind of
16 question at all that somebody committed a crime. We just
17 have to prove it to where you can look at the evidence and
18 say I am firmly convinced. I am firmly convinced that Ms.
19 Calicutt set this fire. And when you look at Ms.
20 Calicutt's motive and opportunity and deception and then
21 you look at all of that and apply your common sense the
22 only conclusion brought is that she is guilty. She was all
23 pilled up, this other woman was out spoiling her evening
24 taking her time away from the man she loved and she decided
25 to set that woman's stuff on fire.

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1 I just have a couple of other things I want to mention
2 to you before I finish. Just a few things, sort of house
3 keeping things. To convict Ms. Calicutt you don't have to
4 find that she intended to burn down the house. She might a
5 just meant to burn up Ms. Johnson's love seat. It may not
6 have occurred to her that that whole house was gonna burn
7 up. But if she intentionally set a fire that did damage to
8 the house, then she's guilty. You know even if the house
9 just sustained more damage than she meant it to sustain; if
10 she set fire to something in that house with an intent to
11 damage it then she's guilty of arson.

12 The judge will tell you that its not an offense that
13 she used drugs that night. If she got voluntarily impaired
14 with pills and marijuana and that clouded her judgment and
15 caused her to do this she's still guilty because she
16 decided to use those pills; she decided to smoke that
17 marijuana. And then the judge will tell you that your
18 verdict has to be unanimous. And that doesn't mean that we
19 can go back in the jury room and if everybody does not vote
20 guilty then you have to find her not guilty. What that
21 means is that if can't agree you just let the judge know
22 and he will give you more instructions.

23 I know for some of you this case might have made you
24 think a little bit of Jerry Springer. And for me I kind of
25 like country music and it has reminded me of some country

1 music songs. But the one - the songs - the song I
2 particularly think of is not a song about cheatin or a song
3 about, you know, another woman or something like that
4 although it does remind me of some songs like that too.
5 But the song that I think of and I think about in this case
6 is a song about a house. And some of y'all may have heard
7 this Miranda Lambert song from a couple of years ago called
8 the House that Built Me. And that was a song about going
9 home to the house you grew up in and what that house brings
10 to you and how when you go to a place like that how you
11 think about your pet and you think about the things you did
12 when you were a kid and you think about your parents.

13 And something - something like that it - it gets you
14 in touch with who you really are and that's a real
15 blessing. I can still do that. It's a blessing to be able
16 to do that. And the first few lines of that song are "*I*
17 *know they say you can't go home again but I just had to go*
18 *back one last time.*" And when I think of those lines I
19 think of Mrs. Corbett because up until November 23rd of
20 2013 she could go back home. You know she could go back to
21 that house and she could go into those rooms that she grew
22 up in. She could go back to those memories of her parents.
23 And in a moment of jealousy and anger and must stupidity
24 Crystal Calicutt took all of that away from her. And now
25 Ms. Corbett can't go home again. Ms. Corbett will never be

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1 able to go home one last time. And now I'm just asking you
2 to hold Ms. Calicutt responsible for what she took away
3 from Kay Corbett. When you go back to that jury room think
4 about all this evidence apply your common sense to it and
5 find Crystal Calicutt guilty of arson... Thank y'all very
6 much.

7 CHARGE TO THE JURY

8 THE COURT: Members of the jury panel, I'm now gonna
9 charge you the law that you are to apply to the facts as
10 you determine them to be in this case. The indictment
11 which you won't have with you in the jury room charges Ms.
12 Calicutt with committing arson in the third degree on
13 November 24th, 2013 at Church Street in Buffalo.

14 To this she has entered a plea of not guilty which
15 places on the State the burden of proving her guilt beyond
16 a reasonable doubt. This indictment is not evidence. It
17 simply contains the charge against Ms. Calicutt. In our
18 system anyone charged with an offense is presumed innocent
19 and I will get to you - get that - I'll talk to you more
20 about that in just a moment. The indictment is the
21 paperwork by way of which this case is processed through
22 our court system and ultimately will be where the unanimous
23 verdict will be enrolled by the Forelady.

24 The fact that she has been charged, the fact that she
25 has been arrested and the fact there is an indictment in

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1 this case and she is on trial is not evidence that can be
2 considered by you as evidence of any guilt on behalf of Ms.
3 Calicutt. Nor does it create any presumption or inference
4 of guilt. Again this indictment is simply a formal written
5 instrument which contains the charges against her; it is a
6 formal document by which this case is brought into court.

7 As I told you Ms. Calicutt has pled not guilty to the
8 indictment and this plea of not guilty places on the State
9 the burden of proving her guilt beyond a reasonable doubt.
10 A person charged with committing an offense in our state is
11 never required to prove themselves innocent. I charge you
12 that it is an important rule of law that a criminal
13 defendant on trial no matter how significant or serious the
14 charge may be will always be presumed to be innocent for
15 the crime for which they are indicted until their guilt has
16 been proven by evidence satisfying you of their guilt
17 beyond a reasonable doubt.

18 The presumption of innocence attaches to an individual
19 at the time of their arrest and remains with them until you
20 as the trial jury in this case are convinced of their guilt
21 beyond a reasonable doubt. The presumption of innocence in
22 Ms. Calicutt's favor exist at this very moment. It remains
23 with her as you deliberate. The presumption of innocence
24 is in an individual's favor and is removed only as to Ms.
25 Calicutt or any other defendant that presumption of

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1 innocence is removed only if and when the jury unanimously
2 determines the State has proven that person's guilt beyond
3 a reasonable doubt. This presumption of innocence is not a
4 mere legal theory or a mere legal phrase, it is a
5 substantial right to which Ms. Calicutt and every other
6 defendant would be entitled.

7 Our law has defined a reasonable doubt as the kind of
8 doubt that would cause a reasonable person to hesitate to
9 act. Proof beyond a reasonable doubt is proof that leaves
10 you firmly convinced of someone's guilt. There are very
11 few things in our world that we can know with absolute
12 certainty and that is not required in criminal cases. It
13 is not required that the State overcome every possible
14 doubt. If based on your consideration of the evidence you
15 are firmly convinced that Ms. Calicutt is guilty of arson
16 as charged you would find her guilty. If on the other hand
17 you think there is a real possibility Ms. Calicutt is not
18 guilty, you would give her the benefit of that doubt and
19 find her not guilty. She is entitled to the benefit of any
20 reasonable doubt you have as to any issue in this case.

21 I remind you that I have certain duties to perform as
22 trial judge. It is my responsibility as I told you earlier
23 to preside over the case and rule on the admissibility of
24 evidence. You are to consider only the competent evidence
25 that was allowed into the record. If any testimony had

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1 been stricken from the - has been stricken from the case
2 disregard it. You are to consider only the testimony which
3 has been presented from the witness stand and any exhibits
4 which have been made part of the record in the case.

5 During the course of a trial an attorney may have made
6 an objection to the introduction of certain evidence. You
7 are not to hold this against them as it is part of their
8 job. You are to make no inference from the fact that an
9 attorney objected at any point in this trial.

10 I have the additional duty to charge you the law
11 applicable to this case. As the presiding judge I am the
12 sole judge of the law in this case and it is your duty to
13 accept and apply the law as I now charge it to you. This
14 is true even if you think the law should be different or
15 even you think I charge the law in error.

16 In every case tried in this court before a jury the
17 jury becomes the sole and exclusive judge of the facts of
18 the case. A trial judge cannot intimate, state, comment
19 on, or make any statement to a trial jury about the facts
20 in a case since, you, the jury in this case are the sole
21 judges of the facts. You are not to infer from anything I
22 have said or done during the progress of this trial or as
23 any indication of my having an opinion on this case as I -
24 or that I have any opinion about the facts in this case.
25 Our law does not allow me to have an opinion about the

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1 facts. This is solely your job. It's solely up to you to
2 determine the effect, the value, the weight, and the truth
3 that the evidence should have.

4 In cases such as this there are generally two types of
5 evidence which are presented. Direct and circumstantial
6 evidence. Direct evidence directly proves the existence of
7 a fact and does not require the jury to make any
8 deductions. Circumstantial evidence is proof of a chain of
9 facts and circumstances indicating the existence of a fact.
10 Crimes may be proven by circumstantial evidence. Our law
11 makes no distinction between the weight or value to be
12 given either direct or circumstantial evidence. However to
13 the extent the State relies on circumstantial evidence, all
14 the circumstances must be consistent with each other and
15 when taken together point conclusively to the guilt of the
16 accused beyond a reasonable doubt.

17 If these circumstances merely portray a defendant's
18 behavior as suspicious then that proof has failed. The
19 State has the burden of proving Ms. Calicutt guilty beyond
20 a reasonable doubt and this burden rest on the State
21 whether it relies on direct evidence, circumstantial
22 evidence, or a combination of the two.

23 As judges of the facts you may believe one witness as
24 opposed to several, several witnesses as opposed to one and
25 you may believe all or part of a witnesses' testimony. In

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1 analyzing the evidence use your common sense, your sense of
2 logic, your sense of reason and your experiences in life.
3 As the judges of the facts in this case you necessarily
4 must judge the credibility of the witnesses who have
5 testified. It is your duty to analyze and evaluate the
6 evidence and determine which evidence convinces you of it's
7 truth.

8 As I said you may believe in determining believability
9 you may believe one witness over several or several over
10 one. You may believe a part of the testimony of a witness
11 and reject the remaining part of the testimony of that same
12 witness. You may believe the testimony of a witness in
13 it's entirety or reject the testimony of a witness in its
14 entirety.

15 As I said use your common sense, your sense of reason,
16 your experience and your sense of logic in analyzing the
17 evidence and your experiences in life. In judging the
18 credibility of the witnesses use those things that you in
19 your day to day life find as indicating truthfulness in an
20 individual. You may also use evaluators of truthfulness
21 such as a witnesses' demeanor. That is, how the witness
22 acts on the stand; are they hesitant or straightforward.
23 Look at consistencies or inconsistencies in a witnesses'
24 testimony at trial or as compared to other statements. You
25 may also consider any bias or prejudice a witness may have;

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1 that is, whether a witness would wish to help or hurt one
2 side or the other. Consider the opportunity the witness
3 had to know those things about which they testify. You may
4 also consider a witness's criminal record in accessing the
5 witnesses's credibility.

6 Our rules of evidence ordinarily do not permit a
7 witness to testify as to opinions or conclusions. An
8 exception exist in law as to witnesses what we qualify as
9 experts. A witness who, by education and experience, has
10 become an expert in some art, science, profession or
11 calling may state an opinion as to relevant and material
12 matter, in which the witness claims to be an expert, and
13 may also state the reasons they reached their opinion.

14 You should consider any expert opinion received in
15 evidence in this case like all the other evidence in a
16 case. You give it the weight you think it deserves. If
17 you decide that the opinion of an expert witness is not
18 based on sufficient education, experience, or if you
19 conclude that the reasons given in support of their opinion
20 are not sound, or that the opinion is outweighed by other
21 evidence, you may disregard the opinion in it's entirety.
22 The opinion of experts is allowed into evidence to assist
23 you, it is not binding on you.

24 An expert witness' testimony is to be given no greater
25 weight than the other witnesses simply because the witness

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1 is an expert. You are not required to accept an expert's
2 opinion even though it is uncontradicted. The testimony of
3 an expert witness is not binding on you the trial jury as I
4 have said.

5 I instruct you and emphasize to you the fact that Ms.
6 Calicutt exercised her constitutional right to remain
7 silent cannot be used against her in anyway whatsoever. A
8 defendant, here Ms. Calicutt, has a constitutional right to
9 remain silent. The assertion of her by that right or
10 assertion of her of that right cannot be as I said used
11 against her in any way whatsoever. Under your oath you are
12 to draw no conclusion whatsoever from the fact that Ms.
13 Calicutt exercised her constitutional right to remain
14 silent and did not testify. This fact cannot be discussed
15 by you in the jury room or factor into your own individual
16 consideration of the evidence. The burden of proof, as I
17 have stated, is on the State. Ms. Calicutt is not required
18 to prove her innocence. The burden of proof remains on the
19 State to prove her guilt beyond a reasonable doubt.

20 Mere presence at the scene where a crime occurred is
21 not alone sufficient to prove some guilty of a crime. A
22 defendant's presence where a crime is being committed or
23 more association with an individual who commits a crime
24 does not make a defendant an accomplice or an aider or
25 abetter of the person committing the crime.

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1 The burden is on the State to prove every element of
2 the crime charged. If you find, after reviewing all the
3 evidence, that the State has proven that Ms. Calicutt was
4 only present at the scene of a crime, and that they have
5 not proven beyond a reasonable doubt any other
6 participation by her in the crime, then you must find her
7 not guilty. The law is that proof of at the scene of the
8 crime along is not sufficient to find someone guilty.

9 Ms. Calicutt is charged with third degree arson. That
10 is a statutory offense passed by our legislature. In order
11 to prove third degree arson, the State must prove beyond a
12 reasonable doubt that Ms. Calicutt willfully and
13 maliciously caused an explosion, set fire to, burned, or
14 caused to be burned certain properties.

15 Willful means that it was not done by accident but was
16 done knowingly or intentionally. It must be shown that the
17 burning was by the willful act of some person and not as a
18 result of a natural or an accidental cause.

19 Maliciously means with hatred, ill will, or hostility
20 toward another person. A person who intentionally does a
21 wrongful act without legal justification or excuse has
22 acted maliciously. A malicious burning is an act done with
23 a condition of mind that shows a heart bent on mischief,
24 showing a design to do an intentional wrongful act toward
25 another or toward the public, without any legal

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1 justification or excuse. Malice need not be expressed but
2 may be inferred.

3 Burning means actual combustion of some portion of a
4 piece of property. It is not necessary that the property
5 be consumed or destroyed. Charring of the material of
6 which the property is constructed or a change in the fiber
7 or composition of the structure, is required for burning.
8 Singeing, smoking, blistering, scorching, or discoloring by
9 heat, is enough to constitute a burning.

10 Next, the State must prove beyond a reasonable doubt
11 that the property at issue the property allegedly burned by
12 Ms. Calicutt was a dwelling house. A dwelling house is a
13 building in which a person ordinarily sleeps. It is a
14 building or structure or other property and it is a
15 building in which a person ordinarily sleeps.

16 Finally, the State must prove beyond a reasonable
17 doubt that the explosion or burning directly or indirectly
18 resulted in damage to the property.

19 Voluntary intoxication is not a defense to a crime. A
20 person who voluntarily becomes intoxicated is just as
21 responsible for the acts committed while intoxicated as
22 when a person is not intoxicated.

23 Now, there are two possible verdicts in this case,
24 Madam Forelady, and I have put them on a verdict form. The
25 order their in is of no importance. I have to put them in

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1 some order and I always put them in this order. You would
2 put a check or an x in front the verdict, unanimously
3 decided upon by the jury. The first line says we find the
4 defendant guilty of arson in the third degree. And if
5 that's what you find the State has proven beyond a
6 reasonable doubt, you would put an x or check on that line.

7 If you find the State has failed to prove her guilt
8 beyond a reasonable doubt as to arson in the third degree,
9 you would put a check or x in the second line that says we
10 find the defendant not guilty. There's a place for you to
11 sign and to date. I believe today is the 10th.

12 Now, your verdict must be unanimous. Madam Forelady,
13 when you - the jury has unanimously agreed on the verdict
14 you write it down, knock on the door, tell the Bailiff, the
15 bailiff will come and get us and we will send for you as
16 promptly as we can.

17 Your verdict cannot be based on passion, prejudice,
18 public opinion, sympathy or matters outside the record. If
19 you have questions while you're deliberating write them
20 down and knock on the door; give them to the bailiff, he
21 will give them to me. I will confer with the attorneys.
22 Depending on the note it may be that I can write an answer
23 on the note. If I do that save the note and turn it in.
24 Don't trash it. Turn it in with the evidence because it
25 has to be part of the record. I can bring you back in.

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1 I'm gonna send in to you a written - the written - a
2 written copy of my charge. But if you have any questions
3 about my charge, I'll be glad for you to let me know and we
4 can - I'll bring you back out here again charge you in open
5 court. If you want testimony replayed let us know, we can
6 have testimony replayed for you.

7 While you're deliberating - It's ten after eleven, I
8 don't know how long you will take, but if you get to as
9 point where you think you want us to order a meal, it
10 usually takes about an hour, we usually get pizza, and but
11 if you determine that you feel like you're gonna be working
12 long enough that you'll need a meal let us know and we'll
13 order it for you with no questions ask.

14 When you first go into the jury room everyone but Ms.
15 Rogers, don't start deliberating because I have to go over
16 with the attorneys my charge. If I have made an error I'll
17 have to bring you back in and correct it. If I have not
18 made an error I will send in the verdict form and the
19 exhibits and the bailiff will tell you to start
20 deliberating. But don't get too comfortable or start
21 deliberating until you hear from me because it will only
22 take a few seconds, a few minutes. So I'm gonna let you go
23 the jury room right now everybody but Ms. Rogers who will
24 remain in here with us.

25 (JURY EXITS COURTROOM TO DELIBERATE AT 11:10 AM.)

1 THE COURT: Ms. Rogers, I'll be with you in just
2 momentarily.

3 Anything from the State involving the charge?

4 SOLICITOR ANTHONY: No, sir.

5 THE COURT: Defense?

6 MR. DELANEY: No, your Honor.

7 THE COURT: All right. Check the exhibits and the
8 Verdict Form. And we'll send 'em in and tell 'em to start
9 deliberating. We're getting the charge polished up to send
10 in. And we'll be at ease.

11 (COURT AT EASE AT 11:12 AM.)

12 (PER SOLICITOR ANTHONY, COURT INSTRUCTS COURT REPORTER
13 TO NOTE STIPULATIONS BY THE ATTORNEYS AGREEING TO REDACTED
14 VERSION OF STATE'S EXHIBIT THIRTEEN TO GO TO THE JURY.)

15 (ALTERNATE JUROR DISMISSED AT 11:12 AM.)

16 (WHEREUPON, COURT'S EXHIBIT NUMBER TWO, IDENTIFIED AND
17 MARKED, RECEIVED INTO THE RECORD.)

18 (WHEREUPON, COURT'S EXHIBIT NUMBER THREE, IDENTIFIED
19 AND MARKED, RECEIVED INTO THE RECORD.)

20 (COURT BACK IN SESSION AT 11:47 AM.)

21 THE COURT: Take your seats. Round up Mr. Delaney
22 and Ms. Cathcart. All right. I understand the jury has
23 reached a verdict.

24 MR. DELANEY: Okay.

25 THE COURT: Mr. Delaney understands the jury has

VERDICT:

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1 reached a verdict so we'll bring 'em in.

2 Bring in the jury.

3 While the jury's coming in I want to thank both
4 counsel for their curtsies and the way they've handled
5 themselves during the trial of the case.

6 SOLICITOR ANTHONY: Thank you, your Honor.

7 MR. DELANEY: Thank you.

8 (JURY REENTERS COURTROOM AT 11:49 AM.)

9 THE COURT: Madam Forelady, I understand the jury has
10 reached a verdict.

11 MADAM FORELADY: We have, your Honor.

12 THE COURT: If you will hand it to the bailiff he will
13 bring it up to me.

14 (VERDICT RECEIVED UP BY THE COURT.)

15 THE CLERK: In the State of South Carolina County of
16 Union for General Sessions of the Sixteenth Judicial
17 Circuit in the State of South Carolina versus Crystal Gail
18 Calicutt Case Number 2014-GS-44-92 we find the defendant
19 guilty of arson in the third degree signed by the
20 Foreperson June Bogan dated December 10th, 2015.

21 If this be your unanimous verdict so say you jurors,
22 please raise your right hands?

23 THE COURT: Let the record show all twelve do.

24 (ALL JURORS AFFIRMED VERDICT.)

25 THE COURT: Thank you.

SENTENCING:

-387-

1 All right, anything from the State before the jury's
2 dismissed?

3 SOLICITOR ANTHONY: No, sir.

4 THE COURT: Defense?

5 MR. DELANEY: No. No, your Honor.

6 THE COURT: All right. Members of the jury panel,
7 other than Ms. Bogan I have to get you to come up here and
8 the Clerk will have you sign the actual indictment. The
9 rest of you can leave and we appreciate your help with us
10 this week and you'll be mailed a check. Thank you.

11 (JURY DISMISSED AT 11:50 AM.)

12 THE COURT: Thank you. All right, anything from the
13 State?

14 SOLICITOR ANTHONY: Yes, sir. If I could just have a
15 moment.

16 THE COURT: While you're doing that; anything from the
17 Defense?

18 MR. DELANEY: Your Honor, even though we did at the
19 close of the case but at this point just renewing the
20 objections we made earlier in the trial.

21 THE COURT: All right. Motions denied. I think the
22 verdict - It was a lot of circumstantial evidence and - but
23 I think it was as I said sufficient so in just a moment
24 after the State does whatever it's doing we'll have Ms.
25 Calicutt come around and Ms. Corbett if she wants to say

SENTENCING:

-388-

1 anything.

2 SOLICITOR ANTHONY: If I can just have a moment to
3 speak to the victim in the case.

4 (PAUSE.)

5 THE COURT: First I'll ask, does the victim want to
6 say anything?

7 SOLICITOR ANTHONY: No, sir.

8 THE COURT: Is there any - Is the State seeking any
9 restitution?

10 SOLICITOR ANTHONY: Well that's what I been - that's
11 what was causing my delay. If I can have just one more
12 moment to speak to the victim.

13 (PAUSE.)

14 SOLICITOR ANTHONY: Okay. Sorry about that. Thank
15 you.

16 THE COURT: I need to know the prior record,
17 restitution and those sort of things and anything else the
18 State wants to say and then Ms. Cathcart I'll hear from
19 your attorney and then you.

20 SOLICITOR ANTHONY: Ms. Calicutt was convicted - first
21 as to her record she was convicted this October of
22 shoplifting in Spartanburg County. She received a
23 probation sentence for that. That will not be a violation.
24 This conviction will not be a violation because this
25 incident occurred before she was placed on probation.

SENTENCING:

-389-

1 She has a 2014 shoplifting conviction. She has a 2013
2 public disorderly conduct conviction, a 2012 petty larceny,
3 a 2011 driving under suspension. A shoplifting conviction
4 from 2010 and obtaining drugs by fraud from 2008 and a
5 possession of marijuana from 2004.

6 I've just been speaking with Ms. Corbett, she does not
7 wish to address the Court. There is restitution in the
8 case of approximately Thirteen Hundred Dollars. So if the
9 Court wanted - and that basically consist of Ms. Corbett's
10 deductible, what she had to spend above the insurance of
11 reimbursement for cleaning the lot after the fire. And a
12 Hundred and Fifty-seven - roughly a little over a Hundred
13 and Fifty Dollars for her personal items that were - that
14 there was no recovery.

15 The State's position is that basically I think what we
16 think's merited here is just a fairly lengthy prison
17 sentence, your Honor.

18 THE COURT: Okay. All right, Mr. Delaney.

19 MR. DELANEY: Thank you, your Honor. Ms. Calicutt is
20 thirty-three years old. She has one child, a five-year-
21 old. Her mother, aunt, are in the courtroom right now.
22 She's had other family members in the courtroom throughout
23 this trial. We're asking the Court for mercy. She does
24 have a few things on her record. I would point out she's
25 never been - never done any type of significant time.

SENTENCING:

-390-

1 Never been to prison. But we would beg of the Court mercy
2 in that regard. We'd ask the Court to consider a split-
3 sentence where the Court gives her a little bit of time; a
4 little taste, but then gives her probation with the
5 restitution to pay back this money.

6 Obviously the jury spoke. I don't know what happened
7 that night as far as things, you know, with this situation.
8 But, you know, I don't believe, you know, this is someone,
9 you know, taking that situation out of it I don't see this
10 as someone that's a threat, you know, to this community, so
11 I'd ask the Court to consider that and again beg for mercy
12 on behalf of Ms. Calicutt.

13 THE COURT: Ms. Calicutt, did you finish high school?

14 You got a GED? Okay. I'll be glad to hear from you.

15 I'll be glad to hear from her mother too if she wants
16 to say anything.

17 MS. CALICUTT: I'm sorry it happened but I didn't do
18 it.

19 (DEFENDANT CRYING LOUDLY.)

20 THE COURT: All right. The sentence of the court is
21 ten years. That's suspended upon the service of three
22 years with five years probation with restitution of
23 Thirteen Hundred Dollars to be paid through Probation.

24 You owe Five Hundred Dollars for having an appointed
25 attorney. You're to have no contact with the victim.

SENTENCING:

-391-

1 You're to obtain your GED. You're to have substance abuse
2 counseling, random drug and alcohol testing.

3 Do you understand that, Ms. Calicutt?

4 (DEFENDANT CRYING LOUDLY.)

5 MR. DELANEY: Thank you, your Honor.

6 SOLICITOR ANTHONY: Thank you, your Honor.

7 (COURT IN RECESS AT 12:00 PM.)

8 (END OF TRANSCRIPT OF RECORD.)

9 (COURT BACK IN SESSION IN THE MATTER OF STATE V.

10 EVERETT MOSS PLEA WITH ERIK DELANEY AND STATE V. JALYSSA

11 BLACK JONES PLEA WITH ERIC DELANEY.)

12 (COURT ADJOURNED AT 01:05 PM.)

13

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CERTIFICATE OF REPORTER

State of South Carolina)

)

County of York)

I, Wanda Nelson, Official Court Reporter for the Sixteenth Judicial Circuit for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Union County, South Carolina, on the 8th, 9th, and 10th days of December, 2015.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

Wanda Nelson
Wanda Nelson, CVR-M
Certified Verbatim Reporter,
Official Court Reporter,
Notary Public, in and for
The State of South Carolina.

My Commission Expires: 1/21/2021

DATE: March 4 / 2016

RECEIVED
COFFEE/UCSO
DEC 21 2015
SC Court of Appeals
WITNESSES

ARREST WARRANT NUMBER

2013A4410100845

ACTION OF GRAND JURY

TRUE BILL

Keith Wright

Foreperson of Grand Jury

Date: OCT 2 2014

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2014-GS-44-0092

The State of South Carolina

County of Union

COURT OF GENERAL SESSIONS

OCTOBER 06, TERM 2014

THE STATE

vs.

CRYSTAL GAIL CALICUTT

Indictment for

ARSON - THIRD DEGREE

SC Code: 16-11-110

CDR Code: 3435

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

STATE OF SOUTH CAROLINA)

INDICTMENT

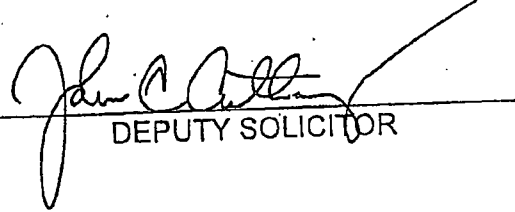
COUNTY OF UNION)

At a Court of General Sessions, convened on October 02, 2014, the Grand Jurors of Union County present upon their oath:

ARSON IN THE THIRD DEGREE

That in Union County, South Carolina, on or about November 24, 2013, Crystal Gail Calicuttt did wilfully and maliciously cause an explosion, set fire to, burn or caused to be burned or did aid, counsel, or procure a burning that resulted in damage to a dwelling house, building, structure, or any property resulting, either directly or indirectly, in damage to the property, to wit: the residence at 217 Church St., Buffalo, in violation of Section 16-11-0110, 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.


DEPUTY SOLICITOR

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF

Union

STATE

VS.

Crystal Gail Calicutt

RECEIVED

INDICTMENT/CASE#: 2014-GS-44-0092

DEC 21 2015

2013A4410100845

AKA: _____
 Race: W Sex: F Age: _____
 DOB: _____ SS#: _____
 Address: Candler Dr.
 City, State, Zip: Buffalo, SC 29321
 DL# _____ SID# SC01607086
 *CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

Date of Offense: 11/24/2013
 S.C. Code §: 16-11-0110
 CDR Code #: 3 4 3 5

SC Court of Appeals

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was

☒ CONVICTED OF or ☐ PLEADSTO: Arson Third Degree

In violation of § 16-11-110(C) of the S.C. Code of Laws, bearing CDR Code # 3436
☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45
 (CSC w/minor 1st or Lewd Act)

The charge is: ☒ As indicted, ☐ Lesser Included Offense,
 The plea is: ☐ Without Negotiations or Recommendation,

☐ Defendant Waives Presentment to Grand Jury. (def.'s initials)
☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

7116

Solicitor _____ SC Bar # _____ Defendant _____ Attorney for Defendant _____ SC Bar # _____
 WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center,
 for a determinate term of 10 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
 and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and or payment
 of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____
 months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are
 incorporated by reference.
☐ 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 the State
 Department of Corrections.
☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.
 Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
 Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☒ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☒ Ordered

PTUP _____

Total: \$ 1,700.00 plus 20% fee: _____ \$ _____

_____ days/hours Public Service Employment

Payment Terms: _____

Obtain GED ☒☒ Set by SCDPPPS

Attend Voc. Rehab. Or Job Corp. _____

Recipient: Victim

May serve W/E beginning _____

Substance Abuse Counseling ☒

*Fine:

§14-1-206 (Assessments 107.5%)	\$	
§14-1-211 (A)(1)(Conv. Surcharge)	\$100	\$ 100.00
§14-1-211 (A)(2)(DUI Surcharge)	\$100	\$
§56-5-2995 (DUI Assessment)	\$12	\$
§56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$ 500.00
§14-1-212 (Law Enforce. Funding)	\$25	\$ 25.00
§14-1-213 (Drug Court Surcharge)	\$150	\$
§50-21-114 (BUI Breath Test Fee)	\$50	\$
§56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ 5.00
3% to County (if paid in installments)		\$ 18.90
TOTAL		\$ 648.90

Random Drug/Alcohol Testing ☒

Fine may be pd. in equal consecutive weekly/monthly

pmts. of \$ _____ Beginning _____

\$ _____ Paid to Public Defender Fund

Other: No Contact with Victim

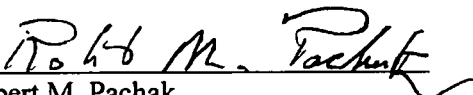
☒ Appointed PD or appointed other counsel,
 \$47.12 requires \$500 be paid to Clerk
 during probation.

Presiding Judge J. H. H. H.Judge Code: 2049Sentence Date 12/10/15

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."

May 2, 2016


Robert M. Pachak
Appellate Defender

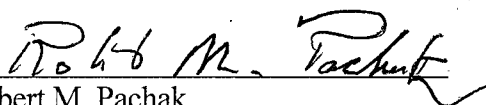
South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S. C. 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

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."

May 2, 2016


Robert M. Pachak
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
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ATTORNEY FOR APPELLANT

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MAY 02 2016
SC Court of Appeals