

ORIGINAL

VOLUME ONE OF THREE

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Greenville County

Honorable R. Lawton McIntosh, Circuit Court Judge

RECEIVED

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SC Court of Appeals

THE STATE,

RESPONDENT,

V.

PAULA REED ROSE,

APPELLANT

APPELLATE CASE NO 2015-002445

RECORD ON APPEAL

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THE FOLLOWING EXHIBIT IS ON FILE WITH THIS COURT:

STATE’S EXHIBIT #5: TAPE OF 911 CALL

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF GREENVILLE) IN THE COURT OF GENERAL SESSIONS

3 The State,)
4 -vs-) TRANSCRIPT OF RECORD
5 Paula Rose,) 2013-GS-23-678;-679;-680;-681
6 Defendant.) May 5, 6, 7 and 8, 2014
7 Greenville, South Carolina

8
9
10 B E F O R E:

11 HONORABLE R. LAWTON MCINTOSH, JUDGE; and a jury
12
13

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17 Attorneys for the State

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MOTIONS AND MATTERS

1 MR. RIORDAN: Then they come back in.

2 THE COURT: --- then they come back in, ---

3 MR. RIORDAN: Fair.

4 THE COURT: --- fair enough?

5 MR. RIORDAN: Yes.

6 THE COURT: Alright, uh, scheduling. How many motions do
7 we have pretrial?

8 MS. ABEE: Your Honor, we have one pretrial motion,
9 um, ---

10 THE COURT: Don't go into it yet, I just wanna know what
11 you got, how long you think it's gonna take.

12 MS. ABEE: Yes, sir, I -- we we have one pretrial motion
13 and then some very minor housekeeping issues, um, I don't
14 anticipate this motion in and of itself taking a long time,
15 uh; however, I do believe Mr. Riordan probly has the
16 majority ---

17 THE COURT: Well he said that so ---

18 MS. ABEE: --- of the pretrial motions.

19 THE COURT: --- what do -- what all do you have?

20 MR. RIORDAN: I've got at least, uh, five motions but a
21 couple of 'em are somewhat inter -- interrelated. There's a,
22 uh, there's there's multiple issues in regard to a search
23 using a dog at the house and I've got about three different
24 grounds that, uh, I would submit that Your Honor could
25 consider as to why the seized items should be suppressed ---

MOTIONS AND MATTERS

1 THE COURT: Okay, uh, ---

2 MR. RIORDAN: --- and I can name the others too if you
3 want, I didn't know if you ---

4 (Indiscernible cross-talk.)

5 THE COURT: No, I'm just, what I'm lookin' at once this
6 jury gives us the information, uh, back how long do we need to
7 break for, seems like to me that it's gonna take a little
8 while.

9 MR. RIORDAN: 'fraid so, Your Honor, I apologize for
10 that.

11 THE COURT: Sir?

12 MR. RIORDAN: I apologize for that but ---

13 THE COURT: Well ---

14 MR. RIORDAN: --- that ---

15 (Indiscernible cross-talk.)

16 THE COURT: --- it is what it is.

17 MR. RIORDAN: I think it is, yeah.

18 THE COURT: Do you think we can get through 'em this
19 afternoon, start this afternoon?

20 MS. ABEE: On my end yes, sir.

21 THE COURT: I mean, it's a short week by the way and ---

22 MR. RIORDAN: I know.

23 THE COURT: --- and quite frankly I I'm leavin' the
24 country Friday so we need to get this case -- I don't mind
25 workin' late, ---

MOTIONS AND MATTERS

1 MS. ABEE: Yes, sir.

2 THE COURT: --- whatever ya'll need to do just to give
3 ya'll FYI.

4 MS. ABEE: And we have no problem with that as well.

5 THE COURT: Um, how long do you think your motion will
6 take, Mr. Riordan?

7 MR. RIORDAN: I would think at least an hour, maybe
8 two, ---

9 THE COURT: So if we break ---

10 MR. RIORDAN: --- I s -- and I say that, I I know the
11 search issues, uh, well depending on your initial ruling maybe
12 not long at all. I'm sorry, I'm sorry to be that way but it's
13 an ---

14 THE COURT: Yeah, ---

15 MR. RIORDAN: --- interesting ---

16 THE COURT: --- yeah, ---

17 MR. RIORDAN: --- matter, yeah, ---

18 THE COURT: --- I understand.

19 MR. RIORDAN: --- so, yeah.

20 THE COURT: Okay, so if we break once the jury comes back
21 for a hour and a half, we come back and then you gonna have
22 hour and a half so that'll be 1:30, 2. We bring 'em back at
23 3:30 is that sufficient time you believe, ---

24 MR. RIORDAN: Most li ---

25 THE COURT: --- hour and a half?

MOTIONS AND MATTERS

1 MR. RIORDAN: --- most likely.

2 THE COURT: Okay, let's do it that way. Have you guys
3 consulted each other concerning your pending motions at all?

4 MS. ABEE: We have not gone through the basis of the law,
5 I did tell Mr. Riordan what I would be objecting to and
6 attempting to keep out, uh, but we have not sat down and
7 discussed specifically what it is; however, I do think we are
8 gonna disagree, ---

9 THE COURT: Well ---

10 MS. ABEE: --- uh, ---

11 THE COURT: --- I I ---

12 MS. ABEE: --- as to what ---

13 THE COURT: --- figure. What what ---

14 MS. ABEE: --- it is.

15 THE COURT: --- is -- yeah, especially it was a search
16 and seizure issue 'cause that would probably ---

17 MR. RIORDAN: There's two 'em of actually.

18 THE COURT: What is your motion, Ms. uh, Abee?

19 MS. ABEE: Uh, our motion is to exclude, there's some
20 newspaper articles that were turned over in reciprocal
21 discovery about other, uh, break-ins and crimes that we would
22 contend aren't similar, um, it's a third-party guilt motion
23 basically, Your Honor. Uh, ---

24 THE COURT: Okay.

25 MS. ABEE: --- there seems to be some sort of leaning

MOTIONS AND MATTERS

1 that possibly these people in newspaper articles could have
2 been the individuals that burglarize Ms. Rose's house,
3 obviously we move to keep out, uh, any of that and we have the
4 the proper law at the time when it's time to argue the motion.

5 THE COURT: You have any real objection to keepin' that
6 out?

7 MR. RIORDAN: Not the articles, Judge, but I, but I do
8 wanna make sure that I am allowed in in in, uh, putting forth
9 a complete defense for Mrs. Rose that I am able to get into
10 what was done by these investigators to look for any other
11 crimes and com -- and compare. I mean, there's no notes
12 whatsoever in any a their investigative reports, I mean, ---

13 THE COURT: I think that's, ---

14 MR. RIORDAN: --- they didn't check ---

15 THE COURT: --- I think that be ---

16 MR. RIORDAN: I think that's proper.

17 THE COURT: --- appropriate ---

18 MR. RIORDAN: Long as that's proper, I think we're good.

19 THE COURT: Okay, let me say this to both sides: If, you
20 know your cases better than I know it, you know your evidence
21 issues better than I know them, if you see somethin' that you
22 contend may be an issue, let me know, let's deal with it
23 in-camera before cat gets outta the bag, okay?

24 MS. ABEE: Yes, sir.

25 THE COURT: Now you were gonna respond, Ms. Abee?

MOTIONS AND MATTERS

1 MS. ABEE: Uh, no, Your Honor. Basically what I was
2 gonna say is of the newspapers articles that Mr. Riordan gave
3 me, only one of them predates the actual arrest, all the other
4 five or four remaining are are ---

5 THE COURT: Yeah, ---

6 MS. ABEE: --- after so ---

7 (Indiscernible cross-talk.)

8 THE COURT: --- he's already, he's already said he's not
9 gonna get into those anyway as I ---

10 MS. ABEE: Uh, ---

11 THE COURT: --- understand.

12 MS. ABEE: --- yes, sir, I'm just talking about if he
13 questions the investigators as to whether or not they did any
14 sorta investigation into those particular other crimes,
15 we'd ---

16 THE COURT: Well, ---

17 MS. ABEE: --- obviously ---

18 (Indiscernible cross-talk.)

19 THE COURT: --- you know that's why we have
20 contemporaneous objection requirements, I ---

21 MS. ABEE: Yes, sir.

22 THE COURT: --- can't anticipate what they are so make
23 sure if you see somethin' just ---

24 MS. ABEE: Object, yes, sir.

25 THE COURT: --- object and then I'll deal with it, okay?

MOTIONS AND MATTERS

1 Now any other matters from the State?

2 MS. ABEE: Your Honor, there aren't any other matters.
3 We did receive a decent amounta reciprocal discovery, um, a
4 lot which just in reading we would contend's irrelevant
5 because we don't have any foundation or context. Um, I know
6 we'd like to take care of a lot of that ahead a time but I I
7 just don't necessarily know where the defense is going with
8 it, um, so I have no problem objecting immediately or or
9 putting the Court on notice if I think something's about to go
10 that way, ---

11 THE COURT: Okay.

12 MS. ABEE: --- uh, I just don't necessarily know how to
13 make a motion in limine to exclude it without knowing the
14 context of what Mr. Riordan will be using it for.

15 THE COURT: I wouldn't know how to rule on it so ---

16 MS. ABEE: Yes, sir.

17 THE COURT: --- you're right. Uh, ---

18 MR. RIORDAN: Kinli, is there any particular portion
19 you're thinking of or right now?

20 MS. ABEE: Um, there, I mean, there's, uh, medical
21 records of, uh, defendant's husband, he's not on trial for
22 anything and it's not as if the medical records reflect
23 anything from the burglary or anything like that so those
24 appear to be irrelevant, uh, the divorce decree between the
25 defendant's husband and previous wife we would contend, uh,

MOTIONS AND MATTERS

1 are irrelevant, there's another, uh, incident report regarding
2 another fire that Mr. Riordan represented the defendant on, it
3 has nothing to do with this other than there being one
4 investigator, uh, that overlapped; however, I don't think
5 there are any complaints, just things that appear to have
6 nothing to do with the facts at hand, they're very very, uh,
7 outside and ancillary-type arguments that again, if it's put
8 into context and the proper foundation's laid, we obviously
9 wouldn't object but at this point it's just difficult to to
10 know if Mr. Riordan's planning on using that and how.

11 MR. RIORDAN: The proper foundation will be laid. All of
12 those things relate back to the investigation in this case and
13 then, uh, the searches, uh, that were conducted ---

14 THE COURT: Alright, let's ---

15 MR. RIORDAN: --- and part a that is ---

16 THE COURT: --- let's just do ---

17 MR. RIORDAN: --- part and parcel of the arguments, it
18 goes to duress, coercion, things of that nature which are
19 prevalent within the investigative reports so again,
20 everything I sent them comes right off their investigative
21 report and I go ahead and bring up right now because we spoke
22 the other day and she mentioned that, you know, we know
23 Mrs. Rose's cri -- background, criminal record, we know we
24 can't go in there and I said, Oh, by all means please go, and
25 we certainly intend to go at -- go through those records,

MOTIONS AND MATTERS

1 that's part of again the investigative file in this case and I
2 submit it's one of the main reasons she sits here today and I
3 plan to get into those in detail 'cause they are spoken about,
4 you can just, for anyone reading any investigative report
5 especially from, uh, Investigator Morgan sees how this case
6 turned from her complaint of what happened to the focus on her
7 and then that's what this case is about is this investigation,
8 Judge, and so everything she's speaking about I understand
9 where she's comin' from but there will be the proper
10 foundation.

11 THE COURT: Well we'll just have to cross that bridge
12 we're there. Go ahead.

13 MS. ABEE: Yes, yes, Your Honor, just as long as it's
14 clear that that is a strategic move on their part. We're not,
15 we contend it's improper under 609 but if they wanna talk
16 about it then by all means, uh, I have no problem with that, I
17 just wanna make sure that it's noted that that is a strategic
18 decision on their part for any sort of possible PCR issues in
19 the future so nothing comes back.

20 MR. RIORDAN: Sure. Well I would just note 609 is for
21 convictions, ---

22 MS. ABEE: Which ---

23 MR. RIORDAN: --- these these are all non-convictions ---

24 MS. ABEE: --- which is why we ---

25 (Indiscernible cross-talk.)

MOTIONS AND MATTERS

1 MR. RIORDAN: --- and, uh, and I agr ---

2 THE COURT: Alright, hold ---

3 MR. RIORDAN: --- I agree the ---

4 THE COURT: --- hold on, ---

5 MR. RIORDAN: --- State would have ---

6 THE COURT: --- hold on, hold on ---

7 MR. RIORDAN: --- no right ---

8 THE COURT: --- hold on, let me, let me point out
9 somethin' to both counsel in this case, I know both of ya,
10 you're both fine counsel, we don't need to go on ad nauseam,
11 okay, we will try this case, put it up and put it down, we're
12 not gonna go on back and forth, okay.

13 MS. ABEE: Yes, sir.

14 THE COURT: Alright, now do you feel, Ms. Abee, do you
15 have, uh, sufficient, uh, exhibits at this point that are not
16 bein' objected to that you can premark 'em?

17 MS. ABEE: Uh, I'm I'm not sure, Your Honor, it just be
18 some photos from the scene. Uh, any photos that we would have
19 entering through whoever we anticipate to call that day we'll
20 have them premarked before, ---

21 THE COURT: Uh, ---

22 MS. ABEE: --- uh, either in the morning or in between a
23 lunch break in the afternoon session before we try to enter
24 'em.

25 THE COURT: Very good and, you know, and if there, at

MOTIONS AND MATTERS

1 THE COURT: Okay, then I -- obviously you do, I didn't
2 realize that's who that was, ---

3 MR. RIORDAN: Yes.

4 THE COURT: --- okay. Thank you very much, we're in
5 recess until 2:30.

6 (Whereupon, a recess was taken.)

7 (States Exhibit Nos. 1, 2, 3 and 4, photographs, marked
8 for identification.)

9 THE COURT: Mr. Riordan, ready with your motions?

10 MR. RIORDAN: May it please the Court. Your Honor, I've
11 handed up a couple copies of a motion in limine regarding
12 phone calls. I understand it was provided to me, I don't
13 know, within the last ten days or so, uh, phone calls taken
14 while my client was in jail, uh, at the detention center and I
15 can't reme -- I couldn't play the tape myself, I had to play
16 it somewhere else, how many calls all Paula do you know?

17 MS. ABEE: Total?

18 MR. RIORDAN: Yeah.

19 MS. ABEE: Uh, I believe there's six or well only three
20 connections already made but there's four phone calls that are
21 attempted and no one ever picks up so there's three calls,
22 um, ---

23 MR. RIORDAN: I guess parta -- which phone calls would
24 you be attempting to ---

25 MS. ABEE: We'd ---

MOTIONS AND MATTERS

1 MR. RIORDAN: --- enter?

2 MS. ABEE: --- be attempting to enter, uh, the portion of
3 a phone call, obviously if the Court rules that the whole
4 thing's inadmissible, uh, between the defendant and her
5 husband Homer Rose ---

6 MR. RIORDAN: Okay.

7 MS. ABEE: --- so only be one of the phone calls, none of
8 the other ones we would be seeking to enter, Your Honor.

9 THE COURT: Okay.

10 MR. RIORDAN: Alright. Your Honor, as I understand it
11 that's a phone call right after her arrest which is six weeks
12 after the fire. I would, speaking for the State, that, uh,
13 they're attempting to use that to prove motive, they've
14 charged her with setting fires to gain insurance funds and so
15 I guess there's that the allegation is that money was tight
16 and Mr. Rose on a phone call makes a comment about being flat
17 broke, tells her, she wonders why she's not out and he said
18 we're flat mo -- somethin' to the effect that the money's
19 gone, we're flat broke. Got the motion in front of ya there
20 one for relevancy and they made, they made charges at six
21 weeks later and so six weeks later wouldn't necessarily be
22 relevant or, uh, you know, probative as to their financial
23 condition at the time so we put that out. The other portion
24 of that is he is telling her that they're broke and so the the
25 fact that he's he's telling her gives no indication she had

MOTIONS AND MATTERS

1 knowledge of the same and we put those out, there's a nice
2 exercise there, we think they could do that but the biggest
3 thing, Judge, if you go back to the very end, South Carolina
4 still has 19-11-30 and I don't think anyone here contests the
5 fact that they're married, I'd ask you take judicial notice of
6 that fact or I guess that be stipulated by the State, uh, you
7 see, In any trial or inquiry in any suit, action, or
8 proceeding in any court or before a person having, by law
9 consent of the parties, authority to examine witnesses or hear
10 evidence, no husband and wife may be required to disclose any
11 confidential or, which is where we are in a criminal
12 proceeding, any communication, not a confidential
13 communication, any communication made by one to the other
14 during their marriage, there's no exception and so on that
15 basis I'd a -- I I don't know what the exception might be, I'd
16 be glad to hear from the State, but it's inadmissible by
17 statute.

18 THE COURT: Ms. Abee.

19 MS. ABEE: Yes, sir, Your Honor, there's case law
20 speaking as to that privacy requirement, specifically the
21 seminal case *Wolfe v. United States*, Your Honor, which
22 specifically says communications between the spouses privately
23 made are generally assumed to have been intended to be
24 confidential and hence they are privileged but where --
25 wherever a communication because of its nature or the

MOTIONS AND MATTERS

1 circumstances under which it was made was obviously not
2 intended to be confidential it is not privileged
3 communication, Your Honor, case law says that. Um, at the
4 beginning of the jail recordings it specifically states this
5 is being recorded and even in the phone conversation itself
6 between Mr. Rose and the defendant he specifically says, Don't
7 say anything, these are being recorded, therefore, Your Honor,
8 they wouldn't have, uh, that privilege and, Your Honor, the
9 statute itself applies to in-court testimony, uh, this would
10 be coming in through a records-keeper and so Mr. Rose would
11 not be compelled to take the stand and say anything against
12 his wife, it'll come in through a a a records-keeper, Your
13 Honor, so he -- the the statute itself would not apply to
14 that, um, compelling testimony 'cause we're not compelling him
15 to testify in regards to that and, Your Honor, I can touch on
16 the hearsay as well if you would like that Mr. Riordan spoke
17 about.

18 THE COURT: Okay.

19 MS. ABEE: Your Honor, we would contend that it's not
20 hearsay. In the phone conversation Mr. Rose does state, uh,
21 you know, We are flat out broke, there's no money. Uh,
22 Mrs. Rose, the defendant, then in turn responds with things
23 such as, I can get a bail bondsman or have you talked to so
24 and so and some other individuals to try to borrow money, uh,
25 Your Honor, so we would contend that she has in fact affirmed

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1 what it is that her husband has said, we we contend that it's
2 not hearsay under 801, uh, (D) -- 80 -- 801(D)(2)(D), uh, I
3 believe, 801(d)(2)(B) I'm sorry, Your Honor, uh, ---

4 THE COURT: (d)(2)(B)?

5 MS. ABEE: 801(d)(2)(B), Your Honor, which is, "A
6 statement of which the party has manifested an adoption or
7 belief in its truth." Your Honor, uh, case law states
8 specifically that, uh, where a party has received a statement
9 and acted on it as true that the statement is admissible, uh,
10 as her adopting that admission. We would contend that because
11 she later went and even responded by saying things such as,
12 Well can we borrow money, I have some money in my bank
13 account, uh, I can try to get a bail bondsman, that she's in
14 fact adopted the belief that they are broke as what was said
15 by Mr. Rose so we contend that and that would come in, uh,
16 because it's not hearsay.

17 THE COURT: Mr. Riordan?

18 MR. RIORDAN: Statute speaks for itself, Judge, it's
19 pretty clear, it's pretty powerful.

20 THE COURT: What about the case that she -- was it the
21 Wolfle case that you cited, ---

22 MS. ABEE: Yes, sir, Your Honor.

23 THE COURT: --- that where you have a expectation of
24 privacy behind it?

25 MR. RIORDAN: Doesn't matter. Per the statute any

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1 communication made during the marriage in a criminal
2 proceeding, it's two part test: criminal proceeding,
3 communication during the marriage, that's it, it's privileged,
4 can't come in, no case can interpret that and statute's clear,
5 no exception.

6 THE COURT: Alright, I, what I'm gonna do, I have a
7 tendency to agree with Mr. Riordan on that one, uh, but I'm
8 gonna have you put it up in-camera, let me look at it. Would
9 you forward -- hand me that case a yours please, ma'am.

10 MS. ABEE: Yes, sir, I can. The case that I have is
11 marked, I don't know if you want ---

12 THE COURT: That's okay, ---

13 MS. ABEE: Okay.

14 THE COURT: --- it probly helps me out, doesn't have any
15 pictures on it, does it?

16 MS. ABEE: Your Honor, uh, we have other case law
17 supporting it as well, uh, this is just the seminal case that
18 I reference.

19 THE COURT: Just show those to Mr., uh, ---

20 MS. ABEE: Absolutely I will.

21 THE COURT: --- Riordan.

22 MR. RIORDAN: I guess the question would be is it in a
23 criminal case?

24 MR. ABEE: I'm sorry, is is he questioning me?

25 MR. RIORDAN: Yeah, well is it in a criminal case?

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1 THE COURT: I'll look at it.

2 MR. RIORDAN: Yeah, ---

3 THE COURT: I'll look at it. I'll ---

4 MR. RIORDAN: --- *Wolfe vs. United States*, a criminal
5 case, is it in South Carolina and are the parties married, ---

6 THE COURT: Okay, do ---

7 (Indiscernible cross-talk.)

8 MR. RIORDAN: --- if they're not I I would say they're
9 distinguished.

10 THE COURT: With that bein' asked are these criminal
11 cases?

12 MS. ABEE: Your Honor, I ---

13 MR. RIORDAN: I heard *Wolfe* as the first, they usually
14 start with the state but could be wrong.

15 MS. ABEE: Your Honor, I'm not, I'm not sure to be honest
16 with you, I I just don't recall off the top of my head. I
17 don't wanna state improperly.

18 THE COURT: Thank you.

19 (Whereupon, counsel handed the documents to the Court.)

20 THE COURT: What's your next motion?

21 MR. RIORDAN: Yes, Your Honor, uh, it's a dual motion
22 cover two consents. There's two consent searches, uh, two
23 consent search forms that are signed in this case, one in an
24 apartment called Oak Ridge, let me get those out, sorry. And
25 and I would ask for the purposes of this that they be handled

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1 jointly. If if this motion does not dispa -- dispose of both
2 then I will proceed to handle both separately, uh, and I ---

3 THE COURT: I'm not following what you mean that.

4 MR. RIORDAN: Well I I I I wanna ma -- I wanna make this
5 motion that if if it prevails, if you agree with the logic
6 then both of them are gone but if not then I'd like to step
7 back and proceed in an effective manner on them individually
8 at my choosing if Your Honor will be so inclined.

9 THE COURT: Well, you'll just go forward first and I'll
10 decide whether ---

11 MR. RIORDAN: I'd like ---

12 (Indiscernible cross-talk.)

13 THE COURT: --- I want you to do that.

14 MR. RIORDAN: Two consent forms are signed. In a normal
15 case consent for -- it's a warrantless search, It's well-
16 settled that searches conducted without a warrant are per se
17 unreasonable unless an exception to the warrant requirement is
18 presented, and the burden is upon the State to justify a
19 warrantless search, so there's no warrant for either search,
20 they had consent forms signed. Interestingly, usually we have
21 these it's the party and when it's the party that signs them
22 you got a 801 and you can get 'em in. They can bring it up
23 and say, I've got the consent form the the defendant signed
24 and you can get under 801(d)(2) admission by a party opponent.
25 In this case the two consents are signed by non-parties. Her

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1 husband has signed one, he's not a party and a girl ---

2 THE COURT: Is he the owner of the premises?

3 MR. RIORDAN: He is.

4 THE COURT: Okay.

5 MR. RIORDAN: He is, ---

6 THE COURT: Does he not ---

7 MR. RIORDAN: --- Ellie Han ---

8 THE COURT: --- does he not ---

9 MR. RIORDAN: --- Ellie Hansen is the other.

10 THE COURT: Let let ---

11 MR. RIORDAN: Yes.

12 THE COURT: --- me ask you first as to the husband, uh,
13 does he not have right to consent to search his place?

14 MR. RIORDAN: Oh, he does and and I'll get to that, that
15 and and I don't mean to interrupt you, Judge, but it's simpler
16 than that, so they got two consents, it's their burden of
17 proof, I've got two forms, non-party, the forms themselves are
18 hearsay, no exception and f -- and there's no other way for
19 them to get the forms in, there's no way to even get the
20 consent in. They've got to prove the burden that the person
21 that gave the consent did so freely, knowingly, willingly and
22 voluntarily. Ellie Hansen not here, she's in Pennsylvania as
23 far as I know, Homer Ro -- Homer Rose isn't here either, he
24 wasn't subpoenaed by them. It's hearsay, they've got no way
25 to even put the consents in. They can't meet their burden of

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1 proof in regard to freeness, the freely and voluntarily waiver
2 of the person that signed the consent form.

3 THE COURT: Well what if you liken that to a Jackson-
4 Denno hearing when you have a waiver of Miranda where the
5 defendant is not testifyin' but they acknowledge that his
6 signature took place on this form?

7 MR. RIORDAN: And that was the key: defendant, that's
8 what I got back to. If this were the defendant then it
9 wouldn't be hearsay, it would be 801(d) statements which are
10 not hearsay, (2) admission by a party opponent.

11 THE COURT: Well hear you but you're speaking more of
12 authentication than you are a hearsay issue.

13 MR. RIORDAN: No, Your Honor.

14 THE COURT: Where is the statement?

15 MR. RIORDAN: It ---

16 THE COURT: The search?

17 MR. RIORDAN: The consent, that that that's the only way
18 they can prove it is to say this person signed this form, the
19 form itself hearsay, so beyond the form they'd have to call
20 the party. Again, if it were the defendant they can call them
21 in and say 801(d)(2) this is admission by a party defendant,
22 statement is offered against the party and is the party's own
23 statement. We don't have that here, neither one of 'ems a
24 party to this case. State can't meet its burden of proof as
25 to a voluntariness of this warrantless search, there's there's

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1 no exception, they've got to prove it and they can't meet
2 their burden, they don't have a witness they can put up here,
3 it's hearsay.

4 THE COURT: Ms. Abee.

5 MS. ABEE: Your Honor, hearsay covers statements, we
6 would contend that consent is an action and is not a
7 statement. Uh, the signature on ---

8 THE COURT: Well the st -- definition of a statement also
9 includes, uh, non-verbal conduct of a person under 801(a).

10 MS. ABEE: Yes, sir, it does. The consent to search was
11 taken by the officers. Once they received this they then went
12 and continued on their investigation and they retrieved things
13 that are obviously incriminating against, uh, Ms. Rose but the
14 purpose of this is whether or not the officers' actions,
15 further actions in the place were admissible or they were
16 lawful, uh, I mean, these people obviously had the right to
17 consent to search and th -- and they did so, I I'm just sorry
18 I don't -- know that's not very eloquent but I've never heard
19 of a signature on on a consent form being considered hearsay
20 and so I apologize if that's not very well-worded, uh, maybe
21 Mr. Underwood could assist if I can have one second in
22 speaking with him about that.

23 (Whereupon, a discussion was held off the record.)

24 MS. ABEE: Your Honor, the officers will be testifying as
25 to whether or not they had permission to be in the place that

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1 they were in fact inside of and whether or not they collected
2 whatever it is that they collected when they were inside of
3 there. They don't have to actually say that someone gave them
4 consent, just whether or not they were there so this signature
5 we would say would possibly ---

6 THE COURT: Just ---

7 MS. ABEE: --- get ---

8 THE COURT: --- one second, they they don't have to say
9 they have consent then they don't have a warrant?

10 MS. ABEE: No, sir, I'm saying, actually saying Ellie
11 Hansen told me that I could go into the place, they don't have
12 to actually phrase her wording and quote her, uh, ---

13 THE COURT: I understand ---

14 MS. ABEE: --- they ---

15 THE COURT: --- that.

16 MS. ABEE: --- could just say that they were lawfully
17 inside of the apartment or lawfully inside of the home, uh,
18 they don't have to actually use that statement, I mean, ---

19 THE COURT: Well what about this witness who apparently
20 is outta state, is not gonna be here?

21 MS. ABEE: Your Honor, she is, she is in Pennsylvania and
22 has refused to talk to us, um, about this case or about
23 anything else, however we do have her consent to search form
24 as well as three investigators that were there with her when
25 she signed this form.

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1 THE COURT: The husband doesn't give me nearly as much
2 heartburn 'cause they pro -- they can identify it,
3 authenticate it and long as it's au -- properly the
4 foundation's laid then that's fine, without this other witness
5 how are you gonna authenticate this is her signature besides
6 them saying this is what it says it is?

7 MS. ABEE: Your Honor, on the consent to search form
8 there is witnesses, uh, that would be called, both the
9 investigators have witnessed that she did in fact sign this
10 and by her signing this they then took their further steps so
11 as far as the hearsay argument it be effect on the listener
12 what they then further did in response to the statement
13 itself, Your Honor.

14 THE COURT: Who who is this witness and where were they
15 searchin', I don't know anything about it?

16 MS. ABEE: Yes, sir, Your Honor, I'll put this in some
17 context for you. Ellie Hansen worked with or for the
18 defendant as some sort of personal assistant. The day of the
19 fire, uh, Ms. Rose went over to Ms. Hansen's apartment to
20 shower. She asked the police officers if she could go take a
21 shower, they said yes, she went over there. After the first
22 search, the one at the house, uh, an arson dog indicated to
23 some shoes in the home as having an ignitable liquid on it so
24 that's the first consent to search form regarding Mr. Rose.
25 After that they asked if they could go get retrieve her

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1 clothing that she was wearing earlier, the defendant stated
2 that her clothing was at Ms. Hansen's apartment ---

3 THE COURT: Right.

4 MS. ABEE: --- so the three investigators as well as the
5 defendant and her husband went over to the apartment complex,
6 uh, in order to get the clothing. They asked for consent to
7 search, Ms. Hansen signed the consent to search form, they
8 walked in, the clothing was in an open bag, you could see the
9 clothing, they knew it was the clothing that she was wearing
10 earlier in the day, they retrieved those two pieces of
11 clothing, put them in separate paint cans to be tested and
12 left. They didn't search any of the other apartment, it was
13 very specific as to what they were going in there to retrieve.

14 THE COURT: Alright, Mr. Riordan, why can't these
15 officers as witnesses not authenticate the signature that was
16 placed on both these forms?

17 MR. RIORDAN: All they're doing is authenticating a
18 hearsay statement. 801(a) a statement is an oral, a written
19 assertion, that's all this is, it's a writing. Again, it's a
20 warrantless search so there's no exception. They've got,
21 they've got to prove that the person that gave the consent did
22 so freely, knowingly and voluntarily. I mean, it, to hear her
23 argument and I, and I'm not gonna be cute, it totally ignores
24 the Fourth and F -- the Fourth and Fourteenth Amendment, I
25 mean, this is, it's an illegal search and seizure and and

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1 again, Judge, I that's what I said it's compelling, it's that
2 simple. We're used to having this as the exception when it's
3 the defendant, that's not the case here. These both, of 'em
4 and and I hope Your Honor will will recognize it and and and
5 and I and and I know do it. It doesn't make a difference
6 between Ellie and and Homer, uh, Mr. Rose, it really doesn't,
7 it's that they can't produce this person. The officers can't
8 do it, just like a civil case, they can't come in here and
9 identify the signature, that's not enough, they've got to
10 prove consent. The statement it -- the the form itself rank
11 hearsay, no exception, there's no exception. The only other
12 way to do it is call the witness up there, that witness,
13 doesn't matter what the officer said it's a warrantless
14 search, it doesn't matter, it's what the person that gave it
15 that's what they've gotta prove and they can't do it, they
16 can't do it, Judge.

17 THE COURT: When are you going to, uh, in your hierarchy
18 of witnesses, this long laundry list you gave me, plannin' on
19 calling these folks?

20 MS. ABEE: Calling the investigators to authenticate the
21 search?

22 THE COURT: Yep.

23 MS. ABEE: Uh, one would be witness number si -- well
24 he's not actually signed on here, we're looking at witness
25 number 8 and then the last witness as well on Charles

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1 Gonzalez, Your Honor, is the one that witnessed both the
2 signatures and I believe he's witness number 8 or 9 on our
3 list.

4 THE COURT: In other words, we go forward with testimony
5 today we're not gonna reset -- I can research this a little
6 bit tonight?

7 MS. ABEE: Yes, sir.

8 THE COURT: Okay.

9 MS. ABEE: And, Your Honor, we would contend that in
10 order to contest these searches the defendant would have to
11 have standing to do so, the voluntariness of it, we would or
12 we'd contend that she does not have standing to do so, that
13 that would be ---

14 THE COURT: The defendant does not have standing to
15 contest the the search?

16 MS. ABEE: Your Honor, she does have reasonable
17 expectation of privacy in Ellie Hansen's home, it was Ellie
18 Hansen's apartment. The officers questioned her said, uh, do
19 you live here, all all those sorts of preliminary questions,
20 do you consent ---

21 THE COURT: Well that's just based on the trespass notice
22 but ya also have expectation of privacy test too that you
23 looked under what's it's the Katz case, whatever it said that
24 if you ---

25 MS. ABEE: Yes, sir.

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1 THE COURT: --- have a subjective manifestation of
2 intention of privacy, it's something that the, uh, public
3 would recognize as having the right to privacy then it would
4 be subject to search and seizure requirements.

5 MS. ABEE: Yes, sir. I I -- we would just contend that
6 Ms. Hansen's signing of the consent form trumps whatever
7 expectation of privacy that the defendant had within the home
8 since she wasn't a resident of the home or or staying at the
9 home or anything of that sort that this consent would trump
10 her expectation of privacy.

11 THE COURT: Mr. Riordan, have you run across any cases
12 anywhere from any jurisdiction that supports your contention
13 that they they have to establish this knowing, free and
14 voluntarily when they sign this consent form?

15 MR. RIORDAN: Got my brief there, Judge.

16 THE COURT: Okay.

17 MR. RIORDAN: I think it's, ---

18 THE COURT: I haven't, ---

19 MR. RIORDAN: --- I mean, I ---

20 (Cross-talk.)

21 THE COURT: --- it hasn't had this case ---

22 (Indiscernible cross-talk.)

23 MR. RIORDAN: I had to call around to Gasser and talk to
24 Stilwell and say, Am I missin' somethin', this is too easy.
25 Everyone agrees, uh, this this is hearsay, there's no

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1 exception, Judge. I know, and and again I know it's odd, it's
2 because it's normally, it's normally 801(d)(2) and I, and I
3 urge you and that's why I was gonna, I know you wanna start
4 but I'd I'd rather, I'd rather we think hard about this 'cause
5 I don't thi -- I don't think there's any way they do it,
6 there's no way they do it.

7 THE COURT: Well let let me tell you and then that's why
8 I was asking the questions about the, uh, lineup of witnesses,
9 I wanna be able to read these briefs, it's three o'clock now,
10 uh, we just selected a jury, haven't begun opening statements,
11 um, I'm not gonna rush to judgment on anything, ---

12 MR. RIORDAN: Sure.

13 THE COURT: --- I wanna read all these different cases
14 and briefs so I can make an informed decision, at least what I
15 consider to be informed decision about it 'cause it seems
16 somewhat logical to me same time it just seems like there's
17 somethin' about it that I'm not puttin' my finger on.

18 MR. RIORDAN: I I, and I don't, I don't disagree and I
19 was in that same quandary but it's pre -- that's I say it's
20 pretty compelling when you look at it. It's a hearsay form,
21 they don't have the person here to do it. They can't just get
22 a form and come in and say, Well I witnessed it, I mean, that,
23 that that just, that's why we have the hearsay rule, the
24 unreliability, but the key that seems to be ignored again our
25 constitutional rights it's it's it's tha -- it's how they did

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1 it, it's a warrantless seizure and that's the whole key. When
2 it's a warrantless seizure that's when they've got the burden
3 of proof to show the person that they claim gave the consent,
4 they've gotta prove that it was done freely, knowing and
5 voluntarily and without that person they can't do it, the
6 form's not enough, it's hearsay and and any comment about them
7 is hearsay from them, that's -- those those just the standard
8 rules of operation ---

9 THE COURT: Well how do you, ---

10 MR. RIORDAN: --- both in the civil ---

11 THE COURT: --- how do you, ---

12 MR. RIORDAN: --- and the criminal arena.

13 THE COURT: --- how do you address those -- the comment
14 that your client doesn't have standing to contest whether or
15 not, uh, Mr., uh, Rose's or this other lady's constitutional
16 rights were violated?

17 MR. RIORDAN: Well if if they concede, if if the point is
18 she didn't have standing 'cause they're not usin' it against
19 her, so be it, if they're not usin' it, I don't care, they can
20 have it all day. If they're gonna use it against her, of
21 course she has standing, that's the whole point. If they
22 don't wanna use it against her then we're fine, we're all in
23 agreement, they can go all day and no one else will object but
24 if it's being used against her, ---

25 THE COURT: Well let me ask you this: Aren't there a

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1 number of cases out there where somebody leaves some kinda
2 contraband in a car or somethin' in a car that's not theirs
3 and the owner says, Yeah, you can search it, go ahead and they
4 do and they basically say well they don't have right to
5 complain or standing to complain about the the consent to
6 search 'cause that's ---

7 MR. RIORDAN: I I have ---

8 THE COURT: --- not their property.

9 MR. RIORDAN: --- I'd have to see the particular case,
10 Judge, but again, unless they can get the person there that
11 says, I did it, it's hearsay, can't do it.

12 THE COURT: Let me look at it in that regard.

13 MR. RIORDAN: Okay, thank Your Honor.

14 THE COURT: Okay, what else do ya have?

15 MR. RIORDAN: Uh, really well the other one's 'cause
16 again, if everyone agrees with that ---

17 THE COURT: I don't think everybody's ---

18 MR. RIORDAN: Yeah ---

19 THE COURT: --- agreeing.

20 MR. RIORDAN: --- well well I say, I say if it comes down
21 to that's it, if if that were the, if that were the case, if
22 that prevails for both then there's really not a whole lot
23 more and I would note with that, uh, well I pretty mu -- I
24 don't know of any other evidence that really exists if we get
25 rid a the two searches, is there anything else? DNA evidence

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1 I guess. We can go -- we can proceed to trial with DNA
2 evidence.

3 MS. ABEE: Your Honor, that ruling would have an impact,
4 uh, on the State's case, it's a, that's kinda why we're in
5 limbo right now in standing with Mr. Riordan, uh, 'cause that
6 would exclude all clothing that tested positive for ignitable
7 liquids of the defendant so that's, we are kinda at a
8 standstill not knowing how to, how to proceed, um, that would
9 affect the strength of the State's case severely, ---

10 THE COURT: What if ---

11 MS. ABEE: --- significantly.

12 THE COURT: Alright, in other words, if I grant his
13 motion to in limine to or to suppress that evidence then this
14 case probly doesn't go forward.

15 MS. ABEE: There's a large possibility of that. Uh, Your
16 Honor, obviously we -- I'd have to talk to a supervisor but
17 yes, ---

18 THE COURT: I understand that, ---

19 MS. ABEE: --- I would, ---

20 THE COURT: --- I completely ---

21 MS. ABEE: --- um, ---

22 THE COURT: --- understand that.

23 MS. ABEE: --- it it would be detrimental to the State's
24 case in chief.

25 THE COURT: I understand that part as well. Any other

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1 motions?

2 MR. RIORDAN: Judge, what we could do if you wanted to
3 within that, uh, ---

4 THE COURT: What I wanna do is break right now ---

5 MR. RIORDAN: I know.

6 THE COURT: --- if there's no more motions, that's why I
7 keep asking.

8 MR. RIORDAN: Well I I guess part of it ---

9 THE COURT: Look, ---

10 MR. RIORDAN: --- if -- 'cause one, there's one way we
11 could do it, I mean, you got the search and then you've got
12 h -- they wanna speak to how they locate, I mean, there's a
13 big question regardin' the use of a dog in this case, they
14 got, they wanna bring a dog, I guess they are. You gonna try
15 to have Gonzalez speak, uh, 'bout his dog?

16 MS. UNDERWOOD: Yes.

17 MR. RIORDAN: Okay. Well that's one thing, that's the
18 search of the house, that's the one again they don't, you now,
19 have it here but I guess we eliminate that, as you mentioned
20 you're not as concerned about it, but if we eliminate the dog
21 and reliability as an expert and we think we've got grounds to
22 do that and that will be gone and then we move to Ellie's ---

23 THE COURT: Well hold on, let's ---

24 MR. RIORDAN: --- case ---

25 THE COURT: --- back up I'm -- you're sayin' that you

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1 brought a dog to one a these premises and they found some
2 clothings based on the smell.

3 MR. UNDERWOOD: Yes, Your Honor.

4 THE COURT: And that's this lady's house?

5 MR. UNDERWOOD: No, Your Honor, it's at the Rose
6 residence.

7 THE COURT: At the Rose residence?

8 MR. UNDERWOOD: Yes, Your Honor.

9 THE COURT: Okay. Any issues on dog certification,
10 training, any a that?

11 MR. RIORDAN: Absolutely, it's yeah, here.

12 (Whereupon, counsel handed the documents to the Court.)

13 THE COURT: Is that Jardines?

14 MR. RIORDAN: Yeah, I think the only one out there is
15 tracking dogs, we kinda likened it, we also did some, uh,
16 just, uh, that we did a non -- scientific and non-scientific,
17 it's just interesting. Well again, and and, Judge, I didn't,
18 I wasn't at the solicitor's convention in October with Justice
19 Beatty speaking but this is the second arson case I've had
20 with the Greenville County Sheriff's Office team and I, and I
21 wanna at least bring that out on the record here. Uh, in both
22 cases I've been provided discovery in those cases and, you
23 know, and I trust the prosecutors gave me what they had and
24 I've I've and they talked about one of 'em earlier, earlier
25 case that I had, it it plays a role here, it definitely does

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1 or or could depending on the rulings here, but this is the
2 second time and and again when when a Justice is callin' out,
3 ya know, me and a bunch of criminal defense attorneys saying
4 we we need to start speaking up and letting the judges know as
5 well what we're facing, what clients are facing in cases like
6 this. This is a fire from July 27th 2012, she was arrested
7 six weeks later September 12th I think 2012, she's mentioned
8 the basis, what I think you'll see is the only basis for the
9 arrest, that they found her clothing that she wore that day
10 had gasoline, her clothing while she's in a burning house with
11 gasoline fire on the front porch, that the first witness will
12 say she comes outta the house and she's on the front porch,
13 the firemen say of course she had gas on her, she's standing
14 in the, in the fire of and where the fire's just burned out,
15 she's kneeling down in it on her pets but that that's ones,
16 that's one part a the evidence that they think is so critical
17 here, the other one is these shoes and that's, again, there's
18 a big question on that beyond just the hearsay, again, if if
19 if you disagree but I don't think you should, I think we win
20 on that, but if you don't we go, we go to the search itself
21 and that's when we have this whole issue with the dog and
22 reliability, it's so important in this case and that's what I
23 want you to look at it at both ways, it's not just the dog
24 that is unreliable but the use of the dog in this, in this
25 manner. We've got a fire that's called in at little bit after

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1 eight that morning, the fire's put out I don't know by nine
2 o'clock probably, they're on the scene, these investigators
3 with the arson team are there. They released the scene I
4 think about 12:20, I think if you look at the call log
5 everyone's gone at 12:20 and releasing the scene means, Hey,
6 Roses, do what you need to do and they get SERVPRO out there.
7 We've got the, we've got the records showing the SERVPRO
8 documents signed that afternoon, SERVPRO personnel in and
9 outta that house cleanin' up, movin' through, they're walkin'
10 through the debris, gas fire on the front porch, diesel fire
11 on the back. We've got photos that, uh, Investigator Cannon
12 thankfully took that morning, I think I put those in with the,
13 uh, look and see if those might be in there, uh, where are my
14 photos, photo? Oh, here they are. The shoes, photos of the
15 shoes and, again, it's two part, you can look at the dog and
16 there's a whole issue here on boy it's frightening to think
17 they're gonna try to say this dog is reliable, that someone's
18 life can be put in jeopardy from this dog coming in their
19 house but but beyond that even if the dog was the best in the
20 world, how can it be reliable in a case like this?

21 THE COURT: Well that's not standard, I mean, even ---

22 MR. RIORDAN: Well I know, ---

23 THE COURT: --- on drug dogs.

24 MR. RIORDAN: --- I understand, Judge, if if if you, uh,
25 I didn't mean interrupt you..

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1 THE COURT: That's alright.

2 MR. RIORDAN: Look at the first photo. This this
3 (indicating) is Cannon, look to the left. You see shoes in
4 the corner, you have running shoes and then you've got these
5 moccasins, you -- and thankfully again just almost missed 'em
6 but he did take the picture so and you see he's got the det --
7 date stamp on there, we'll have, we'll have, you know, we'll
8 talk about that as well, the date stamp's off an hour, their
9 photos are off an hour, so that's at ten thir -- around 10:30
10 you've got a photo, again, the whole fire scene, the house is
11 released. Go to the next one SERVPRO. SERVPRO's there that
12 day, thankfully they've got the date. You can't see the shoes
13 but it's interesting the photo's taken, whoever the
14 photographer is, I can get the SERVPRO guys, they're standin'
15 right where those shoes are. They come back later, there's a
16 big issue with this supposed consent to search that's signed,
17 if we've got to get into that we will, when they're there
18 earlier, the dog's checkin' outside, again, the report is, you
19 haven't heard him yet, report is there's three guys in in in
20 our garage tryin' to get in our gun safe, she's back in a room
21 callin' 911 geared up. About eight minutes into the call she
22 says she hears somethin', checks outside, back porch is on
23 fire. She's scramblin' through the house chasin' one of her
24 cats, she got six pets in the room, that's why I asked the
25 question about the pets, three dogs, three cats, and for the

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1 next you hear that she stays on the phone, she's goin' through
2 the house, she goes out the front door, there's another fire,
3 that's the gas fire, is out on the front porch and so, I mean,
4 the reported call everyone, everyone knows it's arson, no
5 question about that, don't even need to bring the dog out
6 there, I mean, you already know it's an arson but they bring
7 it out there. It's interesting this dog Misty the way he
8 alerts he lies down in it, lies down in it, we've got a photo,
9 I'll add that in, we got the photo. When he's there earlier
10 lying down on the front porch in the gas, at least they took a
11 picture of that so we've got a picture of him hitting there,
12 later that afternoon they're in there, there's certainly a
13 question, again, I don't think we ever get to it, there's
14 certainly a question as to even certainly know -- freely,
15 knowing and voluntary allow 'em in there but without any
16 witnesses other than investigators, no photo, these people are
17 told the dog has hit on the shoes. I got two things to say
18 about that; one, you can go to the photo, here it is roll 47
19 5:28 and I, and I think, I think that's really 6:28, compare
20 the first two, again, SERVPRO's been in there all afternoon
21 cleaning up, shoes have been moved. Spoken with the SLED
22 chemist here about what's the significant 'cause they, 'cause
23 they they get tr -- they go for trace evidence on the shoes
24 and they get trace evidence of gasoline along with toluene,
25 toluene a a a a chemical that is in paint thinner, everyone

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1 knew. One a the firemen says, Yeah, I was upstairs look like
2 she was paintin' one a the rooms. The shoes have been moved
3 there's no doubt about it, contamination is already there. I
4 mean, I -- you talk about reliability, that's a e -- just
5 without the dog comin' in and sayin' this is it, I mean, this
6 is, this the case of cross-contamination is the biggest issue,
7 the lab says, Well it wouldn't do anything, if ya touch one
8 and touch the other it's unreliable but we have a dog that's
9 been layin' in gasoline earlier run -- apparently running
10 around sayin' he hit on the shoes, we don't have a photo of
11 it, and what's -- I would suggest to you somebody's moved 'em,
12 somebody's touched 'em, there's no reliability and the dog
13 it's interesting 'cause 'cause they wanna say this dog is
14 reliable 'cause and and I was gettin' back to the thing with
15 Justice Beatty and and discovery, we put in discovery in this
16 case. Fire's in July, arrested September, yeah, they talk
17 about the shoes and the, and the clothes, again, everyone's --
18 and of of course there's gas on the clothes, she's on the
19 porch where the gas debris is, the chemist is gonna make that
20 clear, that's -- there's no -- totally expected, meaningless
21 really in this case with a lady who's in the fire but the
22 other thing that's out there, Judge, they take that day as
23 part a the evidence in this case, they have two latex gloves,
24 there there's a red gas can on the front porch and there's a
25 yellow burned up kerosene, uh, uh, can on the back porch and

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1 there's two gloves, ya know, latex gloves discarded right near
2 the red can in the front and there's one found in the back
3 porch where the kerosene is, the gloves are taken up, this is
4 the day of the fire July 27th. They send it up, they they
5 send the clothes to SLED immediately, they get those back
6 August 7th, for some reason even though they're taken the same
7 day these gloves are are not even sent to the DNA lab 'til
8 August 29th. Speaking with the guy, I don't even think they
9 planned on callin' the guy, of course I am, August 29th he
10 says it takes about ninety days to do DNA. She gets arrested,
11 we put in discovery, yeah, it's a conflict case, yeah, a
12 conflict is 'cause the solicitor here when he worked with my
13 firm he was, he was part a the group that helped represent
14 Paula in other matters that we defeated, end up havin' civil
15 verdicts against, against bad cops up in Oconee but here's the
16 deal: We go -- we put discovery out I say February, I think
17 it's actually January, so February of 2013 we put out
18 discovery and this is bef -- this predates these solicitor,
19 I'll I'll give 'em that, predates them, we get a discovery
20 pack and I say, Well look, I mean, it's got some stuff in here
21 but goodness gracious is -- this is the investigation? I
22 mean, they're supposed to send me everything. I shoulda known
23 from my other case when they didn't give me everything, I
24 shoulda known but I wasn't gon -- I -- hey, if this is what
25 they wanna prove I'll go to trial 'cause I got gaps all over

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1 the place and we wait. These (indicating State's counsel) end
2 a last year and they say, Hey, we're lookin' at tryin' this
3 thing in February and we were -- we're -- it was, it was
4 lookin' at goin' in February but at the end a the year Kinli
5 says, Look, can't do it, we have to push push it off 'til, uh,
6 'til 'til, uh, 'til May this week and I said, Well good, I
7 mean, at the end a the year I was tryin' to get together so if
8 we're doin' that we need to get together, I need to make sure
9 I've got everything so I can defend my case, that's what Rule
10 5's about gettin' everything, this what Justice Beatty's
11 talkin' about. I mean, I got my buddies, my old, you
12 know, ---

13 THE COURT: Well I hear you ranting ---

14 MR. RIORDAN: Yeah, what ---

15 THE COURT: --- but I don't hear anything ---

16 MR. RIORDAN: --- what ---

17 THE COURT: --- specific.

18 MR. RIORDAN: Okay, can -- here it is, Judge: So we
19 finally have the meeting, again this is two months in the
20 making, they're in Columbia, I understand that, two mo -- two
21 months in the making. We're gonna get together, we have snow
22 days. February 27th let's go down, we're gonna come down from
23 Columbia, we'll meet over at the evidence room, you can see
24 all the evidence, I mean, that's the deal so I can have my
25 stuff and be ready comin' here. We leave there and I say,

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1 Man, there's still all these gaps. Goodness gracious, we got
2 a case where there's gloves sent off for DNA and I don't even
3 see a test, if that's not reasonable doubt, goodness gracious,
4 let's gear up for trial. Well the next day Kinli sends it to
5 me, she sends me the DNA results and says, Hey, here's eight
6 other things 'cause I knew this guy Gonzalez is out there
7 doin' all these things, he didn't even ha -- we don't even
8 have his report. Photographs, they talk about photographs
9 taken. The only photographs we had for over a year is the, is
10 the file that they requested from State Farm. I had to tell
11 'em, I said, Look, you guys talkin' about 200 sumtin'
12 photographs where are they, so we get those. Stuff starts
13 tricklin' in but the key is at least they got me on February
14 27th the DNA, okay, and I guess the cour -- I guess they'll
15 say well it's inconclusive. You read the report, test results
16 inconclusive. Remember her complaint: three guys in the
17 garage tryin' to get in our gun safe. Ya know this a
18 trooper's wife, when when they realize she's there maybe they
19 knew, hey, we're tryin' to get in a gun safe, he or she's got
20 guns inside, we better get outta here, let's let's maybe set a
21 fire to distract her, don't get us shot in our back. DNA
22 evidence result's inconclusive because there's a mixture of
23 DNA from three or more individuals and you go to the array
24 that has the chromosomes on it, XY chromosome only one they
25 could prove male chromosome and that's after these guys on the

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1 scene tauntin' my lady sayin' this gloves are gonna have DNA
2 on it, it's what we're dealin' with, Judge, you've got it
3 there. This, in regard to to this matter, you've got the
4 shoes here, they definitely been moved, I mean, there's no
5 doubt about it. Misty is, Misty is talked about, let's
6 talk about Misty real quick. All that -- ge -- again, gettin'
7 back to discovery I get Misty. I got the stuff on Misty and
8 Gonzalez and CV here, again, I'm waitin' -- we have -- we got
9 all February and all March. Two weeks ago or actually a week
10 from from Friday I had -- when I'm in Columbia doin' a trial
11 academy, I got Dick Harpootlian in there, we're talkin' with
12 everybody, I stop by their office to get it, what do they
13 have? Now they got a hundred forty-one pages of new stuff
14 from SLED, all the analysis behind the test results, so I'm
15 dealin' with that, we get the jail phone calls within the last
16 couple weeks, I mean, look, luckily despite them wantin' to,
17 now the phone call's out so it doesn't matter, sayin' they're
18 broke, ya know, we've had to put up with this all this time.
19 The, uh, the stuff with Gonzalez comes in, again, Hey, if
20 you're gonna, if you're gonna put somethin' up, if you're
21 gonna say ---

22 THE COURT: Well refresh my ---

23 MR. RIORDAN: --- this dog ---

24 THE COURT: --- memory on Gonzalez, ---

25 MR. RIORDAN: Yeah.

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1 THE COURT: --- you know this evidence, now ---

2 MR. RIORDAN: I'm sorry, ---

3 THE COURT: --- I'm just now hearing.

4 MR. RIORDAN: --- Gonzalez is an odor arson investigator,
5 he's trained with a drug dog and so they gave us, they gave us
6 his, uh, CV and the certificates for the dog and I mentioned
7 in there, I mean, the one certificate, again, they've gotta
8 prove reliability, I set it out here. Right now I've got a
9 certificate from November of, uh, 2011 so it's nine months in,
10 certificate for I don't know, the Working Dog Association of
11 America, that's what they're puttin' up as their qualification
12 for this dog, ---

13 THE COURT: Well ---

14 MR. RIORDAN: --- nothin' about training ---

15 THE COURT: --- let me ask you this: Wasn't it in
16 *Jardines* case or somethin' outta Florida where they said that
17 long as you can show the dog had been through the
18 pro -- properly certified through a recognized program then
19 that gives you and he's he passed that and that's probable
20 cause? This is a drug search analysis, isn't that the same,
21 essentially the same thing you're lookin' at here?

22 MR. RIORDAN: I'm not familiar. What I would say is I
23 would hope just like the, just like the curr -- the argument
24 we're havin' on the other one that in in a case such as that
25 where you've gotta prove that that they've gotta bring someone

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1 in there to prove that, they can't just come in with a hearsay
2 form, some printed out thing. This this form, Judge, again
3 gets back to is this reliable. The the dog is trained to hit
4 on paint thinner, ---

5 THE COURT: I ---

6 MR. RIORDAN: --- well lacquer.

7 THE COURT: --- I would agree with you, ---

8 MR. RIORDAN: Right.

9 THE COURT: --- Mr. Riordan, that they would have the
10 obligation established in the foundation of certification and
11 that this is a recognized program, I think that's what is
12 required but once they do that you don't -- they don't have to
13 bring in their weekly field reports and all that if I
14 understand the law, that's up to ---

15 MR. RIORDAN: Well ---

16 THE COURT: --- you to challengin' that -- challenge
17 that.

18 MR. RIORDAN: --- and I, and I'm definitely challenge it
19 and and and that's when Your Honor comes in but you've
20 got -- they've got to show to you the reliability and that's
21 what I get to. All of this I'm talkin' about the reliability
22 here when it's basically, it's basically the word of Gonzalez,
23 that's all we've got and he shows on his form, it's funny,
24 they put out the different things he's he's trained in:
25 charcoal, lighter fluid, they misspell charcoal, I mean,

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1 that's what we're talkin' about, that's the du -- that's how
2 this lady sits here right now, this is the stuff we're talkin'
3 about. Shoes had been moved, clearly contaminated, same with
4 this dog. Again, I'd ask just on that alone, don't worry
5 about the consent, on that alone that these shoes be excluded,
6 that Your Honor can look at the totality of the circumstances,
7 that is unreliable, that's your unreli -- and frightening that
8 someone could be sittin' here facin' a case based on that.

9 Oh, the other point I wanted to get to with the gloves,
10 it was interesting because, yeah, she she she acknowledges the
11 DNA with -- for three or more individuals she didn't get it
12 'til that day, I I trust her that she gave it to me, now I
13 knew when I was a prosecutor the rules are clear they stand in
14 the shoes of of the, of the police, they're assumed to have
15 everything, but it's interesting that this this case was true
16 billed, true billed, that that stuff came back in November
17 November 8th, true billed after that, ---

18 THE COURT: What stuff ---

19 MR. RIORDAN: --- prosecutor's ---

20 THE COURT: --- came back?

21 MR. RIORDAN: --- never even had the darn DNA, the
22 exculpatory evidence.

23 THE COURT: What was true billed in November? What
24 stuff? You say ---

25 MR. RIORDAN: Sometime that -- well her, all of the

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1 charges against her were true billed after that.

2 THE COURT: I understand that but you said it didn't come
3 back in after November 8th, what are you referring ---

4 MR. RIORDAN: November 8th's the, was when the DNA
5 results came back. They were submitted August 29th, they came
6 back November 8th and, again, on November 8th of 2012, she's
7 indicted in February of 2013, we don't see it 'til February
8 27th of this year, that's the case we're talkin' about here
9 and, again, we we can do what we need to, I mean, ---

10 THE COURT: Let me, let me stop you. A -- tell me, uh,
11 about these movement of these shoes, uh, what what is your
12 position on that, that does give me some pause, concern?

13 MR. UNDERWOOD: Your Honor, I I don't see any evidence
14 that anything was moved. In looking at these pictures that
15 Mr. Riordan indicates, the shoes appear to be in the exact
16 same position both pictures.

17 THE COURT: I disagree with you. There in the picture I
18 saw it has paint cans sittin' right in front of 'em.

19 MR. UNDERWOOD: Your Honor, those are the cans that the
20 shoes were collected and placed in by law enforcement.

21 MR. RIORDAN: He's lookin' at the wrong picture. Josh,
22 look at 7128. I don't know, maybe your eyesight's different
23 from mine, I see, ---

24 THE COURT: Ha -- no, ---

25 MR. RIORDAN: --- I see ---

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1 THE COURT: --- sir, no, sir, stop this.

2 MR. RIORDAN: Yeah.

3 MR. UNDERWOOD: I I see the, I see in 7128, Your Honor,
4 that the slippers are located directly next to the sneakers.

5 THE COURT: And then there's these paint cans with tops
6 right in front of 'em in 7247 is what I'm lookin' at.

7 MR. UNDERWOOD: Yes, Your Honor, and and those slippers
8 are still directly next to the same sneakers.

9 THE COURT: There's no paint cans in fronta those though.

10 MR. UNDERWOOD: Your Your Honor, the reason of this
11 picture of the paint cans is when arson investigators are
12 collecting specimens to take into evidence, it is a customary
13 practice to take a picture of the container which you are
14 placing evidence in directly before you put it in there or
15 after to show that it was a uncontaminated, clean, fresh
16 container, that's the purpose of this photograph, Your Honor.

17 THE COURT: Okay.

18 MR. RIORDAN: Judge, if I may.

19 THE COURT: Just one second.

20 MR. RIORDAN: Alright.

21 MR. UNDERWOOD: Those paint cans are the property of law
22 enforcement, those are the containers that they standard
23 they're used ---

24 THE COURT: Okay.

25 MR. UNDERWOOD: --- to take evidence in.

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1 THE COURT: I, quite frankly, Mr. Riordan, I I hear ya
2 and that's concerning but I I can't say that they're in fact
3 something that's been, uh, ---

4 MR. RIORDAN: Well, Judge, ---

5 THE COURT: --- tampered with.

6 MR. RIORDAN: --- I, what I would ask is, look, I didn't
7 think it mattered, it seemed so clear to me even even in the
8 poor quality I have 'cause we we've got the real version you
9 can look at. I would submit se -- I'd ask you take judicial
10 notice quite frankly, 7128 the moccasin, ---

11 THE COURT: I I can't take ---

12 MR. RIORDAN: --- the ---

13 THE COURT: --- judicial notice.

14 MR. RIORDAN: --- the left moccasin, the end a the left
15 moccasin is about midway down from the Nike shoe next to it,
16 then when you look in the afternoon the back a the moccasin
17 h -- moccasin is behind the front of the the the Nike shoe, I
18 mean, I I don't know what else to say there.

19 THE COURT: There's no -- I, let me say this: I I do look
20 at 7128 and it appears that these moccasins as you call 'em
21 besides the striped colored Nikes are sitting at the rear end
22 of the heel and the toe of the moccasin is facin' in the same
23 direction as the, uh, the the tennis shoe whereas in this 7247
24 the moccasins are in front of and turned the opposite
25 direction.

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1 MR. RIORDAN: Yeah, and se -- 7248 I put 'em both in
2 there but 7248's better if you wanna look at it, it's a little
3 bit more clearer than 7247, same same area most, I I mean,
4 just about but ---

5 THE COURT: Well ---

6 MR. RIORDAN: --- I think, I think you realize the first
7 one was ---

8 THE COURT: --- if you look at 7247 and 7248, those are
9 two, they're showing moccasins in opposite directions. No
10 they're not, no they're not.

11 MR. RIORDAN: No, they're they're basically the same. I
12 think you realize the first one was blurry, I was just gonna
13 put every one of 'em in there that they had from the
14 afternoon, there's two of 'em, but as far as clearness, 7248
15 it's easier to look at but in either one of 'em, I mean, the
16 back a the moccasin in the afternoon is in fronta the shoe and
17 in the morning it's in about midway of the shoe, no doubt it's
18 been moved whatever half of a shoe is.

19 THE COURT: That that that appears to be clear to me.

20 MR. UNDERWOOD: And, Your Honor, I mean, I'd have to, you
21 know, elicit testimony from the stand that cause any
22 explanations for why anything mighta been moved a couple
23 inches. Just just a guess, Your Honor, I have not ---

24 THE COURT: I don't want ---

25 MR. UNDERWOOD: --- specifically asked ---

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1 THE COURT: --- you guessin', guessin' doesn't do any
2 good.

3 MR UNDERWOOD: Alright, Your Honor, 'cause one one thing
4 I've seen from experience, Your Honor, is ---

5 THE COURT: Is that a guess anyway?

6 MR. UNDERWOOD: Alright, well no, Your Honor. All all I
7 was gonna say, Your Honor, is that, uh, Investigator Gonzalez
8 is gonna be here to testify to explain where these items were
9 found, how they were found and that would be the proper time
10 to discuss ---

11 THE COURT: I don't ---

12 MR. UNDERWOOD: --- anything ---

13 THE COURT: --- disagree ---

14 MR. UNDERWOOD: --- that mighta been ---

15 THE COURT: --- with that, I don't disagree with that. I
16 tell you what, let's take a few minutes, uh, I wanna look at
17 some a these motions with regard to the hearsay as to the
18 consents, those seem to be the big issues right now, the other
19 ones will have to be subject to in-camera hearings we get into
20 that sounds like to me. Uh, I am gonna say that the telephone
21 call's out, that is subject to the, uh, privilege between
22 husband and wife. I think Mr. Riordan's correct that that has
23 to do with any communications during the marriage which would
24 be more than just, uh, regardless of the phone call or or the
25 notice sayin' this is what, this is gonna be subject to us

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1 listenin' to it, that bein' said let me take a minute look at
2 these cases, uh, I like to be able to tell ya I'm gonna come
3 up with answer today, uh, I can't promise ya that, just gonna
4 look, see what I have, okay. Have ya'll talked about
5 rero -- resolvin' this case at all or is that just not
6 somethin' that's possible?

7 MS. ABEE: Your Honor, a plea offer was extended prior to
8 scheduling it for trial, um, ---

9 THE COURT: Okay, that's okay, it's none a my bus -- I'm
10 here to try the case, I was just throwin' that out there,
11 okay.

12 MS. ABEE: Yes, sir.

13 THE COURT: Alright, thank you, we'll be in recess for a
14 minute, ya'll stand standby, ---

15 MR. RIORDAN: Thank Your Honor.

16 THE COURT: --- please.

17 (Whereupon, a recess was taken.)

18 THE COURT: Alright, let me first address the issue of
19 the search of the premises of both defendant by consent given
20 by her husband allegedly and also by a Ellie Hansen. Uh,
21 looking at the cases and looking at the warrant or the or --
22 no warrant requirement, you can give a consent to search.
23 Obviously her, defendant's husband is in a position to give a
24 consent to search, the burden, however, is on the State to
25 prove that there's a reasonable search and that there was

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1 consent given freely and it was not subject of duress or
2 coercion. At this point the State has listed at item or
3 witness list number 34 Homer Rose, I assume that's the
4 husband, ---

5 MR. RIORDAN: Yes.

6 THE COURT: --- and has -- it also listed Ellie Hansen so
7 at this point, uh, for me make a ruling without the State
8 having attempt to right -- a a right to make a showing in the
9 case as to voluntariness of the consent and the, and the, and
10 scope of the search resulting thereby or coercion is for me to
11 start comment on the facts. I'm not gonna, and the cases
12 clearly say that the existence of consent is determined from
13 the totality of the circumstances, okay, so at this stage for
14 me to limit my, uh, ruling to the form, the consent form
15 without having any proffer made by the State would be for me
16 to prejudge what they would be able to put up or not be able
17 to put up, okay, I, and I'll be glad to do that -- I'll refuse
18 do that. I'm gonna let the State try to establish its
19 foundation that is required to get these these these in. I
20 don't know how the State's gonna do it without a state witness
21 quite frankly but, uh, they've listed the lady as a witness,
22 they've listed your client's husband as a witness, clearly you
23 don't dispute the fact that as a husband who is a co-tenant of
24 the household he in a uncontested world would give -- have
25 right to give consent.

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1 know what order to do it in be little bit presumptuous I
2 believe, that -- thank you though.

3 MR. RIORDAN: Thank Your Honor.

4 THE COURT: Alright. Alright.

5 MS. ABEE: And, Your Honor, this is just to establish the
6 voluntariness of the consent, correct?

7 THE COURT: Right.

8 MS. ABEE: I just wanna make sure my questions are ---

9 THE COURT: The ---

10 MS. ABEE: --- all within ---

11 THE COURT: --- reason ---

12 MS. ABEE: --- the scope.

13 THE COURT: --- I'm doin' this and and I think that you
14 conceded and Mr. Riordan alleged and I think is probly correct
15 that if the -- that, all those consents are not properly
16 established then big part a your evidence against this
17 defendant is gonna be gone.

18 MS. ABEE: Yes, sir.

19 THE COURT: Okay, so, I mean, doesn't it make sense to me
20 to go ahead and do it this way?

21 MS. ABEE: Your Honor, I agree, I just wanna make sure my
22 scope of questioning ---

23 THE COURT: Yes, ma'am, ---

24 MS. ABEE: --- was gonna be proper.

25 THE COURT: --- absolutely.

BEN CANNON - DIRECT EXAMINATION BY MS. ABEE

1 MS. ABEE: Your Honor, then at this time the State would
2 call Investigator Ben Cannon to the stand.

3 (Whereupon, the witness came forward.)

4 THE CLERK: Raise your right hand.

5 BEN CANNON, having been first
6 duly sworn, testified as follows:

7 THE CLERK: Please have a seat. Will you state your full
8 name for the record.

9 THE WITNESS: I'm Ben Cannon, Greenville County Sheriff's
10 Office.

11 MS. ABEE: Thank Your Honor.

12 THE COURT: Yes, ma'am.

13 DIRECT EXAMINATION BY MS. ABEE:

14 Q. Mr. Cannon, if you could just tell us briefly, uh, where
15 you currently work and how long you've been involved in law
16 enforcement.

17 A. I work for the sheriff's office here in Greenville, uh,
18 be ten years this September.

19 Q. And currently what, uh, unit are you assigned to?

20 A. I'm Criminal Investigation Division Arson Unit.

21 Q. And what specifically is your job title?

22 A. I do, uh, fire investigation.

23 Q. And how long have you been doin' fire investigation?

24 A. Uh, since August of 2011.

25 Q. If you could just briefly, uh, describe to us what your

BEN CANNON - DIRECT EXAMINATION BY MS. ABEE

1 involvement was with the case pending against the defendant.

2 A. Um, believe it was the 27th of July, uh, we got a call,
3 uh, stating there was a burglary in progress and that it
4 involved, uh, the attempted burning of a home. Uh, they
5 requested arson investigator and I arrived on scene in early
6 mornin' hours of that day.

7 Q. Were you the lead investigator as to the arson portion of
8 this case?

9 A. Yes, ma'am, I was.

10 Q. Was there any other, any other sort of crime that was
11 being investigated as well?

12 A. Yes, ma'am, the burglary portion was also being
13 investigated as a dual role.

14 Q. Throughout the course of your investigation did it become
15 necessary for you to search inside of the home and, uh, the
16 attached garage at Riley Smith Ro -- or Drive?

17 A. Yes, ma'am.

18 Q. And did you speak with anyone at the home regarding
19 obtaining consent to get inside of the house?

20 A. Uh, yes, ma'am. Uh, while around I spoke with the, uh,
21 homeowner Mr. Rose and, uh, advised him that we will be coming
22 back do a follow up investigation, he said that SERVPRO was on
23 the scene, he would get them to stop what they were doing 'til
24 we arrived.

25 Q. Okay, and you say "we," who is we?

BEN CANNON - DIRECT EXAMINATION BY MS. ABEE

1 A. Uh, myself and Charles Gonzalez.

2 Q. And when you got back on the scene, uh, what did you do
3 or how did you speak with Mr. Rose regarding consent to
4 search?

5 A. Um, I explained the consent to search form that we
6 typically use, uh, and told him that we we needed to look
7 through the garage, through the house just lookin' for, uh,
8 other items that could help us in our investigation.

9 Q. And are you familiar with what Mr. Rose's profession
10 is?

11 A. Yes, ma'am.

12 Q. And what does he currently do?

13 A. He, I I'm not sure if he is now but that time he was
14 employed by the South Carolina Highway Patrol.

15 Q. So he's in law enforcement?

16 A. Yes, ma'am.

17 Q. And you said you went through or advised him that you
18 needed consent to search, if you could just tell us what you
19 talked to Mr. Rose about before obtaining the consent to
20 search specifically.

21 A. I had the consent to search in my hand, uh, explained to
22 him what what we'd be doing, uh, and if he consented, where he
23 needed to sign I filled out the address, case number and told
24 him everything that we took, if we took anything will be
25 logged down and he would get a copy at the end a the, end a

BEN CANNON - DIRECT EXAMINATION BY MS. ABEE

1 the search.

2 Q. At any point in time did you coerce or force Mr. Rose to
3 give you consent?

4 A. No, ma'am, I do not.

5 Q. At any point in time did you make any statements, uh,
6 about obtaining search warrants or any sort of repercussions
7 that would happen if Mr. Rose didn't give consent?

8 A. No, ma'am.

9 Q. And did he say anything to you specifically that would
10 make you think that the consent that he gave was not
11 voluntarily, freely given?

12 A. No, ma'am.

13 Q. And who -- was anyone with you at this time?

14 A. Uh, I believe Charles Gonzalez's may may have been in the
15 garage but I don't know if he was, you know, standing right
16 beside me, I cannot recall.

17 Q. And were you able to go inside of the home?

18 A. Yes, ma'am.

19 Q. And did Mr. Rose stop you any way before you went inside
20 of the home?

21 A. No, ma'am, he did not.

22 Q. And did you obtain things from the search?

23 A. Yes, ma'am, I did.

24 Q. And when you finished your search did you write those
25 items on the consent to search form?

BEN CANNON - DIRECT EXAMINATION BY MS. ABEE

1 A. Yes, ma'am, I did.

2 Q. And did you discuss that with Mr. Rose?

3 A. Yes, ma'am.

4 Q. At any point in time, did he ask you to stop your
5 search?

6 A. No, ma'am.

7 Q. At at any point in time he would have asked you to stop
8 your search, would you have done so?

9 A. Yes, ma'am.

10 Q. If I were to show you that consent to search form, would
11 you recognize it?

12 A. Yes, ma'am.

13 MS. ABEE: Your Honor, may -- I don't know, do you want
14 these in evidence?

15 THE COURT: Just pass 'em forward, please.

16 (Whereupon, counsel complied.)

17 BY MS. ABEE:

18 Q. Do you recognize this form that I've given you?

19 A. Uh, yes, ma'am, I do.

20 Q. And what is that?

21 A. That's a, uh, typical consent consent to search form we
22 use for fire investigation.

23 Q. And you said briefly some of the, uh, items that were on
24 it, what's the location?

25 A. It is [REDACTED] Riley Smith Drive.

BEN CANNON - DIRECT EXAMINATION BY MS. ABEE

1 Q. And is that the home of Mr. Homer Rose?

2 A. Yes, ma'am, it is.

3 Q. What is the date of that search?

4 A. Uh, it is July 27, 2012.

5 Q. And where it says "Signature of occupant," whose
6 signature is there?

7 A. Uh, Mr. Rose.

8 Q. And who witnessed this form?

9 A. Charles Gonzalez.

10 Q. And h -- that's the gentleman that you said was with
11 you?

12 A. Yes, ma'am.

13 Q. And are the items that are seized from the home properly
14 listed?

15 A. Yes, ma'am, they are.

16 Q. And who signed down at the bottom?

17 A. Uh, myself.

18 Q. Now I wanna talk to you about about a -- oh, I'm sorry,
19 just wanna ---

20 THE COURT: No, no, I'm listenin', go ahead.

21 MS. ABEE: Well the same investigator has knowledge as to
22 the subsequent search so I didn't know if you wanted me to
23 continue into that line of questioning ---

24 THE COURT: Sure.

25 MS. ABEE: --- or just stop.

BEN CANNON - DIRECT EXAMINATION BY MS. ABEE

1 BY MS. ABEE:

2 Q. Did you ever conduct a search of a subsequent place in
3 reference to this case as well?

4 A. Yes, ma'am.

5 Q. Approximately how far apart in time was that search from
6 this first search of the Rose residence?

7 A. Maybe an hour and and approximately probly five or, five,
8 seven minutes away from this this residence.

9 Q. And where is that location?

10 A. I believe it's called Oak -- Oak Ridge Place, I believe
11 it's -- I don't know the actual numerics right offhand..

12 Q. And was this an apartment complex?

13 A. Yes, ma'am, it was.

14 Q. And why were you going over to the apartment complex?

15 A. Um, this was, uh, the apartment of Ellie Hansen, she was
16 Mrs. Rose I believe assistant at the time.

17 Q. And was there anything specific that you were looking for
18 while at this apartment?

19 A. Yes, ma'am, uh, Mrs. Rose stated that her clothing that
20 she was wearing earlier that day was inside of this
21 apartment.

22 Q. And did Mrs. Rose make any statements to you about
23 retrieving those clothes?

24 A. Uh, yes, ma'am, once on, once on, once on scene she did
25 not want Ms. Hansen to, uh, let us get the, get the clothing.

BEN CANNON - DIRECT EXAMINATION BY MS. ABEE

1 Q. So when you arrived at the -- at Oak Ridge Place, 150 Oak
2 Ridge Place, ---

3 A. Yes, ma'am.

4 Q. --- who all was there?

5 A. Uh, myself, Investigator Gonzalez, Investigator Morgan,
6 Mr. Rose and Mrs. Rose.

7 Q. Was Ellie Hansen there as well?

8 A. Yes, ma'am, she was also there.

9 Q. And did you speak with Ms. Hansen about giving consent to
10 search the apartment?

11 A. I did not. I was, I was present during during the time
12 M -- uh, Charles Gonzalez was talking with her.

13 Q. And were you able to observe Investigator Gonzalez
14 questioning Ms. Hansen?

15 A. Yes, ma'am.

16 Q. And at any point in time did you see him coerce
17 Ms. Hansen into giving consent?

18 A. No, ma'am.

19 Q. At any point in time did you hear him make any sort of
20 threats to her if she didn't give consent?

21 A. No, ma'am.

22 Q. At any point in time did you hear him say anything or
23 hear Ms. Hansen respond with anything that would make you
24 think that this consent was not freely and voluntarily
25 given?

BEN CANNON - DIRECT EXAMINATION BY MS. ABEE

1 A. No, ma'am.

2 Q. Were you with Investigator Gonzalez when he went inside
3 of the apartment?

4 A. Yes, ma'am, the same, the same group I just mentioned we
5 all went inside at the same time.

6 Q. So that's you and Investigator Morgan, right, ---

7 A. Yes, ma'am.

8 Q. --- Investigator Gonzalez, ---

9 A. Yes, ma'am.

10 Q. --- Ellie Hansen, ---

11 A. Yes, ma'am.

12 Q. --- the defendant ---

13 A. Yes, ma'am.

14 Q. --- and Homer Rose, ---

15 A. Yes, ma'am.

16 Q. --- all all of ya'll went into Ms. Hansen's apartment.

17 A. Correct.

18 Q. At any time when you were inside of Ms. Hansen's
19 apartment did she ask you to leave or stop conducting your
20 search?

21 A. Ms. Hansen did not no, ma'am.

22 Q. And approximately how long were you actually inside of
23 Ms. Hansen's apartment?

24 A. Just a few minutes, enough time to get the, get the
25 clothing and store it properly then we left the apartment.

BEN CANNON - DIRECT EXAMINATION BY MS. ABEE

1 Q. And if Ms. Hansen would have asked you to leave and cease
2 your search, would you have done so?

3 A. Yes, ma'am.

4 MS. ABEE: Your Honor, I have one second? Uh, sorry
5 backtrack, Your Honor.

6 BY MS. ABEE:

7 Q. Investigator Cannon, when you first got on the scene, uh,
8 do you ask for permission to search around the home in order
9 to take pictures or look at other articles?

10 A. Yes, ma'am, I do.

11 Q. And who did you obtain verbal consent from at that
12 time?

13 A. Uh, Mrs. Rose.

14 Q. And at any time while you were taking photos of the home
15 or doing any of your investigation did Mrs. Rose ask you to
16 stop searching her home?

17 A. No, ma'am.

18 MS. ABEE: Your Honor, that would conclude this witness.

19 THE COURT: May I see that consent to search form,
20 please.

21 (Whereupon, the document was handed to the Court.)

22 MS. ABEE: And, Your Honor, we do have the other form
23 it's just through the other investigator, ---

24 THE COURT: I ---

25 MS. ABEE: --- that's why I have this out.

BEN CANNON - CROSS-EXAMINATION BY MR. RIORDAN

1 THE COURT: --- assume it's exact same form.

2 MS. ABEE: Yes, sir, it is. I I can pass it up it's
3 just ---

4 THE COURT: No, that's okay.

5 MS. ABEE: --- through the other, uh, investigator that's
6 why.

7 (Pause.)

8 THE COURT: Cross-examination.

9 MR. RIORDAN: Yes, Your Honor.

10 CROSS-EXAMINATION BY MR. RIORDAN:

11 Q Investigator, who was with you the first time Paula Rose
12 was questioned about where the clothes were that she was
13 wearing that day at the time a the fire?

14 A. I believe Charles may have been present.

15 Q. Where were ya?

16 A. We're at her, we were at her house.

17 Q. What time?

18 A. Sometime after 5:11 p.m ---

19 Q. Okay. Early ---

20 A. --- to ---

21 Q. --- earlier as you said you'd been out at the scene,
22 correct?

23 A. Yes, sir.

24 Q. Alright, and the scene was released, right?

25 A. Yes, sir.

BEN CANNON - CROSS-EXAMINATION BY MR. RIORDAN

1 Q. And when you call back in the afternoon you were informed
2 that SERVPRO was there working, correct?

3 A. Correct.

4 Q. Okay. When you arrived on the scene, SERVPRO still
5 continued to work, didn't they?

6 A. Uh, no, sir, they were just standing by waitin' for us to
7 finish.

8 Q. Where were you working?

9 A. Sir?

10 Q. Where were you working?

11 A. We were started in the garage area.

12 Q. Tell me what the phone call was to Homer Rose, what what
13 did you ask him about returning to the scene after it already
14 been released at twelve tw -- in the afternoon, what time was
15 it? before one o'clock that you guys were outta there and the
16 scene was released, is that a fair estimate?

17 A. Probly around ---

18 (Indiscernible cross-talk.)

19 Q. 12:20 maybe?

20 A. Yes, sir.

21 Q. Would the Greenville County Sheriff's Office call log
22 kinda tell us when everyone left?

23 A. Sure, yes, sir.

24 Q. Okay. Why did ya go back out there?

25 A. For a follow-up investigation.

BEN CANNON - CROSS-EXAMINATION BY MR. RIORDAN

1 Q. Why?

2 A. Uh, you know, it's typical for when we have a dual role
3 investigation for all investigators to get together, make
4 sure, you know, that we're we're not missin' anything, things
5 that nature.

6 Q. You'd been out there all morning, right?

7 A. Correct.

8 Q. Okay. Did and in fact when you left that morning, uh,
9 ya'll let Paula leave 'cause she'd been in the fire, right?

10 A. I'm not, I'm not sure I didn't, I didn't have much
11 interaction with her ---

12 Q. Well ---

13 A. --- after ---

14 Q. --- did you talk to Investigator Morgan, it was Mor --
15 Morgan was gonna interview her, right, at the north station
16 somewhere near Cherrydale?

17 A. I I believe he did, yes, sir.

18 Q. Okay, and he did do that, didn't he?

19 A. Yes, sir.

20 Q. And he called ya after that, didn't he?

21 A. Yes, sir.

22 Q. What he tell ya?

23 A. Uh, we, that's when we went over, just started goin' over
24 the case ---

25 Q. Yeah, what did he ---

BEN CANNON - CROSS-EXAMINATION BY MR. RIORDAN

1 (Indiscernible cross-talk.)

2 Q. --- tell ya?

3 A. Um, just told me about her demeanor, uh, he had, uh,
4 obtained a statement from her, also about the, uh, her prior
5 book she was writing, somethin' about it ---

6 Q. What did he te ---

7 A. --- a thing about Oconee County or somethin' a that
8 nature.

9 Q. --- what did he tell ya about her demeanor in speaking
10 with him?

11 A. That she was very, uh, you know, calm during the whole
12 interview, um, until she got to the point about talkin' about
13 her book and I believe, I believe was Oconee County, Pickens
14 County about the officers over there and she became very
15 passionate, said they did her wrong or somethin' that nature
16 yes, sir.

17 Q. Was it clear from your conversation with Investigator
18 Morgan that he felt that was significant that she was calm in
19 discussing this incident from the morning but was animated
20 about the the incidents that had occurred in Oconee County
21 years earlier?

22 A. Yeah, yeah, he said it was very unusual yes, sir.

23 Q. Okay, he thought that was unusual and that was a reason
24 to really focus on her, is that kinda what that meant to
25 you?

BEN CANNON - CROSS-EXAMINATION BY MR. RIORDAN

1 A. Well no, then then we started talkin' about different
2 other aspects of the case.

3 Q. What aspects?

4 A. Um, well about the fire itself. You know durin', usually
5 durin' if you have a burglary, you have a concealment fire,
6 usually the individual will try to set the fire where they are
7 at and there was no fire damage in the garage or anything else
8 and, you know, n -- in my opinion, you know, they were, if
9 they were really tryin' to hurt Mrs. Rose, someone was trying
10 to hurt Mrs. Rose, uh, you know, all three points of
11 entry/exit, you know, probly woulda been set on fire where
12 there was no escape.

13 Q. Will you agree the front porch is wood and the back porch
14 is wood and the garage is cement, isn't it?

15 A. The floor is cement, yes, sir.

16 Q. Yeah. Um, what else did Morgan say? What what did he
17 say in regard to the charges that she had had filed in Ocone
18 and then the book she was writing?

19 A. I'm I'm I'm not sure if if he said anything else about
20 her, um, said said talked about demeanor of Ms. Hansen.

21 Q. Ms. Hansen?

22 A. Right.

23 Q. Okay, what what he say about Ms. Hansen's demeanor?

24 A. That she was very calm, she was reading a book during the
25 whole time.

BEN CANNON - CROSS-EXAMINATION BY MR. RIORDAN

1 Q. Okay, incident was over, right?

2 A. Sir?

3 Q. Incident from the morning was over, right?

4 A. Correct, yes, sir.

5 Q. What's your recollection as to how long that incident
6 last -- lasted?

7 A. Seven or eight minutes on maybe the 911 call is maybe.

8 Q. That's what you think?

9 A. Might be somewhere around there, not real -- I'm -- I
10 don't know exact time frame look at it.

11 Q. And and just to make sure 'cause we'll be askin' about it
12 later ---

13 A. Sure.

14 Q. --- the, so Morgan tells you he thinks it's significant
15 that this incident in the morning she's fairly calm talking
16 about it, ---

17 A. Right.

18 Q. --- correct?

19 A. Right.

20 Q. You say it lasted eight minutes ---

21 A. Correct.

22 Q. --- but she -- but he wo -- he he he found significance
23 in the fact that she was animated about the situation she had
24 dealt with in Oconee, correct? Did he explain to you how many
25 charges he had looked up that she had been charged with in

BEN CANNON - CROSS-EXAMINATION BY MR. RIORDAN

1 Ocone County?

2 A. If he did I couldn't recall.

3 Q. Okay, you don't remember? Did you look at his report?

4 A. I I haven't lately no, sir.

5 Q. Okay. You're gonna answer it the same way later in
6 fronta the jury, right?

7 A. Yeah, I mean, I hadn't looked at it.

8 Q. Okay, yeah, whatever his report that's what you think he
9 told ya?

10 A. If this is written down, I'm sure that's what ---

11 Q. Okay.

12 A. --- what it is.

13 Q. Did he tell ya she had two separate charges of burglary
14 second and grand larceny?

15 MS. ABEE: Your Honor, I'm gonna object to this, this is
16 outside of the scope of this hearing. My understanding is ---

17 THE COURT: I sustain ---

18 MS. ABEE: --- that is ---

19 THE COURT: --- the objection.

20 MS. ABEE: --- for the voluntariness.

21 THE COURT: The issue of this hearin' is for the
22 determination of voluntariness and consent find signed by
23 Mr. Rose.

24 MR. RIORDAN: Okay.

25 BY MR. RIORDAN:

BEN CANNON - CROSS-EXAMINATION BY MR. RIORDAN

1 Q. When ya called Mr. Rose, what did ya tell him in regard
2 to why you needed to return to the property after ya just
3 left?

4 A. I just told him we need to do a follow investigation.

5 Q. Let me ask ya this: When ya left earlier ---

6 A. Yes.

7 Q. --- wasn't the the agreement that you and Gonzalez would
8 be back on Monday to speak with Paula?

9 A. I believe that's what we said yes, sir.

10 Q. Yeah, that was the agreement, right?

11 A. Yes, sir.

12 Q. Alright. And, uh, how did ya reach Homer?

13 A. Uh, called him on the phone.

14 Q. Okay, and when you arrived what was he doing?

15 A. Sitting in the garage.

16 Q. Okay. Is it your testimony that when you arrived on the
17 scene you went and spoke to Homer and said, I need you to sign
18 this consent to search form before I go through the garage?

19 A. Right, explained it to him, yes.

20 Q. Did you do such a form earlier that day?

21 A. No, sir.

22 Q. Why not?

23 A. I typically don't not not when when the victim's there.

24 Q. 'cause sometimes a verbal consent's enough, right?

25 A. Correct.

BEN CANNON - CROSS-EXAMINATION BY MR. RIORDAN

1 Q. Okay. But you disagree he gave you verbal consent to go
2 in the ra -- garage that day, that's your testimony?

3 A. To go in the ga ---

4 Q. That afternoon.

5 A. No, he he he did a consent to search.

6 Q. You're sayin' you never went in before he could sign the
7 consent to search.

8 A. No, I don't -- no, he was sittin' in the garage.

9 Q. Okay. Why was it different from the morning to the
10 afternoon?

11 A. 'Cause Paula was a potential suspect this time.

12 Q. Okay, he asked ya about that too, didn't you -- didn't
13 he?

14 A. I don't recall that.

15 Q. You never told him that that she was, did ya?

16 A. I don't recall him asking me that.

17 Q. That's important and would go to somebody's free and
18 voluntary waiver of consent, isn't it?

19 A. Well I don't recall him a -- tellin' me that.

20 Q. Well I, that wasn't my question. That would be
21 important, wouldn't it?

22 A. Absolutely.

23 Q. Okay. You didn't inform him of that.

24 A. No, sir.

25 Q. You knew goin' out there from your conversation with

BEN CANNON - CROSS-EXAMINATION BY MR. RIORDAN

- 1 Morgan that you wanted to investigate Paula, correct?
- 2 A. As a potential suspect, yes, sir.
- 3 Q. You wanted to get back in that house, didn't ya?
- 4 A. Uh, that's part the investigation, yes, sir.
- 5 Q. Yeah. You don't tell Homer that, did ya?
- 6 A. No, sir.
- 7 Q. You told him you wanted to come and look at the safe,
- 8 didn't ya? You need to look at the safe and the markings on
- 9 the safe, didn't ya?
- 10 A. I don't recall if I told him that or not.
- 11 Q. Okay.
- 12 A. I believe we just basically follow-up investigation, ---
- 13 Q. Okay.
- 14 A. --- that's what I told him.
- 15 Q. Alright, but your your testimony is this was signed
- 16 beforehand, that you have him a blank form, right?
- 17 A. No, the ---
- 18 Q. Well filled the top filled out.
- 19 A. Yeah, that's correct.
- 20 Q. That's your testimony?
- 21 A. Yes, sir.
- 22 Q. Okay. Anything dated on here as to what time it was
- 23 created?
- 24 A. Uh, says 1711 on here.
- 25 Q. Okay, 5:11?

BEN CANNON - CROSS-EXAMINATION BY MR. RIORDAN

1 A. Yes, sir.

2 Q. Say anything about when Homer signed it?

3 A. No, sir.

4 Q. Okay, you coulda done that too, right?

5 A. Sir?

6 Q. You coulda done that as well when he signed, correct?

7 A. I don't typically no, sir.

8 Q. You could have, couldn't ya?

9 A. Sure.

10 Q. That be more accurate as to whether he had signed before
11 you went in his garage and searched or after you'd already
12 told him you found some items you wanted to seize, correct?

13 A. Yes, but that's not what happened.

14 Q. You've used this, how long you bein' usin' that form?

15 A. Long as I've been in arson we use the same ---

16 Q. Okay.

17 A. --- form.

18 Q. Alright, and who created this form?

19 A. Honestly, I I could not tell you no, sir.

20 Q. Is it your testimony that anyone that signs this form
21 just because they sign it that they've given authorization and
22 the agreement between the parties is that the authorization is
23 that these investigators are authorized by me to seize any
24 items, materials or other property that they deem to be of
25 possible evidentiary value?

BEN CANNON - CROSS-EXAMINATION BY MR. RIORDAN

1 A. Yes, sir.

2 Q. Okay, so so theoretically by this form you could go in
3 Homer's house, a box a Rolex watches you could take that and
4 say it's evidentiary value, right?

5 A. If I thought it was yes, sir.

6 Q. If you thought it was. You could take -- and it's just
7 up to you, correct?

8 A. Correct.

9 Q. Do you explain that to the folks before they sign?

10 A. No, sir, I just explain the form and read it to 'em.

11 Q. Okay, and and part a that again with these forms a lotta
12 times when you have 'em s -- have -- when you wanna ensure,
13 you can come here today and convince folks by the totality of
14 the circumstances that the folks understood, you oftentimes
15 get 'em to initial the outside, don't ya?

16 A. No, sir.

17 Q. You never do that?

18 A. No, sir.

19 Q. Have you seen other officers? Like with Miranda forms,
20 you put the form and you ask that they s -- initial it so you
21 can have more evidence as at that they they did do it and
22 that, uh, you know, you went through it with 'em.

23 A. I've never seen it like I said, sir.

24 Q. You've never seen that?

25 A. No, sir.

BEN CANNON - CROSS-EXAMINATION BY MR. RIORDAN

1 Q. Okay. When, uh, let me ask ya this: Who's han -- who's
2 handwriting's on the bottom?

3 A. This is my handwriting right here (indicating) ---

4 Q. Okay.

5 A. --- yes, sir.

6 Q. Alright, and it's your -- again, let me ask ya this: ---

7 A. Alright.

8 Q. --- The the consent to search you agree the cons -- it's
9 not this form that rules is it? This form doesn't rule as to
10 what you can do, right?

11 A. As far as going in his home?

12 Q. Yeah.

13 A. Absolutely. If he wouldn't give me consent, I couldn't
14 go in there.

15 Q. So every time someone signs this the only reason you're
16 doin' it is so you can take everything you want.

17 A. If I think it's of evidentiary value.

18 Q. If you think you want it, otherwise you'd amend the form,
19 right?

20 A. Uh, explain what you're talkin' about amend the form.

21 Q. You would say, Hey well not everything, may -- not
22 everything of poss -- possible evidentiary value.

23 A. I mean, I I've never amended the form.

24 Q. You understand is you're under oath?

25 A. Absolutely.

BEN CANNON - CROSS-EXAMINATION BY MR. RIORDAN

1 Q. You sure you didn't hand Homer this form after he had
2 already allowed you to come in in the garage and you told him,
3 Hey, I've got a hatchet over here I wanna take and I wanna
4 take some a your gloves?

5 A. No, sir.

6 Q. Okay. What was Homer doin' all this time?

7 A. I believe he was still sittin' in the chair ---

8 Q. Sittin' in the chair.

9 (Indiscernible cross-talk.)

10 Q. Yeah, his house has burned down that day, right?

11 A. It didn't burn down.

12 Q. Well his house was burned, you're right, didn't burn
13 down.

14 A. Yes.

15 Q. Yeah, somebody wanted to burn it down they probly
16 wouldn't a called 911 so quick, huh?

17 A. Not sure.

18 Q. You don't know. Yeah, we don't know. His house was
19 burned, he had SERVPRO over there already, right?

20 A. Correct.

21 Q. Do you recall him being on the phone speaking with oh,
22 maybe insurance agents figuring out how they're gonna deal
23 with this home that's now damaged?

24 A. I don't recall that no, sir.

25 Q. Okay, he wasn't talkin' on the phone?

BEN CANNON - CROSS-EXAMINATION BY MR. RIORDAN

1 A. I I don't remember, I was -- no, sir.

2 Q. Okay, but it would be up, really it's his consent,
3 right, ---

4 A. Correct.

5 Q. --- it's up to hi -- really get back to it's not the form
6 so much as what the person believes he's signing, correct?

7 A. Correct.

8 Q. Okay. And well again would you agree with me 5, 6, 7 and
9 8 look a little bit different than 8 and ni -- than 9 and
10 10?

11 A. 5, 6, 7 and 8?

12 Q. Yeah, the writing.

13 A. No, sir.

14 Q. Is all that your writing?

15 A. Yes, sir.

16 Q. Okay, and and it is your test -- when did you fill that
17 out then?

18 A. Uh, before givin' it to Homer.

19 Q. Okay. Yeah, all the items were filled out before ya gave
20 it to Homer?

21 A. Yeah, before I gave him his copy, correct.

22 Q. Okay. Alright, so the verbal consent was done first and
23 you say afterwards you had already signed it, he signed a
24 receipt almost?

25 A. No, sir, ---

BEN CANNON - CROSS-EXAMINATION BY MR. RIORDAN

1 Q. Okay.

2 A. --- he signed it prior to.

3 Q. Okay, well that's what I asked earlier how was it and you
4 said this part was filled out, this one wasn't.

5 A. Correct, this part was not. Items seized was not filled
6 out ---

7 Q. Okay, what did, ---

8 A. --- 'cause I didn't, 'cause I didn't, I didn't have ---

9 Q. --- what did you seize first?

10 A. Says on here the paint chip from head of hatchet.

11 Q. What's that?

12 A. Says here paint chip from head of hatchet.

13 Q. Well, alright, did you seize pretty much all -- is it
14 delineated between garage items and household items?

15 A. Uh, yes, sir, it's garage first ---

16 Q. Okay.

17 A. --- then house, yes, sir.

18 Q. Alright. Alright, ha -- just wanna make sure I
19 understand, when you're usin' this form, have you ever had
20 someone sign it knowing all you were gonna take were partic --
21 particular items, that you didn't have full authority to take
22 anything you wanted, right?

23 A. No, never.

24 Q. So you always have full authority?

25 A. Yeah, I don't ever say I'm only gonna take this or

BEN CANNON - CROSS-EXAMINATION BY MR. RIORDAN

1 this, ---

2 Q. Okay.

3 A. --- no, sir.

4 Q. Alright. You guys confront Paula in her yard and wanna
5 know where her clothes are, correct?

6 A. I don't know if it was in her yard or maybe in the
7 garage.

8 Q. Okay. When when when Paula left earlier, what did you
9 understand -- where'd you understand she was goin'?

10 A. I think she was going to give a statement if I'm not
11 mista -- mistaken ---

12 Q. Okay.

13 A. --- I believe.

14 Q. Okay. Did, uh, let's jump ahead then, I mean,
15 eventual -- well when you confronted her, what what what did
16 she say in regard to clothes and where they were?

17 A. At Ellie's apartment.

18 Q. Okay, and E -- did they they travel over there separately
19 Ellie and Paula?

20 A. Uh, I I don't recall, I was inside gettin' the, uh,
21 gettin' the slippers when they left.

22 Q. Alright, and just real quick, when you got the slippers,
23 it's your testimony Homer did not protest you being in the
24 house?

25 A. No, sir.

BEN CANNON - CROSS-EXAMINATION BY MR. RIORDAN

1 Q. Okay. Yeah and real quick, I mean, the slippers would
2 you agree, I mean, there's nothin in reports suggest that
3 anyone other than Gonzalez -- well you tell me, who actually
4 was inside when this dog was in the house?

5 A. Just Gonzalez and his dog.

6 Q. Just Gonzalez and his dog, right? And you were the one
7 takin' photos earlier that day when the dog was doin' its, uh,
8 alerting?

9 A. Correct.

10 Q. Uh, you took the picture when it alerted?

11 A. I don't know if the dog was alerting or not ---

12 Q. Okay.

13 A. --- while I was photographing.

14 Q. Alright.

15 A. Notice some pictures with her in it, yes, sir.

16 Q. And was it Misty?

17 A. Yes.

18 Q. Alright. And is that your n -- is that the normal
19 practice to go to reliability is to take a photo when it
20 alerts?

21 A. No, sir.

22 Q. Why not?

23 A. We usually don't even photograph the dog, it just
24 happened to get in the shots.

25 Q. Okay, so just so Gonzalez can just come out and say he

1 hit, right, that's that's what you think?

2 A. That's what ---

3 Q. That's what you do, isn't it?

4 A. Yes, sir.

5 Q. Okay, 'cause in this case ---

6 A. I'm I'm not familiar with the dog handlin' so he ---

7 Q. Yeah, so in this case everyone agrees Gonzalez is in the
8 house by himself with Misty, no no witness whatsoever and
9 comes out and tells ya Misty hit on the shoes.

10 A. Correct, and he takes me back and shows me which shoes
11 they are.

12 Q. Alright. You took the photos early early in the morning,
13 right?

14 A. Correct, ---

15 Q. Alright.

16 A. --- yes, sir.

17 Q. Yeah, and the the the date stamp, you agree the date
18 stamp, the time wasn't changed, was it, you're an hour off,
19 aren't ya?

20 A. It it may have been yes, sir.

21 Q. Okay, and 'cause you didn't get there 'til like 9:47 as I
22 understood it, is that right, may maybe maybe, I don't know.

23 A. It probly some around 9:00 I believe ---

24 Q. Nine o'clock you think?

25 (Indiscernible cross-talk.)

BEN CANNON - CROSS-EXAMINATION BY MR. RIORDAN

1 A. --- 9:30, I'm not sure.

2 Q. You don't know, do ya?

3 A. Not right off hand.

4 Q. Alright, but you took the, you took the photo in the
5 morning of the shoes ---

6 A. Correct.

7 Q. --- and did you take the photo in the afternoon before
8 the shoes are gonna be seized?

9 A. Yes, sir.

10 Q. Alright, you you looked at the photos I handed out
11 earlier, right?

12 A. No, sir.

13 Q. You haven't?

14 A. No, sir.

15 Q. Well let's look at that, make sure everyone's in
16 agreement on that. You agree if that ---

17 MS. ABEE: Your Honor, again we would object, that this
18 is outside of the scope of voluntariness of the search.

19 THE COURT: Alright, I'll give him a little leeway.

20 BY MR. RIORDAN:

21 Q. 7128 see the shoes down here (indicating), it's a photo
22 you took, right, ---

23 A. I ---

24 Q. --- and I, and I agree it's kinda dark. You see these
25 (indicating), uh, tennis shoes?

BEN CANNON - CROSS-EXAMINATION BY MR. RIORDAN

1 A. Correct.

2 Q. Do you agree that the moccasins, the back a the moccasin
3 is about midway down the, uh, - tennis shoe, ---

4 A. Yes.

5 Q. --- that correct? Alright, and then you took the picture
6 later on, uh, well and another SERVPRO. You don't dispute
7 that SERVPRO had been in the house between the time you
8 released the scene and the time you guys went back, correct?

9 A. I don't know if they were in the house or not. When
10 I, ---

11 Q. Alright.

12 A. --- when I got there, they were not in the house, they
13 were, ---

14 Q. Alright, so you ---

15 A. --- they were ---

16 Q. --- can't dispute it, ---

17 A. --- standin' in the garage.

18 Q. --- right, they were out there, right?

19 A. Yes, sir.

20 Q. You'd expect a a company comin' in to do cleaning would
21 take photos before they begin their operations, right?

22 A. I don't know their procedure.

23 Q. You wouldn't have any way -- you wouldn't dispute that,
24 would ya?

25 A. I I couldn't, I don't know their operation.

BEN CANNON - CROSS-EXAMINATION BY MR. RIORDAN

1 Q. Alright, you were familiar with that house, right?

2 A. Yes, sir.

3 Q. You agree this photo assuming that was taken between the
4 photo you took in the morning and the photo you took later
5 after Gonzalez told you that Misty had hit but whoever's
6 takin' that photograph's standin' right over where those shoes
7 are, aren't they?

8 A. And the -- it's on that side a the bed.

9 Q. Yeah. Alright, and then looking at the last picture,
10 again, first picture you agree the back heel of the left
11 moccasin's about midway in the, in the tennis shoe, right?

12 A. Sure.

13 Q. And then, and then when you're going to show that you've
14 got clean cans, ---

15 A. Right.

16 Q. --- you'd agree the moccasin de -- this this one
17 definitely has been moved and is now in front of the tennis
18 shoe, right?

19 A. Uh, yes, sir.

20 Q. Definitely been moved, right?

21 A. Yes, sir.

22 Q. And the other one possibly as well?

23 A. Uh, I'm not sure, I I -- one definitely is, sir.

24 Q. Alright. Uh, was Ellie present when you all first
25 confronted Paula out in the, uh, the yard of her house that

1 afternoon?

2 A. I don't recall.

3 Q. What did Gonzalez say to her?

4 A. About?

5 Q. Anything. What what was the first thing Gonzalez said to
6 her when when Paula arrived on the scene in the afternoon when
7 you guys, when you agreed earlier you guys weren't expected to
8 see her 'til Monday, right?

9 A. Correct.

10 Q. Alright, she comes home and you guys are there.

11 A. Correct.

12 Q. And what what did Gonzalez have to say to her at that
13 time?

14 A. I would have to look at my report, I don't, I don't
15 know.

16 Q. Did he tell her somethin's not right here, looks like you
17 guys are livin' above your means?

18 A. I don't recall that no, sir.

19 Q. You remember that comment?

20 A. No, sir.

21 Q. Did you, did you and Gonzalez discuss that that his
22 trooper's house seemed to be a home where a trooper was living
23 seemed like they were living above their means?

24 A. I never had that conversation.

25 Q. Did it seem like that to you? Was that your assumption?

BEN CANNON - CROSS-EXAMINATION BY MR. RIORDAN

1 That ---

2 THE COURT: I'm gonna sustain the objection at ---

3 MR. RIORDAN: Okay.

4 THE COURT: --- this point, you've gone ---

5 MR. RIORDAN: Alright.

6 THE COURT: --- far beyond purposes ---

7 MR. RIORDAN: Okay.

8 THE COURT: --- of this hearing, ---

9 MR. RIORDAN: Alright.

10 THE COURT: --- okay..

11 BY MR. RIORDAN:

12 Q. The, uh, Ellie was present when you all confronted Paula
13 though, right, initially?

14 A. I'm not -- I I I don't recall, ---

15 Q. Did you ---

16 A. --- no.

17 Q. --- talk to Paula about 'cause 'cause 'cause you said
18 that, uh, Morgan had ta -- told you about his conversation
19 with Paula, correct?

20 A. Which portion?

21 Q. That she had criminal charges and that she was writin' a
22 book?

23 A. Yes, sir.

24 Q. Did ya'll talk to her about a -- askin' about that
25 book?

BEN CANNON - CROSS-EXAMINATION BY MR. RIORDAN

1 A. I I don't recall askin' her about it no, sir.

2 Q. Okay. And SERVPRO people are all over that house,
3 right?

4 A. When I got there, they were in the garage.

5 Q. Okay. The, uh, was it apparent that the Roses were not
6 staying there that night?

7 A. I wouldn't have, I'm not sure where they were stayin'.

8 Q. Okay. Did you travel over to Oak Ridge Apartments?

9 A. Yes, sir.

10 Q. How did you arrive there?

11 A. I drove my vehicle.

12 Q. Okay. And when you got there tell me about any
13 discussions had regarding the obtainment of these clothes from
14 Paula.

15 A. About Charles getting consent from Ellie, that what
16 you're askin' ---

17 Q. No, ---

18 A. --- or about ---

19 Q. --- before that.

20 A. --- about Paula bein' irate and yelling and ---

21 Q. Yeah, ---

22 A. --- screaming?

23 Q. --- she was irate. You you've written your reports to
24 say, to really show she didn't want you takin' those clothes,
25 did she?

BEN CANNON - CROSS-EXAMINATION BY MR. RIORDAN

1 A. No, sir.

2 Q. But but it was offered to split 'em in half, wasn't it,
3 cut 'em in half, ---

4 A. Correct.

5 Q. --- okay. Well why was that unreasonable?

6 A. Because you can have some ignitable liquids on one
7 portion, may not have it on a different portion so we don't
8 know where the -- where ---

9 Q. Okay, ---

10 A. --- it is.

11 Q. --- but di -- is it, is it, is it true though with with
12 you hearing that the way you've written your report you felt
13 her hesitation to give you those clothes was signs of guilt,
14 didn't ya?

15 A. No, sir.

16 Q. You didn't?

17 A. No, sir.

18 Q. Okay. What about her, what about her bein' on the phone
19 with an attorney?

20 A. That's her right.

21 Q. It is her right, isn't it?

22 A. Yes, sir.

23 Q. Absolutely, isn't it?

24 A. Right.

25 Q. Alright, she had a right to refuse consent to turn over

1 these clothes, correct?

2 A. Not when they're not in her possession.

3 Q. Oh really.

4 A. Yes.

5 Q. Okay, but what -- she's got a right to refuse given 'em
6 to ya, right? You asked her if she'd give 'em to ya, right?

7 A. Right.

8 Q. And she refused to do so, right?

9 A. I believe initially she said that she would ---

10 Q. Okay.

11 A. --- on the way over there ---

12 Q. Yeah.

13 A. --- or, um, prior to leaving.

14 Q. Okay, so initially said she would ---

15 A. Correct.

16 Q. --- and when she gets there he's hears she's talkin' to
17 an attorney, right?

18 A. Yes, sir.

19 Q. Do you know who the attorney was?

20 A. No, sir.

21 Q. Okay. Uh, at that point when she's saying -- 'cause
22 she's refusing, correct, ---

23 A. Correct.

24 Q. --- she's refusing to give it to ya. What was your
25 understanding about that apartment?

BEN CANNON - CROSS-EXAMINATION BY MR. RIORDAN

1 A. It is Ellie Hansen's apartment.

2 Q. Okay. And when you drove over there was Ell -- Ellie
3 wasn't even able to get in was she?

4 A. Uh, I'm not sure.

5 Q. Do you remember their, do you remember that Ellie didn't
6 have her key, she'd forgotten her key?

7 A. I really truly do not recall that.

8 Q. Do you remember that E -- the reason Ellie left before
9 you guys anyway was let her dog out, the dog had been in, she
10 didn't know what the emergency was when she left that mornin',
11 the dog had been in all day, right?

12 A. I'm not sure.

13 Q. You're not sure?

14 A. No.

15 Q. So we we would have to listen her -- you you'd expect her
16 dad would know, right?

17 A. Maybe, I'm not sure.

18 Q. Yeah, if he gets an affidavit from her, that would help
19 us, right?

20 A. Sure.

21 Q. Okay. Uh, you agree that she also, she was speaking with
22 an attorney too, right?

23 A. She may have got on the phone, I'm not sure.

24 Q. Ok, well let me just ask you again, you don't recall
25 whether she had a key or not?

BEN CANNON - CROSS-EXAMINATION BY MR. RIORDAN

1 A. No, sir.

2 Q. You don't recall that she had to call Paula to come over
3 with Paula's key to let her in?

4 A. No, sir.

5 Q. You've got -- eventually you do get in, right?

6 A. Yes, sir.

7 Q. And before that though you agree Ellie was upset,
8 correct?

9 A. Sure.

10 Q. She was crying, wasn't she?

11 A. Uh, I don't recall, she may have been.

12 Q. Okay, sh -- well, you've writ -- you've written reports,
13 right?

14 A. Correct.

15 Q. You're the lead investigator in this case, aren't ya?

16 These other investigators that create reports you you review
17 those as well, don't ya?

18 A. No, sir.

19 Q. You don't?

20 A. No.

21 Q. Okay, I'm gonna remember that. Did, um, if they, if they
22 also talked about him -- her being upset and crying, that's
23 something you consider in the totality of the circumstances as
24 to whether she was under duress or coercion, isn't it?

25 A. Yeah, I suppose yes, sir.

BEN CANNON - CROSS-EXAMINATION BY MR. RIORDAN

1 Q. It would be, wouldn't it?

2 A. Right.

3 Q. Alright, and the other thing, again, Homer Homer and
4 Paula's house had burned, right?

5 A. Correct.

6 Q. When ya went in, what did ya find? I've got, I got a
7 photo in here, is this (indicating) the photo you took?

8 A. Uh, yes, sir, it is.

9 Q. Okay. What does that look like?

10 A. That's like an overnight bag or sumtin', ---

11 Q. You understood ---

12 A. --- it's a night bag.

13 Q. --- that to be her overnight bag, correct?

14 A. Correct.

15 Q. Okay, and and what else? bathroom supplies?
16 medications?

17 A. Yes, sir.

18 Q. Okay. Was it clear, I mean, she'd been over there to
19 take a shower, right, 'cause that's why the clothes are
20 there, ---

21 A. Yes, sir.

22 Q. --- was it clear that's where she was spending the night
23 that night?

24 A. I'm not aware.

25 Q. Not aware?

1 A. No, sir.

2 Q. You, so you don't know.

3 A. No, sir.

4 Q. You got no evidence to prove that she wasn't gonna spend
5 the night, do ya?

6 A. No, sir.

7 Q. And that would be, the person, the person, uh, well it
8 really wouldn't matter as long as Ellie can testify to that or
9 her father or anyone else that Paula was an overnight guest,
10 that would matter more than you who doesn't have any knowledge
11 of it, true?

12 A. I never asked that question, no, sir.

13 Q. No, you didn't ask that question, did ya?

14 A. No, sir.

15 Q. Because if she's an overnight guest, she still, she has
16 rights, doesn't she?

17 A. Sure, yes, sir.

18 Q. Yeah, she's got a right to refuse, doesn't she?

19 A. Yes, sir.

20 Q. Alright, and if she has a, if she has a right to refuse,
21 just 'cause Ellie gives it that doesn't, that doesn't count,
22 does it?

23 A. No, I would probly say it probly ---

24 (Indiscernible cross-talk.)

25 Q. Probly doesn't, does it?

BEN CANNON - CROSS-EXAMINATION BY MR. RIORDAN

1 A. --- cancel each other out.

2 Q. Yeah, yeah. Paula was tellin' Ellie she didn't have to
3 give consent, right?

4 A. Yes, sir.

5 Q. Okay. And you guys write this up sayin' a buncha nasty
6 things but go a -- go ahead, what do -- what he -- what -- go
7 ahead, let's get your testimony, what did, what did, what did
8 Paula say to Ellie about what you guys wanted to do and why
9 she sho -- shouldn't give consent?

10 A. About her sex toys?

11 Q. Yeah, yeah, yeah.

12 A. Uh, she said that we wanted to go through her house and
13 get all her sex toys basically.

14 Q. Her sex toys, okay.

15 A. Yes, sir, ---.

16 Q. Who who use ---

17 A. --- go through all her drawers I believe it was.

18 Q. Okay. Alright, and so in response to that what assurance
19 did you give Ellie to gain consent?

20 A. I don't believe I I ever said anything to her, Charles
21 may have s -- may have told her the only thing that we wanted
22 was the clothes.

23 Q. Okay, that's right, you the lead investigator but you
24 never have looked at Gonzalez's report then, right?

25 A. I've I've looked over it after he's already submitted it.

1 Q. You'd ex ---

2 A. I only had ---

3 Q. --- you'd ---

4 A. --- it prior to, I don't ---

5 Q. Okay. You you'd ---

6 A. --- look at it ---

7 Q. --- you'd expect ---

8 A. --- prior to.

9 Q. --- that he would put important details in his report
10 about the things that you're doin' to gain access to what you
11 perceive as evidence in this case, correct?

12 A. I I wish, hope so, yes, sir.

13 Q. Alright, you you would agree his last line of his report
14 says, "We assured Ellie that we only wanted the clothes and
15 that is when she signed the consent to search," correct?

16 A. Yes, sir, it's what it says.

17 Q. Yeah, and so the same form she signed it, you use the
18 same form, correct, ---

19 A. Yes, sir.

20 Q. --- there's no amendment to it whatsoever, is there?

21 A. No, sir.

22 Q. But you agree, you agree that it's in her mind, you have
23 assured her the only things taken, the only things you're
24 gonna be takin' are these two things, right, ---

25 A. That's what Charles ---

BEN CANNON - CROSS-EXAMINATION BY MR. RIORDAN

1 (Indiscernible cross-talk.)

2 Q. --- same form but by the agreement because Ellie
3 understands from what you've assured her ---

4 A. I didn't assure her -- well, ---

5 Q. Okay, ---

6 A. --- I'm ---

7 (Indiscernible cross-talk.)

8 Q. --- 'cause Gonzalez did.

9 A. Yes, sir.

10 Q. Sures her the same form but but doesn't mean you can get
11 everything, you've assured her you're not, correct?

12 A. That's what Charles said, yes.

13 Q. Okay, and so if if that's the same assurance given to
14 Homer Rose, you'd agree the form, just lookin' at a form
15 doesn't mean a whole lot, does it?

16 A. Well to me it would.

17 Q. Okay, to you it would but that's not what matters, is it?

18 A. I can't speak on what somebody else ---

19 (Indiscernible cross-talk.)

20 Q. Well I -- well no, the the point is you can't just go in
21 somebody's -- we got, all got a right to privacy, don't we?

22 A. Absolutely.

23 Q. That's why when Paula says she's not gonna do it that's
24 perfectly legal, right?

25 A. Sure.

BEN CANNON - CROSS-EXAMINATION BY MR. RIORDAN

1 Q. You've written your reports though to suggest that's
2 evidence of guilt, haven't ya?

3 A. I'm pretty sure I didn't put that ---

4 Q. O -- okay.

5 A. --- in my report.

6 Q. Okay, we'll we'll talk about that ---

7 A. Sure.

8 Q. --- but again, the point is if ya don't have a warrant
9 you've gotta make sure the person giving consent is doing so
10 freely, knowingly and voluntarily, right?

11 A. Correct.

12 Q. It's at what's in their mind, correct, ---

13 A. Correct.

14 Q. --- not what you perceive.

15 A. Correct.

16 Q. Alright, and so just like you guys assured Ellie even
17 though she signed the same form you're only taking two
18 items ---

19 A. That's what Charles told ---

20 Q. --- correct?

21 A. --- yes, sir.

22 Q. Yeah, if Homer Rose says the same thing it -- his mind's
23 most important, right, 'cause ---

24 A. Sure.

25 Q. --- he's the one you've gotta get consent from.

BEN CANNON - CROSS-EXAMINATION BY MR. RIORDAN

1 A. Right.

2 Q. Yeah, so if he comes in here and says ---

3 THE COURT: Alright, alright, move forward.

4 Q. --- I was handed a form ---

5 THE COURT: No, no, sir, I I don't need any ---

6 MR. RIORDAN: Okay.

7 THE COURT: --- that, ---

8 MR. RIORDAN: Okay.

9 THE COURT: --- that's a decision I will make.

10 MR. RIORDAN: Okay.

11 BY MR. RIORDAN:

12 Q. Aright, and do you know where Paula stayed that night?

13 A. No, sir.

14 Q. Okay. If she stayed at that house and slept there, that
15 would be evidence of her being at least an overnight guest,
16 correct?

17 A. Correct.

18 Q. Alright, and if that's the case and she had told you she
19 refuses consent, those clothes are result of an illegal
20 search, aren't they?

21 THE COURT: Overruled.

22 MS. ABEE: Objection.

23 THE COURT: Sustained, excuse me. Move forward, I'm
24 go -- that's a decision for me to make, not for this witness.

25 MR. RIORDAN: Okay.

BEN CANNON - REDIRECT EXAMINATION BY MS. ABEE

1 BY MR. RIORDAN:

2 Q. Alright, uh, but you agree she she didn't give consent to
3 go in there to get the clothes, right?

4 A. Paula did not, no, sir.

5 Q. Okay.

6 MR. RIORDAN: Beg the Court's indulgence.

7 THE COURT: Yes.

8 BY MR. RIORDAN:

9 Q. Did you see the, uh, response that Ellie provided to the
10 internal affairs investigators in regard to this incident, ---

11 A. No, s ---

12 Q. --- complaint that was filed?

13 A. No, sir.

14 Q. Okay. And she's -- so you haven't seen her statement to
15 your employer that consent, her consent was given to diffuse
16 the situation?

17 A. No, sir.

18 Q. Okay. Alright, thank you, sir.

19 THE COURT: Redirect?

20 MS. ABEE: Very briefly.

21 THE COURT: Very briefly.

22 MS. ABEE: Yes, sir.

23 REDIRECT EXAMINATION BY MS. ABEE:

24 Q. The top a this form what does it say?

25 A. Um, it's consent to search ---

BEN CANNON - REDIRECT EXAMINATION BY MS. ABEE

1 THE COURT: I've read the form.

2 A. --- the fire, the fire investigation.

3 Q. It it's not for some specific articles, correct?

4 A. No, sir -- no, ma'am.

5 Q. And the entire paragraph does that, uh, reference consent
6 to search throughout the home?

7 A. Correct.

8 Q. And neither Ms. Hansen nor Mr. Rose limited you at any
9 point in time, correct?

10 A. No, ma'am.

11 Q. And with Ms. Hansen being upset, um, to touch on it
12 briefly, was the defendant yelling at that time?

13 A. Yes, ma'am, she was.

14 Q. And that's at the time that Ms. Hansen was upset?

15 A. Yes, ma'am.

16 Q. At any point in time did you, Investigator Morgan or
17 Investigator Gonzalez yell, threaten or coerce Ms. Hansen?

18 A. No, ma'am.

19 MS. ABEE: Your Honor, that be it.

20 THE COURT: Alright, thank you, sir, you may step down.

21 THE WITNESS: Okay.

22 (Whereupon, the witness left the stand.)

23 THE COURT: Call your next witness.

24 MS. ABEE: Your Honor, the State calls Investigator
25 Charles Gonzalez if I may go grab him.

CHARLES GONZALEZ - DIRECT EXAMINATION BY MS. ABEE

1 (Pause.)

2 THE CLERK: Please come forward.

3 (Whereupon, the witness came forward.)

4 THE CLERK: Put your left hand on the Bible, raise your
5 right.

6 CHARLES GONZALEZ, having been
7 first duly sworn, testified as follows:

8 THE CLERK: Please have a seat. Could you state your
9 full name for the record.

10 THE WITNESS: Charles Gonzalez.

11 DIRECT EXAMINATION BY MS. ABEE:

12 Q. Investigator Gonzalez, please tell us briefly, uh, where
13 you current work, are employed and what your position is.

14 A. I'm employed for the Greenville County Sheriff's Office
15 and my current job is in Criminal Investigation Division and
16 specializing in, uh, fire investigation.

17 Q. Please tell us what your role was, uh, in this particular
18 case against Ms. Rose.

19 A. Uh, on that particular day I was called by Investigator
20 Cannon, uh, asked if I would come use my canine to assist with
21 the fire investigation at that address, uh, at which time I
22 did go to the incident location and met with him and I walked
23 around the house, checked for hazards before runnin' the dog
24 and, uh, after that then I ran the dog.

25 Q. And I'm gonna jump ---

CHARLES GONZALEZ - DIRECT EXAMINATION BY MS. ABEE

1 A. It ---

2 Q. --- forward -- sorry.

3 A. I'm sorry.

4 Q. I'm gonna jump forward just a little bit. Do you recall
5 returning back to the home at a later point in time on that
6 day with Investigator Cannon?

7 A. Yes, I -- we did.

8 Q. And please tell us the circumstances surrounding your
9 return.

10 A. Uh, it was maybe a couple hours later, uh, after lunch we
11 discussed that maybe we need to go back and kind of look at
12 things again, uh, some of the things we discussed, uh, kinda
13 weren't making sense about the burglary and stuff so we went
14 back, uh, to the scene that afternoon and when we got there,
15 uh, Homer was there and a gentleman with, uh, SERVPRO was
16 there.

17 Q. Was Ms. Rose there?

18 A. No, she was not there.

19 Q. And were you a part of the conversation that Investigator
20 Cannon had with Homer Rose about obtaining consent to search
21 the home?

22 A. Yes, uh, when he asked he gave, uh, consent, actually I
23 think it was a signed consent that afternoon.

24 Q. And at at any point in time did you hear Investigator
25 Cannon coerce or threaten Homer Rose into giving consent to

1 search the home?

2 A. Oh, no, he had asked him, uh, you know, hey, we need to
3 get consent, we wanna do some follow up and look around and,
4 uh, he said, Yeah go right ahead, something to that effect of,
5 Yeah, go right ahead and, uh, signed the form prior to us
6 searching.

7 Q. Did you individually ever say anything to threaten or
8 coerce Mr. Rose into giving consent to search the home?

9 A. No, I did not.

10 Q. And where exactly did you search among the house?

11 A. I used the canine to search the interior of the house and
12 then we also searched, uh, looked through the garage, uh, at
13 the safe and some other items in the garage.

14 Q. At any point in time did Mr. Rose tell you that you could
15 not go to a certain area of the home?

16 A. No, he did not.

17 Q. If he would have told you that you couldn't go into a
18 certain area, would you have stopped?

19 A. Yes, we would have.

20 Q. At any point in time did he ask you to cease your search,
21 uh, completely?

22 A. No, he did not.

23 Q. At any point in time, did he voice any sort of objections
24 to any items that you were taking?

25 A. No, he did not.

CHARLES GONZALEZ - DIRECT EXAMINATION BY MS. ABEE

1 Q. At any point in time, uh, did you hear Investigator
2 Cannon or did you yourself make any threats or any statements
3 to Mr. Rose about the search?

4 A. No, we did not.

5 Q. Did you later go to, uh, 150 Oak Ridge Place to conduct a
6 search as well?

7 A. Yes, that was the, uh, apartments.

8 Q. And whose apartment were you going to?

9 A. Ellie Hansen.

10 Q. And who is Ellie Hansen or who had you, uh, gleaned Ellie
11 Hansen to be?

12 A. Uh, that she was, uh, Ms. Rose assistant.

13 Q. And at approximately what time did you go to Ms. Hansen's
14 apartment if you recall, was it the same ---

15 A. It ---

16 Q. --- day?

17 A. Yeah, the same day, maybe 3:30, 4:30ish, I I'm thinkin'
18 somewhere later in the afternoon.

19 Q. And when you got to Ms. Hansen's apartment, who actually
20 guided you there?

21 A. Uh, Paula. I started off, she told me where the a a
22 complex was so I started, I left the residence on Riley Smith
23 and went out to Pelham Road and headed toward the apartments
24 which was headed toward 385 and once we got to the entrance of
25 the apartments I pulled over and let her go by and I followed

1 her into where the apartments were.

2 Q. So Ms. Rose guided you to Ellie Hansen's apartment?

3 A. Yes.

4 Q. And was Ms. Hansen there when you got on the scene?

5 A. Yeah, she was.

6 Q. Okay, if you could, uh, did you -- tell us a little bit
7 about your conversation with Ms. Hansen.

8 A. I think she was on the phone when I got there if I
9 remember correctly and, uh, right after that is when, uh, I
10 won't say an altercation but, uh, Ms. Rose became very loud
11 and was screaming outside, uh, then at some point or another I
12 believe I got on the phone with who Ellie or Paula said was
13 her attorney, at some point or another, I I believe that's
14 write, uh, and we explained that we wanted to go into the
15 apartment to obtain Ms. Rose' clothes that she had on previous
16 that day, uh, and before we went in, uh, Ellie, uh, signed a
17 written consent form, consent to search to allow us to go into
18 the apartment and she did that, uh, after Mr. Rose said that,
19 uh, she could, it was fine for her to do that.

20 Q. So Mr. Rose, Homer Rose was on the scene as ---

21 A. He ---

22 Q. --- well?

23 A. --- he, yes, he had made it there. I I'd got there first
24 with, uh, right behind Paula and Ellie was already there and
25 then, uh, Investigator Morgan got there and then Investigator

CHARLES GONZALEZ - DIRECT EXAMINATION BY MS. ABEE

1 Cannon and, uh, Homer got there thereabouts the same time.

2 Q. And when you were speaking with Ms. Hansen about signing
3 this consent to search form, did you go over the form with
4 her?

5 A. Yes, I read every, uh, every line on there.

6 MS. ABEE: Your Honor, may I approach?

7 THE COURT: Yes, ma'am.

8 (Whereupon, counsel approached the witness.)

9 BY MS. ABEE:

10 Q. Do you recognize that (indicating) as the consent to
11 search form that Ms. Hansen signed?

12 A. Yes, it is.

13 Q. And you said you went over every line with her, does
14 that ---

15 A. Yes.

16 Q. --- mean that you read through all ---

17 A. I ---

18 Q. --- the lines in there?

19 A. Yes, I read every everything to her.

20 Q. And what does that form give you permission to do if it's
21 signed?

22 A. Uh, to go into the premises or wherever we're, uh, list
23 on here to, uh, conduct a search.

24 Q. Now were you intending on searching Ms. Hansen's entire
25 apartment?

CHARLES GONZALEZ - DIRECT EXAMINATION BY MS. ABEE

1 A. No, uh, we told her in the beginning that all we wanted
2 was, uh, Ms. Rose' clothes that she had on earlier that day
3 and that was our own intent to go in just to get the clothes
4 and nothin' else.

5 Q. And why did you specifically tell her that your search
6 was gonna be limited?

7 A. Because I, uh, 'cause all we wanted were the clothes, we
8 didn't, I didn't believe that there was anything else in her
9 apartment that, uh, that we needed from her.

10 Q. And was Ms. Rose making any statements about the nature
11 of the search and what ya'll were about to do?

12 A. Yeah, prior to that she was arguin' about, uh, she was
13 tellin' Ellie that all we wanted to do was go in and look
14 through all her sex toys and and take all her sex toys and I
15 explained to her again that that's, we were not there to
16 search her apartment, we're not going through any of her
17 belongings or or her drawers or anything in her apartment,
18 that all we wanted, uh, was those clothes.

19 Q. At any point in time did you threaten Ms. Hansen and say
20 that you would get a s -- a search warrant and search her
21 whole apartment and tear it apart if she didn't sign the
22 sear -- this consent to search form?

23 A. No, I did not.

24 Q. At any point in time did you raise your voice at
25 Ms. Hansen?

CHARLES GONZALEZ - CROSS-EXAMINATION BY MR. RIORDAN

1 A. No, I did not.

2 Q. And when you entered the apartment did Ms. Hansen ever
3 tell you to stop or ask you to stop your search?

4 A. No, she didn't.

5 Q. Did she ever limit where it was that you were in fact
6 going to be searching?

7 A. No.

8 Q. And if she would have would you have stopped your search
9 at that time?

10 A. Yes, I would have.

11 MS. ABEE: Your Honor, may I have one moment?

12 THE COURT: (No verbal response.)

13 MS. ABEE: Your Honor, I have no further questions.

14 THE COURT: Cross-examination.

15 CROSS-EXAMINATION BY MR. RIORDAN:

16 Q. Investigator, during the exchange, uh, at Oak Ridge
17 Apartments you agree Ellie was upset and crying?

18 A. Uh, she appeared to be at one point.

19 Q. Okay. And you assured her all you wanted were the
20 clothes and that's when she signed the consent form,
21 correct?

22 A. Yes.

23 Q. Same consent form.

24 A. Yes.

25 Q. Alright, no reservations written on the form, right?

1 A. No.

2 Q. Alright, so depends the person signs it it's what they
3 understand from the conversation with you as to what's gonna
4 be taken, correct?

5 A. Yes.

6 Q. Okay. Did, uh, do you recall when you first arrived at
7 the apartments where where Ellie was?

8 A. No, it seemed like there was a courtyard area there and
9 it seemed I think she may have come from near someone's deck
10 in that courtyard talkin' to some people if I remember but I'm
11 not, can't remember where she came from, I don't think she
12 came from her apartment, I think she was already downstairs in
13 the, uh, in that little courtyard-type area.

14 Q. Okay, do you know why she wasn't at her apartment?

15 A. No, I don't.

16 Q. Okay. And did Paula have to arrive with her key to open
17 the apartment?

18 A. I don't know if she had to open the apartment but when we
19 got there we all went up there but I don't know why she was in
20 the courtyard waiting.

21 Q. Well skip forward a little bit. When you do get in there
22 Paula's items are there, is it apparent that she is spending
23 the night?

24 A. No, there was a, right when we walk in there's like a
25 kitchen-type area and there was a bag, like a tote bag open

1 top or it coulda been a purse-type bag, large hand-type bag
2 that was sitting right near the base of the kitchen counter
3 right when you walked in the, in the door.

4 Q. And what was next to it?

5 A. I don't recall, I'd have to look through pictures but I
6 don't think, not that I recall any other bags, I just remember
7 like a large open top-type bag there, purse or somethin' and
8 other affects.

9 Q. Bathroom items?

10 A. Yes, if that's what was there, I don't remember that,
11 yes.

12 Q. The types of things you'd use when you're spendin' the
13 night?

14 A. I guess you could, yes.

15 Q. Paula, Paula did offer split the co -- clothes in half,
16 that was somethin' that was offered, correct?

17 A. Yes, but that's not somethin' we we do.

18 Q. Okay. Well at that point what did Morgan tell y -- what
19 did Morgan tell you that Paula had told her about her past
20 criminal experience or past run-ins with cops?

21 A. That she had been charged at some point or another in
22 Ocone County several years ago.

23 Q. They talk about the consent to search that she had given
24 back in June of, June 18th of 2003?

25 A. I I'm not familiar with that.

CHARLES GONZALEZ - CROSS-EXAMINATION BY MR. RIORDAN

1 Q. Okay. If she had given a consent to search in -- of her
2 home in 2003 and only financial records were taken per the
3 consent for -- well actually I sent that to you, do you you
4 read that?

5 A. Uh, that large packet a stuff?

6 Q. Yeah.

7 A. No, I did not.

8 Q. Alright. And and the consent form said that all was
9 taken was financial records and yet the SLED reports created
10 that said that same consent that she gave found a set a keys,
11 that would cause concern as to signing any consent form with
12 police, wouldn't it?

13 A. I'm not sure. I said I don't re -- I didn't go over
14 Ran -- with Randy about her, uh, her previous history as far
15 as what happened in in that case there.

16 Q. Okay. Uh, back with Ellie ---

17 A. Okay.

18 Q. --- this same for -- this (indicating) this is the form
19 that was used, correct?

20 A. Yes.

21 Q. Same form that was used for Mr. Rose?

22 A. Yes.

23 Q. Alright, and you agree just the signing of the form
24 doesn't give complete consent, correct?

25 A. Uh, to my knowledge it does.

CHARLES GONZALEZ - CROSS-EXAMINATION BY MR. RIORDAN

1 Q. Okay, well 'cause in this case, I mean, you've
2 acknowledged her signing it here was because you agree you had
3 told her all that was being taken were these items, correct?

4 A. Correct.

5 Q. Alright, so if the same thing is true with Homer, those
6 are the only allo -- items that are allowed to be taken are
7 the ones he understood from your conversations that were bein'
8 seized, correct?

9 A. On this particular ---

10 Q. Yeah, well the ---

11 A. Ye --

12 Q. --- same form but the one that Homer executed.

13 A. --- yes, this woulda been the same typa form.

14 Q. Same thing would apply.

15 A. That we're only taking certain items? I don't under
16 understand what you're asking about that.

17 Q. Yeah, that the form itself doesn't matter, it's what
18 you've convinced the person when they go to sign the form ---

19 A. Well I we didn't ---

20 Q. --- that you're gonna take.

21 A. --- convince her, I I just told her what we were takin'.
22 We don't typically convince people when we do a consent to
23 search that we're takin' ---

24 Q. What's your definition of convince?

25 A. Uh, to make someone believe that that's the only thing

1 that we're taking from a crime scene.

2 Q. Yeah, before she was upset and cryin' and said she she
3 couldn't figure out what to do which meant she wasn't giving
4 consent, right?

5 A. Right.

6 Q. And so you convince her even though she signed the form
7 all we're taken ---

8 A. Well I didn't ---

9 Q. --- are two items ---

10 A. --- convince her, I told her that's what we were takin'
11 and she talked to Homer and she signed, Homer told her to go
12 ahead and yeah, that's fine, go ahead and sign that.

13 Q. 'Cause that was the agreement to take the two items.

14 A. To take the, yes, the clothes.

15 Q. Okay. And it's your testimony that that wasn't what was
16 done with Homer, that in fact the four items are already
17 listed and said, Homer we're gonna seize these items, will you
18 sign.

19 A. Well to my knowledge it was probly signed prior to us
20 searching.

21 Q. You you don't know do ya?

22 A. No, I didn't, I wasn't there when he signed the consent
23 form with, uh, Investigator Cannon or that I was in another
24 area when that was signed.

25 Q. Okay.

CHARLES GONZALEZ - CROSS-EXAMINATION BY MR. RIORDAN

1 MR. RIORDAN: Beg the Court's indulgence.

2 BY MR. RIORDAN:

3 Q. And and and that afternoon -- well what time did you
4 arrive at Riley Smith Drive that same afternoon of the fire?

5 A. I have to look on the, when he signed the consent. I
6 would say 1:30, 2ish, 2:30ish maybe, somewhere thereabouts. I
7 mean, I without lookin' on the, on the pictures were taken or
8 the form was sign I couldn't say exactly what time but I know
9 it was after lunch that afternoon.

10 Q. Okay. When you arrived was SERVPRO already there?

11 A. Yes.

12 Q. The scene had been released, correct?

13 A. Yes, or ---

14 Q. SERVPRO was in startin' clean up, right?

15 A. Well they were there, I don't know what they had started
16 'cause from my understandin' I think, uh, what Investigator
17 Cannon had told me that SERVPRO had stopped working until we
18 were done and had stopped prior to us getting there.

19 Q. Was that your observation?

20 A. Yes, I believe the guy may have been in the garage, I
21 don't remember seeing him there but he wasn't doin' any clean
22 up work while we were.

23 Q. Was it clear people had been in the house and in the
24 bedroom between the time you left earlier that morning and
25 when you arrived back that afternoon?

CHARLES GONZALEZ - CROSS-EXAMINATION BY MR. RIORDAN

1 A. I couldn't tell, I want to say maybe some items were on
2 the bed of Homer's maybe 'cause I remember him, uh, havin' the
3 uniform on that mornin' but I don't know at what point, seems
4 like I saw it layin' on the bed so I don't know if it was done
5 prior to us doin' our search that morning or not.

6 Q. Okay. Have you looked at the pictures that show the
7 shoes had been moved from the time in the morning until the
8 afternoon?

9 A. No, I have not.

10 Q. You have not. If they had been moved, that would be
11 important in regard to potential contamination of those shoes,
12 wouldn't it?

13 A. Uh, not necessarily, it depends on where they were moved
14 from if they're worn.

15 Q. And you wouldn't know one way or the other though, would
16 ya?

17 A. No, I wouldn't.

18 Q. Okay, uh, where was Misty?

19 A. In my vehicle.

20 Q. Okay, for how long?

21 A. She woulda been there until I, uh, that mornin' I would
22 have taken her out and used her on the scene, conducted the
23 search and then she woulda been back in my vehicle but she'd a
24 been outside prior to me goin' back the second time takin'
25 breaks ---

CHARLES GONZALEZ - CROSS-EXAMINATION BY MR. RIORDAN

1 Q. Okay, is anythi ---

2 A. --- and then back to my vehicle again.

3 Q. --- is anything done right from the time ya leave until
4 you return to, uh, to clean Misty?

5 A. Uh, nothin' other than takin' her out for breaks.

6 Q. Okay. Alright. And did you ever specifically tell Homer
7 that you were gonna take Misty inside of his house to look for
8 evidence?

9 A. I'm, I don't recall if I told her I was takin' her in
10 there or not, I don't remember that.

11 Q. Which door did you go in?

12 A. The garage door.

13 Q. Where was Homer?

14 A. I think he was sittin' in the garage in a a fold up
15 chair.

16 Q. He's talkin' on the phone?

17 A. Coulda been or either to the SERVPRO guy. I remember him
18 bein' in the garage.

19 Q. Okay, and you alone went in with Misty into the home?

20 A. Uh, Investigator Morgan was in there.

21 Q. Where? He was ---

22 A. In ---

23 Q. --- already in there?

24 A. Uh, I don't know if he went in after me, he may have come
25 in after me ---

1 Q. Okay.

2 A. --- or when I did behind me.

3 Q. Alright, and how ---

4 A. He ---

5 Q. --- lo -- how long were ya in the house?

6 A. Probly less than ten minutes, ---

7 Q. Okay.

8 A. --- long enough for her to search the, uh, interior a the
9 house which woulda been probly no more than, her searchin' no
10 more than ten minutes.

11 Q. How does she search?

12 A. She searches, she will search at scene off lead meaning
13 not on a leash, um, and your command to go in and search and
14 she is, I let her go and we go room by room, uh, and she'll
15 search on her own without my guidance. If there's an area in
16 particular that I need her to search then I'll guide her to
17 that area to search those particular areas but other than she
18 works.

19 Q. What's her reward for alerting?

20 A. A piece of a rubber hydraulic hose like a large inch,
21 inch and a half diameter-type of rubber hose.

22 Q. And how does she alert?

23 A. Uh, depends on the where the odor is. Sometimes she'll
24 lay down, sometimes she'll sit, most the time it's
25 sitting, ---

CHARLES GONZALEZ - CROSS-EXAMINATION BY MR. RIORDAN

1 Q. What's the ---

2 A. --- it's ---

3 Q. --- difference?

4 A. There's just she'll lay down or sit. Sometimes if a odor
5 is low on the ground she will lay down but she'll she'll sit
6 also but there's no, she doesn't lay or sit versus, you know,
7 if a certain type odor, she doesn't do one for the other. If
8 there's an odor there that she finds that she's trained for,
9 she'll do one or the other: sit or lay down.

10 Q. What did she do here?

11 A. Uh, she, I believe she laid down on that one, on the
12 shoes ---

13 (Indiscernible cross-talk.)

14 Q. When she laid down di -- did she touch the shoes?

15 A. Uh, if if anything it woulda been maybe her nose when she
16 was smellin' it but she doesn't, she doesn't, when she finds
17 what she's, uh, trained to find, uh, ignitable liquids, she
18 will, she does not, uh, dig it, she doesn't lay on it, she'll
19 use her nose and pinpoint to where it is and then she'll
20 either lay or sit.

21 Q. I mean, ---

22 A. She doesn't get into the odor and on top a the odor.

23 Q. Okay. Did you take any photos that day of her
24 alerting?

25 A. I generally don't photograph the dog while she's working,

1 uh, at just so very seldom will I do photographs, that she's
2 even photographed while working, uh, basic 'cause I don't have
3 anything in my hands but other than her reward while I'm
4 workin'. Uh, sometimes if Investigator Cannon is there and
5 has his camera while I'm working he shoots photographs of, uh,
6 of the dog working but it's, I don't photograph her when she
7 alerts or while she's working.

8 Q. You ever take video of her?

9 A. A video has been taken but not by me, a fire scene, that
10 an insurance guy happened to be videoin' her, uh, while she
11 was workin' but I don't video her while she's works or
12 photographs, ---

13 Q. Did ---

14 A. --- now it does happen but I don't do it to photograph
15 where she alerts.

16 Q. --- did Misty enter the Rose bedroom ahead of you?

17 A. Yes.

18 Q. Which way'd she go when she entered?

19 A. Uh, she went in the bedroom and started in and she went
20 over to the, where the sh, excuse me, where the shoes were
21 which were on the other side of the bedroom.

22 Q. Where were you at that time when she went ---

23 A. Uh, ---

24 Q. --- went over ---

25 A. --- behind, ---

1 Q. --- to the left side?

2 A. --- I come in through the doorway.

3 Q. How far behind?

4 A. Just I probly no more than ten feet I would say.

5 Q. Where was Morgan?

6 A. I think he may a been to my right side, I don't -- he
7 coulda been following behind me. I know he was in there but I
8 just don't remember where he -- 'cause when they're doin' that
9 I'm watchin' her the whole time while she was workin' versus
10 what's everybody else is doin'.

11 Q. And what did she do when she went near the shoes?

12 A. Uh, she did some alert and smellin' around and then she
13 came to a final indication at the shoe. I pulled her off of
14 it, I rewarded her, pulled her off it, had her come in to
15 search again, she went back to the shoe again ---

16 Q. Alright, ---

17 A. --- so I rewarded her again and ---

18 Q. --- alright, and when she alerts you don't know what
19 she's alerting to, do ya, as far as the type of liquid?

20 A. No, nothing other than what she has been trained to alert
21 on. I don't know if it's, you know, if it's anything from
22 diesel to paint thinners, I don't know what she's alerting on.

23 Q. And you'd been throughout the entire house that day,
24 right?

25 A. I don't know if I went through the house that day, uh,

1 maybe 'cause I didn't take the dog in the house that day. If
2 anything I may have went into the the room where the the back
3 side of the sunroom where the fire burned in the, uh, I don't
4 know if the sunroom where the porch back area was attached to
5 the bedroom or to a room in between there but I don't ---

6 Q. You don't dispute that a room in the house was bein'
7 painted at that time, do ya?

8 A. I I didn't smell any paint, uh, I mean, all I smelled was
9 fire but I couldn't tell if anything was painted or not.

10 Q. You spoke with Mrs. Rose about what type of work she does
11 or what she did, correct?

12 A. Uh, yes.

13 Q. Okay. Did you tell her that you all, that you were aware
14 of what troopers made and they seemed to be living above their
15 means?

16 A. No, I did not.

17 Q. Okay. Did you talk with her about where their sources of
18 income were?

19 A. No, I did not.

20 Q. Did you have any questions about their financial state?

21 A. No.

22 Q. Okay. Did, uh, did you ask her about a book she was
23 writing?

24 A. Think she made mention of a book she was writing but I I
25 didn't quite understand what she was, I didn't go in any

CHARLES GONZALEZ - CROSS-EXAMINATION BY MR. RIORDAN

1 detail about that.

2 Q. You never asked?

3 A. I don't recall askin' her what kinda book she was
4 writing, it's ---

5 Q. Di ---

6 A. --- possible but I don't ---

7 Q. --- did she ---

8 A. --- recall.

9 Q. --- tell you she was re -- in the process of goin' room
10 by room, remodelin' the home had been?

11 A. I I don't recall her sayin' anything about that, ---

12 Q. Okay.

13 A. --- I didn't see anything of that nature.

14 Q. You're you're dog won't distinguish between, its alert
15 doesn't distinguish between paint thinner or paint lacquer and
16 any other accelerant, does it?

17 A. Uh, no, as long as it's an accelerant or an ignitable
18 liquid that she's been trained on, she doesn't distinguish
19 between the types.

20 Q. Alright.

21 MR. RIORDAN: Court's indulgence.

22 (Pause.)

23 BY MR. RIORDAN:

24 Q. Yeah, af -- who -- how did you advise the Roses that, uh,
25 Misty had alerted on a pair a shoes?

CHARLES GONZALEZ - CROSS-EXAMINATION BY MR. RIORDAN

1 A. I don't know that I did or if Investigator Cannon, uh,
2 told 'em that she had alerted on shoes. On the bedroom shoes?

3 Q. Yes?

4 A. It -- I don't know if I told her, Investigator Cannon
5 told 'em that.

6 Q. Had Homer asked you whether you were considering his wife
7 a suspect in this case?

8 A. I don't recall if he did or not.

9 Q. Okay. Did you ever tell ---

10 A. Co ---

11 Q. --- him his wife was a suspect in this case?

12 A. No.

13 Q. When you went back over there that day, was that your
14 intention to get inside that house?

15 A. Uh, no, to do a follow-up, uh, whether it be, uh, to look
16 at the safe a little more closely and to run our -- the dog in
17 the house and anything that I may have missed that day.

18 Q. Have you ever used that consent form basically as a
19 receipt: You've received consent, you fill out the items that
20 you're gonna take and then you have the person sign it?

21 A. No, we, they sign before we begin our search, uh, after
22 they're explained to the form they're explained it, uh, and
23 then they sign prior to us even searching but, uh, whether it
24 be a premises or whatever we're searching and then after an
25 item was taken it's written on there then they're given a copy

1 of the afterwards.

2 Q. Who wrote the items in on the, uh, consent form for [REDACTED]
3 Riley Smith Road?

4 A. Uh, probably Investigator Cannon, I'd have to look at
5 it ---

6 Q. Did you ---

7 A. --- and see.

8 Q. --- have any writing on there?

9 A. I don't think so but I'd have to look at it and see. I
10 think I just did the one for the apartments ---

11 Q. Okay, ---

12 A. --- that ---

13 Q. Were ---

14 A. --- afternoon.

15 Q. --- the entries made as items were seized or were they
16 added in separately? how was that done?

17 A. Well what do you -- I don't understand.

18 Q. On the form.

19 A. On the one that I did?

20 Q. Yes.

21 A. Uh, there was two items taken and they were, uh, labeled
22 on there afterwards.

23 Q. That you ---

24 A. I ---

25 Q. --- added in.

CHARLES GONZALEZ - CROSS-EXAMINATION BY MR. RIORDAN

1 A. On those -- yeah, I wrote those two, I wrote the consent
2 for the apartments, I filled out everything on that, uh, I
3 signed it, she signed it then after we collected the two items
4 then I wrote those two items on the consent and then gave them
5 copy of his consent afterwards.

6 Q. Soon after that did you hear from Investigator Morgan in
7 regard to correspondence he had from Ellie Hansen?

8 A. I don't recall that.

9 Q. Did she advise him that you had threatened her that day
10 and she was scared?

11 A. No.

12 Q. Okay. Do you know where -- do you know if she continued
13 to live in the Greenville area?

14 A. Uh, no, shortly after that my understanding that she went
15 up north somewhere 'cause I know that, uh, Investigator Cannon
16 had had found her some sort a way and I had an officer speak
17 with her wherever that was, I'm not sure, I know it was up
18 north somewhere but I don't know what state ---

19 Q. Officer ---

20 A. --- or ---

21 Q. --- Cannon ---

22 A. --- whatever ---

23 Q. --- was the one who initiated that?

24 A. Yes, he talked with a agency wherever she was at.

25 Q. Okay. Have you, have you initiated correspondence with

CHARLES GONZALEZ - CROSS-EXAMINATION BY MR. RIORDAN

1 her through police out of state recently?

2 A. No, I've -- after that day I never talked to Ellie after
3 the apartment, I don't even think I spoke with, uh, Paula or
4 Homer after that day, after the apartment that day of the
5 fire.

6 Q. Alright. You agree Ellie's the one that determines the
7 form of the consent that you gave, correct?

8 A. Yes.

9 Q. Alright. And Homer as well?

10 A. As on on his consent from his house?

11 Q. Yes.

12 A. Yes.

13 Q. His understanding as to what was being allowed he's the
14 one that determines that, correct?

15 A. Yes, far as I know he does, yes.

16 Q. Okay. Is there a copy even given? The way I see we've
17 got a ---

18 A. Should be a pink copy too, there's a pink copy that's
19 missing, ---

20 Q. Okay.

21 A. --- that's what, uh, they would have received that day.
22 Actually I know she received it, actually I, I'm not mistaken,
23 I think, uh, Homer may have taken it from her that day when I,
24 after I completed it if I'm not mistaken.

25 MR. RIORDAN: No further questions.

CHARLES GONZALEZ - REDIRECT EXAMINATION BY MS. ABEE

1 THE COURT: Any redirect?

2 MS. ABEE: Brief clarification, Your Honor, if I may
3 approach.

4 THE COURT: Yes, ma'am.

5 (Whereupon, counsel approached the witness.)

6 REDIRECT EXAMINATION BY MS. ABEE:

7 Q. Investigator Gonzalez, uh, earlier you said you weren't,
8 I don't know if -- just clarify for us whose signature is this
9 (indicating)?

10 A. That's mine as a witness.

11 Q. Okay, and did you witness Mr. Rose signing that
12 document?

13 A. Uh, yes, I was there when he would have signed it.

14 Q. Okay, did you hear him acknowledge consent?

15 A. I'm sure I had to be standin' there close by when, uh,
16 when he read it to him.

17 Q. And at any point in time did he limit your scope while
18 you had Misty inside the house?

19 A. No.

20 Q. Was he there when you took Misty inside of the house?

21 A. Yes.

22 Q. And at no time he stopped you.

23 A. No.

24 MS. ABEE: Nothing further, Your Honor.

25 THE COURT: Thank you. Thank you, sir, you may step

RANDY MORGAN - DIRECT EXAMINATION BY MS. ABEE

1 down.

2 (Whereupon, the witness left the stand.)

3 THE COURT: Call your next witness, please.

4 MS. ABEE: Your Honor, at this time the State calls
5 Investigator Randy Morgan.

6 (Whereupon, the witness came forward.)

7 THE CLERK: Come forward, put your left hand on the
8 Bible, raise your right.

9 RANDY MORGAN, having been first
10 duly sworn, testified as follows:

11 THE CLERK: Please have a seat. You state your full name
12 for the record.

13 THE WITNESS: My name's Investigator Randy Morgan.

14 DIRECT EXAMINATION BY MS. ABEE:

15 Q. Investigator Morgan, if you could just tell us briefly
16 where you currently work and what your current position is
17 there.

18 A. I'm a property crimes investigator with the Greenville
19 County Sheriff's Office.

20 Q. And what is your particular role in this case?

21 A. Uh, I originally got called to the scene, uh, when it was
22 originally came in as a a a burglary.

23 Q. And did you go investigate the burglary at the scene?

24 A. I did.

25 Q. Do you recall meeting with Investigators Cannon and

RANDY MORGAN - DIRECT EXAMINATION BY MS. ABEE

1 Gonzalez sometimes later in the day?

2 A. Yes.

3 Q. And did that necessitate you returning back to the home
4 on Riley Smith Road?

5 A. I did.

6 Q. Now were you with Investigators, uh, Cannon and Gonzalez
7 when they were speaking with Mr. Rose trying to obtain consent
8 to search the home?

9 A. Uh, I was.

10 Q. And at any point in time did you hear either of those
11 investigators or did you yourself coerce Mr., uh, Rose into
12 giving you consent?

13 A. No, ma'am.

14 Q. At any point in time did either of the three of ya'll
15 threaten him, ---

16 A. Uh, ---

17 Q. --- uh, with with any sort of search warrant or anything
18 like that if he didn't give consent?

19 A. --- no.

20 Q. At any point in time, uh, did Mr. Rose stop ya'll from
21 searching anything around the home?

22 A. No, ma'am.

23 Q. And specifically what did you go inside and search?

24 A. Uh, I didn't search anything inside. I, uh, I
25 accompanied, uh, Investigator Gonzalez, uh, when his dog was

RANDY MORGAN - DIRECT EXAMINATION BY MS. ABEE

1 walking through the house, uh, and, uh, and then I was present
2 when he was outside, uh, with the dog in the driveway.

3 Q. And did Mr. Rose see you and Investigator Gonzalez enter
4 the house?

5 A. I believe so. He was sittin' in a lawn chair, uh, in the
6 second bay of the garage.

7 Q. And was Misty with ya'll when you entered inside of the
8 house?

9 A. Uh, the dog, yes, the canine, yes.

10 Q. And at any point in time did Mr. Rose stop you from
11 entering the house with a canine?

12 A. No.

13 Q. Now, Investigator Morgan, were you, uh, present at the
14 apartment complex that was also searched later that day?

15 A. I was.

16 Q. Okay, and if you can tell me who was there when you got
17 there.

18 A. Uh, when I arrived on scene, uh, Investigator Gonzalez
19 was there, uh, the defendant and, uh, Ellie Hansen I believe
20 was her last name, sumtin' like that.

21 Q. And did you speak with Ms. Hansen at all?

22 A. Uh, I did.

23 Q. And what did you and Ms. Hansen speak about?

24 A. Uh, just basically her givin' us consent just to acquire
25 some items from the apartment.

RANDY MORGAN - DIRECT EXAMINATION BY MS. ABEE

1 Q. And what woulda been some of the things that you talked
2 to Ms. Hansen about, uh, what would you have talked to her
3 about in order to obtain consent?

4 A. Basically explainin' the consent to search to her, uh,
5 what it meant, the items that we were lookin' for, uh, I I
6 know there was some other statements made, uh, about stuff
7 that we were were supposedly gonna look through, uh, and
8 basically assured her that the only items we were looking for
9 was these certain clothing items.

10 Q. And did you see Ms. Hansen sign the consent to search
11 form?

12 A. Yes, I did.

13 Q. Okay, and at any point in time was she coerced into
14 signing that form?

15 A. No, ma'am.

16 Q. At any point in time, did you or any of the other two
17 investigators, uh, threaten her in any way in order to sign
18 this form?

19 A. No, ma'am.

20 Q. And when you went into the home -- did you go into the
21 home?

22 A. Yes, ma'am.

23 Q. Who was with you then?

24 A. Uh, myself, uh, uh, Investigator Cannon, Investigator
25 Gonzalez, the defendant, uh, Mr. Rose and Ms. Hansen.

RANDY MORGAN - DIRECT EXAMINATION BY MS. ABEE

1 Q. And at any point in time did Ms. Hansen tell you to stop
2 the search?

3 A. No.

4 Q. If she would have told you to stop the search, what would
5 you have done?

6 A. Uh, we would have secured the residence and went and
7 obtained a search warrant.

8 Q. And at any point in time was that necessary?

9 A. No, ma'am.

10 Q. Did you search through her entire house?

11 A. No, ma'am.

12 Q. Did you search only what it was that you said you were
13 gonna go get?

14 A. That that's correct. The the items were pointed out to
15 us, uh, that were beside the kitchen, uh, that were laying on
16 top of a bag and that was the items that we secured.

17 Q. And to backtrack you with Mr. Rose if he would have asked
18 you to stop when you were searching that home would you have
19 stopped as well?

20 A. Uh, probly so, I I mean, it's one of those that
21 Ms. Hansen was the one who lived in the apartment, uh, and and
22 even, uh, but I I don't know.

23 Q. Let me clarify my question a little bit: back at
24 Mr. Rose's residence if he were to ask you to stop, not at
25 Ellie Hansen's apartment but at Mr. Rose's residence.

RANDY MORGAN - CROSS-EXAMINATION BY MR. RIORDAN

1 A. Correct, I mean, he he was the owner of the home.

2 Q. And did you ever enter either of these, uh, homes either
3 the house on Riley Smith or the apartment without first
4 obtaining the consent to search?

5 A. No.

6 MS. ABEE: Your Honor, I have no further questions.

7 THE COURT: Cross-examination.

8 CROSS-EXAMINATION BY MR. RIORDAN:

9 Q. At the Oak Ridge Apartments, uh, did you observe and
10 report that Ellie was crying, upset?

11 A. She was.

12 Q. Okay. And did, uh, did she tell you she didn't know what
13 to do?

14 A. Correct, that was the statement she was makin'.

15 Q. Did you all try to give her assurance in regard to the
16 limitations of your search that you would have?

17 A. Correct, I I -- well, I I don't remember if it was me or
18 it was explained to her that there was only certain items, uh,
19 that that we were lookin' for, we was not going to destroy her
20 apartment.

21 Q. And you you didn't make any change to the form, didn't
22 limit the form in any way did ya?

23 A. No, sir.

24 Q. Okay, and but her -- but your assurance to her to get her
25 to sign the form was that these two items would be taken.

RANDY MORGAN - CROSS-EXAMINATION BY MR. RIORDAN

1 A. Well we explained to her the form and what we were
2 lookin' for, yes, sir.

3 Q. Okay, and do you -- were you involved at all in the
4 execution of the consent to search form by Mr. Rose?

5 A. I'm sorry, where?

6 Q. Were you involved at at [REDACTED] Riley Smith Road?

7 A. I was present, yes, sir.

8 Q. Okay. Did you all assure him that the only items that
9 would be seized were the first four items on that list?

10 A. I don't know what was explained to him about what was
11 gonna be seized, basically I was walkin' with Investigator
12 Gonzalez, uh, and the canine, uh, I I mean, I I'm no canine
13 handler so . . .

14 Q. And you all, when you met with Paul that afternoon and
15 released her, was the agreement that, uh, Investigators
16 Gonzalez and Cannon would meet with her on Monday?

17 A. Released her from where?

18 Q. From your interview with her.

19 A. Uh, she was free to go, I mean, she just give me a victim
20 statement about the the incidents of the day.

21 Q. Okay. And what -- how long did you meet with her out at
22 the -- 'cause this is away from the home, correct?

23 A. Uh, I met with her at my office at ---

24 Q. Where is that office? What's that address?

25 A. [REDACTED] Old Buncombe Road.

RANDY MORGAN - CROSS-EXAMINATION BY MR. RIORDAN

1 Q. Okay, why'd you meet there?

2 A. That's my office.

3 Q. Okay, and, uh, how long did you meet with her?

4 A. Forty-five minutes, maybe an hour, I I I don't know, I
5 didn't time the inter, the interview.

6 Q. What was discussed?

7 A. Uh, the what happened the day. She was tellin' me, uh,
8 about the three subjects that she saw in her, uh, garage and
9 basically how the incident occurred.

10 Q. Okay, what else?

11 A. Uh, once she, uh, explained that and then, uh, she did
12 mention that that she had a but I think I asked about
13 fingerprints because forensics had gotten fingerprints off a
14 the safe, uh, and I asked, I knew Homer's was on file wi --
15 through SLED, uh, I believe I ask her and then I ask
16 Ms. Hansen, uh, if she had fingerprints on file because if
17 they came back then we could compare 'em.

18 Q. And what was response?

19 A. Uh, she just mentioned that she had a criminal history.

20 Q. Tell me about discussion regarding her criminal history.

21 A. Uh, ---

22 MR. RIORDAN: Objection, Your Honor, to scope.

23 THE COURT: I agree, I sustain the objection.

24 BY MR. RIORDAN:

25 Q. Did, uh, did that discussion you had with her thereafter

RANDY MORGAN - CROSS-EXAMINATION BY MR. RIORDAN

1 is that what, uh, changed the schedule of when more of, uh,
2 when Cannon and Gonzalez were gonna meet with Paula?

3 A. No, sir, I I didn't know if they were gonna meet with him
4 or not, I I don't know.

5 Q. Okay.

6 A. At that time I had not spoken with him any further.

7 Q. Now why why -- if you didn't know, why'd you go back to
8 the house then?

9 A. I'm sorry?

10 Q. If you didn't know, why'd you go back to their house?

11 A. Because after our meeting with the defendant, uh, I did
12 speak with Investigator Cannon after that.

13 Q. Were you present, uh, during any discussions with Homer
14 about, uh, seizing any items at his home?

15 A. Uh, no, sir.

16 Q. Okay. Did you tell me your involvement with with
17 identifying any items that were gonna be seized from [REDACTED] Riley
18 Smith Road that afternoon.

19 A. No, the the only thing I saw was when the dog laid down
20 beside the shoes, uh, and then Investigator Got -- Gonzalez
21 advised me that, uh, that his canine had alerted to those
22 shoes and then Investigator Cannon put 'em in a paint can.

23 Q. How did, how did the dog alert, what did it do?

24 A. She laid down.

25 Q. How?

RANDY MORGAN - CROSS-EXAMINATION BY MR. RIORDAN

1 A. Dog laid down on the ground.

2 Q. Where?

3 A. Beside the, beside the shoe.

4 Q. Okay, have you seen the photos of the shoes from that
5 day?

6 A. No, sir.

7 Q. 7128.

8 A. Okay.

9 Q. Had you been in that room that day and observed the shoes
10 there?

11 A. Uh, ---

12 Q. See 'em on the bottom?

13 A. --- yeah.

14 Q. Had you seen 'em there?

15 A. Yeah, I I mean, that's -- well when I was in the bedroom
16 with the canine, that's the first time I had went in that
17 bedroom all day.

18 Q. Okay, that afternoon?

19 A. Correct.

20 Q. Alright, this, this is in the morning though, are you
21 saying you didn't see 'em that morning?

22 A. No, sir, I didn't go in the bedroom that morning.

23 Q. Okay. Did you move the shoes at all that day?

24 A. No, I didn't touch 'em.

25 Q. Did did -- when when you all left after the morning

RANDY MORGAN - CROSS-EXAMINATION BY MR. RIORDAN

1 session, I mean, the the place was released, right, the scene
2 was released?

3 A. Um-hum, yes.

4 Q. And SERVPRO was out there?

5 A. Uh, I don't know when they got there, uh, they were not
6 on scene when I originally left no, sir.

7 Q. Okay. And, uh, during during your arrival in the
8 afternoon, was SERVPRO still working?

9 A. Uh, they they were there when we came back that
10 afternoon.

11 Q. Okay. And when you noticed the shoes that afternoon, uh,
12 where did the dog lie down next to 'em?

13 A. Uh, laid down right in here (indicating) I guess ---

14 Q. Where where ---

15 A. --- right in front.

16 Q. --- where's the --- what at was the front the paw?

17 A. Uh, I don't remember which which way it was aimin', I
18 just know it laid down in fronta the shoe.

19 Q. Okay, what's then the paws front?

20 A. Yeah, that's usually how a dog lays down, yes.

21 Q. Well, I mean, but in this picture are they comin' right
22 at the back a the shoes or is she coming ---

23 A. I ---

24 Q. --- sideways ---

25 A. --- think she laid down longways in front of the shoe.

RANDY MORGAN - CROSS-EXAMINATION BY MR. RIORDAN

1 Q. Oh, alright. You know what chemical she was alerting
2 on?

3 A. No.

4 Q. Do you know what chemical she's trained to alert on?

5 A. No, sir.

6 Q. Did you meet with Ellie Hansen after the items were taken
7 from her and, uh, in the apartment at Oak Ridge?

8 A. I believe it was a day or so after, I don't have my
9 report but when I -- when she did provide me with her
10 fingerprints, yes.

11 Q. Okay, and what discussion did you have with her then?

12 A. Uh, asked her if she would give me her fingerprints for
13 comparison.

14 Q. What she tell you about her moving out of the state?

15 A. Uh, I think she mentioned she was moving to Pennsylvania
16 boyfriend or somethin' like that but . . .

17 Q. Did she mention she felt threatened and intimidated by
18 Investigator Gonzalez at her -- at the Oak Ridge Apartments?

19 A. Uh, I don't think so, I don't recall it, no, sir.

20 Q. Do you recall that Ellie left, Ellie left Riley
21 Smith to go to the apartment on her own, correct?

22 A. Yes, sir, I believe she did.

23 Q. Did she tell you she needed to let her dog out to use the
24 bathroom?

25 A. She did.

RANDY MORGAN - CROSS-EXAMINATION BY MR. RIORDAN

1 Q. Did she call back and say she couldn't get in?

2 A. Uh, I don't know, I didn't have her number, I don't --
3 because when we were there, when we got there we we went up
4 and she opened the door or we opened the door, I believe she
5 give us the key.

6 Q. So you got there, you just walked up and opened the
7 door?

8 A. No, sir.

9 Q. Okay, well I I just wanna make sure I understand. When
10 you got there, where was she?

11 A. When I got there, the defendant, Investigator Gonzalez
12 and Ellie were in the courtyard.

13 Q. Okay. And yeah, and wasn't, and she wasn't in the
14 apartment yet, right?

15 A. No, sir.

16 Q. Did you understand that Paula had to bring her key, her
17 key to the apartment?

18 A. I don't know whose key we used, I assumed it was Ellie's.

19 Q. Okay, you don't know, do ya?

20 A. No, sir.

21 Q. Alright. And in regard -- where where was that
22 apartment, first floor or second floor?

23 A. Second floor.

24 Q. Okay. Had you ever been over there before?

25 A. Uh-uh (negative.)

RANDY MORGAN - CROSS-EXAMINATION BY MR. RIORDAN

1 Q. One a ya'll get lost goin' over there?

2 A. I didn't, no, sir. I went straight there.

3 Q. Who was there when you arrived?

4 A. Investigator Gonzalez, the defendant and Ellie were in
5 the courtyard.

6 Q. Did Ellie, did Ellie say she needed to let her dog out to
7 use the bathroom?

8 A. Yes.

9 Q. Okay. Did Investigator Gonzalez allow her to do that?

10 A. No, I don't believe so.

11 Q. Did he tell her if she couldn't open the door, he was
12 gonna charge her with obstruction of justice if she did so and
13 not let him in?

14 A. No, sir, I I did not hear, ---

15 Q. You sure?

16 A. --- I did not hear him say that, no, sir, I didn't.

17 Q. Well why didn't she go in? Did she feel ---

18 A. I don't know.

19 Q. --- like she was being deprived of goin' in by somebody
20 there?

21 A. Uh, I don't know.

22 Q. Okay. She would be the best person to tell about that,
23 wouldn't she?

24 A. Yes, sir, I wouldn't speculate on what she would say.

25 Q. Okay. And what about, uh, as far as when you saw the

RANDY MORGAN - CROSS-EXAMINATION BY MR. RIORDAN

1 items, you guys took items from Paula in that apartment,
2 correct?

3 A. Yes, sir.

4 Q. Included she had a bag a bathroom items, correct?

5 A. Correct, there was a bag there.

6 Q. She had told ya earlier in the day that she, that she and
7 Ellie were needed to go inside and get some clothes and some
8 items, they were gonna go back to Ellie's to take a shower,
9 get cleaned up before your interview, didn't she?

10 A. Correct, yes, sir.

11 Q. Alright, 'cause that's where she was gonna stay that
12 night, Paula, wasn't she?

13 A. I don't know where she was gonna stay.

14 Q. And she -- you don't know?

15 A. No, sir, I don't.

16 Q. Okay, so and again, that would be up to you the persons
17 that stay in the apartment or Paula or Homer, correct?

18 A. Correct, yes.

19 Q. Alright, and if Paula's spending the night there, she's
20 an overnight guest in the house, right?

21 A. I guess she would be yes, sir.

22 Q. Alright, as an overnight -- okay. And do you know how
23 long Paula stayed in that apartment from the time of the fire
24 after?

25 A. No, sir.

RANDY MORGAN - CROSS-EXAMINATION BY MR. RIORDAN

1 Q. That again would be something other folks might have
2 better knowledge of, correct?

3 A. Correct.

4 Q. And you, and I I'm pretty sure I asked already, I'm
5 sorry, you did see Ellie crying and being upset at the
6 apartment, correct?

7 A. Yes, she was upset, yes.

8 Q. And and eventually you guys assured her if she would sign
9 that confe -- sent form you guys would only take Paula's
10 clothes, correct?

11 A. She was explained the items that we were lookin' for,
12 yes.

13 Q. Alright, Paula had offered to split the clothes in half,
14 correct?

15 A. Um, I don't know.

16 Q. Okay. Well do you remember conversations with Paula and
17 Gonzalez with her asking Gonzalez about his working other
18 arson cases?

19 A. No, sir.

20 Q. You don't remember that?

21 A. Uh-uh (negative).

22 Q. Okay. Did, uh, did Paula ever give consent for those
23 clothes other than to split them in half?

24 A. I I never heard her give consent no, sir.

25 Q. Okay. Did you, after I guess within the days following

RANDY MORGAN - REDIRECT EXAMINATION BY MS. ABEE

1 this, uh, this fire did you ever attempt to reach Ellie of,
2 uh, or out of state?

3 A. Uh, my understanding she moved outta state, uh, I don't
4 think I did. I I mean, after the the fingerprint comparison
5 'cause I think I -- when I met with her it was a day or two
6 before she was leavin', uh, wherever she went up north
7 somewhere and, uh, ---

8 Q. She give ya phone numbers for her sister that she was
9 gonna live with?

10 A. I think I do have her phone number yes, sir.

11 Q. Okay. Despite that did you make efforts to have police
12 visit her in-laws' home?

13 A. No, sir, I didn't.

14 Q. You didn't?

15 A. No, sir.

16 Q. Do you know who did?

17 A. No, sir.

18 Q. Have you tried to, uh, reach her at all in the past week,
19 month or week?

20 A. No, sir.

21 MR. RIORDAN: No questions.

22 THE COURT: Redirect?

23 REDIRECT EXAMINATION BY MS. ABEE:

24 Q. Investigator Morgan, at any time when you were at Homer
25 Rose's home, did he appear to be upset about your search?

CHARLES HOMER ROSE III - DIRECT EXAMINATION BY MR. UNDERWOOD

1 A. No, s -- no, ma'am, he, uh, like I said, he was sittin'
2 in a lawn chair, uh, in the second bay of the garage and, uh,
3 pretty much he said you do what we need to do so . . .

4 Q. Even after you came back out from inside of the house,
5 did he appear to be upset?

6 A. No.

7 MS. ABEE: I have no further questions, Your Honor.

8 THE COURT: Thank you sir, you may, step down.

9 THE WITNESS: Thank you.

10 (Whereupon, the witness left the stand.)

11 THE COURT: Call your next witness, please.

12 MR. UNDERWOOD: Your Honor, at this time, the State calls
13 Homer Rose.

14 THE CLERK: Please step forward, put your left hand on
15 the Bible and raise your right. Over here (indicating), sir.

16 (Whereupon, the witness came forward.)

17 CHARLES HOMER ROSE III, having
18 been first duly sworn, testified as follows:

19 THE CLERK: Um, please have a seat.

20 THE WITNESS: Thank you.

21 THE CLERK: You state your full name for the record.

22 THE WITNESS: Charles Homer Rose the third.

23 DIRECT EXAMINATION BY MR. UNDERWOOD:

24 Q. Good afternoon, Mr. Rose. Mr. Rose, are you the owner of
25 [REDACTED] Riley Smith Drive in Greenville?

1 A. Sir, I can't understand a word you're saying, could you
2 come up a little bit closer.

3 Q. I'll I'll come up closer and try to speak a little
4 louder, I'm sorry. Uh, Mr. Rose, are you the owner of [REDACTED]
5 Riley Smith Drive?

6 A. Yes.

7 Q. Okay. And how long have owned that property?

8 A. Since 1993.

9 Q. So you owned it in July of 2012?

10 A. I'm sorry?

11 Q. Did you own that property in July of 2012?

12 A. I did.

13 Q. Mr. Rose, what do ya do for a living?

14 A. I'm a state trooper.

15 Q. And how long have you been a state trooper?

16 A. Um, forty-three years, sir.

17 Q. And being a state trooper are you a certified law
18 enforcement officer in South Carolina?

19 A. I am.

20 Q. Did you go to the Criminal Justice Academy?

21 A. Numerous times.

22 Q. Alright. Have you had, uh, update courses, refresher
23 courses ---

24 A. I ---

25 Q. --- and ---

1 A. --- have.

2 Q. --- and in your training as a law enforcement officer did
3 that include instruction on consent to search?

4 A. Did.

5 Q. And in your training, uh, have you learned how to use
6 consent to search forms?

7 A. I have.

8 Q. So are you familiar with that process?

9 A. I am.

10 Q. Is it a fairly standard process throughout all of South
11 Carolina with all law enforcement agencies?

12 A. It's supposed to be, yes.

13 Q. Are you familiar with consent to search forms?

14 A. Uh, I am.

15 Q. Do you use the forms in your work?

16 A. I do.

17 Q. Mr. Rose, on July 27th 2012, uh, in the afternoon after
18 the fire, did you have occasion to speak with Investigators
19 Charles Gonzalez and Ben Cannon?

20 A. I did.

21 Q. Alright, and where did that take place?

22 A. Uh, at my residence in the driveway.

23 Q. And at that time did they tell you why they were there?

24 A. Uh, they were there to investigate the fire.

25 Q. And at that time did they ask you for consent to search

CHARLES HOMER ROSE III - DIRECT EXAMINATION BY MR. UNDERWOOD

1 your home?

2 A. No.

3 Q. They did not ask you to search your home?

4 A. Not at that time.

5 Q. Okay. At at sometime did they ask to to search your
6 time?

7 A. You're gonna have to be more specific, sir.

8 Q. Okay, well you said, "Not at that time," when did they
9 ask to search your home?

10 A. In the afternoon.

11 Q. Okay, and do you remember what time that was?

12 A. Oh, probably around 4, 4:30.

13 Q. Who did you talk to about getting consent to search the
14 home?

15 A. I received a phone call from Investigator Cannon who
16 indicated to me that he wanted to return to my residence. I
17 thought about that for just a minute and I wasn't sure why he
18 would because the crime scene or what crime scene there was
19 had been released, uh, the people with whom I had contracted,
20 uh, to clean up the debris and the water and the other residue
21 from the fire had been in the house and working for a period
22 of about an hour and a half or two hours.

23 Q. But did you agree to let Mr., I'm sorry, Investigator
24 Cannon come back to your house?

25 A. I did.

CHARLES HOMER ROSE III - DIRECT EXAMINATION BY MR. UNDERWOOD

1 Q. And you told him it was okay to come back to search your
2 house?

3 A. Verbally I did, yes.

4 Q. Alright. And when he arrived did he present you with a
5 consent to search form?

6 A. No.

7 Q. Have you ever seen a consent to search form given to you
8 by Investigator Ben Cannon?

9 A. Uh, Mr. Cannon gave me a document, uh, with "Consent to
10 search" across the top of it unlike any document of that
11 nature I had ever seen. It had been completely filled out
12 with the exception of my signature and it even listed the
13 property that they had taken.

14 Q. Okay. And that item that you said was completely filled
15 out did you sign that consent to search form?

16 A. I did.

17 MR. UNDERWOOD: Court's indulgence Your Honor.
18 Permission to approach the witness, Your Honor.

19 THE COURT: Yes.

20 BY MR. UNDERWOOD:

21 Q. Trooper Rose, you recognize this (indicating) document?

22 A. I do.

23 Q. What is that?

24 A. Sense -- says "Consent to search fire investigation."

25 Q. And have you seen this document before?

CHARLES HOMER ROSE III - DIRECT EXAMINATION BY MR. UNDERWOOD

1 A. No. Oh, I'm sorry, in this form that was the first time
2 I had ever seen it.

3 Q. Alright, but but this particular piece a paper have you
4 seen it before?

5 A. I have.

6 Q. Alright. And was that the document that Investigator
7 Cannon presented to you that day?

8 A. It was with the exception of the last two items on the
9 consent were not on the consent at the time that I saw this
10 document.

11 Q. Okay. Did did you sign that document?

12 A. I did.

13 Q. Alright, and is that so under the place where it asks for
14 someone's consent that, is that your signature?

15 A. It is but let me explain this to you, sir. Due to the
16 nature in which this form was completed I thought I was
17 signing a receipt as opposed to a consent to search simply due
18 to the fact that this was presented to me after the conclusion
19 of the search, not before.

20 Q. And, Mr. Rose, the -- but that is your signature ---

21 A. For ---

22 Q. (Indiscernible cross-talk.)

23 A. --- the third time it is, yes.

24 Q. Now, Mr. Rose, the, uh, document that was given to you,
25 uh, it has carbon copies on the back, doesn't it?

1 A. It does.

2 Q. Did you receive the pink copy?

3 A. I don't recall.

4 Q. Okay.

5 A. At the time that that document was completed, sir, uh,
6 there were some other issues that needed to be addressed. A
7 heated confrontation occurred between myself and Investigator
8 Gonzalez that continued on later into the afternoon and as far
9 as a pink copy of anything I have no recollection of that.

10 Q. Well, Mr. Rose, let me ask you this: Did anyone threaten
11 or coerce you to sign this document?

12 A. No.

13 Q. Did you sign it freely and voluntarily?

14 A. I did.

15 Q. And did you freely and voluntarily allow investigators
16 from the Greenville County Sheriff's Office to come to your
17 home and conduct a search?

18 A. I allowed them to come to my home and examine my garage
19 which had not been damaged by the fire and the gun safe which
20 Investigator Cannon specifically requested to come and look at
21 again.

22 Q. Did, uh, Investigator Gonzalez and Investigator Morgan go
23 into the rest of your home?

24 A. I don't know about Investigator Morgan but I do know that
25 Investigator Gonzalez and his dog Misty did and at that time I

1 realized that this entire thing was a pretext simply to
2 distract my attention and to let Investigator Gonzalez go in
3 the house. With everything that was going on Gonzalez comes
4 out with the dog with a pair a my wife's bedroom shoes waiving
5 it in the air like something that he's so proud of saying, The
6 dog hit on this, the dog hit on this. I got outta my car,
7 confronted Gonzalez and said, What are you doing in my home?
8 He did not answer that question. I said, Your search or
9 anything you wanted to do is confined to the garage, I made
10 that perfectly clear to Investigator Cannon, did Cannon not
11 tell you that? As far as I was concerned, sir, the search was
12 over. The crime scene had been released. I had no idea what
13 this thing was, I found out though it was a pretext.

14 Q. When Investigator Gonzalez brought his dog in, did you
15 tell him not to bring the dog into your house?

16 A. I never knew he was in the house 'til he came out.

17 Q. Did you at any time tell him to not go into your house?

18 A. I didn't have the chance, he'd already been in and come
19 out.

20 Q. On this form that you signed, does it say anywhere on
21 that form that they were only allowed to come into your
22 garage?

23 A. No.

24 Q. Does it say that, uh, investigators were not allowed to
25 go into the rest of your home?

CHARLES HOMER ROSE III - DIRECT EXAMINATION BY MR. UNDERWOOD

1 A. Sir, I made that patently clear to Investigator Cannon on
2 the phone, ---

3 Q. Alright, I ---

4 A. --- I gave him verbal permission, let me answer the
5 question.

6 Q. I I -- alright, I don't think you understood my question.
7 I just ---

8 A. I understood ---

9 Q. --- want ---

10 A. --- your your ---

11 Q. I'm just asking ---

12 A. --- question very well.

13 Q. --- does it say it on the form?

14 THE COURT: Just one second. He ask question, listen to
15 the question, answer his question, if you'd like to explain
16 it, you may do so, okay?

17 THE WITNESS: Yes, sir.

18 THE COURT: Okay.

19 BY MR. UNDERWOOD:

20 Q. And and I think I know where you're going, sir, and we'll
21 get to that. Right now I'm just asking is it on the form any
22 limitations to the search?

23 A. No.

24 Q. Alright. Now during your discussion with Investigator
25 Cannon, did you tell him to not let anyone else into your

CHARLES HOMER ROSE III - DIRECT EXAMINATION BY MR. UNDERWOOD

1 home?

2 A. At what point?

3 Q. At any point.

4 A. I don't recall. I was so concerned with the fact that
5 Gonzalez and the dog had been in my home that I just was not
6 concerned anybody else at that point in time.

7 Q. How many ways are there to get into your home from the
8 garage?

9 A. The only way that Gonzalez could have was right there
10 through the back door which we were.

11 Q. So so the only way he could have got in the house was
12 through the door where you were in the garage?

13 A. Exactly.

14 MR. UNDERWOOD: Thank Your Honor, no further questions at
15 this time.

16 THE COURT: Cross-examine.

17 MR. RIORDAN: No questions, thank Your Honor.

18 THE COURT: Thank you, sir, you may step down. Thank
19 you, Officer, you can step down.

20 THE WITNESS: Yes, sir. Thank you, Your Honor.

21 THE COURT: Yes, sir.

22 (Whereupon, the witness left the stand.)

23 THE COURT: Anymore witnesses?

24 MS. ABEE: No, Your Honor, that concludes this --
25 conclude the State's evidence in this matter.

MOTIONS AND MATTERS

1 THE COURT: Okay. Alright, as to the issue of
2 voluntariness of the consent forms, I'll be glad to listen to
3 Mr., uh, Riordan, as this is your motion to, uh, limit ---

4 MR. RIORDAN: Yes, Your Honor, in regard to totality of
5 circumstance, I'd like to call, uh, Ellie Hansen's father,
6 John Hansen to the stand.

7 THE COURT: I I I've heard you make reference to an
8 affidavit from her and I'm ---

9 MR. RIORDAN: Yes, ---

10 THE COURT: --- not ---

11 MR. RIORDAN: --- I'm sorry.

12 THE COURT: --- allow that, I'm not gonna allow that into
13 evidence so I'll make it a court exhibit but ---

14 MR. RIORDAN: Yeah, that's right ---

15 THE COURT: --- but it's not proper, it's testimonial,
16 it's not subject to cross-examination and I shall not allow
17 that into evidence ---

18 MR. RIORDAN: Alright.

19 THE COURT: --- but you can make it a court exhibit.
20 I'll be glad to let you come around, Mis ---

21 MR. RIORDAN: Mr. Mr. Hansen, come to the stand.

22 (Whereupon, the witness came forward.)

23 THE CLERK: Put your left hand on the Bible, raise your
24 right.

25 (Whereupon, the witness complied.)

MOTIONS AND MATTERS

1 JOHN CREIGHTON HANSEN, having
2 been first duly sworn, testified as follows:

3 (Affidavit of Ellie Hansen marked Court's Exhibit
4 No. 2 for identification.)

5 THE CLERK: Please have ---

6 THE COURT: Just a ---

7 THE CLERK: --- a seat.

8 THE COURT: --- second. The witnesses and this officer
9 here, this is limited to the voluntariness of this, any, I
10 just want the lawyers to have you look around, they have a
11 problem with anybody in the courtroom.

12 MS. ABEE: Your Honor, we would have an objection to
13 Mr. Rose being in the courtroom.

14 THE COURT: Your officers been in here too.

15 MS. ABEE: Um-hum. Your Honor, he's the lead
16 investigator on the case which ---

17 THE COURT: Oh, he is ---

18 MS. ABEE: --- I believe we established ---

19 THE COURT: --- okay.

20 MS. ABEE: --- in the beginning.

21 THE COURT: I -- you're right, okay.

22 MS. ABEE: Yes, sir.

23 THE COURT: Thank you. Excuse me.

24 MR. RIORDAN: Judge, ---

25 THE CLERK: Have a seat.

JOHN CREIGHTON HANSEN - DIRECT EXAMINATION BY MR. RIORDAN

1 THE COURT: Have a seat, please.

2 (Whereupon, the witness complied.)

3 THE CLERK: And will you state your full name for the
4 record.

5 THE WITNESS: John Creighton Hansen.

6 THE COURT: Let me amend what I've told you,
7 Mr. Riordan, ---

8 MR. RIORDAN: Yes.

9 THE COURT: --- I think I need to allow you the
10 opportunity to proffer what you intend to proffer.

11 MR. RIORDAN: Thank you.

12 THE COURT: Okay, sir. Go ahead.

13 DIRECT EXAMINATION BY MR. RIORDAN:

14 Q. Mr. Hansen, just, uh, would you explain, uh, your
15 relationship with Ellie Hansen.

16 A. I'm her father.

17 Q. Okay, and were you familiar with her relationship with
18 Paula, Homer Rose.

19 A. Um, pretty much. I had never been to the Ro -- uh, to
20 the, uh, Rose's home, I never gone out to eat with them or
21 anything, uh, but I knew that, you know, Ellie was, uh, you
22 know, doing, uh, errands and light housework and personal
23 assistant kinda work for Mrs. Rose.

24 Q. Okay, and had that been established for a month or two at
25 least prior to the, uh, home fire or do you know what period a

JOHN CREIGHTON HANSEN - DIRECT EXAMINATION BY MR. RIORDAN

1 time?

2 A. I mean, it was, I think it was, you know, quite a while
3 before that.

4 Q. Even more than that, correct?

5 A. I think prior.

6 Q. But about a month prior to fire did, uh, what did you
7 know about her obtainment of the apartment at Oak Ridge that
8 was the subject of this search?

9 A. Uh, I wrote a one-page small summary here of ---

10 Q. Well if if you need to refer to it but otherwise you just
11 provide the testimony. If that's what helps you, I don't
12 think anyone objects.

13 A. Uh, so can I, can I read this?

14 Q. Sure.

15 A. Your Honor?

16 THE COURT: Go ahead.

17 A. I wrote this to, I sent this to Jack last night around
18 eleven o'clock, "Hey, Jack, couldn't convince Ellie to come
19 down and have a panic attack; however, we went over the
20 timeline of people involved in her apartment meltdown event
21 from July 27, 2012 and here are our recollections: Summary.
22 Ellie went to her apartment on the afternoon of the 27th to
23 let her dog out, Paula had had a break-in and fire at her
24 ho -- at her house that morning. Ellie had misplaced her
25 apartment key so she waited on her neighbor's porch with her

JOHN CREIGHTON HANSEN - DIRECT EXAMINATION BY MR. RIORDAN

1 female neighbor after she called Paula and asked if she could
2 use Paula's key to the apartment. Paula and Homer had helped
3 Ellie lease the apartment, had -- and had furnished it and
4 Paula would come and hang out with Ellie's dog and cat when
5 Ellie was at work or out of town occasionally. For example, I
6 had taken Ellie to Israel for a few days in May or June of
7 2012 and then she stayed for a tour with her church when I
8 left Israel. Paula took care of her pets when Ellie was away.
9 Anyway, Paula and two policemen showed up at about the same
10 time. Officer Gonzalez told Ellie that he needed to search
11 her apartment because of the fire. Paula who had come to the
12 apartment earlier because her home was smoke damaged told him
13 he needed a warrant. Officer Gonzalez started yelling at
14 Ellie to let him in or else. Ellie spoke to you by phone and
15 you advised her that she didn't have to let the officers in
16 without a warrant. Officer Gonzalez was yelling at Ellie to
17 open the goddamn door or he would arrest her. She said she
18 just wanted to let her dog out to go potty but he said if she
19 did without letting him in she would be arrested. Ellie was
20 almost having a panic attack by this time. She was assaulted
21 by one of her mother's boyfriends when she was about
22 12-years-old who was babysitting Ellie and my youngest
23 daughter Ann who is crippled and blind. The man said he would
24 kill Annie if Ellie told on him, something Ellie didn't do
25 until she was 18-years-old. Ellie finally gave consent to

JOHN CREIGHTON HANSEN - DIRECT EXAMINATION BY MR. RIORDAN

1 Officer Gonzalez to enter the apartment since Ellie was
2 starting to have a panic attack. Ellie said that Officer
3 Gonzalez was extremely abusive with his yelling and swearing
4 but that the second policeman, Officer Cannon, was calm and
5 professional. Another Officer, Randy Morgan, showed up toward
6 the end of the intense scene, by this time Ellie's neighbor
7 was traumatized as well from Officer Gonzalez' conduct. Ellie
8 said Officer Morgan tried to defuse the ongoing situation and
9 was professional like Officer Cannon. Ellie called me as soon
10 as the situation was over and was extremely traumatized by her
11 treatment from Officer Gonzalez. She went to her friend Alex,
12 Alex is a female, for a night or two and not too long after
13 that moved to W -- the Wilmington, Delaware area to live with
14 my eldest daughter, Jill, always elways -- Ellie's best
15 friend. Jill is a graduate of the Vanderbilt University
16 School of Medicine and was working in her field in that area.
17 Paula took over the apartment lease when Ellie moved north,"
18 and one footnote is that, uh, Jill was married three weeks ago
19 in New York and Ellie's gonna be married, uh, June 13th in
20 Lancaster, Pennsylvania.

21 Q. How how old is Ellie now?

22 A. Uh, 24.

23 Q. Okay, 22 at the time of this incident? And did she share
24 with you that Paula and Homer actually stayed at the home that
25 night?

JOHN CREIGHTON HANSEN - DIRECT EXAMINATION BY MR. RIORDAN

1 A. Yeah, uh, yes.

2 Q. Okay, and stayed as you said, eventually even assumed the
3 lease and stayed there until the renovation was complete on
4 their home.

5 A. I, they took over the lease when she left, I don't know
6 how long they stayed there.

7 MR. RIORDAN: Nothin' further, Your Honor, thank you.

8 THE COURT: Cross-examination?

9 MS. ABEE: Uh, no, Your Honor.

10 THE COURT: Thank you, sir, you may step down. You wanna
11 make that a -- that letter or affidavit a ---

12 MR. RIORDAN: Yes, please make that ---

13 THE COURT: --- court exhibit?

14 MR. RIORDAN: --- proffer that is an exhibit, Judge.

15 THE WITNESS: This is just the letter, the a -- the
16 affidavit is ---

17 (Whereupon, a discussion was held off the record.)

18 THE COURT: Thank you, sir.

19 THE WITNESS: Thank you, Your Honor.

20 (Whereupon, the witness left the stand.)

21 (Affidavit of John Hansen marked Court's Exhibit No. 3
22 for identification.)

23 MR. RIORDAN: Mike Mike Courry is what . . .

24 THE CLERK: You please come forward.

25 (Whereupon, the witness came forward.)

MICHAEL COURRY - DIRECT EXAMINATION BY MR. RIORDAN

1 THE CLERK: Place your left hand on the Bible, raise your
2 right ---

3 THE WITNESS: Okay.

4 MICHAEL COURRY, having been
5 first duly sworn, testified as follows:

6 THE CLERK: Please have a seat. Will you state your full
7 name for the record.

8 THE WITNESS: Michael Courry.

9 DIRECT EXAMINATION BY MR. RIORDAN:

10 Q. Mr. Courry, uh, tell the Court what you do.

11 A. I'm a CPA in Simpsonville.

12 Q. You and your wife work in that business?

13 A. We do.

14 Q. Alright, and you have children?

15 A. Yes, we do.

16 Q. How many?

17 A. Three.

18 Q. And who -- what are they, what are their names?

19 A. Justin, my oldest son, uh, twin daughters Erin and
20 Alexandra.

21 Q. Okay. Which which daughter was friends, is it Alex ---

22 A. Alex.

23 Q. --- that was friends with Ellie?

24 A. Yes.

25 Q. Alright, and because a that friendship would Ellie stay

MICHAEL COURRY - DIRECT EXAMINATION BY MR. RIORDAN

1 at your home from time to time?

2 A. She would.

3 Q. Did you become familiar with her relationship with Paula
4 and Homer Rose?

5 A. Somewhat, yes.

6 Q. Could you tell the Court about your familiarity with, uh,
7 Paula's, uh, house sitting and/or pet sitting for Ellie at the
8 apartment.

9 A. I know they have the arrangement they kinda took care of
10 each other's pets because they were very attached to those
11 pets, that's, and that's my daughter was the same way.

12 Q. And you knew that Paula had actually, Paula and Homer had
13 actually helped Ellie even obtain the apartment, correct?

14 A. Think so, yes.

15 Q. Paula had her own key?

16 A. Probly so, yes.

17 Q. When when Ellie was away or staying with you all, Paula
18 would often stay there, watch the pets and the apartment?

19 A. Yes.

20 Q. Alright, and you remember specifically the night of the
21 fire or the day of the fire at the Rose home?

22 A. Definitely, it was on the Channel 4 news, ---

23 Q. Okay.

24 A. --- all the way around.

25 Q. And that night, again, tell the Court, I mean, that night

MICHAEL COURRY - DIRECT EXAMINATION BY MR. RIORDAN

1 did Ellie stay at your home?

2 A. Definitely, yes.

3 Q. Why was that?

4 A. Uh, she said, uh, Paula and, uh, Homer were gonna be
5 spending the night her apartment.

6 Q. They were spendin' the night at the Oak Ridge apartment.

7 A. Yes, as I understand it.

8 Q. Alright, and is it your understanding -- fact, Ellie
9 stayed with ya not only that night but the successive nights
10 until she moved outta state, ---

11 A. Well ---

12 Q. --- correct?

13 A. --- she just, uh, it was a few nights, yes, she didn't
14 stay there long.

15 Q. Okay, and the Rose's stayed at the apartment at 150 Oak
16 Ridge, your -- you -- did you lose track of that after Ellie
17 was gone?

18 A. We go -- oh, yeah, definitely.

19 Q. Okay. To your knowledge do -- to your knowledge did they
20 ever move outta that apartment until home renovations were
21 completed?

22 A. I would not know that.

23 Q. Okay, thank you.

24 THE COURT: Cross-examination?

25 MR. UNDERWOOD: No questions, Your Honor.

MOTIONS AND MATTERS

1 THE COURT: Oh, thank you, this -- may this witness be
2 excused?

3 MR. RIORDAN: Yes, Your Honor.

4 THE COURT: Thank you, sir.

5 (Whereupon, the witness left the stand.)

6 MR. RIORDAN: Your Honor, in that regard per our earlier
7 discussions may I also pass up the motion in regard to Oak
8 Ridge, uh, and with Riley Smith?

9 THE COURT: I'm sorry, with regard to what, please?

10 MR. RIORDAN: Just a motion, we'll call call it Oak Ridge
11 the apartment.

12 THE COURT: Sure. You're you're talkin' about Ellie
13 Hansen's apartment?

14 MR. RIORDAN: Like to call it Oak Ridge since Paula
15 helped, uh, obtain it, had a key, Judge.

16 THE COURT: For my edification you you have a motion
17 limine directed to defendant's home and Ellie Hansen's
18 apartment which you're referring to as Oak Wood, is that
19 correct?

20 MR. RIORDAN: Yes, Oak Ridge is ---

21 THE COURT: Oak Ridge.

22 MR. RIORDAN: --- the apartment and I have, uh, one
23 called Riley Smith here somewhere, uh, ---

24 (Whereupon, a discussion was held off the record.)

25 MR. RIORDAN: I can add it in too since we did both of

MOTIONS AND MATTERS

1 those together. Uh, here we go.

2 MR. RIORDAN: Thank Your Honor.

3 (Whereupon, counsel handed the documents to the Court.)

4 THE COURT: Thank you. Okay, sir.

5 THE COURT: Anything further from the defense,

6 Mr. uh, Riordan?

7 MR. RIORDAN: I'm sorry, Your Honor, I was distracted,
8 sorry.

9 THE COURT: Anything further from the defense?

10 MR. RIORDAN: Call Paula Rose.

11 (Whereupon, the defendant came forward.)

12 THE COURT: Just for the record, uh, what's your position
13 with regard to the testimony elicited at this pretrial motion
14 to, uh, limit admission of certain evidence as to use of it
15 subsequently at trial, Ms. Abee?

16 MS. ABEE: Your Honor, I I would believe if Ms. Rose
17 testified later at trial I'd be able to use this testimony for
18 impeachment purposes if something is different but not a
19 hundred percent sure what's being asked.

20 THE COURT: Do you -- what's your feeling with regard to
21 that, Mr. Riordan?

22 MR. RIORDAN: Wouldn't disagree.

23 THE COURT: Do you think you -- do you -- would you
24 request that she receive a Fifth Amendment instruction at this
25 point ---

MOTIONS AND MATTERS

1 MR. RIORDAN: Sure.

2 THE COURT: --- just to be on the safe side?

3 MR. RIORDAN: Yes.

4 THE COURT: Alright, go ahead. You been sworn in?

5 THE DEFENDANT: No.

6 THE COURT: Okay, raise your right hand.

7 PAULA ROSE, having been first duly
8 sworn, testified as follows:

9 THE CLERK: Um, please have a ---

10 THE COURT: And Ms. -- I am so sorry.

11 THE CLERK: No, it's ---

12 THE COURT: Ms. Rose, have your rights under the Fifth
13 Amendment to the United States Constitution been explained to
14 you by your attorney?

15 THE DEFENDANT: I'm sur -- sure at sometime but if you
16 would like to ---

17 THE COURT: Oh, I'm ---

18 THE DEFENDANT: --- explain it again.

19 THE COURT: --- going to. I just wanna make sure you do.
20 You may come around and be ---

21 THE DEFENDANT: Okay.

22 THE COURT: --- seated. Under the Fifth Amendment to the
23 United States Constitution says that no person can be
24 compelled to testify or give evidence in any proceeding,
25 criminal proceeding against him or herself, I'm paraphrasin'

MOTIONS AND MATTERS

1 but that's what it means, do you understand that?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: What that simply means in layman's terms is
4 that no one, including me, Mr. Riordan, the State, anyone can
5 force you to take the stand and testify, you understand?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: That means you have the right to insist on
8 protections afforded to you under Fifth Amendment and not
9 testify, do you understand that?

10 THE DEFENDANT: I do, sir.

11 THE COURT: Now if you were not to testify at trial and
12 when I charge the jury on the law I will instruct them that
13 the jury cannot, shall not consider your failure to testify
14 whatsoever because the burden of proof remains on the State of
15 South Carolina prove each and every element of the charge or
16 charges against you by proof beyond a reasonable doubt, do you
17 understand that?

18 THE WITNESS: Yes, sir.

19 THE COURT: And that burden never shifts from the State
20 to you, do you understand?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: So if you decide to testify on the other hand
23 including in this hearing, it may be that what you testify to
24 will subject you to, uh, cross-examination by the the State of
25 South Carolina if you take the stand at a subsequent time in

MOTIONS AND MATTERS

1 this trial, do you understand that?

2 THE DEFENDANT: I do, sir.

3 THE COURT: What that means is they can use your
4 testimony right now against you if you choose to testify later
5 on in this matter, do you understand?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Also, just like anyone else you're subject to
8 regular, uh, direct examination by your attorney, down the
9 road you'd be subject to cross-examination, if you have
10 convictions that involve imprisonment for more than a year or
11 that involve your dishonesty and I determine that the, uh,
12 probative value of those convictions would outweigh the
13 prejudicial impact on you then the State will be allowed to
14 cross-examine you on those as well, do you understand that?

15 THE DEFENDANT: Sir, I've never been convicted of
16 anything.

17 THE COURT: I I'm not asking if you have, I'm asking if
18 you understand that rule.

19 THE DEFENDANT: If -- not really. I'm ---

20 THE COURT: Okay, ---

21 THE DEFENDANT: --- not sure what you're saying.

22 THE COURT: --- if you've been convicted, you said you
23 never been convicted of anything, ---

24 THE DEFENDANT: No.

25 THE COURT: --- but if you had been ---

MOTIONS AND MATTERS

1 THE DEFENDANT: Oh.

2 THE COURT: --- crime well charged more imprisonment for
3 more than a year or the State has a charge against you that
4 you've been convicted of that involves misstatement or
5 dishonesty and I find that the probative value of those guilty
6 pleas or findings of guilt by a jury outweigh the probe -- the
7 prejudice to you, the State's gonna be allowed to
8 cross-examine you on this, do you understand?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Okay. Now do you have any question
11 whatsoever of your Fifth Amendment rights as I've gone over
12 them with you?

13 THE DEFENDANT: No, sir.

14 THE COURT: Do you have any questions of me?

15 THE DEFENDANT: No, sir.

16 THE COURT: Do you have any questions of Mr. Riordan?

17 THE DEFENDANT: No, sir.

18 THE COURT: Do you understand that if you choose to
19 exercise your rights you have a right to do that but in order
20 to waive your rights you must knowingly, intelligently and
21 voluntarily wa -- waive the protections given to you under the
22 Fifth Amendment, do you understand that?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: And again, since we're in a pretrial setting
25 that should you take the stand later on in this trial and if

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1 it's relevant and it is not overly prejudicial such that it be
2 inadmissible, whatever you testify here to may be used to
3 cross-examine you at a subsequent time in this trial, do you
4 understand that?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Do you wish to go forward?

7 THE DEFENDANT: Yes, sir, I do.

8 THE COURT: Do do you wish to go forward freely and
9 voluntarily knowing your rights under the Fifth Amendment?

10 THE DEFENDANT: Yes, sir, I do.

11 THE COURT: Very good. Any follow-up questions from
12 Mr. Riordan?

13 MR. RIORDAN: Not regarding instruction, Your Honor.

14 THE COURT: Very good. Go ahead please, sir.

15 DIRECT EXAMINATION BY MR. RIORDAN:

16 Q. Paula, would you just tell the Court what your
17 relationship was with Ellie Hansen.

18 A. I hired Ellie, uh, to help me around my house, uh,
19 probably shortly after Homer and I got married. We got
20 married in February of 2010 and I hired her shortly
21 thereafter, uh, 'cause I was having to be out of the house a
22 lot and we have a lot of animals and she was hired to help me
23 take care of those animals and to, I was remodeling our house
24 and we had a lotta workers in and outta the house so she
25 helped me, you know, maintain the safety of the home, that

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1 they were comin' in and out, lettin' them in and out and other
2 things. She did some light cleaning and run errands for us
3 and sometimes took care of us when we were sick 'cause we
4 don't have any family around so . . .

5 Q. Okay. Did Ellie have pets as well?

6 A. She did, she had a dog and a cat.

7 Q. And at some point prior to the fire on July 27th did you
8 assist in, uh, helping Ellie obtain access to use the
9 apartment at Oak Ridge?

10 A. I did. She, uh, actually had -- was living with, uh, a
11 girl at the time that, uh, was not working out, I, and I had
12 a -- initially we had helped her get two apartments, uh, on
13 her own before this time she moved in with a girl that she
14 went to church with and it wasn't working out so in June of
15 2012, uh, we started lookin' for her apartment and found one
16 close nearby where where we are and it's also close to where
17 her dad lived 'cause he only lives about two miles from us
18 and, um, first thing I had to do was help her, uh, qualify
19 because she didn't have enough income to actually qualify so I
20 actually obtained financial documents showing what my net net
21 worth was, uh, so that she would be able to qualify and I
22 never actually signed for her on the lease because when it
23 came to that the lady didn't ask me at that point to sign, uh,
24 but I was, you know . . .

25 Q. You had been the one that needed to assist to get her

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1 qualified to even live in the apartment.

2 A. I I was and we -- I actually paid, uh, I think a hundred
3 dollar deposit for her and, uh, I received a key to the house
4 and or key to the apartment and a key to the mailbox.

5 Q. Okay. And did you utilize those keys to gain access to
6 the the apartment and the mailbox?

7 A. I did many times.

8 Q. Okay. And prior to July 27th 2012 did you stay at the
9 apartment?

10 A. I did. Uh, I know that when she was in Israel I would go
11 over there and, you know, stay and take care of her animals
12 and, uh, I don't know if she was in that apartment though,
13 maybe she might not have been in apartment but I did go and
14 stay in that apartment when she was at work. We had, uh,
15 Homer helped her obtain a job at Sports Club and she worked at
16 Sports Club so a lotta times she'd be workin' and her animals
17 needed to be let out, her dog did and, uh, her cat might need
18 to be fed. Sometimes Ellie would take off, uh, on a flight
19 somewhere and, you know, go and travel because she had, uh,
20 her dad had free air fare so she could travel very easily and
21 I was in and outta the apartment all the time.

22 Q. Okay. Yeah, so even before Oak Ridge at her other
23 apartments you had, you exercised the same rights I guess in
24 regard to assisting her and coming and going at the
25 apartment?

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1 A. I did and in fact I think the, uh, maybe not the, I'm I'm
2 not sure of the first apartment I had to sign for her but I
3 know the second apartment she got. Uh, the first one she was
4 only in for like a week 'cause it didn't work out with a girl
5 she was living with and then we, she moved in with me for
6 thirty days and we got her a place on her own and that's when
7 she first finally moved out on her own living on her own, uh,
8 and I know I signed for that apartment, you know, my name was
9 on the lease of that one.

10 Q. The morning of July 27th 2012 at some point did, uh, the
11 officer speak with you about gathering items from your home
12 and leaving so you could get ready, take a shower and then
13 meet them out at, uh, the northern where wherever the office
14 was for Investigator Morgan?

15 A. Yeah, I I -- Morgan is who I talked to about it. Uh, we
16 were already going back in our house because we had to go in
17 and look for the one cat that didn't get found, we g -- had to
18 go back in and actually crawl around and I located the cat
19 finally, uh, but we we did ask permission, you know, to go in
20 'cause we were gonna be gettin' items this time and, uh, we
21 packed up bags and, uh, took toiletries and medicines and
22 things that we were gonna need for, you know, at least a
23 couple of days. We knew we were gonna at least spend the
24 night there because ---

25 Q. Where?

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1 A. At Ellie's apartment at Oak Ridge.

2 Q. Okay. And wh -- and and that was -- was that a
3 discussion that was even had with the investigators?

4 A. When I went to talk with Morgan and give him my
5 statement, uh, he asked me, you know, where are you gonna stay
6 and what are ya'll gonna do and I told him that Ellie was
7 gonna stay with a friend and we were gonna, you know, be at
8 her apartment for the time being, you know, until we could
9 figure something out.

10 Q. And even at that time all of your things that you had
11 gathered were at the Oak Ridge Apartment, correct, ---

12 A. Yes.

13 Q. --- for which you had a key?

14 A. Yes.

15 Q. Alright. And when you left your meeting with
16 Investigator Morgan, what was told or what was advised to you
17 as in regard to any subsequent meetings that you were
18 scheduled to have with any investigator?

19 A. When I was leaving his office, I I finished givin' him my
20 statement and he got a phone call and said, Hold on a minute.
21 He took the phone call, came back and said, That was the arson
22 investigator and he wants to meet with you Monday regarding,
23 you know, this incident will that be okay? Uh, we had already
24 discussed that I was going to be going to the doctor and he
25 had even mentioned about how bad I sound -- sounded, my lungs

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1 and my sinuses and all, uh, I was coughing constantly and I I
2 hadn't already went to the doctor which I probly should have
3 but I was going home to go to the doctor and, you know, he
4 knew that and knew that, he told me that we were gonna meet
5 Monday.

6 Q. Okay, and there after you left his office what did you do
7 the the balance of that afternoon?

8 A. I immediately had to, uh, leave his office, Ellie was
9 driving me. Uh, we had to leave his office and get to Top Dog
10 who had, uh, some of our animals. They'd called and said the
11 dogs were not well and they didn't wanna keep 'em because they
12 were afraid they were gonna die, they wanted 'em to go to the
13 vet, go go to the doctor and so we had to rush to get the dogs
14 before they closed and get 'em over to the vet, uh, and that's
15 what we did.

16 Q. Okay. And after that what what did you do?

17 A. We ---

18 Q. That brie -- briefly who who was traveling, who who's
19 driving who at this point?

20 A. Ellie's driving me.

21 Q. Okay. Alright, where'd you go next?

22 A. Uh, we went home for, Ellie drove me home at that
23 point.

24 Q. Okay. Go ahead and advise what happened when you arrived
25 home.

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1 A. We pulled up at my residence and first thing I noticed
2 was my husband sitting in his patrol car on his cell phone
3 and, uh, I saw who I now know as Cannon and Gonzalez and I had
4 met them earlier in the day but had not been real involved
5 with them during the day, I'd mostly been involved with Morgan
6 that that morning. Uh, Cannon and Gonzalez are makin' a
7 beeline straight to me where I'm getting out of the passenger
8 side of Ellie's vehicle, uh, and Gonzalez, uh, starts to I
9 guess in a way, in a loud tone start askin' me questions.

10 Q. What did he ask?

11 A. Well first I ask him, you know, I thought I was meeting
12 ya'll Monday what's what are we doing, I'm going to the doctor
13 and he said, No, you're not going to the doctor right now, you
14 got some questions to answer, and I don't know that I even
15 said anything back to him but I remember the first thing that
16 really popped out his mouth next was, I know how much money
17 your husband makes, I know how much money a trooper makes and
18 I'm lookin' around here and it's not makin' sense, I think
19 you're livin' above your means so you need to tell me what you
20 do for a living, how do ya'll have all this, how -- well
21 where's the money comin' from?

22 Q. Okay. Wha'd ya say to him?

23 A. I just told him that, uh, I had, for the last two years I
24 had been working on remodeling my house is what I did, I
25 didn't, you know, work outside the house and, uh, at that

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1 point he mentioned to me, he quo -- he said, Well what about a
2 book? Well, uh, ---

3 Q. Wha'd ya say?

4 A. Uh, well caught me off guard because I knew I had told
5 Morgan about it but I didn't know how Gonzalez knew and he
6 sort of said it in a really, he by this time hi -- his tone
7 had elevated and the conversation was getting heated, uh, and
8 when he asked me about, What about, what about a book, I said,
9 Well, I have, I am writing a book or or I have wrote a book
10 and, you know, we're scheduling it to be released, uh, it's in
11 editing process, why? And he said, What's the name of your
12 book, and I told him "Good cop, bad cop," and it does have
13 more that goes with that but before I could get to that he
14 said, What do you mean "Good cop, bad cop," that's so
15 disrespectful and he turned around and he pointed at Homer and
16 he said, Your husband's a cop, that is just disrespectful and
17 I, there were cuss words used but I don't remember ever
18 specifically but this was, had become a heated argument
19 between him and I raised my level of my tone because I raised
20 it to him because I felt like I was defending myself, I felt
21 like I was under attack at this point.

22 Q. Okay, continue.

23 A. When he says 'bout Homer bein' a cop and that was
24 disrespectful, I said, Well didn't you hear me, it says "Good
25 cop" and Homer's the good cop and yeah, there's a bad cop but

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1 I said, You don't wanna go all into that. I said, You know,
2 somethin' happened to me years, a few years back, uh, in
3 Oconee County and I've already talked to Morgan about it and
4 there were bad cops and then I told him I said, You know,
5 we, and he just started screaming at me, you know, it was back
6 and forth between me and him just banter and, uh, he he just
7 became irate and every time I tried to answer somethin' from
8 him he wouldn't let me answer and initially Cannon was with
9 Gonzalez but Morgan came up during this conversation, he drove
10 up behind me and Ellie, a few minutes behind me and Ellie, and
11 he had come up and had engaged or not engaged but was
12 listening to the conversation that we were having or the
13 argument really.

14 Q. Okay. And did it continue? Did it ---

15 A. Uh, just back and forth for a little bit, finally Cannon
16 and Morgan got Gonzalez and said, Hey, let's go into the,
17 let's go walk over here and talk ---

18 Q. Alright.

19 A. --- and that's how that conversation ended.

20 Q. Was there a time though then they came back and wanted
21 to, wanted to know what happened to your clothes?

22 A. Um, a a good good long time after that, ---

23 Q. Okay, alright.

24 A. --- before that they wanted to sniff my shoes.

25 Q. Okay. Let's just go straight there 'cause we're here on

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1 the mainly talkin' about the, uh, consent over at Oak Ridge.

2 At some point they ask about your clothing.

3 A. Uh, they asked me about the clothing after they found the
4 shoes and Homer and Gonzalez had got into it about Gonzalez,
5 sneaking into the house with the dog is what my husband had
6 contended ---

7 Q. Okay, let's do, ---

8 A. -- and ---

9 Q. --- let's do go back then, I'm sorry. Let's go back and
10 and and, uh, speak to that. What did you see in regard to
11 Gonzalez and a dog Misty?

12 A. Uh, when I got there the dog was not out. I didn't see
13 the dog for during the time of our argument, I didn't see that
14 between me and Gonzalez. Uh, after the three of them pull
15 away and have their little conversation after the heated
16 argument with Gonzalez they pull away Cannon then goes to
17 Homer about the consent and Cannon and Homer are working on
18 the garage, the consent and doing, telling 'em all that he's
19 gonna do there and during that time, uh, that that Cannon's
20 explained what he's gonna take and everything then Morgan and
21 Gonzalez then tell me they want me to take my shoes off and
22 let the dog smell my shoes so Gonzalez goes and gets the dog
23 out at that time and that's when the dog gets out to smell my
24 shoes and some shoes that they had found in the garage that
25 they let the dog smell.

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1 Q. Okay. What happened ne ---

2 A. Uh, after Gonzalez gets the dog out at that point my
3 husband has already done the consent and and Cannon's now
4 getting the items that he's gonna seize, he's workin' in the
5 garage and my husband's now back on the phone in his car and
6 after they get through with the dog smellin' my shoes I go
7 over to my husband and I'm talkin' to him and I don't see
8 where the dog is at, you know, at this point. I know he's got
9 the dog out but I tell Homer that, you know, the dog smelled
10 my shoes and then we become aware that the dog's out and
11 Gonzalez has now disappeared and that's when we go and
12 discover that he's in the house.

13 Q. In in regard to the signing of the consent, was it clear
14 to you that Investigator Cannon had already identified the
15 four items that he was gonna take before ---

16 A. Yes.

17 Q. --- execution of the consent to search?

18 A. Yes, it was.

19 Q. Okay. Alright, tell me about your observations once he
20 tried to take the dog into, in the home.

21 A. Well we didn't see him try to take it in.

22 Q. Okay.

23 A. We saw him once I went over to the car to speak with
24 Homer and gettin' him off the phone and I explained to him
25 that this, he didn't even see, Homer did not seen the heated

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1 argument that had started when I drove up because he went in
2 the house where SERVPRO was working and was dealing with, I
3 saw the guy come out and get Homer when we were driving up,
4 Gonzalez and Cannon's walkin' to us, he goes in the house so
5 he doesn't even see that, so I go over, uh, to get Homer, you
6 know, off the phone and say, I'm not feeling good about this,
7 I'm feeling attacked and I feel like I'm going back to what
8 happened to me in Oconee County and they've got this dog out
9 now and and instead of really watchin' what the dog was doin',
10 they were really watchin' my reactions and at this point, you
11 know, we had had the heated argument but I I was concerned and
12 I was watching 'em and I -- once we got Homer off the phone
13 and I'm tellin' him this we say where's Gonzalez and where's
14 the dog and we go to find out and he's gone into the house and
15 he comes out, uh, and says, "Whose shoes are these in here?
16 Whose whose suede mocs are these," and I said, "What side of
17 the bed," and he said, "The left side," and I walked in and I
18 said, "Those are my, you know, those are all my shoes right
19 there."

20 Q. Okay.

21 A. Homer, uh, is -- at this time I'm dealing with Cannon and
22 Gonzalez and Homer's dealing with Morgan I believe and Homer's
23 become irate, upset, Morgan's tryin' to say, "Calm down,
24 nothin' wrong, we're just doin' our jobs," and, uh, this is
25 when instead of the the argument starting at Ellie's house, it

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1 starts at our house, you know, from the minute I drive up and
2 uh, you know, Homer saying, "I I didn't give you, I didn't
3 give you the right to go into my house, it's they've been
4 working in here, you know, it's a mess, I didn't -- you you
5 didn't have the right to do that, you didn't ask."

6 Q. Okay, yeah, and SERVPRO had been there that whole
7 afternoon since they released the scene, correct?

8 A. Yes, they have.

9 Q. And they continued to work during the time even these
10 investigators arrived in the afternoon.

11 A. And they did.

12 Q. Okay. Alright, and and and and real quick and you drove
13 back up and you had left Ran, uh, Randy Morgan the
14 investigator, correct?

15 A. I did.

16 Q. And go ahead, I mean, since you bring that up the asking
17 about the book, what had you and Mr. Morgan discussed at his
18 office in regard to your criminal history?

19 A. Well, it, somehow it came up -- well no it di -- it came
20 up because he wanted to know who -- when we first got there
21 first thing he said, it was me and Homer and Ellie there when
22 we first got there 'cause it -- Homer led us, led us there
23 'cause we didn't know where his office was and, uh, he sat us
24 down and the first thing he wanted to know was about a red
25 truck, that if we knew anybody with a red truck 'cause so --

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1 one -- someone, a neighbor had spotted one out in front,
2 across from our house that morning and the first thing, you
3 know, we we have a guy that does our yard work that drives a
4 red pickup truck so, uh, he wanted to know who he was and
5 could I find out where he'd been, all that, uh, then he wanted
6 to know, uh, who we thought might have done this, you know,
7 and and Homer had his things and of course mine went back to
8 what had happened to me month Oconee County. Uh, at about
9 this time Homer got a call from SERVPRO, that's when they
10 said, "We're at your house," so Homer had to leave and go let
11 them in and it was just me and Ellie there and I went ahead to
12 tell him, you know, the story of that I had been in an abusive
13 relationship with my husband, uh, I was and eventually it was
14 a 17-year marriage but the first 7 years were abusive and then
15 I -- we got better and then right at the end it got really bad
16 and it turned from abuse on me to abuse on me and my son who
17 had got to be a teenager and was standin' up for me and my son
18 left, uh, in 2003 because of the abuse and and my husband
19 pinned me up against a wall and threatened me so I called the
20 police. His brother who was a, uh, investigator for Oconee
21 County Sheriff's Office, he's, uh, I think a homicide
22 investigator at this time but he's pretty much been an
23 investigator over every division, and, uh, he called the
24 police that night and said, Don't arrest my brother, so I've
25 got a CDV complaint on my husband and so I file a complaint on

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1 his brother saying he shouldn't get involved and he had got
2 involved before and I had complained and complained and
3 complained and so this time I I didn't just file it with the
4 sheriff's office, I went ahead and filed it with Attorney
5 General's office, uh, or I started talkin' to Attorney
6 General's office, I didn't actually file 'til my first arrest
7 I filed the actual initial written complaint but, uh, after
8 all of this happened my husband started calling me, tellin'
9 me, "If you don't drop this, somethin' bad's gonna happen to
10 you," uh, and then I had another conversation in person with
11 him who -- which he said; uh, "You know you've pushed it too
12 far, you've messed with the wrong people so you got two
13 choices: you can die or go to prison," and I had no clue what
14 he meant. Uh, I went ahead and I filed for divorce, within
15 just a few days of my filing, uh, they called me from the --
16 well actually they showed up at my door one morning, uh, said,
17 "Mike McGowan with the sheriff's office wants you to call,
18 he's needs to talk to you about your CDV complaint," so I
19 thought great, let me go down and talk to him, maybe they're
20 gonna do somethin' this time and they, uh, get me down there,
21 throw me in a room with a man I don't know from SLED who
22 starts, uh, interrogating me, uh, gets me to give a s -- a
23 initial statement about, uh, the DMV had been, he said some
24 money had been taken and I used to work at the DMV, I actually
25 used to be assistant manager there and, uh, had keys there

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1 and, uh, I don't think actually -- well he did tell me that
2 they were talkin' to all the people who had, who had keys, who
3 had prior had keys so, uh, he knew I'd had keys there and ,
4 uh, it goes from there to an interview room where I did a
5 polygraph which I was glad to do and I done polygraphs before
6 where I'd worked in retail and never had a problem takin' a
7 polygraph. Took this polygraph, it was like none I'd ever
8 seen, not -- the computer wasn't, I wasn't hooked up, blood
9 pressure cuff didn't work, had a problem with 'em, said,
10 "Sumtin's not right here, did you're not, you're not bein'
11 honest with me," and he says, You've, pretty much you failed,
12 but they say whatever, you're being disingenuous or whatever
13 and, you know, I went into some questions with him, goes from
14 that to, uh, Billy Looper who's the guy with SLED coming in
15 and, uh, this ends up being a 6-hour ordeal through Billy
16 Looper questioning me, very physically being and screaming and
17 then we ha -- go out and have another investigator come in and
18 talk to me about another crime. Uh, they talked to me about
19 bank robbery, showed me a picture of a bank robber which I
20 didn't know was a bank robber at the time but, uh, pretty much
21 then Billy Looper comes back in and tells me, "Look, we've got
22 a trooper here that's says he saw your car at the DMV that
23 night, he saw a guy with you, uh, you've told us your son's
24 with you all the time, you told us . . .", he had an initial
25 date that he, uh, said, asked me about, this this certain date

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1 that this or who it happened and I told him, you know, I
2 didn't know but I knew my mom had been in the hospital during
3 that time and possibly I went there and he was, you know, "Oh,
4 yeah, you went, we've got your video, we know you went," so
5 anyways he he says, uh, "What you can do you've got two
6 choices: you can either admit to doin' this or we're gonna
7 frame you or we're gonna say you and your son did it," I
8 wouldn't say "frame", he didn't say frame but it's what it
9 meant to me. Uh, my son was at this time 17-years-old and he
10 he explained to me what would happen to my son, that he would
11 go to prison and that what they like little boys in prison,
12 pretty little boys in prison and, you know, that he would be
13 raped and used and abused and that he knew I didn't want that
14 for my son so I just needed to sign somethin' that I did it
15 and all this will go away, all this other stuff will go away
16 and I started fillin' out, uh, somethin' at that time, it been
17 six hours, my son had been threatened, I thought nobody's
18 gonna believe this once this gets out, this man is crazy. I
19 couldn't leave, they had my car keys, they had my purse. I
20 was kept there for six hours without food or drink, I couldn't
21 go to the bathroom, they had somebody waiting outside the
22 door, I couldn't leave. I, even if I did get up and leave, I
23 couldn't, I had no way to leave, I was afraid.
24 Q. Well during during that session at that time did they ask
25 for a consent to your home, consent to search form?

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1 A. Detective Jerry Moss who I knew who worked at the
2 sheriff's office came in and told me, uh, that my husband had
3 been there a lot lately, he didn't know what was goin' on but
4 I needed to sign this consent 'cause if I didn't sign it they
5 were just gonna get a a warrant and I told him, "Yeah, go
6 ahead because there's nothin' there, you know, I don't have
7 anything to hide."

8 Q. And you did give that at that time.

9 A. I did.

10 Q. Alright. Did your mother go when they searched the
11 home?

12 A. My mother, my stepdad, my son were there.

13 Q. Did she -- did your mother get a receipt from the I guess
14 the consent form itself showing all of the items taken?

15 A. She did.

16 Q. Was that just some financial records?

17 A. Twenty-six 1099 forms.

18 Q. Okay. And eventually they did charge you with those
19 cases, right?

20 A. Yes, they did.

21 Q. Alright, and guess when that case went to trial in
22 discovery did those financial forms ever show up? We ever see
23 'em?

24 A. No, not 'til about six years later.

25 Q. Okay. And then later they charged you with another

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1 burglary second grand larceny at the DMV, correct?

2 A. They did. They charged me with a burglary that one of
3 the detectives came in and talked to me about while Billy
4 Looper would go out. There was one that happened in 1999 at
5 the DMV that I had no knowledge of, uh, about some
6 equipment ---

7 (Indiscernible cross-talk.)

8 Q. And in that, and in that case the SLED report that Billy
9 Looper drafted did it state that in the search incident to
10 your home that was executed back when you gave consent that
11 some keys were found that fit all the locks at the DMV?

12 A. It did.

13 Q. Okay. And eventually that that the first case was taken
14 to trial, correct?

15 A. It was.

16 Q. Alright. And Linda Land's the DMV owner or or or manager
17 of the DMV testified, correct?

18 A. She did.

19 Q. And she testified, did she not, that at the time you and
20 another employee left, they changed the locks at the DMV,
21 correct?

22 A. They did, ---

23 Q. Alright.

24 A. --- she she testified to that.

25 Q. And then after the break-in that you were initially

PAULA ROSE - DIRECT EXAMINATION BY MR. RIORDAN

1 charged with in March of 2003 she said they changed the locks
2 again, correct?

3 A. She did.

4 Q. Alright. And so Billy Looper you gave a consent to
5 search for your home and the receipt that your mother kept
6 only showed financial records, correct?

7 A. Yes, sir.

8 Q. And then Billy Looper created a report. Billy Looper who
9 was with SLED at the time of the trial created a report that
10 said keys were found that fit all the locks, correct?

11 A. He did, correct.

12 Q. And and keys never existed durin' discovery, correct?

13 A. No.

14 Q. Did you talk, on the day of of the day of the fire, did
15 you speak with Randy Morgan about the other charges, a a
16 charge for i -- for insurance fraud?

17 A. I don't, I don't know that I went past, uh, what I've
18 went past here because I I do get deeply involved in it 'cause
19 I'm very passionate, it involved my minor child who I lost
20 custody of during all of this because they were arresting me
21 so much so I don't know that I went into much more than than
22 that 'cause I don't know that I could but I did tell him that
23 I had been, I had numerous arrests, that we were followed and
24 harassed and threatened, I mean, we had a constant police
25 unmarked car that followed us everywhere we went and, uh, you

PAULA ROSE - DIRECT EXAMINATION BY MR. RIORDAN

1 know, I I told him all that but I I told him that, you know, I
2 fought everything and that not only was I found not guilty but
3 that the police officers, the the one SLED agent was found
4 lying on the stand during my trial and it was very apparent.
5 The other trial I had very clear we had 911 tapes just
6 disputing what they were saying completely, com ---

7 Q. That was the harassment case prosecuted John Covington,
8 he was the prime witness for the State?

9 A. He was.

10 Q. It was actually prosecuted by prosecutor David Wagner
11 from the solicitor's office, correct?

12 A. Yes, it was.

13 Q. Alright, and that case resulted not guilty as well.

14 A. It did.

15 Q. And you spoke with, and you spoke with Morgan about those
16 at the meeting, correct?

17 A. I don't know if I specifically ---

18 Q. Okay.

19 A. --- told him each one but I told him there were, I
20 started into what happened the first time that they got me to
21 the sheriff's office and got deeply involved like I did here
22 and, uh, but told him I had numerous arrests, I had fought
23 everything, uh, and and that I had eventually filed a civil
24 suit in federal court entitled 42-1983 and during depositions
25 there we got the lots of evidence, not just lots but proof

PAULA ROSE - DIRECT EXAMINATION BY MR. RIORDAN

1 that I was framed and we took it almost to trial. We picked a
2 jury and then we decided to take a settlement, uh, of
3 \$300,000.

4 Q. Okay. Alright, that afternoon when they asked to, uh, to
5 get your clothes at some point did you offer to split the
6 clothes with them?

7 A. I did. I I don't know if I can actually say that I was
8 on the phone with you when all that happened but I did ask
9 them if I could split the clothes because I did have a deep
10 concern that this was going the same place the last one went
11 and I wanted some evidence this time that I could have
12 analyzed and in case somethin' did come up that shouldn't a
13 been on there.

14 Q. Okay, and they refused to do that, correct?

15 A. They did.

16 Q. Alright, and with that you said, Unless we get half of
17 it, given what you had been through before with the consent
18 you didn't, you objected to the taking of your clothes,
19 correct?

20 A. I did because when I gave consent they did tear through
21 my whole entire house even trash bags.

22 Q. Okay. Alright, that afternoon, Ellie had left earlier
23 that afternoon to go back to the apartment?

24 A. She did. She went back to let, uh, Whiskey, her dog
25 out.

PAULA ROSE - DIRECT EXAMINATION BY MR. RIORDAN

1 Q. Alright, did she call you back though and relate
2 somethin' to you?

3 A. She called me back and said that she had left her keys
4 somewhere and that she needed me to come and bring her my keys
5 so she could get in.

6 Q. Okay, and you had a key of the apartment, correct?

7 A. I did.

8 Q. Okay, and that afternoon you left earlier what i -- you
9 mentioned getting a bunch of items that include bathroom
10 items, ---

11 A. Yes, sir.

12 Q. --- items to spend the night that evening.

13 A. Yes, sir.

14 Q. Okay, was it cl -- was that everyone's understanding that
15 you and Homer would spend the night there at the Oak Ridge
16 apartment?

17 A. Everywhere's -- everyone's including Randy Morgan. I
18 don't know that Gonzalez and Cannon knew it but I know I
19 did ---

20 Q. That's right, ---

21 A. --- talk ---

22 Q. --- you ---

23 A. --- to Morgan about it.

24 Q. --- you had a discussion with him back at the, at his his
25 office and told him that, correct?

PAULA ROSE - DIRECT EXAMINATION BY MR. RIORDAN

1 A. I did.

2 Q. Alright, and did you stay there that night?

3 A. We did.

4 Q. Did you stay there suc -- any nights thereafter?

5 A. I honestly stayed there every night thereafter. My
6 husband went home, I made him a little, uh, a little bedroom
7 in our bonus room over the garage and it has, it's on heating
8 and air system ---

9 THE COURT: Mr. Riordan, let's step this up, please,
10 sir, ---

11 MR. RIORDAN: Okay.

12 THE COURT: --- okay, the bonus ---

13 MR. RIORDAN: Yeah, okay.

14 THE COURT: --- room has nothin' to do with what we're
15 doing.

16 MR. RIORDAN: That's true.

17 THE COURT: Thank you.

18 BY MR. RIORDAN:

19 Q. You stayed there, you were just mentioned ---

20 A. I did. Homer stayed a couple nights in the bonus room
21 but I stayed, when Ellie came back, I stayed on the couch
22 until just a few, probly few days that she was there getting
23 her stuff and moving to her sister's.

24 Q. Okay. And and that same night Ellie stayed at her friend
25 Alex's home?

PAULA ROSE - CROSS-EXAMINATION BY MS. ABEE

1 A. She did.

2 Q. Okay. Alright, I have nothin' further, thank you.

3 THE COURT: Cross-examination?

4 MS. ABEE: Yes, sir.

5 CROSS-EXAMINATION BY MS. ABEE:

6 Q. Ms. Rose, I only wanna talk to you about, uh, the consent
7 and and the searches that went on. You said first that you
8 were speaking with Investigator Morgan back at his office,
9 correct?

10 A. Yes, ma'am.

11 Q. And you went there freely and voluntarily, is that
12 right, ---

13 A. I did.

14 Q. --- and gave him a statement in your own free will?

15 A. I did.

16 Q. And then subsequently after that you went back to the
17 house, am I right?

18 A. I did.

19 Q. And your husband was there ---

20 A. He was.

21 Q. --- and Investigator Gonzalez was there, ---

22 A. Yes.

23 Q. --- and Investigator Cannon was there, right?

24 A. Yes.

25 Q. According to you Investigator Morgan wasn't there yet?

PAULA ROSE - CROSS-EXAMINATION BY MS. ABEE

1 A. Right.

2 Q. When you got there you said that you and Investigator
3 Gonzalez got in what you call it a a "heated argument", a
4 heated debate, right?

5 A. Yes, ma'am.

6 Q. You said that he was essentially yelling at you, right?

7 A. He was.

8 Q. And you were engaging back in a conversation?

9 A. I was.

10 Q. However, when he brought his dog up and asked to sniff
11 your shoes, you consented to allow the dog to sniff your
12 shoes, right?

13 A. I did.

14 Q. And at any point in time, you never told Investigator
15 Gonzalez to get off your property, right?

16 A. No, I didn't.

17 Q. And you never asked Investigator Cannon to leave your
18 property, am I right?

19 A. I didn't.

20 Q. And after Investigator Morgan showed up you never asked
21 him to leave your property either, am I right?

22 A. No, I didn't ask him to leave where we were standing
23 there doing all this, ---

24 Q. So ---

25 A. --- this all happened in the same area.

PAULA ROSE - CROSS-EXAMINATION BY MS. ABEE

1 Q. --- so you never, after getting in this fight with
2 Investigator Gonzalez you never asked him to leave.

3 A. Eventually we had a problem with him being there. I
4 never side, Get off my property, my husband did but ---

5 Q. This is, ---

6 A. --- I didn't specifically say to Gonzalez. I went over
7 to my husband and said, I'm feeling like sumtin's not right
8 here and that's when we started havin' a problem with him
9 being there.

10 Q. And so let's talk about that. You went and told your
11 husband that you were havin' a problem with him being there,
12 right?

13 A. With the way they were treating me, yes.

14 Q. And during that time of you talking to your husband
15 Investigator Gonzalez, Investigator Morgan and Misty the
16 canine all snuck into your house without you seeing them.

17 A. I didn't see Morgan. I just -- when we went to check to
18 see where -- I don't think Morgan was in there that that I
19 saw. I never saw Morgan in there. When we went to check and
20 see where Can -- or Gonzalez and the dog was, they were in our
21 home.

22 Q. Okay. And you said at this time that's when Investigator
23 Gonzalez came out and asked whose shoes were on the left side
24 a the bed, am I right?

25 A. Yeah, I mean, we looked in and could see them. If you

PAULA ROSE - CROSS-EXAMINATION BY MS. ABEE

1 look in the door in the garage, you can see all the way down,
2 it's like a bowlin' alley to where they were at in my
3 bedroom.

4 Q. And so you saw them in your bedroom and ---

5 A. I could see ---

6 Q. --- did Investigator Gonzalez come out and talk to you
7 first and ask whose shoes it was or did you go into the
8 bedroom?

9 A. No, I think we looked down and saw him in the bedroom and
10 at some point he came out and said, Whose shoes are these, and
11 then we went in.

12 Q. You went into the bedroom to see where the shoes were?

13 A. Um-hum.

14 Q. So he wasn't waving 'em around in the air saying, Whose
15 shoes ---

16 A. He had, ---

17 Q. --- these belong to?

18 A. --- he had other shoes that belonged to me that they had
19 initially when I -- that they -- that I had been wearing the
20 day before that were left in the garage. He had shoes with
21 him at some point in his hands waiving them, yes, but I don't
22 know at what point.

23 Q. But they weren't the moccasins.

24 A. No, I didn't see him with the moccasins waiving them but
25 I saw him with some shoes in his hands when he was, when he

PAULA ROSE - CROSS-EXAMINATION BY MS. ABEE

1 was asking some questions to to us but ---

2 Q. And when he was out there asking those questions to you
3 and you knew he was in the house, you could see him in there,
4 you didn't tell him to leave at that point in time, am I
5 right?

6 A. I didn't 'cause my husband was going in to tell him to
7 leave.

8 Q. Okay, so you both you went into the bedroom, right, ---

9 A. Um-hum.

10 Q. --- and you showed him where the shoes were ---

11 A. No, he already was in there. He took us back to show us
12 these shoes, he asked, Whose shoes are these, so we went in to
13 see.

14 Q. And you said that they were yours, right?

15 A. I did.

16 Q. And did they begin to take them at those time and put
17 them in the paint cans?

18 A. No, not at that time. Ca -- uh, Cannon had to go outside
19 and get the cans at that time.

20 Q. Okay. Was it your understanding that they were gonna
21 collect these shoes and put them in the cans?

22 A. I -- it was my understanding my husband had a problem
23 with it, I had a problem with it, my husband was taking it up
24 with them.

25 Q. You never told them don't take these shoes, am I right?

PAULA ROSE - CROSS-EXAMINATION BY MS. ABEE

1 A. I was actually probably crying and very upset at this
2 point, ---

3 Q. And so that's ---

4 A. --- no, I ---

5 Q. --- a no?

6 A. --- did not. no, ma'am, not verbally.

7 Q. And when Investigator Cannon came back with the paint
8 cans to go inside of the house to retrieve these slippers, you
9 didn't tell him no and to leave the house at that time, am I
10 right?

11 A. I couldn't because my husband was telling them.

12 Q. So after this they ask you about your clothing that you
13 were wearing earlier in the day, right?

14 A. They do.

15 Q. Okay, and you said the clothing was at Ellie Hansen's
16 apartment, right?

17 A. Correct.

18 Q. And so you got in the car and went to Ellie Hansen's
19 apartment, am I right?

20 A. After some, I mean, there was some other conversation and
21 stuff but yeah, at some point we did -- I did have to, I was
22 supposed to lead Gonzalez there and then I ended up having to
23 chase him there so . . .

24 Q. You didn't tell Officer Gonzalez, No, I'm not taking you
25 there to get these clothes, right?

PAULA ROSE - CROSS-EXAMINATION BY MS. ABEE

1 A. No, he told me I was gonna take him there to get these
2 clothes.

3 Q. And you didn't feel like you could say no.

4 A. I was to trying process everything because I felt very
5 attacked. Uh, I actually suffer from post-traumatic stress
6 disorder and, uh, I have since 1999 and I was actually too
7 emotionally drawn back to to even know. I was try -- I wanted
8 to believe these people were doing the right thing so I was
9 going along with it but yet I was, once we got to the
10 apartment I I didn't go along with it but, you know, I was, I
11 was trying to just process everything that was going on.

12 Q. But you told Investigator Gonzalez where the apartment
13 was, right?

14 A. Yes, I did.

15 Q. And you accompanied him there.

16 A. I followed him there, yes.

17 Q. And when he pulled into the apartment complex, you had to
18 pull in front of him to show him where the exact apartment
19 was, right?

20 A. Um, not really, I -- there's no way to show him an exact
21 apartment. I pushed -- pulled into a parking place and he
22 parked a couple down from me.

23 Q. So he parked after you.

24 A. Yeah, I mean, just right after me.

25 Q. And you said that you were goin' along with it up until

PAULA ROSE - CROSS-EXAMINATION BY MS. ABEE

1 you got to the apartment, that's what you just said, am I
2 right?

3 A. I was not wanting to go along with it but I was trying to
4 figure out what I needed to do, that's why I was calling --
5 had -- was called talking to my attorney.

6 Q. And so once you got to the apartment that's when you were
7 no longer going along with what was happening, am I right?

8 A. Hmm. I would say once I got to the apartment and
9 Gonzalez then started a heated conversation and some really
10 bad language with Ellie, uh, then I totally was no, don't let
11 him in, make him get a search warrant.

12 Q. And you would say that you were rather emotional when he
13 showed up, right?

14 A. Oh, definitely I was -- well I I wasn't, I wasn't
15 screamin' and all that but, you know, it led to some really
16 bad things.

17 Q. And you and Ellie are are close friends, am I right?

18 A. Well we were.

19 Q. And so she saw you being upset, correct?

20 A. Uh, no I wasn't ups -- I wasn't like, I didn't go there
21 screaming and crying or anything and I actually probly didn't
22 cry there but I had some heated argument with Gonzalez after
23 he had a heated argument -- well he didn't actually have an
24 argument, he was yelling at Ellie to let him in the GD
25 apartment.

PAULA ROSE - CROSS-EXAMINATION BY MS. ABEE

1 Q. And so you told Ellie not to give consent, am I right?

2 A. I absolutely.

3 Q. Because you had given consent previously one time before
4 and had a bad experience ---

5 A. That's one reason ---

6 Q. --- with it.

7 A. --- but also by the way he was acting, at this point I
8 didn't trust him.

9 Q. And in fact you said that the one time you previously
10 given consent they tore through your entire house, right?

11 A. They absolutely did.

12 Q. And in fact you told Ellie that they were gonna tear
13 through their -- her entire apartment, correct?

14 A. I told her, Don't -- no, I did not tell her. I said, If
15 you give them consent they could tear through your whole
16 apartment but if you make 'em get a search warrant they'll
17 have to say specifically what they're gonna get and they can't
18 go in there and just look through things that they shouldn't
19 be lookin' through.

20 Q. And so you saw Ellie speaking with Investigator Cannon
21 and Morgan and Gonzalez, right?

22 A. Just with Gonzalez.

23 Q. And did you see Ellie sign the consent to search form?

24 A. No, I actually didn't.

25 Q. And you actually went inside of the home or the apartment

PAULA ROSE - CROSS-EXAMINATION BY MS. ABEE

1 with them, am I correct in saying that?

2 A. I went in, I followed them. I was probly the last one
3 in.

4 Q. Okay, and at no point in time when you were out there you
5 didn't hear Ellie tell them to get out, right?

6 A. I was on the phone with my attorney this whole point in
7 time.

8 Q. So you never heard Ellie tell them to get out?

9 A. Ellie couldn't have told 'em to get out at that point,
10 she was very hysterical.

11 Q. And this is Ellie's apartment, right?

12 A. Yeah, I helped Ellie obtain a lease on this apartment,
13 it -- she lived there.

14 Q. You're not signed on the lease, right?

15 A. No, but I had to submit documents, they have the
16 documents that I submitted to help her obtain the lease and I
17 paid for her, uh, she had a hundred dollar security deposit
18 that I paid.

19 Q. You're not a co-signer on it at all?

20 A. I initially was supposed to be. Once I gave them the
21 documents that I provided they didn't make me and I was -- we
22 were friendly with the people and, you know, they didn't make
23 me.

24 Q. And Ellie's apartment was filled with her things, right?

25 A. Actually, there was some a my clothes there; in fact,

PAULA ROSE - CROSS-EXAMINATION BY MS. ABEE

1 what I went there with to change into I didn't change into, I
2 actually had purple dress at her house that I wore to
3 interview with Cannon or I'm I'm sorry, with Morgan and then
4 when I got back I was still wearing that, you know, when I got
5 back and this was there in this dress and it was something
6 that I had left at Ellie's house.

7 Q. Every time you went over to Ellie's apartment you would
8 talk to her beforehand, am I right, or she knew that you were
9 there?

10 A. No, not always because sometimes she was outta town. I
11 would have to go and and take her dog in and out, uh, I
12 brought her dog over to our house sometimes and then we'd take
13 it back, you know, when she was g -- fixin' to be home and her
14 cat, uh, I've took her cat to the vet before and I've
15 actually, uh, I know two nights I spent there, uh, when he --
16 me and Homer were in a spat one time so . . .

17 Q. But when you were watching Ellie's animals when she was
18 out of town, she knew you were watching them, right? She had
19 arranged that care?

20 A. Yeah, she knew I was gonna watch 'em.

21 Q. So she knew you'd be coming in and out of her apartment?

22 A. During those times she did.

23 MS. ABEE: Your Honor, may I have just one second?

24 THE COURT: (No audible response.)

25 MS. ABEE: Nothing further, Your Honor.

PAULA ROSE - REDIRECT EXAMINATION BY MR. RIORDAN

1 THE COURT: Thank you. Any reply? redirect?

2 REDIRECT EXAMINATION BY MR. RIORDAN:

3 Q. On this occasion certainly as you discussed with Morgan,
4 Ellie knew you were staying there that night, correct, you
5 were her overnight guest that night without a doubt, correct?

6 A. Yes.

7 Q. You had said the same with Investigator Morgan, he knew
8 that's where all your things were, correct?

9 A. Yes, he did.

10 Q. And you continued to stay there up until the time the
11 renovation was ---

12 A. I ---

13 Q. --- were complete.

14 A. Yes, ---

15 Q. Alright.

16 A. --- we did.

17 MR. RIORDAN: No further questions, Judge.

18 THE COURT: Alright, ma'am, you may step down.

19 THE DEFENDANT: Thank you.

20 (Whereupon, the witness left the stand.)

21 THE COURT: So let me go over some things with you guys,
22 I'm gonna make a ruling first on motion in limine. As to the
23 phone call; number one, I ruled earlier it wasn't gonna be
24 admissible, I don't find it relevant. I know you may be able
25 to extrapolate to the fact we don't have money for a bond,

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1 we're broke, that there's need to burn the house but under a
2 403 analysis, uh, prejudicial impact outweighs any probative
3 value. Uh, Mr. Riordan may be correct on the, uh, spousal
4 privilege that'll be a secondary ruling far as the
5 admissibility of it but I -- it is not admissible. Uh, ---

6 MR. RIORDAN: Thank Your Honor.

7 THE COURT: --- canine. As far as, you know, what I
8 heard today the State has to establish the proper foundation
9 for admission of that testimony if that foundation is met and,
10 uh, should be admissible but depends on whether you ma -- you
11 meet your foundation and subject to proper objection to that.

12 Uh, the rest of these, I'm gonna look, I'm gonna divide
13 the Oak Ridge and Riley Smith. Oak Ridge is Ms. Hansen's
14 property, Riley Smith is the defendant's property, uh, and in
15 connection with the initial motion in limine that the the
16 form, consent to search form in and of itself is hearsay and
17 therefore does not come in. All these, uh, are not limited in
18 such a narrow view. Uh, looking at consent to search whether
19 it be by form or not by a form, uh, you have to have voluntary
20 and free, uh, if you're not gonna have a warrant, somebody has
21 to freely and voluntarily give you permission to search their
22 premises, uh, under the Constitution so the analysis is based
23 on whether or under totality of the circumstances there was
24 consent properly given and obtained, whether that was, that
25 consent was subject to duress or coercion in order to obtain

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1 that consent. In the defendant's case, the Riley Smith case
2 or as it it, uh, relates to the defendant's residence, lookin'
3 at the totality of all the circumstances, clearly husband
4 admitted that he signed permission form, uh, he's a trained
5 and certified law enforcement officer of forty-three years,
6 I'm not positive but at least that forty-three years appears
7 to be with South Carolina Highway Patrol notwithstanding he
8 used consent to search forms, was familiar with 'em, had been
9 trained and certified in the use of consent to search forms
10 although he said this one was filled out differently because
11 it's more of a receipt, uh, from the totality it's clear that
12 this is what it is and it is consent form. The form itself is
13 plain, it's unambiguous and it clearly describes the rights to
14 the person to not allow searchin', not allow a search to take
15 place, uh, it also says that we're gonna search the entire
16 premises. Uh, Mr., uh, Rose admitted his signature to the
17 form and further it was authenticated by the State's witnesses
18 in this matter. Uh, a concern was whether there was a
19 revocation of the consent to search once it began based on the
20 fact that this dog and Mr., uh, Gonzalez apparently or
21 allegedly snuck into the house, uh, Mr. Rose however admits
22 and it seems to be verified by the testimony of the defendant
23 in this matter that there's only really one access into the
24 house where they coulda got the dog in, that's where the
25 garage was, that's where he was or located nearby. During the

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1 defendant's testimony just now, she admitted that they saw him
2 in the house with the dog, uh, Mr. Rose said that he became
3 irate after Mr. Gonzalez allegedly came out with, uh, the
4 finding of the slippers but he never attempted to stop the
5 search prior until th -- prior 'til then, even if he did which
6 I do not find to be credible, uh, he did so too late,
7 therefore under the to -- totality of the circumstances I'm
8 gonna find that that search is admissible, Form 4 is also
9 admissible as not bein' hearsay. I don't think hearsay is
10 necessary the -- necessarily the analysis we look at, I think
11 it's more of authentication as to the form itself but even so
12 it has properly been authenticated and admitted to by
13 Mr. Rose.

14 Uh, as to Ellie's, again, the same standard totality of
15 circumstances. In this case Ellie is the tenant, uh, had the
16 right to give permission as the tenant of the apartment to
17 search. Uh, although the defendant would qualify as a status
18 of a overnight guest, the law is clear that a tenant has the
19 right of possessor of the property, their right supersedes any
20 objection by a overnight guest and that's the case a *State vs.*
21 *Flowers*, I believe that's the case, uh, also, that Ellie's
22 signature on the form has properly been authenticated, again,
23 I may be wrong on this, Mr. Riordan, if I am certainly there's
24 a crowd to correct me but, uh, it's not a matter of
25 necessarily hearsay, I think it's a matter of authentication

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1 of the form, you don't have to stand up, I'm just puttin' this
2 on the record, uh, but it's the exact same form that was used
3 with the Roses so it's clear, unambiguous and and and set
4 forth what was being done, where it was gonna be done. Uh,
5 there is absolutely no evidence that Ellie attempted to limit
6 the search after there was some type of oral agreement reached
7 as to the scope of the search. I understand that there was a
8 concern about some private-type pieces of property that she
9 did not want them fumblin' with but after the law enforcement
10 said this is what we're lookin' for she consented to the
11 search. Uh, there's certainly not admi -- there's no
12 admissible or credible evidence as to any coercion or gor --
13 or duress by law enforcement as to Ellie makin' her consent
14 not voluntary. Uh, again, with all due respect to her father
15 that testimony is not admissible, uh, and is not credible or
16 relevant to this case to the extent it goes into matters that
17 are not, uh, so under this *Flower's* case her consent would be
18 superior although the defendant by all measures said we don't
19 want, I don't want you in there getting these clothes and I
20 think that's clear on the record from all accounts I don't
21 want you gettin' them after she had a chance to talk to her
22 husband, up until that time she apparently at the Rose
23 location and even leadin' up to gettin' to the, uh, house of
24 Ms. Hansen or apartment Ms. Hansen had been fairly
25 cooperative, uh, these arguments back and forth might have

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1 been such but is also cooperation and no ending of the search
2 going on at that point by anything that they had done. Uh,
3 again, I don't believe the admission of consent form is
4 dictated by the hearsay in Ms. Han -- in Ms. Hansen's case but
5 is more a matter of auth -- authorization. Clearly under the
6 Rose matter it was admitted to signed freely and voluntarily
7 by Mr. Rose by his own admission so it is clearly admissible
8 in that case, uh, and it and overall the question of consent
9 is not dependant on whether or not this form is there or not
10 but you can have a consent to search although it may be orally
11 given. I know from a law enforceme, uh, enforcement practice
12 and preference is to have a signed consent form but there's no
13 reason why you can't have an oral consent to search so the
14 search based on totality of the circumstances is is based on
15 more than just this form, it's based on the actions or non-
16 actions by, uh, the defendant, uh, her husband, as well as
17 Ms. Hansen, therefore subject to me reading further and
18 changin' my rulin' in the mornin' which I reserve the right to
19 do I am denying the motion in limite -- limine as to the
20 Hansen apartment, the Hansen Form 4 -- I mean, not Form 4,
21 consent to search as to the Rose property as to consent to
22 search form on the Rose, uh, property as well, I believe that
23 covers all the motions I have in this case, is that correct,
24 Mr. Riordan, not that you agree I know but, I mean, is that --
25 any other mi -- motions I have not ruled on?

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1 MR. RIORDAN: No, Your Honor.

2 THE COURT: Okay. Uh, assuming I don't change my ruling
3 and I will clarify that tomorrow, uh, since this is taking at
4 or near the time of testimony my understanding that motion in
5 limine is means that you do not have to stand up and object
6 during the trial to be protected on the record with that
7 unless you feel the need to, Mr. Riordan, I'll leave that up
8 to you but I'm ruling for the record that you do not have to,
9 okay?

10 MR. RIORDAN: Right, Your Honor.

11 THE COURT: Uh, let me tell ya'll this: ya'll gave me a
12 list today of around seventy, eighty witnesses, they may --
13 and and ya'll knew this week was a short week begin with so
14 ya'll be prepared to stay late and be prepared for me to start
15 pushing the whip to make this case go through 'cause I'm not
16 gonna let you not try your case but I'm not gonna let you be
17 repetitive, uh, I'm not gonna let there be re-cross unless you
18 specifically ask, it's not a matter of right anyway, ---

19 MR. RIORDAN: Yes, sir, I know.

20 THE COURT: --- if you do, give me good cause and I'll
21 let you do it but I want this case to move along, okay. Now,
22 uh, are ya'll staying for the State here?

23 MS. ABEE: Uh, Your Honor, I'm in Spartanburg, uh, ---

24 THE COURT: Are you, okay.

25 MS. ABEE: --- and Mr. Underwood is in in Columbia, we're

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1 not overnight here, uh, ---

2 THE COURT: Okay, well ---

3 MS. ABEE: --- due due to the distance.

4 THE COURT: --- ya'll might wanna consider it this week
5 'cause you gonna be stayin' late, it's gonna be tough, blurry
6 eyes. We're startin' promptly at nine.

7 MS. ABEE: Yes, sir, and just maybe for a little bit a
8 your piece of mind we're only anticipating that nineteen of
9 those, uh, individuals from our end and some of them are
10 rather short so ---

11 THE COURT: I'm just anticipating ---

12 MS. ABEE: (Indiscernible cross-talk.)

13 THE COURT: --- every other case I've been involved with
14 as a judge they ---

15 MS. ABEE: Yes, sir.

16 THE COURT: --- go longer than the lawyers always tell me
17 they're gonna do, ---

18 MS. ABEE: Yes, sir.

19 THE COURT: --- okay, uh, just like the motions to and
20 that's understandable, I mean, you don't know what's gonna
21 happen 'til you get two bright, smar -- articulate people in
22 here bangin' hands. Uh, anyway that this case can resolve
23 itself at all, doesn't matter to me, I asked that earlier. If
24 there is, I'm only gonna say ya'll talk about it if you think
25 there's a possibility, if you do not that's my job is to try

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1 cases. I'm not gonna try to twist arm. Mr. Riordan, anything
2 I can do or anything that, uh, you can think of that I've not
3 addressed at this juncture?

4 MR. RIORDAN: No, Your Honor.

5 THE COURT: Alright, gentlemen, uh, ladies, thank you,
6 we'll see you the morning at 9:30.

7 MS. ABEE: Thank you.

8 THE COURT: Nine o'clock.

9 MS. ABEE: Alright.

10 (Proceedings May 6, 2014)

11 THE COURT: Good mornin'.

12 MR. RIORDAN: Mornin', Your Honor.

13 MS. ABEE: Mornin'.

14 THE COURT: We had a brief meetin' in my chambers,
15 counsel prior to me come in the courtroom and, uh, two things
16 for the record; number one, uh, defense counsel advises that
17 try as he might he's a little under the weather but I believe
18 you feel like you're able to proceed, is that correct, ---

19 MR. RIORDAN: Yes, Your Honor.

20 THE COURT: --- Mr. Riordan? Please advise, let me know
21 otherwise if you're -- that status changes, ---

22 MR. RIORDAN: Yes, Your Honor.

23 THE COURT: --- also there's a matter with regard to
24 certain articles in the paper that I excluded yesterday in my
25 pre-trial rulings and Mr. Riordan wanted to be heard on that

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1 again which I granted him right to be heard, please.

2 MR. RIORDAN: Yes, Your Honor. There are a number of
3 articles both before and then one after this crime that speak
4 of masked men being involved in, uh, instances and and and I
5 agree the third-party guilt case law is is fairly strong
6 affirming when judges keep that out, I would, I remind the
7 Court they're also are are very strict to say the judge has
8 that discretion, uh, ultimate discretion in regard to those
9 evidentiary matters and I think most of those, again, if if
10 you wanna, you you could argue that any case like this where
11 there's masked folks in her garage, uh, that those are all
12 things that should be looked into or at least considered in an
13 investigation, of key note is the one, uh, following her
14 arrest. She's arrested on September 12th, Sept -- and again,
15 as you'll find out, we'll talk about more in this case from
16 previous problems that she fought and and, uh, gain victory on
17 with her other arrest and then ultimate a civil suit all
18 stemmed out of Oconee County, uh, but she's arrested on
19 September 12th, we've got a September 17th article, I put all
20 of 'em in but this is the most significant or at least I guess
21 is is one 'cause again, what they always do in a third-party
22 case is say, Well you've got these facts and this scenario but
23 let's differentiate from the other ones. Again, what what I
24 expect the evidence will show here Paula comes out, her her
25 car, her normal car she drives it's in the garage, is in the

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1 shop that day so so the garage is empty. Her husband's a
2 trooper and he's out on duty already that morning. Her pets
3 are at home as they are often when they're out but she's
4 awoken by the dog, she goes to the garage, the dog is barking
5 in the garage and she sees three men in there, two masked, one
6 without a mask at their gun safe, they've got a large gun safe
7 in the garage, fella's there with the dial. It's a brief
8 encounter, she locks the door and proceeds for the back.
9 You'll you'll hear the 911 call, she's on the phone I think
10 it's about eight minutes, uh, basically assessing the
11 situation, talking with the 911 operator, says she hears
12 something, opens her door, one a the animals runs out, a cat
13 that she tries to get back in anyway and she sees her back
14 porch is on fire, eventually she goes out the front porch and
15 sees the front porch is on fire so we've got two fires
16 basically, uh, you know, that's the scenario that's there and
17 as as I noted, uh, and you've been in the room, and the
18 evidence in the case that they had when they made the arrest
19 on Sept -- they waited six weeks, September 12th is when the
20 arrest is there, it's based upon her having, uh, trace
21 evidence of gasoline on her clothing and, uh, on at least one
22 of the sh -- on one of the shoes per per the report from SLED,
23 on the scene however were gloves that were taken, the the the
24 latex gloves and DNA processing was not even completed at the
25 time a the arrest. Came in back in

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1 No -- on November 8th, uh, and and so again, we've got the,
2 we've got the arrest, they haven't even gotten the DNA
3 evidence back but within that week of September 17th so it's
4 five days later, investigators are searching for burglars who
5 they say torched and upset her, killing three pets in
6 process. The burglar struck a home on Stephen Drive Oconee
7 County just before 3 p.m. Detectives say the thieves stole
8 guns, jewelry and electronics and set the place on fire
9 choosing the house at random, a dog and two cats died in the
10 fire. The officials tell us a neighbor walkin' by the house
11 saw smoke, reported it, the homeowners were away at work and
12 and I know again they'd say, Well it's differentiated, they,
13 you know, in our case they didn't steal any guns or jewelry
14 and electronics but of course that's because they were
15 discovered. I mean, they're at the gun safe, can see where
16 the phone line's cut, can see where that's to make sure, Hey,
17 if there's electronic system set up with alarm we can break in
18 and let's get what we can before we get outta here and we
19 torch the home, uh, fairly compelling to read that and say
20 isn't that something you at least look into. I mean, we've
21 got a girl, do you raise issues in regard to having these past
22 criminal incidents all out of Oconee County, after she's
23 arrested we got a very similar crime right here and it's
24 somethin' at least we looked into and I understand, Judge, I
25 guess part of what I do and how I failed, appreciate you

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1 lettin' me do this and I feel like I failed my client by not
2 doin' it yesterday.

3 THE COURT: I think you ---

4 MR. RIORDAN: I I appreciate ---

5 THE COURT: --- did a ---

6 MR. RIORDAN: --- ya doin' this.

7 (Indiscernible cross-talk.)

8 THE COURT: --- quite ---

9 MR. RIORDAN: Yes, it ---

10 THE COURT: --- frankly. Go ahead.

11 MR. RIORDAN: --- so so part of it is, I I mean, this is
12 a fire investigation case, we've got two fire investigators
13 that you, know, just Friday, I think Thursday or Friday I I
14 did get their CVs so I'm able to look through to see their
15 qualifications. As I told you what we will have based upon
16 what you advised yesterday that my expert can sit in, he's not
17 sequestered, uh, he'd been, I've been usin' him as a
18 consultant just to look at the holes that existed in this
19 case, we've talked about that. He's in more, he's in many
20 more organizations than the two but he's in some of the civil
21 organizations. They've got a code of ethics they follow. He
22 will come up and speak to the fact that even if you've made an
23 arrest the investigation continues beyond the arrest. In this
24 case we will -- you will see the arrest is made and people
25 that called 911 they're never even spoken to before the

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1 arrest. People that reported it, saw it, you know, this
2 report, her report, you know, masked persons tryin' to steal,
3 place on fire, no comments about any of the things they'll
4 come and testify to today but after her arrest, after she's
5 arrested and the big press report's put out, Oh, she was
6 lying, we've proved she's lying, again, the DNA hadn't even
7 come back when they're putting out these press reports. After
8 that port -- after that time they speak to these witnesses so
9 they're continuin' their investigation and part of it should
10 be, you know, keeping an eye out for other similar crimes, it
11 woul'da have been easy, this is in the newspaper and certainly
12 they have I -- a a plan to ask them about what, uh, options or
13 or what capabilities they have to keep track of similar
14 crimes, I know they got a data base that spits out, uh,
15 different facts and at least my my my investigator would say,
16 Look, these are the very types of things that you're looking
17 for to make sure you're doin' the right thing, that our code
18 says we're not case.makers, we're truth seekers and that's
19 what we do. We think it has relevance, we think it could come
20 in, we know third-party guilt, uh, guilt evidence was there
21 but again this is, this is really getting to, they've, at this
22 point again she's presumed innocent, Judge, the whole case
23 here from our standpoint is really pok -- look at this
24 investigation, was this a true investigation or did you
25 immediately that day get sidetracked and focus only on her and

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1 I think those are fair criticisms that that a fire
2 investigator can have and this type of evidence is something
3 that he can speak to in that regard.

4 THE COURT: Well let me make sure I understand. My
5 understanding of the motion yesterday was to exclude the
6 admission of the articles themselves but not with proper
7 foundation delvin' into other similarities whether or not
8 people met their standard of care in in in performance of
9 their duties as fire investigators, ---

10 MR. RIORDAN: Yeah.

11 THE COURT: --- okay, sir, ---

12 MR. RIORDAN: Yes.

13 THE COURT: --- uh, and my ruling would remain the same
14 with regard to the admission of those ---

15 MR. RIORDAN: Alright.

16 THE COURT: --- uh, uh, articles. Unless somethin'
17 changes it may change that dynamic, I don't see that it
18 will ---

19 MR. RIORDAN: Sure.

20 THE COURT: --- but of course trials are fluid animals
21 and so they they may change, uh, but I don't want it be heard
22 and my ruling was not to exclude ---

23 MR. RIORDAN: Okay.

24 THE COURT: --- from proper inquiry and foundation
25 delvin' into standards of care, you know, and things along the

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1 lines that you just talked about.

2 MR. RIORDAN: Right, and that's and that's what I, that's
3 what I expect the investigator would speak to that he, you
4 know, again, we gave him a ball of paint, Hey, look at this
5 case, here's the investigation, here's what we've gotten from
6 the State that they say is their investigation, here's what
7 else is out there. They've got newspaper articles but the
8 newspaper articles are the press release. Here's other
9 newspaper articles of other reported crimes, those are the
10 types of things he'll look into say, Yeah, you look for that
11 and I see, I see other things here that were never even
12 explored and so okay, great, I understand but we won't be able
13 to put in the article itself.

14 THE COURT: Right, right ---

15 MR. RIORDAN: Thank Your Honor.

16 THE COURT: --- or and and and that doesn't exclude, you
17 know, proper cross-examination either. Okay, alright,
18 anything from the State before we start?

19 MS. ABEE: No, Your Honor.

20 THE COURT: Uh, ---

21 MR. RIORDAN: Thank Your Honor.

22 THE COURT: --- Mr. Riordan, uh, would -- do you have any
23 other matters you wanna place on the record at this point or
24 or no?

25 MR. RIORDAN: Yeah, we'll put, we'll put it on the

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1 record, Judge. We we did speak, as we spoke back in chambers,
2 we spoke before, I I would note again, the only plea offer
3 that's been given in this case and and I did acknowledge it,
4 it it it really didn't matter so much for our other cases, my
5 client maintains her absolute innocence, she swears she didn't
6 do anything and will not plead to anything. I would note that
7 the only plea offer that existed before today that I was aware
8 of was one that was offered early earlier this year, uh, it
9 was before we had the exculpatory evidence as well, uh, but in
10 any event as I understand it they they've agreed to, they they
11 would let her plead to one of the five-year charges, uh, and
12 dismiss the others, I don't know if there's even any
13 recommendation as to what they will do but my client refuses
14 that and I now appreciate that and she understands that. For
15 what it's worth, had the similar thing in Oconee County and
16 rode it all out. *Alford* plea if you want it, she said no
17 and ---

18 THE COURT: Yeah, and that's fine, you know, listen, ---

19 MR. RIORDAN: (Indiscernible cross-talk.)

20 THE COURT: --- you know, my job is ---

21 MR. RIORDAN: I'm sorry.

22 THE COURT: --- try cases, I just wanna make sure we had
23 a clean record ---

24 MR. RIORDAN: Yes, Your Honor.

25 THE COURT: --- so for ---

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1 MR. RIORDAN: Your Honor ---

2 THE COURT: --- future review.

3 MR. RIORDAN: And, You Honor, one 0:09:58.0 (4) other
4 thing and again, as I spoke to me not bein' on my game
5 yesterday and and maybe not even now, I thought I had advised,
6 uh, when when you made the motion everyone's sequestered,
7 Mr. Rose, Ms. Rose thought he couldn't be here for openings, I
8 mean, we're tryin' to get him up here, is there any way that
9 we can wait and have him here for openings, I know he's comin'
10 on his way right now ---

11 THE COURT: How long ---

12 MR. RIORDAN: --- but ---

13 THE COURT: --- you talk -- how -- here here's my
14 concern: I really don't have a problem with him or anyone
15 bein' here for openin' statements, uh, ---

16 MR. RIORDAN: I know and I I advised him ---

17 THE COURT: --- uh, my problem ---

18 MR. RIORDAN: --- he needs to be here.

19 THE COURT: --- my my problem is is that we've got a
20 short week ---

21 MR. RIORDAN: I know.

22 THE COURT: --- and we've gotta work late, you're under
23 the weather, um, check and see, I don't have a ---

24 MR. RIORDAN: Here ---

25 THE COURT: --- problem ---

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1 MR. RIORDAN: --- here's what I would ask, Judge, can
2 you -- Kinli, are you okay and just say the witness has been
3 sequestered, I made a mistake in not tellin' my clients that
4 that didn't mean opening statement, that ---

5 THE COURT: Well ---

6 MR. RIORDAN: --- he walks in late, you know, that that's
7 not any, you know, plea -- please please understand that, ---

8 THE COURT: That's fine.

9 MR. RIORDAN: --- blame that on me. Is everyone okay
10 with that?

11 THE COURT: I'm fine with that.

12 MS. ABEE: Yeah, if he ---

13 THE COURT: Alright, first ---

14 MS. ABEE: --- walks in and ---

15 (Indiscernible cross-talk.)

16 THE COURT: --- yeah, I I keep hearin' you characterize
17 things as mistake, let me, let me just ---

18 MR. RIORDAN: Yes.

19 THE COURT: --- say this for the record: ---

20 MR. RIORDAN: Yes.

21 THE COURT: --- that you had a full and complete
22 evidentiary hearing yesterday, ---

23 MR. RIORDAN: Yeah.

24 THE COURT: --- I thought you did a very thorough job ---

25 MR. RIORDAN: Thank you, Judge.

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1 THE COURT: --- and some, uh, req -- uh, some
2 sequestra -- excuse me, sequestration orders would include
3 openin' statements as well, uh, there's no mistake I've seen
4 made in this matter, ---

5 MR. RIORDAN: Alright.

6 THE COURT: --- that bein' said, uh, is there someone in
7 Greenville County -- Mr. Bailiff, do you put somebody at the
8 door durin' openin' statements?

9 MR. BAILIFF: Yeah, ---

10 MS. BAILIFF: I'm ---

11 MR. BAILIFF: --- she'll (indicating) be here, yeah.

12 THE COURT: Do you remember that her husband who
13 testified yesterday if he comes in, let him in, ---

14 MS. BAILIFF: I will.

15 THE COURT: --- okay, ---

16 MS. BAILIFF: He's the only ---

17 THE COURT: --- otherwise ---

18 MS. BAILIFF: --- one that you wanna let in 'cause
19 normally we don't ---

20 THE COURT: Yeah, normally, uh, ---

21 MS. BAILIFF: Okay, but I'll let him in.

22 MR. RIORDAN: And, Your Honor, his son -- her her son is
23 out there tryin' to get him too, he he'd be coming in as
24 well ---

25 THE COURT: Uh, ---

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1 MR. RIORDAN: --- if that's okay.

2 THE COURT: --- that's that's fine.

3 MS. BAILIFF: Okay. Okay.

4 MR. RIORDAN: And Mr. Kerlin, the, uh, the expert, I'm
5 sorry, the ---

6 MS. BAILIFF: No, that's fine.

7 MR. RIORDAN: --- folks in the lobby. Thank you.

8 THE COURT: Any ---

9 MS. BAILIFF: So it's it's three people?

10 THE COURT: Yes, ma'am. Alright, anything else before we
11 get started?

12 MS. ABEE: Nothing from the State, Your Honor.

13 THE COURT: Mr. Riordan?

14 MR. RIORDAN: Nothing from the defense, Your Honor.

15 THE COURT: Bring the jury in, please.

16 MR. BAILIFF: Yes, sir.

17 (Whereupon, a discussion was held off the record.)

18 (The following takes place in the presence of the jury.)

19 THE COURT: Alright, Mr. Foreman, uh, ladies and
20 gentlemen of the jury, uh, we're about to begin with openin'
21 statements in this case, uh, and I will give you an opening
22 instruction as well but before we do I need the clerk to
23 administer the oath for this trial.

24 THE CLERK: Will you please stand, raise your right hand.

25 (Whereupon, the jury complied.)

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1 THE CLERK: The proper response to the oath is I will.

2 (Whereupon, the jury was sworn.)

3 THE CLERK: Thank you.

4 THE COURT: Thank you. Let the record reflect that all
5 affirmed in the re -- in the affirmative, affirm affirm. You
6 have those indictments?

7 THE CLERK: Yes, sir.

8 THE COURT: Alright, ladies and gentlemen, uh, I don't
9 know if any of you've ever been involved in the judicial
10 system before whether it be in a civil case or a criminal case
11 such as this one, either as a participant, as a witness or
12 some otherwise, uh, I would suspect however that each and
13 everyone of you have watched what on TV purports to be a
14 criminal trial but either at the movies or on TV, let me
15 quickly dispel you, uh, this trial is gonna be nothin' like
16 you've seen on TV, trials are often very slow, they're very
17 methodical and very deliberate, uh, but they are a fundamental
18 part of our democracy, they are a search to try to see that
19 justice is done. Uh, in this case, uh, these attorneys are
20 advocates for their, for their clients; in fact, when they're
21 sworn in as attorneys, all attorneys take an oath that they
22 will zealously represent their client's interest in any
23 proceeding and you can expect no less in this case, that that
24 bein' said these attorneys are also officers of this court so
25 durin' this trial you can expect these attorneys will be

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1 professional, they will be competent and they'll be ethical to
2 one another, to any witnesses that'll appear in this
3 courtroom, to this court and to anyone in this courtroom;
4 likewise, you've just taken an oath that you will do your best
5 to be fair and impartial to try to reach a unanimous verdict
6 in this case if possible, uh, that means that these attorneys,
7 this court, these witnesses can expect of you that you will be
8 fair, that you'll be im -- uh, impartial, you'll be unbiased
9 and ethical in your dealings in this matter.

10 Now what I tell you now is basically a overview of this
11 trial so you'll generally understand where you are durin' this
12 process, I will charge you on the substive [sic] law that you
13 must apply to this case at the end a this case. Now first
14 those of you who requested to take notes do you have your pad
15 and pencil with you? Okay, and again, Mr. Foreman, uh, this
16 case is not an endurance contest, if durin' this trial anyone
17 needs to take a break before I call for one, raise your hand,
18 let me know, if I call you before you're ready to come back,
19 let me know that and anything these (indicating) fine bailiffs
20 will take care a you and if you can't hear something or
21 something during the trial that you don't understand, raise
22 your hand, you're not allowed to ask questions but we'll take
23 a break and make sure that we, uh, address what your, what
24 your concern is.

25 Now, as I told you when I had the entire panel here,

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1 these (indicating) are indictments, the fact that this lady
2 has been arrested, charged and indicted is not evidence of
3 guilt on her behalf, it's not an inference of guilt, nor does
4 it raise any type of presumption of her guilt, these are
5 simply the charging mechanisms by which the State of South
6 Carolina brings a person before a jury such as yourselves for
7 a trial and a determination of guilt or innocence and,
8 Mr. Foreman, uh, during your deliberations, uh, the jury will
9 not be allowed to engage in any conversation about the fact
10 that she was indicted as being an inference or presumption or
11 evidence of guilt, okay, sir, it will be your job to make sure
12 that that is not done; in fact, in this case the defendant has
13 said, I'm not guilty, to all four charges that you heard, what
14 that simply means, ladies and gentlemen, it places the burden
15 on the State of South Carolina to prove each and every element
16 of all four indictments by proof beyond a reasonable doubt
17 before the defendant can be found guilty. Defendant has no
18 burden in this case, she has no obligation to say anything, to
19 do anything in this case, that's her constitutional right as
20 with every American in the United States, the burden of proof
21 as I told you is a reasonable doubt. Also, and I'll charge
22 you about this later, Mr. Foreman, each one of these
23 indictments is a separate document, it must be independently
24 considered as to whether or not the State meets its burden a
25 proof on that indictment unaffected by your decision on other

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1 indictments and I'll remind you that at the end of this case
2 but the burden a proof just to give you an idea of what that
3 is is this: it's a reasonable dou -- a reasonable doubt is a
4 kind of doubt that would cause reasonable person to hesitate
5 to act in an important matter in their own affairs. Now the
6 State as I told told you has burden of proving each and every
7 element of all charges by proof beyond a reasonable doubt.
8 Some of you in the past may have sat on civil juries. In a
9 civil jury the evidence is by a preponderance of the evidence
10 so the burden a proof is by the preponderance of the evidence,
11 what that simply means is the greater weight of the evidence.
12 In those cases the judge will tell the jury that if the
13 evidence causes the scales of justice to tilt ever so slightly
14 in favor of one, uh, party or the other then that burden's
15 been met or has not been met. Now the burden a proof in a
16 criminal trial is much stronger than that, it is by proof
17 beyond a reasonable doubt. Proof beyond a reasonable doubt is
18 proof that leaves you firmly convinced of the defendant's
19 guilt. There are very few things in this world, ladies and
20 gentlemen, that we know with absolute certainty and in
21 criminal cases the law does not require, uh, that proof
22 overcomes every possible doubt. If based on your
23 consideration of the evidence at the end a this case if you
24 are firmly convinced that the defendant is guilty of the crime
25 or crimes for which he has been charged, it'll be your duty to

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1 find her guilty. On the other hand, if you think there's a
2 real possibility that the defendant is not guilty of the crime
3 or crimes for which she has been charged then you must give
4 the be -- the benefit a the doubt to the defendant and find
5 her not guilty, that is reasonable doubt and I'll give you
6 further instruction on that at end a this case. Now, ladies
7 and gentlemen, it will be your duty at the end a this case to
8 determine whether or not the State has met its burden a proof
9 with regard to each one of these four indictments separately
10 considered by you the jury.

11 Now, your purpose of juries in the vernacular of law is
12 to be the judges of the facts, you are to determine what the
13 facts are; in other words, we say that you're the sole judges
14 of the fact, therefore, if at any time during the course of
15 this trial I make any comment, I do anything that suggests to
16 you the facts, i.e., the verdict you are to reach, uh, you
17 must disregard it. I'll tell that under this constitution of
18 South Carolina no trial judge is allowed to comment on the
19 facts nor to have an opinion on the facts and so if I do
20 anything that seemed to indicate one way or the other, uh, you
21 are to disregard that. I can tell you that I have no feeling
22 one way or the other, I view my job somewhat akin as a referee
23 to make sure that the process is followed, that everybody has
24 a fair trial and at the end a the case to instruct you on the
25 law that you must apply to this case and you will determine

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1 what the facts are in this case based on the evidence that is
2 gon -- presented here in this courtroom, evidence is what you
3 hear by way a sworn testimony from this (indicating) witness
4 stand and any exhibits which I may allow into evidence, that's
5 the only evidence that is considered evidence in this case,
6 that means you may not and shall not be influenced by any
7 outside, uh, influences that may bear upon you durin' the
8 course of this trial. Also, ladies and gentlemen, I'll tell
9 you that normally if I make an error at law as a trial judge,
10 there is a group or groups of people down in Columbia who
11 correct my error; on the other hand, uh, it's generally not
12 correctable if you make a incorrect finding of fact;
13 therefore, I ask you and charge you that during this course
14 that you do your best to pay cose -- close attention to the
15 testimony and the evidence and do not let your mind wander,
16 uh, during the course a this trial.

17 Now, the law that makes you the sole judges of the facts
18 makes me the sole judge a the law, that means that you must
19 accept the law as I give it to you, you shall not be concerned
20 with what you like it to be or what you think it should be, it
21 be improper, it be a dereliction of your duties to do anything
22 but apply the law as I give it to you at the end a this case,
23 I cannot invade your provence as being finders of fact, you
24 cannot invade my province as bein' the instructor of the law.
25 Uh, also, I'll remind you that durin' this case you may not

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1 and shall not ha -- begin your deliberations, uh, amongst
2 yourselves or with anyone else until you are given very
3 specific instructions that you are and may begin your
4 deliberations at that point, that includes I remind you
5 conversation amongst yourselves, with family members, anyone
6 else either orally, by way of Twitter, telephone or any other
7 method of communication. Also, uh, if you happen to run into
8 any parties during the course of this case, any witnesses
9 during the course a this case, they don't, and they don't
10 speak to you, in Greenville that's not a big problem 'cause
11 you have a jury selection, I mean, gathering room, but if you
12 happen to, you're not to speak with them, they know, uh, that
13 they not speak to you, okay, but if one side sees the other
14 speaking to someone, they're gonna think there's improper
15 ex parte communications which are never allowed on any case
16 and so I'm gonna ask you just not engage in that, also remind
17 you not to engage in any independent jury research and not to
18 hear anything about the news. If a news, uh, item comes
19 across you about this case, you're not to read, hear, or
20 listen to it and you're not to research any matter or any
21 person involved in this case.

22 Now, in every single trial you have five phases: you'll
23 have an opening statement by the attorneys, you'll have the
24 presentation of the evidence, you'll have closing, uh, uh,
25 statements by the attorneys, I will then charge you on the

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1 law, we'll have a brief break and then you'll be given the
2 opportunity to begin your deliberations, I tell that to you so
3 you know where you are during this case; in fact, in just a
4 moment the solicitor is going to make an opening statement on,
5 uh, on what she contends this case is about. What the
6 attorneys tell you in opening statements or at other times
7 during the case is helpful but it is not evidence, the only
8 true evidence that you will hear is what you hear by way a
9 sworn testimony from the witness stand and exhibits admitted
10 into evidence, it's not to minimize what they tell you but it
11 is not evidence in the classical sense of evidence; also, in a
12 minute the defense may but is not required to give you an
13 opening statement, they have no burden to meet whatsoever,
14 they can sit there not say anything throughout this trial and
15 the burden would be on the State prove this case by proof
16 beyond a reasonable doubt; however, if the defense avails
17 itself the right to make an opening statement, again, it is
18 what this attorney contends this case is about or what the
19 issues are in this case, it is helpful and it will help you
20 understand the framework of this case but again, it is not
21 evidence.

22 In every single trial that I was ever involved in as an
23 attorney or as a trial judge, there are objections. I'll tell
24 you, Mr. Foreman, ladies and gentlemen of the jury, objections
25 are simply part of the process that every trial goes through,

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1 uh, the fact there there was an objection raised to a
2 particular question or a particular issue shall not and may
3 not be considered by the jury in its deliberations so at the
4 end a this case and I'll remind you of this, Mr. Foreman, that
5 if any jurors begin to try to interject into the deliberations
6 the fact of an objection, my ruling on that objection if I let
7 you stay in here and hear it would be improper. I will tell
8 you that it's simply part of the process and these attorneys
9 have an ethical obligation to object any time they think that
10 there's a problem goin' on in the courtroom. Sometimes you
11 may feel like you're cattle bein' ushered in our outta the
12 courtroom, I apologize to you in advance if in fact that does
13 happen, uh, but that is simply part of the process.

14 Now, Mr. Foreman, uh, again, your job as foreman is
15 communicate with the Court if it's necessary. The process I
16 want you to follow is what you did earlier: get a piece a pad,
17 write your issue down or the question or whatever it is you
18 have, sign your name, knock on the door and give it to the
19 bailiff, okay?

20 JURY FOREMAN: Yes, sir.

21 THE COURT: Now, uh, just for purposes of clarity I'm
22 gonna send you back to your jury room real quick, I'm gonna
23 give these attorneys opportunity to correct anything I said or
24 add somethin' I may a omitted I'm stating to you now, then
25 we'll begin with opening statements from the State but if you

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1 will go back to your jury room, please.

2 (The following takes place outside the presence of the
3 jury.)

4 THE COURT: Any additions or exception from the State?

5 MS. ABEE: No, Your Honor.

6 THE COURT: From the defense?

7 MR. RIORDAN: No, you can do it again if you want, Judge.

8 THE COURT: I hear you, no. You, uh, have a minute you
9 wanna take before you do your opening statements or ya'll
10 ready to go?

11 MR. RIORDAN: Can I just see where hopefully they
12 they ---

13 THE COURT: Yes.

14 MR. RIORDAN: Thank Your Honor.

15 MS. ABEE: And, Your Honor, Mr. Underwood will be doing
16 the opening for the State, I'll be closing.

17 THE COURT: Okay, very good.

18 (Pause.)

19 (CD of 911 call marked State's Exhibit No. 5 for
20 identification.)

21 (Whereupon, a discussion was held off the record.)

22 THE COURT: Okay, State ready?

23 MR. UNDERWOOD: Yes, Your Honor.

24 THE COURT: Defense ready, Mr. Riordan?

25 MR. RIORDAN: Yes, Your Honor.

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1 THE COURT: Okay, very good, bring the jury in.

2 (The following takes place in the presence of the jury.)

3 THE COURT: State ready to proceed, ---

4 MR. UNDERWOOD: Yes, Your Honor.

5 THE COURT: --- Mr. Underwood? Defense ready to proceed?

6 MR. RIORDAN: Yes, Your Honor.

7 THE COURT: Very good, alright, Mr. Underwood.

8 MR. UNDERWOOD: Thank Your Honor, may it please the
9 Court, ---

10 THE COURT: Yes, sir.

11 MR. UNDERWOOD: --- Mr. Riordan. Just after eight
12 o'clock on July 27th 2012, just after 8 a.m. people are on
13 their way to work, the defendant Paula Rose calls Greenville
14 County 911. She very calmly explains to the operator how
15 there are three large men in her garage trying to break into
16 her safe and threatening her, this part a the conversation
17 goes on for several minutes, she is very calm, then she begins
18 describing a fire at her house and her demeanor drastically
19 changes to a sense of panic. We are here in this trial to
20 prove to you that the burglary portion of that claim is a lie
21 and that the defendant herself, Paula Rose, is the one who lit
22 the fires at [REDACTED] Riley Smith Drive in Greenville. Now as I
23 stated this all began with her 911 call about three large men
24 in her garage, it's treated as a burglary and an active fire
25 from the beginning. Law enforcement is responding to a

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1 burglary, large numbers of deputies are on the scene,
2 obviously the fire department is on the scene, everyone is
3 working to contain this fire and investigate this burglary. A
4 tracking dog is brought out to the scene to see if there's any
5 way that any tracks can be found to look for any suspects,
6 pictures are taken, evidence is collected. In addition to
7 arson investigators who are on scene, there are property
8 crimes investigators who specialize in burglaries that come to
9 the scene and begin their burglary investigation. This is a
10 joint case: Arson investigators and burglary investigators. A
11 statement is taken from the defendant Paula Rose about what
12 happened that day, at that time she is considered by law
13 enforcement the victim. She is questioned as a victim, she's
14 given all the respects as a victim. As the investigation
15 continues, things started to change, certain pieces of her
16 story didn't make sense which caused the investigators to
17 further their investigation, to broaden it, to consider
18 everything that's possibly out there, all possible outcomes.
19 As a result they conduct some searches and they locate and
20 they seize the clothes that Paula Rose was wearing. That
21 morning after she had a chance to go and change, take a shower
22 they collected her clothes and on those clothes they found
23 ignitable liquids which show that she is the one who poured
24 gasoline on her front porch and her back porch and lit a fire.
25 Now you may ask yourselves why would someone do this, well

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1 remember, this was a a joint investigation, burglary
2 investigators are working with the arson investigators the
3 whole time, even up to the point when these clothes were
4 collected, but why would a person set their own home on fire?
5 Well we're gonna prove to you that there was a very good
6 reason: attention, sympathy and free publicity. When I say
7 "free publicity," that's because Paula Rose was writing a
8 book, a book that she thought was about to be published and
9 it's not only great publicity 'cause the news is there filming
10 all this but it's free, free to her. Why? because her husband
11 has an insurance policy on the house, a large policy that's
12 gonna cover everything at no expense to her.

13 My name is Joshua Underwood, I'm a prosecutor with the
14 Attorney General's Office down in Columbia along with Ms. Abee
15 who you met yesterday and we are here to prove this case to
16 you. As the judge explained there are four different charges:
17 filing a false police report, making a false claim in a fire
18 loss, arson third degree, and burning personal property to
19 defraud the insurer. As the judge told you, we have the
20 burden of proof in this case, Paula Rose doesn't have to prove
21 or disprove a thing, this is our burden and we gladly accept
22 that burden, we have to prove it to you beyond a reasonable
23 doubt. As the judge explained, there's many different levels:
24 there's, uh, light levels of proof, higher levels, higher
25 levels, the highest level of proof in a case is beyond a

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1 reasonable doubt and remember that word "reasonable" doubt.

2 Ladies and gentlemen, I submit to you that at the end a
3 this case as we present evidence through numerous witnesses
4 all little pieces of the puzzle when that puzzle is complete
5 and you see the whole picture, we're gonna ask you to return a
6 verdict, a verdict Paula Rose is guilty of all four counts.

7 Thank you.

8 THE COURT: Mr. Riordan, does defense wish to open --
9 have an openin' statement?

10 MR. RIORDAN: Yes, Your Honor.

11 THE COURT: Okay, sir.

12 MR. RIORDAN: May it please the Court.

13 THE COURT: Yes, sir.

14 MR. RIORDAN: On behalf of the defense, Paula Rose, her
15 husband Charles Homer Rose the third with South Carolina
16 Highway Patrol Department of Public Safety, her son Chaz and
17 her elderly parents who were here yesterday but since they
18 couldn't be here opening, for opening statement today, are not
19 here today, we thank you in advance for the time, the
20 attention, service you bring to this case and I'm gonna give a
21 different openin' statement I've been prepared to give for the
22 last week based upon what was just said. I wanna, usually
23 don't hold notes, I try not to have it, but I wanna make sure
24 we remember this 'cause it was just said. Clothes found, this
25 investigation that after interviewing her things changed,

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1 things didn't make sense, you'll find out what that was but
2 we'll talk about it now just a little bit. He says 'cause her
3 clothes are found they found ignitable liquids on the clothes
4 when these clothes were taken, I don't know what they're
5 doin', you'll find out what was attempted to do so we can make
6 sure but thankfully again, we're talkin' about evidence in
7 this case, you wait and hear what this evidence is. Sound,
8 found ignitable liquids, it sounds like they're gonna be able
9 to pull out these pants and show right around the cuff where
10 these pour patterns are, it's what it sounds like, isn't it?
11 Found ignitable liquids. You you listen to the chemist and
12 see if that's what they say. What he say too 'cause found her
13 clothes, found ignitable liquids from the front and the back
14 porch, he just said, remember that, remember that, 'cause
15 'cause they're doin' the same thing the investigators did in
16 this case which was not a whole lot. What was the other
17 thing? yeah, they're workin' the whole time on this case, you
18 know, they're, they heard her complaint, they're workin' the
19 case, you find out how quickly this thing moves from her
20 complaint to focussin' on her and why that is.

21 You know I came in here, look, I I'm strugglin'
22 healthwise, this thing has been gettin' me. You saw me
23 yesterday, I probly scared some people yesterday I was so
24 hyped up on adrenaline, was at the end and it fell off and I'm
25 gettin' strength back, gettin' it back and yet and she

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1 deserves that. We don't want this thing to go any longer.
2 We're gonna, we're gonna talk about this: she wanted the
3 attention, the publicity, free publicity, well you look and
4 see how this thing's indicted, she's got four counts. It's
5 funny we come in here today that's the first time anyone says
6 she's lookin' for publicity 'cause before this -- you'll see
7 the indictments, she's charged with gaining insurance fraud
8 'cause she's tryin' to get money and you'll see why they
9 thought that. The evidence -- what this investigation was
10 it's so sad it, uh, you'll you'll see, yeah, and they say
11 'cause she could, 'cause that's all she could get, yeah,
12 'cause they never checked, yeah, she had nothin' to gain
13 financially like they charged her. Husband is a sole owner of
14 the house, husband's a sole insured on the policy. State Farm
15 investigates this, they get their whole file. They say
16 they're gonna call the State Farm agent, you wait till he's up
17 here and see what he's got to say about this. You remember
18 what they just said, okay, you remember that, see if this
19 case, see if this investigation shows that 'cause that's
20 minute stuff, that wasn't even what I had planned.

21 Thank you again, I hope you guys, remember what Judge
22 Stilwell said yesterday, Hope your experience is rewarding and
23 fulfilling and we hope it is. We hope you find it thoroughly
24 enjoying. We're gonna try to do that, we're gonna try to do
25 that. It's funny when I sit up here and say for the defense,

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1 for the defense. My first six plus years were doin' just what
2 they do, last three and a half doin' exactly what they do.
3 Mrs. Abee's to be congratulated, great attorney, I saw her
4 within the last month just successfully prosecuted the former
5 now sheriff of Chesterfield County, again, nice man by all
6 accounts, made mistakes deputizin' his friends improperly,
7 from paperwork apparently, improperly assigning them guns, uh,
8 that they had confiscated. I was over there for a little bit,
9 one a the guys had the gun, his whole gun safe taken but when
10 it's recovered and they get the guns, the paperwork, why did
11 you have this, the paperwork came ba'ck to get him. A good man
12 made mistakes, that's her last case. My last case as
13 prosecutor right in the same courthouse, the biggest courtroom
14 up here on the eighth floor similar to this case. I've got
15 Trooper Homer Rose with me there, in that case it was me and
16 the highway patrol and MAIT team over here (indicating) 'cause
17 we were the prosecution and who was over here (indicating)? a
18 Greenville County sheriff's deputy, mentioned his name
19 yesterday the document when Paris Fant, said, yeah, I might
20 have a problem with that 'cause I had to testify against him
21 in a worker's comp. case, again, deputy, good guy, made
22 mistakes and so you can feel comfortable all the attorneys
23 here are well-aware sheriff's personnel can make mistakes and
24 if I make a mistake, refer to our case as the State, you hold
25 that against me 'cause I, I'm not a prosecutor but I still

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1 think like one, I still feel like one but I'm with the
2 defense. Defense thanks you also for the time you already
3 spent, I know we wasted your day yesterday you think but hey,
4 you don't know, you don't realize just how important that was;
5 in fact, it's probly the most important thing I'm sittin' here
6 talkin', you probly don't even need me to say anything 'cause
7 ya heard it all yesterday and you've heard from the judge
8 today. Yesterday you go down there and watch the video down
9 in the jury assembly room and they talk to you about the
10 standards in different types of cases, civil versus criminal,
11 he's talked about it again, you'll hear it, I don't wanna
12 repeat myself but it is important, this case is important, as
13 the judge said for which she shouts out I'm not guilty. Civil
14 case. Mon -- money's all that's at stake civil case versus
15 here somebody's life and liberty at stake. What is civil
16 case? Burden of proof you start the case and I tried both of
17 'em and I tried most of those if I, if I make another mistake
18 and start talkin' about civil standard of proof, you know,
19 obviously I'm not talkin' about it but I hope at some point
20 you get to the point where you feel it wouldn't matter in this
21 case, okay. Civil standard a proof the scales of justice
22 start evenly and the the plaintiff, the moving party, has to
23 tip 'em ever so slightly. Got the burden beyond by the
24 preponderance or the greater weight of the evidence. Even in
25 a civil case the judge instructs but before you can award

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1 those damages they've gotta be proven beyond conjecture,
2 guess, or speculation, that's a civil case, we're here in a
3 criminal case: highest burden of proof that exists, beyond any
4 and all reasonable doubt. They're gonna get up here and say,
5 now it's gotta be a reasonable doubt and it can't be a, can't
6 be a fanciful doubt, you you you figure out whether you think
7 there's reasonable doubt in this case after you hear the
8 evidence. Beyond a reasonable doubt very important and it's
9 gonna be said more and you'll hear it from the judge as an
10 instruction. What else was important? The qualification from
11 the judge he said some great things, I can't even repeat 'em
12 they were so good, they're perfect for this case, I love that
13 he said 'em. You guys need to know beyond wartime, besides
14 military service most important service you can do in a -- as
15 a citizen in the United States jurors, one a the, uh, six
16 constitutional offices, that's how important, our Constitution
17 that the bedrock principle makes America great, I submit that
18 you've heard that. Hey, I'm not just waivin' a flag here, I
19 believe in that, she (indicating Ms. Abee) believes in that
20 and you guys believe in that 'cause we asked about it, we
21 talked about it and made sure you agreed and you understood.
22 He talked about, Look, we've gotta have that 'cause otherwise
23 that's what makes America great, otherwise we're one a these
24 poli -- used the words "police state," cause you guys could
25 fight against it, when all this other stuff happens at the end

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1 a the day thankfully you twelve get to sit here, common
2 citizens, you take an oath, you take an oath to follow the law
3 that's already been charged part a that, you look at her now,
4 it's not just words. Presumed innocent, you better see her as
5 innocent, you've taken an oath, she's innocent, she's
6 innocent, until they prove her guilty she's innocent. You
7 follow that throughout this, okay. You've agreed to do it,
8 that's why it was so important. Said it it was a police
9 state, uh, he had some other good words, you guys will have to
10 talk amongst yourselves when you get a chance to talk about
11 it, that's the other important thing. Well the other thing is
12 good too, I I'm skippin' ahead, voir dire. The voir dire
13 that's when the judge read the questions to ya yesterday.
14 Some of 'em were kinda funny, if anyone had a dislike for
15 baseball and hot dogs, you'll find out why that's somethin' in
16 this case that's so important given what they just said about
17 why she did this versus why they thought she did it when they
18 charged her 'cause if -- 'cause again, that's part a the
19 presumptions they make here and, I mean, turn the
20 investigation around on somebody. You'll see how the awesome
21 power of the State when it focuses on somebody, can put
22 somebody in this spot how frightening it is but the voir dire,
23 again those questions: do you understand, do you agree, does
24 any -- do any of you have a problem following these these
25 instructions, so you've agreed you're gonna do it. Law week

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1 was last week, we celebrated these very principles and now you
2 guys get to take part part in it and again, I'll say it again,
3 you've taken a solemn oath, America's great 'cause we got
4 great people but where where'd we go wrong? Where is it when
5 America, when America falters? These are the folks that take
6 it, we put 'em in office and take an oath, they don't follow
7 it. You've got an opportunity set an example here, you're
8 gonna follow the oath, okay, you're gonna follow it but let's
9 go back before you took that oath when you're out in your
10 everyday world and you may and may fall back into it, it's
11 easy to fall back into it. You're out and you're in everyday
12 life and you hear a news report, maybe a press release from
13 the Attorney General's Office or the sheriff's department
14 sayin', Hey, there was a crime but an arrest has been made and
15 ya hear that and think thank goodness, what is that? It's
16 natural, I know it is, it's natural and thankfully 90 percent
17 of the time so many officers do do great and again, I'm not
18 saying that this was intentional, there there's a
19 mis -- it's a mistake but what is that? that's the presumption
20 of guilt, that's what that is and again, that's that's what's
21 so concerning for anyone that sits in the chair here like
22 Paula is, that's why we spent so much time qualifying you
23 guys, we don't have concern that you're gonna be able to
24 reverse that, I know it's gonna be tough but you gotta
25 discipline yourself that you're gonna reverse that, you're

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1 gonna make it real, you're gonna follow your oath, you're
2 gonna set the example and so in this ca -- and let's let's
3 make it a little bit better. She's innocent, she's innocent
4 so they got it wrong, that's that's the other thing put,
5 they've got it wrong. Start right now, the presumption is
6 they got it wrong, they arrested the wrong person, that's how
7 you, that's how you start this case and we trust you're gonna
8 do it, you've already said you would by your oath. It's so
9 important because again, as the judge said don't make up your
10 mind, don't talk about this, when you leave the courtroom
11 they'll instruct you don't talk about it even amongst
12 yourselves, when you go home at night, don't talk about it
13 even with your family and everyone else, you've gotta decide
14 this fact on the evidence that comes before you or just
15 importantly the lack thereof, so you can't make up your mind
16 because you know what happens? What what could happen?
17 they're they're gon -- they got the burden of proof so they
18 get to go first, that's right, they've already put it in your
19 mind, uh, there's somethin' funny here, you're gonna hear
20 their testimony first, the problem is first impressions can be
21 lasting impressions. If you get it wrong the first time, if
22 you get it wrong right at the start, you get off track and you
23 start headin' down the wrong road, you might never get back.
24 We suggest that's exactly what happened here and and I hope, I
25 hope I can stay healthy enough to put it out and get it here

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1 and you can see it but I don't think it's needin' me, they're
2 just gonna put it up and you're gonna be able to see it.
3 They've already said, they're gonna put it in your mind again
4 this 911 call. You're gonna listen to the 911 call and if you
5 don't wanna, if you wanna ignore your oath, if you wanna
6 listen to it tryin' to find out is this kinda phony, is there
7 somethin' goin' on phony here, you're gonna, you're gonna find
8 it. You'll you'll hear what you want to hear but I submit to
9 you you won't be following your oath, you won't be if that's
10 how you listen to it. I submit to you that is a dangerous
11 road to predict how any individual person is supposed to be
12 acting, what their demeanor's gonna be in a particular
13 situation unless you know what they've been through and what
14 they're going through. I exp -- I don't expect you're gonna
15 hear the lady she spoke with on the phone, Margaret Quinn, the
16 911 operator, I almost guarantee you won't hear her come in
17 here and say, Yeah, when I was talkin' to go her, I thought
18 somethin' was funny, I knew sumtin' was up. I I submit to you
19 any one a those folks gonna say, Hey, 911 calls they're all
20 different, you never know, and you know part a this, use your
21 common sense. I submit to you any 911 call if someone told
22 you beforehand this has already been said, look, you're gonna
23 hear 911 call but I'm tellin' ya it's it's not true, at the
24 end of it's not true. If you, if you listen to any, I submit
25 if you listen to any call that way, you're you're gonna find

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1 things that make ya scratch your head say, I don't know, but
2 again, if you follow your oath, she's innocent, they've got it
3 wrong, don't think you're gonna have that trouble. Let's do
4 this 'cause they did an invest -- they -- I submit to you they
5 hardly investigated her complaint. If it makes -- if, and I
6 think it would be effective be thinking when you listen to it,
7 you know, we can't, we're we're not here to prosecute her
8 complaint 'cause it wasn't investigated, I wish I could.
9 Don't for a minute let them convince you we've got the burden
10 of proof to show that though. This is the suit they brought,
11 this is the case they brought but if it -- but I, but I submit
12 to you one way to do it is to be thinking, Hey, what if three
13 guys were here, what if it's their suit and this is the 911
14 call, you think you'd have any hesi -- you think anyone would
15 come in here with three guys sittin' there and say, I don't
16 know, that 911 call sounded funny? She's calm they say, I
17 just heard her, yeah, that was part of it, very calm. Hey,
18 this girl's married to a trooper and you'll hear testimony she
19 was married before to a family of law enforcement fo -- in a
20 family of law enforcement folks, she's been in law
21 enforcement, she used to work for the DMV office up in O -- in
22 Oconee County, she's worked with troopers her whole life.
23 She's got it, she's got her own experience. These people
24 presume they know how she's supposed to act in a situation.
25 Had her control weapons permit, part a the training, you keep

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1 calm, try to get calm so you can assess the situation. Submit
2 to you that morning she's awoken by her dog, 200 pound or so
3 great pyrenees barkin' in the, barkin' in the garage, again,
4 better get up, goes to see what's happenin', yeah, maybe it's
5 a yard person comin', what -- wasn't sure who to expect and,
6 uh, you know, so again, she's wakin' up. Two guys at the
7 safe, she goes to the light real quick and sees a third guy,
8 quick glance and this is a matter of seconds, grabs her dog,
9 they're not supposed to be there, they're at her husband's gun
10 safe, back to her room. Gets in the room, hey, they got guns
11 out, their gun safe in the garage, she married to law
12 enforcement, they got guns inside too in her bedroom,
13 shotgun's always got a shell in it, pump-action shotgun on the
14 bed. Go call 911, phones dead. Go around the bed her side,
15 alright, get the cell phone, Oh, yeah, there's my Ruger, she
16 wearin' a gown at that time, get some pants on, tuck it in,
17 get her dog quite, her dog's still barkin', you listen, that's
18 what's funny, they're gonna talk about this on the 911 tape,
19 you can hardly hear, you can hear more what's goin' on in the
20 operation center than at her house and if you wanna imagine
21 that she's she's makin' this up and she set a fire, she's
22 callin', tryin' do it, I mean, as they always do in cases she
23 gonna make it up, probly woulda been better than this, you
24 listen to it though, you hear the dog still barkin', she's
25 tryin' to get the dog calm. Yeah, she's already gotten

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1 through, they're comin', the rest of it is distraction, she's
2 on alert lookin' around, seeing what's going on, you think
3 about it in that regard when you're listening to this 911
4 call, okay. I submit to you again, per your oath she's
5 innocent so what she says is absolute truth, that's how you
6 take it until they prove otherwise. Danger is there, she's
7 callin' for help. She hears somethin', opens the door, one of
8 her cats runs out, she's screamin' to get the cat back in
9 there, didn't wanna go out, didn't know -- hadn't heard
10 anything yet, fire out in the back porch, but as soon as she
11 gets out there there's windows everywhere, it's the guy was
12 there before and no longer there, they've set the fire, run.
13 You be thinking about, Well does that make sense they're here,
14 goodness gracious, if they didn't think anyone was home, they
15 realize law enforcement troopers wife's in the house, let's
16 get, before we get a shotgun to our back, let's get a little
17 distraction here and diversion, okay, but she calls for help,
18 she's running around tryin' to do things, breathin' smoke,
19 calls for help and heroic first responders respond, no doubt
20 about it. People call, you'll hear from Ben Temple, first guy
21 he's goin' to work, come's off Pelham Road, takes a left turn
22 where this is, talkin' to one of his buddy's on the phone,
23 soon as he gets where he can see, he says, Oh, man, I think
24 that a house on fire, I need to go, hangs up, pulls right in
25 the driveway this guy, and they make, I don't even know what

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1 they're gonna do with this, gate's wide open, no testimony the
2 gate's being open, gates wide open, he drives in, stops his
3 car, he's near near the, near the end of the driveway, stops
4 his car, takes off his seat belt, opens the door, goes out to
5 see, walks around to see is this re -- is this a house fire or
6 somebody burnin' leaves in the back, he realizes it's a house
7 fire. Back to his car, calls 911, short call, I can't even
8 remember how short it is, basically saying 9 -- yeah, at --
9 911's comin', okay. Right then here comes Paula outta the
10 burning house onto the front porch and you'll hear that
11 beginning a the tape, again, she's been, she's been in law
12 enforcement her whole life, she's used to first responders,
13 guys that are off duty hearin' radio calls, she comes out,
14 sees a young fit guy, thinks he's part of it. You'll hear on
15 the tape she's screamin', My 200-pound dog's in there, my
16 200-pound dog, it's somethin' to that, maybe she doesn't say
17 it twice, whoa, I can't make a mistake, somebody might arrest
18 me, 200-pound dog's in in, uh, inside and you hear a voice off
19 in the distance, it's him, he said, Yeah, she asked me and I
20 said, Are there people in there, huh, he'll tell ya, he's
21 like, Well if there's people there, I'm probly gonna have to
22 go in and you hear her respond back, No, my dogs and my cats,
23 and he says, Okay, well I'm not goin' in for pets, he says,
24 Well 911's on the way and you can hear 'em. He gets back in
25 his car, backs out of the driveway on the street and hears the

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1 first responders, Wade Hampton Fire Department's a mile away,
2 here comes the first truck. Reggie Batson drivin', we got
3 Lieutenant Scott, uh, Proffitt and Brandon Barwick, they're
4 already geared up, they stop the, stop the truck, boom,
5 they're off to the fire really about the same time. Sheriff's
6 Deputy Robbie Brown usually a resource officer, usually works
7 at school, he hears the call and he responds. He comes there
8 about the same time, gets out of the car, he knows there's
9 three guys there, no report of them bein' armed but you gotta
10 be ready. He's got his shotgun in hand, he's comin' down,
11 Where are the bad guys, she doesn't know, it's been eights
12 minutes now I think since since, uh, uh, she she had seen the
13 fire and knew no one was there. This whole incident start to
14 finish on the phone call less than seventeen minutes, fire
15 department's there. Lieutenant Scott Proffitt comes up says,
16 Yeah, she's there on the front porch where the gas fire is,
17 that's important, remember that's where the gas fire is, Yeah,
18 she's right there on the front porch screamin' with me, Save
19 my dogs, they saved me, save my dogs. He's tellin' her, you
20 know, get outta the way, I'm not worried about dogs, we gotta
21 fight the fire. He tells her get outta the way, he wan -- he
22 wants to go, he's a little bit concerned 'cause she's still
23 packin' her gun but these guys fight the fire. They stop the
24 fire, he gets in and saves dogs. Yeah, dog comes out, again,
25 they're on the front porch huggin' her dogs, dogs walkin' on

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1 the thing, she's holdin' 'em, everyone agrees, Boy, she was
2 really concerned about those dogs. They responded, they
3 ceased, they put out the fire and they stopped all the threat
4 and so yeah, she is happy at that point. An hour later after
5 all the danger's gone investigators arrive, they look around
6 and they're there for hours, 12 -- 12:20, '30, what, somethin'
7 like that, finish their investigation, release it, tell Paula
8 she can go but they want her to come and meet her later.
9 Randy Morgan, she meets Randy Morgan. She goes, she got gross
10 and takes a shower, gets ready to go meet with him, the scene
11 is released, her husband, Hey, the house is, house is burned,
12 but hey, it's just a house, we can deal with that, get the
13 insurance company involved, let's get, uh, SERVPRO out on the
14 scene, clean it up, to get it cleaned up, let's move -- remove
15 the debris, get the water out that's in here, windows are out,
16 let's board it up, workers workin' all over the place.
17 Investigator, I I forgot 'cause this part is -- was so
18 important gettin' off on the wrong track and making
19 presumptions, just dangerous presumptions, investigators get
20 out there, say, Well goodness, it's a pretty nice house,
21 pretty nice pool, pretty nice property, highway patrol lives
22 here, I I I think I know what highway patrolman makes,
23 somethin' doesn't seem right, that's the first false
24 presumption, presuming to know what family resources somebody
25 might have beyond their salary. You remember the questions we

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1 asked about in voir dire, that's gonna be important here
2 'cause that's the first presumption that get's 'em off track:
3 somethin's not right here, financially this just doesn't make
4 sense, trooper livin' here? They speak to, here here's the
5 next thing they talk about that they look into this
6 investigation, they were workin' this whole time on her
7 complaint, get down here, we spoke to her just like she's a
8 victim. Let's talk about that. Yeah, she's there, they've
9 got to talk to her, we understand that, anyway, Randy Morgan's
10 gonna come up here, yeah, and we're gonna read, we're gonna go
11 through his report, it's it's gonna be interesting, Randy
12 Morgan comes in and says, Yeah, I spoke to her about the
13 incident and while she told me about the incident she was
14 calm, and and he says, In my experience it seemed unusual
15 given my experience, well isn't that somethin', his e -- his
16 experience is now gonna be start of the evidence of the crime,
17 doesn't know anything about what she's been through and let's
18 talk about it again, this in -- just seems unusual for someone
19 that's been through this, we're talkin' about a couple seconds
20 with the guys in a 17-minute ordeal fully before people she's
21 worked with and respects are all there, she's safe again and
22 so he's he he he just finds it so strange, there's somethin'
23 goin' on here. What else is real strange? This'll be funny
24 'cause we're here in a criminal case, I'm defending her and
25 I'm, usually I'm making motions, don't anyone talk about any

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1 charges she had in her past, let's not do it, no, let's talk
2 about it 'cause she's up front with them and tells them 'cause
3 they're wantin' to know what she does, what she's doin', she
4 says, Look, I went through a hell of an ordeal, I've got some
5 criminal charges, I'll I'll tell you about the horrible ordeal
6 and he says, Well when she talks about this ordeal she was
7 animated and, uh, really goin' on, real difference from from
8 what happened that day, again, he doesn't know what this
9 lady's been through and when you see what what his
10 investigation was, he didn't care, all he heard was she had
11 criminal charges. Let's talk about those, we'll talk about
12 'em in this case. First char -- yeah, again, told ya she's
13 married to law enforcement before, up in Oconee County, bad
14 marriage, after a long time bad marriage, finally filed CDV
15 charge against her husband ---

16 MR. UNDERWOOD: Your Honor, I have a an objection.

17 THE COURT: Would you take your jury to the jury room,
18 please, Mr. Foreman.

19 (The following takes place outside the presence of the
20 jury.)

21 MR. UNDERWOOD: Your Honor, uh, first I think the the
22 opening statement's getting a bit too argumentative but more
23 importantly, Your Honor, as to the specific matter being
24 addressed at the time a my objection I don't feel the
25 underlying back story's relevant to this case. I can

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1 understand Mr. Riordan talking to a certain extent about how
2 she's had problems with law enforcement before, uh, that
3 that's caused her stress, I don't think that the entire back
4 story a that is relevant to this case and I don't know that
5 it'll be admissible at trial.

6 THE COURT: Well I o -- I overrule your objection on that
7 ground, however, uh, this is opening, it is not closing so I'm
8 gonna ask you to start movin' forward, wrap it up, ---

9 MR. RIORDAN: Yes.

10 THE COURT: --- okay.

11 MR. RIORDAN: Ma -- again, Randy Morgan does talk
12 about those, I'm gonna, I I will say charges that were
13 dismissed, ---

14 THE COURT: Just one second, ---

15 MR. RIORDAN: --- that's what ---

16 THE COURT: --- guys, ---

17 MR. RIORDAN: Yes, Your Honor.

18 THE COURT: --- when I want you to argue back with me, I
19 will ---

20 MR. RIORDAN: Yes, ---

21 THE COURT: --- ask you ---

22 MR. RIORDAN: --- Your Honor, I'm sorry. I just wanna
23 make sure I didn't violate your instruction.

24 THE COURT: Alright, okay.

25 MR. RIORDAN: Your Your Honor, real quick, uh, her -- who

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1 is it your ---

2 THE DEFENDANT: My mom and dad.

3 MR. RIORDAN: Her mother are, her mother and father are
4 here, they're elderly, can they come in now that we, yeah,
5 'cause I ---

6 THE COURT: Let me tell you guys we're gonna move this
7 case along and ya'll are dragging this thing out, yes, they
8 may but ---

9 MR. RIORDAN: Yes, sir, ---

10 THE COURT: --- but I want this case ---

11 MR. RIORDAN: --- I ---

12 THE COURT: --- movin' along, okay. Uh, bring 'em in and
13 do it in a hurry basis, please. Yes, bring 'em in.

14 THE BAILIFF: Okay.

15 (The following takes place in the presence of the jury.)

16 MR. RIORDAN: Yeah, we don't wanna talk about criminal
17 charges if you're guilty but if you've been charged multiple
18 times as as was told, yeah, we'll, again, we'll go over his
19 report, multiple times but defeat all of 'em, jury trial not
20 guilty, jury trial not guilty, dismissal, nol-pros, nol-pros,
21 big ordeal many years and he finds concern over the fact that
22 she is animated about that thing she's lived with for nine
23 years versus the seventeen minutes she had to go through,
24 you'll see that's when everything changes. Again, rather than
25 being impressed that she fought charges and defeated all of

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1 'em, yeah, they talk about it, it's in the book, that's what
2 the book's about, Good Cop, Bad Cop. Bad cop set her up, she
3 has to fight 'em and beat 'em, course she's happy to talk
4 about it but instead again, instead of that bringing her
5 credibility and looking into this thing and saying, Ma'am,
6 might be some powerful people out here and I don't know that
7 they had anything to do with it but at least have some damn
8 curiosity and look into it, instead you'll see that what they
9 adopt is, Well she musta been guilty then, she got away with
10 it then, we're not gonna let her get away with it this time,
11 that's the mindset 'cause one of 'em also is a, is a a a fraud
12 case, again, which she wins, nothin' done to look into the
13 background of it and that's when it changes back when she
14 leaves that meeting, again, she's been in a fire, she take a
15 shower, wantin' to go get some medical care from breathin'
16 smoke all day, the agreement was that she's gonna meet the
17 arson investigators again on Monday, this is a Friday, gonna
18 meet 'em on Monday, but when she gets back they're at the
19 house and that's where all these questions come up about that
20 livin' above your means, what's goin' on here, what about this
21 book, and everything's focused upon her and they do get some
22 evidence and we'll talk about that. I hope you guys, uh, will
23 look at this and has -- have some concern 'bout how this
24 evidence is gathered and whether it means anything in this
25 case. When the scene is released, when SERVPRO is out there

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1 dealin' with things, you'll see that key evidence in the case
2 has clearly been moved. You look and see 'cause an arrest is
3 made, that's the power they've got. They make an arrest,
4 based upon the little bit, they make an arrest and you'll see
5 they make that arrest when there's other significant evidence
6 out there that they haven't even gotten results back upon, so
7 if we don't even see you'll hear about that if she's arrested,
8 there's no press release to talk about new evidence in the
9 case, no, no, no, that's, we don't even see it till February
10 this year, this fire's July of 2 of 2012, February 28th, the
11 last day of February this year the first time she gets to see
12 some a the evidence, the results of some other evidence, we'll
13 wait, we'll wait to, we'll we'll talk about that 'cause that
14 will part a the investigation here. Look, they've got the
15 power, they've got awesome power, again, you follow your oath,
16 you don't wield it in a unwise way, usually no problems,
17 you're not saying these guys are bad guys but I, but I do
18 suggest, I think you'll see in this case they made a mistake.
19 Presumptions, false presumptions, they did all, it was their
20 power but now the power's with you, that's what we go back to.
21 Again, at the end a the day, yeah, you can have a police state
22 if you just leave it up to folks like that but thankfully you
23 guys get to come at the end a the day just like our other two
24 cases, not guilty, not guilty, she's dependin' upon you guys,
25 dependin' upon. Presumptions gathered here, faulty

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1 presumptions, your twelve presumptions, presumption of
2 innocence, that's the only hope she's got, she's countin' on
3 you to follow your oath. This is titled case vs. Paula Rose,
4 the prosecution of Paula Rose. Look, you guys are the judges
5 of the facts. Many many ways you guys are just like
6 investigators. You sit here presumin' she's innocent and they
7 got it wrong, that's how you view this. Okay, you got it
8 wrong so come up here and prove us otherwise. You got a big
9 burden, you better prove it beyond any reasonable doubt, we're
10 gonna make sure that investigation was thorough, that's how
11 you look at this case 'cause this really what this is, it's
12 the prosecution of their investigation, that's what this is
13 gonna be, that's what we're gonna do try to do in
14 cross-examination, you guys will be listenin' to this case.
15 They have the power before, you've got it now. They got the
16 right to bring this I guess, they got the right to bring a
17 case, along with that right comes the duty, the obligation,
18 the burden to prove all elements of these charges beyond any
19 and all reasonable doubt, kinda doubt that will cause a
20 reasonable person to hesitate to act in normal daily
21 activities. You listen to this evidence, you digest it,
22 whatever it is, articles here, paperwork, testimony from the
23 stand, be asking yourself is this a thorough investigation, is
24 this what we expect, is this what we expect citizen a
25 Greenville County be subject to. You listen closely to the

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1 evidence, you ask yourselves those questions, you apply your
2 common sense, you apply your sense of justice, most important
3 you follow your oath. We're confident at the end a this case
4 you all are gonna be able to reach a unanimous verdict, one
5 which finally brings justice. You know what's funny, the fire
6 was put out by the brave guys, arson investigation team's more
7 dangerous than the arsonist, they started a fire that's still
8 burnin' under her, we're countin' on you guys to put it out,
9 you'll do that by your investigation. We're confident if you
10 do all those things you will reach a verdict which does
11 justice, that's all we ask for, nothin' more. Thank you,
12 alright.

13 THE COURT: First witness.

14 MS. ABEE: Your Honor, this time the State calls Benjamin
15 Temple to the stand and and, Your Honor, the State would ask
16 that anyone that's sequestered be removed from the courtroom
17 at this time.

18 THE COURT: Granted.

19 THE CLERK: Please come forward.

20 (Whereupon, the witness came forward.)

21 THE CLERK: Put -- raise your right.

22 BENJAMIN BRIGGS TEMPLE,
23 having been first duly sworn, testified as follows:

24 THE CLERK: Please have a seat. Would you state your
25 full name for the record.

BENJAMIN BRIGGS TEMPLE - DIRECT EXAMINATION BY MS. ABEE

1 THE WITNESS: Benjamin Briggs Temple.

2 DIRECT EXAMINATION BY MR. ABEE:

3 Q. Good morning, Mr. Temple.

4 A. Hi.

5 Q. Are you currently employed?

6 A. Yes.

7 Q. Where at?

8 A. Uh, ECS Carolinas.

9 Q. And what county do you currently live in?

10 A. Greenville.

11 Q. Do you recall witnessing a house fire on July the 27th of
12 2012?

13 A. I do.

14 Q. And approximately what time of day was that house fire?

15 A. Uh, I was on my way to work so I think between 8 and
16 8:30.

17 Q. And you say you're on your way to work, what roads were
18 you traveling on at that time?

19 A. I take Pelham Road to Riley Smith to Blacks, uh, Blacks
20 Road over to Roper Mountain.

21 Q. And do you recall which road the house fire was on?

22 A. Is that Riley Smith? I get Riley Smith and Blacks Road
23 confused but ---

24 Q. If you could just tell us briefly what you observed when
25 you saw the house on fire.

BENJAMIN BRIGGS TEMPLE - DIRECT EXAMINATION BY MS. ABEE

1 A. I, uh, came down the hill, I I was on the phone with
2 someone and I saw a lot of smoke off to my right that looked,
3 uh, like an excessive amount of smoke for what mighta been a
4 leaf fire, uh, told the guy I was talking to that I needed to
5 get off the phone because I thought I might be seein' a house
6 fire. I, uh, pulled into the driveway and, uh, as I pulled in
7 I was still unsure because the smoke was hanging around the,
8 uh, around the trees a lot, couldn't tell exactly if it might
9 just be a a leaf, somebody burnin' leaves, uh, until I got
10 outta the car and I approached the house, uh, and when I got
11 closer to the house I saw smoke coming from the eaves of the,
12 of the house there. I realized it was house fire, went back
13 to my car, called 911, uh, the dispatcher told me that help
14 was on the way and that's about the time I heard the fire
15 sirens, uh, saw someone come outta the house, uh, she said
16 that there was a dog inside, uh, and she couldn't get him to
17 come downstairs, uh, asked her if there were any people in the
18 house and she said no, uh, and at that point the fire engines
19 were gettin' close so I got in my car and got outta the
20 driveway.

21 Q. And what type of car were you driving?

22 A. Uh, it was a black mercedes.

23 Q. And what type of clothing do you wear when you go into
24 work?

25 A. Typically, uh, something' like I have on now or perhaps

BENJAMIN BRIGGS TEMPLE - DIRECT EXAMINATION BY MS. ABEE

1 like khakis and a polo shirt or button down.

2 Q. And at any point in time, uh, did this person tell you
3 that there were three men at the house?

4 A. No.

5 Q. And do you see the person that came outta the house here
6 in the courtroom today?

7 A. I I was a good distance away at that point so I I
8 wouldn't be able to positively identify.

9 Q. And once you pulled outta the driveway how much time
10 passed before a fire truck showed up?

11 A. Uh, it was probably a minute to two minutes maybe at the
12 most.

13 Q. And once the fire truck showed up what did you do?

14 A. I kinda just stayed outta the way, watched the firemen do
15 their thing, they, uh, one fireman went up to the house,
16 another guy was gettin' hoses ready, uh, outside the truck and
17 I just kinda stayed around not real sure what to do, uh, and
18 after a few minutes I just went on to work.

19 Q. Thank you, Mr. Temple. Your Honor, I have no further
20 questions.

21 THE COURT: Cross ---

22 MR. RIORDAN: May ---

23 THE COURT: --- examination.

24 MR. RIORDAN: --- may it please the Court.

25 THE COURT: Yes, sir.

BENJAMIN BRIGGS TEMPLE - CROSS-EXAMINATION BY MR. RIORDAN

1 CROSS-EXAMINATION BY MR. RIORDAN:

2 Q. Temple, thanks again for bein' here.

3 A. Yes, sir.

4 Q. Uh, you're familiar with that area, right?

5 A. Yes, sir.

6 Q. You you had been through there before, correct?

7 A. Yes, I have.

8 Q. And, uh, that area, that house fairly remote, isn't it?

9 A. It has woods around it, yes.

10 Q. Woods all around it, right?

11 A. At least on one side, I don't remember if there's a house
12 on the other side or not.

13 Q. Alright, in July the growth around there nearly about as
14 thick as it gets, isn't it?

15 A. I would guess.

16 Q. Okay, and you see the smoke, you're able to pull right
17 into the gar -- into the driveway, right?

18 A. Yes.

19 Q. No problem with the gate bein' closed or opening as you
20 drove in was there?

21 A. I didn't see a gate.

22 Q. Didn't even see a gate, did ya?

23 A. Yes. sir.

24 Q. Drove right in and you did, you see Paula comin' out of a
25 burning house or a woman, you haven't identified her that's

1 right. You see her come out of a burnin' house, right?

2 A. Yes.

3 Q. Got soot on her? S ---

4 A. I couldn't see any soot.

5 Q. Did ya see that the front porch had -- was either on fire
6 or still burning at the time, could you tell?

7 A. The only thing I saw was smoke comin' from the eaves of
8 the house.

9 Q. Okay. Alright. And again, she's telling ya immediately,
10 My 200 pound dog's in there, co -- she wanted you come get her
11 200 pound dog, right?

12 A. I was concerned that she might want me to get her dog.

13 Q. Okay, so that's why you asked are there people in
14 there, ---

15 A. That's right.

16 Q. --- you'd a gone in for the people, right?

17 A. I'd like to think so but ---

18 Q. Alright, well that's we talked about, you said if there
19 were people in there I knew I'd have to go but with when she
20 said no dogs and cats, you said alright, 911's on the or
21 authorities are comin', correct?

22 A. Correct.

23 Q. In fact, you actually helped, uh, Reggie Batson the
24 driver hook up some a the hoses, didn't ya?

25 A. I I helped him with hoses yes.

BENJAMIN BRIGGS TEMPLE - CROSS-EXAMINATION BY MR. RIORDAN

1 Q. Alright, real quick, you're familiar with that area,
2 right?

3 A. I am.

4 Q. Alright, and I asked you specifically, I said, look, you
5 goin' through any mi -- any time soon and you said you would,
6 right?

7 A. I do ---

8 Q. And I asked ---

9 A. --- drive through there.

10 Q. --- you to clock when you turn off Pelham to drive to the
11 driveway asked you to look at your odometer and see how far it
12 was, right?

13 A. Yes.

14 Q. And you told me yesterday that you did reset it when you
15 turned but you looked down and when you got there it was
16 between .3 and .4 miles, correct?

17 A. Right, to be clear I was coming the other direction
18 but ----

19 Q. Okay.

20 A. --- glanced down as I pass the driveway, glanced down
21 again as I pass the library.

22 Q. Alright, and I'd a -- I thought I'd asked you to check
23 your time too but and and you didn't but but you said
24 certainly less than a minute to drive that little stretch,
25 right?

BENJAMIN BRIGGS TEMPLE - CROSS-EXAMINATION BY MR. RIORDAN

1 A. I would estimate it less than a minute.

2 Q. That was easy to do to look at your odometer to figure
3 out how far that was, right?

4 A. It was.

5 Q. Yeah. Thank you. Thank you for your stopping that day
6 as well.

7 THE COURT: Re -- redirect?

8 MS. ABEE: Your Honor, I have no redirect for this
9 witness.

10 THE COURT: Alright, will this -- may this witness be
11 excused?

12 MR. RIORDAN: Yes, Your Honor.

13 MS. ABEE: No objection, Your Honor, thank you.

14 THE COURT: Thank you, sir.

15 (Whereupon, the witness left the stand.)

16 THE COURT: Call your next witness, please.

17 MS. ABEE: Your Honor, at this time the State calls David
18 Bailey.

19 THE CLERK: You please come forward and put your left
20 hand on the Bible, raise your right.

21 (Whereupon, the witness came forward.)

22 DAVID HAMMOND BAILEY, having been
23 first duly sworn, testified as follows:

24 THE CLERK: Please have a seat.

25 (Whereupon, the witness complied.)

DAVID HAMMOND BAILEY - DIRECT EXAMINATION BY MS. ABEE

1 THE CLERK: Will you state your full name for the record.

2 THE WITNESS: David Hammond Bailey.

3 DIRECT EXAMINATION BY MS. ABEE:

4 Q. Mr. Bailey, are you currently employed?

5 A. Yes, I am.

6 Q. Where at?

7 A. Wade Hampton Fire Department.

8 Q. And what's your current rank there?

9 A. Assistant fire chief.

10 Q. And how long have you been at the Wade Hampton Fire
11 Department?

12 A. Be thirty-eight years in August.

13 Q. Do you recall responding to a fire at [REDACTED] Riley Smith
14 Road in July of 2012?

15 A. Yes, I do.

16 Q. Okay, and if you could, uh, are you familiar with that
17 residence?

18 A. Familiar as in what?

19 Q. Do you know like who the homeowner of that residence
20 is?

21 A. Yes.

22 Q. Okay, who's the homeowner?

23 A. Uh, Mr. Rose.

24 Q. And how long have you known Mr. Rose?

25 A. Thirty-six years.

DAVID HAMMOND BAILEY - DIRECT EXAMINATION BY MS. ABEE

1 Q. And you say Mr. Rose, what's his first name?

2 A. Uh, Homer.

3 Q. And so what was the call that you received to respond to
4 ■ Riley Smith?

5 A. Uh, we received a call that morning respond to a
6 structure fire, reported structure fire, a possible
7 burglary.

8 Q. And so when you arrived on the scene describe to us, uh,
9 who all was there.

10 A. Uh, there were a number of deputies there, uh, my first
11 truck responded, uh, they were there first before I got on the
12 scene: three firemen and a number of deputies.

13 Q. And did you see an active fire when you arrived?

14 A. Uh, yes.

15 Q. Okay, and describe to us the scene at the fire itself
16 that you had saw.

17 A. Uh, the, uh, there had been a fire on the front porch
18 that was, uh, smoldering a little bit, uh, there was active
19 fire in the rear of the house.

20 Q. Okay, and what, if anything, did you do in response to
21 that fire or direct your men to do?

22 A. Uh, I directed, uh, my men to, uh, secure hand lines,
23 pull lines into the structure, uh, see about getting the fire
24 out in the rear of the house, uh, do ventilation salvage
25 overhaul, uh, I was positioned probly 20 feet inside the

1 driveway was my position on the scene.

2 Q. And I wanna first talk about the fire on the front porch,
3 you said that that fire was smoldering, describe to us what
4 that actually means.

5 A. Uh, there was no flame, uh, I believe there was a dog bed
6 that, uh, had been on fire and just a little bit of smoke
7 comin' off of.

8 Q. So did you actually have to put out that fire before
9 proceeding to the back ---

10 A. No.

11 Q. --- a the house?

12 A. No.

13 Q. Okay, and how did you get to the back a the house?

14 A. Myself?

15 Q. Or, uh, your men. How did you get to the back a the
16 house to put out the fire?

17 A. Uh, they went through the front door.

18 Q. Okay, were they able to put out that fire?

19 A. Yes.

20 Q. And were you able to see which part a the house that fire
21 was located in?

22 A. Uh, I did later on, yes.

23 Q. Okay, and where did you see that the -- where did you see
24 that fire?

25 A. Uh, the rear patio, uh, deck portion of the outside a the

DAVID HAMMOND BAILEY - DIRECT EXAMINATION BY MS. ABEE

1 house.

2 Q. And in comparison to the fire on the front porch, what
3 did the back porch fire look like?

4 A. Uh, heavy fire damage on the back.

5 Q. And you said there were deputies there, uh, when you
6 showed up on the scene, what did you see them doing?

7 A. Uh, one was, uh, coming out of the, uh, garage and, uh,
8 coming back towards the street and I just spoke to him, asked
9 him if everything was clear, he stated yes and we proceeded to
10 do our job.

11 Q. When you say you asked him if everything was clear, why
12 did you ask that?

13 A. Uh, because the report that we had that there was a, uh,
14 fire and possibly a burglary in progress.

15 Q. And did any of these deputies did you ever see them with
16 any sort of weapons or guns drawn while you were on the
17 scene?

18 A. Uh, yes.

19 Q. And what types of weapons did they have?

20 A. Uh, the one I spoke with briefly, uh, he had a shotgun.

21 Q. How long did you and your men stay there on scene?

22 A. 'Proximately two hours.

23 Q. And is that typically the length of how long you would
24 stay at a house fire?

25 A. Uh, yes, ma'am, according to the work that we do yes,

DAVID HAMMOND BAILEY - CROSS-EXAMINATION BY MR. RIORDAN

1 ma'am.

2 Q. And did you speak with anyone else at the house or on the
3 scene while you were there, uh, Ms. Rose or Mr. Rose at any
4 time?

5 A. I spoke to Ms. Rose briefly, uh, towards the, right
6 before I left the scene just to get, uh, her name, address,
7 phone number and briefly spoke to Mr. Rose.

8 Q. And did you do any sort of investigation there at the
9 house?

10 A. Uh, no, uh, it ---

11 Q. Why not?

12 A. --- it was a, uh, seemed to be an ongoing active, uh,
13 sheriff's department, uh, investigation, we got the fire out,
14 done our job and we backed off the property.

15 Q. And is that standard for how you would respond, is that
16 standard protocol?

17 A. With that situation going on yes, it was.

18 MS. ABEE: Your Honor, I have no further questions at
19 this time.

20 THE COURT: Cross-examine.

21 CROSS-EXAMINATION BY MR. RIORDAN:

22 Q. Morning assistant chief, how you doin', sir?

23 A. Good, how are ya?

24 Q. We were able to meet for the first time last week, right?

25 A. That's correct.

DAVID HAMMOND BAILEY - CROSS-EXAMINATION BY MR. RIORDAN

1 Q. Found out we're actually somewhat neighbors, right?

2 A. That's correct.

3 Q. Alright, and, uh, and and we speak, I mean, again, you
4 were out there, you're you're assistant chief now, you don't
5 have to necessarily put on a suit and go fight the fire
6 anymore, do ya?

7 A. Thank goodness.

8 Q. Alright, thank goodness. And you get there as I look at
9 the report, well actually that that's why we met, right, that
10 you were, you were there when I went down to the the the East
11 North Street station that first day, ---

12 A. That's correct.

13 Q. --- correct, and I called dispatch because at that point
14 in time all we had was a report and I couldn't read it, right?

15 A. That's that's correct.

16 Q. I called dispatch and said, Is is there a list of all the
17 guys that actually went out on the scene and your guy was it
18 Steve, is that who works the, can't remember.

19 A. That's one of 'em, yes.

20 Q. Okay, so Steve works the desk he says, Yeah, c'mon down,
21 I'll give ya a list of the guys, right?

22 A. I assume you spoke with him, ---

23 Q. Alright.

24 A. --- I'm not familiar.

25 Q. And I asked him, I said, well any a these guys here and

DAVID HAMMOND BAILEY - CROSS-EXAMINATION BY MR. RIORDAN

1 that's when they said, Well, yeah, get chief got a few guys
2 together and it was, I sat in a room with, I don't know, 'bout
3 five guys at the table and yourself and the chief, right?

4 A. Yes.

5 Q. Alright, and so I had a list at that time of what crew
6 who went where and, uh, and I told ya, I said, Well this is
7 first time I ever seen that list and you said, Well -- well I
8 don't know if you said it, it was clear no one had asked for
9 it before that, right?

10 A. Uh, if they have I wasn't when I was there.

11 Q. Alright, and I asked, I said, Well, alright, well tell me
12 who's gonna be there next week, who's gonna be for trial and
13 no one even knew there was gonna be a trial this week, did
14 they?

15 A. Uh, no.

16 Q. Okay. We talked about that arson case and the f -- and
17 the fir -- I had to go to the other other place to see, to see
18 Lieutenant Proffitt well may be up here in minute I guess but
19 but again, I I was there that day, I went over and spoke to
20 them, at that point you guys acknowledged no one's ever
21 talkin' to you at all about this fire since the day a the
22 fire, had they?

23 A. Uh, I have not, no, no, sir.

24 Q. And, uh, we sat, I came back I guess, what was that
25 Saturday when I was there to see Scott one more time?

DAVID HAMMOND BAILEY - CROSS-EXAMINATION BY MR. RIORDAN

1 A. I believe so.

2 Q. And Reg -- Reggie was there too, Reggie's the driver,
3 right?

4 A. Uh, yes, he ---

5 Q. Alright, Reggie Reggie told us he had, he had a trip to
6 Exum ---

7 MS. ABEE: Objection, Your Honor.

8 THE COURT: Sustained.

9 BY MR. RIORDAN:

10 Q. Okay. Reggie can't be here, right, today?

11 A. That's correct.

12 Q. He's off on vacation, isn't he?

13 A. Uh, yes.

14 Q. Okay. Alright, and at that point though you and I were
15 there and we talked about, again, I asked Scott, Has anyone
16 been in contact with ya, and at that point still no one had
17 been in contact with him, right?

18 A. That's correct.

19 Q. I mean, I made the comment, I said, Man, that's somethin'
20 arson case and the first firefighter on the scene never even
21 been talked to through the investigators, that was true,
22 wasn't it?

23 A. Uh, I believe so.

24 Q. And you got there 'bout four minutes after those guys got
25 there, right?

1 A. Four to six I believe.

2 Q. Okay. You don't know what, uh, like on the front porch
3 where the gas fire was, you don't really know exactly what was
4 burnin' the time the first guys got there, do ya?

5 A. Uh, no.

6 Q. You don't dispute that some a these deputies are sayin'
7 there's still some fire goin' on the front porch, do ya?

8 A. I don't believe I spoke to a deputy about, uh, ---

9 Q. Okay, alright.

10 A. --- 'bout the fire goin' on.

11 Q. Alright. You saw Paula there, right?

12 A. Uh, yes.

13 Q. Was she still on the front porch by that time or they
14 gotten all her dogs out by then when you arrived?

15 A. I'm not real sure where she was standin' at.

16 Q. Do you remember us talkin' about the dogs in the big
17 room?

18 A. Uh, yes.

19 Q. You remember talkin' 'bout the big dog?

20 A. Yes.

21 Q. And some a the guys were sayin', Yeah, that big black
22 dog, and what did, what did ya'll s -- what what did somebody
23 else say?

24 MS. ABEE: Objection, ---

25 THE COURT: Sustained.

DAVID HAMMOND BAILEY - CROSS-EXAMINATION BY MR. RIORDAN

1 MS. ABEE: --- Your Honor.

2 MR. RIORDAN: That's true.

3 BY MR. RIORDAN:

4 Q. Alright, assistant chief, thank you very much. Take
5 care.

6 THE COURT: Redirect?

7 MS. ABEE: Your Honor, I have no redirect for this
8 witness.

9 THE COURT: May this witness be excused?

10 MS. ABEE: No objection from the State, Your Honor.

11 THE COURT: Any objection?

12 MR. RIORDAN: No objection, Your Honor.

13 THE COURT: Thank you, sir, you may be excused.

14 THE WITNESS: Thank you.

15 (Whereupon, the witness left the stand.)

16 THE COURT: Next witness, please.

17 MR. UNDERWOOD: Your Honor, State calls Lieutenant Doug
18 Proffitt.

19 THE CLERK: You please come forward and p -- uh, place
20 your left hand on the Bible, raise your right.

21 THE WITNESS: Yes, ma'am.

22 (Whereupon, the witness came forward.)

23 DOUGLAS SCOTT PROFFITT, having
24 been first duly sworn, testified as follows:

25 THE CLERK: Have a seat. Please state your name for the

DOUGLAS SCOTT PROFFITT - DIRECT EXAMINATION BY MR. UNDERWOOD

1 record.

2 THE WITNESS: Douglas Scott Proffitt.

3 DIRECT EXAMINATION BY MR. UNDERWOOD:

4 Q. Morning, Lieutenant Proffitt.

5 A. Morning.

6 Q. Please tell the jury, uh, where you're currently
7 employed.

8 A. Wade Hampton Fire Department.

9 Q. And how long have you been a firefighter?

10 A. Uh, since 1991, ---

11 Q. How long ---

12 A. --- twenty-two years.

13 Q. --- you been with, uh, Wade Hampton?

14 A. Since 1996.

15 Q. And what's your current position with the fire
16 department?

17 A. Lieutenant.

18 Q. And what does that mean?

19 A. Means you're in charge of the fire and and the people
20 that are on it.

21 Q. Were you involved with the call on July 27th 2012 at [REDACTED]
22 Riley Smith?

23 A. Yes.

24 Q. How were you involved?

25 A. I was in charge of the first arriving engine.

1 Q. Okay. Who else was on that engine with you?

2 A. Reggie Batson and Brandon Barwick.

3 Q. And you say that was the first engine to arrive?

4 A. Yes, sir.

5 Q. Can you describe to the jury what you saw at the scene
6 when you first arrived.

7 A. Uh, smoke coming up from the back and smoke coming outta
8 the front door a the house.

9 Q. When you first pulled up, was was Reggie the driver?

10 A. Yes.

11 Q. Okay. Where did you park the fire truck?

12 A. Well, he parked at ---

13 Q. Well where was the fire truck parked?

14 A. At the entrance to the house, ---

15 Q. Okay.

16 A. --- to the residence.

17 Q. Alright. Did you all actually pull into the driveway?

18 A. Yeah.

19 Q. What was Reggie's role as the driver in fighting that
20 fire?

21 A. As the driver operator he gets you to the fire and then
22 provides water and support to the suppression staff would be,
23 which would be myself and, uh, Firefighter Barwick.

24 Q. So and you say supply water, you mean he stays and works
25 the truck?

DOUGLAS SCOTT PROFFITT - DIRECT EXAMINATION BY MR. UNDERWOOD

1 A. Um-hum.

2 Q. Okay, so does he actually go into the, into the burning
3 building?

4 A. No.

5 Q. Okay. When you got outta the truck, what was the first
6 thing that you did?

7 A. Proceeded to the residence to do what we would call
8 "seeing size-up."

9 Q. And how did you do that?

10 A. Just basically walk up, get an analysis of what's goin'
11 on, uh, sorta get a picture so you can start a game plan on
12 how to put the fire out.

13 Q. Okay, what did you see at the fronta the house?

14 A. Uh, the front door was open, there was smoke coming out,
15 there was some burned areas around the front but no fire was
16 visible.

17 Q. So at the fronta the house there's no visible fire?

18 A. Right.

19 Q. Okay, alright. Did you see any people at that time?

20 A. Uh, yeah.

21 Q. Alright, who did you see?

22 A. Uh, Mrs. Rose.

23 Q. Did you speak with her?

24 A. Uh, briefly.

25 Q. And what was that conversation?

1 A. She expressed concern about the animals, the dogs in the
2 house.

3 Q. And after speaking to her what did you do next?

4 A. Uh, proceeded to finish the size-up.

5 Q. Did you ever get to the back a house?

6 A. Yeah.

7 Q. How did you get to the back a the house?

8 A. Through the roll up door in the garage.

9 Q. Okay. Was that door open?

10 A. Um-hum.

11 Q. And ya exited through the garage to the backyard?

12 A. To the back door, to the back door that swung open.

13 Q. What did you see in the backyard when you got there?

14 A. Uh, the back deck, the porch area of the back a the house
15 was on fire.

16 Q. After you saw that what did you decide to do as far as
17 your your plan for putting out the fire?

18 A. At that point I went back to the front a the house make
19 sure that they were gettin' hoses stretched out and my plan
20 was to go in the front door to push whatever fire was in the
21 house back out.

22 Q. And is that what you did?

23 A. Um-hum.

24 Q. Uh, what was, uh, Mr. Barwick's role at that point?

25 A. He was bringing hose from the truck up the driveway.

DOUGLAS SCOTT PROFFITT - DIRECT EXAMINATION BY MR. UNDERWOOD

1 Q. And as far as the actual fighting the fire what were you
2 doing?

3 A. I actually was puttin' out the fire.

4 Q. Now you say you went through the house to the back put
5 the fire out, can you describe what the fire looked like when
6 you first got to it through the house.

7 A. We actually couldn't see it. I had to have a camera so
8 we crawled in a few feet and you could see it in the back,
9 there was probably two places burnin' inside the house at that
10 time.

11 Q. When you say "a camera," what kind of a camera?

12 A. A thermal imaging camera.

13 Q. So it can see heat?

14 A. It sees flame.

15 Q. Alright. What was the extent of the fire that had
16 actually entered into the house?

17 A. Uh, there was a a good amount of in fire damage in the
18 house but there was not that much fire in the house, it was on
19 the back -- the porch area.

20 Q. So the majority of the fire was on the back porch?

21 A. Um-hum.

22 Q. Were you successful in putting that fire out or bring it
23 under control?

24 A. Yes.

25 Q. How long did it take to bring the fire under control?

1 A. Probly five to six minutes.

2 Q. Okay. After you got the fire under control what did you
3 do next?

4 A. Uh, basically we backed up a little bit into the house to
5 make sure that nothing had rekindled behind us, basically just
6 checking for hot spots.

7 Q. And did you find any?

8 A. Yeah.

9 Q. After you did that check what else did ya do?

10 A. We had walked a little bit further into the house looking
11 for any damage and also to open windows, uh, to allow smoke
12 and heat to get outta the house.

13 Q. At some point did you find, uh, the animals that Ms. Rose
14 was concerned about?

15 A. Uh, yes.

16 Q. When did you find them?

17 A. Uh, about that time as we were fanning out.

18 Q. And where did you find 'em?

19 A. In the bedroom or in a bedroom.

20 Q. Were you able to get the dogs outta the house?

21 A. Um-hum.

22 Q. Were they safe?

23 A. Yeah.

24 Q. Did you have an opportunity to go in the room above the
25 garage?

- 1 A. No.
- 2 Q. Alright. Did you at any point go up there?
- 3 A. To the room above the garage, no.
- 4 Q. Okay. Did you go upstairs at all?
- 5 A. Yes.
- 6 Q. Okay. Uh, what did you see when you were upstairs?
- 7 A. Her residence.
- 8 Q. Did, did you, ---
- 9 A. I mean, ---
- 10 Q. --- did you go throughout the entire upstairs?
- 11 A. No, I did not.
- 12 Q. What rooms did you go in upstairs?
- 13 A. I peeked in one a the bathrooms and I believe one a the
- 14 bedrooms but there was another crew up there already and they
- 15 had gone through and looked for ---
- 16 Q. Okay, so ---
- 17 A. --- what we were ---
- 18 Q. --- second crew was upstairs, you were ---
- 19 A. Yeah, ---
- 20 Q. --- downstairs?
- 21 A. --- um-hum.
- 22 Q. After you've done everything in the house did you have an
- 23 opportunity to walk around outside the house?
- 24 A. Yes, I did.
- 25 Q. And why did you do that?

DOUGLAS SCOTT PROFFITT - DIRECT EXAMINATION BY MR. UNDERWOOD

1 A. I like to see, I had a picture of the house when first
2 walked up and it's on fire, I like to see what things look
3 like afterwards, I mean, what we -- what the damage was, what
4 we had accomplished, just just adds to the overall picture.

5 Q.. And while you were walking around the house did you see
6 any, uh, white latex gloves anywhere?

7 A. No, I did not.

8 Q. Either in the front or the back?

9 A. No.

10 Q. Did you see any gas cans anywhere?

11 A. Yes.

12 Q. Where?

13 A. The front and the back.

14 Q. Front and the back?

15 A. Um-hum.

16 Q. Can you describe the gas can you saw in the front.

17 A. A a small red can.

18 Q. What about in the back?

19 A. It was a, I believe a red can.

20 Q. Did you see any yellow gas cans?

21 A. I can't, the can in the back I remember seeing a can but
22 I can't remember seeing exactly what color can it was, I mean,
23 just there was so much going on, I remember in my mind
24 thinkin' there's a can but it may have been red or yellow.

25 Q. Do you remember what the condition a that can was?

DOUGLAS SCOTT PROFFITT - DIRECT EXAMINATION BY MR. UNDERWOOD

1 A. No, I do not.

2 Q. Do you know the Rose family?

3 A. I do not know Mrs. Rose, now I have worked some car
4 wrecks with Homer, Mr. Rose, yes.

5 Q. How would you describe your relationship with him?

6 A. Strictly professional.

7 Q. Now when you arrived on the scene was law enforcement
8 already present?

9 A. Yes.

10 Q. Alright. How many officers were there?

11 A. Uh, I would imagine three, two to three, it could have
12 been more, they were, they were there before we were so I
13 wasn't exactly countin' cars.

14 Q. Okay. And do you know what they were doin'?

15 A. Uh, they were there for a burglary call.

16 Q. Did you know that at the time?

17 A. Uh, I knew we were dispatched since that was one a the
18 things that was described in the information we got from our
19 dispatch.

20 Q. And did you know whose house it was when you got there?

21 A. When we first got there, yes.

22 Q. How did you know?

23 A. I just happened to know that's where he lives.

24 Q. Alright.

25 MR. UNDERWOOD: Court's indulgence, Your Honor?

DOUGLAS SCOTT PROFFITT - DIRECT EXAMINATION BY MR. UNDERWOOD

1 THE COURT: Yes, sir.

2 BY MR. UNDERWOOD:

3 Q. Thank you, Lieutenant Proffitt, that's all the questions
4 I have for ya right now.

5 MR. RIORDAN: Beg the Court's indulgence.

6 THE COURT: Just just one second. Let let's take about
7 ten-minute break, it's about a good time for the mornin'. Uh,
8 Mr. Foreman, if you need anything, the jury needs anything,
9 let the bailiffs know and we'll bring you back in ten minutes,
10 okay, sir.

11 (The following takes place outside the presence of the
12 jury.)

13 THE COURT: Don't talk to anybody about your testimony on
14 the break but you're free to go to the restroom if you need
15 to, somethin' else, okay.

16 THE WITNESS: Okay, thank you.

17 THE COURT: Alright, ten minute recess.

18 (Whereupon, the witness left the stand.)

19 (Whereupon, a recess was taken.)

20 (Whereupon, the witness returned to the stand.)

21 (Whereupon, a discussion was held off the record.)

22 THE COURT: Alright, uh, counsel, what we're gonna do
23 just to make sure we stay ahead a the curve, ---

24 THE WITNESS: Thank you, ma'am.

25 THE CLERK: Okay.

DOUGLAS SCOTT PROFFITT - DIRECT EXAMINATION BY MR. UNDERWOOD

1 THE COURT: --- we'll go ahead and order lunch now for
2 the jury, that way we can take a shorter break and then keep
3 things movin' along, ---

4 MS. ABEE: Yes, sir.

5 THE COURT: --- if we don't have to tomorrow or next day
6 that's fine, but I just, I'd rather get out in front than
7 stayin' behind, ---

8 MS. ABEE: Yes, sir.

9 THE COURT: --- okay.

10 MR. RIORDAN: Yes, Your Honor.

11 THE COURT: Okay, but if ya'll just bear with us they're
12 gonna give them their men -- their menus right now.

13 MR. RIORDAN: Oh, okay.

14 MS. ABEE: Absolutely.

15 (Whereupon, a discussion was held off the record.)

16 (Note from the jury marked Court's Exhibit No. 4 for
17 identification.)

18 THE COURT: Okay, so State ready to proceed?

19 MR. UNDERWOOD: Yes, sir.

20 MS. ABEE: We are, Your Honor.

21 MR. RIORDAN: Yes.

22 THE COURT: Defense ready? Would you bring ---

23 THE BAILIFF: Yes, sir.

24 THE COURT: --- the jury in, thank you.

25 (The following takes place in the presence of the jury.)

DOUGLAS SCOTT PROFFITT - CROSS-EXAMINATION BY MR. RIORDAN

1 THE COURT: Mr. Riordan, are you ready with
2 cross-examination?

3 MR. RIORDAN: Yes, Your Honor, may it please the Court.

4 THE COURT: Yes, sir.

5 CROSS-EXAMINATION BY MR. RIORDAN:

6 Q. Lieutenant, and you recall as Doug Proffitt, that's
7 what's on the report, right, Douglas Proffitt, you go by Scott
8 though, right?

9 A. Yes, I do.

10 Q. Alright. I showed up and met with you and Reggie last
11 week at the, at the station, I can't remember if it was
12 Wednesday or Thursday but I met you guys, you guys are at the
13 station on, uh, Pelham, close to the Rose residence, correct?

14 A. Yes, sir.

15 Q. And the main station where you can get a run report like
16 this was over on East North Street, that's where I've been
17 before, right?

18 A. Yes, sir.

19 Q. They called ya and told ya I was comin' out there,
20 right?

21 A. Yes, sir.

22 Q. We talked. At that time I was the first person that's
23 talked to you about this fire, wasn't?

24 A. Yes, sir.

25 Q. Alright. No investigator ever spoke with you about this

1 case, did they?

2 A. No, sir.

3 Q. And then I came back again Saturday and spoke with you
4 again, I still was asking ya, Are you bein' called, at that
5 time I was still the only person that had spoken to ya,
6 right?

7 A. Yes, sir.

8 Q. Alright, well while I was there though someone said AG's
9 Office is callin', correct?

10 A. Yes, sir.

11 Q. Alright. Alright. You were there, Re -- and Reggie was
12 there, Re -- Reggie's not here, right?

13 A. No, sir.

14 Q. We had a laugh about that that he didn't, he didn't want
15 s -- he he's somewhere important for his family today,
16 right?

17 A. Yes, sir.

18 Q. Where is he?

19 A. Exuma.

20 Q. Alright, and he drove, he stayed out with the hoses
21 mostly, correct?

22 A. Strictly.

23 Q. He didn't have to go in fight the fire with you and then
24 Brandon following him.

25 A. No, sir.

1 Q. Alright, but you're the first firefighter there and you
2 see Paula right on the front porch, right?

3 A. Yes, sir.

4 Q. And it was clear there's a red gas can out there and you
5 can see there's a fire, it's been there at least and still
6 smolderin'. There's like a be -- there's like some bed behind
7 her maybe like a dog bed, is that thing still smoldering
8 'cause it was cushiony or somethin' like that?

9 A. (Nodded in the affirmative.)

10 THE COURT: If you would give us verbal responses,
11 please.

12 A. Yes, sir.

13 Q. I'm sorry. And and she was concerned about her dogs,
14 wasn't she?

15 A. Yes, sir.

16 Q. She tell ya, Save my dogs, they saved me, you save
17 them?

18 A. Yes, sir.

19 Q. Alright, but you had to fight the fire.

20 A. Right.

21 Q. And we talked about you check the front porch and see
22 that's that's pretty much under control, you go through the
23 house, check the back porch, correct?

24 A. Yes.

25 Q. The back porch is where there's ba -- that's where the

1 big fire was, right?

2 A. Yes.

3 Q. Came back around, that's wh -- you guys even show your
4 cool thermal imagin', right, ya hold it up and you can see, ya
5 know, doesn't doesn't help much when you're not in a fire but
6 when you're even there you can put your hand in front of it
7 and gives you the temperature and all that, correct?

8 A. Yes.

9 Q. That's what you use when you went in the fire.

10 A. Yes.

11 Q. I mean, when you see Paula it's clear she's been in that
12 fire, right?

13 A. Yes, sir.

14 Q. She got soot all over her?

15 A. Yes, sir.

16 Q. Alright, and before you went in there you made sure and
17 put your gas mask on.

18 A. Right.

19 Q. Alright, you go in with Brandon behind ya a little bit,
20 you guys are lookin', you wanna find where it is and that
21 camera shows ya, Hey, here's the heart a the fire, ---

22 A. Right.

23 Q. --- correct?

24 A. Yes.

25 Q. Alright, and you guys, you get your hoses in, you, didn't

1 take you long to knock out the fire in the house and then you
2 pushed it out the back door, correct?

3 A. Yes.

4 Q. But again, the back fire was the one that took more time
5 to take care of, correct?

6 A. Yes.

7 Q. Alright. And when you're doin' that still Paula's on the
8 front porch, you're havin to tell her to basically get outta
9 the way, right?

10 A. Before we went in, yes.

11 Q. Yeah, and and you kinda joke, you're kinda concerned
12 with, uh, with her wantin' to get on you, why was that?

13 A. She had a pistol in her waistband.

14 Q. Pistol in her waistband, right?

15 A. Yes, sir.

16 Q. Alright, but you did get the fire out and as she had
17 asked you went back there bravely into her bedroom and did
18 find the big dog first, right?

19 A. Yes, sir.

20 Q. You're walkin' through the smoke, you can hardly see in
21 fronta your knees what you told me, ---

22 A. Right, ---

23 Q. --- isn't that ---

24 A. --- yeah.

25 Q. --- true?

1 A. Yes.

2 Q. And you're wanderin' around and you bump into somethin',
3 you weren't even sure if it was furniture but you realize when
4 you reach down it was the dog.

5 A. Yes.

6 Q. And ya found his collar and dragged him out. Paula was,
7 she was enthralled to see her dog, wasn't she?

8 A. Yes, sir.

9 Q. Huggin' all over the dog?

10 A. Yes, sir.

11 Q. Alright. Clear that she loved her animals, right?

12 A. Yes, sir.

13 Q. And that wasn't the only one, ya still talked and said
14 you gotta go back in and get the other dog, didn't ya, ---

15 A. Yes.

16 Q. --- and carry that one out for her.

17 A. Yes, sir.

18 Q. She was very thankful and appreciative, wasn't she?

19 A. Yes, sir.

20 Q. And these dogs they're covered in soot, aren't they?

21 A. Yes, sir.

22 Q. Alright. And then there was still, was it a cat that was
23 still missing in the house, you had to go around the house a
24 little bit upstairs even?

25 A. I never looked for the cat, the upstairs crew I believe

1 they were lookin' for a cat.

2 Q. Oh, okay. Alright. Again, he was askin' 'bout the cans,
3 I mean, you acknowledge, that way the jury's already heard ya
4 but when he asked about cans you said a red can on the front
5 porch and a red can on the back was your initial recollection,
6 right?

7 A. Initially, yes.

8 Q. Yeah, you you don't, that wa -- you're not there to look
9 for evidence, are ya?

10 A. No, sir.

11 Q. And you're certainly not there to create evidence, are
12 ya?

13 A. No, sir.

14 Q. Alright, they're talkin' about these gloves, you only
15 wear gloves if you go on a wreck scene, you might get blood on
16 ya, right?

17 A. Medical gloves, yes.

18 Q. Yeah, medical gloves. If you you wear medical gloves in
19 a fire, they'll melt on your hands, won't they?

20 A. Yes, sir.

21 Q. And if ya had 'em out there, you'd be sure to pick those
22 up and get 'em outta there, right?

23 A. Yes, sir.

24 Q. Firefighters responding to an arson case they know they
25 better not leave anything on the scene, right?

1 A. Yes, sir.

2 Q. Okay. Alright. And you -- fire's put out, right, ---

3 A. Yes, sir.

4 Q. --- through your efforts primarily, you're the one that's
5 there assessing it and puttin' it out, right, your your game
6 plan that ruled the day on that, right?

7 A. Yes, sir.

8 Q. Thank you for that. You knew that was Homer's house,
9 right?

10 A. Yes, sir.

11 Q. In fact, you you knew a little bit about Homer, didn't
12 ya?

13 A. Yes, sir.

14 Q. Tell tell the jury what you knew and what ya know now
15 'cause we've talked about it freely, tell 'em what ya already
16 knew.

17 A. As far as his family goes?

18 Q. Yes, sir.

19 A. Oh. In passing years ago I heard that his grandparents
20 or I'm not sure exactly but at that time his family had some
21 pull with concessions, uh, sales, uh, I I couldn't even
22 remember till we spoke what it was.

23 Q. And we spoke and then you looked at all the articles,
24 right? Go ahead and tell the jury what you found out, pretty
25 neat story, isn't it?

DOUGLAS SCOTT PROFFITT - CROSS-EXAMINATION BY MR. RIORDAN

1 MR. UNDERWOOD: Your Honor, ---

2 A. Yeah.

3 MR. UNDERWOOD: --- I'm gonna object to that.

4 THE COURT: Just one second. Mr. Foreman, will ---

5 MR. RIORDAN: Uh, ---

6 THE COURT: --- you take the jury ---

7 MR. RIORDAN: --- I'll ---

8 THE COURT: --- in ---

9 MR. RIORDAN: --- I'll ---

10 THE COURT: --- the jury room.

11 MR. RIORDAN: --- I'll withdraw the question, Your
12 Honor, ---

13 THE COURT: Okay.

14 MR. RIORDAN: --- withdraw the question.

15 BY MR. RIORDAN:

16 Q. Just tell the jury what you know, Scott.

17 A. His family was influential in development of hot dogs and
18 hot dog sales in ballparks.

19 Q. Alright. Well, fact, I show -- I showed ya tax returns
20 he had too, didn't I?

21 A. Yes, sir.

22 Q. Told you to remember what those were, didn't I?

23 A. Yes, sir.

24 Q. Go ahead and tell the jury what you know ---

25 MR. UNDERWOOD: Objection, ---

DOUGLAS SCOTT PROFFITT - CROSS-EXAMINATION BY MR. RIORDAN

1 Q. --- about ---

2 MR. UNDERWOOD: --- Your Honor.

3 THE COURT: Take your jury to the jury room, please.

4 (The following takes place outside the presence of the
5 jury.)

6 MR. UNDERWOOD: Your Honor, the witness can't testify
7 about hearsay documents that are shown by Mr. Riordan that
8 haven't been authenticated in any way.

9 THE COURT: I sustain that objection, ---

10 MR. RIORDAN: Okay.

11 THE COURT: --- okay. Now ---

12 MR. RIORDAN: I'll I'll -- that'll probly close it.

13 THE COURT: That's ---

14 MR. RIORDAN: Do you want me to, do you want me to cease
15 with him now or ---

16 (Indiscernible cross-talk.)

17 THE COURT: No, I wanna get you opportunity to close it
18 but I'm gonna sustain that objection, okay. Bring the jury
19 back in.

20 THE BAILIFF: Okay.

21 (Whereupon, a discussion was held off the record.)

22 (The following takes place in the presence of the jury.)

23 BY MR. RIORDAN:

24 Q. And just just to be clear, Scott, even before I showed ya
25 anything you tol -- you already knew about the concessions

1 with his family, correct?

2 A. Yes, sir.

3 Q. And and when you say that concessions and hot dogs,
4 where? Uh, go head and tell the jury.

5 A. In New York ---

6 Q. Okay, ---

7 A. --- in ---

8 Q. --- with with what though? selling selling that stuff
9 where?

10 A. At at a ball, at a ballpark.

11 Q. Yeah, ballparks, right?

12 A. Yes.

13 Q. Major league ballparks.

14 A. Major league ballparks.

15 Q. Okay, alright, and and knowing that it was no surprise to
16 you that this, even though Homer's a trooper that he can
17 afford to live in this home, correct?

18 A. No, sir, no.

19 Q. Wasn't any surprise to you from what you knew from years
20 ago, right?

21 A. No, sir.

22 Q. Scott, thank you very much.

23 THE COURT: Redirect?

24 REDIRECT EXAMINATION BY MR. UNDERWOOD:

25 Q. Lieutenant Proffitt, you mentioned that the the dogs were

DOUGLAS SCOTT PROFFITT - RECROSS-EXAMINATION BY MR. RIORDAN

1 covered in soot, uh, were the dogs ever on the back porch area
2 where the fire was?

3 A. If if they were, I didn't know that. I found 'em in the
4 bedroom.

5 Q. So you didn't find 'em where the fire was, they're
6 somewhere else.

7 A. Yes, I found 'em in the bedroom.

8 Q. Uh, were the dogs rollin' around on the front porch?

9 A. No, sir, I found 'em in the bedroom.

10 Q. Did you ever see the dogs rollin' around on the porch?

11 A. No, sir.

12 Q. Where -- what what was -- how'd the soot get on 'em?

13 A. Well in a house fire there's usually soot on everything.

14 Q. Is that from the smoke?

15 A. Yes, sir.

16 Q. Okay, so it's not from physical contact, it's from smoke?

17 A. No, if you stand still in a fire, you'll be covered in
18 soot.

19 Q. Okay, thank. No further questions, Your Honor.

20 THE COURT: May this witness be excused?

21 MR. RIORDAN: Your Honor, may may I, may I follow up on
22 that, please, Your Honor.

23 THE COURT: Yes, sir.

24 RECROSS-EXAMINATION BY MR. RIORDAN:

25 Q. Scott, you talked about that the soot, I mean, the soot's

1 all over these dogs, right?

2 A. Yes, sir.

3 Q. The the gr -- the the Great Pyrenees was black, wasn't
4 it?

5 A. Yes, sir.

6 Q. And Paula when you bring that dog out, she's right there
7 on the front porch to great it, right?

8 A. Um-hum.

9 Q. She's kneeled down huggin' it, isn't she?

10 A. Yes, sir.

11 Q. Alright. Trace evidence of gas on Paula's clothes, any
12 s -- any surprise to you as a fireman given where you, where
13 you saw her that day?

14 A. No, sir.

15 Q. She's standin' right in it, isn't she?

16 A. Right where had been burnt yes, sir.

17 Q. Thank you.

18 THE COURT: Thank you, sir, you may be excused.

19 (Whereupon, the witness left the stand.)

20 THE COURT: Call your next witness, please.

21 MR. UNDERWOOD: Your Honor, the State calls Rene Buford.

22 THE CLERK: Please come forward and place your left hand
23 on the Bible, raise your right.

24 (Whereupon, the witness came forward.)

25 RHONDA RENE BUFORD, having been

RHONDA RENE BUFORD - DIRECT EXAMINATION BY MR. UNDERWOOD

1 first duly sworn, testified as follows:

2 THE CLERK: Have a seat. Will you please state your full
3 name for the record.

4 THE WITNESS: Rhonda Rene Buford.

5 DIRECT EXAMINATION BY. MR. UNDERWOOD:

6 Q. Good mornin', Ms. Buford, could you please introduce
7 yourself to the jury and tell them where you work.

8 A. Um, I go by Rene Buford but I work for Greenville County
9 Sheriff's Office.

10 Q. And what do you do there?

11 A. I am 911 research analysis and do training also.

12 Q. And can you explain kinda what your job duties are.

13 A. Um, what I do is I research anything that has come into
14 the 911 center whether it be by phone, radio, teletype, or any
15 documentation, CAD and, uh, our CAD which is our, uh, Computer
16 Aided Dispatch, anything that's documented in it then I would
17 research that for any criminal, civil, uh, FOIA co -- request,
18 uh, complaints on officers, complaints on any personnel, um,
19 any type of in -- in -- information that's needed of that
20 documentation that would help with any type of
21 investigation.

22 Q. And are you the custodian of all those records that you
23 just listed?

24 A. Yes, I am.

25 Q. Are 911 calls recorded when they come in?

RHONDA RENE BUFORD - DIRECT EXAMINATION BY MR. UNDERWOOD

1 A. Yes, they are.

2 Q. How does that take place?

3 A. Uh, all telephone calls whether it be 911 or
4 non-emergency, uh, anything that comes into the dispatch
5 center is recorded, uh, automatically simultaneously, uh, and
6 by, uh, date and time, uh, is how it comes in ---

7 Q. Okay.

8 A. --- so it's an automatic, uh, recording, it -- we have no
9 choice.

10 Q. Alright, and is that for every single call that comes
11 in?

12 A. That is for every single call.

13 Q. And is the recording from the very beginning to the very
14 end of disconnection?

15 A. Uh, yes it is. On our 911 lines the recording actual
16 actually begins prior to the dispatcher pickin' up, uh, the
17 non-emergency lines only record at the time that the
18 dispatcher makes the connection but on a 911 line it actually
19 records right as the person that's callin' 911 hits the final
20 1 then the line begins to record.

21 Q. Okay, and this record is it standard procedure that's
22 always ---

23 A. Yes.

24 Q. --- followed?

25 A. Yes, it is.

RHONDA RENE BUFORD - DIRECT EXAMINATION BY MR. UNDERWOOD

1 Q. May I approach the witness, Your Honor?

2 THE COURT: Yes.

3 MR. RIORDAN: No objection.

4 THE COURT: You're not objecting to the admission of that
5 document ---

6 MR. RIORDAN: Not at all.

7 THE COURT: --- or exhibit? What exhibit number is
8 that.

9 MR. UNDERWOOD: Your Honor, this is State's Exhibit
10 No. 5.

11 THE COURT: That'll be admitted without objection.

12 (State's Exhibit No. 5, CD of 911 call, admitted into
13 evidence.)

14 BY MR. UNDERWOOD:

15 Q. And, Ms. Buford, do you recognize that (indicating)?

16 A. Yes, I do.

17 Q. And what is that disk?

18 A. Um, that is a disk of the 911 call, uh, that came in on
19 the date of this incident.

20 Q. And do you know what time that call came in?

21 A. Um, I did not make documentation when I was listening to
22 it, uh, in memory but, uh, around 8:07, 8:06 in there.

23 Q. Alright, and have have you listened to this recording?

24 A. Yes, I have.

25 Q. Is it the full and complete recording a that call?

RHONDA RENE BUFORD - DIRECT EXAMINATION BY MR. UNDERWOOD

1 A. Yes, ---

2 Q. Was ---

3 A. --- it is.

4 Q. And do you know who that call came from?

5 A. Um, uh, the complainant's name on this call was Paula
6 Rose.

7 Q. Okay.

8 MR. UNDERWOOD: Your Honor, at this time I wish to
9 publish Exhibit No. 5 to the jury.

10 THE COURT: Yes, sir. Ladies and gentlemen, if you
11 cannot hear or you have difficulty hearin', raise your hand so
12 we can make sure we adjust it.

13 (Whereupon, State's Exhibit No. 5, CD of 911 call, was
14 played for the jury.)

15 BY MR. UNDERWOOD:

16 Q. And is that the complete recording that 911 call?

17 A. Yes, sir.

18 Q. Now, Ms. Buford, in the, in the background you hear a lot
19 of, uh, typing, clicking, ---

20 A. Um-hum.

21 Q. --- the information that's being relayed by the caller is
22 that passed on to dispatch?

23 A. Uh, yes, it is, it's put into the, uh, as I called it
24 earlier a, what we call a "CAD system," Computer Aided
25 Dispatch, uh, it's put into a call incident that and all the

RHONDA RENE BUFORD - CROSS-EXAMINATION BY MR. RIORDAN

1 updates that's, that you were hearing the clicking she was
2 typing the information that she was bein' given and then the
3 radio dispatcher would relay that to the deputies in route.

4 Q. Alright. Thank you. No further question at this time,
5 Your Honor.

6 THE COURT: Cross-examination.

7 MS. ABEE: May it please the Court.

8 CROSS-EXAMINATION BY MR. RIORDAN:

9 Q. Ms. Buford, are you listed at all on the log report?

10 A. Uh, no, sir, I was not part of the call.

11 Q. You have anything to do with this call?

12 A. Besides I'm the rec -- recordskeeper ---

13 Q. Sure.

14 A. --- but no, sir.

15 Q. Margaret Quinn is this the operator that was speaking
16 with with Paula?

17 A. Yes, she is, she's an employee of the sheriff's office.

18 Q. And, uh, and every o -- 911 call's different, isn't it?

19 A. Uh, yes, sir.

20 Q. You guys don't sit there and try to guess how someone's
21 supposed to act when they're callin', do you?

22 A. No, sir.

23 Q. Okay. Margaret Quinn never said she thought Paula was
24 makin' this up, did she?

25 A. Not to me.

RHONDA RENE BUFORD - CROSS-EXAMINATION BY MR. RIORDAN

1 Q. In fact, you you you part a the training with the 911
2 operators?

3 A. I, yes, sir, I do do, I do incorporate training with
4 them.

5 Q. And part a that as we heard with the 911 operator you
6 want your operators to stay calm themselves, right, ---

7 A. That is correct.

8 Q. --- no matter what's bein' reported.

9 A. That is correct.

10 Q. And they want callers calling in to stay calm as well,
11 don't they?

12 A. That is correct.

13 Q. That's what you want, correct?

14 A. It -- the quicker we can get the information from a calm
15 caller, quicker the information goes out.

16 Q. Do you, I mean, have you told friends if ya ever call 911
17 if you're ever in a bad situation try to stay calm, try to
18 assess the situation so you can share that with the 911
19 operator ---

20 A. Yes, sir.

21 Q. --- so they -- so you guys can help her, help whoever's
22 calling in?

23 A. Yes, sir.

24 Q. Again, I know the qual -- quality is what it is, I mean,
25 it's -- you guys, you can hear about as much a the background

1 stuff in the office, the clicking, as you can what's going on
2 behind the scenes at Paula's house, right?

3 A. Yes, sir.

4 Q. Okay. Part a the call log though you're suppose -- you
5 guys try your best to put in there officers who are dispatched
6 and when they arrive, correct?

7 A. That is correct.

8 Q. And you have that call log in front of ya.

9 A. Yes, sir.

10 Q. Let's talk about, uh, you try to get precise information,
11 right?

12 A. We try, yes, sir.

13 Q. That's important, right?

14 A. Yes, sir.

15 Q. You try to get your officers to be precise as well when
16 they follow up and write their own incident report, correct?

17 A. Um, I'm not part of the deputies trainin' but ---

18 Q. You would hope ---

19 A. --- yes, sir, ---

20 Q. --- that they would do that, ---

21 A. --- I would hope.

22 Q. --- wouldn't ya? You feel pretty confident the
23 information on here's correct and was done, uh, properly and
24 timely?

25 A. Yes, sir.

RHONDA RENE BUFORD - REDIRECT EXAMINATION BY MR. UNDERWOOD

1 Q. What do you have as to the arrival time of, uh, Deputy
2 Isaac Henderson?

3 A. Um, I show Deputy Henderson on the scene at 0850.

4 Q. 8:50, right?

5 A. Um-hum.

6 Q. Alright, and, uh, once you look through those though it's
7 not just the deputies that you guys list, you list everyone
8 that's put out there, right, you try to?

9 A. Everyone that's involved with the sheriff's office that
10 goes on the scene.

11 Q. Alright, tell tell me when, uh, Investigator Gonzalez got
12 there.

13 A. Um, I don't have him in the, in the catalogue.

14 Q. No further questions.

15 THE COURT: Redirect.

16 REDIRECT EXAMINATION BY MR. UNDERWOOD:

17 Q. The catalog is that based on radio contact?

18 A. Uh, it is yes.

19 Q. So if -- how does the CAD know when someone is at a
20 particular place? Like what what happens to put that
21 information in there?

22 A. Uh, there's two different ways in that information could
23 be put in there: either they radio into the dispatcher and the
24 dispatcher is responsible for putting them on the call or, uh,
25 the officers that have MDTs, which is Mobile Data Terminals,

RHONDA RENE BUFORD - REDIRECT EXAMINATION BY MR. UNDERWOOD

1 in their cars they have the, uh, ability to put themselves on
2 the scene.

3 Q. And throughout the course of an investigation do
4 investigators always contact CAD whenever they're going out to
5 visit a crime scene?

6 A. Not always.

7 Q. Is that normal?

8 A. Uh, ---

9 Q. Let me rephrase my question, that that's kind of a vague
10 questions. Uh, is it expected for every time someone goes out
11 to a scene when it's no longer an active incident, uh, do they
12 always call into the dispatcher?

13 A. Uh, no, not necessarily, uh, a -- when you say active
14 scene you mean -- I ---

15 Q. When when after a crime has occurred, it's not in
16 progress, ---

17 A. Okay.

18 Q. --- do do -- when investigators get to visit a crime
19 scene when a crime is no longer in progress, do they radio
20 into dispatch?

21 A. Uh, most a the time we, uh, they do call into dispatch
22 but then we do have depu, uh, investigators that go out on
23 follow-ups after the fact, after a incident has occurred and
24 they do not radio into dispatch ---

25 Q. Alright, no ---

RHONDA RENE BUFORD - RECROSS-EXAMINATION BY MR. RIORDAN

1 A. --- with their locations.

2 Q. --- further questions this time. I'm sorry, what was
3 that last part?

4 A. With their locations they do not radio in.

5 Q. Okay, thank you, no further questions, Your Honor.

6 BY MR. RIORDAN:

7 Q. Ma'am, the polic ---

8 THE COURT: No, no, no, you have to ask on cross, I'm not
9 gonna allow it.

10 MR. RIORDAN: Well it's just ask -- okay, Your Honor.
11 Okay.

12 THE COURT: Go ahead, I'll give you, I just wanna make
13 sure you're all aware.

14 MR. RIORDAN: Okay.

15 THE COURT: Go ahead.

16 RECROSS-EXAMINATION BY MR. RIORDAN:

17 Q. The pol -- the best policy is to have them radio in,
18 correct?

19 A. Well I can't speak for their policy a -- you know,
20 because I am not an investigator what their policies are set
21 forth by their, uh, supervisors or their procedures.

22 Q. When you have officers and deputies on duty, you wanna
23 know where they are, don't ya?

24 A. Yes, sir.

25 Q. You need to know where they are for their safety as well,

RHONDA RENE BUFORD - RECROSS-EXAMINATION BY MR. RIORDAN

1 correct?

2 A. That is correct.

3 Q. And that's why the policy is to call in and let you know
4 where they're goin', that's when they're, when they're headin'
5 out to a scene, right?

6 A. Yes, sir.

7 Q. And then usually when they arrive there they call you
8 guys and say, On scene, that's why we have this log, it says
9 that: when they went out and when they arrive, correct?

10 A. Correct.

11 Q. Alright. Investigator Gonzalez isn't on there, is he?

12 A. Uh, no, sir, he's not.

13 Q. Thank you, ma'am. Thank Your Honor.

14 THE COURT: Thank you, ma'am. Any r -- any reason why
15 this witness can't be excused?

16 MR. UNDERWOOD: No, Your Honor.

17 THE COURT: Alright. Mr. Riordan, any reason why this
18 witness ---

19 MR. RIORDAN: No, Your Honor, I'm sorry.

20 THE COURT: Thank you, ma'am.

21 THE WITNESS: Thank you.

22 (Whereupon, the witness left the stand.)

23 THE COURT: Call your next witness, please.

24 MS. ABEE: Your Honor, the State calls James Robbie Brown
25 to the stand.

JAMES ROBERT BROWN - DIRECT EXAMINATION BY MS. ABEE

1 (Whereupon, the witness came forward.)

2 JAMES ROBERT BROWN, having
3 been first duly sworn, testified as follows:

4 THE CLERK: Please have a seat. Will you state your full
5 name for the record.

6 THE WITNESS: James Robert Brown.

7 DIRECT EXAMINATION BY MS. ABEE:

8 Q. Are you currently employed?

9 A. Yes, ma'am.

10 Q. Where at?

11 A. Greenville County Sheriff's Office.

12 Q. And what's your current position there?

13 A. Deputy II assigned to community patrol.

14 Q. And how long have you been with the Greenville County
15 Sheriff's Office?

16 A. Think this July's twelve twelve years.

17 Q. And were you working there back in July of 2012?

18 A. Yes, ma'am.

19 Q. And if you could briefly tell us what your role is in
20 this particular case.

21 A. Uh, we got a call for, uh, out at [REDACTED] Riley Smith in
22 reference to some subjects attempting to break into a safe
23 and, uh, as a respond, first respondin' officer I arrived on
24 scene and, uh, retrieved my shotgun from my rack inside my
25 patrol vehicle and proceeded in toward the front door a the

JAMES ROBERT BROWN - DIRECT EXAMINATION BY MS. ABEE

1 house.

2 Q. And [REDACTED] Riley Smith Road what county is that in?

3 A. It is Greenville County.

4 Q. And who, if anyone, was at this house when you, uh, got
5 on scene?

6 A. (Cleared throat). Excuse me. Uh, when I first pulled up
7 a saw a fire truck pullin' up on the far end come toward the
8 house and as I approached I went up the driveway, as I
9 approached it, the fireman was arrivin' and there was a female
10 subject that was comin' outta the front door.

11 Q. And do you know who this female subject is?

12 A. I believe I wa -- she was identified Mrs. Rose.

13 Q. And do you see her here in the courtroom today?

14 A. I'm not sure.

15 Q. Okay.

16 A. Yeah, it it was just lotta smoke and fire and wasn't
17 dressed.

18 Q. Well what was your particular role, uh, what type of call
19 were you responding to?

20 A. A burglary, three subjects tryin' to break into their
21 safe.

22 Q. And you stated that you grabbed your shotgun when you got
23 outta your car?

24 A. Yes, ma'am.

25 Q. And why did you do that?

JAMES ROBERT BROWN - DIRECT EXAMINATION BY MS. ABEE

1 A. Well if I was gonna be outnumbered by suspects, I wanted
2 more firepower than my issued county, uh, pistol beside me.

3 Q. And did you speak to the the lady that came outta the
4 house at all about, uh, where these three suspects were?

5 A. Yes, ma'am. She had to come out the door and some a the
6 fireman or a fireman started to go in and I asked her where
7 were the bad guys and she said she didn't know so I proceeded
8 toward the garage to clear the garage because supposedly they
9 were in the garage at the time the calls were comin' in and,
10 uh, I cleared the garage lower level and then went to the
11 backyard to clear the backyard to make sure I didn't see, uh,
12 any suspects.

13 Q. And you said "cleared the garage" and "cleared the
14 backyard," what does that actually mean, what are you actually
15 doing at that point in time?

16 A. I'm lookin' for three subjects or any subject that looks
17 unknown or I think they were supposedly wearin' black and had
18 some masks on so I'm lookin' for human bodies that shouldn't
19 be with -- in that area.

20 Q. Now when you got there was the fire still active at the
21 house?

22 A. Yes, it was.

23 Q. Okay, and where was the active fire located?

24 A. Uh, on the back porch or back deck. Think there was
25 still some smoke comin' from inside the house when Mrs. Rose

JAMES ROBERT BROWN - DIRECT EXAMINATION BY MS. ABEE

1 came out and, uh, there may have been some smolderin' in front
2 but there was active, lots of flames in the back.

3 Q. When you say smolderin' up front, what do ya mean by
4 that?

5 A. Think there was a dog bed or the porch deck had been
6 burning but I think, I think the fireman had probably
7 distinguished most of it when he went in.

8 Q. And so you saw the active fire on the back porch and what
9 did you do?

10 A. After I made sure there was no other people in the
11 backyard other than myself I di -- grabbed a garden house
12 outta the pool and started to spray off the, uh, rear deck and
13 the rear porch where flames were comin' from.

14 Q. Was there any sort of reaction when you did that?

15 A. And the -- as the water was hittin' the deck, it would
16 sizzle or pop, kinda like a grease fire at at your house when
17 you, uh, pour some water on it, it just sizzled, popped.

18 Q. And did you see where Ms. Rose was during all this?

19 A. I I did not know where she was at that time, I know I had
20 left her at her front porch, she was concerned about her
21 animals so she still had several animals apparently in the
22 house and I think the firemen were tryin' to bring them out.

23 Q. Did you ever see her anywhere other than the front
24 porch?

25 A. Yes, after, uh, when the firemen started to spray water

JAMES ROBERT BROWN - DIRECT EXAMINATION BY MS. ABEE

1 through the house and come out on the back, I put my hose down
2 and went back toward the side and Ms. Rose had came and was
3 sittin' there on the back with some of her, some of her
4 animals there.

5 Q. When you say "there on the back," on the back porch ---

6 A. On the back ---

7 Q. --- where the fire was?

8 A. Behind the garage, beside the pool area, she was in that
9 location so she had come from the front porch apparently
10 through the garage and was sittin' on the back.

11 Q. So down and away from the fire?

12 A. Yes, ma'am, in a safe zone.

13 Q. And who if, anyone else, uh, from the Greenville County
14 Sheriff's office showed up on the scene while you were still
15 there?

16 A. Um, a canine officer and I think one or two other
17 officers, I'm not familiar exactly who all was there but I
18 think, uh, Matt Smith also arrived and at that time we went to
19 try to see if we could find evidence of which way these
20 suspects had left so we went through the backyard and
21 everywhere. I think we went over a fence, went up into the
22 woods pretty good ways then we came back down the far side of
23 the property, the adjacent side and, uh, came back toward the
24 front of the house, checked the fence line down through there
25 and we did notice the open gate and there was a small

JAMES ROBERT BROWN - DIRECT EXAMINATION BY MS. ABEE

1 footprint down near the gate.

2 Q. Okay, so let me get this straight, after the fire is
3 put out that's when you start searching the rest around the
4 house, ---

5 A. Yes.

6 Q. --- the perimeter of the house?

7 A. Yes, more firemen had arrived and they were, they were
8 controllin' the fire.

9 Q. And you said a canine showed up, were you with the canine
10 while searching the perimeter of ---

11 A. Yes, ---

12 Q. --- the house?

13 A. --- three of us, three of us went into the woods
14 outside, well we we clif -- we finished clearin' the garage
15 'cause I think it was upstairs there so we cleared it first
16 and then went ahead toward the, uh, rear a
17 the backyard, checked the back and then came down the adjacent
18 side.

19 Q. And when you searched the perimeter of the house, what
20 exactly are you looking for?

21 A. Any type of evidence such maybe gloves, hats, jackets,
22 t-shirts, anything someone may have dropped or lost or got
23 snagged on a limb, got pulled off of 'em while runnin' through
24 the woods.

25 Q. And do you recall seeing anything like that while you

JAMES ROBERT BROWN - CROSS-EXAMINATION BY MR. RIORDAN

1 were searching the perimeter of the house?

2 A. We did not find anything except one footprint down at
3 the, uh, front corner of the house.

4 Q. And, Deputy Brown, approximately how tall are you?

5 A. I'm about 5'10.

6 Q. And what's your shoe size?

7 A. I wear a 10 1/2.

8 Q. And this shoe print did you see if it was smaller or
9 larger than your shoe size?

10 A. It appeared to be smaller than my boot, my 10 1/2.

11 MS. ABEE: Your Honor, may I have one second to confer?

12 THE COURT: Yes, ma'am.

13 MS. ABEE: Your Honor, I have no further questions for
14 Deputy Brown at this time.

15 THE COURT: Cross-examination.

16 CROSS-EXAMINATION BY MR. RIORDAN:

17 Q. Deputy Brown, did you tell me you're a resource officer?

18 A. No, sir, I'm on community patrol.

19 Q. Community patrol, ---

20 A. Yes, sir.

21 Q. --- alright, and and, uh, but on this day I I think I'd
22 asked you, you know, responding to scene, was this somewhat
23 unusual for you that morning?

24 A. Uh, normally, uh, our unit concentrates on community
25 problems or solvin' problems with, uh, mostly drug houses or,

1 uh, speedin' and, uh, this was not a routine ---

2 Q. Sure.

3 A. --- in my new assignment.

4 Q. And I'm, and that -- and not diminishing any way as I
5 said before we thank you for gettin' out there and we talked
6 about that, right?

7 A. Yes, sir.

8 Q. Alright, you're out there but but parta that you wanna
9 keep reports, uh, as well, correct, of what, of your
10 activities, you actually did it in ---

11 A. Yes.

12 Q. --- this case, right?

13 A. Yes, I did write something.

14 Q. And that you actually wanna be accurate, correct?

15 A. Sir?

16 Q. You wanna be accurate when you do that, correct?

17 A. Yes, sir, try to be.

18 Q. Alright, you try and you try to create that when things
19 are freshest in your mind, correct?

20 A. Yes.

21 Q. Alright, and your report in this case, again, I mean,
22 I -- report actually that you drafted what what's the date on
23 it as to when it was created?

24 A. See if I can find my readin' glasses. It is dated
25 8/15.

JAMES ROBERT BROWN - CROSS-EXAMINATION BY MR. RIORDAN

1 Q. Okay, so good nineteen days after the the fire, is that
2 right?

3 A. I can't confirm exactly the date of the fire.

4 Q. Right, 'cause that day, I mean, you were out, you were
5 runnin' around with shotgun lookin' for bad guys, ---

6 A. Look, ---

7 Q. --- right?

8 A. --- 7/27 so I don't know the math but 7/27 8:15 is what
9 it says.

10 Q. Alright. And again, you're not sittin' there takin'
11 notes on when everything happens sequentially or anything like
12 that, are you? You're you're you're runnin' around with a
13 shotgun lookin' for bad guys, right?

14 A. That's correct.

15 Q. And, uh, but you did create this. When you talk about
16 Ms. Rose bein' on the back, I mean, was she with her cat, do
17 you remember what animal ---

18 A. I can't remember what type animal it was, I do remember
19 her saying that there was still a cat in the house after they
20 brought a couple animals out, I think maybe three or four.

21 Q. I I mean, she was concerned about all her pets, wasn't
22 she?

23 A. Yeah, she was.

24 Q. She was pleading with the firemen to get in there and
25 please save her pets, wasn't she?

1 A. Well she was a -- she was tellin' them or informed them
2 that yes, they did have animals inside still.

3 Q. Okay, and did you, did you see her that she was carryin'
4 a gun, she had a gun on -- in her waist?

5 A. No, sir, I did not.

6 Q. You didn't see that?

7 A. No, sir.

8 Q. Okay. Was she, was she holdin' a dog at that time, do
9 you know?

10 A. I think she had possibly a dog or a cat in her arms when
11 she came out, ---

12 Q. I mean, ---

13 A. --- I'm not ---

14 Q. --- is it possibly, is it possible the animal was
15 covering her weapon if she had one?

16 A. Hmm, that is possible.

17 Q. Alright. And you keep a report but to your best
18 recollection, right, you try to go back and and preserve what
19 you do remember, right?

20 A. Um-hum, try to yes, sir.

21 Q. Alright. Does your report say, "I went up the main
22 driveway and saw Ms. Rose walking out the front door,"
23 correct?

24 A. Yes, sir.

25 Q. "I saw a small fire burning behind her on the porch,"

JAMES ROBERT BROWN - CROSS-EXAMINATION BY MR. RIORDAN

1 right?

2 A. Yes, sir, think it was a dog bed.

3 Q. Yeah, still on flames, you're the first guy, you're the
4 first officer on the scene, right?

5 A. Other than firemen, firemen arrived when I did.

6 Q. Okay.

7 A. I was the first armed police officer ---

8 Q. Alright, what ---

9 A. --- or deputy sheriff.

10 Q. --- how many firemen do you remember?

11 A. I saw one.

12 Q. Okay, so one fireman and you.

13 A. Yes.

14 Q. Alright. You said yeah, you you put the hose down and
15 the flame shot up on the back porch, right?

16 A. Well as I sprayed water up on the porch, flames didn't,
17 it just spark, uh, park, uh, poppin' and snappin' the, uh,
18 when the water hit the hot porch.

19 Q. And and the hose actually had some little blue device
20 that kinda monitored it as well, right, stuck on the hose
21 itself, you ---

22 A. Well ---

23 Q. --- remember?

24 A. --- I don't remember.

25 Q. Okay, but and and I, and I -- sorry that I didn't ask you

JAMES ROBERT BROWN - CROSS-EXAMINATION BY MR. RIORDAN

1 before but were you standing then beneath the porch and just
2 holdin' the hose up, I never really understood how you ---

3 A. No, I was standin' probably about 15 feet away arcing
4 the ---

5 Q. Okay.

6 A. --- the hose up.

7 Q. Alright.

8 A. Well I I had the hose in my hand but I think there was a
9 nozzle or somethin' that allowed me to be able to or I may
10 have used my finger to shoot the, uh, water up onto the deck.

11 Q. Alright, even then when the hose hit it's still crackling
12 and that's the fire the the the firemen really had to fight,
13 right?

14 A. I I do not know how severe the fire was, I couldn't see.

15 Q. Were you on the back porch when the water started comin'
16 through the house out the back porch?

17 A. Yes, I know that.

18 Q. You had to get outta the way, didn't ya?

19 A. That's correct.

20 Q. Alright. Alright, but you said, again, you're you're
21 lookin' for bad guys, you're not lookin' to, you're not parta
22 the crew that's preserving evidence or lookin' for evidence,
23 are ya?

24 A. Well at at that time no, I'm I'm made sure I didn't see
25 bodies or bad guys in the garage, they wasn't in the back,

JAMES ROBERT BROWN - CROSS-EXAMINATION BY MR. RIORDAN

1 they wasn't in the front yard, they wasn't on the side, at
2 that time I tried to help with the fire and then I probably
3 didn't spend four or five minutes doin' that ---

4 Q. Okay, you said ---

5 A. --- and then, uh, came back with Mrs. Rose there sittin'
6 at the back.

7 Q. Alright. Per your testimony and per your, uh, well, I
8 mean, how how long are you there that day? You were there
9 till 12:20, weren't ya?

10 A. Yes, sir, I, uh, stayed out front keepin' the media from
11 entering the Rose's property.

12 Q. Okay. Are you sure about when you saw Paula back there
13 sitting with her, with her cat?

14 A. She was sittin' at the back next to the garage in the
15 pool area.

16 Q. But you're there four hours, you don't put on your report
17 anything about when that was, do ya?

18 A. I don't, I don't think I, I don't think I did. Well,
19 wait a minute.

20 (Whereupon, the witness examined a document.)

21 "Rose walked to the back yard, sat near the pool along
22 with the cat. Rose seemed calm, concerned for the animals."

23 Q. Yeah, seemed calmed without concern for anything except
24 the animals, right?

25 A. Yes.

1 Q. You guys were on the scene preservin' everything at that
2 ri -- that time, right?

3 A. That time we were still havin' arri -- officers and
4 firemen were style arrivin' on the scene and once we got
5 enough that's when we started to try to start protectin' the
6 perimeter and start lookin' for the evidence.

7 Q. And at that time you're there with a shotgun, you got
8 other officers that are armed, correct?

9 A. Yes, sir.

10 Q. Pretty safe place at that time, wasn't it?

11 A. Should be.

12 Q. And again, she had, she had great concern for the
13 animals, didn't she?

14 A. Yes, sir.

15 Q. You could tell she cared for these animals, ---

16 A. Yes, sir, ---

17 Q. --- right?

18 A. --- she she cared for her animals.

19 Q. You didn't see anything that was out -- unusual with
20 that, did ya?

21 A. No, sir.

22 Q. But you do go lookin' and you say you found, says, "We
23 checked for evidence of footprints and only found one near a
24 gate at the front corner a the yard and we marked the
25 footprint for forensics," right?

JAMES ROBERT BROWN - REDIRECT EXAMINATION BY MS. ABEE

1 A. Yes, sir.

2 Q. Okay. And when you found that you didn't wanna disturb
3 that, did ya?

4 A. No, sir.

5 Q. You guys set up a perimeter around it, make sure nobody
6 disturbed that, right?

7 A. I believe we put sheriff's office crime scene tape around
8 the ---

9 Q. Alright, no no officers are supposed to if you find
10 somethin' like that, you're not supposed to be walkin' over
11 there and leavin' your own footprints, are ya?

12 A. Well you wouldn't wanna have someone steppin' on top a
13 the footprint that you find.

14 Q. Alright, you said you didn't, you didn't recognize her,
15 she looked a little bit different comin' out the burning
16 house, didn't she?

17 A. That is correct.

18 Q. Thank you, sir.

19 A. Yes.

20 MS. ABEE: Very briefly, Your Honor.

21 REDIRECT EXAMINATION BY MS. ABEE:

22 Q. Uh, Deputy Brown, you said that after you searched around
23 the house and the perimeter you then were there to stave off
24 the media, is that right?

25 A. Yes, sir, they asked me to wait out front and just keep

JAMES ROBERT BROWN - REDIRECT EXAMINATION BY MS. ABEE

1 media and onlookers from comin' up into the property.

2 Q. Was there a decent amount a media already there?

3 A. Um, I don't know exactly what time they arrived but there
4 was one or two news crews that did appear.

5 MS. ABEE: Thank you, Your Honor, I have no further
6 questions.

7 THE COURT: Alright. Thank you, ---

8 MR. RIORDAN: (Indiscernible cross-talk.)

9 THE COURT: --- sir, you you may be excused.

10 THE WITNESS: Thank you, Your Honor.

11 (Whereupon, the witness left the stand.)

12 THE COURT: Call your next witness, please.

13 MR. UNDERWOOD: Your Honor, State calls Deputy Brian
14 Osborne.

15 MS. ABEE: Your Honor, just to confirm, when you said
16 excused, does that mean excused from his subpoena?

17 THE COURT: Yes, ma'am.

18 MS. ABEE: Okay, I just wanted to confirm that, thank
19 you.

20 THE COURT: Alright, any objection to that, Mr. Rio ---

21 MR. RIORDAN: No, no, ---

22 THE COURT: --- Riordan.

23 MR. RIORDAN: --- Your Honor, absolutely.

24 THE COURT: Thank you very much.

25 (Whereupon, the witness came forward.)

BRIAN LEE OSBORNE - DIRECT EXAMINATION BY MR. UNDERWOOD

1 BRIAN LEE OSBORNE, having been
2 first duly sworn, testified as follows:

3 THE CLERK: Oh, please have a seat.

4 (Whereupon, the witness complied.)

5 THE CLERK: Will you state your full name for the record.

6 THE WITNESS: Brian Lee Osborne.

7 DIRECT EXAMINATION BY MR. UNDERWOOD:

8 Q. Good afternoon, Deputy Osborne.

9 A. Afternoon.

10 Q. Uh, if you would please introduce yourself to the jury,
11 let 'em know where you work, what you do.

12 A. Deputy Brian Osborne, work for the Greenville County
13 Sheriff's Office, uh, currently assigned to school
14 investigations.

15 Q. And what was your assignment before that?

16 A. I was a canine handler and ---

17 Q. How long were you a canine handler?

18 A. Four years.

19 Q. Were you the canine handler that responded to [REDACTED] Riley
20 Smith Drive on July 27th 2012?

21 A. I was.

22 Q. What kinda specialized training did you have, uh, to be a
23 canine handler?

24 A. Oh, a minimum before we even start actually working our
25 dogs is a 600-hour class that we go through before ever

BRIAN LEE OSBORNE - DIRECT EXAMINATION BY MR. UNDERWOOD

1 certified, every week after that we have a minimum 10-hour day
2 on Wednesday training days, uh, certified nationally through
3 North American Police Work Dog Association and countless hours
4 off duty that I spend working my dogs, well over a thousand
5 hours of training I had with my dog at the time.

6 Q. Alright. And what what was your dog's name?

7 A. Mike.

8 Q. Is Mike still in service?

9 A. No, sir, he's retired now.

10 Q. Where where is Mike now?

11 A. He's at my house.

12 Q. Okay, so he re -- he retired when you went to bein' a
13 resource officer at. ---

14 A. He did, he's now a pet.

15 Q. Great. Now, Deputy Osborne, uh, you said that you were
16 certified as a, uh, dog handler?

17 A. Yes, sir, I was certified as a dual purpose team, myself
18 and my dog ---

19 Q. Can you explain ---

20 A. --- were a team.

21 Q. --- what that means a "dual purpose team."

22 A. Dual purpose, he was certified in human odor and narcotic
23 odor, did a little bit of everything ---

24 Q. Alright.

25 A. --- as far as apprehension, narco detection, tracking,

BRIAN LEE OSBORNE - DIRECT EXAMINATION BY MR. UNDERWOOD

1 searching and stuff like that.

2 MR. UNDERWOOD: Your Honor, at this time the State would
3 offer Deputy Osborne as an expert, uh, in the field of, uh,
4 dog tracking, narcotics tracking.

5 THE COURT: Any voir dire?

6 MR. RIORDAN: No objection.

7 THE COURT: Okay, it'll be so stipulated. Ladies and
8 gentlemen of the jury, normally witnesses are limited to
9 testifying to what they see, they felt, they saw, they heard,
10 basically consider their senses, uh, however, if a person
11 because a their education training has a specialized know --
12 knowledge in particular area is helpful for you, the jury, uh,
13 they'll be allowed to give their opinion in that area of their
14 expertise. In this case this, uh, State and defense stipulate
15 that this witness is an expert in dog handling, he'll be
16 allowed to give his opinion, the basis of opinion, uh, in this
17 case. Go ahead.

18 MR. UNDERWOOD: Thank Your Honor.

19 BY MR. UNDERWOOD:

20 Q. Deputy Osborne, how did ---

21 THE COURT: I'm sorry, I'm sorry, I apologize. Expert
22 testimony, ladies and gentlemen, is like any other testimony
23 you hear in a case: you may accept it, you may reject it or
24 give it as much weight as you think it deserves. I apologize,
25 counselor.

BRIAN LEE OSBORNE - DIRECT EXAMINATION BY MR. UNDERWOOD

1 MR. UNDERWOOD: Thank Your Honor.

2 BY MR. UNDERWOOD:

3 Q. Deputy Osborne, how did you end up being, uh, involved
4 with incident at Riley Smith?

5 A. The call came over the radio that morning that a house
6 was being burglarized, it was in progress, uh, I just heard it
7 via the radio and because nature of me bein' a canine handler,
8 that's somethin' that we respond to so I, as soon as the call
9 came out I started headin' way.

10 Q. Alright, and describe the scene when you arrived.

11 A. Uh, there were firefighters everywhere, uh, fire trucks
12 everywhere. The back of the house I could tell was on fire
13 and I think it was the front porch on fire of the house. Uh,
14 firefighters and, you know, trucks and lights and people
15 runnin' all over the place with hoses.

16 Q. Okay, and were there a lotta deputies there as well?

17 A. At the time no. Uh, Deputy Brown was there and I didn't
18 see him originally when I got there, I found him at the
19 backyard of the house.

20 Q. So when you first arrived what did you do?

21 A. I deployed canine Mike on a 6-foot lead or leash and and
22 went to the area to find out, you know, what was going on
23 because I didn't see any of our, I say all law enforcement
24 there to give me any idea of any type of suspects or anything
25 like that ---

BRIAN LEE OSBORNE - DIRECT EXAMINATION BY MR. UNDERWOOD

1 Q. Alright, and ---

2 A. --- so I went to find Deputy Brown.

3 Q. Alright, and you found him, without going into your exact
4 conversation, ---

5 A. Sure.

6 Q. --- what did you do next?

7 A. Well I informed him that, you know, any type of track
8 wasn't gonna be started because of the amount of contamination
9 in the yard between the firefighters and everything going on
10 it would be futile to try to start a, any type of suspect
11 track but asked him if all areas had been cleared of any type
12 of suspects. Deputy Brown told me that the complainant, the
13 victim, Ms. Rose ---

14 Q. And and and and ---

15 A. Sure.

16 Q. --- don't go into what he told you, ---

17 A. I'm sorry.

18 Q. --- uh, just what was your understanding of the situation
19 at that time?

20 A. My understanding was that the the female caller had seen
21 some gentlemen in her garage trying to get into a gun safe and
22 that she went in, deeper into her house, lost site of 'em and
23 the back of the house was on fire.

24 Q. Okay, and did you have an opportunity to go where this
25 gun safe was?

BRIAN LEE OSBORNE - DIRECT EXAMINATION BY MR. UNDERWOOD

1 A. I did.

2 Q. Alright, describe that area.

3 A. It was in the garage, uh, my recollection of the actual
4 areas, uh, it it's a a garage off to the left of the house if
5 you're lookin' at it from the front, uh, and there was a bonus
6 room above the actual garage. I asked Deputy Brown if that
7 had been cleared of anybody, any suspects, he told me no, that
8 he had not cleared it. We made sure that nobody was supposed
9 to be in that area by Ms. Rose, she confirmed that no innocent
10 people were supposed to be there, at that point I went
11 upstairs to clear with my canine partner.

12 Q. And did you do that?

13 A. I did.

14 Q. Alright, how how did, how did you clear the room?

15 A. Went up to the, it was the steps leading up the door was
16 shut, I opened up the door and gave my dog his search command
17 to go in and search, again, for any type of human odor that
18 was there, he didn't find anybody in that bonus room. There
19 was also a little small attic access that he cleared as well
20 without locating anyone there.

21 Q. And say as as an expert in dog tracking was there any way
22 to, uh, utilize the dog to find a track to see if anyone had
23 fled from that scene?

24 A. Not at that scene at that time 'cause there were so many
25 people there, you know, my dog was very good at what he did

BRIAN LEE OSBORNE - DIRECT EXAMINATION BY MR. UNDERWOOD

1 but there was no way for him to tell me, you know, exactly who
2 he was tracking.

3 Q. Are you aware of while you were there any gloves being
4 found at the scene?

5 A. I wasn't aware of anything.

6 Q. Alright. If any gloves were found at the scene, would
7 they have been any use to you in trying to lay a track?

8 A. Well any type of article that, of clothing that is worn
9 would contain skin grafts which is what a dog actually tracks,
10 potentially that could have been used; however, there's no
11 exact percentage that anybody, a suspect or a firefighter or
12 anyone there, there was no way to tell exactly who wore any
13 gloves those were presented to me. Even if I had those with
14 the amount of people that were in that yard, again, my dog
15 couldn't look back me and say, Hey, daddy, you know, I'm
16 trackin' so-and-so as opposed to someone else.

17 Q. Is that because the contamination at the scene?

18 A. Sure, yes.

19 Q. Did you take a -- while you were in the, uh, area the
20 garage, did you have an opportunity to look at the gun safe?

21 A. I did.

22 Q. Uh, what what did that scene look like?

23 A. It it's it's hard for me to recall exactly. Uh, I
24 remember it appeared that there was some type of on the face
25 of the safe itself it looked like it had been chipped as if

BRIAN LEE OSBORNE - DIRECT EXAMINATION BY MR. UNDERWOOD

1 somebody had hit it with something, other than that I don't
2 really remember exactly what the area looked like.

3 Q. Did you make any other attempts to find any signs of
4 flight on the property?

5 A. Yes, sir, once I cleared that bonus room above the garage
6 and I knew that we weren't gonna be able to start a track in
7 the yard of any sort, I returned Mike, my my canine partner,
8 to the -- my patrol vehicle, myself and Deputy Brown, another
9 deputy went to the back a the house (coughed), excuse me,
10 jumped the fence behind the house where we knew no
11 firefighters had been at, at that point we decided to start
12 kind of combing the area visually, uh, to see if any type of
13 items had been discarded from any potential suspects, we were
14 told over the radio that the suspects were wearing masks.
15 Many times I've been on scenes to where, you know, a mask has
16 been discarded and we can start a possible track from that
17 point we know there's no contamination. We walked through the
18 woods all the way back around to the fronta the house and
19 didn't see any type of items that had been discarded, no areas
20 looked disturbed where anybody had run through.

21 Q. And did you find anything that's deemed evidence as you
22 were doing your perimeter check?

23 A. When we got back around to the fronta the house, the, uh,
24 there was a gate on the front of the, in the front yard, if
25 you're looking at the house it would be on the right-hand side

BRIAN LEE OSBORNE - DIRECT EXAMINATION BY MR. UNDERWOOD

1 closest to the road, this gate was opened. Uh, there was a
2 muddy area right there that contained some footprints and
3 a -- some -- a tie down strap like a motorcycle strap was
4 hanging from one of the trees in that area.

5 Q. Okay. Now you mentioned the -- a gate, what kind of a
6 gate was it?

7 A. Like a, just like a personnel gate from a fence that you
8 would walk through, they're a little latching system and there
9 would have been ---

10 Q. Like the kind of little latch that just flips up and
11 down?

12 A. Yeah, I I don't remember exactly what the latch was like
13 but, yeah, somethin' like ---

14 Q. But that, but that type ---

15 A. Sure, ---

16 Q. --- of gate?

17 A. --- yes.

18 Q. And what did you do with that area where you found?

19 A. Once we saw this tie down strap and footprints, you know,
20 we asked a few of the firefighters around if they had walked
21 through there, the ones that we spoke to had not. We had not
22 walked through there, when I say "we", myself and Deputy Brown
23 had not stepped in that muddy area so once we saw this we had
24 it taped off with crime scene tape so our forensic people
25 could come and take pictures and collect anything that had to

BRIAN LEE OSBORNE - CROSS-EXAMINATION BY MR. RIORDAN

1 be done there.

2 Q. Do you remember how large the footprint was?

3 A. I do not no, sir.

4 Q. Why didn't you, uh, run the dog from that point?

5 A. Again, there's so much contamination there and people
6 were coming in and out of that gated area. Even on the
7 outside of it, firefighters were around, highway patrol had
8 been showin' up at that point, ya know, there were dozens of
9 people around the area and, again, I wouldn't know exactly who
10 I was tracking if the dog was able to pick up an actual
11 track.

12 Q. So again, Deputy Osborne, in your expert opinion as a dog
13 tracker, was there any way from either the scene where the
14 footprint was found or anywhere else and that all lead to
15 establish a reliable track?

16 A. Not with a hundred percent certainty, no, sir.

17 Q. And that was again due to contamination?

18 A. Yes, sir.

19 Q. Was that contamination due to the fault of anyone?

20 A. No, sir.

21 Q. Thank you, no further questions.

22 THE COURT: Cross-examination.

23 CROSS-EXAMINATION BY MR. RIORDAN:

24 Q. Deputy, that area that this house, uh, yard around it
25 that's a fairly remote and wooded area, right?

BRIAN LEE OSBORNE - CROSS-EXAMINATION BY MR. RIORDAN

1 A. Yes, sir, it is.

2 Q. Woods, pretty thick woods in end a July, right?

3 A. Fairly thick, yes, sir.

4 Q. Brush growin' everywhere.

5 A. Um-hum.

6 Q. And and down I guess if you're lookin' at the property
7 from the street lookin' at it to the right is what?

8 A. More woods.

9 Q. Okay, what eventually, you even know?

10 A. No, sir, I have no clue.

11 Q. When you guys went out, did you make or just like let's
12 say from the right if you're lookin' at the the the building
13 again from the street to the right's this gate we're talkin'
14 about, correct, ---

15 A. Yes, ---

16 Q. --- right at the top?

17 A. --- in that, in that corner right there yes, sir.

18 Q. And and is it, well is it my understanding that when you
19 look without the dog 'cause it's coo -- too contaminated for
20 the dog to find anything, right?

21 A. No, sir, my dog coulda found ---

22 Q. Well ---

23 A. --- track ---

24 Q. --- and you're right, I shouldn't said anything, too
25 contaminated to to go after folks that had been there,

BRIAN LEE OSBORNE - CROSS-EXAMINATION BY MR. RIORDAN

1 correct?

2 A. Too contaminated to find an actual suspect track, yes.

3 Q. Alright, and when you guys, just make sure I understood
4 when -- did did you all search the woods, you exited that area
5 and just walked or like down the fence, all ---

6 A. No, sir, we ---

7 Q. --- around the fence?

8 A. --- we began searching the woods we actually entered from
9 the back of the residence over the fence and came back around.
10 Yeah, I I was in one area, Deputy Brown was in area, there
11 were other deputies that had arrived that were also walking in
12 that area. I I told these deputies if they found anything
13 that that would remotely suggest that someone had gone through
14 these woods to let me know and I would bring the dog there at
15 that time and and attempt to start a track.

16 Q. And as I look at your report it says, "Myself, Brown and
17 Deputy Smith," ---

18 A. Um-hum, yes, sir.

19 Q. --- so the three of ya?

20 A. Yes.

21 Q. No other officers, correct?

22 A. To my knowledge, no.

23 Q. Okay. You never went down like to the, to the creek that
24 runs to the right?

25 A. No, sir, I didn't go to the creek.

BRIAN LEE OSBORNE - CROSS-EXAMINATION BY MR. RIORDAN

1 Q. Okay, 'cause right to the right there's the bridge and
2 there's a big creek through there as well.

3 A. Okay.

4 Q. Okay. You didn't check that area, did ya?

5 A. I did not check the creek.

6 Q. Alright, you, when did you draft your report?

7 A. Uh, it was 7/27/2012.

8 Q. The day of, right?

9 A. Yes, sir, I usually ---

10 Q. Alright.

11 A. --- try to get 'em on pretty quick.

12 Q. And as I read it it says, uh, "There were multiple fire
13 trucks on the scene prior to my arrival and many firefighters
14 in both the front and backyards, parenthesis, both back and
15 front porch were burning," isn't that what ya wrote?

16 A. Yes, sir.

17 Q. Then you go on, "Tracking would be futile due to the vast
18 amounts of contamination."

19 A. Yes.

20 Q. Thank you, sir.

21 THE COURT: Redirect?

22 MR. UNDERWOOD: No, Your Honor.

23 THE COURT: Alright, thank you, sir, you may be excused.

24 Any reason why he can't be excused from his subpoena?

25 MS. ABEE: Not from the State, Your Honor.

RANDY MORGAN - DIRECT EXAMINATION BY MS. ABEE

1 MR. RIORDAN: No, Your Honor.

2 THE COURT: Thank you, sir.

3 THE WITNESS: Thank you, Judge.

4 (Whereupon, the witness left the stand.)

5 THE COURT: Call your next witness, please.

6 MS. ABEE: Your Honor, may we approach very briefly?

7 THE COURT: Yes, ma'am.

8 (Whereupon, a bench conference was held off the record.)

9 THE COURT: Mr. Foreman, ladies and gentlemen, uh, what
10 we're doing is looking at logistics, uh, seeing if your lunch
11 was here yet, if so we we're gonna break but since it's not
12 we'll keep going till around one or it arrives, okay.
13 Alright.

14 MS. ABEE: Your Honor at this time the State calls Randy
15 Morgan to the stand.

16 THE CLERK: Please come forward.

17 (Whereupon, the witness came forward.)

18 RANDY MORGAN, having been first
19 duly sworn, testified as follows:

20 THE CLERK: Please have a seat. Will you state your full
21 name for the record.

22 THE WITNESS: Uh, my name's Investigator Randy Morgan.

23 DIRECT EXAMINATION BY MS. ABEE:

24 Q. And please tell us a little bit, uh, about your
25 employment background.

RANDY MORGAN - DIRECT EXAMINATION BY MS. ABEE

1 A. Uh, I started years ago, uh, with the South Carolina
2 Department a Corrections, uh, I left there in '94. I went, I
3 was employed with the South Carolina Highway Patrol, uh, until
4 2003 and then basically I got tired a travelin' the state and
5 I came here to the sheriff's office and I've been here ever
6 since.

7 Q. And you say "ever since," when is that?

8 A. Uh, I came here in August of '03 and, uh, I became an
9 investigator with, uh, the sheriff's office, uh, approximately
10 6 1/2 years ago.

11 Q. And so what, uh, division are you currently assigned
12 to?

13 A. Uh, I'm a property crimes investigator, uh, I investigate
14 burglaries, uh, somebody breaks into your car, uh, steals your
15 lawnmowers, uh, stuff like at that.

16 Q. How long have you been a property crimes investigator?

17 A. Uh, 6 1/2 years.

18 Q. And if you could, tell us what your role was in this
19 particular case.

20 A. I got the call, uh, my sergeant, uh, called me and said
21 that this lady had reported a burglary to her home and now her
22 home was on fire and, uh, ---

23 Q. What date was that?

24 A. Uh, was July the 27th of 2012.

25 Q. And is that when you became involved in the case?

RANDY MORGAN - DIRECT EXAMINATION BY MS. ABEE

1 A. That's correct, I responded to the scene.

2 Q. Okay, and where was the scene located at?

3 A. Uh, [REDACTED] Riley Smith Drive in Greenville, South ---

4 Q. And ---

5 A. --- Carolina.

6 Q. --- is that a house?

7 A. Uh, it is.

8 Q. And when you first got there what was the type of
9 response that you were giving, what call were you responding
10 to?

11 A. I was responding to to the burglary, uh, itself. When I
12 arrived on scene, uh, the fire department was on scene, uh,
13 puttin' out the fire, uh, and there was a several, uh, uniform
14 patrol officers on scene as well.

15 Q. What about a homeowner? was the homeown -- homeowner ---

16 A. Uh, ---

17 Q. --- there?

18 A. --- yes, I I had spoke with, uh, Ms. Rose, uh, was on
19 scene.

20 Q. And do you see Ms. Rose here in the courtroom today?

21 A. I do.

22 Q. Can you i -- point her out to us, tell us where she's
23 sitting and maybe a, the color of a piece of clothing she's
24 wearing.

25 A. Uh, the peach color top at the defense table.

RANDY MORGAN - DIRECT EXAMINATION BY MS. ABEE

1 MS. ABEE: Your Honor, please let the record reflect that
2 he's properly identified the defendant as Paula Rose.

3 THE COURT: Record so reflects.

4 BY MS. ABEE:

5 Q. When you spoke with Ms. Rose initially when you got on
6 the scene, uh, what did you talk to her about?

7 A. Uh, basically I just asked her what had happened. Uh,
8 how did we get there, uh, and she explained that she was
9 inside her home, uh, her dog started barkin', uh, so she went
10 to the garage side door, I guess that's how you would explain
11 it, to see what the dog was barkin' at and she observed, uh,
12 three people inside her garage.

13 Q. And so what did you do in response to Ms. Rose telling
14 you that?

15 A. Well we we tried to get some description, uh, of the
16 suspects, uh, to see if we could maybe put out a BOLO to the
17 area, uh, neighborhood to see if anybody saw anything. Uh,
18 she indicated two of 'em had on ski mask, uh, wearin' all
19 black clothing, uh, the third was a, uh, I think she's, the
20 the way she said a shiny bald head, he was tryin' to, he was
21 movin' the dial on the the gun safe.

22 Q. And you said a a "BOLO," what is that?

23 A. Uh, be on the look out, uh, somethin' for officers if
24 they were headed to the scene, uh, or somebody in the area if
25 they see three people wearin' all black hopefully two with ski

RANDY MORGAN - DIRECT EXAMINATION BY MS. ABEE

1 masks on that hopefully they'll stop 'em and get out with
2 'em, f ---

3 Q. And were you able to issue a BOLO on that?

4 A. Honestly I don't know if one ever got out or not to be
5 honest with ya.

6 Q. Do you know if you did one?

7 A. Uh, I did not personally do one, no, ma'am.

8 Q. And so after she described what these people looked like
9 what did you do?

10 A. Uh, basically ask her, uh, if anything was stolen, uh, I
11 I believe about this time her husband had also arrived on
12 scene. Uh, we determined that nothing was stolen or or they
13 determined that nothing was stolen. Uh, forensics was
14 contacted, uh, to get them in route to the scene to process
15 it, see if a -- any forensic evidence could be recovered. Uh,
16 one of the road deputies I think was a Deputy Brown, uh, asked
17 or advised me he had thought he had found a a shoe print in
18 the yard, uh, we had that marked off, uh, then I I asked
19 Ms. Rose about the gates because there are two gates, one
20 drive-thru gate then one walk thru gate. Uh, she believed
21 that both gates were closed, uh, while she was at home but now
22 both of 'em were open.

23 Q. Investigator Morgan, I'm gonna back ya up just a
24 little, ---

25 A. Kay.

RANDY MORGAN - DIRECT EXAMINATION BY MS. ABEE

1 Q. --- uh, you gave us good information just lengthy so I
2 wanna make sure ---

3 A. Okay.

4 Q. --- we understand everything that you were sayin'. You
5 could describe to us what, uh, the house looks like if you're
6 standing on the road and I'm looking at the house, what does
7 it look like?

8 A. Okay, uh, it it's a very large home, it it's a nice home,
9 uh, that the driveway is to the left, uh, if you're lookin' at
10 the house, it's on the left, there's a drive-thru gate, uh, I
11 think you gotta have a code to get through the gate. Uh, as
12 you pull up to the house, there's two garage doors, believe it
13 was two, uh, and then the house goes to the right from there.

14 Q. And, Investigator Morgan, if I showed you some pictures
15 from the scene, would you recognize them?

16 A. Sure.

17 MS. ABEE: Your Honor, may I approach her attorney?

18 THE COURT: Yes, ma'am.

19 MS. ABEE: Your Honor, I'm showing opposing counsel
20 what's been premarked State's Exhibits 1, 2, 3 and 4, may I
21 approach the witness?

22 THE COURT: Yes, ma'am.

23 BY MS. ABEE:

24 Q. Investigator Morgan, I'm handing you what's been
25 premarked as State's Exhibits 1, 2, 3 and 4, without telling

RANDY MORGAN - DIRECT EXAMINATION BY MS. ABEE

1 us what they are can you look through those and tell us if you
2 identify, if you can identify what's in those pictures.

3 (Whereupon, the witness complied.)

4 A. Yes, I can.

5 Q. Do those pictures fairly, accurately represent the scene
6 as you saw it that day?

7 A. Yeah, that is correct.

8 MS. ABEE: Your Honor, at this time the State would seek
9 to enter State's Exhibits 1, 2, 3 and 4 into evidence.

10 THE COURT: Any ---

11 MR. RIORDAN: No ---

12 THE COURT: --- objection?

13 MR. RIORDAN: No objection.

14 THE COURT: They'll be admitted without objection.

15 (State's Exhibit Nos. 1, 2, 3 and 4, photographs,
16 admitted into evidence.)

17 MS. ABEE: Permission to publish to the jury?

18 THE COURT: Yes, ma'am.

19 BY MS. ABEE:

20 Q. And I first talk to you about State's Exhibit No. 2, you
21 see this?

22 A. Yes, yes.

23 Q. And what actually is this here (indicating) in State's
24 Exhibit No. 2?

25 A. Uh, that that's the incident location.

RANDY MORGAN - DIRECT EXAMINATION BY MS. ABEE

1 Q. Okay. You were describing the garage to us, how many
2 cars, uh, is the garage?

3 A. Uh, uh, it's two garage doors but I think it might be a 3
4 or 4-car garage, somethin' like that.

5 Q. And when you arrived on the scene, were any of the garage
6 doors open?

7 A. Uh, the one to the right, uh, the garage door was open.

8 Q. And is it your understanding that that garage door was
9 open when this incident occurred?

10 A. Yes.

11 Q. Okay, and what about I'm gonna ask you about this car
12 right there (indicating), was that car there at the time this
13 incident occurred?

14 A. Uh, I believe it was the the Honda, yes.

15 Q. And we talked about a a gun safe, if you could, tell us
16 what the garage looks like when you actually enter it.

17 A. Uh, well once you walked into to it, uh, that there
18 appeared to be a door straight ahead that maybe went out to
19 the backside a the house, uh, to the right was the entrance
20 into the home, uh, to the left was the other side of the
21 garage, uh, and then there was a a pretty large gun safe up
22 against the wall, uh, that there was a rack layin' on the
23 ground, uh, and then you could go out from, to the left of
24 garage you could go out into the backyard, uh, then there was
25 some stairs leading to the a a room above the garage.

RANDY MORGAN - DIRECT EXAMINATION BY MS. ABEE

1 Q. I'll show you State's Exhibit 3, does that accurately
2 depict what it looked like when you walked into the garage?

3 A. Yes, ma'am.

4 Q. Alright, and you said there is a metal rack that was
5 laying on the ground, is that this rack right here
6 (indicating)?

7 A. Yes, ma'am, it is.

8 Q. Okay, what is this right here (indicating)?

9 A. Uh, it's a cloth or somethin' like that.

10 Q. Okay, and what is your understanding of what the position
11 of this cloth and metal shelf originally is?

12 A. Uh, uh, according to Ms. Rose at the time the shelf was
13 standing, uh, in front of the gun safe and the the cloth or
14 whatever was draped over the the rack.

15 Q. And that (indicating) is the gun safe?

16 A. Correct.

17 MS. ABEE: Permission to publish, Your Honor?

18 THE COURT: Yes, ma'am.

19 BY MS. ABEE:

20 Q. So that metal safe in the picture and the blanket were
21 actually over the gun safe before these three alleged burglars
22 came in?

23 A. Uh, that from my understanding it was, the the rack was
24 standin' in front of the gun safe and then the cloth was over
25 the the rack.

RANDY MORGAN - DIRECT EXAMINATION BY MS. ABEE

1 Q. And when you got there they were pushed down, am I
2 right?

3 A. Correct, that they -- it was in that, that's where they
4 were found, I found 'em.

5 Q. And according to Ms. Rose how did that rack get on the
6 ground?

7 A. Uh, I I assumed the the burglars or, uh, knocked it
8 over.

9 Q. So you said you called forensics out there, what all did
10 you ask forensics, uh, to do or what did you inform them of?

11 A. Uh, I told 'em that, uh, that, uh, Ms. Rose had seen the
12 the suspects at the the gun safe, uh, I asked 'em to process
13 the door see if any of 'em tried to open the door, uh, I I I I
14 pretty much zeroed in on those two places since that's where
15 Ms. Rose said that she saw them.

16 Q. So that was the gun safe?

17 A. The gun safe and the door goin' into the home.

18 Q. What else did you do, uh, for your burglary investigation
19 after you called forensics out there?

20 A. Uh, basically, uh, I spoke with Ms. Rose again, I ask her
21 that, uh, that I wanted to get a a a victim statement from her
22 concernin' this incident, uh, and she indicated that she
23 wanted to go freshen up and it was, I think it was well after
24 lunchtime by this time, uh, so Ms. Rose was allowed to go
25 freshen up, get her some lunch, uh, and then meet with me back

RANDY MORGAN - DIRECT EXAMINATION BY MS. ABEE

1 at my office.

2 Q. And at this point in time was Ms. Rose a suspect?

3 A. No.

4 Q. What was she in in your eyes in ---

5 A. Uh, she she was the victim of this incident.

6 Q. And did Ms. Rose come to the, uh, your office and speak
7 with you?

8 A. She did.

9 Q. And who, if anyone, was with her when she did?

10 A. Uh, her husband, uh, Homer Rose and a assistant, uh, her
11 name was Ellie Hansen.

12 Q. And at approximately what time did she show up at your
13 office to speak with you?

14 A. 2, 2:30, 3:00, maybe somewhere in that neighborhood.

15 Q. And again at this time was she in any way a suspect?

16 A. No.

17 Q. And what did you ask Ms. Rose about when she was at your
18 office?

19 A. Uh, basically it it give us time to sit down and give her
20 time to think about the incident so if she had mighta left out
21 some details with the chaos.

22 THE COURT: Just one second. May I see counsel up here,
23 please.

24 MS. ABEE: Alright.

25 (Whereupon, a bench conference was held off the record.)

RANDY MORGAN - DIRECT EXAMINATION BY MS. ABEE

1 THE COURT: I'm sorry, I apologize. Excuse me.

2 BY MS. ABEE:

3 Q. Investigator Morgan, you were explaining that why it is
4 that you went and actually had a sit-down conversation with
5 Ms. Rose, if you can just finish that up ---

6 A. Sure, ---

7 Q. --- for us.

8 A. --- uh, basically giving her the optine -- the the
9 opportunity to collect herself, uh, calm down, like I said
10 take I shower, uh, get some food in her, uh, basically we can
11 go over the details of this incident to try to figure out what
12 happened.

13 Q. And do you recall what Ms. Rose was wearing when you
14 initially got on the scene?

15 A. Uh, it was a dark colored shirt, maybe sweatpants, blue
16 jeans, I I'm not really sure to be honest ---

17 Q. Was she wearing ---

18 A. --- with ---

19 Q. --- the same type of clothes when she came to your office
20 later?

21 A. No, no.

22 Q. And when you sat down with Ms. Rose was she able to give
23 you more detail about the burglary?

24 A. Uh, yes, yes.

25 Q. Okay, and what is that type a detail that she gave you?

RANDY MORGAN - DIRECT EXAMINATION BY MS. ABEE

1 A. Uh, uh, basically she stated around 8 a.m. that mornin',
2 uh, she was in bed, her dog was barkin', her dog Bear was
3 barkin' at the door, uh, apparently he has several different
4 types of barks, uh, this certain bark that he was displaying
5 was the one that when somebody shows up. Uh, she started
6 walkin', uh, she walked outta the bed, walked towards the
7 door, uh, she could see through the window, she saw three
8 people standin' inside her garage, uh, all three people were
9 large in stature, two of the people had on black ski mask, uh,
10 all black clothing, the third person, uh, was standin' in
11 fronta the gun safe, he was a white male, had a shiny shaved
12 head, uh, I then looked through the door, the guy closest to
13 me stated either, She's here or someone's here, uh, said, I
14 gra -- she then grabbed the dog and retreated to her bedroom.

15 Q. Okay, were you ever able to see this dog, uh, ---

16 A. Uh, I be, ---

17 Q. --- that she was talkin' about?

18 A. --- uh, e -- I believe it was and he's a rather large
19 dog.

20 Q. And according to Ms. Rose one of the individuals stated
21 something along the lines that she's home or somebody's
22 home ---

23 A. Correct.

24 Q. --- and what did Ms. Rose say she did after she grabbed
25 her dog and went back into her bedroom?

RANDY MORGAN - DIRECT EXAMINATION BY MS. ABEE

1 A. Uh, said she then went got a shotgun, uh, went to the
2 head of her bed then she got a handgun. Uh, she picked up the
3 house phone, attempted to call 911 for help, uh, the phone had
4 no dial tone, uh, then she picked up her cell phone, she
5 called 911.

6 Q. And at this point in time when she's talkin' to 911 does
7 she know whether or not her house is on fire?

8 A. Uh, I don't believe so according to her statement.

9 Q. And did Ms. Rose tell you what happened while she was on
10 the phone with 911?

11 A. Uh, she she basically said that, uh, she told 911 three
12 stan -- sorry, three strange subjects was in her garage, they
13 were tryin' to to get into the sun -- gun safe, said while she
14 was talkin' with 911, uh, I heard two large bangs and it
15 sounded like it came from the garage.

16 Q. Okay, did she say what she did in response to those ---

17 A. Uh, ---

18 Q. --- large bangs?

19 A. --- she said she kept waiting to hear glass break but she
20 never did.

21 Q. And she said these two bangs came from where? where did
22 it sound like?

23 A. Uh, she said the garage area.

24 Q. And where in reference to the garage is Ms. Rose's
25 bedroom?

RANDY MORGAN - DIRECT EXAMINATION BY MS. ABEE

1 A. Uh, it's on the other side a the house.

2 Q. Okay. And so after she heard these two bangs what did
3 she say happened?

4 A. Uh, the -- she looked out her bedroom window, uh, which
5 faces the fronta the house towards the road, uh, she did not
6 see any people were in vehicles, uh, she then walked back to
7 the door and then she only heard the sound of a crackling
8 noise.

9 Q. Did she say anything about where any of her animals were
10 located at that time?

11 A. Uh, no.

12 Q. Okay, and what about after she heard the crackling noise,
13 what ---

14 A. Uh, ---

15 Q. --- did she say?

16 A. --- she opened her bedroom door, one of the cats shot out
17 of the door, uh, and then she took off after the cat, then she
18 saw that her werker -- wicker couch that was in her sunroom
19 was on fire.

20 Q. So after Ms. Rose sees these three individuals in her
21 garage, retreats back to her bedroom, hears two bangs and then
22 crackling, she opens the door and runs after her cat?

23 A. Correct, after it shot out.

24 Q. Okay, and you said that's when she saw that the house was
25 on fire, that this specific couch is on fire.

RANDY MORGAN - DIRECT EXAMINATION BY MS. ABEE

1 A. Correct.

2 Q. Alright, and what did she say happened after that?

3 A. Uh, she took off after the cat, saw the wicker couch on
4 fire in sunroom, she then ran upstairs after the cat and when
5 she got upstairs there was a lotta smoke so she came back
6 downstairs. Uh, the fire was then inside the house, uh, her
7 drapes were on fire, uh, The 911 lady told me to get outta the
8 house. Uh, she went back into the bedroom, uh, tried to get
9 the dogs out, uh, then she walked out the front door, she saw
10 embers burnin' on the front porch.

11 Q. Investigator Morgan, you say you've been an investigator
12 in property crimes for 6 1/2 years, have you ever investigated
13 other home invasions or burglaries before?

14 A. Uh, I have.

15 Q. And do you frequently speak with the victims of these
16 burglaries?

17 A. Uh, we do.

18 Q. And do you commonly observe their demeanor?

19 A. Uh, I do.

20 Q. And typically what do you observe the victim of a home
21 invasion their demeanor to be?

22 A. Uh, normally they're very shaken, uh, very upset. Uh,
23 that the the one word that comes all the time is "violated,"
24 somebody has entered their space, somethin' that's sacred to
25 them and somebody has violated that space.

RANDY MORGAN - DIRECT EXAMINATION BY MS. ABEE

1 Q. And at any time when you were speaking with Ms. Rose
2 either at the house or when she came and gave you this
3 statement, uh, what was her demeanor like?

4 A. Uh, that there was no emotion whatsoever. I I mean,
5 there was, there there was emotion for the animals but the
6 burnin' of her home, the, uh, the the burglar -- the attempted
7 burglary, uh, there there was just no emotion whatsoever.

8 Q. And you said that you were investigating the burglary
9 aspect of this home, ---

10 A. Correct.

11 Q. --- do you know who was investigating the arson portion
12 of it?

13 A. Uh, it was Investigator Cannon, Investigator Gonzalez.

14 Q. And is it common for you to cross-reference with other
15 investigators if there's a separate type of crime?

16 A. Yes, yes.

17 Q. Okay, so since you were doin' the burglary and they were
18 doin' the arsons did the three of ya'll meet?

19 A. Uh, we did later that afternoon. We ---

20 Q. And what -- sorry, go ahead.

21 A. We were originally on scene together, uh, I I was
22 basically concentrating on the burglary aspect of it, uh, and
23 and they were lookin' into the the the burnin', the fire
24 aspect.

25 Q. And what is the purpose of meeting with the other

RANDY MORGAN - DIRECT EXAMINATION BY MS. ABEE

1 investigators on the case?

2 A. Uh, basically, I I mean, they asked me my opinion about
3 what happened, what I found on the scene, uh, and basically I
4 asked them the the same thing because they're specialized in
5 a, in a fire investigation, uh, and and they don't know what I
6 do and and and vice versa.

7 Q. Do ya'll compare notes with one another?

8 A. Uh, we do. We sit down and talk about the case and, uh,
9 what they found versus what I find, stuff like that.

10 Q. And would you at any point do any sort of investigation
11 as to the arson portion of?

12 A. No, ma'am.

13 Q. So did you ever, uh, check the back screen porch or
14 anything like that?

15 A. Uh, I walked back there. I I mean, I saw the damage and,
16 uh, that there was some items layin' on the deck but, uh, as
17 an investigative part, uh, no, not nothin' of that end.

18 Q. Because are you trained in any way as an arson
19 investigator?

20 A. No, I'm not.

21 Q. Okay, so once the three of ya'll met together and started
22 sharing notes was further investigation necessary?

23 A. Uh, we we believed so yes, ma'am.

24 Q. Okay. And, uh, what did you do to further your
25 investigation?

RANDY MORGAN - DIRECT EXAMINATION BY MS. ABEE

1 A. Uh, basically after we spoke, uh, I basically just, uh,
2 the demeanor of Ms. Rose about the incident, uh, that there
3 was and from what the other investigators found, uh, the the
4 arson investigators found that we -- it was determined that
5 we'd go back to the house for a a a s -- follow-up
6 investigation.

7 Q. Now was there any, in your opinion, anything in the
8 garage that was set on fire?

9 A. No, nothin' in garage.

10 Q. Is there anything in the garage that could have been set
11 on fire?

12 A. Uh, yes.

13 Q. Okay, and what are some a those things? What are some
14 things that could make ---

15 (Indiscernible cross-talk.)

16 A. Well the walls, the stairs, uh, I I mean, they coulda
17 doused the sheetrock, whatever, I mean, that there was,
18 there's flammable stuff that was in the garage, there was a a
19 vehicle cleanin' supplies, uh, and stuff like that.

20 Q. And so when you went back to the scene what did you
21 investigate?

22 A. Uh, basically I was told that they were gonna ask for
23 consent, uh, so they could put the arson dog, uh, inside the
24 house.

25 Q. And were you there when these investigators received

RANDY MORGAN - DIRECT EXAMINATION BY MS. ABEE

1 consent?

2 A. I I was.

3 Q. And how did you further your investigation while you were
4 there?

5 A. Uh, Investigator Gonzalez put his dog in the house and I
6 sorta ---

7 MR. RIORDAN: Your Honor, I have just certain objection
8 in regard to arson dog goin' in.

9 THE COURT: I'm sorry?

10 MR. RIORDAN: Uh, if he's gonna get into the the use of
11 the dog, yeah, we talked about just preserve the objection for
12 expertise, that's ---

13 THE COURT: Okay, ---

14 MR. RIORDAN: --- all.

15 THE COURT: --- alright, noted for the record. Go ahead,
16 please.

17 BY MS. ABEE:

18 Q. And did you follow the arson dog inside?

19 A. Uh, I did.

20 Q. Okay. Did you see the arson dog alert to anything while
21 you were in there?

22 A. Uh, Inve -- the the dog laid down beside some slippers in
23 the master bedroom, uh, and Investigator Gonzalez advised me
24 that that the dog had alerted, uh, to the slippers..

25 Q. What about as far as the garage is concerned, did you do

RANDY MORGAN - DIRECT EXAMINATION BY MS. ABEE

1 any other further investigation inside of the garage?

2 A. Uh, as we were lookin', uh, I -- we were lookin' at the
3 safe, uh, that there was some paint chips chipped off the door
4 of the safe, uh, the dial was not damaged or anything like
5 that and as we were lookin' inside the the garage itself we
6 found a hatchet, uh, that was layin' amongst the the the the
7 vehicle cleanin' supplies and stuff like that so as we picked
8 up the hatchet, uh, it appeared that same color paint chips on
9 the hatchet had came from the safe.

10 Q. And what color is that safe?

11 A. Uh, it's sort of a maroonish color best I can remember.
12 Sort of a dark maroon, uh, sorta looks black in the picture
13 but I believe is a dark maroon color.

14 Q. And would you say that these marks that were on this safe
15 were they very deep?

16 A. Uh, no, it it's like somebody just scraped paint off the
17 door, nobody sunk a hatchet or whatever into the the door, uh,
18 of the gun safe.

19 Q. And where on the the door of the safe were these marks
20 located?

21 A. It was near the dial, sorta beside the dial but the dial
22 was not damaged.

23 Q. There were no marks on the dial?

24 A. None.

25 Q. What about, uh, the cracks of the safe like where the

RANDY MORGAN - DIRECT EXAMINATION BY MS. ABEE

1 hinges are, were there any marks over there?

2 A. We didn't see any.

3 Q. Did you ever have to go anywhere else, uh, to search for
4 further evidence in this case?

5 A. Uh, after the arson investigators, uh, were finished at
6 the home, uh, Investigator Gonzalez, uh, asked Ms. Rose about
7 her clothes that she had been wearin' earlier in the day, uh,
8 and she mentioned that it was at a third person this
9 Ms. Hansen's apartment which was couple miles away from the
10 incident location here on Riley Smith.

11 Q. And did you go to Ms. Hansen's apartment?

12 A. I did.

13 Q. And when you arrived at Ms. Hansen's apartment, who if
14 anyone else was there?

15 A. Uh, Ms. Rose was there and, uh, Investigator Gonzalez,
16 uh, and Ms. Hansen.

17 Q. And what was Ms. Rose's demeanor like, uh, once you got
18 onto the scene at Ms. Hansen's apartment?

19 A. Uh, she was very irate. Uh, she was on the phone with
20 somebody named Larry, she kept sayin' that was her attorney.
21 Uh, Ms. Hansen was cryin', uh, it was just a total change in
22 demeanor from the five minutes prior when she left the
23 house.

24 Q. What, if anything, do you recall hearing Ms. Rose say?

25 A. Uh, uh, if you'll give me a second I will tell you. Uh,

RANDY MORGAN - DIRECT EXAMINATION BY MS. ABEE

1 Ms. Rose was yelling, uh, at Investigator Gonzalez. Uh, as I
2 was walkin' towards them, uh, like I said that the victim's
3 attitude had totally changed to in a very aggressive manner.
4 Uh, said she was on the phone with her attorney Larry, uh, we
5 could not go into the apartment to get the clothes. Uh, Ms.,
6 like I said, Ms. Hansen was cryin', uh, and about that time,
7 uh, Homer Rose the, Ms. Rose's husband, arrived on scene as
8 well as Investigator Cannon.

9 Q. Were you able to get consent from Ms. Hansen to go into
10 her apartment?

11 A. Uh, Ms. Hansen ---

12 MR. RIORDAN: Your Honor, I'll object to just preserve my
13 objections in regard to hearsay.

14 THE COURT: I will sustain the objection with regard to
15 hearsay objection, okay.

16 MS. ABEE: Yes, sir ---

17 THE COURT: Rephrase your, ---

18 MS. ABEE: --- Your Honor.

19 THE COURT: --- rephrase your question.

20 BY MS. ABEE:

21 Q. Uh, Investigator Morgan, were you ever able to go inside
22 of Ellie's apartment?

23 A. Yes, we did.

24 Q. And did you see the other two investigators retrieve
25 clothing from inside of that apartment?

RANDY MORGAN - DIRECT EXAMINATION BY MS. ABEE

1 A. Yes, I did.

2 Q. Investigator Morgan, uh, was there anything at the scene
3 to you as someone with over 6 1/2 years of property crimes
4 investigation that indicated that there was a burglary in the
5 house?

6 A. No, nothin'.

7 Q. What about burglary in the garage?

8 A. Nothin'.

9 Q. Was there anything ever taken from this home?

10 A. Nothin' was reported stolen.

11 Q. And how many entran -- entrances and exits are there to
12 the house?

13 A. Uh, like driveway-wise or into the house? There's a
14 front door, a side door, uh, there's a back door, uh, that
15 leads like from the sunroom down to the pool, uh, then you got
16 the, like I said, the side door would be comin' in from
17 garage.

18 Q. And where is it that Ms. Rose said that these, uh,
19 burglars were?

20 A. E -- at the side door from the entrance from garage.

21 Q. And was there any damage to that side door at all?

22 A. None at all.

23 MS. ABEE: Your Honor, may I have one second?

24 THE COURT: Yes, ma'am.

25 (Whereupon, a discussion was held off the record.)

RANDY MORGAN - DIRECT EXAMINATION BY MS. ABEE

1 BY MS. ABEE:

2 Q. Investigator Morgan, uh, when you were looking around the
3 garage, what other types of equipment or things did you see
4 inside there?

5 A. I believe there's some weed eaters and, uh, like yard
6 equipment, stuff like that, I think, I'm not sure if there was
7 a ridin' mower or not, uh, I I mean, they just, uh, I I
8 remember there's some plastic gloves 'cause I I know her
9 husband's a trooper, uh, and, uh, I have plastic gloves at my
10 house too, uh, and it's just sumtin' you keep in your car.
11 Uh, I don't really know what else was, I don't remember
12 anything else was there, I know there's chairs and stuff like
13 that.

14 Q. You see any gas cans?

15 A. Um, I think there might have been one layin' on the, uh,
16 on like a tool bench, workbench.

17 Q. And that's inside the garage?

18 A. Correct.

19 Q. What about around the rest a the house, did you see any
20 gas cans there?

21 A. Uh, there was a gas can on the front porch and I, uh, I
22 believe later it was determined there was a yellow one on the
23 back porch but it got melted.

24 Q. Did you speak to Ms. Rose about whether or not, uh, she
25 had gas cans at the house?

RANDY MORGAN - DIRECT EXAMINATION BY MS. ABEE

1 A. Yes.

2 Q. Okay, and is this while she was talking to you when she
3 came to your office?

4 A. Yes.

5 Q. And what did she say about having gas cans?

6 A. Um, I asked her if she had any gas cans at her home, she
7 told him that they had two small red gas cans at the house.
8 Uh, I asked her if she had any yellow gas cans and she told me
9 that she had never seen a yellow gas can, uh, at her house.

10 Q. And what about did you talk to her about the gates being
11 open or closed, I know you indicated that there was a a gate
12 to get into the driveway?

13 A. Yes. I, uh, after the gas cans I ask her about the
14 driveway gate, uh, and she told me that she was not sure if
15 the gate was open or closed. Uh, I ask her about the walk-
16 thru gate at the corner of the yard, uh, and it was open and
17 she indicated that it was clo -- I'm sure that the gate was
18 closed yesterday, uh, but she wasn't sure about that day.

19 MS. ABEE: Your Honor, I have no further questions for
20 Investigator Morgan at this time.

21 THE COURT: Okay. Uh, ladies and gentlemen of the jury,
22 your lunch is here, it's a good time take a break. I'm gonna
23 recess this, uh, trial for forty-five minutes, I'm gonna ask
24 that you stay together. If anybody needs to take a break, I
25 know they have some personal breaks, you can go with the

MOTIONS AND MATTERS

1 bailiff and he'll let you do that. Uh, while you're having
2 your lunch break, Mr. Foreman, it's my intention that, uh, if
3 at all possible go a little bit longer tonight, we have a
4 lotta room to cover still, would you poll your jury to see if
5 that's gonna present any significant problem for them please,
6 sir, and just let us know when we come back from the lunch
7 break, ---

8 THE FOREMAN: Okay, sir.

9 THE COURT: --- other than that I'll remind you not to
10 speak with each other about this case. We're in recess
11 forty-five minutes.

12 (The following takes place outside the presence of the
13 jury.)

14 THE COURT: Alright, Investigator, uh, you understand the
15 rule which you can't speak with anybody about your testimony
16 durin' this ---

17 THE WITNESS: Yeah.

18 THE COURT: --- break? And we'll see ya'll back at 2,
19 oh, excuse me, 1:45.

20 MS. ABEE: Yes, sir.

21 THE COURT: Thank you very much.

22 (Whereupon, a recess was taken.)

23 (Whereupon, a discussion was held off the record.)

24 MS. ABEE: Your Honor, we were just about to get some
25 things premarked ---

MOTIONS AND MATTERS

1 THE COURT: Okay.

2 MS. ABEE: --- just before the jury comes in.

3 THE COURT: Okay, I appreciate that.

4 (Whereupon, a discussion was held off the record.)

5 MS. ABEE: And, Your Honor, after this witness will be
6 the witness with the canine, uh, and I -- we know you wanna do
7 an in camera hearing prior to the qual -- qualification of him
8 and the dog as an expert, uh, so we just wanna put you on
9 notice that be coming next. Uh, also ---

10 THE COURT: Well let me, let me ask you this, ---

11 MS. ABEE: Um-hum.

12 THE COURT: --- it seemed like why -- when we ended up
13 yesterday that I heard from the State as long as you present
14 proper foundation then that would be allowed, if you don't
15 then it's like any other evidentiary matter: if the
16 foundation's not laid doesn't come in.

17 MS. ABEE: Yes, sir.

18 THE COURT: I don't nec -- necessarily need to see any
19 fur -- I mean, I got enough to glean what I'm gonna hear about
20 from that from all the preliminary.

21 MR. RIORDAN: If, and you indicate -- can I just, I I
22 I'll I'm probly like to object but you just say overrule and
23 I've I'm -- is that how ---

24 THE COURT: Yeah, I mean, ---

25 MR. RIORDAN: (Indiscernible cross-talk.)

MOTIONS AND MATTERS

1 THE COURT: --- I want you --- yeah, I want you to make
2 your record protect your client, I mean, ---

3 MR. RIORDAN: Sure.

4 THE COURT: --- I just, what I'm sayin' is I think we --
5 that was kinda my thoughts beginnin' of the, uh, case 'cause
6 always if I'm not sure I wanna hear some testimony, ---

7 MS. ABEE: Yes, sir.

8 THE COURT: --- at the end of the hours of preliminary
9 testimony we had yesterday I don't feel the need to have any
10 further. I know what I'm gonna hear and I I, you know, my
11 ruling will be and I'll let you object, uh, Mr. Riordan, that
12 long as the appropriate foundation is laid on the admission of
13 the testimony about the drug dog then you'll be allowed, okay.

14 MS. ABEE: Yes, sir, and the do -- we do have the dog if
15 that is necessary and we're technically qualifying her as an
16 expert through the handler and ---

17 THE COURT: I don't ---

18 MS. ABEE: --- what protection is ---

19 THE COURT: --- want that dog prancin' around this
20 courtroom.

21 MS. ABEE: Yes, sir, I'm just saying if if it came into
22 question and for anything that the dog is here.

23 MR. RIORDAN: Can I ---

24 MS. ABEE: (Indiscernible cross-talk.)

25 MR. RIORDAN: --- send him over this ---

MOTIONS AND MATTERS

1 THE COURT: And I I'm not minimizin' the dog, I I saw
2 several women over here that obviously love their dogs, I
3 don't ---

4 MS. ABEE: Yes, sir.

5 THE COURT: --- mean that, I have three myself, I I just
6 don't want 'em run around the courtroom. Go ahead.

7 MR. RIORDAN: Alright, it was a bad joke. I was gonna
8 see if if the dog came in if we'd let did it go sniff the
9 jury, but, uh, uh, but but just ---

10 THE COURT: I object.

11 (Laughter.)

12 MR. RIORDAN: --- so I'm clear that will be the next one
13 is Gonzalez so she'll -- she's gonna do whatever she does and
14 then you'll look at me, I'll say, Judge, just per our earlier
15 conversations I just wanna preserve my objection if ---

16 THE COURT: I think ---

17 MR. RIORDAN: --- she's, if she's got it..

18 THE COURT: --- if ---

19 MR. RIORDAN: I think she'd give me a wink and say enough
20 or somethin' like that.

21 THE COURT: I think, let me just tell ya this: I
22 think ---

23 MR. RIORDAN: Yeah.

24 THE COURT: --- you're covered on the re -- uh, ---

25 MR. RIORDAN: Okay.

MOTIONS AND MATTERS

1 THE COURT: --- on the record ---

2 MR. RIORDAN: Alright.

3 THE COURT: --- without havin' to stand back up, that's
4 what I was tryin' to tell ya yesterday afternoon as to those
5 matters since I've ruled and it's now now it's not, I don't
6 think you have to repeat it again on 'cause right before the
7 witness but right now since this would be near the witness you
8 don't need to object, again, I think you're covered on the
9 record and your basis will be reserved. If you wanna add a
10 basis bein', uh, like Professor Mathis would say precise,
11 consice ---

12 MR. RIORDAN: I don't have anything precise or concise, I
13 I'll stand on what I filed yesterday and what ---

14 THE COURT: Very good.

15 MR. RIORDAN: --- we talked about and with that, Judge,
16 then will you do in in thi -- with with him like you did with
17 the other dog handler and give him instruction on, uh, ---

18 THE COURT: Yeah, ---

19 MR. RIORDAN: --- any eyewitness.

20 THE COURT: --- I do that all the time.

21 MR. RIORDAN: That's what I thought.

22 THE COURT: If you would, I'm gonna ask you before this
23 case is over with I am, it's my intent to make all motions
24 filed by the defense, uh, court exhibits so they are in the
25 file for further review if necessary, okay. Now anything,

MOTIONS AND MATTERS

1 Ms. Abee, before we go further?

2 MS. ABEE: A ---

3 THE COURT: Am I -- Abee, right?

4 MS. ABEE: Yes, sir, it's Abee.

5 THE COURT: I, and I know that I've been -- you've been
6 in front of me countless times, ---

7 MS. ABEE: Yeah, ---

8 THE COURT: --- I just ---

9 MS. ABEE: --- but I -- different last name. I was Bare
10 then last time ---

11 THE COURT: Oh, you got ---

12 MS. ABEE: --- I saw you in Spartanburg.

13 THE COURT: --- married since.

14 MS. ABEE: Yes, sir, I got ---

15 THE COURT: Oh, ---

16 MS. ABEE: --- married in August ---

17 THE COURT: --- dumb down, good well ---

18 MS. ABEE: --- so it's ---

19 THE COURT: --- congratulations.

20 MS. ABEE: --- it's a little bit more complicated last
21 name now but just the first two letters of the alphabet,
22 that's it.

23 THE COURT: Abee, okay.

24 MR. RIORDAN: Judge, I know you're ready to start, I I
25 just ate, drank, can I run real quick 'cause I know I'm gonna

MOTIONS AND MATTERS

1 be long, I'm sorry, ---

2 THE COURT: Okay.

3 MR. RIORDAN: --- be right back.

4 THE COURT: Okay.

5 MR. UNDERWOOD: And, Your Honor, just to be clear Your
6 Honor did not want to have a demonstration of the dog,
7 correct?

8 THE COURT: Uh, was that your intent was to do?

9 MR. UNDERWOOD: Uh, we're prepared to do so, Your Honor,
10 uh, but if you don't want it, Your Honor, then we won't.

11 THE COURT: No, not unless you can cre -- recreate the
12 conditions that existed out there at scene, I don't think it
13 be appropriate.

14 MR. UNDERWOOD: Alright.

15 MR. RIORDAN: Thank you, Your Honor, be right back.

16 (Whereupon, a discussion was held off the record.)

17 (Photographs marked State's Exhibit Nos. 6 thru 19, paint
18 can with tan slipper marked State's Exhibit No. 20, paint can
19 with blue jeans marked State's Exhibit No. 21, paint can with
20 tan slipper marked State's Exhibit No. 22 and paint can with
21 black shirt marked State's Exhibit No. 23 for identification.)

22 (Motion in limine packet marked Court's Exhibit No. 5 for
23 identification.)

24 THE COURT: Alright, State ready?

25 MS. ABEE: We are, Your Honor.

RANDY MORGAN - CROSS-EXAMINATION BY MR. RIORDAN

1 THE COURT: Okay. Defense ready?

2 MR. RIORDAN: Yes, Your Honor.

3 THE COURT: Bring the jury in please, sir.

4 MS. ABEE: Your Honor, would you like the witness to take
5 the stand?

6 THE COURT: Come around please, you're still under oath,
7 sir.

8 THE WITNESS: Yes.

9 (Whereupon, the witness returned to the stand.)

10 (Whereupon, a discussion was held off the record.)

11 (The following takes place in the presence of the jury.)

12 THE COURT: Mr. Riordan, you ready to go with
13 cross-examination?

14 MR. RIORDAN: Yes, Your Honor, may it please the Court.

15 THE COURT: Yes, sir.

16 CROSS-EXAMINATION BY MR. RIORDAN:

17 Q. Investigator Morgan, we broke I understood you to say you
18 went back in the afternoon, you and the arson team, you went
19 to the house, ---

20 A. Yes.

21 Q. --- you went in the house with the canine, ---

22 A. Yes.

23 Q. --- canine hit on some shoes.

24 A. It laid down beside some slippers.

25 Q. Alright, you secured those shoes.

RANDY MORGAN - CROSS-EXAMINATION BY MR. RIORDAN

1 A. Uh, I didn't, no, sir.

2 Q. Okay, you went outside and dealt with the gun safe.

3 A. Yes.

4 Q. Okay, found somethin' regard to paint chips?

5 A. Yes, sir, on the hatchet, yes, sir.

6 Q. Alright. And I understood you say earlier that morning,
7 uh, you were on the scene, you already gained some info and
8 then Mr. Mr. Rose drove up at some point.

9 A. Correct.

10 Q. Okay, and I understood, uh, when you broke that morning
11 from the scene you had told Paula go ahead get cleaned up, get
12 a shower and calm down and she's gonna meet ya at your office.

13 A. Yes.

14 Q. Alright. How long you been an investigator?

15 A. Uh, 6 1/2 years.

16 Q. Alright, and as part a that as bein' investigator when
17 you arrive on a scene and hear a complaint, you wanna be
18 objective, right?

19 A. Correct.

20 Q. Alright, and in questioning and gaining information, you
21 wanna be fair, correct?

22 A. Correct.

23 Q. Alright. You wanna be impartial, ---

24 A. Correct.

25 Q. --- you wanna explore every piece of evidence you

RANDY MORGAN - CROSS-EXAMINATION BY MR. RIORDAN

- 1 can, ---
- 2 A. Exactly.
- 3 Q. --- every every trail you can follow you'll do it.
- 4 A. Exactly.
- 5 Q. You wanna exhaust all possible explanations, don't ya?
- 6 A. That's correct.
- 7 Q. And to do so you do that by maintaining a clear record.
- 8 A. Correct.
- 9 Q. That's what you write reports for, correct?
- 10 A. Yes.
- 11 Q. And you wanna do that in a timely fashion, don't ya?
- 12 A. Yes.
- 13 Q. And you want them to be concise, correct?
- 14 A. Yes, sir, ---
- 15 Q. Profess ---
- 16 A. --- acc ---
- 17 Q. --- professionally done?
- 18 A. --- as accurate as possible, yes.
- 19 Q. Okay. And you wanna be transparent, right, when you go
- 20 through these investigations and and and try to figure out
- 21 what happened?
- 22 A. Yes, sir, that that's my job, yes.
- 23 Q. That means sharing information too, correct, ---
- 24 A. Correct.
- 25 Q. --- with the accused, right?

RANDY MORGAN - CROSS-EXAMINATION BY MR. RIORDAN

1 A. Correct.

2 Q. You don't ever wanna appear in your investigation to be
3 biased or prejudiced, do ya?

4 A. Uh-uh.

5 Q. Do ya? You need to ---

6 A. Yes, sir, ---

7 Q. --- answer verbally.

8 A. --- that that's correct, ---

9 Q. Okay.

10 A. --- yes.

11 Q. That would be unfair to the, to the victim in the case,
12 is that right, ---

13 A. Um-hum.

14 Q. --- the suspect that you might charge?

15 A. Uh, I I mean, if a suspect is is determined, uh, we don't
16 tell them the the entire investigation, I I mean, I -- that
17 that's what we're here today for.

18 Q. Alright, you wanna do all those things so you could help
19 eventual fact finders that get involved in a case, correct?

20 A. Correct, yes.

21 Q. Okay. In this case you eventually did draft a report,
22 didn't ya?

23 A. Uh, yes, sir.

24 Q. And when did you create that report?

25 A. Uh, my first supplement was done August 1st.

RANDY MORGAN - CROSS-EXAMINATION BY MR. RIORDAN

1 Q. Alright, another thing I forgot to ask. When you're
2 gaining information to the extent you're preserving it 'cause
3 you can do a report, correct, ---

4 A. Yes.

5 Q. --- but you wanna use the best means possible, uh, to
6 preserve evidence don't ya, ---

7 A. Yes.

8 Q. --- correct?

9 A. Yes.

10 Q. Alright, that's what you'd like to do so these
11 (indicating the jury) folks can see with their own eyes the
12 best form of evidence that exists that was available to you.

13 A. Correct.

14 Q. Okay. Alright, let's talk a little bit about, uh, your
15 earlier reporting in this case. I'm looking at -- how many
16 page is your report? I've got one -- yours have numbers on
17 the bottom?

18 A. Uh, top. I think mine's nine pages.

19 Q. You don't have yours bates stamped with 14 outta 236, ---

20 A. No.

21 Q. --- stuff that was produced in discovery?

22 A. No, sir, this ---

23 Q. Okay, ---

24 A. --- was on ---

25 Q. --- may I approach just to make sure we're talking off

RANDY MORGAN - CROSS-EXAMINATION BY MR. RIORDAN

1 the same page.

2 THE COURT: Yes, sir.

3 BY MR. RIORDAN:

4 Q. Well let me add 1, page 1 of 9 is that what we're lookin'
5 at?

6 A. Correct, ---

7 Q. Okay, there we ---

8 A. --- top right hand corner, yes.

9 Q. Alright, alright. At the very bottom, you're you're
10 kinda reciting information you learned on the scene, right?

11 A. Correct.

12 Q. It says, "The victim then related that she retreated to
13 her bedroom and got a shot gun and the next thing she knew
14 that her house was on fire and she called the police."

15 A. Correct.

16 Q. That's what you understood her to tell you that
17 mornin'?

18 A. Yes, that's what ---

19 Q. Di -- di ---

20 A. --- she told me on scene.

21 Q. Okay. Di -- that's how you wrote it on August 1st,
22 right?

23 A. Correct.

24 Q. Okay. You spoke about, uh, the next page, said, "Her
25 husband Homer told her that he shut the gate when he left for

RANDY MORGAN - CROSS-EXAMINATION BY MR. RIORDAN

1 work but now the gate is open and she did not open it."

2 A. Correct.

3 Q. Okay. Later when ya take a statement from her I think
4 ya, I think I heard ya talk and say a statement that was taken
5 later at your office said, "She wasn't sure if the gate was
6 open or closed."

7 A. That's correct.

8 Q. Alright. Do ya think she was talkin' about that morning
9 after her husband left?

10 A. I I really don't know, I I mean, when when we originally
11 talk with a victim especially on scene, somethin' like this, I
12 I mean, their their mind's goin' a hundred miles a minute so
13 that's the reason for the the secondary sit down interview to
14 to let 'em collect their thoughts and and and to try to figure
15 out exactly what happened.

16 Q. Sure. The statement you took at your office when she
17 says she's not sure if the gate's open or closed, that coulda
18 been referring to after her husband left, right?

19 A. Could, yes, ---

20 Q. Yeah.

21 A. --- sir.

22 Q. Okay.

23 A. Yes.

24 Q. Alright. And let's get to that, I mean, I'm gonna skip
25 around here, I'm sorry for that, but you do talk to her in the

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1 afternoon, that's an arranged meeting, right?

2 A. Correct, yes.

3 Q. You asked her to come out there, ---

4 A. Yes, I did.

5 Q. --- you told her she could go home and get a shower
6 and ---

7 A. Get sumtin' to eat.

8 Q. --- get calmed down ---

9 A. Yes.

10 Q. And so being calm at the interview that was what, that's
11 what you wanted her to do, correct, ---

12 A. Yes.

13 Q. --- ya told her that?

14 A. Yes.

15 Q. Alright. And by that time the scene had been released.
16 You guys had been out at the scene for a good four hours at
17 least and it was an hour least.

18 A. Yes, couple hours, yes, sir.

19 Q. And with that being an arranged interview when you go out
20 to your d -- to your office -- you guys have cameras in your
21 office?

22 A. No, sir.

23 Q. Why not?

24 A. We do now, we did then. You'll have to ask the sheriff's
25 o -- the ---

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1 Q. Okay.

2 A. --- sheriff hisself.

3 Q. There certainly offices within a sheriff's department
4 where victims and suspects sit down and give their statement
5 and it's all videotaped, right?

6 A. Uh, we do not videotape interviews, ---

7 Q. Really?

8 A. --- that's sheriff's office poli ---

9 Q. No one at the sheriff's office videotapes interviews?

10 A. That's what I've been told, yes.

11 Q. You never do that then, do ya?

12 A. No, sir.

13 Q. So when you talk about, uh, how in your experience
14 someone's demeanor is, the only way that we can tell that is
15 through you tellin' us, right?

16 A. Uh, based on my experience yes, sir.

17 Q. Well wouldn't the best thing to d -- I mean, you got a
18 cell phone?

19 A. I do.

20 Q. Do they ha -- you don't think they have a cam -- you
21 could've done somethin' to record her testimony, right?

22 A. No, sir. We do, ---

23 Q. No?

24 A. --- we do not record interviews, no, ---

25 Q. Oh.

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1 A. --- sir.

2 Q. So di -- you didn't have a camera on your, uh, phone, a
3 camera on your phone that you could just pulled out and
4 videotaped it. Again, if you're gonna make comments about how
5 they react, that would be the best way to preserve that,
6 wouldn't it?

7 A. We do not videotape interviews, sir.

8 Q. Okay, so that's your choice, right?

9 A. That is sheriff's office policy.

10 Q. Okay. You think that policy should change?

11 A. I don't make those policies, I ---

12 Q. And again, you, ---

13 A. --- just have to abide by 'em.

14 Q. --- alright, again I just wanna make sure, you're under
15 oath sitting here, it's your understanding that the sheriff's
16 department's policy is they do not videotape statements from
17 victims ---

18 A. Correct.

19 Q. --- or suspects.

20 A. Correct.

21 Q. So if -- okay. Okay. Alright, uh, let's get back to the
22 scene that you arrive and other investigators arrive at some
23 point, ---

24 A. Correct.

25 Q. --- and you guys begin to investigate, correct?

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1 A. Correct.

2 Q. And you guys are in and outta the garage and through the
3 house, ---

4 A. Yes.

5 Q. --- correct, ---

6 A. Yeah.

7 Q. --- you're there for four hours?

8 A. Yes.

9 Q. Alright, at no time that morning when you arrived, did
10 you ask anyone to sign a consent to search form, did ya?

11 A. No, sir, it was a crime scene at that time.

12 Q. Okay, well later did ya think it was?

13 A. Uh, after we discussed, uh, the from what the version I
14 saw and some of the evidence they they had seen and stuff like
15 that then, uh, we we felt it was necessary for the either
16 consent to search or, uh, possibly a search warrant, yes.

17 Q. Alright, let's go back to page 2 'cause again you're
18 wanting to be accurate, right?

19 A. Correct.

20 Q. And, uh, the second paragraph says, "Deputy Brown," he's
21 the one that came in here with the bald head, he was the first
22 one on the scene, right?

23 A. Uh, yeah, I believe so, ---

24 Q. Alright, ---

25 A. --- yeah.

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1 Q. --- said, "Spoke with me and he related he had located
2 two shoe impressions in the front yard," right?

3 A. Yes.

4 Q. Did you ever check back on his report and talk to him
5 about that?

6 A. Uh, he -- I walked out to the yard with him, uh, that
7 area was roped off and it was, uh, mentioned to the forensics
8 officer when he arrived.

9 Q. Okay. Alright said, "I observed that the victim was
10 upset and worried about her pets," right?

11 A. Correct.

12 Q. But then you write that she was not worried about the
13 damage to her residence.

14 A. Correct.

15 Q. Okay. Was that, was that sumtin' unusual?

16 A. Uh, I believe so yes, sir.

17 Q. Really?

18 A. Well from from the damage that I saw done to the house,
19 uh, it -- there seemed to be no concern about the house
20 whatsoever to me.

21 Q. Okay. Have you listened to the 911 tape?

22 A. I have heard it, yes.

23 Q. I mean, there's concern there when sees the back of the,
24 when goes around the backyard and sees the house burnin' down,
25 there's certainly concern there, isn't sh -- isn't there?

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1 A. Uh, a a little bit, yes.

2 Q. Okay. Uh, while you were on the scene got on page 3 says
3 you walked around the back of the incident location, spoke
4 with Investigators Cannon, Gonzalez and it says, "I secured a
5 photo of the yellow piece of material using my cell phone so I
6 could blow the picture up."

7 A. That's correct.

8 Q. Alright, was it that s -- you're say -- I I thought you
9 said just a minute ago the phone does it not have a camera as
10 well?

11 A. Yes, it does.

12 Q. Okay, so you could have used -- is -- does it have video
13 on it, video capabilities?

14 A. I guess it does, I don't ---

15 Q. Okay.

16 A. --- use it.

17 Q. So you could have used that if you wish, you just don't
18 'cause a the policy.

19 A. We do not videotape statements.

20 Q. Okay. That picture have you ever turned that picture
21 over to any prosecutor's office?

22 A. No.

23 Q. Okay. That's the kinda thing you're supposed to do,
24 right?

25 A. We we never determined if -- where the item came from. I

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1 I mean, I believe it was a Enviro-Flow gas can but, uh, there
2 should be other pictures of it, one forensics took.

3 Q. Sure, but when you take pictures to see what the picture
4 you are 'cause you're the one that investigates the gas can,
5 right?

6 A. Uh, I did go to several locations to try to figure out
7 where it came from, yes.

8 Q. Alright, my point bein' that photo, you never gave that
9 photo to anybody, did ya?

10 A. No, sir, I did not.

11 Q. Okay. We don't know what you looked at, do we?

12 A. That's true.

13 Q. Alright. You also found a unique type of security and no
14 drip gas can top and you observe the sticker from the gas
15 can appears to be new, correct?

16 A. Correct.

17 Q. So it looked like a burned up can but away from it not
18 burned up was the top, right?

19 A. Correct.

20 Q. And and certainly you would expect that with them there
21 you could infer someone unscrewed the top and left the top
22 there, correct?

23 A. Yes.

24 Q. Alright, and that top was obtained, wasn't it?

25 A. Uh, I do not know, I didn't ---

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1 Q. Okay. Did you ever ask anybody to run any fingerprint
2 analysis on the gas top that was found?

3 A. I do not know that.

4 Q. You certainly didn't, did ya?

5 A. No, sir, I didn't.

6 Q. Do you know of anyone that did?

7 A. I do not.

8 Q. Alright, and again -- well tell us what you did. It
9 says, "I then used it my -- the internet via my cell phone to
10 pull up business that sale . . ." you meant to say sell,
11 didn't ya?

12 A. Correct.

13 Q. Alright, "... sale gas cans like Northern Tool &
14 Equipment, Tractor Supply, Lowe's and Home Depot. Accordin'
15 to the Northern Tool & Equipment website they sale," S-A-L-E
16 again, "EnviroFlow gas cans," and they got an internet
17 picture, right?

18 A. Correct.

19 Q. Alright, and it says you traveled out to Northern Tool &
20 Equipment and met with Lynn Pace and you inquired to her and
21 she said they don't carry those.

22 A. Correct.

23 Q. Alright, next thing it says you did says you talked with
24 Harry Arrowood with Wal-Mart asked if they sale, S-A-L-E,
25 yellow environmental gas cans and he says I don't know,

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1 right, ---

2 A. Correct.

3 Q. --- said Wal-Mart doesn't carry those. Says ya then
4 canvassed the area. So ya did go around the area in the
5 neighborhood, right?

6 A. I did.

7 Q. And there's other, there's other homes event -- this a
8 fairly remote home though, right?

9 A. Yeah, it's off the road a good ways and not really
10 visible from any a the neighbors.

11 Q. I mean, when ya come in from Pelham Road down Riley Smith
12 Road although there's at the top you got the Pelham Library,
13 there's some -- now there's a school over there and a strip
14 mall, correct?

15 A. If you say so, I don't know.

16 Q. Well do you remember?

17 A. It it was a strip mall ---

18 Q. Okay.

19 A. --- two years ago.

20 Q. Alright, and then when you go down there's no other homes
21 like, uh, that have a driveway off the side of the road until
22 you get the Rose house, correct?

23 A. Correct, I think you cross a, cross a creek and then the
24 Rose's, the incident location's first house on the right.

25 Q. Cross the creek, bears on the right and it's all woods

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1 around it, correct?

2 A. Correct, yeah.

3 Q. Alright, and right past it though to the left is is what
4 we talk about here in a minute Bucky's, uh, Barber Shop, ---

5 A. Correct.

6 Q. --- that's the next place up or it's just on the
7 left, ---

8 A. Correct.

9 Q. --- right across the street. Alright. Alright, so you
10 made, you made contact with Bucky that owns it, right?

11 A. Correct.

12 Q. You asked him what he had seen, if anything, that
13 morning, right?

14 A. Correct.

15 Q. Said, "He advised he arrived at work around 7:45, didn't
16 hear or see anything outta the ordinary until the police and
17 fire trucks started showin' up," right?

18 A. Correct.

19 Q. He didn't say anything about lawn care goin' on that
20 mornin' for him, did he?

21 A. Nope, he did not.

22 Q. Says then you spoke with Caroline Smith and she related
23 she left around 6:30 that morning and observed what?

24 A. Uh, she observed a larger model red Ford truck, possibly
25 an F-250 model with a utility trailer parked in the driveway

1 of Bucky's Barber Shop.

2 A. Okay.

3 Q. "Red Ford truck with a utility trailer on the back of
4 it," correct?

5 A. Correct.

6 Q. And and you go on and say, "She didn't think anything
7 about it, she figured someone was cutting Bucky's grass,"
8 correct?

9 A. Correct.

10 Q. Alright, there's nothing in -- and with that, I mean, the
11 way that's written says if hey she sees a truck and a utility
12 trailer, she thinks the lawnmower is around somewhere else,
13 right?

14 A. Yes.

15 Q. That's your understanding of it, correct?

16 A. Correct.

17 Q. No mention of anything else on the back a this utility
18 trailer is there?

19 A. Uh-uh.

20 Q. Is that a no?

21 A. That's correct.

22 Q. Alright. Those the only -- it says you talked to
23 Wimberly Smith as well, any other, any other the neighbors you
24 spoke with?

25 A. I believe that's the only ones that we could find at

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1 home.

2 Q. And there's nothing your report to suggest you went
3 around to the neighborhood that's directly behind through the
4 woods the Rose residence is it?

5 A. I did not.

6 Q. You didn't go back in there, did ya?

7 A. No.

8 Q. In fact, right behind there the cul-de-sac dead-ends, uh,
9 behind there if you go all the way through the woods,
10 correct?

11 A. If you say so.

12 Q. Well there's o -- there's one cul-de-sac and then if you
13 go further, there's an old, it's the old community pool.
14 There's a tennis court and a, and a swimmin' pool and another
15 ---

16 MS. ABEE: Objection.

17 Q. --- empty area, right?

18 MS. ABEE: Objection, Your Honor, ---

19 A. If you say so.

20 MS. ABEE: --- the witness has stated that ---

21 THE COURT: Just stop, keep -- when she objects, you stop
22 and you stop.

23 MR. RIORDAN: Yes.

24 THE COURT: What's your objection?

25 MS. ABEE: Objection, Your Honor, the witness has stated

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1 that he didn't go to any of this property, he's askin'
2 questions that he asked and answered.

3 THE COURT: Okay.

4 MR. RIORDAN: Alright, and I, and I, and I apologize.

5 THE COURT: Okay.

6 BY MR. RIORDAN:

7 Q. There's nothing in your report to suggest you went back
8 in any a those neighborhoods, right?

9 A. I did not, no.

10 Q. That is clear, correct? Alright. That afternoon at your
11 office says -- well you spoke about that, that she didn't,
12 didn't seem to, didn't appear to be anxious, mad, upset, fear
13 for her safety, that that that was, that's what you've written
14 in your report four or five days later, right, August 1st?

15 A. Correct.

16 Q. Alright, and again, you said your thoughts are, "I
17 thought this behavior was odd based on my previous years in
18 law enforcement in dealing with other victims of similar
19 crimes," correct?

20 A. Correct.

21 Q. And part of what you mentioned were ho -- I think was
22 asked home invasions, correct?

23 A. Correct.

24 Q. I mean, they're in the garage, no one got in the home
25 here, right?

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1 A. Correct.

2 Q. Alright, and and when you talk about that, I mean, do
3 you -- victims they're gonna respond different to to whatever
4 situation they're in, correct?

5 A. Correct.

6 Q. You don't have any expertise to talk about how someone
7 should act, do ya?

8 A. Uh, I feel like I do, yes.

9 Q. From what?

10 A. Twenty-two years of law enforcement experience dealin'
11 with the public, uh, in all facets of law enforcement.

12 Q. Okay. You, so you got some special powers to tell when
13 somebody's just feeling odd to you, ---

14 A. No, ---

15 Q. --- correct?

16 A. --- no, sir, I don't have no special powers no, ---

17 Q. Yeah.

18 A. --- it's just ---

19 Q. Yeah, that's that's correct, isn't it?

20 A. That's correct.

21 Q. Yeah, that's just your opinion, right?

22 A. Yes.

23 Q. Okay, 'cause then you go on, it says, "Victim mentioned
24 during the interview that she had a criminal history because
25 she had been arrested Oconee County several years ago but she

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1 fought the charges in court and was found not guilty."

2 A. That's correct.

3 Q. Alright. Says, "I asked the victim she had the charges
4 taken off her criminal history and she said no."

5 A. Correct.

6 Q. Why'd ya ask that?

7 A. 'Cause, I I mean, if it was still there, most people if
8 they're found not guilty of a charge, they want it expunged.

9 Q. Yeah, okay. And and you know all the parameters of when
10 you can expunge it.

11 A. Uh, I I know a few of 'em.

12 Q. Have you ever, uh, seen a solicitor to determine they're
13 gonna nol pross without prejudice?

14 A. Yes.

15 Q. Okay, that means they're gonna dismiss the case but it
16 kinda hangs out there, right?

17 A. Yeah.

18 Q. Yeah, and so and who who -- when you -- when -- 'cause
19 that's what you say, it's interesting that you say that, if
20 you win the case, even though you've won the case then you've
21 gotta apply to get your record expunged, right?

22 A. Correct, my ---

23 Q. Yeah, ---

24 A. --- understanding.

25 Q. --- where -- and and who usually runs the expungements?

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1 A. I assume the solicitor's office.

2 Q. Yeah, the same solicitors who prosecute the case handle
3 the expungements, right? Is that right?

4 A. I assume so.

5 Q. That's your experience, isn't it?

6 A. Correct.

7 Q. You gotta go down, fill out a form, you've gotta pay
8 money to do it and it's up to them to do it and determine
9 whether they will do it, correct?

10 A. I assume so.

11 Q. You don't know any different, do ya?

12 A. No, sir.

13 Q. Okay. "Victim then related that the Ocone Sheriff's
14 Office and SLED had framed her," that's what she told ya,
15 right?

16 A. Correct.

17 Q. Intimidated her, correct?

18 A. Yes, yes.

19 Q. Wrongfully charged her.

20 A. Yes.

21 Q. Did you disbelieve her?

22 A. No.

23 Q. Do you have any basis to disbelieve any of that?

24 A. No, thi -- this was her statement verbatim.

25 Q. Okay. "Victim also related she'd written a book about

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1 the ordeal and they did not want it published."

2 A. That's what she said, yes.

3 Q. That sound, that sounds that there's nothin' unusual
4 about that, is it?

5 A. I mean, I've never dealt with a victim who had wrote a
6 book before so . . .

7 Q. Okay, well maybe you you never been a victim that had
8 fought, -- how -- let let's go to all the charges, let's go to
9 that. Ran the -- your -- di -- she told ya the charges,
10 didn't she?

11 A. Uh, I don't know if she told me or not or I just ran her
12 criminal history.

13 Q. Well ya talk about how the fact she she talks about this
14 with passion and is ready to talk about, you're tellin',
15 you're tellin' this jury she didn't tell you all the different
16 charges and how they had set her up and framed her?

17 A. No, basically what I meant by that was from her bein' a
18 victim of a fire to versus or a fire and a burglary versus her
19 bein' framed and writin' a book, I mean, she had a totally
20 different demeanor about her.

21 Q. Okay, well let's talk about that. How long -- did you,
22 did you go back and see how long this incident lasted the
23 morning, what you investigated?

24 A. The incident?

25 Q. Yeah, ---

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1 A. No.

2 Q. --- how long did it last?

3 A. Uh, I don't know.

4 Q. I mean, from the time the phone call, the 911 call starts
5 until authorities are on the scene, do you know how long it
6 was?

7 A. No, sir, I don't.

8 Q. You have any basis to disagree that it was less than
9 seventeen minutes or right at it?

10 A. No, sir.

11 Q. Okay, and in fact she tells you what happened and she
12 says her interaction with the folks in the garage is is is
13 very brief, isn't it?

14 A. Correct.

15 Q. She sees 'em, locks the door and retreats ---

16 A. Correct.

17 Q. --- few seconds, right?

18 A. Correct.

19 Q. And she retreats to where? She tells you she's got her
20 shotgun out and she's got a pistol, correct?

21 A. Correct.

22 Q. And she's marr -- she's married to to a law enforcement
23 man, correct?

24 A. Correct.

25 Q. Alright. She, and she never reported that these folks

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1 she saw with her gun safe were armed, did she?

2 A. No.

3 Q. There's no no no report a that, is there?

4 A. No mention of them bein' armed.

5 Q. Okay, and so we have that situation and so she's
6 protected withi -- within twenty minutes, within seventeen
7 minutes, you agree, correct?

8 A. Yeah, there's ---

9 Q. Okay.

10 A. --- some somebody there on scene.

11 Q. Alright, 'cause people are there and she's safe at that
12 point, right? She's got lots a law enforcement, good
13 firefighters and her husband gets home as well, correct?

14 A. Correct.

15 Q. Alright. And you, I mean, you've written this report, it
16 was your intent to write this report, I mean, that's how you
17 write it to show the distinction between she's not so mad
18 about what just happened but she still has problems with her
19 criminal history, correct?

20 A. That's, ---

21 Q. You ---

22 A. --- that is correct.

23 Q. --- you ran the criminal history to see when these were,
24 didn't ya?

25 A. I I did.

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1 Q. Yeah. Burglary second, grand larceny June 18th 2003,
2 correct?

3 A. Correct, yes.

4 Q. Then on November 3rd 2003 charged with burglary second
5 and grand larceny again. Those are serious charges, aren't
6 they?

7 A. Yes.

8 Q. Do you know -- and sh -- you -- she told you the facts
9 about 'em, didn't she?

10 A. Uh, I don't think we went into too many, too much
11 details, uh, about the incidents itself.

12 Q. Alright. And but ya did look through, I mean, when they
13 pull up, ---

14 A. Yeah.

15 Q. --- they also show found not guilty on July twen -- on
16 January 26, 2006, correct?

17 A. Correct.

18 Q. Yeah, and then, and then the other, the other one's
19 dismissed, isn't it, four days later?

20 A. Uh, I don't know, just she she she was found not guilty
21 so I don't know if nol prossed, dismissed, I don't know,
22 you'll have to ask them.

23 Q. Well we're talkin' about your investigation.

24 A. Yeah.

25 Q. You don't, you don't have it even listed, do ya?

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1 A. I do, ---

2 Q. Well you don't have, you don't have the ---

3 A. --- 1/30 of '0 ---

4 Q. --- disposition was, uh, on Jan -- do you even write down
5 what happened on January 30th of 2006 with the case? You know
6 it's dismissed, right?

7 A. Like I said, my my report says she was found not guilty
8 on 1/26/06 and 1/30 of '06.

9 Q. You go on to note, "The victim was charged with filing a
10 false police report and false statement by individual
11 insurance by the Oconee County Sheriff's Office," you wrote
12 about that case too, didn't ya?

13 A. Yes.

14 Q. And I guess you check later, the one thing ya checked is
15 you pulled up the the insurance, uh, reporting bank to see
16 about that claim, correct?

17 A. I do, I have access to that.

18 Q. December 3rd of 2003 and all you really did was look at
19 what how Allstate had reported it, you say that's what
20 Allstate reported, correct?

21 A. That that's what they documented on the result.

22 Q. Alright, you've got another thing, "Charged with
23 harassment, unlawful use of phone, victim found not guilty
24 October 14th 2 -- 2004," correct?

25 A. Where you at? Which page, which page you at?

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1 Q. Uh, page page 6 on the top. Actually page 5 on the
2 bottom and page 6 on the top, this is where ---

3 A. Okay, ---

4 Q. --- it goes through ---

5 A. --- 10/14 of '04.

6 Q. Alright, so you've documented these multiple charges, I
7 mean, the little bit you pulled up certainly corroborated what
8 she said, correct?

9 A. Yes.

10 Q. Alright, you said you like to be thorough in your
11 investigation, right?

12 A. Correct.

13 Q. That's what you should be, right?

14 A. Yes.

15 Q. What did you do to look into these, the facts a these
16 cases?

17 A. The facts of what cases?

18 Q. The facts of the trials and what occurred at trial and
19 what was alleged ---

20 A. That ---

21 Q. --- against her?

22 A. --- that that was not my position to do it, that's a
23 different agency.

24 Q. Okay.

25 A. That had nothin' to do with this incident.

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1 Q. Okay, well she's talkin' about it, I mean, it's true you
2 you hear that, when you hear the insurance fraud, your mind
3 started clickin', you s -- your thought was she got away with
4 somethin', di -- wasn't it?

5 A. No, sir.

6 Q. No?

7 A. No.

8 Q. Okay. Well in this case what was her complaint in this
9 case?

10 A. That she was the victim of an attempted burglary.

11 Q. Yeah, and when she tells ya she's got charges, that the
12 police have set her up, framed her, intimidated, wrongfully
13 charged her and you see evidence of it down here, you're
14 tellin' this jury you didn't do anything to look into who had
15 done that to her?

16 A. No.

17 Q. You didn't care, did ya?

18 A. I I mean, it -- I ha -- I didn't have a dime in it, I was
19 investigatin' this case.

20 Q. She had a dime in it, didn't she?

21 A. That that's her.

22 Q. 'Cause when you're takin' that statement, when ya finish
23 the statement and ya leave, at that point the arson team was
24 not even supposed to meet with her 'til Monday, correct?

25 A. I do not know.

RANDY MORGAN - CROSS-EXAMINATION BY MR. RIORDAN

1 Q. You don't know?

2 A. No.

3 Q. Okay, okay. And t -- then tell me then, you you talk to
4 the jury about how things changed, what changed after your
5 meeting with Paula that made you all go back out to her house
6 in that that afternoon?

7 A. After we -- after she left, uh, an I got to thinkin'
8 about her demeanor in the mornin' and the the different
9 basically sides of her durin' this interview from not really
10 being concerned or worried about the damage to her home versus
11 the compassion against or the hatred for Oconee County, SLED,
12 the passion she had for her book and then I contacted, uh,
13 Investigator Cannon, Investigator Gonzalez and we started
14 discussin' the case and then that's when they decided to go
15 back out that afternoon.

16 Q. Alright, part of your investigation is you like to find
17 motives for why somethin' occurred, right?

18 A. We'd like to yes, sir.

19 Q. Okay, and this morning we heard I guess your, is it your
20 belief that her motive in doin' this was to gain publicity?

21 A. I don't know what her motive was, sir.

22 Q. Okay, so -- okay, so you don't have an opinion on that,
23 do ya?

24 A. No, sir, I don't.

25 Q. Okay.

RANDY MORGAN - CROSS-EXAMINATION BY MR. RIORDAN

1 A. I ---

2 Q. Could could a possible motive for the crime she reported
3 where she says law enforcement has set her up, she's writin' a
4 book about it and they don't want it to come out, could that
5 be a possible motive?

6 A. There there's all types of motive, sir.

7 Q. Sure. Do you think as a thorough, objective, non-biased
8 investigator you could have looked into it to see who was
9 behind all of this that occurred that you see evidence of?

10 A. Occurred where? here in Greenville?

11 Q. Up in Oconee.

12 A. I don't have, I didn't investigate that case, sir. I
13 have nothin' to do with that case.

14 Q. Well tr -- well that that woulda been a easy
15 investigation, wouldn't it?

16 A. I don't know, you'll have to ask that investigator, ---

17 Q. Yeah, okay.

18 A. --- that's two counties away.

19 Q. Okay. What about the trial? I mean, court reporter's
20 here takin' down everything we say right now, right?

21 A. Correct.

22 Q. You can see there's two trials where she's found not
23 guilty, correct?

24 A. Correct.

25 Q. You coulda gotten the court, the court record from that

RANDY MORGAN - CROSS-EXAMINATION BY MR. RIORDAN

1 case and looked through it, right?

2 A. What would a trial six years ago do with this case?

3 Q. Well you don't know, do ya, 'cause ya never looked.

4 A. No, sir, I did not.

5 Q. You don't know who the people were that were behind it,
6 do ya?

7 A. I do not know.

8 Q. You didn't ask her about -- well she told you, didn't
9 she, the persons from SL -- SLED agent on the stand in Oconee
10 lying on the stand, did she tell you that?

11 A. She mentioned that, yes.

12 Q. She absolutely did, didn't she? She mentioned, she said
13 they f -- they planted evidence against her, didn't they,
14 that's what she told ya.

15 A. That that's her opinion, sir.

16 Q. I know but that's what she told ya, right?

17 A. She did say that, yes.

18 Q. That's pretty powerful stuff to tell, you could have
19 looked into that to confirm it, couldn't ya?

20 A. No, sir, I could not.

21 Q. Why not?

22 A. Because I'm an investigator for Greenville County, I
23 don't work the state, sir.

24 Q. You ca -- so you can't go through and see who might have
25 the motive to do this for, when she tells you, you didn't look

RANDY MORGAN - CROSS-EXAMINATION BY MR. RIORDAN

1 into any of it.

2 A. No, sir, I ---

3 Q. Who ---

4 A. --- did not.

5 Q. --- is Billy Looper?

6 A. I don't know.

7 Q. She told ya Billy Looper was the SLED agent in that case,
8 didn't she?

9 A. Okay, yes, ---

10 (Indiscernible cross-talk.)

11 Q. You don't know Billy Looper?

12 A. No, sir, I don't.

13 Q. You don't know anything about him?

14 A. No, sir, I don't.

15 Q. Well, okay, just to make sure, I sent you a whole packet
16 a stuff this weekend, didn't I?

17 A. Uh, I never received a package from you.

18 Q. Okay, you, maybe maybe you didn't, I might not have
19 served it on you, you ser -- I served on the other guys for
20 sure. Let me ask now where you live?

21 A. ■■■ Forestdale Road.

22 Q. How do ya spell that?

23 A. If the package you're referring to was served on my
24 mother ---

25 Q. O ---

RANDY MORGAN - CROSS-EXAMINATION BY MR. RIORDAN

- 1 A. --- Saturday night, ---
- 2 Q. --- okay, what's ---
- 3 A. --- I have not seen it.
- 4 Q. --- what's the address?
- 5 A. Mine's [REDACTED] Forestdale Road.
- 6 Q. Forestdale?
- 7 A. Correct.
- 8 Q. Alright. Alright, so your mother got it. She tell you
- 9 she had a package that had been served upon her?
- 10 A. Yes.
- 11 Q. Did ya look through it?
- 12 A. I haven't seen it, no, sir. I haven't been ---
- 13 Q. Alright, you just didn't go ---
- 14 A. --- to my mom's house.
- 15 Q. --- pick it up.
- 16 A. I haven't been to my mom's house, I ain't had time.
- 17 Q. Did you talk to the other investigators to find out they
- 18 got the same package?
- 19 A. Uh, yes, I knew they got 'em.
- 20 Q. Did they tell ya the tra -- portions of the transcript
- 21 from a trial were ---
- 22 MS. ABEE: Objection, ---
- 23 Q. --- in there?
- 24 MS. ABEE: --- Your Honor, calls for hearsay.
- 25 MR. RIORDAN: K -- okay.

RANDY MORGAN - CROSS-EXAMINATION BY MR. RIORDAN

1 THE COURT: Rephrase please.

2 MR. RIORDAN: Sure.

3 BY MR. RIORDAN:

4 Q. Did you speak with the investigators about any receipt of
5 pa -- did you talk to 'em at all about a package received?

6 A. They they said that they received some packages from you.

7 Q. Did any, in speaking with them, di -- have you learned
8 anything new about Billy Looper and his testimony up in Oconee
9 against Paula Rose?

10 A. No, sir.

11 Q. It's your testimony you don't know who Billy Looper is?

12 A. I do not know him, no, sir.

13 Q. Okay. Okay. You didn't -- I mean, the warrants
14 themselves you could go get the warrants at the, uh, at the,
15 uh, courthouse too, they're they're all kept in the clerk a
16 court's office, right?

17 A. Yes, sir, a ---

18 Q. And ya didn't do that, did ya?

19 A. Are we still referrin' to Oconee?

20 Q. Yes, sir, we are.

21 A. No, sir, I did not go to ---

22 Q. Okay.

23 A. --- Oconee.

24 Q. Did you make any calls to speak with anyone up in
25 Oconee?

RANDY MORGAN - CROSS-EXAMINATION BY MR. RIORDAN

1 A. No, sir.

2 Q. Did you -- did she tell you who her ex-brother-in-law
3 was?

4 A. Think she mentioned a police chief or a assistant sheriff
5 or captain or somebody, I I I don't remember.

6 Q. Well that's the, that's the, that's the magistrate court
7 case, the harassment case that was a trial for not guilty,
8 that that would be John Covington the now chief a police at
9 Seneca.

10 A. Uh, okay, ---

11 Q. Okay, she told you ---

12 A. --- if you say so.

13 Q. --- about that, right?

14 A. She she mentioned it, yes.

15 Q. Okay, that was a case he brought and we won that one,
16 correct?

17 A. (Indiscernible cross-talk.)

18 Q. You you didn't look into it, did ya?

19 A. No, sir, I did not.

20 Q. Okay. Uh, did you -- do you know Gregory?

21 A. No, sir.

22 Q. Don't know who he is?

23 A. No, sir.

24 Q. Okay. Do ya, do ya think with her sharin' that
25 information it would've, you could've taken some time to

1 investigate her allegations?

2 A. No, sir.

3 Q. You couldn't have?

4 A. No.

5 Q. Why not?

6 A. It did not pertain to this incident.

7 Q. Well shoot, that's that's part of what could have
8 happened, right?

9 A. It could have back then but it did not pertain to this
10 incident so I didn't have any interest in it.

11 Q. That -- agreed, agreed. Alright, based upon that you all
12 went out there and confronted Paula, didn't ya?

13 A. Uh, the two arson investigators did, yes.

14 Q. Okay, but you said you go out there and you go in with
15 the dog and the dog as you say alerts on some shoes?

16 A. It laid down beside some.

17 Q. Okay. Who who was present when that happened?

18 A. Uh, myself and Investigator Gonzalez.

19 Q. Okay. Had you been around with that dog earlier in the
20 day?

21 A. Uh, dog was in the truck but no, sir, I mean, I, that's
22 first time I'd ever seen the dog really.

23 Q. Okay, so you were out there on the scene earlier and you
24 never even saw the dog.

25 A. I I knew she was in the truck but she never got outta the

RANDY MORGAN - CROSS-EXAMINATION BY MR. RIORDAN

1 truck.

2 Q. Okay, so in the mornin' she never got outta the truck.

3 A. Not that I know of. I never saw her ---

4 Q. Okay.

5 A. --- 'cause the other, uh, the other dog, the large, Bear
6 I think what's they call it, he was running around, there's a
7 little cocker spaniel, it was running around and . . .

8 Q. Did you see pictures a that do -- have you ever seen a
9 picture of that dog, a picture taken at the Rose home of it
10 alerting?

11 A. No.

12 Q. You haven't seen any of 'em?

13 A. No.

14 Q. There's certainly no picture of the dog alerting near the
15 shoes, is there?

16 A. I wouldn't think so, no, ---

17 Q. Okay.

18 A. --- sir.

19 Q. Again, to preserve and have the best possible evidence to
20 this jury, that's somethin' that easily coulda been done,
21 correct?

22 A. Uh, it's -- I I guess it could have if somebody had a
23 camera.

24 Q. Well ya had your cell phone with ya and took a picture a
25 the yellow gas can that day, didn't ya?

RANDY MORGAN - CROSS-EXAMINATION BY MR. RIORDAN

1 A. I did.

2 Q. And you ha -- you didn't leave it in the car, you had it
3 with you when the dog's walkin' around, right?

4 A. Uh, I assume so, I had it on my side, yes.

5 Q. Yeah, you coulda taken it out right then and taken a
6 picture, couldn't ya?

7 A. I could have.

8 Q. Yeah, we coulda seen where the dog was and how close it
9 was to the shoe, whether it moved the shoe, we could see all
10 that then if we had a picture, right?

11 A. Uh, you would have a still.

12 Q. Yeah, we have a still shot of it, ---

13 A. Um-hum.

14 Q. --- at least that.

15 A. Yes.

16 Q. Alright, we don't have any a that. This jury doesn't
17 have any a that, do they?

18 A. No, sir, they do not.

19 Q. All all we have is the testimony from you and and and,
20 uh, Investigator Gonzalez, correct?

21 A. Uh, yes.

22 Q. Alright. Earlier we -- they talk about Ricky Brown.
23 Ricky Brown said he was o -- he was the first one on the scene
24 at 8:20, he's the one that, uh, he's had the shaved head, came
25 out there with shotgun, usually works in community relations I

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1 think or . . .

2 A. Deputy Brown.

3 Q. Deputy Brown. I'm sorry, what I ---

4 A. Yes.

5 Q. --- say? Investigator ---

6 A. You said Ricky.

7 Q. --- I'm sorry. Robbie Brown. Robbie Brown.

8 A. Correct.

9 Q. Alright, so he's out there at 12:20 and says he preserves
10 the scene 'til, he helps preserve the scene 'til 12:20,
11 right?

12 A. Uh, yes, sir.

13 Q. That's important to preserve a crime scene, isn't it?

14 A. It is.

15 Q. You don't want any cross-contamination of a crime scene,
16 do ya?

17 A. Correct.

18 Q. 'Cause once you do that if that happens, if it's not
19 secure and there's even potential for cross-examination, uh,
20 for cross-contamination, whatever evidence you try to gather
21 it could be unreliable, correct?

22 A. Correct.

23 Q. I mean, that that's why ya do it.

24 A. Correct.

25 Q. Alright, but you guys released the scene at 12:20,

1 right?

2 A. Correct.

3 Q. And when you went back out there Homer Rose already had
4 ServPro working on the scene, correct?

5 A. ServPro was on scene, yes.

6 Q. ServPro in and outta that residence, weren't they?

7 A. They were there when I got there.

8 Q. Takin' pictures in that bedroom where the shoes were,
9 right?

10 A. I don't know.

11 Q. Have ya seen the, have ya seen the photograph that's
12 taken so the photograph's taken in a angle where they'd be
13 standin' right near those shoes?

14 A. No, sir, I have not.

15 Q. Ya haven't seen that?

16 A. No, sir.

17 Q. What have ya looked at in this case, just your 9-page
18 report?

19 A. That's correct.

20 Q. Have you even seen any of the other investigators'
21 reports?

22 A. Uh, no, sir.

23 Q. Have you read through 'em to compare 'em to see if
24 there's inconsistencies?

25 A. No, sir.

RANDY MORGAN - CROSS-EXAMINATION BY MR. RIORDAN

1 Q. Ya think that would be important?

2 A. No, sir.

3 Q. No? Okay.

4 A. No, sir.

5 Q. Alright. Do do you know -- Cannon di, uh, Mr. Cannon did
6 take photos, correct, that morning ---

7 A. He did.

8 Q. --- for sure?

9 A. Yes.

10 Q. And he actually has a photo of the bedroom with the shoes
11 in it, correct?

12 A. I believe so, yeah.

13 Q. You can barely see 'em down in left corner, there's a
14 pair of, uh, athletic shoes and right next to 'em are these
15 moccasins the dog ---

16 A. Yeah.

17 Q. --- laid next to, correct?

18 A. Yes, sir, I believe so.

19 Q. Alright. And again, you guys released the crime scene
20 and ServPro's out there, right?

21 A. Correct.

22 Q. Alright, and then later after you say the dog has laid
23 down near it you guys what you do take a picture of is a shot
24 I think, I think they've even got 'em marked. Here, I'll show
25 it to ya, they've already got it marked as -- well, I'm not

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1 gonna put it in, that's that's for them to do. You ha -- have
2 you looked at those photos to see whether the shoes have been
3 moved from the morning 'til the afternoon?

4 A. No, sir, I have not seen those.

5 Q. Okay. If they had been moved, that would certainly bring
6 up the question of contamination, wouldn't it?

7 A. I don't know if they were moved or not, sir.

8 Q. I know and that that since you hadn't looked at the
9 pictures, right?

10 A. I I can't answer that.

11 Q. The pictures in this investigation you've not even looked
12 at, correct?

13 A. Correct.

14 Q. And and that's my question since you haven't looked at
15 'em. Assuming the shoes have been moved from the picture
16 takin' that morning, can we assume that the the potential for
17 ta -- contamination is real?

18 A. And it could be.

19 Q. It's reasonable to co -- to to assume that, isn't it?

20 A. Uh, it could be.

21 Q. It's reasonable to have that concern, correct?

22 A. It could be, yes, sir, it could not be as well.

23 Q. Yeah. Alright, yeah, you look some more f -- after you
24 all had, uh, got with Paula you took the shoes, right?

25 A. Yes, sir, the shoes I believe were put in a, some kinda

RANDY MORGAN - CROSS-EXAMINATION BY MR. RIORDAN

1 paint can.

2 Q. Alright, and ya'll told her, I mean, at this point again,
3 when you left that day, okay, you said you didn't -- you said
4 it was not your -- you you didn't have any recall sayin' that
5 the inve -- the arson investigator's gonna meet with her on
6 Monday, you don't remember any a that.

7 A. No, sir.

8 Q. Okay. Uh, that would be important, wouldn't it, if if
9 that's true?

10 A. Uh, it could be, yes.

11 Q. Okay, 'cause if if after you speak with her and learn
12 about her criminal record, the very little of what you look
13 into, the arson investigators are out there, there could be an
14 inference that based upon your information that's why they
15 came out there, right?

16 A. After our discussion, like I said, based on my
17 determination of her body language and after the statement and
18 then that's when we decided to go back out that afternoon.

19 Q. Okay, and once you brought the shoes out and said the dog
20 had hit on it, it, I mean, it was clear, don't you think it
21 was reasonable for her to know at that time that you guys were
22 focused on her?

23 A. I I guess you could.

24 Q. Absolutely, right?

25 A. I guess you could.

RANDY MORGAN - CROSS-EXAMINATION BY MR. RIORDAN

1 Q. That's when you came up and asked about the clothes she'd
2 been wearin' that morning, correct?

3 A. Correct.

4 Q. Alright, and and when she was there, again, her house,
5 the house has has damage to it, right?

6 A. Yes, sir.

7 Q. And it was clear when she said she was gonna leave she
8 and Ellie went in there and got bathroom supplies and clothes
9 and all kinds of other things 'cause they didn't have to spend
10 the night there, right, they couldn't spend the night there?

11 A. Uh, I wouldn't wanna spend the night there. I don't know
12 if they did or not but ---

13 Q. Yeah, ---

14 A. --- that's their home.

15 Q. --- you wouldn't a done it, would ya?

16 A. I wouldn't a done it, ---

17 Q. Yeah, ---

18 A. --- no, sir.

19 Q. --- fact, windows were knocked out so they just had to be
20 secured with boards, it really wasn't that secure either, was
21 it?

22 A. Yeah, I wouldn't think so, no, sir.

23 Q. Alright, and so it was not unreasonable for her to go to
24 her friend Ellie, I mean, you you had met Ellie that day,
25 right?

RANDY MORGAN - CROSS-EXAMINATION BY MR. RIORDAN

1 A. Uh, yes, sir.

2 Q. You found out that she worked and and was a friend with
3 Paula, correct?

4 A. Uh, an assistant, a helper, dog sitter, somethin'.

5 Q. There we go, dog sitter is for cer -- for sure,
6 correct?

7 A. S -- some kind of assistant, I ---

8 Q. Ellie had her own dog when you got to her apartment,
9 right?

10 A. Yes, little puppy.

11 Q. Alright, so it wasn't unusual Paula with six animals if
12 she needs to go somewhere it's good to have a friend to to
13 come watch the pets and vice versa, ---

14 A. Uh, yeah.

15 Q. --- nothin' wrong with that, is there?

16 A. No, sir.

17 Q. And when her house is burned down and her assistant lives
18 in apartment and can, and can go somewhere else, easy to offer
19 her the apartment, correct, ---

20 A. I I guess she could have.

21 Q. --- especially if Paula helped her get it, put the down
22 payment on it.

23 A. Uh, I don't know.

24 Q. Okay. Whe -- when Ellie left, were you still at -- where
25 were you when Ellie left?

RANDY MORGAN - CROSS-EXAMINATION BY MR. RIORDAN

1 A. Left where?

2 Q. Left the Rose home that afternoon.

3 A. Um, I guess I was still on scene.

4 Q. Okay. You remember her leavin' sayin' she needed to go
5 let her dog out, that the dog had been in the house all day?

6 A. Yes.

7 Q. Alright, she wanna let her dog out so it could relieve
8 itself.

9 A. Yes.

10 Q. Alright. And she went back to her apartment, correct?

11 A. Uh, I assume so.

12 Q. Alright, but she forgot her key. She didn't have her
13 key, did she, to get back in?

14 A. No, I I believe somebody had her key so . . .

15 Q. Yeah, Paula had a key, right?

16 A. I believe so.

17 Q. So Paula was gonna go there let her in, correct?

18 A. I believe so.

19 Q. Alright. And when you get back over there -- now, I
20 mean, it's clear at that point you've said the dog hit on
21 shoes and now you want her clothes, I mean, it's clear that
22 you guys are focusing on her as the, as the main suspect in
23 this case, correct?

24 A. I did not say that the dog hit on the shoes.

25 Q. Okay, well who did?

RANDY MORGAN - CROSS-EXAMINATION BY MR. RIORDAN

1 A. The dog.

2 Q. Okay. Well, I mean, you you can -- the dog can't talk,
3 right?

4 A. Well Investigator Gonzalez said that his dog alerted to
5 the shoes.

6 Q. I mean, you conveyed the information, you said that
7 you're the only witness other than Gonzalez apparently, ---

8 A. Okay.

9 Q. --- ya did tell people that, right?

10 A. I I did.

11 Q. Okay, and so was it -- do you think it's improper, do you
12 think it would be unreasonable for Paula or anyone else if
13 they're innocent and they realize the police are focused on
14 them you would almost expect them to call an attorney,
15 wouldn't ya?

16 A. That that's their right yes, sir.

17 Q. That is their right, isn't it?

18 A. Yes.

19 Q. That's their constitutional right, isn't it?

20 A. You're right.

21 Q. There's nothin' wrong with that, is there?

22 A. No, sir, there's not.

23 Q. You guys write your reports though as if that's signs of
24 guilt, don't ya?

25 A. No, sir.

RANDY MORGAN - CROSS-EXAMINATION BY MR. RIORDAN

1 Q. You bring it up she's on the phone with her attorney.

2 A. No.

3 Q. Did you tell her, Why do you need an attorney?

4 A. Uh-uh.

5 Q. No one out there asked her, Why do ya need to talk to an
6 attorney, is that, is that your testimony?

7 A. Um-hum.

8 Q. Is that a yes?

9 A. Yes, sir, it is.

10 Q. Okay, alright. And you you say attorney Larry, right?

11 A. That's what she was sayin'.

12 Q. That's what she was sayin'.

13 A. Correct.

14 Q. You're -- have you -- well you haven't read Gonzalez's
15 report so you don't know, what what -- if the other officers
16 say she's a talkin' to an attorney named Jack, would that mean
17 you got it wrong?

18 A. That that's what she was sayin' when I walked up ---

19 Q. Okay.

20 A. --- 'cause she had the phone in one ear and . . .

21 Q. And in talkin' with her attorney Jack, did she propose
22 since you wanted the clothes to cut them in half so both
23 parties would have an equal portion that they could
24 independently test?

25 A. No, sir, I never heard that.

RANDY MORGAN - CROSS-EXAMINATION BY MR. RIORDAN

1 Q. You ne -- well did she ask to cut 'em in half?

2 A. No, sir.

3 Q. You never heard her ---

4 A. I never ---

5 Q. --- request?

6 A. --- heard no, sir.

7 Q. Okay. Alright, eventually do, you guys do enter the
8 apartment, correct, ---

9 A. We do.

10 Q. --- and and and obtain the clothes ---

11 A. We do.

12 Q. --- and there's a picture of them sitting in her bag,
13 corre -- correct?

14 A. Correct.

15 Q. I mean, well where there's a picture or not you observe
16 her clothing: her pants that she was wearing and her shirt, in
17 a bag, correct?

18 A. Correct.

19 Q. They're balled up together in the top a the bag, aren't
20 they?

21 A. Correct.

22 Q. And next to it are bathroom supplies.

23 A. Uh, that I don't know. I know the clothes were on top a
24 the bag.

25 Q. Were ya lookin' to see what else was there?

1 A. No, sir.

2 Q. Did you make any note of it?

3 A. No, sir.

4 Q. Would that be important?

5 A. No.

6 Q. Possibly?

7 A. No, sir.

8 Q. You wanna give all the information, don't ya?

9 A. Exactly.

10 Q. Okay. Well she's spendin' the night it wouldn't be
11 unusual. Did did you write your report to suggest she went
12 over there so she could hide the clothes that she was wearing?

13 A. No, sir, ---

14 Q. Okay.

15 A. --- she went over there to freshen up after the ---

16 Q. Sure.

17 A. --- the first interview.

18 Q. Alright, just wanna make sure that's not an inference,
19 that was, that's exactly what she told ya she was gonna do was
20 to go over to the place, correct?

21 A. Exactly, yes.

22 Q. Okay. Alright. Alright, let's let's go back 'cause
23 'cause, okay, that that's day, the the the couple days later
24 you continue your investigation, right?

25 A. Exactly.

RANDY MORGAN - CROSS-EXAMINATION BY MR. RIORDAN

1 Q. Alright. Was that, was that lookin' to investigate just
2 Paula or were you still keepin' an open mind and lookin' out
3 for the three suspects?

4 A. I I mean, we were still lookin', I mean, there was some
5 forensic evidence. Uh, forensics had recovered some, uh,
6 fingerprints, uh, and we we were just, we were continue
7 investigatin' or at least ---

8 Q. Where ---

9 A. --- I was.

10 Q. --- who did, who did the forensics?

11 A. Uh, what's his name Cassimire (phonetic) or somethin'
12 like that.

13 Q. Kretschmar?

14 A. Kretschmar.

15 Q. Dustin Kretschmar, is that true?

16 A. Yes.

17 Q. He came out there and he's written report that he got two
18 fingerprints off the safe, correct?

19 A. Correct.

20 Q. What does your report say about his, uh, results on those
21 fingerprints?

22 A. Uh, the fingerprints match Ms. Rose.

23 Q. Both of 'em match Ms. Rose, that your information?

24 A. Uh, yes, sir, I believe so.

25 Q. Okay. And if you're wrong that just means you don't

RANDY MORGAN - CROSS-EXAMINATION BY MR. RIORDAN

1 know this case very well, do ya? If you're wrong you don't
2 know ---

3 MS. ABEE: Objection, ---

4 Q. --- this case very well, do ya?

5 MS. ABEE: --- argumentative.

6 THE COURT: Overruled.

7 THE WITNESS: I'm sorry?

8 BY MR. RIORDAN:

9 Q. If that's wrong you don't know this case very well, do
10 you?

11 A. I know this case very well, ---

12 Q. Okay.

13 A. --- yes, sir.

14 Q. So if that information is wrong, what what's this jury to
15 take from that if that's wrong?

16 A. Uh, this is my case and I know the ---

17 Q. Well ---

18 A. --- case, yes.

19 Q. --- okay, this is your case and you know it. Where's
20 that report in your file? Do you have a copy of it?

21 A. I should.

22 Q. Yeah, you should, do ya?

23 A. If you'll give me a moment ---

24 Q. Please, I'm ---

25 A. --- I'll look ---

RANDY MORGAN - CROSS-EXAMINATION BY MR. RIORDAN

1 (Indiscernible cross-talk.)

2 Q. --- sorry. You're right, I'm sorry. I need to calm
3 down, I'm sorry.

4 (Pause.)

5 A. Yes, sir, I do.

6 Q. Let me see that, please. May I, may I approach?

7 THE COURT: Yes.

8 (Whereupon, counsel approached the witness.)

9 BY MR. RIORDAN:

10 Q. Alright, this report was created when?

11 A. Uh, 7, the response date's 7/27, approve date was August
12 the 9th of 2012 by I thi -- I think it was Sergeant Lindley
13 (phonetic).

14 Q. Okay, and and at that point the way this was drafted what
15 does it say? Does it say both? Does -- where where's to
16 where on there did it say there's a match? How do you read
17 this report?

18 A. Uh, right here (indicating) "Match: last name Reed, first
19 name Paula, they were elimination and the examiner was Gary
20 Christopher.

21 Q. Okay. What's that mean "elimination"?

22 A. It means that assume they took her prints and eliminated
23 'em or compared 'em against the fingerprints found and they
24 matched 'em to her.

25 Q. Do you own a safe?

RANDY MORGAN - CROSS-EXAMINATION BY MR. RIORDAN

1 A. Do I?

2 Q. Yes.

3 A. No, sir.

4 Q. Okay. In this case the safe was belonged to the Rose's,
5 correct?

6 A. That's correct.

7 Q. And the prints were taken from hers when we see the
8 designation it's to eliminate them, correct, ---

9 A. Correct.

10 Q. --- because you expect the owner of a safe's print to be
11 on the safe, correct?

12 A. That's correct.

13 Q. Alright, but again, I wanna make clear as you read this
14 test there's only reference to one print bein' eliminated,
15 isn't there?

16 A. Correct.

17 Q. Alright, you said there were two prints, right?

18 A. No, sir, you said there were two prints.

19 Q. Oh, okay.

20 A. There's two cards accordin' ---

21 Q. Two cards, ---

22 A. --- to the forensics report.

23 Q. --- okay. Has anyone shared with you lately the results
24 of of what's, uh, been done with these prints?

25 A. No, sir.

RANDY MORGAN - CROSS-EXAMINATION BY MR. RIORDAN

1 Q. So there's still new information out there that's coming
2 in within the last week then, isn't?

3 A. Uh, new information of what?

4 Q. About another print.

5 A. No, sir, I haven't heard of one.

6 Q. Are you aware that two prints were found on the safe,
7 one's an elimination print 'cause Paula's are supposed to be
8 there, right?

9 A. Yes.

10 Q. There's nothin' suspicious about her print bein' on the
11 safe, is there?

12 A. No, sir, it's ---

13 (Indiscernible cross-talk.)

14 Q. In fact, you spoke to her husband and you asked would
15 Paula's prints be on there, correct?

16 A. Correct.

17 Q. And he told ya, yeah, they'll be on there, she just put
18 some a Ellie's personal stuff in the safe, did he?

19 A. Correct.

20 Q. Are you aware that a second print exists, that that print
21 eliminates it, what they can show is with a portion of it
22 there that it doesn't belong ---

23 MS. ABEE: Objection, ---

24 Q. --- to ei ---

25 MS. ABEE: Sorry, objection Your Honor, counselor's

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1 testifying as to something.

2 THE COURT: Overruled, overruled.

3 BY MR. RIORDAN:

4 Q. That another print exists, enough of it exists that
5 Mr. Rose and Mr. Rose are eliminated, correct?

6 A. Uh, I don't know, you'll have to ask forensics.

7 Q. Okay. Again, if that's true you would agree that that's
8 reasonable doubt, isn't it?

9 A. Uh, I have not been notified of that evidence no, sir.

10 Q. Okay. Let's talk about those are the only two
11 fingerprints you know of, correct, ---

12 A. Correct.

13 Q. --- 'cause th -- 'cause, uh, this is your whole file?

14 A. Yes.

15 Q. State Farm was involved in this case too, weren't they?

16 A. I believe they were.

17 Q. Yeah, they were the insured, weren't they?

18 A. I I believe so.

19 Q. They hired their own independent investigator to go out
20 there, didn't they?

21 A. Uh, I believe so.

22 Q. 'Cause those folks don't like payin' money if they don't
23 have to, do they?

24 A. Uh, I would assume not.

25 Q. Okay, and their own investigator went out there, you guys

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1 requested every bit a State Farms' file, didn't ya?

2 A. I didn't no, sir.

3 Q. You didn't. Well you're part a the team, are -- aren't
4 ya?

5 A. Uh, I have not seen State Farm's report if there even is
6 one, I don't ---

7 Q. Well well you said you know this file, right?

8 A. I know my part of the investigation yes, sir.

9 Q. Okay. Let me ask it this way: If the State Farm
10 investigator had two fingerprints, that would be somethin'
11 important for the sheriff's department to investigate,
12 wouldn't it?

13 A. Uh, I have not been made aware of any additional
14 fingerprints other than these that were found by, uh, the
15 forensics technicians.

16 Q. Yeah, you've already said you don't know about it, my
17 question was: that would be important, wouldn't it?

18 A. Uh, yes, sir, it would be if there's any there.

19 Q. Yeah. In fact, the the fingerprints -- here, let me ask
20 you about Kretschmar's fingerprinting. Is there any
21 photograph that you all took that even shows fingerprint dust
22 on the safe?

23 A. No, sir, he he wa -- when I was leavin' the scene, he was
24 pullin' up, you'll have to ask him that.

25 Q. Okay, but he did, he did find two prints, right?

RANDY MORGAN - CROSS-EXAMINATION BY MR. RIORDAN

1 A. 'Cording to his report, yes.

2 Q. Okay. Did ya see any photograph of the actual two prints
3 that he had?

4 A. No, sir.

5 Q. And again, you said you haven't seen State Farm
6 investigator's file, right?

7 A. I have not, no.

8 Q. So you don't know anything about him actually taking
9 photographs of prints that he got on the scene, do ya?

10 A. No, sir, I do not.

11 Q. That be a good way to do if you, if you take a -- if you
12 get a print, take a photograph of it too, correct?

13 A. Uh, you'll have to ask the forensics, I don't fingerprint
14 stuff.

15 Q. Okay. What do you do?

16 A. I'm a burglary investigator.

17 Q. Alright. "7/30/2012 traveled to a store at Woodruff
18 Road," or excuse me, "to to to Lowe's at Woodruff Road,"
19 correct?

20 A. What page are you on ---

21 Q. Oh, I'm sorry, page 8.

22 A. Yes.

23 Q. 'Cause your investigation continues, right? You're
24 followin' up on this yellow gas can, right?

25 A. Correct.

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1 Q. And let me ask ya: Was it your -- what did Paula tell ya
2 'bout the gas can?

3 A. Said she had some red ones but she didn't know anything
4 about a yellow one.

5 Q. Yeah, I mean, the red one was on the scene was theirs,
6 right?

7 A. Uh, we assume so.

8 Q. I mean, wha -- what would it matter if if she had -- why
9 would -- did you think she was lying about the yellow gas
10 can?

11 A. No, at at this point in time we didn't know.

12 Q. Okay, so but you go out to Woodruff Road and meet with
13 Matt F -- uh, Matthew Ferry and he actually checked to see,
14 they actually sell the even flow gas cans, don't they?

15 A. They do.

16 Q. And he actually checked the inventory, he located, uh,
17 one that been purchased recently, right?

18 A. Correct.

19 Q. How -- and and and part a that how far back did you go on
20 these purchase a these gas cans as you went around town to
21 different stores?

22 A. I believe it was probly a week or so prior to the
23 incident.

24 Q. Okay, why'd you cut it off there?

25 A. 'Cause normally if somebody purchases somethin' to u --

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1 be used in the commission of a crime, it's usually purchased
2 the day of or a day or two prior.

3 Q. Normally that's the case, huh, that that's your book a
4 investigation, huh?

5 A. Correct.

6 Q. So you just picked on your own, you go back a week and
7 cut it off?

8 A. Based on my experience, yes.

9 Q. Okay. What did, what did they tell ya at Lowe's when you
10 visit on July 30th 2012?

11 A. Uh, that they do carry the gas cans, uh, the can is
12 designated to hold diesel fuel. I asked him to check to check
13 his inventory system, see if anyone purchased these diesel
14 cans around the time of this incident. He advised that the
15 last Enviro-Flow diesel can was sold, uh, was on 7/17/2012 to
16 a business card holder by the name of Buckeye Construction.

17 Q. So ten days or you actually did go back more than a week.
18 Okay, so you went ten days.

19 A. That the last one that was sold was ten days prior.

20 Q. Alright, Buckeye Construction Company, right?

21 A. Correct.

22 Q. Alright, he actually had a -- they actually had a phot --
23 they had surveillance footage a the purchase, right?

24 A. Correct.

25 Q. Tell us what you write in your report about that.

RANDY MORGAN - CROSS-EXAMINATION BY MR. RIORDAN

1 A. Uh, "The gentleman, the gentleman that purchased the
2 diesel can was an older white male that had gray hair, this
3 person does not fit the description of any suspects that was
4 provided by the victim."

5 Q. Tell us what the s -- what the descriptions were of the
6 three suspects.

7 A. Uh, sorta stocky build. Uh, one of 'em had a shiny bald
8 head, the other two were wearin' ski masks, ---

9 Q. Yeah, ---

10 A. --- they they were stocky build.

11 Q. --- so two with ski masks, right? You can't see what
12 color their hair is, can ya?

13 A. That's correct.

14 Q. Okay, we didn't have photographs. I mean, do you agree
15 that the information you've written here in no way eliminates
16 this person as a suspect, does it?

17 A. Yes, sir, it does.

18 Q. How?

19 A. Based on what I said on here.

20 Q. Okay, you just decided on your own what the su -- what
21 the description was, huh?

22 A. No, sir.

23 Q. I mean, if he's got gray hair and they're and two of 'em
24 are wearin' masks, that doesn't eliminate anybody, does it?

25 A. The mask alone, no.

RANDY MORGAN - CROSS-EXAMINATION BY MR. RIORDAN

1 Q. Okay, well despite that. Now you've got, you've checked
2 a few places, ya found someone that purchased the ga -- the
3 yellow diesel even flow that you're lookin' for, right?

4 A. Correct.

5 Q. So tell this jury what ya did when you called -- tell us
6 what ya found out when ya called Buckeye Construction Company.

7 A. I never did because he didn't match the description.

8 Q. Buckeye Construction Company. You ever ha -- you ever,
9 have you ever had a construction company that has more than
10 one person that works for it?

11 A. Yes.

12 Q. Yeah, you -- that's axpect -- expected, right, it's a
13 construction company, right?

14 A. Correct.

15 Q. Ya just got information earlier that day there's a red
16 pickup truck with a, with a empty utility trailer on the house
17 across the street right up the road that mornin', correct?

18 A. Correct.

19 Q. Alright, and you're not curious enough to call them at
20 least to see if they had a crew over in that area, did ya?

21 A. No, sir.

22 Q. Didn't find out whether they had me -- they even doin'
23 construction in the area in the months before.

24 A. No, sir.

25 Q. Alright, so you eliminated that person, ---

RANDY MORGAN - CROSS-EXAMINATION BY MR. RIORDAN

1 A. Correct.

2 Q. --- tell us more about your investigation 'cause again
3 you wanna be thorough, right?

4 A. Correct.

5 Q. Alright, tell us about your thorough investigation,
6 what's the next thing you do in regard to gas cans?

7 A. I went to the Lowe's on Wade Hampton Boulevard.

8 Q. What did ya do there? Wha'd ya find out?

9 A. Uh, uh, the last gas can they sold there was on 7/19/2012
10 to a Jeff Aughtry.

11 Q. Alright. Continue, is that it? Did you call Jeff
12 Aughtry?

13 A. Uh, I again reviewed their surveillance footage, uh, this
14 gentleman is a small-framed white male, uh, had a younger boy
15 with him and again, this person does not fit the description,
16 uh, of the suspects provided by the defendant.

17 Q. Okay, that's what you write in your report, correct?

18 A. That is correct.

19 Q. Alright, would you show the jury the two, the the
20 surveillance shots, the stills of the surveillance photos that
21 the company showed you of these two people now that we found
22 purchasin' the gas can that you're lookin' for, will you show
23 that to 'em please.

24 A. No, sir, I didn't get the video surveillance.

25 Q. Alright, we talked about wantin' to get the best evidence

1 possible, right?

2 A. Yes.

3 Q. That woulda been easy to do, wouldn't it?

4 A. Yes.

5 Q. 'Cause then this jury, these investigators could look at
6 it and make their own determination, right?

7 A. They they didn't match the suspects.

8 Q. That's what you say, right?

9 A. Yes, sir, that is what I say.

10 Q. Yeah, okay, okay. What else did ya do?

11 A. I then spoke with the victim's, uh, husband Homer.

12 Q. Oh, let me stop real quick on Jeff Aughtry 'cause you
13 found out it's Jeff Aughtry, you didn't think he fit the
14 description either, why?

15 A. Accordin' to the video surveillance he didn't.

16 Q. 'Cause he was a a small-framed white male, that what you
17 wrote?

18 A. Supposed to be small, ---

19 Q. Yeah.

20 A. --- excuse me, for my grammar.

21 Q. And I'm not tryin' to pick but you've got, you've got
22 misspellings in and outta this whole thing, right?

23 A. Uh, there's a few there I'm sure.

24 Q. And you wanna be professional when you prepare a report
25 like this, don't ya?

RANDY MORGAN - CROSS-EXAMINATION BY MR. RIORDAN

1 A. Yes, sir.

2 Q. I mean, that the clu -- conclusion a this whole report is
3 is she gettin' arr -- is her gettin' arrested, correct?

4 A. I didn't make that determination, no, sir.

5 Q. Okay. Well do you -- so you dis -- do you disagree with
6 it?

7 A. No, sir, I don't.

8 Q. Okay. You write that on seven thir -- tell us, tell us
9 what you write next in your report on page 8.

10 A. Uh, "7/31/12 I spoke with the victim's husband Homer and
11 he related that he has been thinkin' about this incident and I
12 might want to talk with his ex-wife Becky Chism, uh, because
13 he related that a day or so, uh, a day or so ago he received a
14 Facebook friend request from Heather Chism, uh, who is Becky
15 Chism's daughter . . ."

16 Q. Continue.

17 A. ". . .and he thought this was very odd because he is
18 divorced from her, uh, bu -- from hi -- from her mom and he
19 has not spoken with either of them for four or five years."

20 Q. Keep readin', please.

21 A. Uh, "I then made phone contact with Becky Chism at her
22 place of employment which is Judge Garrett's office. I asked
23 her to come to my office and she advised that she would.
24 Later this same day Becky Chism arrived at night ---

25 Q. Let ---

RANDY MORGAN - CROSS-EXAMINATION BY MR. RIORDAN

1 A. --- and I ---

2 Q. --- me stop ya real quick, is that the same office as,
3 uh, as where you met with Paula for her statement?

4 A. Correct, that's northern area command.

5 Q. Alright, and since since you don't, well it's the policy
6 apparently that you don't record anything, there's no
7 recording of your conversation with Becky either, is there?

8 A. That's correct.

9 Q. All we can go on is what you r -- write in your report.

10 A. That's correct.

11 Q. Okay. And and let's make sure is your testimony that the
12 first time Homer said anything about his ex-wife was on July
13 31st 2012?

14 A. That's correct.

15 Q. And since you -- is there -- do you remember anything
16 else he told you that you didn't include in your report?

17 A. No, sir.

18 Q. Do you deny that Homer told ya that the only other person
19 that had the combination to the safe was his ex-wife?

20 A. No, sir, I don't know if she had the combination or
21 not.

22 Q. You deny that he told ya that?

23 A. Yes.

24 Q. Oh, okay. Did you ask him if anyone else had a
25 combination to the safe?

RANDY MORGAN - CROSS-EXAMINATION BY MR. RIORDAN

1 A. I I don't know if I did or not.

2 Q. Yeah, there's nothin' in the report that you write about
3 that, right?

4 A. Correct.

5 Q. That's pretty -- that that would be somethin' again
6 investigator might ask that question when the report is a guy
7 is turning the knob, correct?

8 A. But there was also paint chips like somebody was tryin'
9 to knock it open.

10 Q. Okay. Did you -- did did -- again, there's nothin' in
11 your report, yeah two things, there's nothin' in the report,
12 it's just because the chi -- the paint chip exists you're not
13 gonna look into the other one as to whether somebody's openin'
14 and tryin' maybe has the combination to the lock?

15 A. According to Ms. Rose then the person was turnin' the
16 dial.

17 Q. Okay, and again, whether there's any other evidence or
18 not, if somebody tells you that, that as an investigator don't
19 you think that would be important to find out who else might
20 have had any time before a combination a the safe?

21 A. Well I can say that his ex-wife was not the suspect, ---

22 Q. Well, ---

23 A. --- she has hair.

24 Q. Okay, that wasn't my question though. You agree nothin'
25 in your report says that you even asked the question, is it?

RANDY MORGAN - CROSS-EXAMINATION BY MR. RIORDAN

1 A. No, sir, I did not.

2 Q. Do you regret that?

3 A. No, sir.

4 Q. Okay. Alright, tell u -- tell us -- so you go to see
5 Becky, now again where does she work?

6 A. Judge Garrett's office.

7 Q. Alright, and when you pull up this case on the the
8 Greenville County court record search, which which, uh, which
9 which judge is it assigned to?

10 A. Case what?

11 Q. This case, all four a these cases ---

12 A. I don't know.

13 Q. --- when you pull it up online?

14 A. I don't know.

15 Q. It's it it's assigned to Judge Garrett's office, isn't
16 it?

17 A. If you say so, I don't ---

18 Q. Okay.

19 A. --- know.

20 Q. You don't have, you don't have any knowledge otherwise,
21 do ---

22 A. I did ---

23 Q. --- ya?

24 A. --- not, I did not sign warrants no, sir. I don't know
25 what judge they would be sent back to, I don't know.

RANDY MORGAN - CROSS-EXAMINATION BY MR. RIORDAN

1 Q. Well doesn't matter who signed 'em, it's where it's
2 assigned on the, on the court record search that you could
3 pull up online, you've never looked at that?

4 A. No, sir.

5 Q. Okay. How long have you known Becky?

6 A. Probly ten, twelve years I guess. I known of her, I knew
7 her when she was married to Homer ---

8 Q. Okay, you known her a long time, right?

9 A. --- 'cause me and Homer used to be partners so . . .

10 Q. Okay. You guys, you have worked -- yeah, with that real
11 quick before I forget, uh, did you know, I mean, the firemen
12 knew about Homer's family background, did you know about
13 that?

14 A. Background as in what?

15 Q. His family business, his prior family business.

16 A. Uh, I heard rumors that his family owned some concession
17 stands in New York and possibly had a stake in the Boston Red
18 Sox team.

19 Q. Yeah, what other teams? Any other teams that they had a
20 stake in?

21 A. That's all I know.

22 Q. That's all you knew.

23 A. Yes.

24 Q. Okay. Alright, you go talk to Pau -- and Becky over
25 there you you work with her a lot, don't ya?

RANDY MORGAN - CROSS-EXAMINATION BY MR. RIORDAN

1 A. No, sir, I don't use Judge Garrett's office.

2 Q. You don't use it at all?

3 A. No.

4 Q. Okay, and you're probly right, those those are for the
5 traffic cases, right?

6 A. Traffic does use them a lot, ---

7 Q. Alright.

8 A. --- yes.

9 Q. Alright, there's plen -- plenty a Greenville County work
10 that goes through there, correct?

11 A. Uh, yes, ---

12 Q. Okay.

13 A. --- he's one a the busier offices.

14 Q. Alright, so you go talk to to to Becky, what, go ahead
15 and relay what you write in your report about what Becky tells
16 ya.

17 MS. ABEE: Objection, Your Honor, hearsay.

18 THE COURT: Overruled.

19 A. Uh, "She came to my office, I ask her if she had spoken
20 with her ex-husband Homer and she related that, uh, she has
21 not spoken with him in years. She then related that she had
22 heard about this incident, she didn't have an -- any
23 information to add."

24 Q. Okay.

25 A. "I then ask her about Paula Rose, she related that she

RANDY MORGAN - CROSS-EXAMINATION BY MR. RIORDAN

1 was crazy. Becky related that when she was married to Homer
2 he was cheating on Becky with Paula."

3 Q. Okay, those are serious allegations, aren't they?

4 A. Yes.

5 Q. Alright.

6 A. Uh, "Becky related that when -- I'm sorry.

7 Q. No, continue. Go ahead.

8 A. "Becky then related that, uh, that was the reason for
9 their divorce."

10 Q. Okay, and so she's told you Paula's crazy, she, when she
11 was married to her, Homer was cheating on her with Paula and
12 that was the reason for their divorce, right? That's pretty
13 powerful stuff, made you think bad about Paul, uh, Paula,
14 didn't it?

15 A. No, I mean, she ---

16 Q. Didn't at all?

17 A. --- she's got one to live with it, not me.

18 Q. Okay, well she's gotta li -- 'cause you believed it,
19 didn't ya?

20 A. No.

21 Q. Well that's what you just said, she's gotta ---

22 A. That's what, ---

23 Q. --- live with it.

24 A. --- that's what she told me.

25 Q. Okay, 'cause one thing again with a divorce when you get

1 divorced, there's a family court in town too, isn't there?

2 A. Yes.

3 Q. Yeah, you can go down and get the whole, you can go up to
4 clerk's office of the family court and get the whole file,
5 can't ya?

6 A. I guess you can, yes, sir.

7 Q. Yeah, police officer could walk in a courtroom and get
8 just about anything they want, can't they?

9 A. Yes.

10 Q. Okay, so tell the jury what you found when you went over
11 to family court to look at the domestic pleadings between
12 Homer and Becky in this case.

13 A. I didn't.

14 Q. You didn't do that, did ya?

15 A. No.

16 Q. And you didn't get the packet I sent out either, did ya?

17 A. No, sir.

18 Q. Okay, so you haven't spoken to the other guys what's in
19 there, huh?

20 A. No.

21 Q. Woulda been easy to go over there to see if what Becky
22 had to say is true, isn't it?

23 A. I I'm not worried about their personal lives, sir.

24 Q. Apparently not.

25 A. No.

RANDY MORGAN - CROSS-EXAMINATION BY MR. RIORDAN

1 Q. Okay. You could have easily gone over there to see what
2 it might say and whether there's any evidence in any a the
3 pleadings that says Paula Rose was cheating, uh, with Homer
4 durin' their marriage, right, you coulda found that out?

5 A. I could have yeah.

6 Q. I mean, do you even know if they both had attorneys?

7 A. No, sir, I don't.

8 Q. What do ya, what do ya think, Homer Rose you just told me
9 you knew his family owned part a the Boston Red Sox, do you
10 think, do you think Becky had an attorney involved in that
11 case?

12 A. I'm sure she did.

13 Q. You think the attorney had a duty to do all she could to
14 look into the allegations ---

15 THE COURT: Just one second, just one second.

16 Mr. Foreman, would you go to the jury room, please. Would you
17 take the jury to the jury room, please.

18 (The following takes place outside the presence of the
19 jury.)

20 THE COURT: You are goin' very very far astray. I've
21 been givin' you some leeway but I've 'bout had enough a this,
22 you gonna ---

23 MR. RIORDAN: Okay.

24 THE COURT: --- bring it back into toe, ask relevant
25 cross-examination questions or I'm gonna cut you off, okay?

RANDY MORGAN - CROSS-EXAMINATION BY MR. RIORDAN

1 MR. RIORDAN: Okay.

2 THE COURT: You understand?

3 MR. RIORDAN: May I huddle since they're out, just ---

4 THE COURT: No, sir.

5 MR. RIORDAN: --- that I was try -- okay, I was gonna say
6 I'll finish it right up then but ---

7 THE COURT: May you do what, I'm sorry?

8 MR. RIORDAN: I was gonna huddle just so I can make sure
9 I can finish up ---

10 THE COURT: Oh, ---

11 MR. RIORDAN: --- quickly.

12 THE COURT: --- sure, sure, sure, sure.

13 MR. RIORDAN: Alright.

14 THE COURT: Let's take a 5-minute break.

15 MR. RIORDAN: Alright, thank Your Honor.

16 THE COURT: Officer, ---

17 THE WITNESS: Yes.

18 THE COURT: --- you can get down, you can't speak with
19 anybody about your testimony.

20 THE WITNESS: I'll just stay.

21 (Whereupon, a recess was taken.)

22 THE COURT: Alright, counsel, let's get started. Bring
23 the jury in.

24 (The following takes place in the presence of the jury.)

25 THE COURT: Mr. Riordan.

RANDY MORGAN - CROSS-EXAMINATION BY MR. RIORDAN

1 MR. RIORDAN: May it please the Court.

2 THE COURT: Yes.

3 BY MR. RIORDAN:

4 Q. Investigator Morgan, tell us the final thing that Becky
5 told you that you related to me in court.

6 A. Uh, to continue where we left off?

7 Q. Yes.

8 A. Uh, uh, "Becky then related that she had heard that Homer
9 had spent a lotta money keepin' Paula outta jail. Uh, I then
10 asked Beck -- asked Becky about the Facebook friend request
11 from her daughter Heather, uh, she advised that she knew
12 nothin' about the request."

13 Q. Let me ask you this real quick, Facebook just so I don't
14 forget, are you a Facebook friend of Becky Chism?

15 A. No.

16 Q. You're not?

17 A. No.

18 Q. Okay, any other investigators in this case to your
19 knowledge?

20 A. I don't know, you'll have to ask them.

21 Q. Alright, and with her though you never asked her anything
22 about the contents a the safe?

23 A. No.

24 Q. Did ya ever ask her what Homer kept in the safe durin'
25 the time that they were married?

RANDY MORGAN - CROSS-EXAMINATION BY MR. RIORDAN

1 A. No.

2 Q. Okay, it's certainly not reflected in your report,
3 right?

4 A. Correct.

5 Q. Alright. Did, uh, --- tell the jury which way that safe
6 opens anyway.

7 A. Uh, I don't know, I never seen it open.

8 Q. Ya never asked 'em even to open the safe, did ya?

9 A. No, sir.

10 Q. You never even found out what was inside the safe, did
11 ya?

12 A. No, sir, the, 'cordin' to the victims, they advised
13 nothin' was stolen.

14 Q. Okay. Well do ya think it be important to find out what
15 three men might wanna get outta the safe?

16 A. No, sir.

17 Q. Was it not curious to ya at all what was in the safe?

18 A. No, sir.

19 Q. You were, and real quick I know you've mentioned on, uh,
20 I think it was elicited to show that you felt nothing was
21 stole -- or there was no report of anything stolen, correct?

22 A. According to the victims nothin' was stolen.

23 Q. But you related they had, uh, yard equipment or or
24 yar -- yard equipment or lawn equipment in the garage, is that
25 what you said?

RANDY MORGAN - CROSS-EXAMINATION BY MR. RIORDAN

1 A. Uh, according to Mr. Rose that, uh, Paula had a small
2 weed eater she used around the yard, uh, like I said, there
3 was some shelve -- shelving, uh, there's some vehicle cleanin'
4 up, uh, clean up material, stuff like that.

5 Q. Alright, I just wanna make sure you aren't -- was was
6 your point in bringin' that out was to say there were items in
7 there of value that coulda been taken but weren't, ---

8 A. Uh, ---

9 Q. --- is that what you're attemptin' to say?

10 A. --- yes, sir, they there are items of value in ---

11 Q. Okay.

12 A. --- there.

13 Q. Tell us the inventory of the items that you, uh, located
14 on the property that you felt were of value but you were
15 concerned that they were not taken.

16 A. Uh, I'm sorry?

17 Q. Tell us the inventory of those items that you found that
18 were still in the garage that you felt if burglars were there
19 and wanted somethin' of value that you expected they would
20 take 'em, from your twenty years experience.

21 A. Uh, no items were reported stolen so there is no
22 inventory of items.

23 Q. No, the inventory of the items that were still there,
24 tell us.

25 A. I don't make an inventory of items that are left on

1 scene, I only document items that are stolen.

2 Q. I know but the point was -- okay, we'll move on, I'm
3 sorry. Uh, tell us about -- well well with that, you knew
4 they had a yard man, right?

5 A. No, sir, not until they told me.

6 Q. Okay, well I know but they did tell you, correct?

7 A. They did.

8 Q. Alright, and again, you're sayin' they had yard items,
9 they actually had a yard guy that would do the yard work,
10 correct?

11 A. That's what they told me.

12 Q. Alright, you never spoke to him, did ya?

13 A. No, sir, I did not.

14 Q. Alright, uh, what, if anything, did you do, uh, with
15 regard to the cut phone line?

16 A. Uh, I didn't do anything with cut phone line, no.

17 Q. Okay. Did you, uh, did you attempt to contact the phone
18 company?

19 A. Uh, I did not, no.

20 Q. And why not?

21 A. Uh, I just didn't.

22 Q. Do you know who the pho -- did you, tell us did you
23 document who the service provider was?

24 A. No, sir, I don't even know if they have a home phone, I
25 don't know.

RANDY MORGAN - CROSS-EXAMINATION BY MR. RIORDAN

1 Q. Okay. Well di -- did you observe the cut phone lines,
2 have you see ---

3 A. I did, ---

4 Q. --- the photograph?

5 A. --- I did.

6 Q. Okay. Did, uh, did y -- di -- tell us in your report
7 when you made any inventory of calls to that service provider
8 to inquire as to any other cut phone lines that might've
9 existed in that neighborhood.

10 A. I did not.

11 Q. You didn't do that, did ya?

12 A. No, sir.

13 Q. Did you determine what had cut the phone line?

14 A. No, sir.

15 Q. Did you investigate that at all?

16 A. Uh, I saw that it been cut, ---

17 Q. Okay.

18 A. --- it was in two pieces..

19 Q. Okay. Was a, was a cell phone found on the scene and
20 turned into you?

21 A. Uh, there was one found out, uh, next to the road.

22 Q. Alright, a Droid X phone, correct?

23 A. Yes, sir, that was put in P&E.

24 Q. Tell the jury what the results were of the test of that
25 to find out whose ---

RANDY MORGAN - CROSS-EXAMINATION BY MR. RIORDAN

1 A. I ---

2 Q. --- phone that was.

3 A. --- I do not know if it's been tested or not 'cause it
4 was quite muddy and dirty and you could tell it been there for
5 a little while.

6 Q. What about the Lowe's bag? You recovered a Lowe's bag
7 too, what did ya do with it?

8 A. Uh, it's still in property and evidence.

9 Q. Okay. What what analysis was done of it?

10 A. Uh, I don't know if any was done on it or not, I do not
11 know.

12 Q. Alright, as you close up your report page 9 of 9, what
13 what's the last thing you say in your report?

14 A. Page 9 of 9, "I request that this case remain active
15 until the fingerprint comparison can be completed and the
16 analysis of the items submitted to SLED."

17 Q. And is that all you were worried about were those
18 items?

19 A. Uh, they were the it -- that that was the re -- the
20 fingerprint request that I ask and then the items that was
21 recovered by Investigator Gonzalez and Cannon.

22 Q. So you're gonna keep this case open and active per your
23 report until you got the fingerprint comparisons back,
24 correct, ---

25 A. Correct.

RANDY MORGAN - CROSS-EXAMINATION BY MR. RIORDAN

1 Q. --- and you per your testimony you think you know what
2 those are, right, you're confident?

3 A. Correct.

4 Q. Okay. And the analysis of the items submitted to
5 SLED, ----

6 A. Correct.

7 Q. --- did ya wait for all those to to be analyze?

8 A. Correct.

9 Q. Nothin', I guess the phone and some a these other things
10 were never sent to SLED or anywhere else.

11 A. Uh, we we have our own analysis but I don't know if
12 they've been analyzed ---

13 Q. Did you wanna keese -- keep the case open until you got
14 the analysis back of all the items submitted to the Department
15 of Public Safety?

16 A. I'm sorry?

17 Q. Did you want to also keep the case active until you got
18 back all the analysis from items that were also sent for
19 testing at the Department of Public Safety, ---

20 A. Uh, ---

21 Q. --- Greenville County DPS.

22 A. Oh, I -- the the ones that we were waitin' on was the
23 forensics and the stuff that went to SLED.

24 Q. What about forensics that went to to here Greenville
25 County? you didn't worry about that?

RANDY MORGAN - CROSS-EXAMINATION BY MR. RIORDAN

1 A. I didn't, I didn't know what they had, I know I only
2 requested the fingerprints.

3 Q. What do you know about a pair of latex gloves found in
4 front of the house near the red gas can and a white latex
5 glove found on the back porch near the burned up yellow diesel
6 can?

7 A. Yeah, I know -- I knew some were there.

8 Q. What did -- what do you know about 'em?

9 A. That they were gloves and they were found on the porch.

10 Q. Okay, and when you write your report you'd like to keep
11 the case active until you get the results back from the
12 analysis of those too, correct?

13 A. I didn't put them in for analysis.

14 Q. I mean, latex gloves especially durin' the, durin' the
15 summer if somebody's wearin' those they're almost immediately
16 gonna get DNA on 'em aren't they?

17 A. And they're gonna be sweaty.

18 Q. You'd expect them to have DNA right on 'em, wouldn't
19 ya?

20 A. Correct.

21 Q. And you in your last line and and and you tell this court
22 you didn't worry about the DNA analysis, ---

23 A. I know ---

24 Q. --- you don't even mention it, do ya?

25 A. Sir?

RANDY MORGAN - CROSS-EXAMINATION BY MR. RIORDAN

1 Q. You don't even mention it in your report, do ya?

2 A. Because I did not secure them, uh, I did not put 'em in
3 for analysis, I don't know who did that.

4 Q. Alright, but you've told me you wanna be fair and
5 impartial, right?

6 A. Correct.

7 Q. And you wanna be thorough.

8 A. Correct.

9 Q. And before you make an arr -- you, I mean, you assisted
10 in the arrest of Paula Rose, didn't ya?

11 A. No, sir, she turned herself in with you I believe.

12 Q. Well I know but you, I mean, your case report, this is
13 part a the case, that's why you're here, correct?

14 A. Yes, sir, I'm here, I'm part a the case, yes.

15 Q. Yeah, and and you you you didn't keep your case active,
16 you didn't keep it open and and be open and objective until
17 all the evidence came back, did ya?

18 A. Yes, sir, I did.

19 Q. Ya did?

20 A. Yes.

21 Q. Alright, eventually ya did get DNA results back, didn't
22 ya?

23 A. I didn't no, sir.

24 Q. Okay, well let me ask, let me ask this way: When Paula
25 was arrested, had you all got back the DNA evidence yet?

RANDY MORGAN - REDIRECT EXAMINATION BY MS. ABEE

1 A. Uh, I don't know. I ---

2 Q. You don't, ---

3 A. --- have not, ---

4 Q. --- you don't know?

5 A. --- I have not seen a DNA report no, sir.

6 Q. Do ya think if you're an investigator in this case that
7 would be important?

8 A. I don't wanna think, sir, I have to know. I have not
9 seen the DNA report.

10 Q. We found agreement. No further questions.

11 THE COURT: Redirect?

12 MS. ABEE: Thank you, Your Honor.

13 REDIRECT EXAMINATION BY MS. ABEE:

14 Q. Investigator Morgan, why did you take that picture on
15 your cell phone of the yellow gas can?

16 A. Well basically just so I could blow it up. I I mean, if
17 you, if you're takin' a picture with a normal camera, at least
18 with my phone I could blow it up to try to read what the the
19 sticker on the thing said because it was, it was flat, it was
20 melted.

21 Q. And by doing that were you able to further your
22 investigation?

23 A. Yes, that's when we found it was the Enviro-Flow can.

24 Q. And throughout your entire report what do you refer to
25 Ms. Rose as? Is she ever referred to as a suspect?

RANDY MORGAN - REDIRECT EXAMINATION BY MS. ABEE

1 A. No, she was the victim.

2 Q. And that's throughout your entire report.

3 A. Correct.

4 Q. So after you met with Ms. Rose and talked to her and
5 received her statement, did you flip in your head and she all
6 of a sudden became a suspect?

7 A. No, ma'am.

8 Q. Were you, uh, objective, fair and impartial throughout
9 the rest a your investigation?

10 A. I feel like I was.

11 Q. Wanna talk to you about, uh, what Ms. Becky Chism said to
12 you, did that have anything to do or any bearing on what you
13 continued to do with the case?

14 A. No, ma'am.

15 Q. In fact, after you talked to Ms. Chism and she said those
16 things about Ms. Rose, did you not continue your
17 investigation?

18 A. I did.

19 Q. And what about the safe, did it appear as if the safe had
20 even been opened?

21 A. No.

22 Q. And according to what Ms. Rose and her husband said, was
23 anything missing outta the safe?

24 A. Nothin'.

25 Q. So did it appear as if one of the three gentlemen who was

RANDY MORGAN - REDIRECT EXAMINATION BY MS. ABEE

1 possibly trying to get into the safe actually knew the
2 combination?

3 A. Probly not.

4 Q. And I wanna talk to you about the Oconee County incidents
5 that, uh, Mr. Riordan was talkin' to you about, ---

6 A. Okay.

7 Q. --- what year were those charges dismissed?

8 A. Uh, I'll give you the exact dates. Uh, 06/2006.

9 Q. And what year was this burglary?

10 A. 2012.

11 Q. So six years had passed in between?

12 A. Correct.

13 Q. And in order for you to remain fair and impartial, would
14 you ever go and research another case that someone had been a
15 part of?

16 A. No.

17 Q. Okay, why is that?

18 A. Uh, because you would get tainted and and, I mean, you
19 would -- that there would be some type a bias about it and, I
20 mean, that that was six years ago and it had no basis on this
21 case whatsoever, I mean, I was takin' things at face value
22 here.

23 Q. And when you say it would cause you to biased, do you
24 mean against Ms. Rose by reading ---

25 A. Correct.

RANDY MORGAN - REDIRECT EXAMINATION BY MS. ABEE

1 Q. --- that?

2 A. Well, I mean, it very well could be. Uh, I mean, I know
3 she was found guilty but there had to be some kinda reasonable
4 suspicion ---

5 MR. RIORDAN: Object to his form, he said ---

6 THE COURT: We'll ---

7 MR. RIORDAN: --- she was found guilty.

8 THE COURT: --- we'll let him re -- re -- rephrase that.

9 MS. ABEE: I I don't know if he did say that, I'm sorry,
10 Your Honor. Uh, rephrase your your answer, Investigator
11 Morgan, just be specific.

12 THE COURT: Did you testify that she was found guilty?

13 MR. RIORDAN: I'd ask that the court reporter read it
14 back, just ---

15 THE COURT: No, sir, ---

16 MR. RIORDAN: Sorry, Judge.

17 THE COURT: --- I can take care of this court.

18 THE WITNESS: I I mean, she's fou -- she was found not
19 guilty.

20 THE COURT: Thank you. Okay, ---

21 THE WITNESS: Yes.

22 THE COURT: --- move on, please.

23 MS. ABEE: Yes, sir.

24 BY MS. ABEE:

25 Q. We talked about, uh, this book that Ms. Rose talked to

RANDY MORGAN - REDIRECT EXAMINATION BY MS. ABEE

1 you about, what was the subject matter of that book?

2 A. Apparently it was her ordeals with the, uh, Oconee County
3 Sheriff's Office and SLED I believe.

4 Q. Did she tell you the title of the book?

5 A. Uh, she might have, I didn't write it down, I didn't
6 even . . .

7 Q. In referring to, uh, the the video surveillance that
8 Mr. Riordan talked about, who gave you the body type
9 description of the suspects in the garage?

10 A. Ms. Rose.

11 Q. And the individual with the gray hair did he have the
12 same body type build ---

13 A. No.

14 Q. --- as the suspects that Ms. Rose said?

15 A. No.

16 Q. And what about the other gentleman that had the child
17 with him, did he have the same body type that Ms. Rose stated
18 the suspects had?

19 A. No, he was a small-framed gentleman.

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

21 THE COURT: Thank you, you may be excused. You may step
22 down, thank you.

23 THE WITNESS: Thank you, sir.

24 (Whereupon, the witness left the stand.)

25 THE COURT: Any reason why this officer can't be accused?

CHARLES GONZALEZ - DIRECT EXAMINATION BY MR. UNDERWOOD

1 MS. ABEE: No objection from the State, Your Honor.

2 MR. RIORDAN: No, Your Honor.

3 THE COURT: Thank you, sir.

4 THE WITNESS: Thank you, Judge.

5 THE COURT: Call your next witness.

6 MR. UNDERWOOD: Your Honor, the State calls Charles
7 Gonzalez.

8 THE COURT: While Mr. Gonzalez is bein', uh, summoned,
9 Mr. Foreman, have you had opportunity to talk with your jury
10 about whether or not there's any, uh, significant problems
11 workin' later tonight so ---

12 THE FOREMAN: Uh, no, I believe we're, okay.

13 THE COURT: Okay, thank you very much.

14 (Whereupon, the witness came forward.)

15 CHARLES GONZALEZ, having been
16 first duly sworn, testified as follows:

17 THE CLERK: Um, please have a seat. You state your full
18 name for the record.

19 THE WITNESS: Uh, Charles Gonzalez.

20 DIRECT EXAMINATION BY MR. UNDERWOOD:

21 Q. Good afternoon, Investigator Gonzalez.

22 A. Afternoon.

23 Q. And please introduce yourself to the jury and tell them
24 where you're employed.

25 A. Uh, Charles Gonzalez and I work for Greenville County

CHARLES GONZALEZ - DIRECT EXAMINATION BY MR. UNDERWOOD

1 Sheriff's Office.

2 Q. And how long have you worked there?

3 A. Since March of 2001, thirteen years?

4 Q. How long have you worked in law enforcement?

5 A. Uh, for twenty-one years.

6 Q. What other agencies have you worked for?

7 A. Uh, I started in 1993 at Fairfield County Sheriff's
8 Office which is, uh, down near Newberry County near Columbia.

9 Q. Okay. Did ya have any military service prior to that?

10 A. Yeah, uh, durin' that time I did, yes.

11 Q. And what was that?

12 A. Uh, South Carolina Army National Guard.

13 Q. And wha'd you do in the National Guard?

14 A. I was a, uh, Bradley fighting vehicle systems mechanic.

15 Q. Said that, uh, you originally started law enforcement in
16 Fairfield County?

17 A. Yes, in 1993.

18 Q. Alright. What was your primary position and duties
19 there?

20 A. Uh, uniform patrol sergeant.

21 Q. And what about when you moved to Greenville County?

22 A. And when I came to Greenville in 2001 I started out on
23 uniform patrol and then, uh, went to Criminal Investigation
24 Division in 2005 and I've been there ever since.

25 Q. And what is your current position sheriff's ---

CHARLES GONZALEZ - DIRECT EXAMINATION BY MR. UNDERWOOD

1 A. Uh, I work in Criminal Investigation Division in the
2 arson unit.

3 Q. Being in the arson unit have you ha -- undergone any
4 special training or education?

5 A. Yes, I have.

6 Q. Could you please summarize the specialized training and
7 education that you have.

8 A. I've been through to the National Fire Academy in
9 Maryland, uh, numerous times for fire investigation classes,
10 uh, forensic evidence investigation classes, uh, courtroom
11 testimony classes and also electrical classes for, uh, causes
12 of fire.

13 Q. And who are the different organizations that put these
14 classes together?

15 A. Uh, it's through the National Fire Academy, they they
16 host the classes there.

17 Q. And do you hold any certifications in the field of arson
18 investigations?

19 A. Yes, uh, ---

20 Q. What are those?

21 A. --- certified fire and explosive investigator and
22 certified fire investigator, also a certified fire
23 investigator instructor.

24 Q. Uh, what is your role in the arson unit Greenville
25 County?

CHARLES GONZALEZ - DIRECT EXAMINATION BY MR. UNDERWOOD

1 A. Uh, we go out investigate fires when requested by a fire
2 department or uniform patrol officers that are at the scene of
3 fires, anywhere from vehicle fires to, uh, building structure
4 fires to grass fires.

5 Q. And how many other people are in the arson unit?

6 A. Myself and Investigator Cannon.

7 Q. Is there another member of your team?

8 A. Uh, yes, I also have a, uh, a canine, accelerant
9 detection canine Misty.

10 Q. Alright, and has Misty had any kind of training to be an
11 accelerant detection canine?

12 A. Yes, uh, January 31st of 2011 I went to Kasseburg Canine
13 which is in New Market, Alabama which is a suburbs of
14 Huntsville, Alabama. I went there for six weeks of accelerant
15 detection training. Uh, we started from the very beginning
16 with her. Uh, she she had, uh, obedience training before
17 being imported from Holland but after that, uh, she was
18 exposed or imprinted on ignitable liquids and from that point
19 on is when I begin training with her from the beginnin' of the
20 imprint to the end 'til certification.

21 Q. And what type of training have you undergone with
22 Misty?

23 A. Uh, we do, uh, from there, uh, it's we're exposed her to
24 a minimum sixteen different ignitable liquids while there in
25 Alabama, uh, and went through the process of of teaching her

CHARLES GONZALEZ - DIRECT EXAMINATION BY MR. UNDERWOOD

1 to search for those ignitable liquids and, uh, when she found
2 them to the point of bein' rewarded for, uh, I also durin'
3 that time learned how to know when she is alerting on
4 ignitable liquids and when she isn't alerting on 'em and how
5 to handle her in workin' in fire scenes. After I finished
6 there with her I went to Austin, Texas where I work with the
7 State Fire Marshal's Office there doin' some more specialized,
8 uh, fire scene, actual fire scene training with her and after
9 training with the Fire Marshal's Office there, uh, I certified
10 in Austin, Texas with her and came back to Greenville March
11 17th, 18th of 2011.

12 Q. And and throughout the process of the time that you have
13 had Misty has she undergone any kinda certification process?

14 A. Yes, every every year in the Fall, usually October,
15 November, uh, I got to lately it's I went to Virginia once
16 then, uh, after that I went to Charleston and then to, uh,
17 Douglas County Georgia where she certifies each year with the,
18 uh, North American Police Work Dog Association also called
19 NAPWDA.

20 Q. Is that a recognized organization for certification of,
21 uh, police canines?

22 A. Yes, it is.

23 Q. When was she first certified?

24 A. March, I went I finished at the the 11th a March in
25 Alabama, I drove out there so I started that Monday at around

CHARLES GONZALEZ - DIRECT EXAMINATION BY MR. UNDERWOOD

1 14th or 15th of March 2001 is when she first certified.

2 Q. So in 2001?

3 A. I'm sorry, 2011, my bad.

4 Q. And has she remained and kept current her
5 certification ---

6 A. Yes, ---

7 Q. --- since that time?

8 A. --- she does. She certifies, uh, each year. As I said
9 before her year's time is out, she certifies.

10 Q. Do you undergo any part a that certification process?

11 A. Yes, it's not just the dog, it's the, it's the the canine
12 and the handler itself 'cause you can't do one without the
13 other. Uh, when we go to these certifications or these these,
14 uh, canine workshops, uh, they bring in a master trainer from
15 different locations, uh, there's only two: there's there's one
16 in California, one in Texas, I go to these workshops every
17 year, so, uh, this particular master trainer he uses, he
18 evaluates the dog and myself, how I handle the dog, how the
19 dog searches and how I reward the dog once she, uh, finds the
20 the trained odor and that master trainer will place these
21 odors out in different venues such as interior finds, uh,
22 outside, we do open area searches and, uh, building searches
23 with her and he evaluates those and and grades her on on those
24 and it's, uh, she can't miss. She can't miss an odor of those
25 odors that they put out, if so then she would fail the

CHARLES GONZALEZ - DIRECT EXAMINATION BY MR. UNDERWOOD

1 certification.

2 Q. Okay. Would would she also be penalized if she falsely
3 alerted?

4 A. Yes, well that be the same as her not finding a an odor
5 because the the trainer knows where the odor is. I have to
6 tell the trainer exactly where the odor is. Once she alerts I
7 have to tell him it's -- I can't say it's in this room, I have
8 to tell him where the actual odor's at.

9 Q. Based on the way ---

10 A. Based on ---

11 Q. (Indiscernible cross-talk.)

12 A. --- the way the the dog works and alerts.

13 Q. And can you describe the process on how the dog makes an
14 alert, just the alert process.

15 A. Uh, once she finds the the odor that she is trained to
16 find she will either lay down or sit down. She will pinpoint
17 with her nose through, uh, her respirations and her breathing
18 will change and she will actually pinpoint the spot to where
19 the odor's at and then she'll, at that point she'll lay lay
20 down or sit down.

21 Q. And how many fire scenes have you worked with Misty?

22 A. A hundred and forty-two.

23 Q. And outta those hundred forty-two times over the last few
24 years you've been working with her has she ever had a false
25 alert?

CHARLES GONZALEZ - DIRECT EXAMINATION BY MR. UNDERWOOD

1 A. No, she hasn't.

2 Q. Has she always been reliable as far as her alerting
3 process?

4 A. Yes.

5 MR. UNDERWOOD: Your Honor, at this time I would offer
6 Investigator Gonzalez as an expert in the handling of
7 accelerant detection canines.

8 MR. RIORDAN: Subject to my earlier objection, Judge.

9 THE COURT: Okay, sir.

10 MR. RIORDAN: Thank you.

11 THE COURT: Alright, I'm gonna sustain or excuse me, I'm
12 gonna find that this well officer is a expert in dog handling
13 and in the field described by counsel and, Ladies and
14 gentlemen, just as I told you earlier in this case, uh,
15 normally witnesses are limited to what they can testify to
16 which is what they see, they hear, they saw and felt, in this
17 case because this officer's been found to be an expert in the
18 field of dog handling, he'll be allowed to give a a ex -- his
19 opinion in that field. Expert testimony is just like any
20 other testimony you will hear in this case, you may accept it,
21 you may reject it or give it as much weight as you think is
22 appropriate. Okay, sir.

23 MR. UNDERWOOD: Thank Your Honor.

24 BY MR. UNDERWOOD:

25 Q. Investigator Gonzalez, how did you become involved with

CHARLES GONZALEZ - DIRECT EXAMINATION BY MR. UNDERWOOD

1 this case involvin' a July 27th 2012 fire at [REDACTED] Riley Smith?

2 A. Uh, uh, Investigator Cannon, uh, called me by telephone.

3 I was actually, uh, bomb training that day, was on a Friday,

4 and said that he needed the canine at this fire scene, uh, for

5 me to, uh, do a search with her. Uh, he told me that it was

6 a, uh, highway patrolman's house and that three people

7 attempted to burglarize the house and then the house was set

8 on fire. I went, I left bomb training and drove straight to

9 Riley Smith Road. Uh, once I got there ---

10 Q. And and were were you ever dispatched to Riley Smith
11 Drive?

12 A. No, I wasn't.

13 Q. You were going solely based on the phone call?

14 A. Yes, that's typical how I go to fire scene.

15 Q. Are you considered the primary investigator?

16 A. On this case?

17 Q. Yeah.

18 A. No, I'm not.

19 Q. So were you called in to assist ---

20 (Indiscernible cross-talk.)

21 A. Assist, yes.

22 Q. Okay. Alright, what happened when you arrived at
23 incident location?

24 A. When I arrived, uh, there were lots a cars out by the
25 roadway, there was news media I remember correctly, uh, that

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1 there were some highway patrol cars there, there were, uh,
2 numerous people in the yard and I don't recall if the fire
3 department was still there or not, uh, it's possible they may
4 have been when I got there. Uh, once I arrived on scene I
5 pulled into the driveway in the front yard and exited my
6 vehicle and started walking towards the rear of the house
7 'cause I didn't see anyone, I didn't see Investigator Cannon
8 out front so I started walkin' towards the rear.

9 Q. Okay, and do you remember what time that was?

10 A. It was mid-mornin', uh, it was after 9, I'd say maybe
11 9:30, 10:00 maybe when I got there if I remember. I mean, I I
12 don't, I'd have to look at some, maybe some pictures that were
13 stamped but I could -- it's somewhere around that mid-mornin'
14 time.

15 Q. Alright, now when you first got there what was the first
16 thing you did?

17 A. I started walkin' toward the back a the house and that is
18 when, uh, I was met, uh, just in the driveway, uh, by a female
19 who I later learned, uh, was the victim Paula Rose. I didn't
20 know that until after my encounter with her.

21 Q. Okay, and tell the jury what happened in that encounter.

22 A. Uh, when I I walk into the back a the house, uh, when I
23 approached her, uh, when she asked me how tall I was and kinda
24 caught me off guard and I told her 6 feet tall and I forget
25 her remarks after that, somethin' to the effect of, Why, you

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1 don't look 6 feet, or somethin' to that effect and I kinda, it
2 was, thought it was kinda weird that this person's sayin' that
3 to me. I had no idea who it was until later that it was, uh,
4 uh, Paula and that was after I went to the back a the house
5 and found Investigator Cannon.

6 Q. And is is that woman in the courtroom today?

7 A. Uh, yes.

8 Q. Could you point her out and identify what she's wearing.

9 A. She has that, uh, pinkish, orange colored dress over here
10 (indicating) ---

11 MR. UNDERWOOD: Your Honor, I'd ask the record ---

12 A. --- and sweater.

13 MR. UNDERWOOD: --- reflect that he's identified the
14 defendant.

15 THE COURT: The record so reflects.

16 MR. UNDERWOOD: Thank Your Honor.

17 BY MR. UNDERWOOD:

18 Q. Investigator Gonzalez, how did you begin your
19 investigation of that scene?

20 A. Well after talkin' with Investigator Cannon, he told me
21 that, uh, little more details as far as the someone tryin' to
22 break in the house and or I'm sorry, break into the safe a the
23 house and then, uh, the house bein' set on fire, then I walked
24 around the house, uh, checking for hazards 'cause what I do I
25 was gonna, I was gonna run a canine, so typically what I'll do

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1 is walk around the exterior of the house and if I'm gonna run
2 interior then I'll go through the interior also to make sure
3 that how much fire debris is there as far as glass and nails
4 and those type a things to determine whether or not I'm gonna
5 put my, put shoes on the dog prior to allowin' her to work,
6 uh, so I walked around the exterior a the house, uh, looking
7 at the fire damage. I saw the front porch had some fire
8 damage, it wasn't to the very minimal damage, more of a a
9 scorching or charring of some a the vinyl siding and some a
10 the the wood decking on the floor, that was on the front, also
11 I saw like a red plastic container typically used to carry
12 like gasoline in or kerosene, it was laying on the front
13 porch, uh, then on the back porch, a lot more damage on the
14 back porch in back a the house. Uh, from the back a the house
15 you could look at the house and I could tell where the fire,
16 there's a lotta fire debris on the porch from, uh, looked like
17 glass and other, uh, items: vinyl, burnt vinyl sidin' that may
18 have fallen off the house. I could see a pattern on the back
19 a the house what we typically call a "V- pattern" that kinda,
20 it if you look at a picture, it kinda almost like a V, it'll
21 point to where the fire burns and chars, it will point you
22 back to a particular type, particular area, you know, of of a
23 fire where a fire originates usually ---

24 Q. Alright, ---

25 A. --- so, uh, ---

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1 Q. --- and let me, let me stop you just there for a second.
2 Going back to the front of the house when you were on the porch,
3 uh, you said that you saw a gas can?

4 A. Yes.

5 Q. Alright. Alright, did you see any gloves on the porch?

6 A. I don't think there are any gloves on the porch. I know
7 there's like a dog bed, a burnin' dog bed and a dog bowl and
8 container.

9 Q. And when you moved around to the back, still just you,
10 is the, is the dog still in your truck?

11 A. Yeah, the dog's still in the vehicle at the time.

12 Q. Okay, so you moved around to the back and you see what
13 you describe as a V-pattern pointing to a point of origin.

14 A. Correct.

15 Q. Where was that pointing to?

16 A. That was in like a a little screened in sunroom type area
17 on the back porch itself on the back deck. If you're looking
18 at the house, it's kinda more to the front -- if you look at the back
19 of the house, it's kinda more to the left side of the house, uh,
20 there's a covered porch, shingle roof covered a screened-in
21 porch. Uh, so after lookin' that area and I saw that there
22 was a lotta fire debris but, uh, didn't really concern me much
23 about, uh, workin' the dog there so I didn't have any
24 hesitation of of workin' the dog on that, on this particular
25 fire scene.

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1 Q. Alright, now how did you go about, uh, well did you do
2 anything else before you brought the dog out?

3 A. Uh, no, I don't think I did.

4 Q. Okay. So after you've cleared the area, you've made sure
5 that it's a safe environment, uh, how do you go about, in
6 general terms, how do you go about using the dog?

7 A. Uh, after it was cleared I knew where I was gonna search
8 I'm sure that nobody was, uh, in those particular areas, I
9 mean, there were people there but it -- there -- it doesn't
10 affect her to work around people. Uh, I got the dog outta
11 the, outta the vehicle on a leash and went to the I believe we
12 started on the back porch I believe is where we started takin'
13 our samples first. Uh, I made, I had the dog sit down prior
14 to me searchin' and then I gave her the command to start
15 working, uh, which was usually I would motion my hand and tell
16 her to, uh, go find it or where's it at and allowed her to
17 work. I took the leash off of her so I allowed her to go and
18 work on her own which is how I usually work her in a, in a
19 open area like that so she after I took her off leash she
20 immediately she starts, uh, working. She'll start smelling,
21 she'll just go in a area by herself, uh, and she immediately
22 went over to the, on the, on the back deck there a the house
23 and, uh, alerted and indicated on on side a the house there,
24 the deck area, so pulled her off, I rewarded her and allow ---
25 Q. How do ya re -- how do ya reward the dog? do ya give her

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1 food?

2 A. No. Once she, once the dog, uh, alerts or indicates then
3 I will, what her reward is a piece of a rubber hydraulic hose,
4 it's probly 18 inches long, 'bout inch, inch and a half
5 diameter, it's just a a really heavy hydraulic-type rubber
6 hose. Uh, once she finds that then I will go up and I will
7 reward her with that that rubber hose and, uh, she'll take it
8 from me and we'll play a little game of tug and and, you know,
9 I'll, uh, uh, pet her and and give her, you know, the kudos
10 for for doin' a good job, then I'll I'll make her sit and I'll
11 take it back from her and allow her to keep, uh, working ---

12 Q. Okay, now ---

13 A. --- so ---

14 Q. --- but as far as the reward goes, does she ever get the
15 hose when she doesn't, uh, make a proper alert?

16 A. No, that that that hose and I have several of 'em is, uh,
17 the only time she ever gets that to even play or anything is
18 is when she is working and she finds an an an odor that she's
19 been trained to find. At no other time does she play with it
20 at home or or fetch or anything with it. Now she'll play with
21 other items like balls and sticks and stuff but never with
22 that, that's that's her drive to find odor is that rubber
23 hose.

24 Q. Does she associate the odor of ignitable liquids with the
25 hose?

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1 A. Uh, well yeah, that's her, she associates that as, Hey, I
2 get that if I find my my my, I get that reward if I find my
3 odor that I'm ---

4 Q. And ---

5 A. --- trained to find.

6 Q. --- and has she ever falsely alerted?

7 A. No.

8 Q. Okay. Uh, so you you comment that she made an alert on
9 the back porch, ---

10 A. Yeah.

11 Q. --- how did she make that alert?

12 A. She at one one of 'em she sit down but I I I I continued
13 to allow her keep searchin', she just kept alerting and
14 multiple, multiple, she just kept on. I mean, she would after
15 multiple times I I quit searchin' with her 'cause she just
16 every time I will take her I would reward her, uh, she'd go
17 back, she'd go to another spot and go to another spot or back
18 to the same spots over and over, uh, alerting so ---

19 Q. And what are you able to determine by the the multiple
20 alerts?

21 A. That there, when there's multiple alerts like that in an
22 area like that that it's most likely, uh, an igni -- well it
23 is ignitable liquid 'cause what she's trained to find is
24 ignitable liquids, uh, what's poured or spilled on that back
25 porch area.

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1 Q. Does does that indicate that, uh, a wide field of
2 liquids or is it tiny droplets or what what comes up?

3 A. It can be, sh -- it can be just a a smear of like she, if
4 you take a one drop, she'll she'll, she doesn't know if it's
5 one drop or if it's a gallon, she just knows that it's a an
6 odor, she doesn't distinguish between how or quantity.

7 Q. So even a small amount she'll alert?

8 A. Yes.

9 Q. And again, can you describe what she does when she
10 alerts.

11 A. She will, uh, that most a the time if there's an odor and
12 it's ground level, meaning on the floor or against the wall,
13 most of the time with that she will, when it's like that, she
14 will lay down but she will sit also, there's no difference. I
15 mean, there's no thing that if it's a certain type of odor,
16 she doesn't sit versus lay on different type of odors, it's
17 just whatever movement she's findin', it, you know, she may
18 decide she wants to lay down or sit down but she do -- I mean,
19 before that she pinpoints, she puts her nose, she does her her
20 little moving and breathin' and she pinpoints that spot and
21 she'll lay down or sit ---

22 Q. And ---

23 A. --- and ---

24 Q. --- are you trained how to recognize her pinpoints?

25 A. Yes, I I watch her. I mean, when she's working I'm not

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1 watching other people what they're doing, I'm watching the dog
2 constantly for, uh, changes in her behavior while she's
3 working.

4 Q. Now generally do you film or photograph the dog while
5 she's working?

6 A. No, I do not.

7 Q. Why not?

8 A. Uh, 'cause I'm watching the dog and I can't photograph
9 the dog while I'm watching the dog. I just 'cause I don't do
10 it, uh, typically no one else does it. There's times that she
11 has been photographed, uh, while I'm workin', it just depends
12 if someone happened to has a camera takin' pictures while
13 she's workin' but I do not, uh, photograph while she's workin'
14 and while she's alertin' at every spot, I just don't do
15 that.

16 Q. So if she's photographed, is it always someone else who's
17 doing it?

18 A. Yes.

19 Q. A -- to your knowledge were any photographs taken of
20 Misty at this crime scene?

21 A. Yes, Inves ---

22 Q. And that's -- I'm sorry ---

23 A. --- Investigator Cannon took photographs.

24 Q. So was Investigator Cannon accompanying you as you were
25 running the dog?

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1 A. Yeah, he was there on the back porch, yes.

2 Q. And after Misty alerted on the back porch did you and
3 Investigator Cannon take any samples from the back porch?

4 A. Yes, we did. Uh, ---

5 Q. Two ---

6 A. --- two or three samples were taken from different areas
7 of the back porch, one of 'em near the threshold of the, uh,
8 entry, screen door entry to the little sunroom and there was
9 another one taken along the edge of the wall of the house
10 where the deck meets on the back porch.

11 Q. And were those items actually collected by Investigator
12 Cannon?

13 A. Yes.

14 Q. Did you have an opportunity to take Misty to the front
15 porch where the other fire ---

16 A. Ye ---

17 Q. --- scene was?

18 A. --- yes, after that I went to the front porch and again
19 the same thing. Uh, I took her off her leash and gave her the
20 command to search, uh, she went up on the front porch and
21 immediately started, uh, searching then alerting and then she,
22 uh, came to an indication at, uh, multiple different spots.
23 She alerted, uh, around the door of the house, along the wall
24 of the house, uh, even on the wood decking of the house where
25 the, between the cracks of the wood decking, on just those

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1 multiple spots on the front porch that she also alerted to and
2 I told Investigator Cannon that he needed take samples from,
3 uh, these particular spots.

4 Q. Okay, and did Investigator Cannon take samples?

5 A. Yes, he did.

6 Q. Okay, and what was done with those samples to your
7 knowledge?

8 A. Uh, after he collected 'em they were, uh, submitted to
9 our property and evidence and then, uh, we later took them to
10 SLED which is in Columbia to be analyzed.

11 Q. Now while you were working Misty, uh, were there any
12 other dogs in the area?

13 A. There were dogs there but I didn't s -- I want to say
14 they were put up or somewhere prior to me workin' her 'cause I
15 wouldn't have gotten her out with with another dog loose in
16 the yard 'cause that will distract her and she, uh, would have
17 been more interested in the other dog than working.

18 Q. Okay, so by by the time that you were working with the
19 dog any other dogs or any area were were at least temporarily
20 taken away?

21 A. Yes.

22 Q. Okay. After you were finished, uh, collecting those
23 samples at the house that morning, uh, what was the next step
24 of your involvement?

25 A. After we left the scene?

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1 Q. Well did ya do anything else at that time?

2 A. Aft -- uh, after, uh, using the canine, I, yes, I I put
3 the canine up and then I think whatever Investigator Cannon
4 needed me to help with I ask him what he needed help with so I
5 remember at some point while we were there after I put the dog
6 up, uh, talkin' with Homer because on the back porch there was
7 a a a a melted yellow container like a, almost like a
8 gasoline-type container, like a big plastic-type, uh,
9 container, uh, so we ask or I did, I ask Homer and you could
10 tell that that container it smelled like, uh, it smelled like
11 a heavy petroleum like diesel or kerosene, uh, so I ask Homer
12 if he had a yellow container like that and he told me that he
13 did, that it was around here somewhere, uh, so we never found
14 a yellow container anywhere around there and, again, I ask him
15 about it and he said that they use that container, Paula uses
16 that container to burn debris in the yard, uh, so they were
17 clearin' off some bushes and stuff in the yard so after that I
18 went out into the back yard and observed where some like hedge
19 rows and bushes and small shrubs had been cut down and there's
20 a a large burn pile there, uh, like he had mentioned, uh, of
21 burnin' debris and you could tell that someone had been
22 burnin' limbs and sticks in that debris 'cause there were some
23 old ones there, it appeared to been rained on numerous times
24 prior to or its last use.

25 Q. So so it appeared that in the area on more than one time

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1 since the last time somethin' was burned there?

2 A. Yes.

3 Q. And wha'd you base that on?

4 A. Uh, you could look at there and see a campfire after it's
5 been rained on, there's no fresh, uh, ashes there, it's just
6 all, uh, different, all this stuff's just washed flat, it's
7 not disturbed at all.

8 Q. When you concluded that morning at the crime scene, uh,
9 what did you and Investigator Cannon do after that?

10 A. Well we, uh, after that we left and and went to lunch and
11 I don't remember where but I know we left and started, uh,
12 talkin' about the case some, uh, kinda some of the points that
13 we saw, uh, that after we left we started thinkin' about that
14 really didn't make sense, uh, especially on this type of a
15 fire and this type of a crime where, you know, masked people
16 were tryin' to, uh, break in a safe, uh, and then the house
17 bein' set on fire so we started discussin' some a the things
18 about the safe, uh, then the actual fire itself of, uh, people
19 how they set the fire to the front porch and back porch versus
20 if they were there tryin' to conceal a crime that they were
21 doin' then why not the garage also, uh, so started talkin'
22 about things like that and then the safe if they're tryin' to
23 break in the safe then why wasn't the safe, uh, damaged,
24 heavily damaged, uh, ---

25 Q. And ---

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1 A. --- s ---

2 Q. --- just to to clarify, was it you and Investor [sic]
3 Cannon alone having this ---

4 A. No, ---

5 Q. --- discussion?

6 A. --- and Investigator Morgan also.

7 Q. Okay, and what was his role?

8 A. Uh, he is a property crimes or burglary investigator,
9 that's his, what he does every day so he knows that type of of
10 stuff, the burglary and stuff, and and he, you know, he says
11 that, you know, this, from all the burglaries and stuff that
12 he's investigated this didn't make sense or of what we were
13 seeing at the scene versus what we, you know, were initially
14 told, uh, so we decided we needed to go back and do a little
15 further follow-up investigation.

16 Q. Okay, and a a moment ago you said you were discussing
17 things that didn't seem right to you, uh, you mentioned
18 something about concealment, what is a concealment fire?

19 A. Concealment fire is if someone breaks in a house or, for
20 example, someone breaks in a house or business or and they're
21 tryin' to hide fingerprints or cover their tracks and they'll
22 set a fire to dispose of or to hide that, uh, same with, uh,
23 like a body. If someone that would have, you know, go in and
24 they've killed a person and they want to thinkin' they can
25 dispose of the body and all evidence by setting the house or

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1 on fire, uh, they'll set set a fire to conceal what they've
2 done or touched to so that it can't be connected to that
3 particular person.

4 Q. And when a concealment fire happens, is it the actual
5 item that they're trying to conceal that is burned?

6 A. Yes.

7 Q. Okay. In a concealment fire are other things lit on fire
8 instead of the actual evidence?

9 A. Uh, typically the area if it's a house then, I mean, say
10 for instance you broke in a house and you're, uh, broke into a
11 file cabinet they will try to destroy all a that plus that
12 entire room that they may have touched.

13 Q. Alright; and is that what happened at this particular
14 crime scene?

15 A. No, it wasn't.

16 Q. So after you had a discussion with, uh, Investigator
17 Cannon and Investigator Morgan, uh, what did you do to
18 follow-up on the investigation?

19 A. Then we went back to the house on Riley Smith, uh, we got
20 there, Homer was in the garage, uh, sitting in a a like a fold
21 up type chair, uh, Investigator Cannon had, uh, talked to him
22 about us comin' back there to do a follow-up investigation to
23 make sure we didn't miss anything the first time and, uh,
24 Homer consen -- signed a consent to search form and, uh, told
25 us to do whatever we needed to do. Uh, he, I don't think he

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1 ever came in the house and he stayed in the garage the entire
2 time that we were there, there's also a a gentleman there from
3 ServPro and he he was not working or doing anything when we
4 got there, he was, I think he was in the garage also when we
5 got there and he did not enter the house or do any type a work
6 while we were there. Uh, okay.

7 Q. Now when earlier that day, morning, first time you were
8 at the house ---

9 A. Right.

10 Q. --- did you take Misty inside the house?

11 A. No, I did not.

12 Q. Okay, and why not?

13 A. Because it appeared all, that all the crime, uh, the
14 setting of the fires were all exterior, uh, all on the front
15 porch and the back porch. I saw no need to go in the house to
16 do a search at that time.

17 Q. Okay. Now you came back the second time did you go in
18 the house with Misty?

19 A. Yes, I did.

20 Q. And why did you go in the second time?

21 A. Uh, to search for anything that may have been in the
22 house that, uh, could have been an ignitable liquid that may
23 have been on some items or clothes or shoes that were in the
24 house, uh, it could have since, you know, what we were talkin'
25 about earlier as far as the the things we saw didn't make

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1 sense or didn't fit the a concealment-type fire.

2 Q. Now at the time that you went in the house with Misty,
3 was anyone else with you?

4 A. Yes, uh, Investigator Morgan was, uh, with me.

5 Q. Where was Investigator Cannon?

6 A. Think he was outside talkin' to Homer I believe.

7 Q. Did Homer know that you were in -- going in the house?

8 A. Yes, he was ---

9 MR. RIORDAN: Object to the form as to what Homer's ---

10 THE COURT: Sustained.

11 MR. RIORDAN: --- knowledge woulda been.

12 BY MR. UNDERWOOD:

13 Q. Was Homer in a place that he would have seen you go in
14 the house?

15 A. Yes, he was sitting in the garage on a chair.

16 Q. Did you have to go past him to get into the house?

17 A. No, he was over to the left side of me when I went, ---

18 Q. But did ---

19 A. --- he ---

20 Q. --- you have to cross his line of vision to get into the
21 house?

22 A. Yes, I mean, I could see him when when I'm standin' in
23 fronta the house in the garage, he was, he was right there on
24 the left side.

25 Q. And was he there at the same time that you and Misty went