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STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

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Appeal from Greenville County

SC Court of Appeals

Honorable R. Lawton McIntosh, Circuit Court Judge

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

CHARLES GONZALEZ - DIRECT EXAMINATION BY MR. UNDERWOOD

1 into the house?

2 A. Yes.

3 Q. So he was in a position to be able to see you?

4 A. Yes.

5 Q. Okay, so when you go into the house you say Investigator
6 Morgan was with you?

7 A. Yes.

8 Q. Did you work the dog in the house?

9 A. Yes, I started at the garage door that we -- the walk-in
10 door that goes into the house and while workin' her off lead I
11 allow her to to go search. Uh, we went into the house, she
12 went through the kitchen area searchin', uh, seemed like
13 there's another little room right between the kitchen area and
14 then you go into a bedroom which woulda been like a straight
15 shot from the door all the way toward the back a the house,
16 uh, so she ---

17 Q. Now now you mentioned, second now, that ServPro was
18 there, ---

19 A. Yeah.

20 Q. --- did it appear that ServPro had cleaned up those areas
21 yet?

22 A. I didn't see anywhere anybody cleaned up.

23 Q. Okay.

24 A. It didn't look like anyone had, uh, done any cleanin' in
25 there.

1 Q. So you started at the garage and you worked through the
2 house toward a bedroom.

3 A. Yeah, I did. She's searchin' the kitchen, she searches
4 each room, I'll I'll clear that room prior to goin' to the
5 next room, uh, and then on to the next room.

6 Q. Now you say clear a room, does that ---

7 A. Mean I'll I'll allow her search that entire room before
8 going to the next room.

9 Q. Okay. Now in those rooms that you've listed so far prior
10 to getting in the bedroom, did Misty alert at all?

11 A. No, she did not.

12 Q. Did you take Misty into the kitchen area, uh, where the
13 fire had actually come into the house?

14 A. Yeah, she, yes, she went by all that, she searched
15 that.

16 Q. Alright, did she alert there?

17 A. No, she did not.

18 Q. Did Misty make any alerts in their house?

19 A. Yes, once we went to the, to the -- to that bedroom, uh,
20 which appeared to be the master bedroom she started around on
21 the left left-hand side a the wall, uh, when she comes around
22 and she went over to a pair of, uh, brown leather like
23 moccasin type of like bedroom shoes, kind of light tan
24 colored, uh, like leathery with a fur type inside a a shoe.
25 Uh, she she alerted to those, she laid down, uh, so I rewarded

CHARLES GONZALEZ - DIRECT EXAMINATION BY MR. UNDERWOOD

1 her and I pulled her off and allowed her to to to continue
2 searchin' bedroom, she circled around and went right back to
3 the shoes again, uh, so I rewarded her again and pulled her
4 off a that and allowed her to finish searchin' the rest of the
5 bedroom and she was wantin' to go back so I I wouldn't let her
6 go back the third time, uh, so we finished searchin' the rest
7 of the rooms downstairs and then I went upstairs with her and
8 she searched the upstairs room then we came back outta the
9 house, that's when I told Investigator Cannon that she alerted
10 to those shoes in the bedroom, that he needed to collect
11 those.

12 Q. Okay, and in what way did she alert this, on this
13 occasion?

14 A. Uh, she laid down.

15 Q. And was Investigator Morgan present when that took
16 place?

17 A. Yes, he was, he was behind me or to the right or to the
18 right of me.

19 Q. Did Investigator Morgan take any photographs?

20 A. Uh, no, he did not.

21 Q. And earlier in the day when there were photographs taken
22 did -- who took those photographs?

23 A. Uh, Investigator Cannon.

24 Q. And was he present during this alert?

25 A. Uh, no, he wasn't.

CHARLES GONZALEZ - DIRECT EXAMINATION BY MR. UNDERWOOD

1 MR. UNDERWOOD: May I approach the witness, Your Honor?

2 THE COURT: Yes.

3 (Whereupon, defense counsel examined the exhibits.)

4 MR. RIORDAN: No objection.

5 THE COURT: What exhibit numbers are those?

6 MR. UNDERWOOD: Your Honor, these are Exhibits, State's
7 Exhibit 7, 6, 8, 10, 9, 11 and 12.

8 THE COURT: Alright, they'll be admitted without
9 objection.

10 (State's Exhibit Nos. 6, 7, 8, 9, 10, 11 and 12,
11 photographs, admitted into evidence.)

12 BY MR. UNDERWOOD:

13 Q. Investigator Gonzalez, can you identify what each of
14 those, uh, photographs are by exhibit number, please.

15 A. Uh, Exhibit No. 12 is a picture of of Misty on the back
16 porch. As she's searchin' the back porch area, as she comes
17 around here where this (indicating) little brick ledge is is
18 the threshold to the screen door that goes onto the sunroom
19 which is on the top here (indicating) above my hand, the
20 sunroom here, (indicating), uh, the back porch that leads down
21 back toward the garage area at the bottom, that's she's on the
22 back porch near the screen door.

23 Q. And this was taken in the morning?

24 A. Yes, this was the morning time.

25 Q. Okay, and what's the next exhibit?

CHARLES GONZALEZ - DIRECT EXAMINATION BY MR. UNDERWOOD

1 A. Exhibit No. 11 and this is, this (indicating) is Misty
2 where she's alerted to the, she's lookin' back at me now for
3 reward. Uh, she has alerted to the the where the brick meets
4 the wood right here (indicating) at the base of the screen
5 door on the back porch sunroom area.

6 Q. And the next exhibit, please.

7 A. Exhibit No. 9 and this is when she is is searching and
8 she's about to alert to this area where this yellow melted
9 container is right here (indicating) and it is, uh, there's a
10 window right here (indicating) to the house so to her left
11 over in this (indicating) corner is where the threshold that
12 she earlier alerted on with the brick threshold, again, kinda
13 a little bit further back over this (indicating) way.

14 Q. And that yellow container that she's about to alert ---

15 A. Yeah.

16 Q. --- was that collected?

17 A. Yes.

18 Q. By who?

19 A. I think forensics collected that one.

20 Q. But it was collected by law enforcement?

21 A. Yes, that -- yeah, that was collected also.

22 Q. And the next exhibit.

23 A. This was the one that I've asked, I mentioned earlier
24 that I'd asked Homer about the, this is the yellow container
25 that I was talkin' about.

CHARLES GONZALEZ - DIRECT EXAMINATION BY MR. UNDERWOOD

1 Q. Okay.

2 A. Uh, Exhibit No. 10, again this is Misty alerting
3 indicating at the base of the wall where it meets the deck
4 right here (indicating) where a sample, you can see where a
5 sample was taken from this particular point right here
6 (indicating), screen porch being over here (indicating), you
7 can see the brick edge. Exhibit No. 8 this is Misty spinning
8 around, she's, uh, searching the back porch area, you can see
9 several people standing around in this (indicating) particular
10 area. I may have given her reward, she may have the, uh,
11 reward already in her mouth. Exhibit No. 6 ---

12 Q. And and, Investigator Gonzalez, uh, explain now that when
13 you found the, uh, location where Misty alerted in the
14 bedroom, what did you do about that alert?

15 A. I notified Investigator Cannon about it afterwards.

16 Q. And then what happened?

17 A. Uh, he came in, photographed it and then he brought cans
18 in and collected these shoes.

19 Q. And can you explain the ---

20 A. Yeah, ---

21 Q. -- those exhibits.

22 A. --- Ex -- Exhibit No. 6, uh, this (indicating) is the
23 bedroom and these two brown slipper shoes here (indicating)
24 are the the shoe that she alerted on in the bedroom.

25 Q. And in that photograph, uh, what are those paint cans all

CHARLES GONZALEZ - DIRECT EXAMINATION BY MR. UNDERWOOD

1 about?

2 A. These are, uh, gallon cans, uh, they're empty paint cans,
3 uh, that are lined, they have a gray lining in 'em and that's
4 what we use to collect, uh, all of our, well majority of our,
5 uh, fire debris for testing on these cans, we we use gallon
6 cans and quart cans.

7 Q. And did those slipper get placed into those cans?

8 A. Yes, these are, like I said they're paint cans, they're
9 clean, unused, uh, cans and the slippers, one one slipper was
10 placed in each can, exhi -- Exhibit No. 7, uh, again, another
11 picture that one shoe per can.

12 Q. And why don't you put 'em in the same can?

13 A. Because if, uh, when we collect shoes because if you put
14 'em both in one can, uh, sometimes some a the process that
15 shoes are made of, uh, chemicals are made of we'll test in a
16 lab for different type chemicals so if one shoe has say
17 ignitable liquid on it and you put 'em both in the can, you
18 can't differentiate which which shoe may have had a an
19 ignitable liquid so they're both placed in separate cans so if
20 you do get a reading from the lab that's, uh, some type of a
21 chemical that may have been in the process or the glue of
22 making these you can differentiate, uh, the results.

23 Q. So is that a method of preventing cross-contamination?

24 A. Yes.

25 Q. And what is your your next exhibit, please.

CHARLES GONZALEZ - DIRECT EXAMINATION BY MR. UNDERWOOD

1 A. That that was Exhibit No. 7, that was the last one.

2 Q. Alright, and are there -- is there gloves in that
3 photograph?

4 A. No, not in this one they're not or this one, they --
5 these appear to be the same picture, No. 6 and 7 appear to be
6 the same.

7 Q. Alright, so Investigator Gonzalez, the, uh, the slippers
8 they had or the moccasins, ---

9 A. Yes.

10 Q. --- who actually did the collecting of those?

11 A. Investigator Cannon.

12 Q. Okay. Were you present when they took place?

13 A. Yes.

14 Q. And was that based on the, uh, probable cause you found
15 from the alert of Misty?

16 A. Yes.

17 Q. And again, the fact that Misty alerted at the slippers
18 what did that indicate to you?

19 A. That she had smelled an ignitable liquid that she's been
20 trained to find.

21 Q. And did Misty alert anywhere else in the house?

22 A. No, that was the only place in the house.

23 Q. After those shoes were collected wha'd you do next?

24 A. Uh, we, after that, uh, Paula, I believe Paula had
25 arrived, uh, with, uh, Ellie Hansen and I wanted to also check

CHARLES GONZALEZ - DIRECT EXAMINATION BY MR. UNDERWOOD

1 her shoes that she had had on that day, uh, that morning, uh,
2 and she had on some open toed type sandal shoes so I ask her
3 if she would allow me to let Misty check her shoes so she took
4 her shoes off in the driveway and I use, allow Misty to search
5 those shoes and there's another pair of like, uh, Croc-type
6 shoes that were there in the driveway and she did not alert to
7 either one of those or either none of the four shoes that are
8 on the ground.

9 Q. Okay, so were there three pairs of shoes that Misty
10 examined?

11 A. Uh, well she we -- she checked, you're looking at Exhibit
12 No., Exhibit No. 7, uh, she checked there's a pair a tennis
13 shoes in there, she checked everything 'cause it's not just
14 shoes, she was checked everything, well actually there's a
15 brown shoe there too, she would have checked everything in the
16 room there.

17 Q. So outta the shoes in the bedroom and outta the shoes
18 outside the only shoes that were alerted to were the
19 moccasins?

20 A. Yes.

21 Q. Okay. After that exchange of examining Paula's shoes,
22 what did you do?

23 A. Uh, I don't know if I talked with Investigator Cannon,
24 that sometime durin' that we decided that we, uh, wanted to
25 get Paula's clothes that she had on that mornin' earlier that

CHARLES GONZALEZ - DIRECT EXAMINATION BY MR. UNDERWOOD

1 day when the, uh, incident occurred.

2 Q. And why did you wanna get her clothes?

3 A. 'Cause we, again, after examining the safe and the rest a
4 the house and and and talkin' about the crime that occurred,
5 uh, that there may be a possibility she may, there may be
6 ignitable liquids on her clothes, uh, things just weren't
7 makin' sense with the story she had told so we wanted to have
8 her clothes tested also to see if there were a liquid on,
9 ignitable liquid on those.

10 Q. And how did you go about getting to those clothes?

11 A. Uh, I ask her where the clothes were that she had on
12 earlier that day and she told me they were at Ellie's
13 apartment. Uh, I ask her where that was and she said I think
14 Oak Ridge, Oak Ridge Apartments off a Pelham Road, uh, so I
15 said, Alright, okay, we need to get those clothes, uh, where's
16 it at, she told me, I wasn't familiar with the apartments, uh,
17 so we we decided to leave. Uh, she was to go to the apartment
18 to get the clothes, uh, so I backed outta the driveway then
19 she backed out behind me and I drove toward, uh, Pelham, down
20 Riley Smith to Pelham Road and then took a right on Pelham
21 headed toward, uh, Interstate 3 -- 85. Uh, after driving a
22 little ways I saw an entrance to the apartments that she was
23 talkin' about so I pulled over and allowed her to go around me
24 so I could follow her to where this, where Ellie's apartment
25 was, so I followed into the complex, we went around into the

CHARLES GONZALEZ - DIRECT EXAMINATION BY MR. UNDERWOOD

1 back of the, uh, complex. After we pulled in, uh, after she
2 stopped, got out, I got out, uh, Ellie, I ask where Ellie was
3 and Ellie came from somewhere in the -- that courtyard area,
4 she was on the telephone, excuse me, uh, by that time Paula,
5 that her attitude and everything had changed, she, uh,
6 begin again ---

7 Q. And and before we get to that was anyone else there at
8 that time?

9 A. Uh, none the other investigators, no.

10 Q. Okay, were they on their way?

11 A. Yes, they were, uh, shortly behind me.

12 Q. Okay, so at this point the only people present are you,
13 the defendant and Ellie?

14 A. Yes.

15 Q. Okay. What took place then?

16 A. Uh, she became very loud and and was almost to the point
17 of screaming about, uh, us getting clothes and going in the
18 apartment and so I didn't understand why she was, what had
19 happened between that short period a time that she attitude
20 had changed like that to be, to become like that, uh, so while
21 I was tryin' to talk to Ellie about the apartment she was
22 contin -- excused me, continued to scream or be very loud and,
23 uh, she was, Ellie was on the phone and she told me that the
24 person on the phone wanted ---

25 Q. Uh, don't go into ---

1 A. Oh, ---

2 Q. --- something that Ms. Rose ---

3 MR. RIORDAN: Object to hearsay.

4 Q. --- told you or something that Ms. ---

5 THE COURT: Sustained.

6 Q. Who who told you what or who told you?

7 A. That ---

8 Q. Who you talkin' about?

9 A. --- uh, Ellie.

10 Q. Okay, don't don't go into what Ellie ---

11 (Indiscernible cross-talk.)

12 A. Okay, alright.

13 Q. Uh, so you're there, she's on the phone.

14 A. Yes.

15 Q. Alright, just tell me what happened.

16 A. Uh, shortly after that, uh, Investigator Morgan arrived
17 and then, I mean, it was just a matter, probly not even a
18 minute, I mean, it was just right after that Investigator
19 Morgan arrived and then Investigator Cannon and Investigator,
20 I'm sorry, Investigator Cannon and and Homer arrived about the
21 same time. Uh, think Homer, I don't know what he asked what
22 was goin' on and of course we told him that we wanted to get
23 into the apartment to get Ellie, I'm sorry, to get her clothes
24 from Ellie's apartment, uh, and Paula started screamin' that
25 to Ellie that, you know, that they don't, they're they're

CHARLES GONZALEZ - DIRECT EXAMINATION BY MR. UNDERWOOD

1 gonna go through your whole apartment, they're gonna, uh,
2 search your room for your sex toys and your dildos, that
3 that's all they wanna do in to go into your apartment for so
4 we explained to Ellie that that is not why we were wantin' to
5 go into the apartment, we wanted to go into the apartment
6 solely to retrieve the clothes that Paula had on earlier that
7 day.

8 Q. And after that explanation were you allowed to go in the
9 apartment?

10 A. Yes, after that I, on our consent to search forms I
11 explained and read every line on that form to Ellie, uh, and
12 she agreed to allow us to go into the apartment to get those
13 and at that time myself, Investigator Cannon and Morgan, uh,
14 Paula, Homer and Ellie all went upstairs to the apartment. We
15 went inside the apartment and right when you walk in there's a
16 kitchen area and on the other side a the kitchen's like a a
17 counter or bar-type counter and she told us there her clothes
18 were, it was a a open top type bag, uh, layin' there with the
19 clothes on top of it.

20 Q. And to rewind just a little bit, how did you actually
21 gain access into the apartment? was it locked? was it open?

22 A. Yeah, someone opened it with a key.

23 Q. Do you remember who?

24 A. No, I don't.

25 Q. The clothes that you were searching for had you seen, uh,

CHARLES GONZALEZ - DIRECT EXAMINATION BY MR. UNDERWOOD

1 Ms. Rose wearing those clothes earlier in the morning?

2 A. Uh, that morning she had o -- when I first met her, she
3 had on blue jeans and a black shirt that mornin'.

4 Q. And are those the clothes that she identified in Ellie's
5 apartment?

6 A. Yes, that she had on, it was, uh, blue jeans and a black
7 shirt.

8 Q. And where were those clothes located?

9 A. They were right by the kitchen counter, that bar counter,
10 uh, laying on a, it was either open top type purse or a, or
11 like a tote bag type, uh, bag laying on top a those.

12 Q. And were those items collected?

13 A. Yes, I collected both a those items, placed placed both
14 of 'em in separate, uh, gallon cans.

15 Q. And did you then take those items to well into evidence
16 and then later to SLED for ---

17 A. Yes, I, uh, after collecting those I filled out the the
18 pro -- the the consent to search form with items that were
19 taken and gave the copy of it to Ellie and we left.

20 Q. Okay. During either the search of the Rose's residence
21 or of Ellie's apartment, did you or anyone else make any
22 threats or coerce anyone to let you in?

23 A. No, we did not.

24 MR. UNDERWOOD: Permission to approach the witness, Your
25 Honor?

CHARLES GONZALEZ - DIRECT EXAMINATION BY MR. UNDERWOOD

1 THE COURT: Yes.

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

3 BY MR. UNDERWOOD:

4 Q. Investigator Gonzalez, now approaching you with State's
5 Exhibits 20, 21, 22 and 23, you recognize, uh, these items and
6 can identify each of 'em by exhibit number.

7 A. This one is a a gallon can, uh, ---

8 Q. Which exhibit number is that?

9 A. --- it's ---

10 Q. It's on the bag.

11 A. --- Exhibit No. 23. This (indicating) one is a gallon
12 complan -- gallon can collected by me at Oak Ridge Place
13 Apartments, uh, it's labeled, uh, CG-2 which is Charles
14 Gonzalez 2 for sample number 2 and it contains a black shirt.
15 Exhibit No. 22, this, I don't know whose initials those are.
16 This one doesn't look like one that was collected by me, says,
17 uh, these it's labeled, uh, shoes or boots, says right tan in
18 color slipper so this woulda been, uh, Investigators Cannon's,
19 it looks like it's BC-9 for Ben Cannon, looks like number 9 on
20 there.

21 Q. And would that be in reference to the mo -- one a the
22 moccasins slippers found in the bedroom?

23 A. Correct. This (indicating) one is Exhibit No. 21. This
24 is, uh, item CG-1 for Charles Gonzalez 1 which woulda been the
25 first sample that was taken at, uh, Oak Ridge Apartments and

CHARLES GONZALEZ - DIRECT EXAMINATION BY MR. UNDERWOOD

1 this is, uh, labeled blue jeans. And this (indicating) can
2 is, uh, Exhibit No. 20 and it is BC-10 for Ben Cannon number
3 10 and it is the, uh, shoe, the other, uh, slipper tan shoe.

4 Q. Now these these items are currently sealed, aren't
5 they?

6 A. Yes.

7 Q. Alright. Uh, do you recall how those particular seals
8 that are currently on those cans got there?

9 A. When we, after we collect 'em these cans and we seal the
10 lids then we as investigators put red tape on these cans. We
11 initial, date and case number on top a the can itself on the
12 edges of the tape so if it's pulled off you can tell but
13 there's more tape on here so my guess is probly at the lab
14 when they were checkin' 'em for ignitable liquids.

15 Q. And prior to this trial was the defense granted an
16 opportunity to look inside those cans and see what was in
17 there?

18 A. Uh, yes, I think we opened 'em up at the Law Enforcement
19 Center, they looked ---

20 Q. Were you, ---

21 A. --- at 'em.

22 Q. --- were you, were you present for that?

23 A. Yes.

24 Q. And was defense counsel present?

25 A. Yes.

CHARLES GONZALEZ - DIRECT EXAMINATION BY MR. UNDERWOOD

- 1 Q. Was the defendant present?
- 2 A. Yes.
- 3 Q. Was Homer Rose present?
- 4 A. Yes.
- 5 Q. Was an expert they had brought in present?
- 6 A. Yes.
- 7 Q. Okay, so is that when those seals were opened?
- 8 A. Yes.
- 9 Q. And were they then resealed afterwards?
- 10 A. Yes, and there's KB so I'm assumin' that's probly Kara
- 11 Benneck (phonetic) who is the, uh, property and evidence, uh,
- 12 supervisor.
- 13 Q. Was she who was assisting in that process?
- 14 A. Yes, so she woulda been the one to seal this back up.
- 15 Q. Are those steal -- seals still in tact?
- 16 A. Yes, they are.
- 17 Q. Uh, do you have a tool to open those cans, Mr. Riordan
- 18 would like opened?
- 19 A. Uh, I I left a tool earlier, a screwdriver somewhere.
- 20 Q. Alright, can you open each can please and, uh, verify
- 21 whether or not the contents in each can is what you personally
- 22 observed being put in those cans and collected.
- 23 A. Yes, this is Exhibit 20 and it is a shoe or a bedroom
- 24 shoe, tan colored shoe.
- 25 Q. You recognize the ---

CHARLES GONZALEZ - DIRECT EXAMINATION BY MR. UNDERWOOD

1 A. Yes, ---

2 Q. --- item in that can?

3 A. --- yes, that is a tan colored slipper shoe in this can.

4 Q. Is that one of the two shoes that Misty alerted to in the
5 bedroom?

6 A. Yes.

7 Q. And which exhibit is that?

8 A. Exhibit 20, 2-0.

9 Q. Alright, thank you.

10 A. This is Exhibit Exhibit No. 21 and it's a blue jeans, is,
11 uh, it says, uh, CG-1 which woulda been jeans that I collected
12 from the apartment.

13 Q. Do you recognize those jeans?

14 A. Yes.

15 Q. Are they the jeans in fact we collected?

16 A. Yes.

17 Q. And can you open the next exhibit, please.

18 A. Exhibit Number 22 is, uh, BC-9 which is the other
19 slipper.

20 Q. Okay, uh, Agent Gonzalez, if you could ---

21 MR. RIORDAN: Uh, yes.

22 MR. UNDERWOOD: Your Honor, at this time the State
23 would, I I think Mr. Riordan's ready to stipulate this point,
24 uh, ---

25 MR. RIORDAN: Yeah.

CHARLES GONZALEZ - DIRECT EXAMINATION BY MR. UNDERWOOD

1 MR. UNDERWOOD: --- we'd ask that 20 through 23 be
2 admitted.

3 THE COURT: Twenty, twenty-one, twenty-two and
4 twenty-three ---

5 MR. UNDERWOOD: Yes, Your Honor.

6 THE COURT: --- are admitted into evidence without ---

7 MR. RIORDAN: Uh, ---

8 THE COURT: --- objection.

9 MR. RIORDAN: --- well no, per per my earlier objection.
10 My my point was to move on. He asked if we needed to open 'em
11 here and I'd said we can wait the SL -- as I understand the
12 SLED lady will be here but no, everything -- we said we're
13 protected from yesterday, correct, ---

14 THE COURT: We made it ---

15 MR. RIORDAN: --- just for the record.

16 THE COURT: --- subject to the prior discussions. Okay,
17 go ahead.

18 MR. UNDERWOOD: Thank Your Honor.

19 (State's Exhibit No. 20 paint can with tan slipper,
20 State's Exhibit No. 21 paint can with blue jeans, State's
21 Exhibit No. 22 paint can with tan slipper and State's Exhibit
22 No. 23 paint can with black shirt admitted into evidence.)

23 BY MR. UNDERWOOD:

24 Q. And you don't need to open anymore cans, sir, so but
25 those items are in fact what was collected?

CHARLES GONZALEZ - DIRECT EXAMINATION BY MR. UNDERWOOD

1 A. Yes, they were.

2 Q. And you took those items to SLED for analysis?

3 A. Yes, we did.

4 Q. And do you have the results of that analysis prior to the
5 arrest in this case?

6 A. Yes.

7 Q. And we'll we'll be bringing the person who brought in the
8 analysis to discuss those results.

9 A. Okay.

10 Q. After you collected the items at the apartment, what else
11 did you do in this investigation?

12 A. Uh, I may have sat in on a one or two interviews with
13 Investigator Cannon where he had some witnesses or actually
14 people that had called 911 on this particular case, uh, come
15 to the office for interview, I was there for one or two a
16 those, uh, and also between those times I received a call from
17 the fire department, from Wade Hampton Fire Department, uh,
18 that ---

19 Q. Don't ---

20 MR. RIORDAN: Object to the form of any conversations
21 from other folks is hearsay, ---

22 A. Okay.

23 MR. RIORDAN: --- Judge.

24 THE COURT: I sustain that.

25 A. I contact ---

CHARLES GONZALEZ - DIRECT EXAMINATION BY MR. UNDERWOOD

1 BY MR. UNDERWOOD:

2 Q. Don't tell me what was said, I just wanna know what you
3 did.

4 A. --- I contacted the State Forestry Commission and asked
5 them for, uh, if they could tell me a r -- if there was a
6 record of controlled burns, uh, like, uh, when when you do
7 yard debris burns the the 800 number that you call Forestry
8 Commission to report that you're doin' burns, I called and
9 asked was there a record, uh, for that particular address and
10 gave him phone numbers of that address and cell phones, they
11 researched and sent me an email back with copies of the
12 controlled burns that were reported to them for that
13 residence.

14 Q. And when was the latest control burn?

15 A. I think it was May May somethin' of 2012 was the last one
16 that they received.

17 Q. And the fire occurred in July?

18 A. Yes.

19 Q. Thank you, Investigator Gonzalez, that's all I have this
20 time.

21 THE COURT: Alright, Mr. Foreman, ladies and gentlemen of
22 the jury, let's take about a 10-minute break and we'll bring
23 you back out here. Again, if you need anything, make sure you
24 ask the bailiffs, we'll make sure we give it to ya. Thank
25 you.

CHARLES GONZALEZ - DIRECT EXAMINATION BY MR. UNDERWOOD

1 (The following takes place outside the presence of the
2 jury.)

3 THE COURT: Alright, Officer, you may step down, may not
4 speak with anybody 'bout your testimony, okay, sir.

5 THE WITNESS: Alright.

6 (Whereupon, the witness left the stand.)

7 THE COURT: May I see the attorneys up here.

8 MS. ABEE: Yes, sir.

9 (Whereupon, a bench conference was held off the record.)

10 (Whereupon, a recess was taken.)

11 (State's Exhibit No. 24, photograph, marked for
12 identification.)

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

14 (Whereupon, the witness returned to the stand.)

15 THE COURT: Mr. Riordan, you ready?

16 MR. RIORDAN: Yes, sir, can't remember, he's not finished
17 though, is he? We we, did we interrupt or what?

18 MS. ABEE: He he just ended.

19 MR. RIORDAN: He did just end so I'm -- alright.

20 MR. UNDERWOOD: And you're up.

21 THE COURT: Could you bring the jury in please, ma'am.

22 THE BAILIFF: Certainly.

23 (The following takes place in the presence of the jury.)

24 THE COURT: Alright, Mr. Riordan.

25 MR. RIORDAN: Mark those.

CHARLES GONZALEZ - CROSS-EXAMINATION BY MR. RIORDAN

1 (Photographs marked Defendant's Exhibit Nos. 1 and 2 for
2 identification.)

3 MR. RIORDAN: May it please the Court.

4 CROSS-EXAMINATION BY MR. RIORDAN:

5 Q. Investigator Gonzalez, how lo -- remind me again how long
6 you been an investigator.

7 A. Uh, for 8 1/2 years.

8 Q. Alright, when you investigate cases, you wanna be
9 objective, right?

10 A. Sir?

11 Q. You wanna be objective, don't ---

12 A. Yes.

13 Q. --- ya? You wanna be fair and impartial?

14 A. Yes.

15 Q. You wanna explore all avenues in the case?

16 A. Yes.

17 Q. You wanna exhaust all possible explanations?

18 A. Yes.

19 Q. And doin' that you wanna maintain a great record,
20 right?

21 A. Yes.

22 Q. You wanna be timely with the information you record,
23 don't ya?

24 A. Yes.

25 Q. You wanna create the report contemporaneous with the

CHARLES GONZALEZ - CROSS-EXAMINATION BY MR. RIORDAN

1 information that you observe, don't ya?

2 A. Yes.

3 Q. That's the best way to do it, right?

4 A. Right.

5 Q. You wanna try to preserve that evidence in the best way
6 possible too, don't ya?

7 A. Yes.

8 Q. Preserve it in the best, I guess the easiest way so that
9 you, that others can see and not just rely on your testimony,
10 correct?

11 A. Correct.

12 Q. That's always better, isn't it?

13 A. Yes.

14 Q. Okay. Misty's last certification before this fire was
15 when?

16 A. October of 2013 I believe.

17 Q. Okay. And and again just last week I guess, Thursday
18 maybe, uh, I was provided I think five certificates that
19 Misty's ever had and your CV, right?

20 A. Yes.

21 Q. First information ever provided regarding you and your
22 dog to me, right?

23 A. Yes.

24 Q. That was all it was, wasn't it?

25 A. The CV and the certificates?

CHARLES GONZALEZ - CROSS-EXAMINATION BY MR. RIORDAN

1 Q. Yeah.

2 A. Yes.

3 Q. Alright. Uh, and the one that, and so the one that was
4 active you said the North American Police Work Dog
5 Association, correct?

6 A. Yes.

7 Q. Alright, and we talk about accelerants your dog is
8 trained per the certificate to alert on lamp oil, kerosene,
9 li -- uh, diesel fuel, gasoline, Coleman fuel, naptha, what's
10 naptha?

11 A. It's, like a, uh, an octane.

12 Q. Alright. And and it says charcoal lighter fluid but it
13 misspells charcoal, right?

14 A. I I didn't catch that, I didn't read it, no.

15 (Indiscernible cross-talk.)

16 Q. C-H-A-R-C-H-O-A-L.

17 A. O-A-L, charcoal.

18 Q. That's what on the certificate, ---

19 A. Yes.

20 Q. --- that's, uh, that's ---

21 A. Okay, so it's ---

22 Q. --- in this case, right? Alright, but al -- but the dog
23 also hits on paint thinner and lacquer thinner, ---

24 A. Yes.

25 Q. --- correct, common household items for people renovatin'

1 a house or paintin' a room, isn't it?

2 A. Yes.

3 Q. Okay. In fact, you talked to Ms., talked to Paula 'bout
4 what kinda work she did and she told ya she'd been remodeling
5 her home over the last couple years, right?

6 A. I don't re -- I don't recall that, no ---

7 Q. You don't recall that?

8 A. No.

9 Q. Did you go through the house and observe any rooms that
10 were being painted at the time a the fire?

11 A. If there was, may have been upstairs maybe, uh, but, you
12 know, it's wasn't that obvious and I think there may have been
13 some painting upstairs if I remember right but . . .

14 Q. Correct, and your dog, your dog, I mean, the dog's been
15 trained, he doesn't care what accelerant it is, right, when
16 it, when it, when it alerts, ---

17 A. Right, she ---

18 Q. --- correct?

19 A. --- doesn't distinguish.

20 Q. Okay. Alright, and you but you did eventually, uh,
21 create a report in this case, right?

22 A. Yes.

23 Q. In fact, you went out there early, earlier and you all
24 went through freely, there was no consent or anything like,
25 that consent to search signed, right?

CHARLES GONZALEZ - CROSS-EXAMINATION BY MR. RIORDAN

1 A. Uh, I I know we had consent but I don't know if there was
2 a form signed ---

3 Q. There was no ---

4 A. --- at ---

5 Q. --- form signed, was there?

6 A. Okay.

7 Q. Okay. Uh, and and and and it was a crime scene, right?

8 A. Yes.

9 Q. Alright, when you do your job, it's important to preserve
10 the crime scene, isn't it, ---

11 A. Yes.

12 Q. --- especially an arson case, you can have
13 cross-contamination easily, right?

14 A. Yes.

15 Q. I mean, your dog is sensitive to smell, all these
16 different things we talked about, correct?

17 A. Yes.

18 Q. They much more sensitive than us and that's why we use
19 dogs, correct?

20 A. Correct.

21 Q. Alright, but the machines that test the information
22 afterwards are much more sensitive, aren't they?

23 A. Well I've read articles that the dog's nose is more
24 sensitive than a machine but it's I ---

25 Q. Really?

1 A. Yes.

2 Q. Okay, which -- where where was that from?

3 A. There's there's articles I've read and even the trainers
4 I've heard people say that but ---

5 Q. You're not suggestin' this dog's ---

6 A. No, in no way I'm not sayin' that she is better than a
7 machine, no, I'm not.

8 Q. Say, -- well let me just get to it. You're not, you're
9 not suggestin' this jury that that -- this dog is is certified
10 as an expert that has better training than a machine, do ya?

11 A. No, I'm not sayin' that.

12 Q. You have no way to say that, do ya?

13 A. No, I don't.

14 Q. Nothing in your certificate suggests that's the case, is
15 it?

16 A. Correct.

17 Q. In fact, you you shouldn't even by your code, the the
18 different organizations you're in, you ca -- you don't really
19 even do it unless you get the thing sent off and get some
20 confirmation, right?

21 A. What's -- I'm sorry, what are ---

22 Q. You don't even -- you talk about the positive nature of
23 it, I mean, you've gotta do both.

24 A. Right, I don't, ya know, if she alerts I can't say what
25 that item is or or what she, that sample is until the lab

CHARLES GONZALEZ - CROSS-EXAMINATION BY MR. RIORDAN

1 confirms ---

2 (Indiscernible cross-talk.)

3 Q. No way to know in this case why your dog alerted on
4 anything that day, correct?

5 A. Correct.

6 Q. But when we got this call, when you got the call, I mean,
7 Paula had already said guys have been in the house and have
8 set the house on fire, correct?

9 A. Correct.

10 Q. I mean, you knew it was an arson case, right?

11 A. Correct.

12 Q. I mean, that the dog is, the dog is usually brought out
13 on a fire to see if there were accelerants, correct?

14 A. Uh, no, I use her even if I know it's an arson she's used
15 though.

16 Q. Okay, but but let me ask ya ya really didn't need to, did
17 ya?

18 A. No, I didn't need to.

19 Q. I mean, we got a red gas can on the front porch and a
20 yellow burned up diesel can on the back, don't we, ---

21 A. Yes.

22 Q. --- right?

23 A. Yes.

24 Q. And you go to the scene, I mean, you do write up a
25 report, go ahead and tell the jury when you wrote up your

1 report in this case.

2 A. I don't have it with me, it's dated, should be dated on
3 the bottom.

4 Q. Okay, you don't even have it with ya as you're here?

5 A. No, it's not ---

6 (Indiscernible cross-talk.)

7 Q. When's the last time you looked at it?

8 A. Earlier today.

9 Q. Di -- let me ask ya this: Do, I mean, you wanna be
10 transparent as an investigator, right?

11 A. Yes.

12 Q. You know anything that you create, documents that create,
13 you're supposed to turn that over to the prosecutors, right?

14 A. Yes.

15 Q. 'Cause persons that are charged they've got, we've got
16 the discovery rule, correct?

17 A. Correct.

18 Q. As soon as you get somethin', you're supposed to give it
19 to them so they can get it to us.

20 A. Correct.

21 Q. And the only time we met this fire ya'll charged her
22 September 12th, correct?

23 A. Correct.

24 Q. Okay. What -- so you're -- let me ask this way, I'll
25 I'll hand it to ya, let's just look together.

CHARLES GONZALEZ - CROSS-EXAMINATION BY MR. RIORDAN

1 A. Okay.

2 MR. RIORDAN: May I approach, Judge?

3 THE COURT: Yes.

4 (Whereupon, counsel approached the witness.)

5 BY MR. RIORDAN:

6 Q. I've got, I mean, does this appear, don't, you know, I've
7 got writing on it, but does that appear to be your report page
8 1 of 3: 1, 2, 3?

9 A. Yes.

10 Q. Well there's three ---

11 A. Yes.

12 Q. Alright. And what's the date on there?

13 A. October 11.

14 Q. Alright, almost a month after you arrest is when you file
15 your report, correct?

16 A. Yes.

17 Q. Alright, and that's what we talked about earlier, that's
18 that's how, those are the standards that you apply in your
19 investigations to be thorough and accurate and timely, ---

20 A. Well ---

21 Q. --- is it ---

22 A. --- reports aren't always done the day after or sometimes
23 it's weeks and even even later before ---

24 Q. Yeah.

25 A. --- a final report is done.

1 Q. Okay. Alright, but in your report you come back and say
2 when you arrived, uh, you could smell the odor of gasoline
3 comin' from the front porch when you arrived.

4 A. Right, when I was on the porch.

5 Q. Yeah, when you were on the porch you could smell it right
6 there, couldn't ya?

7 A. You could ---

8 Q. Okay.

9 A. --- while you're on the porch, yes.

10 Q. And when you went on the back porch you also said when
11 you're back you could smell a strong odor of petroleum product
12 that smelled like diesel fuel or kerosene.

13 A. Yes.

14 Q. And ya had a red gas tank on the front porch, it's
15 sittin' right there, wasn't it, ---

16 A. Yes.

17 Q. --- and a yellow one burned up on the back.

18 A. Yes.

19 Q. And in this case would you agree -- we -- well and again
20 understand I know you've been sequestered so you've been out
21 here, uh, well that's another interesting thing, you you --
22 you're an arson investigator, right?

23 A. Yes.

24 Q. And you you assisted, you played a big role in her being
25 charged with arson, didn't ya?

CHARLES GONZALEZ - CROSS-EXAMINATION BY MR. RIORDAN

1 A. Yes.

2 Q. You'd agree neither your report nor anybody else's report
3 in here mentions any of you ever speaking with any of the
4 firefighters that responded, put out this fire, isn't that
5 true?

6 A. Correct.

7 Q. Would it surprise you that testimony's been said that the
8 bigger fire was on the back porch?

9 A. Yes.

10 Q. That would surprise ya?

11 A. No, no, it wouldn't, I'm sorry. Yeah, ---

12 Q. Yeah, ---

13 A. --- that's where ---

14 Q. --- and that was obvious, wasn't it?

15 A. Right, correct.

16 Q. So whatev -- so the kerosene poured on the back porch
17 that was, there was a lot more seemingly of that liquid poured
18 out on the back porch than the gasoline on the front.

19 A. Well I don't know that.

20 Q. You don't know that?

21 A. No.

22 Q. You don't have an opinion about that?

23 A. No, because on the back porch there was furniture that
24 burned which could have, uh, caused more damage versus ---

25 (Indiscernible cross-talk.)

1 Q. Okay. Alright, well let's do it this way, I mean, were
2 you curious to look? Do you know what what size tank was on
3 the bank porch?

4 A. Yes, there -- I believe it was a 5-gallon, I'm not cr --
5 there's a label on it ---

6 Q. Sure.

7 A. --- 'cause that, 'cause I know some guys, uh, tried to
8 track down where that particular container came from ---

9 Q. Yeah, ---

10 A. --- so ---

11 Q. --- alright, and Judge, ju -- kinda lead a little bit
12 just to make you -- wants to move, we need to, 5-gallon tank
13 on the back, correct?

14 A. Correct.

15 Q. Two gallon tank on the front, right?

16 A. That that's what it appeared ---

17 Q. Alright, ---

18 A. --- to be, yes.

19 Q. --- and and you said the guys who looked at it. Who
20 looked at it other than Randy Morgan? Did he have somebody
21 else helpin' him track down the purchase of this, uh, gas
22 can?

23 A. I believe he had another investigator there with him that
24 day that may have been, I don't know if he was new and and
25 learning, ---

CHARLES GONZALEZ - CROSS-EXAMINATION BY MR. RIORDAN

- 1 Q. Is that ---
- 2 A. --- or ----
- 3 Q. --- Jason Cox?
- 4 A. Yes, I ---
- 5 Q. Yeah, he's he's all over this. He didn't file a
- 6 report, ---
- 7 A. Okay.
- 8 Q. --- did he?
- 9 A. I don't know.
- 10 Q. Ya haven't seen one, have ya?
- 11 A. No, I haven't.
- 12 Q. Okay. Uh, and so you don't know what he learned in
- 13 regard to that, uh, tank and what he did. We don't, we don't
- 14 know that, do we, what he did this investigation?
- 15 A. Well, uh, he was with Investigator Morgan so I don't, I
- 16 don't know that was relayed through Morgan or . . .
- 17 Q. Did you see any reports of any of them checking on, uh,
- 18 reported crimes in the neighborhood that week?
- 19 A. I don't know if Randy did or not, ---
- 20 Q. 'Cause have ---
- 21 A. --- I ---
- 22 Q. --- you read his report?
- 23 A. I have before, yes, ---
- 24 Q. Okay.
- 25 A. --- not lately.

1 Q. Did you give him your report to read?

2 A. Yes, he has access to it.

3 Q. Okay.

4 A. I don't know if he read it, he has access to it.

5 Q. Okay. And did, uh, did, uh, Cannon, do you know if
6 Cannon has shared his report with you? Have you all shared
7 your reports together?

8 A. Yes.

9 Q. You've read, uh, both of 'em?

10 A. Not everything in Cannon's, there's probly some things,
11 uh, such as like accurate and other items that I may not have
12 read in his report.

13 Q. Okay, and again, I'll ask you since you, since you have
14 had access to all three reports, right, ---

15 A. Yes.

16 Q. --- you'd agree there's not one mention of any
17 investigator speaking or doing a check and noting in the
18 report that I checked to see about any other burglaries,
19 break-ins, things a that nature in this neighborhood, did ya?

20 A. I know when Randy said that when they canvassed that
21 neighborhood they checked for that but there were no other
22 reports of break-ins that mornin' ---

23 Q. Well ---

24 A. --- or ---

25 Q. --- I'm as -- you talkin' about when they go around

1 talkin' to neighbors, right?

2 A. Yes.

3 Q. That's not the same. You guys got a database you can
4 access to figure out, I mean, that's what you do, don't ya, ya
5 log 'em in similar crimes, ya'll talked about, uh, different
6 home invasions and things a that nature, that exists, ---

7 A. But ---

8 Q. --- doesn't it?

9 A. --- but yes but I don't specialize in burglaries so I
10 don't know, uh, at that particular type case I wouldn't have,
11 I would focus my investigation on the fire ---

12 Q. And that wasn't my que ---

13 A. (Indiscernible cross-talk.)

14 Q. And I didn't mean to interrupt, we're we're tryin' to
15 move quickly, ---

16 A. Okay.

17 Q. --- I didn't mean to interrupt, that wasn't my question.
18 My question was you said you had access to everything, I'm
19 just wantin' to confirm you haven't seen in anyone's report
20 that anyone even did that.

21 A. No, I I have not.

22 Q. That doesn't exist, does it?

23 A. Not that I know of.

24 Q. Okay. You talk about talkin' to the neighbors, what did
25 ya learn about his conversation with the neighbors?

CHARLES GONZALEZ - CROSS-EXAMINATION BY MR. RIORDAN

1 A. Uh, that they look -- I know they canvas the neighborhood
2 and nothin' came back that would lead to them to, uh, anyone
3 seeing three people that morning.

4 Q. Okay.

5 A. Uh, I don't know ---

6 Q. What about a vehicle? Any information about a vehicle
7 that was close by on the morning of this fire?

8 A. I I -- not to my knowledge. I mean, ---

9 Q. Not to your know ---

10 A. --- I didn't, ---

11 Q. --- you don't know about it.

12 A. --- I didn't -- yeah, I don't -- I didn't go out there
13 and do that.

14 Q. I mean, that be important thing, right? That's the
15 kinda ---

16 A. Yes.

17 Q. --- thing you want: ---

18 A. Correct.

19 Q. --- a neighbor that lives in the area talkin' about a
20 strange pickup truck parked at the next re -- the next
21 building across the street, the next place right up the road,
22 you don't know about that?

23 A. Uh, no.

24 Q. Okay. Di -- are you familiar ---

25 A. Now ---

CHARLES GONZALEZ - CROSS-EXAMINATION BY MR. RIORDAN

1 Q. --- with that area?

2 A. No, not, I mean, I know around the area but no, not as
3 far as every street in that neighborhood, no.

4 Q. Alright, alright.

5 A. Um, I've been through there it's best I can say about
6 that.

7 Q. Alright. Ya did have the dog out there on the front and
8 despite knowing it was an arson, we knew that, we had cans
9 both places, you had the dog out there in the morning,
10 right?

11 A. Yes.

12 Q. And he's on the -- di -- an and is it your testimony all
13 you had him on was on the porch, ---

14 A. Sir?

15 Q. --- porches? Didn't bring him in the, didn't take him in
16 the house?

17 A. No, no, ---

18 Q. Her?

19 A. --- not in the morning.

20 Q. Okay. And when you all were there, I asked earlier, I
21 mean, part of it that there's no consent to search that
22 morning, right, that was signed? a form?

23 A. I've learned that there wasn't a signed one. Uh, my, uh,
24 understanding it was a verbal consent that morning.

25 Q. Well Randy said, Look it was a crime scene, right?

1 A. Yes.

2 Q. Okay, and s -- and and with a crime scene we had, uh,
3 Robbie Brown, he was the first one on the scene, he was one a
4 the last ones, he said he stayed there to secure the scene,
5 right?

6 A. Correct.

7 Q. That's so ya'll can go in and do your investigation,
8 correct?

9 A. Correct.

10 Q. 'Cause you wanna be thorough, correct?

11 A. Correct.

12 Q. And keepin' the scene preserved is a big part a that,
13 isn't it?

14 A. Yes.

15 Q. Alright, and in this case at some point you all decided
16 you had done enough that day and released the crime scene,
17 didn't ya?

18 A. Correct.

19 Q. About 12:20.

20 A. That's, yeah, that's about right.

21 Q. Alright. And ya said ya had lunch with Randy Morgan.
22 What did Randy have to add to this? Di -- did he even tell
23 ya -- apparently didn't tell ya about the pickup truck and the
24 conversation ---

25 A. I ---

CHARLES GONZALEZ - CROSS-EXAMINATION BY MR. RIORDAN

1 Q. --- he had about it, right?

2 A. --- I know they canvassed the neighborhood that mornin'
3 and searched for, uh, this container, where this container may
4 have come from, the yellow ---

5 Q. Okay.

6 A. --- container but ---

7 Q. Alright, I mean, it was pickup truck and a utility
8 trailer on the back of it. Do -- you didn't know anything
9 about that?

10 A. No, I don't know those.

11 Q. Okay. When ya had Misty out there despite the fact we
12 already knew it was an arson, you -- and we knew ignitable
13 liquids were used, correct? You could smell the gas layin' on
14 the front porch ---

15 A. Correct.

16 Q. --- and smell the diesel on the back ---

17 A. Correct.

18 Q. --- and you -- and that's the, that's the morning with
19 the dog there you got samples, two samples on the front and
20 two on the back.

21 A. Correct.

22 Q. And all the samples on the front came back gas and the
23 ones on the back came back diesel.

24 A. Uh, correct.

25 Q. Okay. And in doing that you wanna be very careful. Each

CHARLES GONZALEZ - CROSS-EXAMINATION BY MR. RIORDAN

1 sample you took even though they're on the same porch, uh, the
2 same area you're always very careful not to, uh, to always use
3 a clean saw to cut it and new gloves and a new can to put the
4 debris in or or the sample, correct?

5 A. Correct.

6 Q. You don't ever want to, uh, cross-contaminate any a those
7 items, do ya, ---

8 A. Correct.

9 Q. --- 'cause 'cause again, if you di -- if you cut one and
10 you put it in and you keep the same gloves on and touch
11 somethin' else immediately, it's of no use, is it, ---

12 A. Correct.

13 Q. --- cause it's contaminated.

14 A. Right.

15 Q. And you can, and when you're out there you can smell the
16 gas.

17 A. Correct.

18 Q. And on the front porch that day you had, uh, you had
19 Misty at least, uh, we mark these please, ya had Misty, uh,
20 when when Misty alerted on the front porch, Investigator
21 Cannon took a picture of it, didn't he?

22 A. Yes, that's correct ---

23 (Indiscernible cross-talk.)

24 Q. That's good to do, isn't ---

25 A. Yes.

CHARLES GONZALEZ - CROSS-EXAMINATION BY MR. RIORDAN

1 Q. --- it, ---

2 A. Yes.

3 Q. --- 'cause then someone besides just comin' in here and
4 listen to you say it we can have a picture of the dog lyin'
5 down, right?

6 A. Correct.

7 Q. And when the dog's lyin' down, he's lyin' down in the
8 whole -- right in the middle of where all the gasoline was,
9 right, that you're smellin'?

10 A. Correct.

11 Q. Alright.

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

13 (Photographs marked Defendant's Exhibit Nos. 3 and 4 for
14 identification.)

15 BY MR. RIORDAN:

16 Q. Investigator Gonzalez, I hand you Defendant's Exhibit 3,
17 is is that the photo that I was talkin' about with Misty
18 sittin' on the front porch?

19 A. Yes.

20 Q. Lyin' right down in the, in the gasoline field, right?

21 A. Well there's -- well where gasoline's been poured,
22 there's no liquid gasoline standing there.

23 Q. Sure, to where you could still smell it, right?

24 A. Yeah, you could smell.

25 Q. The vapors of it, right?

CHARLES GONZALEZ - CROSS-EXAMINATION BY MR. RIORDAN

1 A. Yeah, you could smell.

2 Q. The residue of it.

3 A. Yes.

4 Q. Okay: I'll go ahead and mark this too 'cause you're out
5 on the scene, Exhibit 4 did you see that glove on the back
6 porch?

7 A. Yes.

8 Q. Did, uh, where's my other two? Alright, did you --
9 alright, did you go in the house at all that morning 'bout ---

10 A. If I did it was a brief, uh, walk-in to look at the
11 backside of the damage from the back porch area.

12 Q. Uh, you knew Ben Cannon was takin' photos in there,
13 right?

14 A. Yes, ---

15 Q. Alright, and ---

16 A. --- he'd already photographed ---

17 (Indiscernible cross-talk.)

18 Q. --- he was the photographer, right?

19 A. Yes.

20 Q. And, uh, at that time do you know how many arson courses
21 Investigator Cannon had been through, things related to
22 arson?

23 A. Several.

24 Q. Several? How many?

25 A. I mean, I know he's been to the National Fire Academy,

CHARLES GONZALEZ - CROSS-EXAMINATION BY MR. RIORDAN

1 uh, there's some other classes, I know some online classes
2 that he's done, I don't know how many.

3 Q. He's on your team, isn't he?

4 A. Yes.

5 Q. And you just ---

6 A. He's probly got a hundred hours, at least a hundred
7 hours.

8 Q. You talkin' about now or then?

9 A. Then. At that time I don't know at that time ---

10 (Indiscernible cross-talk.)

11 Q. Yeah, you have no idea, do ya?

12 A. No.

13 Q. You don't look at his resume, do ya?

14 A. No, I don't.

15 Q. His CV ---

16 A. No, I don't.

17 Q. --- provided to me last week just like yours, right?

18 A. Right.

19 Q. Okay. Well if you don't know, I'll just talk to him
20 about it.

21 A. Okay.

22 Q. And so but he's he's the investigator and he's the lead
23 investigator in this case, isn't he?

24 A. Yes.

25 Q. Alright, the -- let me just make sure, who decided to to

1 arrest Paula Rose?

2 A. It was after reviewin' all the evidence, uh, Investigator
3 Cannon obtained the warrants ---

4 Q. Alright, you ---

5 A. --- for ---

6 Q. --- you were involved in that decision though, weren't
7 ya?

8 A. Yes.

9 Q. You had plenty to do with this arrest, didn't ya?

10 A. Yes.

11 Q. And and that's the same for Randy Morgan too, isn't it?

12 A. Yes.

13 Q. Okay, 'cause you all worked as a team in this case,
14 right?

15 A. Yes, we did.

16 Q. Alright. Any idea if Randy Morgan read any a your
17 reports?

18 A. I don't know if he did or not.

19 Q. That you see him if you're workin' as a team he would do
20 that, right?

21 A. At some point I'm sure he would have.

22 Q. You would expect him to, correct?

23 A. Correct.

24 Q. That would be the policy when a team is is is
25 investigating a complaint.

CHARLES GONZALEZ - CROSS-EXAMINATION BY MR. RIORDAN

1 A. Correct.

2 Q. Okay, but you don't know whether he did, do ya?

3 A. I do not.

4 Q. Alright. Alright, we'll we'll talk Mr. Cannon, he's the
5 one that took the photos though, correct?

6 A. Correct.

7 Q. And he -- and and ya had 'em, it was easy enough to do in
8 in the mornin', take a picture of the dog when it lays down
9 and alerts.

10 A. Correct.

11 Q. Okay. Alright, let's talk about, uh, you you talk about
12 havin' a conversation with Homer in your November 11th report
13 and you said Homer told him he has a yellow can around there
14 somewhere, is that right?

15 A. Yes, he did.

16 Q. Ya have any any, uh, no -- notation in your report that
17 anyone witnessed that conversation?

18 A. Uh, no.

19 Q. Okay. Were you tryin' to -- was that so -- of some
20 significance to ya?

21 A. Yes.

22 Q. Why?

23 A. Because, uh, when I ask him about the container if it was
24 his, uh, durin' investigation to determine did the container
25 belong to the residence or was the container brought in from

1 somewhere else.

2 Q. Okay, but including it in report was -- were you putting
3 that in to try to settle some discrepancy with with, uh, which
4 you report are comments between him, his wife?

5 A. No, that was durin' that conversation to determine where
6 this container came from.

7 Q. Okay. Alright, I mean, it wouldn't matter, would it, in
8 this case? I mean, that one a their ca -- they definitely
9 acknowledged the red can on the front porch is theirs,
10 right?

11 A. Right.

12 Q. No reason to lie and say the yellow one wasn't, ---

13 A. Correct.

14 Q. --- correct?

15 A. Correct.

16 Q. Okay. Is it possible you made a mistake in your report
17 by sayin' that Homer told ya that?

18 A. No, it's not.

19 Q. Okay. You di -- you didn't record that, did ya?

20 A. No.

21 Q. You easily could have, couldn't ya?

22 A. No, 'cause I don't ---

23 Q. Why ---

24 A. --- have a recorder with me.

25 Q. --- why not? Okay, you didn't have one?

CHARLES GONZALEZ - CROSS-EXAMINATION BY MR. RIORDAN

1 A. I don't carry recorder on me ---

2 Q. Yeah, ya'll ---

3 A. (Indiscernible cross-talk.)

4 Q. --- don't seem to record anything anyone says, do ya?

5 A. No, I don't typically carry recorder around with me
6 doin' -- durin' investigation.

7 Q. So that's, uh, kinda convenient. So you come into court,
8 the only testimony anyone can have is what you say they said,
9 is that true?

10 A. Correct, what I put in my report.

11 Q. It would be so much easier if you would record it and
12 then the jury could hear exactly what they said and see if
13 they heard the same thing, right?

14 A. Correct.

15 Q. Same with videotape. You -- with a videotape then the
16 jury can see what they think about the demeanor of a person
17 when they're givin' a statement, right?

18 A. Correct.

19 Q. You guys have video cameras down at the Greenville County
20 Sheriff's office, don't ya?

21 A. Yes, they do.

22 Q. Road deputies have videos in their car, don't they?

23 A. Yes, they do.

24 Q. I mean, when they're interactin' with the public so
25 highway patrol any time they turn on the blue lights they got

1 the camera on recordin' what they do, right?

2 A. Correct.

3 Q. So, I mean, every time they're interactin' with the
4 public everyone can see, that's transparency, isn't it?

5 A. Correct.

6 Q. Makes it a lot easier for everybody, doesn't it?

7 A. Correct.

8 Q. No one can make up anything against you and you can't
9 make up anything against them.

10 A. Correct.

11 Q. Easy to have, that's that's the best preservation of
12 evidence, isn't it?

13 A. If it's available at the ---

14 Q. Yeah, if ---

15 A. --- time, yeah.

16 Q. --- it's available. Do ya have a cell phone?

17 A. Yes.

18 Q. Did ya have one then?

19 A. Yes.

20 Q. What kinda phone was it? do ya know?

21 A. No, I think I've been through one or two since ---

22 (Indiscernible cross-talk.)

23 Q. Have ya ever had a phone that had a recording device on
24 it?

25 A. I'm sure it does.

CHARLES GONZALEZ - CROSS-EXAMINATION BY MR. RIORDAN

1 Q. Okay, yeah, if ya had that, that be easy enough ---

2 A. But I don't ---

3 Q. --- to do, wouldn't it?

4 A. --- use that, I don't, I don't do that.

5 Q. Yeah, I understand you don't.

6 A. Right.

7 Q. It woulda been easy if ya had it, right?

8 A. Correct.

9 Q. And you've and you've had, you acknowledge you've had
10 those devices, right?

11 A. A a cell phone?

12 Q. Yes, with recording capability either audio or v -- or
13 video, ---

14 A. Yeah.

15 Q. --- you've had those.

16 A. Yes.

17 Q. Alright. Alright, again you talk about a burn pile in
18 the backyard, that's the responsible way to do it, have a
19 burn, a burn pile if you're burnin' shrubs, right?

20 A. Correct.

21 Q. I mean, you could see where she had cleared out a bunch a
22 shrubs all around the the the house ---

23 A. Yes.

24 Q. --- and and there was a burn pile in the back yard.

25 A. Yes.

CHARLES GONZALEZ - CROSS-EXAMINATION BY MR. RIORDAN

1 Q. Alright. And and was responsible and got, as you said,
2 had a burn notice, you said May but it was May 29th, wasn't
3 it?

4 A. Uh, yes, if that's what it -- I know it was May but ---

5 Q. It wasn't May 1st, it was May 29th, ---

6 A. Okay, that's ---

7 Q. --- correct?

8 A. --- that's what it says ---

9 Q. It's true, isn't it?

10 A. Yes.

11 Q. Alright, you write your report that, uh, uh, that
12 afternoon you went in and she alerted on the shoes, again, we
13 don't have ja -- like we did in the mornin' we don't have
14 photos in the afternoon of the sh -- of of of Misty lyin' down
15 with the shoes, do we?

16 A. Correct.

17 Q. Okay. Have you seen the photos Investigator Cannon took
18 in the morning that showed the shoes in the room?

19 A. Yes, I've seen 'em.

20 Q. Okay. And you agree Defendant's Exhibit No., is this
21 entered Exhibit 1?

22 MR. UNDERWOOD: Uh, no no objection to any a the four
23 photos that ---

24 MR. RIORDAN: Okay.

25 THE COURT: What exhibits are those ---

CHARLES GONZALEZ - CROSS-EXAMINATION BY MR. RIORDAN

1 MR. RIORDAN: Exhibits 1 and 2, Your Honor.

2 THE COURT: Okay, ---

3 MR. RIORDAN: May I approach?

4 THE COURT: --- admitted without objection.

5 (Defendant's Exhibit Nos. 1 and 2, photographs, admitted
6 into evidence.)

7 BY MR. RIORDAN:

8 Q. I hand you Exhibit No. 1, you'll see that, uh, photo.

9 A. Yes.

10 Q. Alright, and do you, do you agree that's what, that's a
11 photo, uh, Investigator Cannon took in the morning of the
12 bedroom that captures the shoes in the bottom left corner, ---

13 A. Yes, it is.

14 Q. --- taken about 10:32 if I recall.

15 A. Okay, yes.

16 Q. Does that sound right?

17 A. Yeah, that sounds right.

18 Q. Have you ever looked at the source photos that give the
19 information as to when a photo was taken?

20 A. No, I haven't.

21 Q. Okay, that's easy to do when ya have it, right?

22 A. Yes.

23 Q. We've got other photos in this case from the forensic
24 guy, correct, ya'll gave me that I think just within the last
25 two weeks eighty pictures.

CHARLES GONZALEZ - CROSS-EXAMINATION BY MR. RIORDAN

1 A. Okay, yes.

2 Q. The -- we never gotten source photos on those as to where
3 you can tell what the date stamp was and the time, have ya?

4 A. Uh, no.

5 Q. Okay, and and were you h -- were you here with, uh, some
6 a the test -- well let me just ask. You have no reason to
7 doubt that even though the photo was taken at 10:32 you can
8 almost, you can see it in the clock that the source photo says
9 9:32, you don't have any reason to doubt that, do ya?

10 A. In this clock?

11 Q. Yeah. Can ya read it?

12 A. Yeah, but it looks like, I mean, I see the 32 but the
13 number in front of it I can't tell if that's a 9 ---

14 Q. Can't, ---

15 A. --- or 10.

16 Q. --- okay.

17 A. I can see a little blur there ---

18 Q. Alright.

19 A. --- but . . .

20 Q. Do you know when Investigator Cannon arrived at the
21 scene?

22 A. No, I do not.

23 Q. Alright, I show you what's already been, uh, admitted as
24 Exhibit Nu -- Defendant's Exhibit No. 2, you recognize that
25 (indicating) area since you had been in the house?

1 A. Yeah, that's the, uh, master bedroom.

2 Q. Okay, and the photographer that took that picture's
3 standin' right over there (indicating) where those shoes were,
4 isn't that true?

5 A. It looks like it from this angle, yes.

6 Q. Alright, and so again, preservation is so important,
7 isn't it?

8 A. Yes.

9 Q. That's vitally important in an arson case.

10 A. Correct.

11 Q. Can't have cross-contamination 'cause if you do that you
12 might have improper information, correct?

13 A. Correct.

14 Q. It's wrong.

15 A. Right.

16 Q. You you basically throw it out if it's contaminated, if
17 there's a possibility of it, correct?

18 A. Correct.

19 Q. And in this case you released it 12:20, I mean, ServPro's
20 out there, they're already takin' pictures, that's who took
21 this, correct?

22 A. Uh, I'm not sure that ---

23 Q. It's dated, they've got the date on there.

24 A. Okay.

25 Q. Is it still light outside?

CHARLES GONZALEZ - CROSS-EXAMINATION BY MR. RIORDAN

1 A. Yes.

2 Q. Alright, and you expect when ServPro arrives on the scene
3 first thing they're gonna do is document the area, figure out
4 what the the scope a the work's gonna be, right?

5 A. I'm -- I don't know what their jobs are.

6 Q. That makes sense to ---

7 A. I kn -- I know they come in and clean up but I don't know
8 what their ---

9 Q. Sure, that ---

10 A. --- job entails.

11 Q. --- makes sense to ya, doesn't it?

12 A. What's that?

13 Q. That makes sense to ya that they would come in and
14 document the area before they begin all their work?

15 A. I assume, I, again, I don't know how they, how they work
16 or what they do ---

17 Q. By the ---

18 A. --- other than clean up.

19 Q. Alright, by the time you get there they've already done
20 some clean up, right?

21 A. I di -- in that bedroom it didn't look to me like stuff
22 had been cleaned up.

23 Q. Okay, but the guy certainly took a photo right there,
24 correct?

25 A. Okay, yes.

CHARLES GONZALEZ - CROSS-EXAMINATION BY MR. RIORDAN

1 Q. You agree with that, don't ya?

2 A. Yes.

3 Q. And when to get to the bedroom you gotta walk through all
4 the stuff, don't ya, debris on the front porch, if you come
5 through the front, through the house that's true, isn't it?

6 A. Yes.

7 Q. And when you get there in the afternoon ServPro's there,
8 right?

9 A. Yes.

10 Q. Alright, and we already heard from, uh, Randy Morgan, he
11 says you guys arrive at the scene, ya go inside with the dog,
12 the dog hits on the shoes, ya go outside to check on the safe
13 and then ya go confront Paula about the clothes, is that your
14 recollection?

15 A. Yes.

16 Q. Okay. Alright. You would agree you alre -- we've
17 already put in through you earlier in your direct examination
18 the photos you took just before you were gonna put the shoes
19 in the can, correct? What are those (indicating) -- that
20 right there?

21 A. Uh, yes.

22 Q. Alright.

23 A. They look the same, yeah.

24 Q. Yeah, they do, yeah. So 6 and 7 are identical, that may
25 be good 'cause you wanna look at it twice, don't ya? Look at

CHARLES GONZALEZ - CROSS-EXAMINATION BY MR. RIORDAN

1 this (indicating) photo, would you agree, I mean, it's, you
2 can't doubt at all, can ya, that -- where's where's the other
3 photo? Where's the -- did I take it? I probly did. You'd
4 agree Exhibit No. 1 when we look at the moccasins, the shoes
5 that are in one a these ca -- they're in the cans, I mean,
6 isn't it easy to see that the back a the moccasins end about
7 midway at the, uh, 'bout middle of the tennis shoe, correct?

8 A. Yes.

9 Q. Alright, and again, preservation, crime scene
10 preservation's so important, isn't it?

11 A. Yes.

12 Q. I mean, okay, and then we got six, we we've got these
13 two, again, we got two photos they can share lookin' at the
14 same time, it's clear the shoe has been moved, right, the
15 shoes actually.

16 A. Or the tennis shoes have been moved, one of the two.

17 Q. One of the two.

18 A. Either the tennis shoes or those shoes ---

19 Q. Okay.

20 A. --- have.

21 Q. And when ya don't know, that that ge -- ya don't know,
22 that that's that's, boy, ya ya can't tell, can ya?

23 A. Right.

24 Q. That's somethin' that's out there that that that no one
25 will ever know ---

CHARLES GONZALEZ - CROSS-EXAMINATION BY MR. RIORDAN

1 A. Correct.

2 Q. --- 'cause you have a doubt as to which one was which,
3 right, which one was moved?

4 A. Uh, you can't tell with the photo which one was ---

5 Q. No, okay.

6 A. --- moved the tennis shoe or the moccasin.

7 Q. Okay. Alright. And ya got the clothes, we got the
8 clothes as well, uh, di -- did you confront Paula and tell her
9 ya thought things didn't make sense, that looked like Homer
10 and and her were livin' above their means?

11 A. No, I did not.

12 Q. Did that ever cross your mind? You knew this was a
13 highway patrolman's home, right?

14 A. Yes.

15 Q. Okay. You didn't say anything to 'em about them livin'
16 above their means or that somethin' didn't seem, right?

17 A. I've never told anyone that especially them.

18 Q. Did ya think ya had in your mind how much money a highway
19 patrolman makes?

20 A. I have no idea.

21 Q. You don't have any idea? As we sit here today, you're
22 tellin' this jury you don't have any idea what a highway
23 patrolman makes?

24 A. No, I don't.

25 Q. Don't have any idea. Think they ---

CHARLES GONZALEZ - CROSS-EXAMINATION BY MR. RIORDAN

1 A. I don't have any i ---

2 Q. --- make more? Do they make more or less than you?

3 A. I don't know, I don't know what his salary ---

4 Q. Okay.

5 A. --- is. I have no idea if he makes more or less.

6 Q. Okay.

7 A. I mean, it's possible he's more. If he's been there a
8 long time, it's possible that he makes more than me.

9 Q. You certainly asked her what she does, right?

10 A. Uh, I think sometime durin' the conversation it came up,
11 uh, ---

12 Q. Alright,

13 A. --- I ---

14 Q. --- and when you were out, and when you're out there in
15 the afternoon Randy Morgan's already told ya about their
16 discussion at his office, right?

17 A. A little bit, not a lotta details of his -- their
18 conversation.

19 Q. He he told ya that she's got a criminal record, didn't
20 he?

21 A. I think he did say she'd been arrested before.

22 Q. Yeah, one a those insurance case, right?

23 A. Uh, some some -- in Oconee County if it was a fire or
24 theft I'm not sure what, I know ---

25 Q. Well, ---

CHARLES GONZALEZ - CROSS-EXAMINATION BY MR. RIORDAN

- 1 A. --- was somethin' in Oconee County.
- 2 Q. --- I mean, when when ya heard that, is that why you were
- 3 out there?
- 4 A. (Indiscernible cross-talk.)
- 5 Q. Is that why you came back out there that afternoon?
- 6 A. No, it was not.
- 7 Q. Well let me ask ya this: When ya left, when ya left that
- 8 morning, wasn't the agreement that the two of you would meet
- 9 with her on Monday? This is Friday afternoon, when ya left
- 10 the first time in the mornin' the agreement was you wouldn't
- 11 see her again 'til Monday, correct?
- 12 A. Uh, it's possible, yes.
- 13 Q. It's possible, right?
- 14 A. Yes.
- 15 Q. Yeah. And the thing that changed was Randy Morgan
- 16 tellin' you she had a criminal record, right, and he didn't,
- 17 he didn't think her demeanor was appropriate from his
- 18 experience, that's what he told ya, wasn't it?
- 19 A. No, that's not correct.
- 20 Q. What did he tell ya then?
- 21 A. We didn't go back out there because she'd been arrested
- 22 before.
- 23 Q. Okay, well why did ya go then? What had ---
- 24 A. The ---
- 25 Q. --- changed?

1 A. --- the conglomerative of all the stuff, the the after
2 discussin' about the, uh, fire and, uh, it not actually bein'
3 set in the garage and the safe, uh, them tryin' to break into
4 the safe and and reexaminin' that, uh, was part of our reason
5 in goin' back out there.

6 Q. Well the only thing Paula reported, the main thing she
7 reported was the guy she saw briefly, I mean, this a brief
8 encounter, that's all she's ever said, she sees 'em, knows
9 they're not supposed to be there, locks the door and goes to
10 the back, right?

11 A. Correct.

12 Q. And she says the one guy, everyone else has got, uh, dark
13 clothes and they got, two of 'em got masks but yet the one
14 that doesn't he's at the gun safe tryin' to open it or he's
15 playin' with the dial, let's say that, you knew that
16 information, right?

17 A. I knew that someone tried to break in the safe, I don't
18 know how they were tryin' to get in.

19 Q. Well well get -- well did ya read the reports?

20 A. Afterwards yes.

21 Q. I mean, did ya hear her say, He was at the dial, he was
22 messing with the dial, that's what she reported, wasn't it?

23 A. On ---

24 Q. You heard ---

25 A. --- which ---

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1 Q. --- her report that, didn't ya?

2 A. Yes.

3 Q. Okay. And what was done then to confirm who else at any
4 time in its existence mighta had the combination a that safe?
5 Did you ask that question to anybody?

6 A. No, I -- my conversation was, uh, just that mornin' with
7 Paula and then after we went back.

8 Q. That would be a, that would be a good question to ask in
9 a case like this, isn't ---

10 A. Well I don't know if Investigator Cannon had already
11 talked with her about that or Investigator Morgan about ---

12 Q. Okay.

13 A. --- the burglary part a the case.

14 Q. Well if you're lookin' through all, if, again, if you're
15 l -- if you're lookin' at this objectively, that's somethin'
16 you wanna know early on, right, ---

17 A. Correct.

18 Q. --- whether somebody has looked into that.

19 A. Correct.

20 Q. And nothin' in here even suggests it was asked. Nobody's
21 report says they even asked Homer or Paula if anyone else had
22 a combo to the gun safe, right?

23 A. Not to my knowledge.

24 Q. Alright, and it -- alright. Alright, but he did tell you
25 of her complaint that these criminal charges she had been

CHARLES GONZALEZ - CROSS-EXAMINATION BY MR. RIORDAN

1 arrested Oconeé several years ago, fought the charges in Court
2 and was found not guilty, correct?

3 A. I don't know if all that came out durin' our conversation
4 or not. I don't know what -- how -- I don't remember how deep
5 into the conversation ---

6 Q. Okay.

7 A. --- we went through her bein' arrested, ---

8 Q. Alright, let's ---

9 A. --- or details.

10 Q. --- ask this: Ha -- let me, you just tell me if you
11 don't think this is in, uh, Morgan's report. "She reported
12 that Oconeé Sheriff's Office and SLED had framed ---

13 MR. UNDERWOOD: Your Honor, ---

14 Q. --- her, intimidated her ---

15 THE COURT: Just one second. What's your objection?

16 MR. RIORDAN: I'm sorry.

17 MR. UNDERWOOD: Hearsay, Your Honor.

18 MR. RIORDAN: Judge, ---

19 THE COURT: Overruled, go ahead.

20 BY MR. RIORDAN:

21 Q. This investigation you're supposed to read his reports,
22 right?

23 A. Right.

24 Q. Okay, and his, if his report says, Oc -- and he just
25 testified, "Oconeé County Sheriff's Office inflated -- had

CHARLES GONZALEZ - CROSS-EXAMINATION BY MR. RIORDAN

1 framed her, intimidated her and wrongfully charged her,"
2 correct?

3 A. If that that's ---

4 Q. Oh, well ---

5 A. --- what the report says, yes.

6 Q. --- I'll say let's let's assume that's there, ---

7 A. Okay.

8 Q. --- alright?

9 A. Right.

10 Q. And that she -- and he already told ya all these charges
11 she had she was found not guilty, correct?

12 A. I don't know if he talked about that durin' our
13 conversation ---

14 (Indiscernible cross-talk.)

15 Q. Alright, let's assume, let's assume right now that that
16 is what it is, correct? When you confront her that day saying
17 the dog has hit on her shoes and now you want her clothes, if
18 she's innocent it's not gonna be unusual for her to get upset,
19 is it?

20 A. Correct.

21 Q. Any person in her situation claimin' her innocence within
22 hours of her reported crime and you're and it's clear you're
23 focusin' on her, right?

24 A. To an extent and that's to include, uh, our reason
25 believin' that is lookin' at the safe also and other items

1 found there ---

2 Q. Okay.

3 A. --- at the scene.

4 Q. Yeah, quickly on the safe, whi -- which way does that
5 safe door open?

6 A. To the, if you're lookin' at it, it's hinged on the
7 right-hand side.

8 Q. Why do you know that?

9 A. 'Cause I saw the pictures of it and I saw the safe when
10 we look ---

11 Q. 'Cause I sent you pictures of it, right?

12 A. Well I saw the safe when we looked at it, the, uh, had
13 the chip marks in it.

14 Q. You agree no one out there ever even asked Homer to open
15 the safe, did they?

16 A. Not to my knowledge.

17 Q. Until I sent you a bunch a pictures a contents, no one
18 even was curious as to what was inside the safe that three men
19 might want, were they?

20 A. I don't know if that was asked prior to me gettin' there,
21 I I'm not sure.

22 Q. And again, whether you, whether know it or not you
23 certainly know it's not in any report, don't ya?

24 A. Correct.

25 Q. That be important, wouldn't it? That be ---

CHARLES GONZALEZ - CROSS-EXAMINATION BY MR. RIORDAN

1 A. It ---

2 Q. --- important to know, ---

3 A. --- it ---

4 Q. --- wouldn't it, ---

5 A. (Indiscernible cross-talk.)

6 Q. --- in a, in a a complaint like this with this reported
7 crime?

8 A. Yes.

9 Q. Alright, in fact, you've taken cour -- your arson course,
10 you you've taken one called "Motive and opportu -- what is it
11 called, Motive somethin' and opportunity? What is that?

12 A. It's ---

13 Q. You remember a course on motive that you looked into that
14 ya took?

15 A. I think that was an online ---

16 Q. Okay.

17 A. --- course.

18 Q. That would be a motive, right? I mean, you'd wanna know
19 why these three people would be -- that would be important to
20 see what of value might be in the safe, correct?

21 A. Correct.

22 Q. That be an important thing if you're really lookin' into
23 the complaint, wouldn't it?

24 A. Correct.

25 Q. And you didn't do that.

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1 A. I did, I looked at the safe and saw that there was no, it
2 didn't appear that anyone tried to gain entry to it.

3 Q. Okay, you didn't, you never asked, you you never looked
4 inside to see what was in it ---

5 A. No, I didn't ---

6 Q. --- was my question.

7 A. --- look in the safe, no, I didn't.

8 Q. You, until I sent ya pictures of it ya had no idea, did
9 ya, ---

10 A. Of I said seen ---

11 Q. --- of the contents.

12 A. --- I still don't -- haven't seen, uh, what's inside the
13 safe.

14 Q. Okay, so you didn't even look at the pictures I sent.

15 A. No.

16 Q. Alright, you did get a package I sent to you this
17 weekend, right?

18 A. Yes.

19 Q. You read it?

20 A. I read the front page of it.

21 Q. You didn't read any of it, did ya?

22 A. No.

23 Q. It's important, I mean, you said you wanna be thorough,
24 right?

25 A. Correct. I read the first page and then the part with my

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1 name didn't pertain to this case, uh, I did not read any of
2 it.

3 Q. Okay, well let me ask ya this 'cause you make, you do
4 make a report in here about how the facts when ya get to the,
5 to Ellie's apartment she's on the phone with her attorney,
6 don't ya?

7 A. Correct.

8 Q. There's nothin' wrong with that, right?

9 A. No, not at all.

10 Q. That's that that would be a s -- it -- that's what you'd
11 expect outta someone that's innocent, right?

12 A. Uh, she was on the phone with Paula's attorney my
13 understanding, not, I believe it was you, not, uh, ---

14 Q. Yeah, you ---

15 A. --- her.

16 Q. --- knew it was me, right, they told ya Jack.

17 A. Right, well they said ---

18 Q. You ---

19 A. --- she said, uh, Paula's attorney ---

20 Q. Okay, so ---

21 A. --- but I didn't know that's who you were, ---

22 Q. Alright, you s ---

23 A. --- I didn't know you.

24 Q. --- you said you seen everyone's report, at least one of
25 ya wrote that it was Jack, right, ---

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1 A. Correct.

2 Q. --- alright, not Larry.

3 A. Correct.

4 Q. And and as part a that conversation you were asked can we
5 cut the clothes in half, ---

6 A. Yes.

7 Q. --- alright, you knew that, right?

8 A. Yes.

9 Q. Alright, again assuming what what was said earlier that
10 police had framed her, that would be a reasonable request,
11 wouldn't it?

12 A. But we don't cut evidence in pieces.

13 Q. I know you don't 'cause it was asked and you refused it,
14 didn't ya?

15 A. Correct.

16 Q. That be an easy way for a person that's innocent to make
17 sure especially when they've been framed by SLED in Ocone as
18 we're assuming ---

19 A. I ---

20 Q. --- for the question ---

21 A. --- but I have no idea know she was ever framed or ---

22 Q. I kn ---

23 A. --- exactly framed ---

24 (Indiscernible cross-talk.)

25 Q. --- that's not my question, sir. Assumin' that is the

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1 truth 'cause you you haven't looked in to see, have ya?

2 A. Uh, see if she was framed?

3 Q. Yeah.

4 A. No, I haven't.

5 Q. You didn't look into any a the background a those cases
6 that were tried, did ya?

7 A. No, I did not.

8 Q. Okay, and all -- portions of it did ya look through to
9 see, that you could have read it this weekend, couldn't ya?

10 A. Yes.

11 Q. You didn't want to, did ya?

12 A. I was spendin' time with my family versus ---

13 Q. Okay.

14 A. --- readin' that.

15 Q. You you didn't want me to come in here and ask ya about
16 it so you'd have to tell the jury about it.

17 A. No, because I was served on a Saturday afternoon with my
18 family and I spent time with them versus readin' a large stack
19 of ---

20 Q. Didn't matter to you, did it?

21 A. No, it did not, not after readin' that first page.

22 Q. Yeah, bein' with family's important, isn't it?

23 A. Yes.

24 Q. Yeah, doin' your job's important too though, right?

25 A. Yes, it is.

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1 Q. Bein' thorough.

2 A. Yes, it is.

3 Q. And let me ask you is it your testimony again, you're
4 talkin' with me, you know it's me on the phone, you're not
5 talkin' with me, di -- she did ask you to let me talk to ya,
6 right?

7 A. Yeah, and I I I talk now that I know you, who you are
8 yes, I I'm assuming that was you then that I talked with but
9 yeah, I talked with ---

10 Q. Well I don't remember, ---

11 A. (Indiscernible cross-talk.)

12 Q. --- I don't remember anyone gettin' on the phone with me,
13 I ---

14 A. Okay.

15 Q. --- thought you refused to talk to me, what did I say or
16 tell ya?

17 A. But I thought you asked me on the phone about cutting the
18 pants in half and that's that's somethin' I said no, we we
19 won't do that ---

20 Q. Okay, alright.

21 A. --- or cutting the or splitting the, uh, articles,
22 cutting them in half.

23 Q. Alright. And ---

24 A. I'm pretty sure that was you I was talkin' to on the
25 phone about that ---

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1 Q. Okay.

2 A. --- that asked me that.

3 Q. Well if it was me, do you remember me askin' about the
4 other case that we've been involved in?

5 A. Yes.

6 Q. Chris Oneal case, right?

7 MR. UNDERWOOD: Objection, ---

8 A. Yes.

9 MR. UNDERWOOD: --- Your Honor, relevance.

10 THE COURT: Sustained.

11 A. But I wasn't involved with you.

12 BY MR. RIORDAN:

13 Q. You were the first person out on the scene that case,
14 right?

15 A. Except for Investigator Bennis (phonetic).

16 Q. You and Med Bennis.

17 A. Yes.

18 Q. And the clothes when you di -- when you did get 'em in
19 Ellie's apartment they're all balled up together, right, the
20 pants and the shirt are all balled up together in the top a
21 that bag?

22 A. Yeah, they were sittin' in the top a the bag.

23 Q. Alright, I mean, that -- and again, if you'd a found 'em
24 separate, you'd make sure they never got touched, correct?

25 A. Correct.

1 Q. I mean, those things are once once you put 'em together,
2 whatever's on one's probly on the other.

3 A. That's possible.

4 Q. Okay. I mean, aga -- and again, you never spoke to even
5 one of the numerous firefighters that arrived on the scene
6 that day, did ya?

7 A. I typically don't speak with the firefighters about the
8 investigation, I like to form my own opinion on cause of the
9 fire versus what they tell me.

10 Q. Okay. Well ya don't think they're important witnesses?

11 A. Yes, but typically if there's somethin' I don't speak
12 with 'em unless there's, you know, they have somethin', uh,
13 have they seen a witness or they'll approach me about an
14 investi, uh, what they may have seen but it's, I don't
15 particularly or don't usually interview firemen on every fire
16 that I ---

17 Q. Do ya think it be important in this case let's say if if
18 the firemen acknowledged, Yeah, she's right there in the
19 middle of the gas fire, she won't even get off the porch
20 'cause she wants the dogs?

21 A. Say it again. I don't remember how many firemen or if
22 the firemen were still there when I was there ---

23 Q. Yeah, 'cause you didn't talk to 'em.

24 A. Correct, they coulda been talked to prior to me but yes.

25 Q. If she kneels down on the porch to hug her dog when it

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1 comes out, she's gonna have somethin' on her pants, right?

2 A. No, not necessarily.

3 Q. Well, okay, it certainly wouldn't be unreasonable to
4 assume that, would it?

5 A. If there's gasoline or a liquid pool there then yes.

6 Q. Yeah, I mean, you looked at the pictures, right there at
7 the front door, that's that's where your dog's layin' down,
8 isn't it?

9 A. Yes, but there's no, uh, liquid gasoline pool there,
10 it's ---

11 Q. Well ---

12 A. --- already burned off ---

13 Q. --- well that's -- okay. Well that's why ya ya cut
14 ou -- there there wasn't any pool either on the pieces that
15 you cut out, was there?

16 A. I think they did come back positive, yeah.

17 Q. Oh, but you can't see a pool on it, right?

18 A. No, there's not.

19 Q. Okay, and just to make sure, I I wanna know what your
20 understanding is. I mean, do you think the -- do you think
21 SLED looks at these and pulls 'em out and finds like with a a
22 microscope or somethin' the spot where some fuel spilled on
23 these clothes?

24 A. No, no, they don't.

25 Q. They don't, do they?

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1 A. No, they don't.

2 Q. Alright. Yeah, it's not like you come in as as perhaps
3 we state in this case there's ignitable liquid on 'em.

4 A. Excuse me?

5 Q. It's it's not ignitable liquid that's on 'em, is it?
6 That's ---

7 A. Uh, ---

8 Q. --- they can't be proven by SLED, can it?

9 A. Well I think the results came back as a gasoline and
10 heavy petroleum and somethin' else in ---

11 Q. Yeah, ---

12 A. --- on the clothes.

13 Q. --- that's what you think, isn't it?

14 A. That's what the report said.

15 Q. Okay.

16 A. On the clothes, I I believe the clothes were gasoline and
17 maybe a medium petroleum on ---

18 Q. Sure.

19 A. --- the clothes.

20 Q. Alright, you're you're not, you're not a forensic expert,
21 are ya, ---

22 A. No, I'm not.

23 Q. --- forensic chemist?

24 A. No.

25 Q. You got no -- you don't know anything they do over at

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1 SLED, do ya?

2 A. Nothin' other than examine evidence, ---

3 Q. You've never ---

4 A. --- no.

5 Q. --- been in watchin' how they conduct this test, do ya?

6 A. No, I haven't.

7 Q. You don't know what they did to conduct this test, do ya?

8 A. I'm familiar with how they do it but not ---

9 Q. You've never done it yourself, have ya?

10 A. No, have not.

11 Q. Have you spoken with Megan Fletcher?

12 A. I don't believe I have, ---

13 Q. Okay.

14 A. --- not on this particular case.

15 Q. Alright, you want to be fair and impartial, right?

16 A. Yes.

17 Q. You wanna explore any and all avenue, uh, of this
18 investigation, correct?

19 A. Yes.

20 Q. Oh, one thing I forgot to add, I mean, you guys did, you
21 guys because I, you say I'm talkin' to ya, I I don't remember
22 that, that's great, so we're talkin', you refuse our request
23 to cut things in half, Pau -- as you said, Paula was upset,
24 wasn't she?

25 A. Yes.

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1 Q. And again -- well we don't need to get in. She she was
2 very upset and actually filed a complaint against you, didn't
3 she?

4 A. Yeah, she did.

5 Q. Alright, you had to respond to that, right?

6 A. Yes, I did.

7 Q. Alright, and again, transparency is anything you have
8 you're supposed to give to the prosecutors and we're supposed
9 to get it, right?

10 A. Yes.

11 Q. In fact, you, I mean, I met you before on February 27th
12 of this year, correct?

13 A. Which --- was that at the, uh, Law Enforcement Center ---
14 (Indiscernible cross-talk.)

15 Q. Yeah, first time we ever met face-to-face, right?

16 A. Correct.

17 Q. Yeah, I just had your name on that other case report, ---

18 A. Right.

19 Q. --- knew you were the first investigator on the scene
20 with Bennis ---

21 A. Correct.

22 Q. --- but we never met in that case, right?

23 A. No, we ---

24 Q. Alright, ---

25 A. --- did not.

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1 Q. --- and the purpose a that whole meeting was to go down
2 and make sure that we had all the evidence in the case, that
3 was the whole thing and to look at it.

4 A. From my understanding you were here to look at the, all
5 evidence collected.

6 Q. Okay. Well the case was set for today so it was just
7 over two months, it it's reasonable to assume two months out
8 the State do -- the State should have provided to us
9 everything you have and that we should have it, correct?

10 A. I'm assumin' so, yeah.

11 Q. Alright, but after that meeting bunch a new stuff came,
12 right?

13 A. Uh, such as?

14 Q. Well, at that point your October 11, 2012 report hadn't
15 even provided to us, had it?

16 A. Oh, it, I don't know if it had or not. They had the
17 whole ---

18 Q. I mean, ---

19 A. --- case file but I'm not sure.

20 Q. Okay, 'cause you -- well you're supposed to make sure
21 they get everything, right, so we can get it?

22 A. It's when my stuff is turned into records and it's put in
23 a case file then it's ---

24 Q. So you don't have anything to do with it after that?

25 A. No, I ---

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1 Q. You don't ---

2 A. --- Investigate -- Investigator Cannon, uh, retained the
3 case file, ---

4 Q. You have no ---

5 A. --- he's ---

6 Q. --- reason to dispute the fact that we didn't even get
7 your report 'til Oc -- 'til March 13th of this year, ---

8 A. No, ---

9 Q. --- do ya?

10 A. --- that's what you're sayin' then no, I don't
11 have ---

12 Q. You got no reason to dispute ---

13 A. You ---

14 Q. --- that, do ya?

15 A. No.

16 Q. Alright, and and again, getting these items that's all,
17 that's all that had been done when you, uh, arrested Paula,
18 those are the only things that had been tested, correct?

19 A. Yes, and the ---

20 Q. Well, I mean, I know there's debris ---

21 A. --- the the, ---

22 Q. --- too.

23 A. --- yeah, the other trace stuff, I think all that ---

24 Q. The only direct evidence against Paula is is is and you
25 didn't even do that until you get the report back from SLED,

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1 right?

2 A. Correct.

3 Q. A trace evidence report, right, ---

4 A. Correct.

5 Q. --- for these these four things, that's the only evidence
6 that you think ties Paula to this fire, correct, to to to
7 arson?

8 A. I believe there's other, the the ax and the paint chips
9 and all that was, uh, was that not back prior to? I don't
10 know if that was back prior to also.

11 Q. Any fingerprints found on that ax that came back to
12 Paula?

13 A. Not to my knowledge, no.

14 Q. What do you know about fingerprints in this case?

15 A. Just that forensics, uh, dusted for for prints at ---

16 Q. Who?

17 A. Uh, Kretschmar.

18 Q. Ya ever see a photograph of what he did and you see see a
19 photograph of the, uh, fingerprints that he took?

20 A. I saw photographs of the scene but I don't know if, I
21 think I saw -- are you saying like the blown up ---

22 Q. Yeah, like a photograph, that that be be interesting. I
23 mean, if you find a photograph, you can take a picture, a a
24 fingerprint, you can take a picture, right?

25 A. Yes.

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1 Q. Did you see the, uh, State Farm report in this case?

2 A. Uh, no, I have not read.

3 Q. Phil Brooks found two fingerprints out there on the
4 metal rack, didn't he?

5 A. Uh, yes.

6 Q. And he took pictures of 'em, right, you had 'em in the
7 file?

8 A. Correct.

9 Q. You could actually see those, right?

10 A. Uh, yes.

11 Q. None of ya'll even asked to analyze those, did ya?

12 A. I'm not sure if they were or not.

13 Q. As we sit here today, no one's even analyzed two prints
14 that were taken out on the scene by the State Farm fellas,
15 right?

16 A. Not to my knowledge.

17 Q. Okay. And what do you know about the two prints that
18 Dustin did get?

19 A. I don't. I mean, that was -- forensics came out, they
20 do, when they do their investigation or their photographs and
21 items, they collect, they submit it to whether it be the
22 fingerprint person or, uh, I don't know what all their job
23 entails as far as what they do when they get it back to their,
24 uh, lab there.

25 A. Okay. You're aware that, uh, ju -- what's the date? Was

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1 just last week, just last week's the first time we got a
2 actual printout of a fingerprint, uh, result, right?

3 A. Correct.

4 Q. Do you even know? Okay, you knew ---

5 A. Well I think ---

6 Q. --- that, right?

7 A. --- I I know that, yeah, there was ---

8 Q. And and and in fairness they have done it since she,
9 since she's a, since she's a victim and she lives there and we
10 expect to have her prints all over everything that she owns,
11 they get her print so they can eliminate 'em, right, ---

12 A. Correct.

13 Q. --- so they can see what other prints are out there.

14 A. Correct.

15 Q. And, in fact, you know now that they actually have the
16 two prints, the other print although it's not full has enough
17 information on it that it eliminates Paula and Homer.

18 A. I don't know about the fingerprints. I mean, I know that
19 there's fingerprint stuff and I know that, uh, they were
20 examined.

21 Q. Yeah, no, ---

22 A. They ---

23 Q. --- so no one's, no one's shared that key pho ---

24 A. That ---

25 Q. --- key point with you.

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1 A. --- their -- on that report that I read I learned that I
2 believe she was, I I I'm s -- yes, I'm sayin' eliminated as
3 that one print bein' hers but I ---

4 Q. Yeah, ---

5 A. --- don't know the ---

6 Q. --- there's was enough ---

7 A. --- details ---

8 Q. --- information to eliminate her as the person that left
9 that print, isn't that true?

10 A. Yes.

11 Q. But you have these, that's that was the basis of your,
12 uh, of bringin' the arrest warrants against Paula, four arrest
13 warrants, correct?

14 A. Yes.

15 Q. Charged her with, uh, where -- is it fair to say when you
16 charge someone with setting a fire to obtain insurance money,
17 you're looking at, you took the course, you're tryin' to show
18 the motive was money, aren't ya?

19 A. Uh, there was -- yes.

20 Q. Yeah. Nothing in here talks about any real attempt to
21 figure out the financial resources of Homer and Paula Rose, is
22 there?

23 A. I think Investigator Cannon subpoenaed some
24 financials ---

25 Q. Yeah, where did he get the financial information that he

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1 subpoenaed, the bank accounts that he got?

2 A. There four or five in there I believe.

3 Q. He get those from his ex-wife Becky that works down at
4 Judge Garrett's Office?

5 A. I have no idea where he ---

6 Q. Well ---

7 A. --- got that ---

8 Q. --- where else would ge get 'em?

9 A. I have no idea ---

10 Q. Those are ---

11 A. (Indiscernible cross-talk.)

12 Q. --- the only things he ever sought were were about four
13 or five, I can't even remember the number, all of 'em came
14 back as closed, right?

15 A. I believe that's correct.

16 Q. I mean, if ya and if ya ever need a divorce, that's
17 almost expected, right, you gonna close the account?

18 A. Uh, yes.

19 Q. That's no surprise to you, is it?

20 A. Correct.

21 Q. Okay. Did you ever go down and see any a the domestic
22 paperwork that Becky had filed against Homer?

23 A. No, I did not.

24 Q. No, no validation to offer claims against Paula, were
25 there?

1 A. No.

2 Q. Nothing in here to support that, is there?

3 A. I haven't talked to Becky.

4 Q. Alright. I mean, it -- police officer, you guys can go
5 down and get tax returns very easy, can't ya?

6 A. I'm assumin', I've never ordered anyone's ---

7 Q. I mean, all ---

8 A. --- tax returns.

9 Q. --- ya have to do is send a, I mean, just like ya did
10 here, ya send out a search warrant to the banks, all ya gotta
11 do is send it to either the go -- federal government or the
12 state government, there gonna be returns on both, correct?

13 A. I imagine, I've never done that. I've never ---

14 Q. You coulda easily done that. You didn't do it here, did
15 ya?

16 A. I've never done that.

17 Q. You didn't know anything about Homer when you went out
18 there, did ya?

19 A. No, sir.

20 Q. I mean, it's a pretty nice house, isn't it?

21 A. Yeah.

22 Q. Nice pool?

23 A. Uh, it's average ---

24 Q. Okay.

25 A. --- I guess.

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1 Q. Did you hap -- di -- and you're tellin' this jury you
2 never had thoughts in your mind that sumtin' was funny about
3 that?

4 A. About his house?

5 Q. Yeah, him livin' ---

6 A. No.

7 Q. --- there as a trooper, ---

8 A. No.

9 Q. --- just -- okay. Di -- didn't pay any mind.

10 A. No.

11 Q. Well the -- okay, well why why did the -- why why is, why
12 his financial, uh, if you don't know anything about it and you
13 didn't think there was anything unusual, why why have we --
14 why do we have as the motive in this case at least up until
15 today that it was financial motive?

16 A. I guess that's part of us ruling out it bein' financial
17 or to rule in with the records.

18 Q. Ya, 'cause 'cause ya didn't do it at the time that you
19 arrested her, did ya?

20 A. What's that?

21 Q. Find out what their finances were to see if there was an
22 actual motive to gain insurance money.

23 A. I don't think we asked 'em about their financials.

24 Q. State Farm sent ya their inf -- ya'll asked for State
25 Farm's information, right?

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1 A. Yes.

2 Q. And in fact up until we met with you on February 27th,
3 the only photos we had were the photos Phil Brooks for State
4 Farm took, right?

5 A. I'm not sure what you had.

6 Q. Yeah, you don't know what we had, do ya?

7 A. No, I do not.

8 Q. You didn't -- you don't care, do ya?

9 A. Yes, I do.

10 Q. Well what can you do about it to make sure it doesn't
11 happen again?

12 A. Well when the case, if it's my case and I'm the, uh, it's
13 my assigned case then I would handle all that.

14 Q. Okay.

15 A. Uh, now when and Investigator Cannon we talk about it, he
16 would help me with my case stuff or I'd help him vice versa
17 but there's lots a his case that he did and people were
18 interviewed and talked with that that I was not part of, ---

19 Q. Okay.

20 A. --- that woulda been stuff that he's retainin' the case
21 file then he has everything in there and that's, uh, when it's
22 requested then I know he sent it, if I'm not mistaken, I
23 believe it was sent to our solicitor's office first ---

24 Q. Okay.

25 A. --- which woulda been everything he had in there.

CHARLES GONZALEZ - CROSS-EXAMINATION BY MR. RIORDAN

1 Q. Alright, you said you you shared all reports, is there
2 anything in there speaking to, uh, does anyone report, uh,
3 that Paula was even a named insured on the policy?

4 A. Uh, I believe afterwards, sometime afterwards we found
5 out that she was not ---

6 Q. Yes. Yeah, after ---

7 A. --- a named ---

8 Q. --- she's arrested, right?

9 A. After s -- right, after we ---

10 Q. Yeah, after ya'll put out the press release says you've
11 you've determined that she was lying and she's all over the
12 paper, on the news, right?

13 A. Correct.

14 Q. Called the cameras down there to be at her bond hearing
15 when she's in jail, right?

16 A. I didn't do that.

17 Q. Who did?

18 A. I'm assumin' the sheriff's office did.

19 Q. Is that the Jonathan Smith, the one that writes the press
20 releases, is that his name?

21 A. M -- yes, most probably.

22 Q. Yeah, who gives him the information?

23 A. He comes to us for it.

24 Q. Okay, but you wanna be fair and impartial and be be
25 thorough, correct?

1 A. Yes, that's ---

2 (Indiscernible cross-talk.)

3 Q. Alright, part a that that day, part a this investigation
4 your team, we had these (indicating) items, what else did we
5 have out there that was found on the scene?

6 A. The ax and the paint chips ---

7 Q. Yeah, everyone keeps forget, what about the latex
8 gloves?

9 A. And the gloves, yeah.

10 Q. Yeah, the gloves, you forgot about those too, didn't ya?

11 A. Yes.

12 Q. You don't even mention 'em in your report anywhere, do
13 ya?

14 A. I didn't collect 'em, ---

15 Q. Okay.

16 A. --- no. I remember seeing 'em but I I didn't mention 'em
17 'cause I didn't ---

18 Q. And it's ---

19 A. --- collect 'em.

20 Q. --- important when you do an investigation to preserve
21 and then collect the items that you think are pertinent or
22 evidence in the case, aren't they?

23 A. Yes, and, uh, when Investigator Cannon collected 'em or
24 or forensics collected 'em then that's when they documented
25 that.

CHARLES GONZALEZ - CROSS-EXAMINATION BY MR. RIORDAN

1 Q. Okay. And this is end a July, you'd agree someone has
2 so -- someone, multiple people using, handin' out gloves to
3 put on, there's gonna be DNA 'cause it's right on the skin and
4 your sweat, there's gonna be DNA content, isn't there?

5 A. I assume so, yeah.

6 Q. That's why you collect 'em, right?

7 A. Correct.

8 Q. It's important piece of evidence, isn't it?

9 A. Yes.

10 Q. I mean, DNA, that's that's the whole Innocence Project,
11 hundreds, thousands a people released from jail are found
12 innocent because a DNA testing, right?

13 A. Yes.

14 Q. That's good, isn't it?

15 A. Yes.

16 Q. 'Cause you don't want innocent people convicted, right?

17 A. Correct.

18 Q. That's part a the code of ethics of of one of the groups
19 that you're in, isn't it?

20 A. Correct.

21 Q. Tell us about that. Be, to be a truth seeker, not a case
22 thinker.

23 A. Correct.

24 Q. Yeah. And to be a truth seeker, you would wait, wouldn't
25 you, you'd wanna wait to get all the evidence results back in

CHARLES GONZALEZ - CROSS-EXAMINATION BY MR. RIORDAN

1 before you made an arrest, right?

2 A. Uh, yes, there's enough probable cause when we made the
3 arrest to make the arrest.

4 Q. Okay, 'cause that's, 'cause you've got that power, right?
5 You can determine what probable cause is and submit that to a
6 magistrate for a warrant, can't ya?

7 A. Yes.

8 Q. Yeah, doesn't even matter. Didn't even tell 'em that
9 there's other evidence out there 'cause you had probable
10 cause, right?

11 A. Yes.

12 Q. Alright, but do you think it's fair?

13 A. What's fair?

14 Q. To seek arrest warrants before physical evidence results
15 come back?

16 A. Uh, my understanding the evidence had come back on the
17 the samples and the clothing and the trace from the safe.

18 Q. Yeah, but you know good and well the DNA results hadn't
19 come back, right?

20 A. Correct.

21 Q. In fact, the D -- the gloves are picked up that day,
22 you -- why why did ya'll wait till August 29th more than a
23 month after the fire to even submit those to the Greenville
24 County Department of Public Safety for testing, why was that?

25 A. I'm not sure why.

CHARLES GONZALEZ - CROSS-EXAMINATION BY MR. RIORDAN

- 1 Q. You don't know why, do ya?
- 2 A. No, I do not.
- 3 Q. Well did you do it?
- 4 A. Do submit the gloves?
- 5 Q. Yeah.
- 6 A. Uh, forensics collected those.
- 7 Q. Whose responsibility was that to make sure that was
- 8 tested and the results back before an arrest was made?
- 9 A. Probly, uh, either myself or Investigator Cannon ---
- 10 Q. All three of ya are involved, ---
- 11 A. --- or ---
- 12 Q. --- right, it's ---
- 13 A. (Indiscernible cross-talk.)
- 14 Q. --- a joint investigation, ---
- 15 A. Yes.
- 16 Q. --- all of ya knew about the gloves or should have, ---
- 17 A. Correct.
- 18 Q. --- correct? And what's it usually take to get DNA test
- 19 results done?
- 20 A. I have no idea.
- 21 Q. Takes about ninety days, doesn't it?
- 22 A. I'm not sure, ---
- 23 Q. Well that's somethin' ---
- 24 A. --- if you say so.
- 25 Q. --- an investigator should know, isn't it?

CHARLES GONZALEZ - CROSS-EXAMINATION BY MR. RIORDAN

1 A. Correct. I've never, I've only done DNA one other
2 time.

3 Q. And if you wanna be thorough and fair, you're gonna know
4 sumtin' like that 'cause you're gonna know how long it's gonna
5 take before you can eliminate or try to, uh, convict s -- or
6 or arrest somebody in a case, right?

7 A. Correct.

8 Q. It's important to have all the evidence before you, 'fore
9 ya seek out four warrants for arrest, isn't it?

10 A. Just the gloves weren't -- well this case wasn't based
11 just on gloves.

12 Q. Okay, just the gloves, three gloves, right?

13 A. Correct.

14 Q. So the time you arrest her, you get the warrants, what
15 was September 10th the warrants are gotten?

16 A. Well, yeah, ---

17 (Indiscernible cross-talk.)

18 Q. Investigator Cannon gets the warrants on September ---

19 A. Okay.

20 Q. --- 10th, you guys call me to turn her in on September
21 11th appropriately enough and ---

22 A. Okay.

23 Q. --- she turns herself in September 12th ---

24 A. Yes.

25 Q. --- on the news that night, ---

1 A. Yes.

2 Q. --- front pa -- not the fr -- I don't know what what part
3 a the paper quite frankly, in the paper, correct?

4 A. I'm sure, yes.

5 Q. All the news, all the news people that had been out there
6 July 27th talkin' about the case now we have another big
7 headline, She's lying, right?

8 A. Oh, I don't know what they said in the news report.

9 Q. Okay, well that's what your press release says, We we
10 determined she was lying, do you wanna read it?

11 A. Yes.

12 Q. Okay, let's get that. Well I tell you what, we we need
13 to move along, we'll get to ---

14 A. Okay.

15 Q. You haven't seen it or you haven't seen it lately?

16 A. No, I have not.

17 Q. And you don't have anything to do with the creation of
18 that?

19 A. No, I do not.

20 Q. Okay, just makin' sure. Jonathan Smith does that. How
21 does, how does he go about creating such a report?

22 A. Uh, he comes back and gathers information, depends if
23 it's my case he'll gather it from me, if it's Ben's case,
24 he'll, uh, Cannons' case he'll, uh, gather the information
25 from him.

CHARLES GONZALEZ - CROSS-EXAMINATION BY MR. RIORDAN

1 Q. And you'd agree if it says that, if it says, We
2 determined she was lying and we've got basis for this, all a
3 that is based upon you getting SLED results back for trace
4 evidence on the, on the clothes and the shoes, right?

5 A. Yes.

6 Q. Alright. When were the DNA results produced?

7 A. I do not know.

8 Q. You never looked at the report, have -- you don't have it
9 in your file, do ya?

10 A. No, I do not. It may be in, uh, the large case file but
11 I do not have it.

12 Q. Okay. You think it was November 8th of 2012, does that
13 ring a ---

14 A. If, ---

15 Q. --- bell?

16 A. --- no, if that's when you, I mean, you say that's the
17 date on it then, yes.

18 Q. You got no reason to doubt that, do ya?

19 A. No, I do not.

20 Q. Right here, I'll show it to ya. Hold on, I got it here
21 somewhere. You hadn't seen it. Sho -- you think somethin'
22 like that should be in your file, right?

23 A. It's probly in the case file, I don't know, ---

24 Q. Okay.

25 A. --- I don't retain the file.

CHARLES GONZALEZ - CROSS-EXAMINATION BY MR. RIORDAN

1 MR. RIORDAN: Here we go, let's let's mark this. Any
2 objection?

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

4 MR. UNDERWOOD: No, no objection.

5 MS. ABEE: Yeah.

6 THE COURT: Four pages, right?

7 MR. RIORDAN: Go ahead mark this as Defendant's Exhibit I
8 think 5, please, Maggie, I'm sorry.

9 COURT REPORTER: That's okay.

10 MR. UNDERWOOD: And and I just wanna clarify what
11 Mr. Riordan's purpose is. He's asked if I had an objection, I
12 wanna know what his purpose was, clarify.

13 MR. RIORDAN: I I'm ---

14 THE COURT: Just one second. Do you have a stated
15 objection to this document though? If you're not -- if you're
16 asking what the purpose for its admission is ---

17 MR. UNDERWOOD: Yes, Your Honor.

18 THE COURT: State -- tell us again please, Mr. Riordan.

19 MR. RIORDAN: He's one of three investigators in the case
20 and the ground we've plowed through right now since he doesn't
21 have it in his file I wanna show it to him.

22 THE COURT: Show ---

23 MR. RIORDAN: It's, uh, the DNA test results in this
24 case, Your Honor.

25 THE COURT: Okay.

CHARLES GONZALEZ - CROSS-EXAMINATION BY MR. RIORDAN

1 MR. UNDERWOOD: Your Honor, I I would object, he's not
2 the one who prepared this report. He's planning on presenting
3 Mr. Brown who did make the report, he'd be more appropriate to
4 testify about its contents.

5 THE COURT: Okay, overrule the objection.

6 MR. RIORDAN: Did you mark it?

7 COURT REPORTER: No.

8 (DNA report marked Defendant's Exhibit No. 5 for
9 identification.)

10 BY MR. RIORDAN:

11 Q. Exhibit No. 5, ---

12 A. Okay.

13 Q. --- seen that report before?

14 A. I I do not have this report.

15 Q. Not even in your file, is it?

16 A. I do not have the file ---

17 Q. Thorough investigator would have a DNA report in his
18 file, wouldn't he?

19 A. I'm sure he would.

20 Q. A fair and impartial investigator would wait 'til he got
21 it back for him to seek arrest warrants, wouldn't he?

22 A. Not necessarily.

23 Q. Okay, yeah, uh, apparently so. You got friends up in
24 Oconee County?

25 A. No, I don't, I only know the fire chief over there.

CHARLES GONZALEZ - CROSS-EXAMINATION BY MR. RIORDAN

- 1 Q. What's the date on the report again?
- 2 A. Uh, looks like August 29th of 2012 ---
- 3 Q. That that's ---
- 4 A. --- is the date, ---
- 5 Q. --- the submission date, correct? That's when they get
- 6 it ---
- 7 A. --- it said received.
- 8 Q. --- to you guys. Yeah, go back, I think you'll see
- 9 November 8th unless I'm -- maybe the bottom a the page.
- 10 A. Report date yeah, November 8th 2012.
- 11 Q. What's the results of that DNA?
- 12 A. Just the serological examination ---
- 13 Q. Yeah.
- 14 A. --- or the results or conclusion or DNA analysis?
- 15 Q. Go ahead conclusion 'cause I guess what is what's
- 16 reported -- well you don't have any report of it at all in
- 17 your report, you -- that's not noted at all. The results of
- 18 the DNA test of the gloves doesn't exist in anyone's report,
- 19 does it?
- 20 A. Not to my knowledge.
- 21 Q. None a you three investigators have it anywhere, do ya?
- 22 A. Not to my knowledge, I don't.
- 23 Q. It's inconclusive, right?
- 24 A. This?
- 25 Q. Yeah, it's inconclusive.

CHARLES GONZALEZ - CROSS-EXAMINATION BY MR. RIORDAN

1 A. Uh, where would that be in here?

2 Q. Alright, ---

3 A. I I ---

4 Q. --- yeah, you'd never seen it.

5 A. (Indiscernible cross-talk.)

6 Q. Here, let me help ya, let me help ya.

7 THE COURT: Just one second.

8 MR. RIORDAN: I'm sorry, Your ---

9 THE COURT: He's answerin' you can't interrupt.

10 MR. RIORDAN: Yes, Your Honor, I'm sorry.

11 THE COURT: That's alright.

12 BY MR. RIORDAN:

13 Q. Results and conclusions. Let's go to this (indicating)
14 one first.

15 A. Which one?

16 Q. Results and conclusions. No conclusion can be drawn but
17 why is it? Read item 122, tell us what that says.

18 A. 122, "Swab from inside fingers and thumb area of 3B latex
19 glove. DNA results obtained from this item are consistent
20 with a mixture of three or more individuals so no conclusions
21 could be drawn from this mixture."

22 Q. Look on the back page, they give an array for those items
23 as to what the chromosome is, whether it's male or female.
24 Have you ever read one a those to see what it is?

25 A. No, not -- you wanna show me which one you're talkin'

CHARLES GONZALEZ - CROSS-EXAMINATION BY MR. RIORDAN

1 about.

2 Q. Yeah, right here, this column here (indicating). What
3 are those f -- all of 'em they've got, what what is it? And
4 you're ---

5 A. Well I know, ---

6 Q. --- not an expert, I know that's that's common ---

7 A. --- which ---

8 Q. --- sense, what does it say?

9 A. --- which one are you talkin' about?

10 Q. All four of 'em, they go right down. What do all of 'em
11 have?

12 A. In this A-M-E-L is that what ---

13 Q. Yes.

14 A. --- you're talkin' about?

15 Q. Yeah.

16 A. Uh, it says XY, XY, XY and XY.

17 Q. XY, XY, XY, XY, male DNA. November 8th that's over a
18 month after she's been arrested, right?

19 A. Correct.

20 Q. Didn't have a press report on that, did ya?

21 A. Uh, not to my knowledge.

22 Q. We met on February 27th you know we didn't have that
23 information, did we?

24 A. No, because I hadn't had this information either.

25 Q. Yeah, one of three investigators you don't even have DNA

1 evidence. The next day is when we got that, isn't it, you
2 know that now.

3 A. Next day of?

4 Q. The next day after our meeting, ---

5 A. Okay, yes.

6 Q. --- right?

7 A. Right.

8 Q. That's the whole reason we met so we'd make sure we had
9 all the evidence.

10 A. Correct.

11 Q. Alright, at least to her credit, soon as she got it, she
12 gave it to me.

13 A. Correct, or I may not have known this existed until
14 then.

15 Q. Alright, how and how as an investigator of a case can ya
16 not know?

17 A. 'Cause I was not the primary investigator on this case, I
18 don't know everything that is done after.

19 Q. So that's Investigator Cannon, huh, ---

20 A. Yeah.

21 Q. --- that's ultimately his responsibility?

22 A. To, responsibility to what?

23 Q. To let you or somebody know to put in report, to mainly
24 make sure, we've talked about transparency, ---

25 A. Not necessarily. He doesn't tell me every single thing

CHARLES GONZALEZ - CROSS-EXAMINATION BY MR. RIORDAN

1 he does on every single case, ---

2 Q. Okay, ---

3 A. --- neither ---

4 Q. --- and again, ---

5 A. --- do I to him.

6 Q. --- again, you know the rules in criminal case, right?

7 A. If he woulda, uh, he woulda received this, um, I know
8 that he would have put this in his case file.

9 Q. Well let me a -- who sent off for it? Who sent it off?

10 A. Is there a, uh, there's gotta be an evidence sheet
11 followin' it somewhere ---

12 Q. You you don't even know ---

13 A. --- so . . .

14 Q. --- who sent it off for testing, do ya?

15 A. It was at, uh, it was at forensics so there's there's a
16 form or sheet somewhere with that chain a custody.

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

18 BY MR. RIORDAN:

19 Q. Uh, real quick. Real quick. Anything in your -- you
20 talked earlier about concealment fires, correct, ---

21 A. Yes.

22 Q. --- fires that are set to conceal what was goin' on, ---

23 A. Yes.

24 Q. --- anything in your report talkin' about you checkin' on
25 concealment fires in this case?

CHARLES GONZALEZ - CROSS-EXAMINATION BY MR. RIORDAN

1 A. No.

2 Q. Okay. Anything either before or after the arrest that
3 you checked to see about fires similar to this one, ---

4 A. No.

5 Q. --- incidents similar to this one?

6 A. Uh, I don't recall any other, uh, burglary-type masked
7 men, uh, fires that I've worked in Greenville.

8 Q. You have a look? Anyone look?

9 A. If there was a fire to that nature, I would know about
10 it.

11 Q. I mean, that's important to check and if you're doin' a a
12 fair and impartial and thorough investigation, isn't it?

13 A. There woulda been a fire like that, I'm familiar with
14 most all fires especially one of seriousness of that then I
15 would have known about another fire similar ---

16 Q. That ---

17 A. --- to this.

18 Q. --- after her arrest ya'll continue to talk to other
19 people; in fact, it was only after her arrest you started
20 talkin' to some a the 911 people, right?

21 A. Uh, whatev -- if if that's the correct date then yeah,
22 it's possible, yes.

23 Q. You have ---

24 A. Whatever the date on the statement ---

25 Q. --- no reason to say it's not, do ya?

CHARLES GONZALEZ - CROSS-EXAMINATION BY MR. RIORDAN

1 A. No, I don't have a reason to say that they were
2 interviewed after the arrest.

3 Q. And I was gonna ask were those concealment fires, I mean,
4 have you ever even handled one what you determined to be a
5 concealment fire?

6 A. Yes.

7 Q. When?

8 A. Uh, several where someone broke into an apartment
9 complex, uh, or the office, the leasing office, uh, they were
10 stealin' money and they poured gasoline all through it in
11 attempt to burn, destroy the files and computers.

12 Q. Okay, ---

13 A. Uh, ---

14 Q. --- any o -- any others?

15 A. --- uh, commercial fire in south Greenville same thing.

16 Uh, they were behind on payments on machine so they, uh,
17 poured gasoline on machines and set 'em on fire to get the
18 insurance money from 'em, pay for 'em 'cause they couldn't pay
19 for 'em.

20 Q. You ever been aware of any ---

21 A. Uh, ---

22 Q. --- other ---

23 A. --- murder, ---

24 Q. Okay.

25 A. --- people kill people, uh, set fires just recently where

CHARLES GONZALEZ - CROSS-EXAMINATION BY MR. RIORDAN

1 they, uh, killed a woman, set her on fire to try to conceal
2 it, again, someone killed a woman, uh, shot her, set the car
3 on fire to try to conceal it.

4 Q. Let me ask this: Di -- did you determine, were you able
5 to determine when, uh, the ignitable liquids in this case were
6 poured on the porches?

7 A. I'm assumin' that morning but no I don't know a date and
8 a time but assumin' that morning when this incident occurred
9 is when they were poured.

10 Q. Alright, but you got no idea when, right?

11 A. No, I'm assumin' just minutes prior to the actual
12 ignition of the fire.

13 Q. Okay. Is it your testimony as we sit here you're not
14 aware of any other cases similar to this one?

15 A. No, I've not worked any other cases in Greenville since
16 I've been workin' fires and a case such as this that I wo -- I
17 would know about or would have been on the scene working a
18 fire where burglary would have occurred with this attempt to
19 burn someone's house down while they're in it.

20 Q. You check anywhere other than Greenville?

21 A. No.

22 Q. Where did Paula say she had all her problems?

23 A. Uh, in Oconee County.

24 Q. Yeah, and I asked, I ask earlier you said you -- di --
25 you got all the information but you didn't read it on Paula's

CHARLES GONZALEZ - CROSS-EXAMINATION BY MR. RIORDAN

1 case?

2 A. The information you sent me?

3 Q. Yeah, about the trials and things a ---

4 A. Yes, ---

5 Q. --- that nature. You did read ---

6 A. --- I I ---

7 Q. --- it or ya didn't?

8 A. No, I did not read that packet a stuff you gave me.

9 Q. Okay. Do you know who Billy Looper is?

10 A. Uh, I've heard of him.

11 Q. He used to work for Greenville County Sheriff's Office,
12 didn't he?

13 A. I don't know, was that prior to my time? You know
14 when ---

15 Q. You ---

16 A. --- it was?

17 Q. I don't know, how long you been here?

18 A. Since 2001.

19 Q. You beli --

20 A. I don't know the name since I've been here ---

21 Q. Okay.

22 A. --- or when I started.

23 Q. What's what -- this Thirteenth Circuit encompasses what
24 counties?

25 A. Uh, Greenville and Pickens ---

CHARLES GONZALEZ - CROSS-EXAMINATION BY MR. RIORDAN

1 Q. Okay.

2 A. --- I believe.

3 Q. You remember Billy Looper was one a the candidates for
4 sheriff that summer in Pickens County?

5 MR. UNDERWOOD: Objection, Your Honor.

6 A. What, I mean, when was that? Was that ---

7 THE COURT: State your ---

8 A. --- prior to me ---

9 THE COURT: --- objection.

10 A. --- comin' to Greenville?

11 THE COURT: Stop stop your answer. State your
12 objections.

13 MR. UNDERWOOD: Your Honor, he's already stated that he
14 doesn't know Mr. Looper.

15 MR. RIORDAN: That wasn't my ---

16 THE COURT: Sustain the objection.

17 MR. RIORDAN: Okay, alright.

18 BY MR. RIORDAN:

19 Q. When you got your test results back from SLED, did, uh,
20 anyone advise SLED that you were gonna be bringin' warrants
21 based upon this evidence even though you still had DNA
22 evidence out there that hadn't been tested?

23 A. Do we, do we notify SLED prior to arrest?

24 Q. Yeah, did ya talk to 'em?

25 A. No, we don't call SLED lab and tell 'em we're makin'

CHARLES GONZALEZ - CROSS-EXAMINATION BY MR. RIORDAN

1 arrest.

2 Q. SLED certainly never told you that what their test
3 results said were any indication that Paula Rose had committed
4 arson, did they?

5 A. No, their test results are on the, on the form that dealt
6 with the items came back as as whate -- you know, you wanna
7 read 'em but, uh, ---

8 Q. Well that's that's that's all it is is a test result,
9 right?

10 A. Correct, those items collected from her house.

11 Q. You have no training as to what that means, do ya?
12 You're not ---

13 A. In ---

14 Q. --- familiar with how the tests are done or or what --
15 how ---

16 A. Well I ---

17 Q. --- how sensitive they are or anything, are ya?

18 A. No, I don't know how sense [sic] they are but I'm
19 familiar with how they, how they do the test on the cans but
20 we don't notify SLED or call SLED every time we do it, we
21 do -- I've never done that, we don't.

22 Q. Just real quickly, again, you don't know anything, you
23 you weren't payin' attention the D, uh, the DNA, the gloves,
24 right?

25 THE COURT: Asked and answered, let's move on with that.

CHARLES GONZALEZ - REDIRECT EXAMINATION BY MR. UNDERWOOD

1 MR. RIORDAN: Okay.

2 BY MR. RIORDAN:

3 Q. With that and that's, so that's established, uh, when was
4 Mrs. Rose indicted?

5 A. I don't know, I may have to pull the records on the, uh,
6 grand jury indictment ---

7 Q. Well it was be ---

8 A. --- 'cause I don't know.

9 Q. --- it was before the end a February of this year, wasn't
10 it?

11 A. I don't know when it was.

12 MR. RIORDAN: Nothin' further. Thank Your Honor.

13 THE COURT: Thank you. Redirect, responsive ---

14 MR. UNDERWOOD: Very briefly, Your Honor.

15 THE COURT: --- to cross-examination.

16 REDIRECT EXAMINATION BY MR. UNDERWOOD:

17 Q. Investigator Gonzaléz, the packet of stuff that you were
18 served on Saturday by Mr. Riordan, ---

19 A. Yes.

20 Q. --- you said that you didn't read it, did you look at it
21 to see what it was?

22 A. I read the first, there was like a cover sheet, a first
23 page and it was addressed to myself, Investigator Cannon and
24 Morgan and then it starts off on the first paragraph, it
25 starts off ---

CHARLES GONZALEZ - REDIRECT EXAMINATION BY MR. UNDERWOOD

1 Q. Well when was that? I mean, did did you look to see what
2 the different items in it were?

3 A. Yeah, after readin' that I -- and it didn't make sense to
4 what this was even about so I I flipped through, it was, it
5 was probly 3 inches thick of copied paper so I flipped through
6 it. I saw, uh, financial records, I saw previous incident
7 report that he was talkin' about earlier with the apartment
8 complex where gentleman was arrested ---

9 Q. And there ---

10 A. --- and there was, uh, I saw it looked like transcripts
11 but I didn't read to see where they were from. I saw, uh, uh,
12 financial, uh, papers in there and that was it. I didn't look
13 to see what ---

14 (Indiscernible cross-talk.)

15 Q. Did you identify what was in there?

16 A. Yeah, yes, yes.

17 Q. Was that material relevant to this case?

18 A. No, I saw nothin' in there that was relevant to what I
19 was, uh, to this and that's why I didn't read any of it.

20 Q. And again, did the defense -- you -- there's a lotta
21 question about cutting the evidence in half, ---

22 A. Correct.

23 Q. --- did the defense have an opportunity to examine all of
24 that evidence in whole?

25 A. Yes.

CHARLES GONZALEZ - REDIRECT EXAMINATION BY MR. UNDERWOOD

1 Q. As to the fingerprints that, uh, Phil Brooks from the
2 insurance company took, you know when he took those prints?

3 A. No, I do not.

4 Q. Do you know if the rack involved was moved prior to him
5 taking the ---

6 A. If I remember from the pictures, uh, when the prints when
7 Phil Brooks was there, uh, I think it was several days after,
8 don't know the date or how many days, the rack that he took
9 'em from was standing in an upright position when it was, when
10 we were there and photographed the scene, the rack was laying
11 down flat, uh, ---

12 Q. So someone pri -- between the time when you found the
13 rack and the time this fingerprint was taken, someone ---

14 A. Someone ---

15 Q. --- had touched and moved it?

16 A. --- someone had stood the rack upright, yes.

17 Q. When you responded to this scene, what -- was it apparent
18 that it was an arson case?

19 A. Yes.

20 Q. But you still brought Misty out.

21 A. As I do on all arson scenes or suspected fire arson
22 scenes, I run her on most all arson sce -- or all scenes but
23 this one in particular, ---

24 Q. If ---

25 A. --- yes.

CHARLES GONZALEZ - REDIRECT EXAMINATION BY MR. UNDERWOOD

1 Q. --- if it's apparent that an accelerant was used, why do
2 you still use the dog?

3 A. Because I want to pinpoint where the samples need to come
4 from and also to make sure we don't miss anything. Uh, when
5 she's searchin' on the porches and the immediate area could
6 someone setting this fire may have dropped somethin' that may
7 have ignitable liquid on it and so I search the the immediate
8 area and if I suspect there's sumtin' further away, I'll even
9 do a even further search with her but I use her, it's not
10 uncommon just because it's a fire scene and I notice a set
11 fire scene does not stop me from usin' canine on the scene, I
12 use her anyway to look for additional evidence.

13 Q. Investigator Gonzalez, did you have anything to do with
14 the random acts that were discussed in Oconee County?

15 A. No, I did not.

16 Q. Did you in any way, shape or form tamper with or plant
17 evidence in this case?

18 A. No, I did not.

19 Q. Have you been involved in any kind of frame job against
20 Paula Rose?

21 A. No, I did not know them until this day, 'til that day.

22 MR. UNDERWOOD: No further questions, Your Honor.

23 THE COURT: Thank you. Thank you, sir, you may step
24 down. Any reason why this witness cannot being excused?

25 MS. ABEE: No objection from the State, Your Honor.

BRANDON MICHAEL BARWICK - DIRECT EXAMINATION BY MS. ABEE

1 MR. RIORDAN: None, Your Honor.

2 THE COURT: Thank you, sir.

3 THE WITNESS: Okay.

4 (Whereupon, the witness left the stand.)

5 THE COURT: Call your next witness, please.

6 MS. ABEE: Your Honor, the State calls Brandon Barwick.

7 MR. UNDERWOOD: Your Honor, is Investigator Gonzalez
8 allowed to be in the courtroom now?

9 THE COURT: Yes.

10 MR. UNDERWOOD: He's here.

11 THE COURT: Yes, he's been released.

12 (Whereupon, the witness came forward.)

13 THE BAILIFF: You place your left hand here (indicating),
14 raise your right hand, face that young lady.

15 BRANDON MICHAEL BARWICK, having
16 been first duly sworn, testified as follows:

17 THE CLERK: Oh, please have a seat.

18 (Whereupon, the witness complied.)

19 THE CLERK: Will you state your full name for the
20 record.)

21 THE WITNESS: Brandon Michael Barwick.

22 DIRECT EXAMINATION BY MS. ABEE:

23 Q. Mr. Barwick, please tell us where you're currently
24 employed.

25 A. I'm employed with Wade Hampton Fire Department.

BRANDON MICHAEL BARWICK - DIRECT EXAMINATION BY MS. ABEE

1 Q. And were you a part of the team that responded to the
2 fire at [REDACTED] Riley Smith on July the 27th a 2012?

3 A. Yes, ma'am.

4 Q. Were you on the first truck or the second truck?

5 A I was on the first truck.

6 Q. And is that the time when you became familiar with who
7 Paula Rose is?

8 A. Uh, yes.

9 Q. And I wanna talk to you about an an incident later, uh,
10 do you recall seeing Ms. Rose again at the fire department in
11 September of that year?

12 A. Yes, ma'am.

13 Q. Okay, and if you could, tell us what Ms. Rose said while
14 she was at the fire department.

15 A. She came in the fire department and she asked if we, uh,
16 knew who she was, we stated we didn't recognize her, the other
17 person that was with me wasn't on the first truck at the time
18 a the fire, she then stated that she was Paula Rose and she
19 was lookin' for information about burn records, if we had kept
20 burn records from the past, uh, the other fireman that was
21 with me called dispatch to check 'cause we don't take the burn
22 records, they do that there, she said no, they don't keep the
23 records, said they may try forestry, that's the 1-800 that
24 call for the state burn permit. We relayed that information
25 to Ms. Rose, she said she had that number, she said that, uh,

BRANDON MICHAEL BARWICK - CROSS-EXAMINATION BY MR. RIORDAN

1 she appreciated what we did with savin' the dogs and puttin'
2 out the fire, she'd also mentioned that the dog had hit on her
3 slippers, she wanted to show that she had been burnin' those
4 slippers in the past.

5 Q. And, uh, does she state that that's why she was asking
6 for the burn permits?

7 A. Yes.

8 Q. And you stated those are kept where, or where did you
9 refer her to?

10 A. With the forestry commission. I don't know if they keep
11 them or not but we don't keep any records in the, uh, our
12 dispatch for those.

13 Q. Thank you, Mr. Barwick. Your Honor, I have no further
14 questions.

15 THE COURT: Cross-examination.

16 MR. RIORDAN: Yes.

17 CROSS-EXAMINATION BY MR. RIORDAN:

18 Q. Brandon, hey. Uh, ---

19 A. Hi ---

20 Q. --- you you were the one that came in right behind, uh,
21 Lieutenant Scott Proffitt, right?

22 A. Yes, sir.

23 Q. Second one on the scene, right?

24 A. We were all three together when we showed up but ---

25 Q. Sure.

1 A. --- second one into the fire.

2 Q. Reggie's drivin' the truck and he stays out and puts puts
3 the hoses and you're straighten out the hoses and Scott's
4 right into the fire, correct, or ---

5 A. Yes, sir.

6 Q. --- right to the scene and you eventually saw Paula out
7 there, didn't ya?

8 A. She was at the porch.

9 Q. Alright, you knew she, I mean, Scott told ya she came
10 outta the house, was there on the porch, all that, correct?

11 A. Well we didn't talk about that to start with, we
12 woulda both had a mask on, there woulda been been limited
13 communication ---

14 Q. Sure, you ---

15 A. --- at the start.

16 Q. --- you guys put masks on to make sure you could breathe
17 when you went in, right?

18 A. Yes, sir.

19 Q. And Paula it was clear she had soot all over, didn't
20 she?

21 A. She was distraught, she had soot on her.

22 Q. Yeah, she's standin' right there on the front porch where
23 the gasoline fire was, right?

24 A. Yes, sir.

25 Q. And she was pleadin' with you guys to go save her dogs,

1 the dog saved me, go save him, right?

2 A. Yes, sir.

3 Q. Yeah, she wanted you guys to to get in but you guys
4 needed to put out the fire to start with, correct?

5 A. Right.

6 Q. But eventually Scott did go in back to the bedroom and
7 found the big dog and got it out ---

8 A. I wasn't with him for that, I was ---

9 (Indiscernible cross-talk.)

10 Q. Okay, alright, but you ---

11 A. I ---

12 Q. --- knew the dogs eventually were saved, correct?

13 A. Yes.

14 Q. She was very appreciative, wasn't she?

15 A. Yes.

16 Q. She's there on the front porch huggin' the dogs and and
17 happy to have 'em, right?

18 A. I wasn't there for that, ---

19 Q. Okay.

20 A. --- I was inside with the fire.

21 Q. What about did -- and you knew she she knew she had a gun
22 on her too, didn't ya?

23 A. I heard the comment about it, I didn't see it myself.

24 Q. Scott was talkin' about that, right?

25 A. Yes, sir.

BRANDON MICHAEL BARWICK - CROSS-EXAMINATION BY MR. RIORDAN

1 Q. He's kinda jokin' about tryin' to make her get off the
2 porch and wonderin' if she, you know, ---

3 A. Right.

4 Q. --- he was concerned about her havin' a weapon when when
5 he wasn't doin' what she wanted him to do, right?

6 A. He was concerned about her bein' distraught and havin' a
7 weapon.

8 Q. I mean, he was, he said that kinda jokingly, right?

9 A. Yes.

10 Q. Alright, and when she came by the fire department she was
11 very appreciative as well, wasn't she?

12 A. Yes, sir.

13 Q. Okay. I've got nothin' further, thank you, sir.

14 MS. ABEE: No redirect, Your Honor.

15 THE COURT: May this witness be excused?

16 MS. ABEE: There's no obje ---

17 MR. RIORDAN: Yes.

18 MS. ABEE: --- there's no objection from the State, Your
19 Honor.

20 THE COURT: Thank you, sir, you may be excused.

21 THE WITNESS: Thank you.

22 (Whereupon, the witness left the stand.)

23 THE COURT: You have any other shorter witness like that?

24 MS. ABEE: We do, yes, sir.

25 THE COURT: Okay, thank you, you may ---

JEFF BAUMANN - DIRECT EXAMINATION BY MS. ABEE

1 MS. ABEE: Your Honor, at this time the State calls Jeff
2 Baumann to the stand.

3 (Whereupon, the witness came forward.)

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

5 JEFF BAUMANN, having been first
6 duly sworn, testified as follows:

7 THE CLERK: Please have a seat.

8 (Whereupon, the witness complied.)

9 THE CLERK: Will you state your full name for the record.

10 THE WITNESS: Jeff Baumann, B-A-U-M-A-N-N.

11 DIRECT EXAMINATION BY MS. ABEE:

12 Q. Mr. Baumann, please tell us where you're currently
13 employed.

14 A. I'm employed by the South Carolina Forestry Commission.

15 Q. And what is it that you do there?

16 A. I am the, uh, division director for our technology
17 section.

18 Q. And what types of duties does that involve?

19 A. I oversee our information technology systems, our
20 dispatch operations communication systems and GIS systems.

21 Q. And if you could, tell us how the Forestry Commission,
22 uh, controls or keeps records of burn permits or when people
23 do controlled burning in their yard.

24 A. Uh, we have an automated system that, uh, captures their,
25 uh, caller information, uh, location of their burn and a phone

JEFF BAUMANN - DIRECT EXAMINATION BY MS. ABEE

1 number, uh, we maintain that call information for forty-five
2 days and then rely on our 1-800, uh, call data we get from the
3 phone company for any period after that.

4 Q. And after this forty-five days are you able to retrieve
5 any phone number that comes through?

6 A. Uh, it, it's -- there is, historically there has been
7 some problems with some cell providers not pass along caller
8 ID information, uh, to, uh, with 800 numbers, uh, but, uh, uh,
9 with, uh, landline phones, uh, no problems at all.

10 Q. And were you asked to look up some phone numbers in
11 regards to this case?

12 A. Yes, I was.

13 Q. Okay, and do you recall what phone numbers those were?

14 A. Uh, there was three.

15 Q. And did you receive a hit on any of those phone
16 numbers?

17 A. Uh, on one number I received a hit, uh, three hits,
18 they're actually, uh, from a, the previous fiscal year that he
19 was asking, uh, some data for.

20 Q. And do you recall the last date of the phone-in for the
21 controlled burn from that phone number?

22 A. I believe it was in Octo, uh, in August.

23 Q. And do you recall sending an e-mail back and forth
24 about ---

25 A. Yes.

JEFF BAUMANN - CROSS-EXAMINATION BY MR. RIORDAN

1 Q. --- this case? If I were to show you that e-mail, would
2 it refresh your cur -- recollection? Your Honor, permission
3 to approach.

4 THE COURT: Yes, ma'am.

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

6 MR. RIORDAN: I have no objection.

7 BY MS. ABEE:

8 Q. Mr. Baumann, I'm gonna ask you to to see if that e-mail
9 refreshes your date on the last control ---

10 A. Yes, May, ---

11 Q. --- burn.

12 A. --- May 29th.

13 Q. Okay, so that was the last control burn that came from
14 that number?

15 A. That's right.

16 MS. ABEE: Your Honor, I have no further questions for
17 Mr. Baumann.

18 THE COURT: Cross-examination.

19 CROSS-EXAMINATION BY MR. RIORDAN:

20 Q. Sir, you you like people to call in to get to to notify
21 you when they're gonna burn, right?

22 A. That's correct, there's a state law.

23 Q. 'Cause ya don't want it to get outta control, there's, as
24 you said there's a state law, right?

25 A. Yes.

JEFF BAUMANN - CROSS-EXAMINATION BY MR. RIORDAN

1 Q. That's the responsible thing to do, isn't it, when you're
2 burnin'?

3 A. Yes.

4 Q. Alright, because sometimes people have be -- at -- in in
5 in your, in your experience have people gone, uh, burning on
6 their own and it gets outta control?

7 A. Yes.

8 Q. That can happen, can't it? That can happen, can't it?

9 A. Yes.

10 Q. You you're you're familiar with that, right, that's why
11 you call, get a burn permit, make sure you do it away from the
12 house.

13 A. There's a burn notification.

14 Q. Yeah. I mean, if someone wanted to burn their house,
15 that be easy way to do it, say, Well I was tryin' to burn my
16 debris that just got outta ---

17 A. Um-hum.

18 Q. --- control, right, that be easy, wouldn't it?

19 A. Yes.

20 Q. Yeah. Thank you.

21 THE COURT: Redirect?

22 MS. ABEE: Nothing, Your Honor.

23 THE COURT: May this witness be excused?

24 MS. ABEE: There's no objection from the State, Your
25 Honor.

DUSTIN KRETSCHMAR - DIRECT EXAMINATION BY MS. ABEE

1 THE COURT: Mr. Riordan?

2 MR. RIORDAN: No no objection, Your Honor, I'm sorry I
3 keep ---

4 THE COURT: Banner [sic], you're excused, sir.

5 (Whereupon, the witness left the stand.)

6 THE COURT: Uh, let me see the attorneys.

7 (Whereupon, a bench conference was held off the record.)

8 MS. ABEE: Your Honor, at this time the State calls
9 Dustin Kretschmar to the stand.

10 (Whereupon, the witness came forward.)

11 THE CLERK: Okay, please have a seat. Will you state
12 your full name for the record.

13 THE WITNESS: Dustin Kretschmar.

14 DIRECT EXAMINATION BY MS. ABEE:

15 Q. Please tell us all where you're currently employed.

16 A. Greenville County Forensics.

17 Q. And how long have you been employed by Greenville County
18 Forensics?

19 A. 'bout three and a half years.

20 Q. And what is your current position there?

21 A. A forensics technician.

22 Q. And what types of things do you do as a forensics
23 technician?

24 A. We collect fingerprints, evidence, uh, take photographs
25 and things a that nature.

DUSTIN KRETSCHMAR - DIRECT EXAMINATION BY MS. ABEE

1 Q. And how were you involved in this particular case?

2 A. I responded to the scene, uh, to take photographs and
3 collect some evidence on scene there.

4 Q. And what day did you respond?

5 A. On 7/27/2012.

6 Q. And, uh, do you know approximately what time you
7 responded?

8 A. Uh, at about, hold on one sec. I arrived on scene at
9 1116 hours.

10 Q. And, uh, if you could, tell us what some of the, uh,
11 evidence is that you collected.

12 A. I took photographs of the scene, uh, I collected a gas
13 can, a gas cap, uh, I took fingerprints of the scene and I
14 collected some latex gloves from the scene as well.

15 Q. And where all did you dust for fingerprints?

16 A. I fingerprinted the, uh, garage door, the door leading
17 from the garage to the house, the exterior of that door. I
18 processed the safe that was inside the garage, there was also
19 a metal shelf that was lying on the garage floor that I
20 processed for fingerprints and then also a door leading from
21 the garage to the back porch area.

22 Q. And of all those things that you dusted were you able to
23 lift a fingerprint off of any of them?

24 A. I did lift some fingerprints off of the safe I believe.

25 Q. And after you lift fingerprints what do you do with them?

DUSTIN KRETSCHMAR - DIRECT EXAMINATION BY MS. ABEE

1 A. We secure them in an envelope and then I take 'em back to
2 the crime scene office and then they get sent, put in, placed
3 in a box and they'll get sent to the latent print division.

4 Q. Uh, tell us what some a the things are that you took
5 photos of while at the scene.

6 A. I took overall photographs of the entire scene which
7 includes the front yard, the house, the backyard, uh, and the
8 back a the house where the porch was. Uh, specifically I took
9 photographs of the front gate area and the electronic box
10 that, uh, was supposedly tampered with and then also there was
11 a gate to the side of the front yard, uh, where some several
12 footwear-like impressions or footprint impressions were, took
13 pho -- photographs a that and then more specifically of the
14 evidence that I collected on scene and inside the garage.

15 Q. And if I were to show you some a those pictures today,
16 would you recognize them?

17 A. Yes.

18 MS. ABEE: Your Honor, may I approach?

19 THE COURT: Yes, ma'am.

20 (Whereupon, defense counsel examined the exhibits.)

21 MR. RIORDAN: No objection.

22 THE COURT: What exhibit numbers are those?

23 MS. ABEE: Your Honor, I'm approaching with Exhibit 13,
24 14, 15, 16, 17, 18, 19 and 24.

25 THE COURT: Okay, are those admitted without objection?

DUSTIN KRETSCHMAR - DIRECT EXAMINATION BY MS. ABEE

1 MR. RIORDAN: Yes, Your Honor.

2 THE COURT: Okay, thank you.

3 (State's Exhibit Nos. 13, 14, 15, 16, 17, 18, 19 and 24,
4 photographs, admitted into evidence.)

5 BY MS. ABEE:

6 Q. Uh, look through these pictures and tell me if they
7 accurately depict some a the pictures that you took or the
8 scene, uh, as you saw it on that day.

9 (Whereupon, the witness complied.)

10 A. Yes, these are the photographs that I took.

11 Q. Okay, I'm gonna talk to you very briefly about some of
12 them. First, I wanna talk about you said you found, uh, some
13 shoe impressions, is ---

14 A. Um-hum, ---

15 Q. --- that right?

16 A. --- yes, ma'am.

17 Q. And I'm showing you State's Exhibit 15, is this where you
18 found one a the shoe impressions?

19 A. Yes.

20 Q. Okay, where is this, uh, located at the house?

21 A. That's at the fronta the house in the corner, uh, the
22 fence I was speaking of earlier.

23 Q. Okay, and when you take a picture of the footprint, do
24 you get u -- or the shoe impression, do you get up close to
25 it?

DUSTIN KRETSCHMAR - DIRECT EXAMINATION BY MS. ABEE

1 A. I do.

2 Q. So like this (indicating) Exhibit 13, is this up-close
3 impression?

4 A. Yes, ma'am.

5 Q. And at the same time I'm gonna show you, uh, State's
6 Exhibit No. 24, is that a another picture of an impression
7 that you took?

8 A. Yes, ma'am.

9 Q. 'Cause you said you took how many while you were at the
10 scene?

11 A. Uh, several photographs of of the footwear impressions.

12 Q. And how many footwear impressions did you find?

13 A. I believe there were three: two by the fence and then one
14 a little bit closer on a, uh, next to a walkway.

15 Q. And did you take any pictures of shoes themselves?

16 A. I did.

17 Q. Okay, and is that this picture here (indicating), picture
18 number 14?

19 A. It is.

20 Q. And why did you take a picture of this particular shoe?

21 A. The tread pattern on those shoes were very similar to the
22 pattern that I photographed that was in the ground.

23 Q. And where did you get these shoes from?

24 A. Those were on the driveway, uh, just sitting on the
25 driveway and I was told that the complainant at the time that

DUSTIN KRETSCHMAR - DIRECT EXAMINATION BY MS. ABEE

1 I was told was the one wearing those sandals.

2 Q. And you said "complainant" who is -- what does ---

3 A. Uh, ---

4 Q. --- that mean?

5 A. --- the complainant, uh, that I was told was a Paula
6 Rose.

7 Q. Okay, and so those were your understanding her shoes?

8 A. Yes, ma'am.

9 Q. And you said that you dusted, uh, the door that leads
10 into the house, would that be this (indicating) door?

11 A. Yes, ma'am.

12 Q. And why did you dust this door for fingerprints?

13 A. I was told that several subjects were, uh, attempting to
14 go into the house through that door, they jiggled the door
15 handle but were not able to actually go into the house.

16 Q. And were there any, uh, were you able to lift any
17 fingerprints off of that?

18 A. No.

19 Q. And then you said you dusted the safe, a back door and a
20 shelf, is that's -- is that what is depicted in this
21 (indicating) picture?

22 A. Yes, ma'am.

23 Q. And is this (indicating) where the shelf was at the time
24 that you got there?

25 A. Yes.

1 Q. So it was laying on the ground?

2 A. It was laying on the ground.

3 Q. Okay, and of all these things that you dusted when, uh,
4 what were you able to lift a fingerprint off of?

5 A. I was able to lift fingerprints off of the front of the
6 safe.

7 Q. And now when you dust something, do you dust just a a
8 little bit here or there, do you dust the entire area?

9 A. I'll dust pretty much the entire area, for the safe
10 specifically I'll do the entire front and then around the
11 edges and tops and sides. I wasn't able to get around behind
12 it because it was too large and I wasn't able to move it.

13 Q. And then; finally, you say you took some latex gloves, is
14 that the gloves that we see here (indicating)?

15 A. Yes, ma'am.

16 Q. And do you recall where you found those latex gloves?

17 A. There's gloves in the front next to the front porch and
18 then also on the back porch.

19 Q. And this, uh, particular picture number 19 is that the
20 one near the front porch?

21 A. That's near the front porch.

22 Q. And where is the glove located?

23 A. Uh, in the middle of the photograph next to the porch.

24 Q. Is, uh, on the porch or the ground?

25 A. On the ground.

DUSTIN KRETSCHMAR - DIRECT EXAMINATION BY MS. ABEE

1 Q. Okay, and this one right here (indicating), uh, this
2 (indicating) picture, where was that located at?

3 A. That was on the back deck.

4 Q. Okay, so this glove right here (indicating) was located
5 on the back deck?

6 A. Yes, ma'am.

7 Q. And what do you do, uh, or what did you do with the
8 gloves?

9 A. I took the gloves, uh, placed them in paper bags and
10 sealed them, uh, I bring them back to the crime scene office.
11 Beca -- I I I inspected the gloves, they didn't really seem to
12 have any, uh, ridge detail and so I thought it be better to
13 get DNA swabs off of each glove and so attempt to try and lift
14 fingerprints so I collected, uh, DNA swabs from each item.

15 Q. And when you say "ridge detail," you mean fingerprints.

16 A. Fingerprint, correct.

17 Q. And that was not inside a the gloves?

18 A. Uh, no, ma'am.

19 MS. ABEE: Your Honor, may I just have one second?

20 THE COURT: Yes, ma'am.

21 BY MS. ABEE:

22 Q. Uh, if you can tell us where on the safe you actually
23 found the fingerprints, where they were located.

24 A. Where specifically, uh, I don't recall specifically where
25 those fingerprints were located on the safe, I know they were

DUSTIN KRETSCHMAR - CROSS-EXAMINATION BY MR. RIORDAN

1 on the front of the safe but where exactly on the fronta the
2 safe I don't recall.

3 Q. But you dusted the entire front of the safe and only
4 found those one set a fingerprints.

5 A. Yes, ma'am.

6 MS. ABEE: Your Honor, I have no further questions.

7 THE COURT: Cross-examination.

8 CROSS-EXAMINATION BY MR. RIORDAN:

9 Q. Kretschmar, and and ya got two fingerprints, right?

10 A. Uh, sir, I don't recall specifically how many
11 fingerprints.

12 Q. You don't remember how many fingerprints you got off the
13 safe?

14 A. No, sir.

15 7Q. Keep a report of it?

16 A. I do.

17 Q. Do ya have it in front of ya?

18 A. I do.

19 Q. Can you look at it and tell us.

20 A. It doesn't say specifically how many fingerprints but it
21 does say I have positive results on the gun safe.

22 Q. And you have a gun safe?

23 A. I do, sir.

24 Q. You open it?

25 A. I have.

DUSTIN KRETSCHMAR - CROSS-EXAMINATION BY MR. RIORDAN

1 Q. I mean, your gun safe should have your fingerprints on
2 it, shouldn't it?

3 A. It depends on the circumstances.

4 Q. Well it could at -- let me ask this way: you found
5 Paula's fingerprint on her gun safe, right?

6 A. Yes, sir.

7 Q. Nothing -- it's -- that -- I mean, that's expected, isn't
8 it, if she's used the gun safe, her gun safe.

9 A. It is possible for her fingerprints to be on there.

10 Q. In fact, you guys did, you know, that's what elimination
11 is, you try to get fingerprints of people ya know are gonna
12 have fingerprints around there so you can eliminate those and
13 then focus on the ones that don't match her, right?

14 A. Yes, sir.

15 Q. Okay. And we've got a fing -- we got an extra
16 fingerprint in this case that doesn't match her, right?

17 A. Yes, sir.

18 Q. You do, right?

19 A. I'm not ---

20 Q. Ya'll just shared that with me last week, didn't ya?

21 A. I don't believe I spoke with you, sir.

22 Q. You didn't speak with me, Chris -- who's who's Chris
23 Gray?

24 A. Uh, Chris Geraghty (phonetic) is our latent ---

25 Q. Chris Geraghty, ---

1 A. --- print examiner.

2 Q. --- I'm sorry.

3 A. Um-hum.

4 Q. He create a report last week to talk about the fact,
5 Okay, Paula's when she, when she was the complainant, the
6 elimination didn't mean anything, right, you didn't even
7 create a report, did ya, a formal report?

8 A. I'm not a -- I'm not aware of the elimination prints.

9 Q. Okay, but after you guys arrest her now the elimination
10 print that's supposed to be there, you guys make up a report
11 to say she found her print on her safe, right?

12 A. I'm not aware of the results of the fingerprint matches,
13 I go to the scene and collect the fingerprints and then send
14 them to the latent print division ---

15 Q. You don't ---

16 A. --- they're the ones ---

17 Q. --- have anything to do with ---

18 A. --- that ---

19 Q. --- it after that?

20 A. No, sir.

21 Q. Okay. Well I'm sorry, I didn't mean to get on ya but you
22 do go out there, you're the the, you're the forensics man sent
23 out to the scene, right?

24 A. Yes, sir.

25 Q. And part a that you end up creating a report, correct?

DUSTIN KRETSCHMAR - CROSS-EXAMINATION BY MR. RIORDAN

1 A. Um-hum.

2 Q. You wanna be thorough in your reports, right?

3 A. Yes, sir.

4 Q. You wanna be timely when you create it, right?

5 A. Yes, sir.

6 Q. Make sure everything ya have and what's fresh in your
7 mind put it down, right?

8 A. Yes.

9 Q. That correct? When when did you create your report?

10 A. On 8/07/2012.

11 Q. Okay, this fire was July 27th, is that right?

12 A. Yes, sir.

13 Q. Uh, and when ya got there you were called by an
14 investigating officer, right?

15 A. Yes, sir.

16 Q. That's who gave you information when you responded,
17 that's who you talked to to figure out what you're lookin' at
18 and what you're lookin' for, right?

19 A. I spoke with several investigating officers that were on
20 scene.

21 Q. Well, okay, well who is the investigating officer on your
22 report?

23 A. Investigator Cannon.

24 Q. Okay, that's who, that's who you would rely on when you
25 start this off and so you got the information from him,

1 right?

2 A. Yes, sir.

3 Q. And the first thing it says is he tells you the incident
4 occurred approximately seven o'clock that mornin'.

5 A. Yes, sir.

6 Q. That's your information, isn't it?

7 A. Yes.

8 Q. Okay. You ever go -- you, and you're not askin', well
9 you didn't go check the 9, you don't know anything about the
10 911 calls, the logs or anything else.

11 A. No, sir.

12 Q. It's kind of important to know. You'd think the
13 investigating officer in a case that mornin' would know within
14 an hour at least, maybe an hour and twenty minutes, when the
15 incident was actually reported, you'd expect that, wouldn't
16 ya?

17 A. I'm not -- could you repeat the question.

18 Q. Would you expect the investigating officer on the scene
19 to at least have in his mind an understanding within an hour
20 and twenty minutes when the incident actually was reported?

21 A. I wouldn't know what the investigating officer ---

22 Q. You'd expect ---

23 A. (Indiscernible cross-talk.)

24 Q. --- that, wouldn't ya?

25 A. I'd get the information from them at -- as ---

DUSTIN KRETSCHMAR - CROSS-EXAMINATION BY MR. RIORDAN

1 Q. I mean, if you can't trust the investigating officer to
2 be correct within a hour and twenty minutes, you can't trust
3 him much on anything, can ya?

4 A. I would trust him, yes.

5 Q. You would still trust him?

6 A. I don't know when the, uh, I I get the information from
7 him as he tells me.

8 Q. Okay. Says, "The suspect opened the gate by tampering
9 with the electric box that controlled the gate," who -- he
10 told ya that, right?

11 A. Yes, sir.

12 Q. You opened up the gate, that's the box, right?

13 A. Yes, sir.

14 Q. All ya gotta do is jump over the fence, right, and and
15 open the box?

16 A. You could.

17 Q. And there's a button there that you push if you -- it
18 could -- and the fence, I mean, did did ya measure how tall
19 fence was?

20 A. No, sir.

21 Q. I mean, you're -- you athletic guy, you could have easily
22 jumped over that fence from the outside in, right, the little
23 side chain-link fences?

24 A. Possibly, yes.

25 Q. I mean, all ya gotta do is put your, put your hand on it,

1 jump right over, right?

2 A. Okay.

3 Q. Quick move to get, the little box isn't locked, all ya --
4 it has, it has little latches you just open up and there's
5 looks like a doorbell, doesn't it, a little button ya
6 push, ---

7 A. Yes.

8 Q. --- right?

9 A. Yes, sir.

10 Q. What did you do -- did you do anything to look through to
11 see how that gate was operating?

12 A. No, sir.

13 Q. Did you look to see if it kept any a log of memory
14 information as to when the last time was the gate was open?

15 A. No, sir.

16 Q. That woulda been, that woulda been somethin' to look at,
17 wasn't it?

18 A. Yes.

19 Q. I mean, but you thought -- you were told by the
20 investigating officer the incident started at seven o'clock
21 that morning, didn't ya, ---

22 A. Yes, sir.

23 Q. --- that's the information you get. What time are you
24 out there?

25 A. I arrived on scene at 11:16.

DUSTIN KRETSCHMAR - CROSS-EXAMINATION BY MR. RIORDAN

1 Q. 11:16. And at 11:16 you're told it happened seven
2 o'clock. Wha'd you do with those latex gloves?

3 A. I collected them, processed them for DNA and then put --
4 placed them in the proper in evidence section.

5 Q. So you're the one that sent it out for testing?

6 A. I'm sorry?

7 Q. You're you're the one that sent it out for testing?

8 A. No, sir.

9 Q. Oh, you just put it in evidence?

10 A. Yes.

11 Q. Alright. Did you ever get the test results back on the
12 DNA a the gloves?

13 A. No, sir.

14 Q. Uh, you collected that 'cause that was important piece of
15 evidence, wasn't it?

16 A. Yes, sir.

17 Q. I mean, latex gloves in the summer when -- any time when
18 you put on a latex glove, you're almost assured to get some
19 DNA in there, aren't ya?

20 A. I can't testify to that, sir.

21 Q. Okay. What what's your, what's your lay opinion on
22 somethin' like that? It's right on the skin, right?

23 MS. ABEE: Objection, ---

24 Q. I understand ---

25 MS. ABEE: --- Your Honor.

DUSTIN KRETSCHMAR - CROSS-EXAMINATION BY MR. RIORDAN

1 THE COURT: Sustained.

2 MR. RIORDAN: Okay.

3 BY MR. RIORDAN:

4 Q. You didn't put any DNI -- A on it when you collected it,
5 did ya?

6 A. No, sir, I was wearing gloves as well.

7 Q. Check that you you you did take some prints off the gun
8 safe, ya got two, right?

9 A. Yes, sir.

10 Q. Alright, did ya, did ya ever open up the gun safe, did ya
11 ask someone to open it?

12 A. No, sir.

13 Q. Do you even know what was inside the gun safe?

14 A. No, sir.

15 Q. You know of anyone that asked to open up the gun safe to
16 see what was inside?

17 A. Not to my knowledge.

18 Q. Did you ever get tests results back? Did you ever see
19 the test results on the DNA?

20 A. No, sir.

21 Q. They they tell ya -- they told ya what the, uh, complaint
22 was: three suspects in the garage attemptin' to get in the
23 safe, right?

24 A. I'm sorry, repeat the question.

25 Q. You knew that mornin' that was what's reported to you,

DUSTIN KRETSCHMAR - CROSS-EXAMINATION BY MR. RIORDAN

1 her complaint was there's three guys in the garage, that's why
2 you're at the safe trying to get in, right?

3 A. Yes, sir.

4 Q. I mean, do you know today what the DNA the test result
5 said?

6 A. No, sir.

7 Q. Do you know that she was arrested on, uh, September 12th
8 based upon SLED, uh, results of, uh, trace evidence, is
9 that -- are you aware a that?

10 A. I'm not aware.

11 Q. Alright. Have you ever, have you ever suggested, cases
12 that you run, that the investigators go ahead and make an
13 arrest when DNA results are still pending?

14 A. No, sir.

15 Q. You wouldn't do that, would ya?

16 A. No, sir.

17 Q. Thank you.

18 MS. ABEE: I have no redirect, Your Honor.

19 THE COURT: May this officer be excused?

20 MR. RIORDAN: Yes, Your Honor.

21 THE COURT: Thank you, sir, you're ---

22 THE WITNESS: Thank you.

23 (Whereupon, the witness left the stand.)

24 THE COURT: --- excused. Next witness, please. Madam
25 forelady, ladies and gentlemen -- madam foreman, ladies and

DUSTIN KRETSCHMAR - CROSS-EXAMINATION BY MR. RIORDAN

1 gentlemen of the jury, uh, I'm plannin' on goin' to seven, is
2 that okay with everybody?

3 (No audible response.)

4 THE COURT: Okay, everybody okay, hum? Anybody need a
5 break? Anybody -- if you need one, please speak up, I
6 mean, -- you do? Okay, let's take about, you know, five,
7 ten-minute break, okay. Thank you so much. Don't sit in
8 silence, I want ya'll let me know.

9 (The following takes place outside the presence of the
10 jury.)

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

12 (Whereupon, a recess was taken.)

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

14 THE COURT: Let me see you guys up here right quick.

15 (Whereupon, a bench conference was held off the record.)

16 THE COURT: Alright, State ready?

17 MR. UNDERWOOD: Yes, Your Honor.

18 THE COURT: Defense ready?

19 MR. RIORDAN: Yes, Your Honor.

20 THE COURT: Bring the jury in, please.

21 (The following takes place in the presence of the jury.)

22 THE COURT: Okay, Ms. Abee, would you call your next
23 witness, please.

24 MS. ABEE: Uh, yes, sir, ---

25 THE COURT: Oh, excuse ---

BRIAN MILTON BROWNING - DIRECT EXAMINATION BY MR. UNDERWOOD

1 MS. ABEE: --- our ---

2 THE COURT: --- me, Harrison.

3 MR. UNDERWOOD: That's alright, Your Honor. Uh, Your
4 Honor, the State calls Brian Browning.

5 THE CLERK: Come forward, please.

6 (Whereupon, the witness came forward.)

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

8 BRIAN MILTON BROWNING, having been
9 first duly sworn, testified as follows:

10 THE CLERK: Okay, please have a seat.

11 THE WITNESS: Thank you.

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

13 THE CLERK: You state your full name for the record.

14 THE WITNESS: My name is Brian Milton Browning.

15 DIRECT EXAMINATION BY MR. UNDERWOOD:

16 Q. Good afternoon, Mr. Browning, ---

17 A. Hello.

18 Q. --- could you please tell the jury what it is you do for
19 a living.

20 A. I work for the Greenville, uh, Department of Public
21 Safety Forensics Division DNA lab as a DNA analyst.

22 Q. And what's your educational background?

23 A. I have a master's in molecular and cellular biology, uh,
24 an undergrad in biology.

25 Q. And what experience do you have working in the field of

BRIAN MILTON BROWNING - DIRECT EXAMINATION BY MR. UNDERWOOD

1 DNA?

2 A. I worked in DNA for 11 years in the biotech community and
3 then, uh, the past 3 1/2 years for the, uh, forensics.

4 Q. Do you hold any certifications?

5 A. I do.

6 Q. What are those?

7 A. I was cert -- I'm certified as a DNA analyst, uh, with,
8 uh, through training with my DNA technical leader, uh, for
9 over a year including mock cases, uh, written and verbal tests
10 and so forth, I've also been certified, uh, as an auditor for
11 quality assurance for DNA labs, uh, for both the FBI and for,
12 uh, Forensic Quality Services.

13 Q. And have you ever testified as an expert in court
14 before?

15 A. I have.

16 Q. How many times?

17 A. Twice.

18 Q. In what court were you qualified?

19 A. In general sessions Thirteenth Circuit. Your Honor, --
20 and in what field?

21 Q. In field of DNA analysis.

22 MR. UNDERWOOD: Your Honor, at this time the State offers
23 Mr. Browning as an expert in DNA analysis.

24 THE COURT: Any voir dire?

25 MR. RIORDAN: No, no whatsoever.

BRIAN MILTON BROWNING - DIRECT EXAMINATION BY MR. UNDERWOOD

1 THE COURT: Do you stipulate to his ---

2 MR. RIORDAN: Stipulate ---

3 THE COURT: --- expertise?

4 MR. RIORDAN: --- to his expertise.

5 THE COURT: Alright, ladies and gentlemen of the jury,
6 just remind you what I've told you throughout this trial, uh,
7 expert testimony is like any other testimony. Okay, very
8 good, co -- you may continue.

9 BY MR. UNDERWOOD:

10 Q. Mr. Browning, if you could please explain in very general
11 terms the process in how you, uh, extract and identify DNA.

12 A. DNA that can come off of, uh, fing -- fingers, skin
13 cells, bodily fluids our job, is to take evidence that's been
14 provided, uh, and remove the or basically take samples of that
15 evidence, uh, extract the DNA and generate if we can a full
16 DNA profile.

17 Q. And when you say a "profile," what do ya mean?

18 A. Just specific parts of the DNA that can vary from person
19 to person, uh, and we call another name for it's like a DNA
20 fingerprint but basically the idea is several different areas
21 are tested and those areas are, uh, unique from each other and
22 together they can create, uh, one one person may have the
23 same, uh, for one area but if you put all fifteen which we
24 look at together, it should be a very easy profile at a very
25 high statistical rate.

BRIAN MILTON BROWNING - DIRECT EXAMINATION BY MR. UNDERWOOD

1 Q. And the fifteen areas you just mentioned are fifteen,
2 those fifteen areas, are they chosen from a part of DNA that
3 is exclusive just to humans?

4 A. That's correct.

5 Q. And what's the reason for that?

6 A. To ensure that there's no cross-contamination with
7 animals or anything of that nature.

8 Q. And does your lab have any kind of accreditation, uh, for,
9 uh, quality standards?

10 A. Yes, we were accredited in 2011 as a which is what
11 required for us to do case work we have to be accredited by a
12 third party, in this case it was named Forensic Quality
13 Services and they, it's an ISO standard, an inter --
14 international standard called a ISO 17025, that's a, that the
15 entire DNA community must meet in order to do DNA case work.

16 Q. Okay, so that means that there are appropriate measures
17 in place to prevent, uh, false tests and contamination?

18 A. That's right.

19 Q. Now, Mr. Browning, how did you get involved with this
20 case involving a DNA request involving Paula Rose?

21 A. I was assigned, uh, this case and to work three items.

22 Q. And what were those three items?

23 A. They were, uh, case Item DK3 actually included two latex
24 gloves, uh, so was actually two items, uh, and the second item
25 was DK5 that was, uh, one ta -- one latex gloves.

BRIAN MILTON BROWNING - DIRECT EXAMINATION BY MR. UNDERWOOD

1 Q. Okay. And do you know where those gloves came from?

2 A. Uh, we we -- I received them from the property and
3 evidence department, uh, directly, I checked them out directly
4 from them to to, uh, for the chain of custody.

5 Q. And when you got -- did you actually handle the gloves?

6 A. I did, I did the swabbing. Excuse me, the the gloves
7 themselves were what were requested for the DNA analysis so I
8 actually had the gloves, uh, opened them out of the evidence,
9 uh, material that I marked in my report and swabbed specific
10 areas of the gloves too and the swabs themselves that the idea
11 is that we'll swab, uh, off any DNA that's left on the gloves
12 and we'll actually test the swabs themselves to try to extract
13 DNA.

14 Q. And did you examine all three gloves?

15 A. I did.

16 Q. Uh, can you summarize very briefly what the results of
17 your analysis were.

18 A. Uh, upon visual observation of the first set of two
19 gloves that I arbitrarily, uh, labeled as 3A and 3B I found
20 various dark smudges on the inside and outside areas of the
21 finger to palm and back back of the gloves. Uh, I swabbed the
22 af -- both the inside I arbitrarily des -- designated myself
23 as the inside and outside of the gloves 'cause it's hard to
24 tell for latex gloves which which was originally inside or
25 outside so I arbitrarily, uh, designated that and then swabbed

BRIAN MILTON BROWNING - DIRECT EXAMINATION BY MR. UNDERWOOD

1 the fingers and and thumbs separately, uh, both inside and
2 outside separately and swabbed the the palm and the wrist area
3 of the gloves both inside and outside separately.

4 Q. Okay. And and you do that with all three gloves both
5 inside and out ---

6 A. That's ---

7 Q. --- as well as ---

8 (Indiscernible cross-talk.)

9 A. --- correct, yes.

10 Q. Okay. And after you did that is that, is that what you
11 referred to as your serological examination?

12 A. That's correct, yes.

13 Q. And after you've done that, uh, were you able to extract
14 any DNA from these gloves?

15 A. I was able to extract DNA from some a the gloves, some a
16 the gloves were or some a the swabs I should say that I I
17 swabbed from the gloves, uh, and and others I was not able to
18 obtain a DNA from so in the end I have one, three, four items
19 or four different swabs that I was able to obtain DNA from,
20 one was the swab from inside fingers thumb area of the latex
21 3A glove, a swab from the outside back palm and wrist area 3B
22 glove, swab from the inside fingers thumb area of 3B glove and
23 swab from the outside fingers and thumb area of 3B.

24 Q. Okay, so you only got DNA from the the two gloves that
25 were submitted together, ---

BRIAN MILTON BROWNING - DIRECT EXAMINATION BY MR. UNDERWOOD

1 A. That's correct, ---

2 Q. --- the pair, ---

3 A. --- that's correct.

4 Q. --- but the single glove you were not able to get any
5 DNA?

6 A. That's correct.

7 Q. Uh, what were the results from the DNA that you did
8 extract?

9 A. For Item 1-1-2 which is the swab from inside fingers and
10 thumb of, uh, area 3A 1a -- latex glove, uh, my results and
11 I'm reading it from my report, uh, DNA results obtained from
12 this item are consistent with a mixture of three or more
13 individuals so no conclusions can be drawn from this mixture.
14 For Item 1-2-1 which is the swab of the outside palm back, uh,
15 back palm and wrist area of 3B glove, again reading from my
16 report, uh, Partial DNA results obtained from this item are
17 consistent with a mixture of at least three t -- oh, I'm
18 sorry, of at least two individuals, detectable peaks were
19 observed at and I list out the loci which were the the fifteen
20 areas that I mentioned, there were, uh, detectable peaks at 1,
21 2, 3, nine of those areas and I list out those, uh, as what we
22 call "allele," uh, locis with possible a allele dropout at
23 several loci due to DNA degradation so no conclusions could be
24 drawn from this mixture. Item 1-2-2 swab from the inside
25 fingers and thumb area of 3B latex glove, DNA results

BRIAN MILTON BROWNING - DIRECT EXAMINATION BY MR. UNDERWOOD

1 contained from this item are consistent with a mixture of
2 three or more individuals so no conclusions could be drawn
3 from this mixture. And for the last item of 1,2 1-2-4 swab
4 from the outside fingers and thumb area of the 3B le -- latex
5 glove, Partial DNA results obtained from this item are
6 consistent with a mixture of two or more individuals,
7 detectible peaks were observed and in this case I have 1, 2,
8 again, nine loci that are able to get detectible peaks from
9 which basically are areas that, uh, the loci and with possible
10 allelic dropout at several loci due to DNA degradation so no
11 conclusions drawn from this mixture.

12 Q. Now can you explain how you're able to say that it's a
13 mixture DNA, what does that mean?

14 A. Sure. Uh, in in the case of human beings, we get DNA
15 from boths our mother and our father ---

16 Q. Um-hum.

17 A. --- so mother and father may have different, uh, again,
18 we're looking at areas that vary from person to person, so
19 mother and father may also vary in this one loci area, we call
20 those those variants "alleles" and that was the word I used in
21 my report, alleles.

22 Q. Okay.

23 A. Uh, one person, uh, can have only a maximum two alleles
24 in in one area, one "loci" as we call it, so if in my results
25 I get an area that has three alleles then that means there's

BRIAN MILTON BROWNING - DIRECT EXAMINATION BY MR. UNDERWOOD

1 at least two people involved because you have and there
2 sometimes they can share so, uh, there's at least three, well
3 in some, uh, in the ones where I have at least three indivi --
4 or two or more individuals I had areas that had up to five
5 alleles so that's more than the four you would expect for two,
6 uh, so in those cases we're very, we we stay very
7 conservative, make sure that all possibility are in play
8 especially when there's DNA degradation involved.

9 Q. Okay, and we'll we'll talk about degradation in a moment
10 but, uh, with these mixtures of DNA are you able to pull those
11 apart and distinguish them from each other?

12 A. No, that's why I was able, that's why I said no
13 conclusions could be drawn. There's a point where we
14 statistically cannot pull apart what's, uh, specific profiles
15 of individuals, just too, there's just too much information.

16 Q. What about the portion of DNA that determines gender, how
17 is that fit with a mixture scenario?

18 A. Right. We have the fifteen areas, the loci that I
19 mentioned and we also have we call "emulsion" which is the XY
20 so we can determine the sex. Females are XX, males are XY, in
21 the case of all of these, uh, both X and Y were, uh, present
22 in the mixtures.

23 Q. Now does that mean that all of the DNA found there is
24 male DNA?

25 A. Again, because of the complicat -- or complicated mixture

BRIAN MILTON BROWNING - DIRECT EXAMINATION BY MR. UNDERWOOD

1 and the degradation there's no way to tell if it's a mixture
2 of male or female or all male.

3 Q. So is it possible that there is female DNA in there?

4 A. It is possible ---

5 (Indiscernible cross-talk.)

6 Q. Can you explain how that is, how that's possible.

7 A. Just because it's it's being masked by the amounta people
8 there. Just like I said before with the alleles like in some
9 if you have more than one person you may only see three
10 alleles because they're sharing one, uh, between the two that
11 are in the mixture so in this case it XY, Y definitely shows
12 that there were some male con -- contribution to the mixture
13 but there's no way to know the amount of 'cause of e -- the
14 female being XX it could be covered up by the mixture in
15 there.

16 Q. So and just as an example for a situation where there's a
17 mixture of three or more people and you see X -- XY, is it
18 possible that there's only one male contributor and the rest
19 are female?

20 A. It could be possible theoretically, I can't really say
21 for this case specifically 'cause there's just, there's just
22 too much information to make a conclusion.

23 Q. And you mention degradation, ---

24 A. Um-hum.

25 Q. --- uh, can you describe the condition of the gloves when

BRIAN MILTON BROWNING - DIRECT EXAMINATION BY MR. UNDERWOOD

1 you received them.

2 A. I gave them the de -- the description of, uh, showing
3 dark smudges on the inside/outside area of the finger palm
4 and, uh, back of gloves for both the the first set of gloves,
5 for the second set this was just a designation I gave it as
6 significant weathering with dark smudges, uh, but I have no
7 idea of a time line or anything a that nature.

8 Q. Okay. When you say "weathering," what does that mean?

9 A. Just that they were in bad shape, they felt, uh, kind of
10 dry and, uh, and, uh, used up guess is a better word for it
11 but that's just I I'm not a expert on on that so . . .

12 Q. It, was it apparent that they were exposed to the
13 elements?

14 A. Yes.

15 Q. Alright. Uh, okay. Would you be surprised that if the
16 gloves were received, were recovered from a fire scene that
17 there would be degradation?

18 A. No, it wouldn't surprise me.

19 Q. And and why not? What things contribute to
20 degradation?

21 A. Uh, degradation can be due to, uh, chemicals, to
22 bacteria, uh, moisture, well basically the bacteria growing in
23 moisture, it can be due to sunlight, uh, just being in the UV
24 rays and it can also be due to being burned.

25 Q. Do you have any way to know how the DNA that you were

BRIAN MILTON BROWNING - CROSS-EXAMINATION BY MR. RIORDAN

1 able to extract from these gloves got there?

2 A. Not at all, no.

3 Q. Alright. Is it required for a person to have worn the
4 gloves to get their DNA on it?

5 A. Uh, I don't know, I -- they definitely would have had to
6 have touched them, uh, and there's, but there's no way for me
7 to know specifically if they wore them or not but yeah,
8 normally that would be the case.

9 Q. Okay. So you don't know how the DNA got on those
10 gloves?

11 A. That's correct.

12 Q. And there were -- and all three gloves were smudged
13 significantly?

14 A. Right.

15 Q. Thank you. No further questions, Your Honor.

16 THE COURT: Cross-examination.

17 CROSS-EXAMINATION BY MR. RIORDAN:

18 Q. Brian, you've -- we've spoken on the phone, right?

19 A. Yes, sir.

20 Q. Alright. And we, uh, talked about these, you don't know
21 when -- you don't know how long these gloves sat out there on
22 the scene, do you?

23 A. No, sir.

24 Q. Alright, and in the summer we talk about dryin' out if,
25 they're out there for multiple hours had to have have some

1 drying effect, correct?

2 A. I mean, they -- the the weather conditions I didn't know
3 so I'm not really sure ---

4 Q. You have no idea, do you?

5 A. No.

6 Q. Alright. And and but but you had sufficient DNA in these
7 samples to have these test results, correct?

8 A. That's correct.

9 Q. And and as I understood it two of 'em have three or more
10 individual's DNA and two of 'em have to two or more
11 individual's DNA at least, correct?

12 A. That's correct.

13 Q. Aright. And and there's no indication there's more than
14 three, is there, could be but there's no indication there
15 are?

16 A. That's correct.

17 Q. Alright, and, uh, the chromosomes and when we talk about
18 XY, certainly females XX so it could be subsumed, right, the
19 only thing for certain you can say is XY, that's the only one
20 we know is there, correct?

21 A. Yes, sir.

22 Q. To guess that there's any female, the XX, you'd have to
23 guess or speculate about that, wouldn't ya?

24 A. Yes, sir.

25 Q. Yes. Thank you, sir.

CHRISTOPHER GARY - DIRECT EXAMINATION BY MR. UNDERWOOD

1 THE COURT: Redirect?

2 MR. UNDERWOOD: No, Your Honor.

3 THE COURT: Any reason why this witness can't be excused?

4 MR. UNDERWOOD: Not from the State, Your Honor.

5 MR. RIORDAN: No, Your Honor.

6 THE COURT: Thank you, sir.

7 THE WITNESS: Thank you.

8 (Whereupon, the witness left the stand.)

9 THE COURT: You have one more brief one you wanna try to
10 do or you wanna ---

11 MR. UNDERWOOD: Yes, Your Honor.

12 THE COURT: Okay.

13 MR. UNDERWOOD: Your Honor, the State calls Christopher
14 Gary.

15 (Whereupon, the witness came forward.)

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

17 CHRISTOPHER GARY, having been
18 first duly sworn, testified as follows:

19 THE CLERK: Have a seat.

20 (Whereupon, the witness complied.)

21 THE CLERK: Will you state your full name for the record.

22 THE WITNESS: Christopher Gary.

23 THE CLERK: Thank you.

24 DIRECT EXAMINATION BY MR. UNDERWOOD:

25 Q. Mr. Gary, tell the jury where you're employed.

CHRISTOPHER GARY - DIRECT EXAMINATION BY MR. UNDERWOOD

1 A. I work for the Greenville County Department of Public
2 Safety in the forensic division.

3 Q. And what do ya do there?

4 A. I'm a latent fingerprint examiner.

5 Q. How long have you, uh, worked for the department in that
6 capacity?

7 A. I've been there full-time for five years in July.

8 Q. And what are you duties?

9 A. I receive latent fingerprint evidence as well as tire
10 track and fabric impressions, I compare them to any known
11 standards that we may have and I issue reports based on my
12 findings.

13 Q. And what formal education do you have?

14 A. I have a bachelor's degree from the college of Charleston
15 in biology as well as a minor in criminal or Crime, Law and
16 society.

17 Q. And do you have any specialized training that allows you
18 to do the analyses that you just described?

19 A. Yes, in 2009 I was selected among fourteen other
20 examiners from around the country where it would take novice
21 examiners and fast-track them in order to become expert
22 witnesses, it was a ten-week training program that was in
23 Largo, Florida and it was sponsored by the National Institute
24 of Justice and it was four hundred hours of classroom training
25 but above and beyond that we also had to take home other

CHRISTOPHER GARY - DIRECT EXAMINATION BY MR. UNDERWOOD

1 practicals and do other outside work, uh, read research
2 articles and things of that nature. I completed that course
3 in 2010 and shortly after that I took part in another latent,
4 uh, impression evidence that dealt with footwear and tire
5 tracks, uh, that class was forty hours and I've had one
6 additional class that was this past December 2013 and it was
7 dealing with advanced methodology with comparing fingerprints
8 and that was also a forty-hour course.

9 Q. Okay. How many fingerprint comparisons have you
10 conducted since workin' for Greenville County?

11 A. Tens of thousands.

12 Q. Have you ever been qualified as an expert witness in
13 latent print analysis?

14 A. Yes, I've been qualified eleven times as an expert
15 witness in latent fingerprint evidence.

16 Q. In what court?

17 A. In state court.

18 MR. UNDERWOOD: Your Honor, at this time the State offers
19 Mr. Gary as an expert in latent print analysis.

20 MR. RIORDAN: No objection.

21 THE COURT: Alright, ladies and gentlemen, again, without
22 me goin' through the litany again I'll remind you that, uh,
23 this witness will be allowed to give his opinion 'cause he is
24 an expert.

25 BY MR. UNDERWOOD:

CHRISTOPHER GARY - DIRECT EXAMINATION BY MR. UNDERWOOD

1 Q. Mr. Gary, did you have an opportunity to examine
2 fingerprints that were lifted from the home of Paula Rose?

3 A. Yes, I did.

4 Q. And how did you, uh, come to be in possession a those
5 prints to do your analysis?

6 A. What is typical of our office and what generally happens
7 and what happened in this case is the technician that
8 processed the scene for those latent prints would place them
9 into a envelope and seal them and they would sign and date or
10 sign their initials on them and place them into a lock drop
11 box, that lock box is only accessible by myself and three
12 other latent fingerprint examiners. Uh, on the morning of,
13 uh, July 30th 2012, I actually personally received the latents
14 from the lock box and transported them to the, uh, latent
15 print office where I popped the seal that, uh, Officer
16 Kretschmar had sealed and I examined the fingerprints in this
17 case.

18 Q. Alright, and when you examine those fingerprints, uh, in
19 very simple brief terms what do you do?

20 A. When I compare fingerprints I first look at the latent
21 print. On the surface of your hand you have what looks like a
22 rubber stamp made out of skin and sweat, dirt, brine make up
23 other things that you touch, sweat, they leave behind a
24 replication of that skin when you come in contact, kinda like
25 the rubber stamps that you may have used during the course of

CHRISTOPHER GARY - DIRECT EXAMINATION BY MR. UNDERWOOD

1 your life. When that stamp is left behind, the technician in
2 this case, Dustin Kretschmar, uh, dusted the fingerprints and
3 the dust adheres to that sweat that's left behind and tape can
4 then be put over the latent print and lifted and placed onto a
5 white backing card so we can see the contrast. The latent
6 print is then compared with a magnifying glass and to look for
7 those minutia, the small details, because in that stamp that I
8 spoke of on your hand the ridges don't just flow from one side
9 a the hand to the other, they actually stop, they divide.
10 Those ridges are real skin, they have characteristics about
11 them: the way they dip in, the pores on that skin, it's all
12 characteristics and all very detailed skin that can be
13 examined and compared, we then take known standards which are
14 the ink standards from when individuals give their
15 fingerprints in a controlled environment and we can associate
16 that individual to those inked or known prints and we compare
17 the two to see if the prints from the crime scene are matched
18 to any known standard that we may have.

19 Q. Alright, and did you conduct that process on the two
20 prints involved in this case?

21 A. Yes, I did.

22 Q. And when you did that what were you able to learn by
23 making that comparison?

24 A. There were two latent lifts that were submitted in this
25 case, both were from the exterior of the front of the safe in

CHRISTOPHER GARY - DIRECT EXAMINATION BY MR. UNDERWOOD

1 the garage. Latent lift number 1 which again was from the
2 exterior of the front a the safe in the garage was identified
3 as being the number 1 which is the right thumb finger of Paula
4 Karen Reed, a.k.a. Paula Lanford Rose, latent lift number 2
5 from the exterior of the front of the safe in the garage was
6 unidentified.

7 Q. Now when you you're you're getting that from the exterior
8 of the safe, does the card indicate where on the safe the
9 prints were lifted from?

10 A. Yes, there's a diagram on the card and latent lift number
11 1 was from the right side of the safe and latent lift number 2
12 was from the left side of the safe.

13 Q. Alright, and is the, is the height indicated at all?

14 A. It appears that they're, uh, up on the upper half portion
15 of the safe.

16 Q. So latent number 1 that's the one that was matched to
17 Paula Rose?

18 A. Yes, that is correct.

19 Q. That was on the upper right side a the safe?

20 A. Yes, that is correct.

21 MR. RIORDAN: Your Honor, just just brief could could we
22 approach, please.

23 THE COURT: Yes.

24 (Whereupon, a bench conference was held off the record.)

25 THE COURT: Continue, please.

CHRISTOPHER GARY - DIRECT EXAMINATION BY MR. UNDERWOOD

1 MR. UNDERWOOD: Thank Your Honor.

2 BY MR. UNDERWOOD:

3 Q. So print number 1 you were able to match that to Paula
4 Rose, uh, and you were not i -- able to identify the second
5 print?

6 A. That is correct.

7 Q. Okay. Did you do that or did you, uh, create any kind of
8 a report to show that?

9 A. Yes, I did.

10 Q. Alright, uh, did you in fact create more than one
11 report?

12 A. No, I did not.

13 Q. Okay. How did you initially document your examination?

14 A. My document or my documentation is on the outside of the
15 envelope that we received it in. I noted that I had one
16 fingerprint match to Paula Reed which was the card that I used
17 to identify and at the time, uh, Paula Reed was submitted as
18 an elimination print. When we receive latent prints, the
19 first thing that we try to do is eliminate people that belong
20 inside the home which are the homeowners, the victims, people
21 that typically have a right to be there. Paula Reed at that
22 time was given to me as a a victim elimination print, so to
23 speak, and I prepared her, I identified her and I did not
24 issue a report on the date because that is customary of our
25 office because the victims have a right to be in their home,

CHRISTOPHER GARY - DIRECT EXAMINATION BY MR. UNDERWOOD

1 there's no need to issue a report finding that.

2 Q. And did you at some point later create a report?

3 A. Yes, I did.

4 Q. Why?

5 A. I was requested by the Attorney General Abee and I wrote
6 a report, what stated my findings that I originally found on,
7 uh, August 3rd 2012, I conducted a subquential [sic]
8 examination, I reviewed the case and I produced a report to
9 state the same findings that I found on that date.

10 Q. Okay, alright. Do you have any way to know how or when
11 the fingerprints got to the place they were lifted from?

12 A. No, there's no scientific basis to say how long a print
13 has been on a surface.

14 Q. And you were never able to identify the second print?

15 A. That is correct.

16 Q. The, uh, second print that you were not able to identify,
17 were you able to exclude anyone?

18 A. Yes, I was.

19 Q. Who were you able to exclude?

20 A. The second print was not made by Paula Lanford Rose or
21 Paula Karen Reed, it was not made by Ellie Kathryn Housen
22 [sic], and it was not made by Charles Homer Rose the third.

23 MR. UNDERWOOD: No further questions, Your Honor.

24 THE COURT: Cross-examination.

25 MR. RIORDAN: Real quick.

CHRISTOPHER GARY - CROSS-EXAMINATION BY MR. RIORDAN

1 CROSS-EXAMINATION BY MR. RIORDAN:

2 Q. Sir, that the five yellow things up there, pictures,
3 really you've never turned anything over to the State until
4 April 29th just last week when you created the report, right?

5 A. That is correct.

6 Q. I mean, because again, that the homeowner you expect to
7 have their fingerprints on their items, correct?

8 A. That is correct.

9 Q. That that's what elimination is, you expect it to be
10 there, right?

11 A. That is correct.

12 Q. And the evidentiary value of it doesn't change just
13 because someone decides to arrest 'em, does it?

14 A. I can't speak to the conditions of the case. I was
15 submitted with two latent fingerprints and I compared them to
16 the people that I knew in the home and that was all the
17 involvement I had with the case.

18 Q. Yeah, and that's what's elimination. Finding somebody's,
19 finding a person's, uh, fingerprint on their own property is
20 of no evidentiary value, is it?

21 A. I can't speak to that, I'm not an investigator.

22 Q. Okay, but what is -- but we do have in this case another
23 print, can't tell when it was made, right?

24 A. That is correct.

25 Q. Coulda been made that morning, right, when it was

CHRISTOPHER GARY - REDIRECT EXAMINATION BY MR. UNDERWOOD

1 collected?

2 A. That is correct.

3 Q. Yeah, and that one definitely eliminates the three people
4 that we expected to have prints on: Mrs. Rose here
5 (indicating), her husband and her friend Ellie, right?

6 A. That is correct.

7 Q. And you guys reported to that me when, last week, it's
8 the first time I've heard about that, isn't it?

9 A. I can't say when you received that.

10 Q. You didn't report it to anyone, did ya?

11 A. It was reported, ---

12 Q. Well ---

13 A. --- it wasn't in the report form that you have there.

14 Q. Yeah, the only reports are created was created April 29th
15 2014, right?

16 A. The report you have in your hand, yes.

17 Q. Yeah, thank you.

18 THE COURT: Alright.

19 MR. UNDERWOOD: Just very briefly, Your Honor.

20 THE COURT: (No verbal response.)

21 REDIRECT EXAMINATION BY MR. UNDERWOOD:

22 Q. Did you create another document that you would not
23 classify as a report but that show you had conducted an a
24 comparison?

25 A. I did document on August 3rd 2012 when I was submitted

CHRISTOPHER GARY - RECROSS-EXAMINATION BY MR. RIORDAN

1 the prints of Paula Reed which is also known as Paula Rose
2 that she was identified on that date.

3 Q. And is that a, that's separate from a report and that's
4 just something knowing that you did the comparison?

5 A. Yes, the reason why we do not issue a report again is
6 because we expect to find victims in their own homes because
7 they're touching items on a daily basis so it's it's not
8 important for our office to issue reports for what at the time
9 she was given as a victim, it it's not something our office
10 does.

11 Q. So since it wasn't where you would classify as an
12 identification you didn't produce a report?

13 A. No, it it was an identification, it was matched to Paula
14 Reed but due to her being a victim and not a suspect at the
15 time I did my original examination a report was not issued.

16 Q. But it was entered into the system.

17 A. Yes, it was.

18 MR. UNDERWOOD: Alright, nothing further, Your Honor.

19 RECROSS-EXAMINATION BY MR. RIORDAN:

20 Q. I mean, the significance is it's the elimination print,
21 right?

22 A. That is correct.

23 Q. I mean, it doesn't matter whether it's, whether a victim,
24 a suspect. Ellie Hansen, she wa -- she wasn't a a victim, was
25 she? You don't know, do ya?

CHRISTOPHER GARY - RECROSS-EXAMINATION BY MR. RIORDAN

1 A. No, I do not.

2 Q. I mean, the key is it's elimination you created to say
3 she's eliminated, right?

4 A. That is correct.

5 Q. Same significance now today as it had back whenever you
6 first noted that, right?

7 A. That is correct.

8 Q. Nothin's changed since then, right?

9 A. Not on ---

10 Q. But ---

11 A. --- my end.

12 Q. --- but nothin' about that report ya had back then said
13 anything about the second print and how she was eliminated
14 from that one, did it?

15 A. No, it did not, it's not customary of our office.

16 Q. Yeah, that's that's -- okay, thank you.

17 THE COURT: Alright. Thank you, sir, you may be excused.
18 (Whereupon, the witness left the stand.)

19 MS. ABEE: Your Honor, may this witness be excused from
20 his subpoena?

21 THE COURT: Yeah, let's go ahead and call -- we have
22 people who have been hangin' in pretty tough all day today,
23 we're pretty good, okay.

24 MS. ABEE: Yes, sir.

25 THE COURT: Uh, let me see the lawyers up here for one

MOTIONS AND MATTERS

1 second, please.

2 MR. UNDERWOOD: Um-hum.

3 (Whereupon, a bench conference was held off the record.)

4 THE COURT: Madam, said that to ya twice, Mr. Foreman,
5 ladies and gentlemen, uh, checked with the attorneys, I was
6 just tryin' get the logistics for this case, we've actually
7 covered a decent amounta road today, uh, but I wanna keep you
8 to the point now if I can, uh, any reason that, and and and if
9 you'd rather go back in your jury room discuss this, that's
10 certainly fine 'cause I don't wanna pressure anybody on the
11 jury, but I -- is there any reason there's anybody can't be
12 here at 8:30 to start in the morning and, Mr. Foreman, why
13 don't you check back in your jury room without me breathin'
14 down your neck so you don't feel like you can give an acc -- a
15 fair answer. If you'll just send word back, uh, write it
16 down.

17 (The following takes place outside the presence of the
18 jury.)

19 THE COURT: While they're doin' that do you have an
20 objection at least goin' ahead and speakin' with Mr. uh, ---

21 MS. ABEE: No, sir.

22 THE COURT: --- Riordan about his witness?

23 MS. ABEE: No, sir.

24 THE COURT: Okay, thank you.

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

MOTIONS AND MATTERS

1 THE COURT: Would you bring the jury in real quick,
2 please.

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

4 (The following takes place in the presence of the jury.)

5 THE COURT: Alright, you have that response, Mr. Foreman,
6 or did I hand it ---

7 MR. BAILIFF: Oh, I gave it to the ---

8 THE COURT: Good, gave the court reporter, very good.
9 Alright, Mr. Foreman, now your response is 8:30 is okay,
10 that's a good Greenville County hardworkin' jury, I appreciate
11 it, okay. The, uh, bailiffs will explain to you where they're
12 gonna be in the mornin' and and and when they're walkin' ya
13 out, show you the process, they'll be downstairs, you'll be
14 selected be allowed in at 8:30 and then we'll begin right
15 right away, soon as we get you settled, okay. Uh, if you
16 can't, if you run into any problems -- would you give them a
17 number to contact ---

18 THE BAILIFF: Yes, ---

19 THE COURT: --- so we can be aware ---

20 THE BAILIFF: --- security officer's ---

21 THE COURT: --- of it.

22 THE BAILIFF: --- number, it's on the back a the badge.

23 THE COURT: Okay. Oh, you do have that?

24 THE BAILIFF: Yeah.

25 THE COURT: Very good, that's very efficient. Okay,

MOTIONS AND MATTERS

1 thank you. Remind you, uh, that you may not speak amongst
2 yourselves or anybody about this case tonight, do not read,
3 hear, listen to anything about this case. Good night, thank
4 you for your hard work.

5 (The following takes place outside the presence of the
6 jury.)

7 THE COURT: Alright, we're in recess.

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

9 (Note from the jury marked Court's Exhibit No. 6 for
10 identification.)

11 (Proceedings May 7, 2014)

12 (Report marked State's Exhibit No. 25 and photographs
13 marked State's Exhibit Nos. 26, 27, 28, 29, 30, 31, 32, 33 and
14 34 for identification.)

15 THE COURT: Alright, anything from the State before we
16 bring the jury in?

17 MS. ABEE: Nothing from the State, Your Honor.

18 THE COURT: Anything from the defense?

19 MR. RIORDAN: Nothing, Your Honor.

20 THE COURT: Bring the jury in, please.

21 THE BAILIFF: Yes, sir.

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

23 (The following takes place in the presence of the jury.)

24 THE COURT: Good mornin', ladies and gentlemen, uh, thank
25 you all for bein' here early and thank you all for agreeing to

NICHOLAS EUGENE GREGORY - DIRECT EXAMINATION BY MR. UNDERWOOD

1 be here early. Before we get started, uh, may I ask if
2 anybody read, heard or or viewed anything about this case
3 during the break, if so would you raise your hand.

4 (No response.)

5 THE COURT: Good, let the record reflect that there was
6 all negative replies. State ready to proceed its first
7 witness ---

8 MS. ABEE: We are, Your Honor.

9 THE COURT: --- or its fifteenth witness and defense
10 ready to proceed?

11 MR. RIORDAN: Defense is ready, Your Honor.

12 THE COURT: Very good. Would you call your witness
13 please, ma'am.

14 MR. UNDERWOOD: Your Honor, the State calls Nick Gregory.

15 (Whereupon, the witness came forward.)

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

17 NICHOLAS EUGENE GREGORY, having
18 been first duly sworn, testified as follows:

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

21 THE WITNESS: My name is Nicholas Eugene Gregory.

22 DIRECT EXAMINATION BY MR. UNDERWOOD:

23 Q. Good morning, Mr. Gregory, would you please introduce
24 yourself to the jury and, uh, tell them where you work, what
25 you do for a living.

1 A. I work for State Farm Insurance, I'm a fire loss home
2 representative, I handle all the large losses or most a the
3 large losses for the Upstate of South Carolina for State Farm
4 Insurance.

5 Q. And when you say you handle the losses as a claim
6 representative, what does that mean?

7 A. Basically I interpret the policy, apply the coverages and
8 document the damages and ---

9 Q. Um-hum.

10 A. --- and settle the claim.

11 Q. Okay. Are you the person that actually deals with the
12 person whose had a loss?

13 A. Yes.

14 Q. How long have you been, uh, doing this?

15 A. A little over thirteen years.

16 Q. And how long with State Farm?

17 A. Little over thirteen years.

18 Q. So with State Farm almost the whole time?

19 A. That's correct.

20 Q. How did you get involved with a loss involvin' a fire at
21 [REDACTED] Riley Smith Drive in July a 2012?.

22 A. I received an assignment from one of our local claim
23 representatives notifying me of the fire, that he thought it
24 was a large loss.

25 Q. And are you aware of how that claim was initiated?

NICHOLAS EUGENE GREGORY - DIRECT EXAMINATION BY MR. UNDERWOOD

1 A. I do not know exactly how it came to be initiated no,
2 sir.

3 Q. Okay, uh, but was a claim made?

4 A. That's correct, yes.

5 Q. And and who who was the person insured on that policy?

6 A. Uh, homer Rose was the named insured on the policy.

7 Q. And do you know who made the, who made the claim?

8 A. I do not.

9 Q. At what point in the claim did you personally become
10 involved?

11 A. I made contact with Mr. Rose on July 31st informing him
12 that the claim had been moved to me to handle.

13 Q. Okay, and you say "moved" to you, what do you mean by
14 that?

15 A. The local claim representative literally reassigned the
16 claim on our claim system to me to handle.

17 Q. And why was it reassigned to you?

18 A. Because it qualified as a large loss and that's typical
19 the procedure if we have the capacity to handle the loss,
20 they'll reassign it to us.

21 Q. After that first contact you had with Mr. Rose, uh, how
22 did you begin handling the claim?

23 A. I reviewed the claim as it was re-- as it was moved to me
24 all the file notes, everything that had transpired prior to it
25 being moved to me, ---

1 Q. Okay.

2 A. --- made contact with Mr. Rose and scheduled an
3 appointment.

4 Q. And when you, uh, schedule that appointment when were you
5 supposed to meet with him?

6 A. I met with Mr. Rose on August 1st the next day.

7 Q. And where did you meet with him?

8 A. At the house, at uh, Riley Smith Drive.

9 Q. Okay. Uh, can you explain to the jury, without going
10 into anything that he said, can you explain how that meeting
11 took place.

12 A. Uh, typical I met with him, explained the coverages,
13 explained the process, uh, asked if he had any questions,
14 obtained as much information, photographs that I could during
15 that initial inspection.

16 Q. Okay, and who else did you speak with that day at the
17 house?

18 A. Uh, Mrs. Rose, his wife, was also there.

19 Q. And why did you speak with Mrs. Rose?

20 A. Because she was also present, uh, as she lived in the
21 home and she was present at the time a the fire.

22 Q. And the person that you spoke with do you see her in the
23 courtroom today?

24 A. I do, yes.

25 Q. Uh, could you point her out, please, and identify what

NICHOLAS EUGENE GREGORY - DIRECT EXAMINATION BY MR. UNDERWOOD

1 she's wearing.

2 A. Uh, she is to my left, is that blue or black blouse or
3 dress with white stripes.

4 MR. RIORDAN: Black.

5 A. Black, sorry.

6 MR. UNDERWOOD: Alright. Your Honor, I ask the record
7 reflect he's identified the defendant.

8 THE COURT: It so reflects.

9 BY MR. UNDERWOOD:

10 Q. What was the extent of your conversations with Ms. Rose?

11 A. Basically asked her some questions about how the loss
12 occurred since the the claim file reflected that she was
13 present at the time of the loss and then I asked background
14 information regarding their lifestyle, things of that nature.

15 Q. Okay. Uh, did you scu -- discuss the property itself
16 with Mrs. Rose?

17 A. I did.

18 Q. Uh, what was the reasoning for that?

19 A. To try to determine what type of work had been performed,
20 uh, at the house to the structure itself and when it had been
21 performed for the purposes of my estimate.

22 Q. Okay, and and that conversation took place with Mrs. Rose
23 not Mr. Rose?

24 A. That's correct.

25 Q. During the time that you were speaking with Ms. Rose did

NICHOLAS EUGENE GREGORY - DIRECT EXAMINATION BY MR. UNDERWOOD

1 you do a what's normally referred to as a "recorded
2 statement?"

3 A. Yes.

4 Q. Uh, and what's the purpose of doing recorded
5 statements?

6 Q. I use a recorded statement to, again, ask information
7 regarding the background, uh, income, questions about what may
8 be in the house, uh, out of ordinary items and then questions
9 about the house itself: when it was constructed, when repairs,
10 remodeling, maintenance had been done and I use that, uh, just
11 to document what I need to complete my estimate.

12 Q. And during while you were doing that statement with her
13 were you interrupted?

14 A. Yes.

15 Q. What happened?

16 A. Uh, someone knocked on the door, uh, in the room where we
17 were doin' the statement.

18 Q. Okay, and did Ms. Rose have to leave?

19 A. Uh, she did answer the door, that at that time I I did
20 stop the statement.

21 Q. Okay. Do you know who it was?

22 A. It was a gentleman, I don't know his full name, he went,
23 I think she called him Cruz, I don't know how to spell that.

24 Q. Okay. Do do you know why he was there?

25 A. I don't know why he was there at that particular time,

1 no.

2 Q. Do you know what his relationship was to Ms. Rose?

3 A. I believe that they per -- he performed some sort of work
4 for the Rose family.

5 Q. You know what kinda work?

6 A. I do -- I don't know for sure, no.

7 Q. Now during that interview can you very briefly summarize,
8 uh, what Ms. Rose told you about the loss.

9 A. I believe and this'll be very briefly summarized and she
10 stated that I think the dogs were barking, uh, she noticed
11 some men in the garage and they saw her, she called 911 and I
12 believe while she was on the phone she heard some crackling
13 and and noticed that there was a or determined that there was
14 a fire set at the door I believe.

15 Q. And how many different fires were there at this house?

16 A. I believe there were two.

17 Q. Do you, do you remember where they were?

18 A. Believe one was at the rear door and one was at the front
19 door.

20 Q. Who else was present while you were, uh, doing work on
21 the claim that day?

22 A. Mr. Rose, Mrs. Rose, uh, Mr. Riordan, the gentleman named
23 Cruz was there for a brief point in time, representatives from
24 ServPro were there towards the end of my appointment, the
25 Special Investigative Unit, uh, representative for State Farm

NICHOLAS EUGENE GREGORY - DIRECT EXAMINATION BY MR. UNDERWOOD

1 Dough Acker and a independent fire origin and cause
2 investigator by the name of Phil Brooks.

3 Q. Did you deal directory with Mr. Brooks?

4 A. I did not, no.

5 Q. Who who did?

6 A. Uh, that woulda been Mr. Acker.

7 Q. Okay, who's also a State Farm employee?

8 A. That's correct.

9 Q. Okay. And you said, uh, Mr. Riordan, is that, uh, Jack
10 Riordan, the defense attorney today?

11 A. Yes.

12 Q. Okay. Was Mr. Riordan acting as, uh, an attorney
13 handling the claim?

14 A. No, he was not.

15 Q. Okay. Did you discuss the claim with Mr. Riordan at
16 all?

17 A. Not that I recall.

18 Q. Okay. Durin' the time that you were there, do you recall
19 if there were any altercations?

20 A. I remember hearing some elevated voices but I did not
21 witness any altercation.

22 Q. Okay. Do you know who the raised voices were?

23 A. I don't know who for s -- for sure who they were between,
24 no.

25 Q. Now can you explain to the jury the process of how, uh,

1 payments are made in a claim, uh, works itself out when
2 there's a huge fire loss like this, the different types of
3 coverages and how they're paid out.

4 A. There are three main coverages under the policy: there's
5 one for the structure itself, one for the personal property or
6 contents inside or around the dwelling that were damaged and
7 then there's these another coverage that pays for additional
8 living expenses, essentially what that is is it pays for a
9 place to stay for the homeowners whenever there's a fire or a
10 loss while the home's being repaired.

11 Q. And and those living expenses, uh, is that something
12 that, uh, the insured person has to pay up front and get
13 reimbursed by State Farm?

14 A. Basically, they are, they have to be incurred, that's
15 correct.

16 Q. Now does State Farm wait until the end a the claim to pay
17 those or they pay as they go?

18 A. As we go.

19 Q. Okay, so people aren't gonna be stuck, you know, with all
20 these huge bills until the end, I mean, it's they get
21 incremental payments as it goes?

22 A. That's correct.

23 Q. Okay. Were there any -- what was the first advance
24 payment that was made to the Roses, uh, in this claim?

25 A. It was \$5,000.

1 Q. And when was that?

2 A. I believe that was August, I believe that was August 1st
3 or 2nd.

4 Q. And are you the one who authorized the the payments?

5 A. I did.

6 Q. Okay, and were there also payments for additional living
7 expenses?

8 A. That's correct.

9 Q. And when did those payments begin?

10 A. They would have began later that month as they moved into
11 an apartment.

12 Q. So that woulda been ---

13 A. Late August, August.

14 Q. --- late August? So by late August living expenses were
15 being picked up by State Farm?

16 A. That's correct.

17 Q. Okay. What were the policy limits as in how high of a
18 policy was this?

19 A. The policy has a couple a different limits based on the
20 the, uh, the different coverages. The structure itself in
21 this case was approximately \$515,000 policy limit and then for
22 the contents or personal property it was \$386,000.

23 Q. And that's not necessarily what's paid, that's how much
24 could be paid.

25 A. That's correct.

NICHOLAS EUGENE GREGORY - DIRECT EXAMINATION BY MR. UNDERWOOD

1 Q. Okay. How many -- what payments actually were made, uh,
2 to the Roses?

3 A. Are you referring to the the total amounts ---

4 Q. Uh, yes, ---

5 A. --- Rose's were covered?

6 Q. --- just just by the categories, we don't need every
7 single payment.

8 A. Okay. The structure payments made totaled approximately
9 \$238,000 and for the contents the payments made were
10 approximately 55,000 and for the additional living expenses
11 the payments made were approximately 16,000.

12 Q. And who were those payments, who's the checks actually
13 made to?

14 A. It actually depends on the coverage. Uh, on the
15 structure itself since there is a mortgage company or there
16 was a mortgage on the property, those payments were made
17 payable to Homer Rose and to the mortgage company. On the
18 contents there were some payments made to some different
19 parties. Payments were made to Mr. Rose, payments were also
20 made to a couple a vendors, uh, being ServPro and Textile
21 Restorations and on the additional living expenses those
22 payments were made to Homer Rose.

23 Q. Now who was -- was Paula Rose listed on the policy?

24 A. She was not.

25 Q. Okay, so as far as State Farm's contractual agreements,

1 those were with Homer Rose.

2 A. That's correct.

3 Q. Now you mentioned that, uh, Phil Brooks and Mr. Acker
4 from State Farm were also involved with the claim, what were
5 their roles?

6 A. They were there to investigate the cause of the fire.

7 Q. Alright, and why did they do that?

8 A. That's somethin' that we typically do when we have a
9 large fire.

10 Q. And what was the result of their, uh, work on your
11 participation with the claim?

12 A. Not sure I follow ---

13 Q. How ---

14 A. --- the question.

15 Q. --- how how did their investigation affect your handling
16 of the claim?

17 A. It didn't have an affect on on my handling of the
18 claim.

19 MR. UNDERWOOD: Court's indulgence.

20 BY MR. UNDERWOOD:

21 Q. Mr. Gregory, you stated that the claim was, uh, in the
22 name of Mr. Rose, uh, but did Mrs. Rose, Paula Rose
23 participate in the claim?

24 A. She participated in the fact that I obtained information
25 from her during our -- my initial inspection.

NICHOLAS EUGENE GREGORY - DIRECT EXAMINATION BY MR. UNDERWOOD

1 Q. Okay, and that includes the information on her version of
2 how the loss occurred?

3 A. That's correct.

4 Q. And information about the value of the property and work
5 that was done to the property?

6 A. It woulda been the value of any work that was done on the
7 property.

8 Q. And you establish the value.

9 A. I establish the damages.

10 Q. Okay. Now, Mr. Gregory, if State Farm had information
11 that Mrs. Rose was responsible for causing the fire, would
12 State Farm still have paid Homer Rose for the loss?

13 A. Uh, it's possible, uh, that that would have taken place,
14 that woulda been a management decision.

15 Q. Okay, is that because the contract was actually with
16 Homer Rose, not with Paula Rose?

17 A. That's correct.

18 Q. So even if she were responsible for the fire, State Farm
19 coulda contractually still have to pay Mr. Rose.

20 A. Possibly.

21 Q. Thank Mr. Gregory, no further questions this time, Your
22 Honor.

23 THE COURT: Cross-examination.

24 MR. RIORDAN: May it please the Court.

25 THE COURT: Yes.

NICHOLAS EUGENE GREGORY - CROSS-EXAMINATION BY MR. RIORDAN

1 CROSS-EXAMINATION BY MR. RIORDAN:

2 Q. Mornin', Nick, ---

3 A. Good mornin'.

4 Q. --- how are ya?

5 A. Doin' well.

6 Q. Nothin' unusual about this, uh, claim, was it? You said
7 a typical claim, uh, for a, for a loss victim, right, oth --
8 other than the circumstances of it?

9 A. Correct, my handling is pretty typical.

10 Q. Alright, your handling of it was typical. The Roses,
11 Paula and Homer, nice folks to deal with, weren't they?

12 A. Yes, they were pleasant.

13 Q. Uh, you talk about an altercation, uh, maybe Mr. Brooks
14 will talk about that, you you don't even know what that was
15 about, do ya?

16 A. I have no idea.

17 Q. Okay, if anything. And and me being there with, I mean,
18 you have -- you had a independent investigator coming to their
19 home, right?

20 A. Correct, SIU there ---

21 (Indiscernible cross-talk.)

22 Q. Nothing unusual about an attorney bein' there when
23 investigator's comin' to his client's home, is there?

24 A. I I don't know.

25 Q. Okay. I mean, you don't think there's a problem with

1 that, do ya?

2 A. I didn't have a problem with it.

3 Q. You you were happy to have me there that day, weren't ya,
4 you didn't have a problem with it.

5 A. No problem.

6 Q. Okay. Uh, and you deal with lotta folks with fire loss,
7 don't ya?

8 A. That's correct.

9 Q. Nothin' usual about this in regards to the loss and the
10 actions of the parties the Roses, was there?

11 A. No.

12 Q. Okay. Uh, and you said Homer, Homer's the property
13 owner, right?

14 A. I believe so.

15 Q. Paula's not even listed as a property owner, is she?

16 A. I'm not aware of who's on the deed of the property.

17 Q. Okay, as you sit here today, you don't have any knowledge
18 that she wasn't ---

19 A. Correct.

20 Q. --- listed on and you know she wasn't listed at -- on the
21 policy, correct?

22 A. That's correct.

23 Q. Y -- as we sit here, can you tell this jury any amount of
24 money paid directly and solely to Paula on the State Farm
25 policy.

1 A. Nothing was paid directly to her.

2 Q. There was no check that went directly to Paula, was it?

3 A. No.

4 Q. Okay, and you said 55 th -- 'cause 'cause on the the loss
5 to the house Homer's, yo -- all you know about is Homer, any
6 check written to repair that house goes to Homer and the
7 mortgage company, right?

8 A. That's correct.

9 Q. And then the mortgage company deals, they pay out to the
10 nice fella that came in and f -- and repaired the property,
11 Rick Lee, right?

12 A. Typically they control that money back to the insurer or
13 the contractor.

14 Q. Okay, you've spoken to Rick, right?

15 A. Yes.

16 Q. You're friends with Rick.

17 A. I know Rick.

18 Q. You've worked with Rick, haven't ya?

19 A. I have.

20 Q. Alright. He he's never told ya anything he felt was
21 suspicious about Paula and Homer, did he?

22 A. No.

23 Q. You talk to Rick about what was done and repaired his
24 property?

25 A. Yes.

1 Q. He talk about anything extravagant in regard to upgradin'
2 the home?

3 A. Not to my knowledge.

4 Q. Fact, he he's basically said, Look, they had a house and
5 we replaced the house, right?

6 A. Correct, they repaired the house.

7 Q. They had just redone, they just renovated their master
8 bathroom and all they did was go back in and clean it up and
9 put it back the same way as before, didn't he?

10 A. I believe it was put back very similar to before.

11 Q. Yeah, the sunroom on the back is different now but that's
12 because the sunroom itself before was like a separate piece
13 put in, right?

14 A. It, I think it was some kit that was put in.

15 Q. Yeah, Rick said it didn't make it, he looked at the
16 expense, it didn't make any sense to put it back that way when
17 he could do it even better for cheaper, right?

18 A. I don't know as far as he put it back better or cheaper,
19 it was his ---

20 Q. Okay.

21 A. --- decision between the Rose's.

22 Q. Alright. Talked about cabinetry in the kitchen, got
23 different cabinets now. He basically says, Well they had nice
24 cabinets before, they got nice cabinets now, right?

25 A. That would be accurate.

1 Q. Same with countertops. They had nice countertops before,
2 they got nice countertops now, right?

3 A. That's correct.

4 Q. So basically they had a house before, they got a house
5 now except for, what, eight months they had to live out of it,
6 right?

7 A. It was probably about eight months.

8 Q. Yeah, in fact, he's talkin' about an advance of monies
9 \$5000, and and and you'll you'll know that there's an
10 indictment here sayin' she's charged with starting a fire to
11 obtain insurance fraud and it's \$5000, although we've heard
12 maybe maybe the reason was to get publicity, uh, they had to
13 document every bit a that, didn't they, where where the monies
14 were goin'?

15 A. Correct.

16 Q. And m -- a lotta that went to boarding their dogs at
17 places, right?

18 A. There was a large portion for pet boarding was the lis --
19 additional living expenses.

20 Q. Yeah, at their house they could have the dogs there, now
21 a lotta this \$5000 is goin' towards boardin' their dogs 'cause
22 they can't stay at the house, right?

23 A. Correct.

24 Q. And their coverage was such that they're in a nice house,
25 actually his coverage would have allowed them to stay in a

1 similar house if they'd a wanted to, right?

2 A. That's correct.

3 Q. But, in fact, they stayed at a, at a small apartment over
4 at Oak Ridge where their friend used to lease but now wanted
5 to move and they took over that lease, correct?

6 A. I believe that's correct.

7 Q. You spoke with Paula and talked with them about finances,
8 didn't ya?

9 A. I did.

10 Q. I mean, when you're concerned on a large loss, you wanna
11 look into see is there a financial incentive here, that's what
12 you look for, don't ya?

13 A. Actually, I was askin' that information more to
14 substantiate any potential contents claim.

15 Q. Okay. Yeah, let's talk about that the contents. You
16 said \$55,000. In a fire like this and what you observed,
17 would you agree that was a very conservative claim?

18 A. It was pretty typical.

19 Q. Oh, well let me ask this way: of the 55 wasn't about,
20 wha'd you say about 30 of it goes to vendors, directly to
21 vendors?

22 A. Uh, actually it was about 35,000 was paid to vendors.

23 Q. Okay, so 55, 35 of it goes to clean-up crew and others so
24 we got \$20,000 to replace things that were damaged, right?

25 A.. Correct.

1 Q. With the smoke damage on the clothes and shoes and all
2 that, in a case like this often the coverage is such that they
3 could have, they could have asked you to replace all those
4 clothes and you woulda done it, wouldn't ya?

5 A. Depending off whether they coulda been cleaned or not.

6 Q. Okay. They didn't ask you to replace 'em, did they?

7 A. No, I believe the majority of those were cleaned.

8 Q. They just cleaned 'em and took 'em back, didn't they?

9 A. The majority, I believe that's correct.

10 Q. Talked about furniture that was, that was damaged in the
11 fire, said coulda made a claim on and they kept, didn't
12 they?

13 A. Some furniture was replaced, some was cleaned.

14 Q. Yeah, I remember she had ta -- read your report she's
15 talkin' about a nice, uh, big trunk that she had bought, kinda
16 weathered old trunk that was somewhat damaged in the fire,
17 correct?

18 A. Correct.

19 Q. And she said, Look, it was supposed to look old anyway, I
20 wanna keep it, right?

21 A. I recall that, yes.

22 Q. Didn't even make a claim on it, did she?

23 A. I don't recall that being turned in to be replaced.

24 Q. And you've been to suspicious fires before where you
25 think people did set an arson oftentimes you go in and you

NICHOLAS EUGENE GREGORY - CROSS-EXAMINATION BY MR. RIORDAN

1 notice the family pictures are off the walls or missing, huh?

2 A. That can be an indication.

3 Q. People that know they're gonna set fire to their house
4 sometimes that personal stuff's gone, isn't it?

5 A. It's it's possible.

6 Q. You didn't see any evidence a that in this case, did
7 ya?

8 A. I did not see anything missing or outta ordinary.

9 Q. And in substantiating the coverage or, excuse me, the,
10 uh, contents claim, did ya sit down with Paula and did she
11 show you some of the financial records to show you how they
12 lived?

13 A. There was, uh, one record in particular that was
14 presented to me when I was takin' her statement.

15 Q. Was that, uh, information from UBS talkin' about the
16 trust fund payments, the non-exempt, uh, or or non-interest,
17 heck, I'm mispronouncin' it, interest exempt taxpayer bo -- I
18 can't even remember, monies that flowed right from ABS Trust
19 Fund to them?

20 A. I believe it was a, it was a UBS Brokerage statement
21 regarding a trust fund.

22 Q. Yeah, talked about the anticipated monies. Each year
23 they'd send out a little schedule of what they they
24 anticipated the trust fund would kick out each month a the
25 year, that was their anticipation, right?

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1 A. I can't remember if it was on a monthly base or an annual
2 basis.

3 Q. I mean, at that time Homer was a trooper with the hi --
4 South Carolina Highway Patrol at least thirty, maybe forty
5 years, right?

6 A. I believe it was forty.

7 Q. Forty-plus years. What what was he making as a highway
8 patrolman, you remember?

9 A. I don't recall the exact figure of what he was making as
10 his salary.

11 Q. Okay. Whatever his salary was you re -- do you know how
12 how many multiple times more his salary do you recall the
13 trust fund payments being throughout the year?

14 A. I don't know what that was in relation to his salary, I
15 remember what the amount was on the statement that I saw.

16 Q. What's the statement you saw? What do remember bein' a
17 yearly figure for the trust fund na -- tax-free, that's what I
18 wanted to get to, tax-free interest payments that came off the
19 trust fund, what was that amount that they would get?

20 A. Believe the amount on the statement from UBS was
21 approximately \$140,000.

22 Q. Okay. And and you were ki -- it was kinda interesting to
23 hear how that happened, you learned a little bit about what
24 that trust fund was from, didn't ya?

25 A. She did provide some background 'bout where that trust

NICHOLAS EUGENE GREGORY - CROSS-EXAMINATION BY MR. RIORDAN

1 fund originated.

2 Q. Go ahead and tell the jury.

3 MR. UNDERWOOD: Objection, Your Honor, hearsay.

4 MR. RIORDAN: Your H -- well I guess the whole thing is
5 hearsay, really?

6 THE COURT: No, sir.

7 MR. RIORDAN: I'm sorry, Your Honor.

8 THE COURT: No, sir. Are you objecting to statements
9 from the defendant?

10 MR. UNDERWOOD: Yes, Your Honor.

11 THE COURT: Overruled.

12 BY MR. RIORDAN:

13 Q. Go ahead and tell the jury 'bou -- I mean, about where
14 where this trust fund come from, what what did you know, it's
15 a neat story, isn't it?

16 A. She stated that Mr. Rose, Homer Rose is either a
17 grandfather or great grandfather, some relationship to him,
18 had essentially, uh, if you'd call it invented might be hot
19 dog or the conce -- or the concessions for ballparks and
20 somethin' to do with a baseball scorecard and basically he
21 op -- they owned or operated a business that, uh, ran the
22 concessions at ballparks.

23 Q. Harry M. Stevens Company, right?

24 A. I remember that name.

25 Q. Harry Mosely Stevens invented the baseball scorecard,

1 right?

2 A. According to her.

3 Q. Basically invented the hot dog, right?

4 A. According to her, yes.

5 Q. Had concessions in all the major league ballparks turn of
6 the century up through the seventies at least, right?

7 A. Didn't know the time frame exactly.

8 Q. Based outta New York, right?

9 A. Didn't know the location.

10 Q. Ownership interest in the Red Sox and Mets?

11 A. Wasn't aware a that portion.

12 Q. Okay. What what was the -- was -- what about his great
13 grandfather, what was his relationship with Babe Ruth and the
14 Red Sox?

15 A. I ---

16 MR. UNDERWOOD: Objection, Your Honor, how's this
17 relevant?

18 THE COURT: Sustained.

19 BY MR. RIORDAN:

20 Q. Any other information you le -- let me ask ya this:
21 Having learned that did you have any qualms about the fact
22 that this fire was set for some type a financial means?

23 A. I didn't have an opinion as ---

24 Q. You don't ---

25 A. --- to how it was ---

NICHOLAS EUGENE GREGORY - CROSS-EXAMINATION BY MR. RIORDAN

1 Q. You ---

2 A. --- set or why it was set.

3 Q. And and you're here -- are you the only representative
4 from State Farm that's come today?

5 A. So far as my knowledge.

6 Q. Far as you know. You speak for State Farm, right?

7 A. I guess I speak for my handling of the claim for
8 State ---

9 Q. Sure.

10 A. --- Farm.

11 Q. Uh, Phil Brooks was hired, you do that on every large
12 loss claim just to look s -- look into it and make sure things
13 seem appropriate, right?

14 A. On the majority.

15 Q. Okay, and Phil Brooks he created a report in this case,
16 right?

17 A. He did.

18 Q. Alright, and, uh, I think when State Farm was goin'
19 through this didn't he ask the Greenville County Sheriff's
20 Department to share with him the -- to share with him some of
21 their information?

22 A. I wasn't part a the investigation so I'm not sure who
23 asked for what or for whom.

24 Q. Okay, did your -- are you aware of any time the
25 Greenville County Sheriff's Office shared any of their

1 information with State Farm?

2 A. No information was shared with me.

3 Q. Okay. Uh, at some point they requested and subpoenaed or
4 I guess obtained through whatever means or some insurance data
5 base they got your whole claim file, right?

6 A. Uh, they didn't request that or obtain it from me.

7 Q. That somethin' they go through Doug on?

8 A. It's possible they would have gone through Special
9 Investigative Unit.

10 Q. Okay. Phil, ya, I mean, you're there, you're handlin'
11 this claim, Phil Brooks ever report back to you to say he had
12 any evidence to link Paula Reed to starting this fire?

13 A. Uh, Phil did not report to me.

14 Q. Yeah, they di -- Phil Brooks was out there, he was takin'
15 fingerprints, right?

16 A. I'm not sure if he took fingerprints or not.

17 Q. Okay. You read his report?

18 A. I did read his report.

19 Q. Okay. State Farm play pla -- payed this claim just as
20 they should have, right?

21 A. We did pay the claim, correct.

22 Q. I just wanna make sure you guys weren't involved. Did
23 you guys in any way ask the Greenville County Sheriff's
24 Department to file charges against Paula Rose for, uh, filing
25 a false insurance claim or starting a fire to collect

1 insurance proceeds?

2 A. I did not have any contacts requesting the charges.

3 Q. Okay, so you got no blame in that, right?

4 A. Not personally from me.

5 Q. State Farm didn't have anything to do with that, did
6 they?

7 A. Not to my knowledge.

8 Q. Okay, and we sit here -- you you haven't been here
9 throughout the trial, have ya?

10 A. Uh, no, not in the room.

11 Q. Okay. Okay. Nick, when's the first time someone ever
12 called ya about this case from a investigator's office or or
13 do it this way: When did Investigator Cannon call you to
14 discuss your involvement in this case, Mr. Cannon right back
15 here (indicating)?

16 A. I have not had any contact with him.

17 Q. You don't even know who that guy is, do ya?

18 A. I do not know him.

19 Q. When's the first time someone ever called you from the
20 AG's Office about this case?

21 A. Last week.

22 Q. You never contacted them and said you wanted to be a part
23 a this, did ya?

24 A. No.

25 Q. Thank you, Nick.

MEGAN FLETCHER - DIRECT EXAMINATION BY MR. UNDERWOOD

1 THE COURT: Redirect.

2 MR. UNDERWOOD: No. No, Your Honor.

3 THE COURT: May this witness be excused?

4 MR. UNDERWOOD: Please, Your Honor.

5 MR. RIORDAN: Yes, Your Honor.

6 THE COURT: Thank you, sir, you may be excused.

7 THE COURT: Call your next witness, please.

8 MR. UNDERWOOD: Your Honor, the State calls Megan
9 Fletcher.

10 THE CLERK: Please come forward.

11 (Whereupon, the witness came forward.)

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

13 MEGAN FLETCHER, having been first
14 duly sworn, testified as follows:

15 THE CLERK: Have a seat. Will you please state your full
16 name for the record.

17 THE WITNESS: It's Megan Fletcher, F-L-E-T-C-H-E-R.

18 . DIRECT EXAMINATION BY MR. UNDERWOOD:

19 Q. Good morning, Agent Fletcher.

20 A. Good morning.

21 Q. Could you please introduce yourself to the jury and tell
22 them where you work and what you do.

23 A. My name is Megan Fletcher, I'm a forensic scientist at
24 the South Carolina Law Enforcement Division in the trace
25 evidence laboratory. I have ---

MEGAN FLETCHER - DIRECT EXAMINATION BY MR. UNDERWOOD

1 Q. How long have you been a forensic scientist?

2 A. For six and a half years.

3 Q. And what exactly is trace evidence?

4 A. Trace evidence is composed of many different types a
5 evidence, we do everything from gunshot residue to fire
6 debris, fibers, paint, explosive residue, glass and, um,
7 unknown white powders, bank dye analysis, duct tape, it's a
8 variety of types a evidence.

9 Q. Okay, and as a forensic scientist, what is your role in
10 processing that evidence?

11 A. Uh, an agency will submit a a type of evidence, uh, and I
12 will analyze it for what they ask me to analyze it for.

13 Q. And when you're doing an analysis, what is it you're
14 trying to find out?

15 A. Uh, well if it would be an ignitable liquid analysis or
16 flammable analysis what they request then I would be looking
17 for the presence or the absence of a flammable liquid. If
18 it's a paint comparison then I would be looking to make a, uh,
19 comparison between a kno -- known and an unknown standard.

20 Q. Okay, when you say a "known" and "unknown standard," what
21 does that mean?

22 A. Uh, so a known would be from a source, uh, from a
23 vehicle, from a wall, from a safe, anything like that and an
24 unknown would be a piece of paint from an unknown source where
25 they found it on a tool or on a victim and they would like to

MEGAN FLETCHER - DIRECT EXAMINATION BY MR. UNDERWOOD

1 match it back up to the source.

2 Q. And do you have any specialized education and training,
3 uh, as a forensic scientist?

4 A. I have my bachelor's degree from Chatham College in
5 biochemistry and English, I also have my master's in forensic
6 science from Marshall University in computer forensics and
7 forensic chemistry and, uh, while at SLED in my 6 1/2 years
8 I've completed in-house training program where specifically
9 for paint and fire debris I've gone through the in-house
10 training program which consisted of written, practical and
11 oral examinations as well as analyzing hundreds of different
12 standards for each of those type of analysis.

13 MR. UNDERWOOD: Your Honor, at this time the State would
14 offer, uh, Ms. Fle -- Agent Fletcher as an expert in trace
15 evidence analysis.

16 MR. RIORDAN: No objection.

17 THE COURT: Ladies and gentlemen, uh, I'm gonna remind
18 you again that normally witnesses are limited to their
19 testimony to what they see, they saw, they heard, they
20 smelled, however a person 'cause of their education or
21 experience or a combination of those who may have developed an
22 expertise that would be helpful to you, the jury, they'd be
23 allowed to give an opinion in the field of their expertise.
24 In this case it's stipulated Ms. Fletcher is an expert in the
25 field of trace evidence analysis, she'll be allowed to give

MEGAN FLETCHER - DIRECT EXAMINATION BY MR. UNDERWOOD

1 her opinion in that field and basis of her opinion. Uh,
2 expert testimony is like any other testimony you'll hear in
3 this trial: you may accept it, you may reject it or give it as
4 much weight as you think is proper. Thank you. Okay.

5 BY MR. UNDERWOOD:

6 Q. Alright. Agent Fletcher, can you explain the different
7 processes and procedures that the lab at SLED has to protect
8 from any contamination of items that are being examined.

9 A. For each type of analysis that we do, we clean the area
10 prior to analysis, we also wear gloves to protect the evidence
11 from any outside contamination. Uh, if we're going between a
12 known and an unknown, we will switch those gloves so ---

13 Q. Okay.

14 A. --- that there's no interaction between the two, we will
15 also, if appropriate, use clean pieces of butcher paper or
16 absorbent padding as well to prevent any sort of contamination
17 between samples.

18 Q. And how are samples stored, uh, both inside and outside
19 of the lab?

20 A. Well I I can't really say how they are stored outside the
21 lab but within the laboratory they are, uh, kept in a sealed
22 state or within protected rooms which means that they are in
23 secure rooms that are protected by a physical and magnetic
24 key, magnetic key is basically a key card that you can swipe
25 to get in and only authorized personnel so in the case of

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1 trace evidence it would be trace evidence personnel and our
2 administrative captains and major for the SLE -- for the
3 forensics building.

4 Q. So so the amount of people that have access to that area
5 is limited.

6 A. Extremely limited.

7 Q. Can you explain the process that you use, uh, to examine
8 a, uh, piece of evidence that's been brought to you when
9 you're searching for flammable or ignitable liquids.

10 A. When flammable, uh, analysis is requested, I receive a
11 box of evidence or a bag of evidence, I check to make sure
12 that the seals are, uh, in tact when I receive it, I then open
13 the box and I check to see what's inside. I remove the
14 evidence out, I check to make sure that the description of the
15 evidence as far as it being a can or a bag, etc. matches what
16 was on the submissions sheet, I also check to make sure that,
17 uh, case numbers and item numbers are correct so then I begin
18 my analysis which means that I open each can individually for
19 a brief moment. I look at, during a brief moment, I'll look
20 at, see what type of evidence inside the can or the bag, I
21 will put an activated charcoal strip inside of that can and I
22 will make my notes at the time, that can is then closed and
23 then set aside so I can process the rest of the evidence, no
24 can of evidence is ever opened at the same time as another
25 one. I also prepare an oven blank which means that that's

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1 basically a negative control, it's a can of ev -- it's a paint
2 can that we keep within our laboratory and we put a Kimwipe
3 which is basically a tissue inside of that can, put a charcoal
4 strip inside of that can and place it aside to be placed in
5 the oven with the rest of the evidence as a negative control.
6 Overnight the evidence will be heated in an oven between 60
7 and 70 degrees celsius and what that does is allows any
8 potential vapors from the evidence to rise up out of the
9 evidence so that it can be attached to the charcoal strip.
10 The charcoal strip is sort of like the, uh, piece of charcoal
11 that you might put in your refrigerator to capture odors, it
12 will take any of those odors or vapor, uh, vapors out and
13 attach themselves to the charcoal strip.

14 Q. So the what essentially you're doing is you're finding
15 the sense of the presence of liquid to cause that liquid to
16 evaporate and be absorbed by these strips?

17 A. Uh, not necessarily evaporate but vaporize up to to
18 attach to the strips.

19 Q. And then once you have done that process how long does
20 that take?

21 A. Uh, that takes overnight and then the next day I will
22 come in, overnight they've been secured in our laboratory with
23 the magnetic and secured keys with limited access. I come
24 back in the next morning, I remove the charcoal strips and I
25 extract any potential vapors that had detached themselves

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1 overnight with a solvent, I then place that solvent on an
2 instrument to be analyzed for the presence of ignitable
3 liquids.

4 Q. And how do you go through that process to identify there
5 are ignitable liquids present?

6 A. What I do is I look at the data that's produced by a gas
7 chromatograph mass spectrometer and I look to make sure that
8 the patterns are there for common ignitable liquids and then
9 once I see a pattern I then check to make sure that each
10 individual peaks in that pattern is a component that it should
11 be for an ignitable liquid of that classification.

12 Q. And when you find ignitable liquids, are you typically
13 able to identify exactly what the liquid is?

14 A. For the most part all we are able to do is identify a
15 classification set forth by the ACF which means that I can
16 identify whether it's a petroleum distillate or an aromatic
17 compound. The only one that we are specifically able to
18 identify is gasoline, however we are not able to say whether
19 it's a specific octane or a specific brand of gasoline.

20 Q. Now you say the different, uh, classes of distillates or
21 aromatics, can you explain what distillates, aromatics are.

22 A. Uh, distillates are basically composed of hydrocarbons of
23 normal and branched out pains, it has a pattern that sort of
24 looks like a stegosaurus, an aromatic com -- compound is just
25 like the word "aromatic," it means that it gives off a scent

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1 and that is basically composed of a six member of carbon ring
2 with and it can or cannot have branches, common aromatic
3 compounds are benzene or toluene.

4 Q. Okay, and and what is toluene?

5 A. Toluene is a solvent commonly used in, uh, paint thinners
6 or deglossers.

7 Q. And among petroleum distillates are there different kinds
8 or levels of petroleum distillates?

9 A. Can can you rephrase the question, please.

10 Q. Are all petroleum distillates identified as the same
11 thing?

12 A. I'm sorry, I ---

13 Q. Alright.

14 A. --- I don't think I ---

15 Q. What ---

16 A. --- quite understand.

17 Q. --- what what what's the difference between a medium
18 petroleum distillate, a heavy petroleum distillate ---

19 A. Oh, okay. Uh, the difference is basically its volatile
20 level. A light petroleum distillate's gonna be more volatile
21 than a medium which is gonna be more volatile than a heavy.

22 Q. Okay, and you say "volatile," what does that mean?

23 A. Means that it's able to dissipate faster, evaporate
24 faster.

25 Q. And when you're talking about something being volatile

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1 and evaporating faster with these ignitable liquids is it the
2 liquid itself that actually burns?

3 A. No, it's the vapor above the liquid.

4 Q. Okay, so after it had been vaporized, that's the thing
5 that actually burns?

6 A. Yes.

7 Q. Now, Agent Fletcher, in this particular case, uh,
8 involving Lab Number L1209076, did you have an occasion to
9 examine, uh, numerous items of evidence that were presented to
10 you from Greenville County Sheriff's office?

11 A. May I refer to my notes?

12 Q. Uh, yes, and actually, uh, may I approach the witness,
13 Your Honor?

14 THE COURT: Yes.

15 BY MR. UNDERWOOD:

16 Q. Okay. Agent Fletcher, I'm handing you what's marked as
17 State's Exhibit Number 25, ---

18 A. Okay.

19 Q. --- do you recognize that?

20 A. Uh, may I refer to my notes?

21 Q. Yes.

22 (Pause.)

23 A. I recognize this as a copy of the report submitted, uh,
24 to the Greenville County Sheriff's Office that I produced.

25 Q. Is is that an accurate copy of your report?

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1 A. Yes, sir.

2 MR. UNDERWOOD: Your Honor, at this time I would move to
3 admit State's Exhibit No. 25 into evidence.

4 MR. RIORDAN: No objection.

5 THE COURT: Admitted without objection.

6 (State's Exhibit No. 25, report, admitted into evidence.)

7 BY MR. UNDERWOOD:

8 Q. Now, Agent Fletcher, if you would, uh, can you describe,
9 uh, what items that you examined in this case.

10 A. Uh, in this case I examined four cans of various types of
11 fire debris. Item 1 for SLED Item Number 1 would be charred
12 wood and yard debris, Item 2 for SLED would also be charred
13 wood and fire -- yard debris, Item 3 was, uh, charred wood and
14 Item 4 was also charred wood. SLED Item Number 5 was an
15 unknown dark red metallic paint chip submitted as paint chip
16 from the head of a hatchet, SLED Item Number 6 was a dark red
17 metallic, was dark red metallic paint chip submitted as paint
18 chip from safe which was a standard, SLED Item Number 7 was a
19 gallon can containing one tan slipper with fur inside and
20 rubber sole, Item Number 8 was a gallon can containing blue
21 jean material, Item 9 was a gallon contai -- gallon can
22 containing black cloth material and Item 10 was a gallon can
23 containing one tan slipper with fur inside and a rubber sole.

24 MR. UNDERWOOD: Court's indulgence, Your Honor.

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

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1 MR. UNDERWOOD: Your Honor, ask the Court's indulgence
2 just for a moment so we can have a couple exhibits marked.

3 THE COURT: Yes.

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

5 (Paint chips marked State's Exhibit No. 35, can
6 containing fire debris marked State's Exhibit
7 No. 36, can containing fire debris marked State's Exhibit
8 No. 37, can containing fire debris marked State's Exhibit
9 No. 38, can containing fire debris marked State's Exhibit
10 No. 39, charcoal test strip marked State's Exhibit
11 No. 40, charcoal test strip marked State's Exhibit No. 41,
12 charcoal test strip marked State's Exhibit No. 42 and charcoal
13 test strip marked State's Exhibit No. 43 for identification.)

14 BY MR. UNDERWOOD:

15 Q. Alright, Agent Fletcher, starting with the small items
16 first, ---

17 A. Okay.

18 Q. --- I'm handing you State's Exhibits 40, 41, 42 and 43,
19 can you identify those, please.

20 A. These are all, uh, archived charcoal strips and the
21 function of the archive charcoal strip is basically half of
22 the charcoal strip that I placed in the evidence we preserve
23 for any future testing, ---

24 Q. Yeah.

25 A. --- uh, these, I can identify these based on the lab

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1 number that appears on the bar code of each of these and the
2 item number I've given them as well as my initials and the
3 date in which I sealed this container.

4 MR. UNDERWOOD: Your Honor, at this time I'd move for
5 Exhibits 40, 41 and 42 and 43 to be admitted into evidence.

6 MR. RIORDAN: No objection.

7 THE COURT: Admitted without objection.

8 (State's Exhibit Nos. 40, 41, 42 and 43, charcoal strips,
9 admitted into evidence.)

10 BY MR. UNDERWOOD:

11 Q. Now handing you Exhibit No. 35, can you identify that,
12 please.

13 A. Can, this is, uh, container Number B which contained the
14 paint samples which were SLED Items Number 5 and 6. I
15 recognize our lab number, the container number as well as my
16 initials and the date on which I sealed the evidence, my
17 initials and the date in which I opened the evidence.

18 MR. UNDERWOOD: Your Honor, at this time I'd move for
19 State's Exhibit No. 35 be admitted into evidence.

20 MR. RIORDAN: What is that?

21 MR. UNDERWOOD: The paint chips.

22 MR. RIORDAN: Uh, no objection.

23 THE COURT: Admitted without objection.

24 (State's Exhibit No. 35, paint chips, admitted into
25 evidence.)

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1 BY MR. UNDERWOOD:

2 Q. Now handing you Number 36, 37, 38 and 39, if you could
3 beginning with Exhibit 36.

4 A. Exhibit 36 is SLED Item Number 4, I recognize the lab
5 number as well as the item number on this (indicating) bar
6 code, those (indicating) are my initials and the date in which
7 I opened this can, my initials and date also appear on the top
8 of the evidence which is the date in which I closed the
9 evidence can, that is Item Number 4 with SLED; State's Exhibit
10 37 is SLED Item Number 3, again the bar code with our lab
11 number and the item number, my initials and date in which I
12 open the can, my initials and date in which I closed the can.
13 State's Exhibit 38 refers to SLED Item Number 2, the lab
14 number, there's my initials and date from when I open the can
15 and my initials and date in which I sealed the can; State's
16 Exhibit 39 refers to SLED Item Number 1 where the lab number
17 is present, the item number's present, my initials and date in
18 which I open the can, again my initials and date in which I
19 closed the can.

20 MR. UNDERWOOD: Your Honor at this time I move for
21 State's Exhibits 36, 37, 38 and 39 be admitted into evidence.

22 MR. RIORDAN: No objection.

23 THE COURT: Admitted without objection.

24 (State's Exhibit Nos. 36, 37, 38 and 39, cans containing
25 fire debris, admitted into evidence.)

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1 MR. UNDERWOOD: Alright, just to keep things going I will
2 place this back in the box so that they're not crowding all
3 over the place.

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

5 THE COURT: Does that block anybody's view over there?

6 (No response from the jury.)

7 THE COURT: Okay.

8 BY MR. UNDERWOOD:

9 Q. Agent Fletcher, uh, beginning with the paint chips that
10 were provided to you, can you tell the jury what examinations
11 you put on those and what your conclusions were.

12 A. I subjected the known and the unknown paint chips SLED
13 Items Number 5 and 6 to chemical and elemental analysis, I,
14 uh, also examined them for their physical structure. Item
15 Number 5 was an unknown dark red metallic paint chip. There
16 were two layers of dark red metallic paint film which means
17 that there was a clear coat on top of a dark red metallic
18 color. These first two layers of the paint chip or these two
19 layers of the paint chip are physically and chemically the
20 same as the layers, the first two layers in Item Number 6
21 which was the standard from the safe, so Item Nu -- Number 5
22 either originated from Number 6 or another item or another
23 source containing the same physical and chemical
24 characteristics.

25 Q. So the paint chips from both sources matched same

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1 characteristics?

2 A. Correct.

3 Q. Agent Fletcher, I also wanna show you what's already been
4 admitted into evidence State's Exhibit Nos. 20, 21, 22 and 23,
5 you recognize those exhibits?

6 A. State's Exhibit 20 is SLED Item Number 10, our lab
7 number, my initials and date when I open the can, my initials
8 and date when I close the can; State's Exhibit 21 refers to
9 SLED Item Number 8 is the lab number, my initials and date in
10 which I open the can, initials and date in which I close the
11 can; State's Exhibit 22 refers to SLED Item Number 7 is the
12 lab number, my initials and date when I open the can, my
13 initials and the date appears to be covered up on the top a
14 this with evidence tape from which I close the can but those
15 are my initials; State's Exhibit 23 refers to SLED Item Number
16 9, my initials and date when I open the can and my initials
17 and the partial date from which I closed the can.

18 Q. And and are these exhibits the remaining items that you
19 examined in this ---

20 A. Yes, sir.

21 Q. --- case? Now, Agent Fletcher, if you could, uh, what
22 was the purpose of examining these items that I've just shown
23 to you in the paint cans?

24 A. I was checking them for the presence or the absence of an
25 ignitable liquid.

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1 Q. Beginning with, uh, SLED Item Number 1, Item 2, Item 3
2 and Item 4 can you state what conclusions you were able to
3 gather following your examination.

4 A. Item Number 1 1 quart can containing charred wood and
5 yard debris I found a mixture containing a heavy petroleum
6 distillate and a heavy aromatic, this can be from a blended
7 product or from a physical mixture. Some examples of heavy
8 petroleum distillates are kerosene, diesel fuel, some jet
9 fuels and some charcoal starters. Some examples of heavy
10 aromatic products are some insecticide, vehicles and
11 industrial cleaning solvents. Item Number 2 one quart can
12 containing charred wood and yard debris, I also found the same
13 mixture of a heavy petroleum distillate and a heavy aromatic
14 product, again, they can be from a blended product or from a
15 physical mixture. Examples of heavy petroleum distillates are
16 kerosene, diesel fuel, some jet fuels and some charcoal
17 starters. Some examples of heavy aromatic products are some
18 insecticides, vehicles and industrial cleaning solvents.
19 SLED Item Number 3 was one gallon can containing charred wood.
20 I found gasoline, this would include all brands of gasoline
21 and gasohol. One ga, Item Number 4 was one gallon can
22 containing charged wood, again, I found gasoline, this
23 includes all brands of gasoline and gasohol.

24 Q. And now if we could move on to items number, skip ahead
25 to Item Number 10, can you explain, uh, what the results of

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1 Item Number 10 as well as Item Number 7.

2 A. Item Number 7 was one gallon can containing one tan
3 slipper with fur inside and a rubber sole. In this, uh,
4 slipper I found a mixture containing toluene and a medium
5 petroleum distillate, this can be from a blended product or
6 from a physical mixture. Examples of medium petroleum
7 distillates are some charcoal starters, some paint thinners
8 and some dry cleaning solvents. Item Number 10 I found a
9 gallon can containing one tan slipper with fur inside and a
10 rubber sole, this contained a mixture of gasoline and a medium
11 petroleum distillate, again, this can be from a blended
12 product or from a physical mixture. Some examples of medium
13 petroleum distillates are charcoal starters, some paint
14 thinners and some dry cleaning solvents.

15 Q. Now, Agent Fletcher, as a forensic scientist, are you
16 able to say how, uh, these liquids can become present on these
17 items?

18 A. The -- in order for me to be able to determine that a
19 ignitable liquid was found, it means that a liquid would have
20 had to have been deposited on these items.

21 Q. Okay, but you don't know how that would be deposited?

22 A. No.

23 Q. Okay. Now we discussed that, uh, these ignitable liquids
24 are volatile, meaning that they vaporize quickly, ---

25 A. Correct.

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1 Q. --- based on that are you able to establish any rough
2 idea of how long, uh, these ignitable liquids could be present
3 before they would have evaporated off?

4 A. Uh, based on some things that we've done in the
5 laboratory, uh, these items, particularly the Item Number 7
6 toluene and medium petroleum distillate they would not, uh,
7 they will not last in their, the form that I found them in for
8 a very long time, long period of time, I would say less than a
9 few days.

10 Q. So that those products would have been on those shoes for
11 less than a few days?

12 A. Correct.

13 Q. Now if we can go back to Item Numbers 8 and 9, could you
14 describe what results you got from those.

15 A. Item 8 was 1 gallon can containing blue jean material, in
16 this I found a mixture containing gasoline and a medium
17 petroleum distillate, this can be from a blended product or a
18 physical mixture. Some examples of medium petroleum
19 distillates are some charcoal starters, some paint thinners
20 and some dry cleaning solvents. Item Number 9 is 1 gallon can
21 containing black cloth material. I found a mixture containing
22 gasoline and a medium petroleum distillate, this can be from a
23 blended product or from a physical mixture. Some examples of
24 medium petroleum distillates are some charcoal starters, some
25 paint thinners and some dry cleaning solvents.

1 Q. And again are you able to tell anything about the
2 condition of the chemicals that you found present ---

3 A. What do you ---

4 Q. --- as to whether what, uh, physical state it had to have
5 been when it was deposited?

6 A. When it was deposited, would have had to have been in a
7 liquid form.

8 Q. Now when you say a "liquid form," does that mean that it
9 could not have been in a gaseous form?

10 A. That's correct.

11 Q. Now it has been suggested in this case by the defense
12 that the ignitable liquids found on these articles of
13 clothing, uh, were a result of walking through smoke and soot,
14 can you form any opinions as to whether that is plausible?

15 A. Uh, ignitable liquids are not found in smoke from a fire
16 scene, uh, specifically it is an accepted practice to take
17 control sample from the same ar -- or from the same room when
18 you're collecting fire debris evidence. We often get samples
19 where they suspect an ignitable liquid may be present and then
20 within the same room they collect a what they call a "control"
21 or a "standard" sample for us to be able to compare against
22 and the ignitable liquid would turn back positive and the
23 control sample would then be negative. If there was possible
24 that and ignitable liquid was from smoke then this analysis
25 would not be possible.

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1 Q. So or is it possible for these ignitable liquids to have
2 gotten upon these clothes from smoke and soot?

3 A. No, sir.

4 Q. Alright. Does that mean that it had to have been an
5 actual liquid placed onto these items?

6 A. In some form of a liquid it had to have been deposited
7 onto the clothing items.

8 Q. Thank you. No further questions, Your Honor.

9 THE COURT: Cross-examination.

10 MR. RIORDAN: May it please the Court.?

11 THE COURT: Yes, sir.

12 CROSS-EXAMINATION BY MR. RIORDAN:

13 Q. Hello, Megan.

14 A. Hi.

15 Q. We finally got to speak a little bit last week, didn't
16 we?

17 A. Yes, sir.

18 Q. And that's -- and as you told me this is your first time
19 testifying and as to these type a findings, correct, ---

20 A. Correct, sir.

21 Q. --- told me two gunshot residue, uh, is that what it was
22 gunshot residue cases?

23 A. Correct, sir.

24 Q. Alright, yeah and we spoke, uh, you you finished the, uh,
25 test results in this case back in August of 2012, right?

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1 A. That is correct, sir.

2 Q. Alright, and then you last Friday, so the Friday before
3 last all you sent, all you sent to the folks that asked you to
4 do samples were the test results that we have here, right?

5 A. The only thing that I sent to Greenville County was the
6 report.

7 Q. Right. The the Friday before last is when I received a
8 hundred and forty pages of your test results, right?

9 A. Uh, I can't say when you received it but I did send
10 it ---

11 Q. Okay.

12 A. --- the previous week.

13 Q. Alright, just for future reference when you do test
14 results will you have SLED make sure they send everything you
15 have includin' your CV so so prosecution can get it to defense
16 and be prepared, okay?

17 A. That's actually not a common practice but the only
18 thing ---

19 THE COURT: Let's let's ---

20 A. (Indiscernible cross-talk.)

21 THE COURT: --- go forward.

22 MR. RIORDAN: Your H -- alright.

23 BY MR. RIORDAN:

24 Q. The, uh, where where are all the cans? right here? The,
25 uh, you spoke about, I mean, again, we're talking about

MEGAN FLETCHER - CROSS-EXAMINATION BY MR. RIORDAN

1 ignitable liquids, right?

2 A. Yes, sir.

3 Q. Alright. And and really we're talking about ignitable
4 liquid residue, aren't we?

5 A. Correct.

6 Q. Correct. And when we talk about the samples that were
7 taken in this case off the front porch let's say, ---

8 A. Okay.

9 Q. --- when you talk about a piece of wood, right, that's
10 what you're cuttin' is the top a the wood, correct?

11 A. I can't say what part that they collected.

12 Q. That's right 'cause you don't really even look. When you
13 get a, when you get a sample, you get a can, you open it up
14 quickly just to make sure it is what it says but then you slip
15 the wire with the tiny little carbon piece on it down in there
16 and seal it back up, right?

17 A. That's correct, sir.

18 Q. Alright, in this case the cans that were used were
19 unlined cans, right?

20 A. Yes.

21 Q. You prefer 'em to be lined but these were unlined,
22 right?

23 A. In this particular case, yes.

24 Q. Alright, then you put 'em in a bag that was sealed up
25 even more for the baking in the oven, alright, but what we're

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1 talking about, again, would you agree with me if if if a piece
2 of the wood off the front porch is cut, that's that's the
3 piece, that's what we're talking about, that's what we're
4 saying. You're saying when we do the test results when it
5 vaporizes that's where you're getting your sample that's
6 eventually tested in the gas chromatogram or can't even
7 pronounce it, is that right?

8 A. The evidence that was collected is what I analyze.

9 Q. Alright, and when those pieces are cut, I mean, part a
10 this again, when you get things you assume you've gotten
11 samples that have been handled appropriately at a crime scene,
12 correct?

13 A. The only thing that I know is that they submit a sample
14 for analysis, as long as it is sealed appropriate a --
15 appropriately and submitted appropriately, I analyze it.

16 Q. Alright, and you don't want cross-contamination, do ya?

17 A. Uh, no, sir.

18 Q. When you're in your lab, you guys are very careful; one,
19 not to even take items out. You don't touch anything inside
20 there, look at 'em normally, do ya?

21 A. Uh, not prior to analysis, sir.

22 Q. Okay. And, uh, you wouldn't wanna take out like let's
23 say a piece a wood cut from a front porch, if you were to take
24 it out and touch it and then touch somethin' else, that would
25 be a potential cross-contamination, wouldn't it?

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1 A. There is potential for a transfer of ignitable liquids
2 between ---

3 Q. Okay, ---

4 A. --- items.

5 Q. --- 'cause I think if that's touchin', it touches
6 somethin' else you can transfer and that new sample when you
7 heat it up and the carbon fibers there it can catch that same,
8 those same vapors, right?

9 A. If the transfer occurred, that is true.

10 Q. Alright. You don't know any facts of this case, right?

11 A. Uh, I know a few but not many no, sir.

12 Q. You hadn't heard testimony from any of the firefighters,
13 have you?

14 A. No, sir.

15 Q. Let me ask you this: Have you every had to test a
16 firefighter's suit fightin' fire, fightin' a gasoline fire
17 goin' through the fire debris?

18 A. I have never analyzed a firefighter, ---

19 Q. I mean, if they ---

20 A. --- sir.

21 Q. --- lay down and touch real quick on the same thing, that
22 could be a transfer right there, correct?

23 A. There -- I -- there could be the potential for that.

24 Q. If pets are walking through the fire debris and you're
25 huggin' and holdin' 'em, that could be a transfer too, isn't

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1 it?

2 A. If there was an ignitable liquid on that pet, there
3 is ---

4 Q. Sure.

5 A. --- a potential for transfer.

6 Q. Alright. If it's there 'cause you haven't even seen the
7 pictures to know how much gas and how much all this was on the
8 front porch, do ya?

9 A. No, sir.

10 Q. Big, if there were big pools that were lit on each,
11 almost each plank on the front porch and every firefighter
12 says we we couldn't get her outta the way off the front porch,
13 she wanted us to go save her animals, we had to basically
14 fight her off the front porch, firefighter says she's right
15 there in it, if she's down at all or the pets are down at all,
16 wouldn't you expect to have some of that same liq, uh,
17 ignitable liquid residue on them?

18 A. If she is touching the ignitable liquid residue then
19 that's ---

20 Q. Yeah.

21 A. --- a possible for ---

22 Q. Alright.

23 A. --- transfer.

24 Q. And then, and then if, and if it's her jeans that have it
25 on there 'cause she might have touched it and then later her

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1 shirt is balled up with it, again, with testing if those
2 things got put together that would be an absolute fear there,
3 right then we've got cross-contamination, right?

4 A. Are you asking whether the shirt and the jeans came in
5 contact with one another?

6 Q. Yes, they certainly didn't in your lab, did they?

7 A. No, sir.

8 Q. If they did in your lab, you'd have known if the jeans
9 had it, now if it's found on the shirt then it's likely, it's
10 just as likely it coulda come from the jeans as anywhere else,
11 right?

12 A. I can never tell the source of an ignitable ---

13 Q. You can never ---

14 A. --- liquid.

15 Q. --- tell the source. Uh, pets, pets have hair on their
16 paws and on their body's, right, I mean, I know that's a
17 stupid question they do, right?

18 A. I assume most do.

19 Q. I mean, if pets have -- and and with the Gulf oil spill,
20 what, the beans that were used, what what are they used to
21 collect the oil in the, in the Gulf oil spill, what was one of
22 the things that they would like to use? They asked for
23 donations: hair, pet hair ---

24 A. I'm not aware of this ---

25 Q. You're not aware of that?

1 A. No.

2 Q. Oh, okay. Hair hair soaks up oils on our bodies, doesn't
3 it?

4 A. That's beyond the scope of my expertise.

5 Q. That's beyond your scope?

6 A. Correct.

7 Q. As an expert, what about as a lay person, just a common
8 person?

9 A. I I mean, hair gets greasy so ---

10 Q. That's it, right?

11 A. Um ---

12 Q. You get your hair gets oily, right, it collects the oil,
13 it collects the oil, doesn't it? This case, I mean, again,
14 you do this real quickly you put these -- quickly, you don't
15 pull it out, you don't pull these clothes out somehow and get
16 some, I don't know beam of light or somethin' else and show
17 hey, down here on the cuff it looks like gas was poured and it
18 splashed right here, you don't do that, do ya?

19 A. No, sir.

20 Q. You don't even look to see what's in these things, do ya?

21 A. I do ---

22 Q. Well ---

23 A. --- look to give a brief description.

24 Q. Oh, but you don't pull 'em out.

25 A. No.

MEGAN FLETCHER - CROSS-EXAMINATION BY MR. RIORDAN

1 Q. I would suggest to you as almost suggested that you could
2 prove that there were, uh, you could prove where the splashes
3 were and I'll confess to you I wasn't sure either, that's why
4 there was a, there was a question in this case about cuttin'
5 clothes in half just to make sure if they were gonna have a
6 half, we'd have a half, we could do our independent testing,
7 that that wouldn't be unfair would it either?

8 A. Well in this particular case there is half of a charcoal
9 strip so we'd need ---

10 Q. Yeah, we still got it, right?

11 A. --- the entire jeans.

12 Q. Okay. Yeah, charcoal, I know this is gonna sound ter --
13 how do you spell charcoal?

14 A. It's C-H-A-R-C-O-A-L.

15 Q. Correct. Thank you. I know that sounds crazy, it -- but
16 the jury knows why. Let let's open up one a these cans. Come
17 here, let's let's find the one with the shirt. Who's got the
18 screwdriver?

19 MS. ABEE: I do, Mr Riordan.

20 MR. RIORDAN: Okay.

21 BY MR. RIORDAN:

22 Q. Megan, you wanna step down, you you're you're more adept
23 at opening cans. You you do this almost like an assembly line
24 basis, right?

25 A. Correct.

1 (Whereupon, the witness left the stand.)

2 Q. Coming and going, fix one, go to the other and I know
3 your lab is precise, right?

4 A. Yes, sir.

5 Q. Alright, and and we can talk while you open it. I mean,
6 if you're in your lab doin' testing, let's, and I know this
7 wouldn't happen, but say you got a piece out that you're gonna
8 test and you set it down and you know exactly where on the
9 table it is but for some reason you gotta leave the room real
10 quick to go get somethin' you forgot, you know right where it
11 is and when you're gone you notice somebody came in, you don't
12 see what they do, you go back in and that piece has been
13 slightly moved.

14 A. I honestly can't leave without because it's not our
15 practice to move ---

16 Q. Alright.

17 A. --- evidence without asking another analyst.

18 Q. I know that but if it di -- this a hypothetical, you can
19 answer it, can't ya? If it's moved you'd have a question as
20 to whether who moved it might have contaminated it, right?

21 A. If something was moved it was over to the side.

22 Q. Yeah, if it -- 'cause you, if if it's moved there you
23 just don't know, right, then we're left to guess or speculate
24 as to whether anything contaminated, aren't we?

25 A. That is correct, sir.

MEGAN FLETCHER - CROSS-EXAMINATION BY MR. RIORDAN

1 Q. Corr -- is that the shirt?

2 A. Uh, it should be ---

3 Q. Should be, okay.

4 A. --- it is SLED Item Number 9.

5 Q. Alright. And as part a this, and we'll talk while you're
6 doing, I mean, you put these in na oven and bake 'em at you
7 said 60 to 70 celsius, that's a hundred and forty to a hundred
8 fifty-eight degrees Fahrenheit, right?

9 A. Correct, sir.

10 Q. And it bakes for what? 14 hours?

11 A. Sixteen hours.

12 Q. Sixteen hours, two more hours, and it bakes and inside
13 there includin' these shoes, we'll talk about the shoes in a
14 minute, it bakes it in there and the vapors, whatever the
15 vapors are in there vaporize up and there in and that little
16 carbon strip catches it, right?

17 A. Yes, sir.

18 Q. Let's pull out that shirt.

19 A. Alright, may I get a pair of gloves to do ---

20 Q. I don't think it matters. Anyone care?

21 THE CLERK: Here are some gloves.

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

23 THE WITNESS: Thank you.

24 BY MR. RIORDAN:

25 Q. Get you to smell anyplace, see if you can smell any gas.

1 A. I do not smell anything.

2 Q. But part of it too a sniff test, you can do that and see
3 if you smell anything, right?

4 A. Uh, when it's opened briefly I do ---

5 Q. Yeah, you don't, ---

6 A. --- see if I can ---

7 (Indiscernible cross-talk.)

8 Q. --- you don't have any notes here to suggest you smelled
9 anything, did ya?

10 A. Uh, no, sir, I did not.

11 Q. I know that. Oh, look looks like some hairs on there,
12 you see that?

13 A. Yes.

14 Q. Lotta hair, isn't there?

15 A. Uh, hair or fiber, ---

16 Q. Hair or ---

17 A. --- yeah.

18 Q. --- fiber. It's, you might wanna turn it inside out
19 let's make sure. Looks like it's on -- let's see the other
20 side. I never never saw ---

21 A. This is inside out.

22 Q. Let's ---

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

24 A. This is the correct one.

25 Q. Yeah. Why don't you show the judge that, black so you

1 can see it on, look, why don't you show them.

2 (Whereupon, the witness complied.)

3 Q. What's that look like?

4 A. These are either hair or fiber ---

5 Q. Yeah, we had testimony from one a the firefighters, asked
6 him if he'd seen a gun, said I wasn't sure 'cause she was
7 holdin' the dog there, it mighta been under her. That's a
8 possible way any a this stuff got on her, right, if a dog's
9 runnin' through it and she holds the dog?

10 A. If the dog had ignitable liquid present on him, there is
11 potential.

12 Q. Sure that's certainly a potential, isn't it?

13 A. Correct.

14 Q. That's a plausible explanation for how it got here, isn't
15 it?

16 A. Uh, I can never tell you exactly ---

17 Q. Yeah, ---

18 A. --- how something ---

19 (Indiscernible cross-talk.)

20 Q. --- and if the jeans, we got a picture, I think they just
21 showed it to ya, the jeans and the shirt are all balled up
22 together when they get 'em later that day, again, you would
23 never let those touch in the lab, would ya?

24 A. No, sir, and as long as they were submitted separately I
25 would be kinda surprised.

MEGAN FLETCHER - CROSS-EXAMINATION BY MR. RIORDAN

1 Q. Alright, thank you, you can return. Alright, so you
2 agree, I mean, looking at this now assuming what I've said is
3 true, you don't have to, but assuming that's true ---

4 THE COURT: Just a minute ---

5 (Indiscernible cross-talk.)

6 MR. RIORDAN: Yes, ma'am, I'm sorry.

7 (Whereupon, the witness returned to the stand.)

8 BY MR. RIORDAN:

9 Q. Assuming that is true, the presence of, uh, ignitable
10 liquid, uh, residue including gas in this case there's a
11 plausible explanation it has nothing to do with someone
12 setting a fire, true?

13 A. Uh, that it seems as plausible as any ---

14 Q. Seems ---

15 A. --- I can't ever ---

16 Q. --- as plausible ---

17 A. --- determine ---

18 Q. --- as anything, doesn't it?

19 A. --- the source of an ignitable liquid.

20 Q. Alright, let's get to the shoes. Again, you you assume
21 'cause you, you're you're careful in your lab, you don't
22 cross-contaminate, right?

23 A. Correct, right.

24 Q. Alright. You assume the shoes have not been bothered
25 with either.

MEGAN FLETCHER - CROSS-EXAMINATION BY MR. RIORDAN

1 A. I I make no assumptions, I just ---

2 Q. Yeah, yeah you don't have to. You receive it and you
3 test it, right?

4 A. Correct.

5 Q. Where are those photos?

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

7 Q. Alright, Megan, -- may I approach with the photos?

8 THE COURT: (No audible response.)

9 Q. Megan, I've got a, uh, what's already been marked as, uh,
10 Defendant's Exhibit No. 1, my first exhibit, so they get, they
11 get to have final closing argument, do you see the, uh, do you
12 recognize those as shoes in the bottom, see those?

13 A. I can see that they're shoes yes, sir.

14 Q. Yeah, well here, look in here you see the, you think
15 they're the same shoes, see the Nikes there (indicating) and
16 these here (indicating), you ---

17 A. Cor ---

18 Q. --- see 'em?

19 A. --- correct, sir.

20 Q. Alright, look look closely, do you see where the back of
21 the le -- the left shoe is the one that you say has a trace
22 amount of gasoline on it, right?

23 A. Uh-huh (affirmative).

24 Q. And really gasoline is ---

25 A. Not sure ---

1 (Indiscernible cross-talk.)

2 Q. --- is ignitable liquid residue that that on your testing
3 results, uh, ---

4 A. Left item was 10, yes, there was gasoline found on ---

5 Q. Okay, and just, ---

6 A. --- Item Number 10.

7 Q. --- and just make sure that's the left shoe, right?

8 A. It was submitted as the left shoe, correct.

9 Q. Okay, that's the left shoe. You see where, you see -- do
10 you agree the back a that left shoe is about midway between
11 the the middle a that left Nike? They're facing different
12 ways you, see that?

13 A. Uh, ---

14 Q. --- you see that here (indicating)?

15 A. I can tell that it does appear to be in the middle of the
16 Nike ---

17 Q. Yeah, about ---

18 A. --- from that picture.

19 Q. --- the middle, the middle a the Nike and I will suggest
20 to you that this was taken early in the morning when a crime
21 scene was bein' preserved, uh, the date stamp on the photo
22 says 9:32 but it's actually 10:32.

23 A. Okay.

24 Q. Okay. Alright, and the crime scene just just to let you
25 know the crime scene in this case was released at 12:20 and

MEGAN FLETCHER - CROSS-EXAMINATION BY MR. RIORDAN

1 SERVPRO came at sometime, you familiar with them?

2 A. Uh, they clean up fire and other ---

3 Q. Yeah, they come in and clean up and they -- they're in
4 and they're out the fire scene, right?

5 A. Correct.

6 Q. Expect those people are goin' right through it walkin' on
7 top a these same boards that people are cuttin' samples outta
8 the top of for you to test, right?

9 A. I can't say as to what they do or what their practice ---

10 Q. It sounds ---

11 (Indiscernible cross-talk.)

12 Q. --- plausible, doesn't it?

13 A. I -- there's potential.

14 Q. Yeah. Alright, we got a photo taken from SERVPRO before
15 before, uh, Mr. Gonzalez and his dog Misty comes back, you see
16 where that photo's taken? You see the ph -- photographer
17 takin' that photo woulda been standing over here (indicating)
18 right near where these (indicating) shoes are, you see that?

19 A. Uh, ---

20 Q. Here, you can look on there. There's the bed there
21 (indicating) and then shootin' towards the bathroom you see
22 that?

23 A. Uh, ---

24 Q. You're, I know ---

25 (Indiscernible cross-talk.)

1 Q. --- you're not familiar with the house, ---

2 A. No, sir.

3 Q. --- assume this is, this (indicating) bed faces forward
4 and assume that person standin' right here (indicating) is
5 shootin' across the bed takin' a photo, does that seem
6 plausible? They're right there (indicating) where those shoes
7 are, aren't they?

8 A. I -- there is a potential for that.

9 Q. Yeah. Alright, but then later we're told oh, and I'll
10 show you this, uh, Defendants Exhibit 3, I had to put this one
11 in too, uh, this (indicating) is Missy, ---

12 A. Okay.

13 Q. --- this is how she alerts ---

14 A. Okay.

15 Q. --- what she, what she doing?

16 A. She's laying down.

17 Q. Laying down where?

18 A. Uh, on a wood surface.

19 Q. Wood surface deck's got all kindsa burn marks here, looks
20 like pour patterns too, right?

21 A. I'm not an expert in pour patterns so ---

22 Q. Okay.

23 A. --- I can't make that determination.

24 Q. Alright. Assume it is pour patterns from gasoline, ---

25 A. Okay.

MEGAN FLETCHER - CROSS-EXAMINATION BY MR. RIORDAN

1 Q. --- dogs layin' right in it, isn't it?

2 A. Correct.

3 Q. You don't know anything about the practice in this case
4 but I would suggest to you testimony is in the afternoon when
5 Investigator Gonzalez and apparently Randy Morgan, only two
6 people there go in the house, that Misty runs off lead, goes
7 ahead and tracks around, ---

8 A. Okay.

9 Q. --- okay, and these (indicating) are moved. The the, uh,
10 the the word is Misty Misty alerts, does this same thing on
11 the shoes, that's what we're told, I mean, we don't have a
12 photograph of it, ---

13 A. Okay.

14 Q. --- alright, but we do have again, the lab example I told
15 ya about, now we're takin' a picture of what Misty alerted on,
16 this is before they're about to put their gloves and put 'em
17 in those same cans we have here, what do you see about that
18 left shoe at least the left shoe, maybe both of 'em?

19 A. Uh, the left shoe is in front of the Nike, front of his
20 canine.

21 Q. Alright, and Mr. Gonzalez brought out a good point, maybe
22 the best point they brought out, that you can't tell if the
23 shoe -- if the Nikes have been moved or the moccasins have
24 been moved, right?

25 A. That's correct.

MEGAN FLETCHER - CROSS-EXAMINATION BY MR. RIORDAN

1 Q. And so we'd be left to guess or speculate as to which one
2 it was, right, ---

3 A. Correct.

4 Q. --- but you don't wanna do that at all when you're
5 dealin' with somethin' this important, do ya?

6 A. No, sir.

7 Q. Not at all. Uh, let me, let's, uh, let's talk about your
8 qualification, ma'am.

9 A. Yes, sir.

10 Q. I mean, you -- where did you attend college?

11 A. I have my bachelor's degree from Chatham College and I
12 have my master's degree from Marshall University.

13 Q. Okay, and, uh, you sent me your CV, correct?

14 A. I did, sir, well I submitted it to ---

15 Q. That's right you sent it ---

16 A. --- the Attorney General's Office.

17 Q. --- to 'em down, they get it to me. Alright, parta that
18 is showing your professional affiliations, correct?

19 A. Correct.

20 Q. Alright, and then you've got four things listed, right,
21 the first one's Chesakea -- Chesapeake Bay Division, is that
22 right?

23 A. Correct.

24 Q. And what's what's it say you're a part of?

25 A. I -- it should have read the identification, however

MEGAN FLETCHER - CROSS-EXAMINATION BY MR. RIORDAN

1 there is a misspelling in that ---

2 (Indiscernible cross-talk.)

3 Q. It says Internal Association of Identification but what's
4 misspelled?

5 A. Identification is misspelled.

6 Q. Alright, what other, what other, uh, I see your part a
7 the American Academy of Forensic Science, correct?

8 A. Correct.

9 Q. And you -- and it says 2005 to the present, ---

10 A. Correct.

11 Q. --- were you one of the founding members?

12 A. No, sir.

13 Q. You a charter member?

14 A. No, sir.

15 Q. Well I looked 'em up. You guys have about three hundred
16 fifty folks in that organization, right, and that organization
17 puts out a peer review article or ha -- or has a, has a
18 journal for which people can put out and have peer review
19 articles published, correct, ---

20 A. Correct, sir.

21 Q. --- on forensic sciences, right?

22 A. Correct, sir.

23 Q. It's important to do that. Forensic science, uh,
24 scientists when they're doin' research they wanna share this
25 so people know what to look for and expect, correct?

MEGAN FLETCHER - CROSS-EXAMINATION BY MR. RIORDAN

1 A. Yes, sir.

2 Q. And, uh, have you ever submitted an article?

3 A. I have not submitted an article in this.

4 Q. Have you, have you -- do you know of any articles that
5 that organization has submitted in regard to, uh, fire, uh,
6 samples or examination?

7 A. There are many, uh, article concerning fire debris
8 analysis.

9 Q. Okay. Do you read -- have you read any a that, uh,
10 pertainin' to shoes? I think we're done with the clothes, are
11 are -- what about with the shoes?

12 A. I -- there are a number of articles that pertain to shoes
13 in regards to them having pyrolysis products or, uh, also the
14 presence of ignitable liquids on the shoes not from the
15 American Academy but however there are research articles on
16 for the presence of ignitable liquids on shoes when a person
17 has poured an accelerant or an ignitable liquid.

18 Q. Okay. Alright, so well but you can't name one article
19 from this new organization the American Academy of Forensic
20 Scientists, can you?

21 A. The American Academy of Forensic Sciences?

22 Q. Is that, is that -- that's the one, ---

23 A. Yes.

24 Q. --- the two thous -- that's the one that's fairly new,
25 right?

MEGAN FLETCHER - CROSS-EXAMINATION BY MR. RIORDAN

1 A. No, sir, that's that's been around since at least the
2 1970s.

3 Q. You sure?

4 A. Yes.

5 Q. Alright. Well are you a member of the American Academy
6 of Forensic Sciences?

7 A. Yes, sir.

8 Q. Alright, that's -- well that okay, since 2005 you -- now
9 that organization's been around 60 years, hadn't it?

10 A. I I'm not exactly sure how long it's been around.

11 Q. Whereas the other one has three hundred and fifty members
12 that one's got at least six thousand members per their
13 website, doesn't it?

14 A. I I can't be sure of the number of but it is a large
15 organization.

16 Q. A large organization, that's wha -- I mean, that that's
17 the kind of, uh, articles that would be authoritative in your
18 field on certain subjects, right?

19 A. We certainly do look at those articles.

20 Q. You would hope that folks would be familiar with the
21 studies in those cases no matter how old they are 'cause they
22 can be important, can't they?

23 A. Yes, sir.

24 Q. You talked about these shoes, uh; one, you talked about
25 toluene, um, now it's definitely in paint thinners, right?

1 A. Uh, it's found in paint thinners, I find it in a
2 deglosser as well.

3 Q. Okay. It's also, it it's also involved with adhesives in
4 shoes, isn't it?

5 A. It can be found in adhesives in shoes, correct.

6 Q. Yeah, and it's also a le -- it's a, it's a leather, uh,
7 tanning product as well, right?

8 A. I'm not as familiar with that use but ---

9 Q. That ---

10 A. --- it it ---

11 Q. --- doesn't, that doesn't sound unusual, does it?

12 A. --- it could be a solvent for that.

13 Q. Okay, solvent and these these are, these are soft leather
14 shoes, right?

15 A. Uh, I have them as being tan slipper, I'm not sure if
16 they were leather or not.

17 Q. Okay, and again when we're talking about this and I know,
18 uh, as Josh brought out, I mean, all these you're looking at,
19 uh, recognized patterns I guess of the hydrocarbons that are
20 vaporized and caught on the strip.

21 A. Yes, sir.

22 Q. Alright, and when you, when you, when we look at your
23 trace evidence positive result, let's look at Number 10 the
24 left shoe, ---

25 A. Okay.

MEGAN FLETCHER - CROSS-EXAMINATION BY MR. RIORDAN

1 Q. --- I mean, you can't tell this jury what amount at all
2 that is that's on this shoe, can ya?

3 A. No, I only ever look for the presence or the absence of
4 any ignitable liquids.

5 Q. We talked about the fact that when you're gettin' gas
6 sometimes and you're pullin' away that drop comes, if a drop
7 came, your machines are so sensitive that that might be
8 enough, isn't that true?

9 A. That is correct.

10 THE COURT: Alright, hang on for one second, ---

11 MR. RIORDAN: Yes, Your Honor.

12 THE COURT: --- please, sir. Uh, ladies and gentlemen,
13 let's, we've been goin' for about an hour and a half, let's
14 take a quick break. I'm sorry to do that to ya in
15 cross-examination ---

16 (Indiscernible cross-talk.)

17 MR. RIORDAN: Not a problem at all, Judge, ---

18 (Indiscernible cross-talk.)

19 THE COURT: Take about a ten minute break and we'll
20 resume.

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

22 (The following takes place outside the presence of the
23 jury.)

24 THE COURT: Alright, ten minutes. You're free to be off
25 the stand if you like.

MEGAN FLETCHER - CROSS-EXAMINATION BY MR. RIORDAN

1 THE WITNESS: I'm okay now.

2 (Whereupon, a recess was taken.)

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

4 THE COURT: You can bring the jury in please, sir.

5 THE BAILIFF: Yeah, I'll line up here.

6 (The following takes place in the presence of the jury.)

7 THE COURT: Mr. Riordan.

8 MR. RIORDAN: May it please the Court.

9 THE COURT: Yes.

10 BY MR. RIORDAN:

11 Q. Ma'am, just so I, so I don't forget, be sure the jury
12 knows none -- neither of the items of clothing nor the shoes
13 have any diesel fuel whatsoever on 'em, do they?

14 A. Uh, no, sir.

15 Q. Your organization, uh, the one, what's what's the one
16 we -- the five -- or the newest one

17 A. Uh, Trace Evidence Examiners?

18 Q. Yeah. Alright, you guys have a, you guys have a code or
19 a little preamble that you guys follow, don't ya?

20 A. Correct.

21 Q. You want me to read it to ya and see if you -- or do you
22 know it by hand, do you know ---

23 A. I don't ---

24 Q. --- it off ---

25 A. --- know it offhand, no, sir.

MEGAN FLETCHER - CROSS-EXAMINATION BY MR. RIORDAN

1 Q. Would you agree it says, "If the law has made you a
2 witness remain," it says a man, "remain a woman of science,
3 you have no victim to avenge, no guilty or innocent person to
4 convict or save, you must bear testimony within the limits of
5 science," that's a pretty, that that that's the preamble your
6 organization stands by, right?

7 A. Okay, that does sound familiar.

8 Q. That's a, that's a good creed though to follow, isn't
9 it?

10 A. Yes, sir.

11 Q. Good oath to follow, isn't it?

12 A. Yes, sir.

13 Q. And you follow it, don't ya?

14 A. Yes, sir.

15 Q. 'Cause there are limits in science, aren't there?

16 A. Yes, sir.

17 Q. Alright, what do you guys do? What do -- what does SLED
18 do? Uh, what is the policy with regard to SLED, uh, in
19 ensuring that the people that send evidence to you and get
20 results back understand the limits of the significance and
21 relevance a that te -- those test results?

22 A. We send them a report, that is the only thing that we
23 send them unless they call us with any questions.

24 Q. Ya'll do anything to screen to understand the educational
25 background and the understanding any a those investigators

1 that received the reports might have?

2 A. Uh, we have no screening tool for the investigators, that
3 is up to the individual agencies.

4 Q. You think it'd be important when you send out trace
5 evidence results that those investigators using that to see --
6 to say they have probable cause and seek arrests, you think it
7 would be a good policy that some education is given to them on
8 the limits of what those test results mean?

9 A. That would be up to the agency, uh, that they are
10 employed by or if they call us we can give them what they
11 need.

12 Q. Well it be, it be, it be a good policy to have, wouldn't
13 it?

14 A. Correct, sir, we are in the process of making our
15 reports.

16 Q. Who sets the policy at SLED?

17 A. Uh, which policy would ---

18 Q. Policy on, uh, on whether you guys have any training
19 courses for investigators, prosecutors, whoever to know what
20 this stuff really means? anything?

21 A. We don't have any policy on that.

22 Q. Okay. Well thought I heard you say earlier when when
23 Josh asked you the toluene, he said that stuff is so volatile
24 it'll, uh, evaporate in two days, right?

25 A. It evaporates very very quickly.

MEGAN FLETCHER - CROSS-EXAMINATION BY MR. RIORDAN

1 Q. Okay. And but but you agree toluene's in paint thinners,
2 right?

3 A. Correct.

4 Q. And and you said you weren't sure but are you willin' to
5 concede it likely is a leather tanning product?

6 A. It is potentially is a solvent.

7 Q. And it's likely involved in adhesives, correct?

8 A. Correct.

9 Q. And you agree that the Journal of Forensic Sciences
10 that's an important, that's an authoritative publication,
11 isn't it?

12 A. Yes, sir.

13 Q. Let me hand you an article from that. Are you familiar
14 with John Lentini or Julia Dolan or Cheryl Cherry?

15 A. Uh, Lentini and Dolan, sir.

16 Q. What what do you know about Lentini?

17 A. Uh, he is a, uh, private investigator and expert in the
18 field of fire debris.

19 Q. He's one of the top expert in the field, isn't he?

20 A. Uh, he's an expert in the field.

21 Q. He's written books hasn't, he?

22 A. Yes, sir.

23 Q. He's an expert's expert on fire and analysis, isn't he?

24 A. Uh, he is an expert in the field.

25 Q. And Cheryl Cherry, what do you know about her? She she's

1 actually a, she's actually a an investigator from the police
2 department up in Illinois, isn't she?

3 A. I have no knowledge of her.

4 Q. You don't know about her. Have you ever read John
5 Lentini's book?

6 A. I have, sir.

7 Q. You remember reading an ar -- which one? You read his
8 newest edition?

9 A. Uh, I read it while I was receiving training in 2009 ---

10 Q. He's got a whole section on shoes, doesn't he?

11 A. I am not aware, I can't recollect that.

12 Q. Is it possible you skipped that section?

13 A. Uh, no, it's not possible that I skipped it, I just can't
14 recollect ---

15 Q. Can't recollect it.

16 A. --- it at this time.

17 Q. Alright, I'll show you an article the, it's called, "The
18 Petroleum-Laced Background," have you ever read that article?

19 A. Yes, sir.

20 Q. You have?

21 A. Yes.

22 Q. Okay, and well let's -- and you've -- and you do recall
23 the the section they have on shoes, don't ya?

24 A. Yes.

25 Q. Okay. You would agree with me it says, and you can read

MEGAN FLETCHER - CROSS-EXAMINATION BY MR. RIORDAN

1 along, alright, you tell me if I'm readin' this wrong, and and
2 what they're talkin' about here, "The Petroleum-Laced
3 Background" is at a fire scene you have debris, you you have
4 things that are there, you wanna make sure that the things
5 you're getting are are really evidence of anything, right, you
6 wanna make sure you understand really what they mean, the
7 significance of 'em, right?

8 A. We wanna make sure that they are indeed ignitable liquids
9 and not from the products at the scene.

10 Q. And these folks go through and they make sure, they they
11 go ahead and do tests on shoes and clothing and other things
12 and see what their test results, actual tests results show and
13 so they can eliminate and show problems that might exist,
14 correct?

15 A. Correct, sir.

16 Q. Alright, let's read 'em off this, shoes, 'cause we're
17 goin' with clothing fibers, now we got shoes, "With the
18 exception of adhesives, no substrate tested presented more
19 potential problems in interpretation than shoes," right?

20 A. Correct.

21 Q. "Most shoes contain some sort of polymer, most are held
22 together with some sort of adhesive," right?

23 A. Correct.

24 Q. Toluene, you talked earlier said it's so volatile it's
25 gone in two days, "Toluene appears to be the most frequently

1 used solvent for adhesives, having been identified in all but
2 one of the shoes examined. The toluene apparently -- the
3 toluene is apparently trapped in the adhesive elastomer
4 matrix, and is only released upon heating. Despite its high
5 volatility, toluene was detected in significant quantities,
6 even in shoes known to be more than five years old," is that
7 what that article says?

8 A. When it is trapped in adhesive that is what that means.

9 Q. Okay, and the last thing he says, "A pair of shoes for
10 comparison would seem to be absolutely essential prior to
11 making any decisions about the significance of petroleum
12 products identified on shoes," that's what it says, doesn't
13 it?

14 A. It does say that.

15 Q. And this is authoritative article, right?

16 A. Yes, sir.

17 Q. You're not, you don't even -- you don't -- you're not a
18 fire investigation expert, are ya?

19 A. No, sir.

20 Q. Lentini's the expert, isn't he?

21 A. I assume that he does fire investigations, ---

22 Q. Yeah.

23 A. --- yes.

24 Q. Have you ever been published in this journal?

25 A. No, sir, I have not.

MEGAN FLETCHER - REDIRECT EXAMINATION BY MR. UNDERWOOD

1 Q. It's a high honor, isn't it?

2 A. Yes, sir.

3 Q. I've got nothing further. Thank you, ma'am.

4 A. Yes, sir.

5 THE COURT: Redirect?

6 REDIRECT EXAMINATION BY MR. UNDERWOOD:

7 Q. Talking about toluene, how did the presence of toluene
8 compare between the shoes?

9 A. Uh, it appeared that there was more in, let me correctly
10 state this, in Item Number 7 there was a greater amount than
11 there was in Item 10. Now we don't do a concentration but
12 just in relative abundance ---

13 Q. So one ---

14 A. (Indiscernible cross-talk.)

15 Q. --- had more than the other?

16 A. Yes, sir.

17 Q. So if they were both manufactured the same way these
18 matching shoes, wouldn't they have the same amount?

19 A. I would assume that, sir.

20 Q. So is it like, is it plausible to conclude that that is
21 not the source of the toluene?

22 A. I can't definitively say that it was not the source of
23 the toluene but the reason that I re -- did report it was that
24 there was the potential that it came from another source other
25 than the adhesive.

MEGAN FLETCHER - REDIRECT EXAMINATION BY MR. UNDERWOOD

1 Q. What other, uh, chemicals were found on each a those
2 shoes?

3 A. On Item Number 7 a medium petroleum distillate was also
4 found ---

5 Q. Okay.

6 A. --- and on Item Number 10 I did not report the toluene, I
7 found gasoline and a medium petroleum distillate.

8 Q. Are medium petroleum distillates in gasoline used to make
9 shoes?

10 A. Uh, not to my knowledge no, sir.

11 Q. As to the discussion about cutting clothes in half so
12 that the defense would be able to have their own independent
13 testing done, uh, did you testify that, uh, half the strips
14 were saved?

15 A. Yes, sir.

16 Q. And is that so that they can be used for further
17 additional testing later?

18 A. Yes, it's part of our preservation of evidence.

19 Q. Did the defense ever make a request to test those
20 strips?

21 A. Nobody requested those from my myself.

22 Q. Would they have been available had additional testing
23 been requested?

24 A. They were return ---

25 MR. RIORDAN: Um, I object to the the the, uh, defendant

MEGAN FLETCHER - REDIRECT EXAMINATION BY MR. UNDERWOOD

1 need to prove anything, he's gettin' into burden a proof here.

2 MR. UNDERWOOD: All all I'm asking is if they were
3 available, Your Honor. There's the question ---

4 THE COURT: I understand ---

5 MR. UNDERWOOD: --- about split ---

6 THE COURT: --- the question, I'm gonna sustain the
7 objection.

8 MR. UNDERWOOD: Alright.

9 BY MR. UNDERWOOD:

10 Q. Now as far as the discussion about, uh, the people
11 receiving your report understanding what the report means, if
12 someone is a certified fire investigator, is it safe to assume
13 they probly understand the terms in your report?

14 A. I don't know what training that somebody would have to go
15 through but these are common terms used in the field of fire
16 debris analysis.

17 Q. So they're not super specialized ---

18 A. Uh, ---

19 Q. --- kinda terms?

20 A. --- they shouldn't be no, sir.

21 Q. Okay. Considering the issue of transfer that was
22 discussed, when you are examining fire debris like say a a
23 cutting from a floorboard for example, when an ignitable
24 liquid is poured onto that floorboard does it soak into the
25 wood?

MEGAN FLETCHER - REDIRECT EXAMINATION BY MR. UNDERWOOD

1 A. I can't testify to that.

2 Q. Is it possible that you could find trace ---

3 MR. RIORDAN: Object to the form, she's already que --
4 she's already answered she can't testify to that.

5 THE COURT: Overruled, go ahead with your question.

6 BY MR. UNDERWOOD:

7 Q. Is it possible to find the presence of a ignitable liquid
8 when the amount of the liquid on the surface of the debris had
9 burned off?

10 A. Yes, there is potential for that.

11 Q. So if a surface had burned off, does that mean there's
12 liquid on the top a the surface anymore?

13 A. Uh, it may or may not be ---

14 MR. RIORDAN: Your Honor, ---

15 A. --- present.

16 MR. RIORDAN: --- I would object, going outside her
17 expertise as to -- she already said the fire scene she wasn't
18 even ---

19 THE COURT: Overruled, ---

20 MR. RIORDAN: --- familiar with.

21 THE COURT: --- on a -- go ahead.

22 BY MR. UNDERWOOD:

23 Q. So if if if the ignitable liquid has burned off of the
24 surface, does that mean that the liquid would no longer be
25 present upon the surface?

MEGAN FLETCHER - REDIRECT EXAMINATION BY MR. UNDERWOOD

1 A. It may or may not, it depends on the fire and I'm not an
2 expert in the field of ---

3 Q. Okay, ---

4 A. --- that.

5 Q. --- let's say, let's say that it has burned off, ---

6 A. If ---

7 Q. --- would you still be able to find the presence of
8 ignitable liquid underneath that surface?

9 A. Uh, that a -- there is potential for that if it was
10 soaked in, yes.

11 Q. Now as to the discussion of, uh, the evaporation of these
12 different ignitable liquids, have you done or are you familiar
13 with any experiments showing how quickly gasoline evaporates
14 when it's not sealed?

15 A. Uh, in our laboratory we, uh, create a 50 percent ---

16 MR. RIORDAN: I ---

17 A. --- gasoline standard.

18 MR. RIORDAN: --- object on the the redirect here, I
19 think he's gone outside the scope of what I did.

20 THE COURT: I sustain that objection.

21 MR. RIORDAN: Thank Your Honor.

22 BY MR. UNDERWOOD:

23 Q. As to ---

24 THE COURT: I'm just listening.

25 Q. --- okay. As to the, uh, presence of the gasoline that's

MEGAN FLETCHER - RECROSS-EXAMINATION BY MR. RIORDAN

1 found on the clothes, is there any way for you to say whether
2 or not that was transfer from second or thirdhand versus
3 direct exposure to the liquid?

4 A. I can never determine the source of an ignitable
5 liquid.

6 Q. But can you say whether or not it was actual contact with
7 the liquid itself?

8 A. Yes, sir, it had to have come in contact with a liquid
9 source.

10 MR. UNDERWOOD: Court's indulgence?

11 THE COURT: Yes, sir.

12 MR. UNDERWOOD: Thank you, no further questions.

13 THE COURT: Alright, may this witness be excused?

14 MR. UNDERWOOD: Please, Your Honor.

15 MR. RIORDAN: Can I follow up just real briefly on on a
16 matter that was raised?

17 THE COURT: I'm gonna hold you very tight.

18 MR. RIORDAN: Okay.

19 RECROSS-EXAMINATION BY MR. RIORDAN:

20 Q. When you talk about rubber soles on your shoes, is it
21 thermoplastic rubber?

22 A. I did not do an analysis on rubber.

23 THE COURT: That's not responsive, ---

24 MR. RIORDAN: Okay.

25 THE COURT: --- thank you.

MEGAN FLETCHER - RECROSS-EXAMINATION BY MR. RIORDAN

1 MR. RIORDAN: Thank Your Honor.

2 THE COURT: Alright, I'm gonna -- any reason why this
3 witness cannot be excused?

4 MR. UNDERWOOD: Not from the State, Your Honor.

5 THE COURT: Alright, thank you, ma'am.

6 THE WITNESS: Thank you.

7 THE COURT: Do you need to retrieve your documents?

8 THE WITNESS: I ---

9 THE COURT: Just make sure ---

10 THE WITNESS: --- think I got everything ---

11 THE COURT: --- you don't take up one of our exhibits if
12 you don't mind, please.

13 THE WITNESS: Think these are all mine.

14 THE COURT: Okay, great, thank you.

15 (Whereupon, the witness left the stand.)

16 THE COURT: Call your next witness, please.

17 MS. ABEE: Your Honor, the State calls Phillip Brooks.

18 (Whereupon, the witness came forward.)

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

20 WILLIAM PHILLIP BROOKS, having
21 been first duly sworn, testified as follows:

22 THE CLERK: Please have a seat.

23 (Whereupon, the witness complied.)

24 THE CLERK: Will you state your full name for the record,
25 sir.

WILLIAM PHILLIP BROOKS - DIRECT EXAMINATION BY MS. ABEE

1 THE WITNESS: William Phillip Brooks.

2 DIRECT EXAMINATION BY MS. ABEE:

3 Q. Mr. Brooks, please tell us all where you're currently
4 employed.

5 A. I'm employed by Brooks Reports.

6 Q. Okay, and what is Brooks Reports?

7 A. We're a private investigation company that specializes in
8 fire origin and cause investigations.

9 Q. And what type of background do you have that allows you
10 to work at Brooks Reports?

11 A. I have, uh, been involved with Brooks Report since 1987
12 as a fire investigator, prior to that, forming this company, I
13 was with the Richland County Sheriff's Department in the
14 forensic science division for about eight years, before that I
15 was with the Cayce Police Department as a patrolman and
16 detective for three years.

17 Q. And did you respond, uh, to [REDACTED] Riley Smith Road in a
18 reference to a case involving Paula and Homer Rose?

19 A. I did.

20 Q. And how did you become involved with that as a private
21 company?

22 A. Uh, State Farm employee by the name a Doug Acker called
23 me and asked me to come to the scene, incident location, to do
24 an investigation as to the cause and origin of the fire.

25 Q. And do you frequently work with State Farm?

WILLIAM PHILLIP BROOKS - DIRECT EXAMINATION BY MS. ABEE

1 A. Yes, I do.

2 Q. And so was this out of the ordinary in any way?

3 A. Just a normal day, yes.

4 Q. And do you recall what day you responded to Riley
5 Smith?

6 A. In August 1st.

7 Q. Okay, and what was your understanding of what your
8 purpose was while you were there?

9 A. Purpose was to determine the origin and cause of the
10 fire.

11 Q. And when you got there who, if anyone else, was there
12 with you?

13 A. See, there was Doug Acker a State Farm employee, Nick
14 Gregory another State Farm employee, uh, Jack Riordan an
15 attorney, uh, Mr. Homer Rose and his wife.

16 Q. Was ---

17 A. I think there was a young lady, Ellie Hansen, yeah, she
18 was also there.

19 Q. Okay. And when you got there what's the very first thing
20 that you typically do when you start your investigation?

21 A. The first thing I do if the, if the, uh, homeowner or the
22 occupant, uh, is there, I'll give some, uh, brief background
23 information as to what transpired and how, uh, what was going
24 on at the time before the fire, immediately before the fire.

25 Q. And were you able to speak with both Homer and Paula Rose

WILLIAM PHILLIP BROOKS - DIRECT EXAMINATION BY MS. ABEE

1 regarding the fire?

2 A. Yes, I was.

3 Q. Okay, I wanna talk to you about some a the things that
4 Ms. Rose talked to you about, uh, did she tell you what had
5 happened with the fire?

6 A. Yes, she said she was home, she told me what happened.

7 Q. And did she till you any physical characteristics ---

8 MR. RIORDAN: Your Honor, I object on hearsay, they're
9 for comments from my client.

10 THE COURT: Overruled.

11 BY MS. ABEE:

12 Q. Did she say or tell you any physical characteristics of
13 the three people she said were in her garage trying to break
14 into the safe?

15 A. Yes.

16 Q. Okay, and what did she say were some of their physical
17 characteristics?

18 A. She said there were three men, uh, they were all wearing
19 dark clothing, two of the men were wearing ski masks and one
20 of the men was not wearing a ski mask and had a bald head.

21 Q. What about their size and their shape and their stature,
22 did she comment on that at all?

23 A. She mentioned that, uh, their physical stature was
24 indicative of men who work out, meaning I I I'm assuming that
25 she meant they were muscular.

WILLIAM PHILLIP BROOKS - DIRECT EXAMINATION BY MS. ABEE

1 Q. And did she tell you about hearing the the crackling
2 sounds on the start a the fire?

3 A. Yes.

4 Q. What other things did she tell you about, uh, regarding
5 maybe some people that had been in and out of her house
6 recently around that time?

7 A. She, um, I asked her specifically about the the people
8 who had been to her house, would have known about the layout,
9 would have been known about the safe, uh, she described the
10 heating and air-conditioning people, uh, the yard, uh, crew
11 like men men maintenance crew with lot type -- lawns-type
12 landscaping company and, uh, talked about a neighbor who is a
13 barber and she also talked about a a Slavic gentleman who had
14 installed a, uh, TV, I think a wall-mounted TV.

15 Q. Did she talk to you at all about a truck that had been
16 seen around the area at that time?

17 A. Yes, a red, uh, pickup truck I think.

18 Q. And who did she say drove a similar truck?

19 A. I don't remember who it was but it was somebody from
20 another county I think, I don't remember the name she said who
21 whose it was.

22 Q. What about, uh, her yard man Cruz, what did she tell you
23 about him?

24 A. Uh, sh -- he did drive a similar truck and, uh, so we
25 were, we were inquiring about his whereabouts, uh, the Cruz,

WILLIAM PHILLIP BROOKS - DIRECT EXAMINATION BY MS. ABEE

1 the yardman.

2 Q. And did Ms. Rose express, uh, any concern to you about
3 Cruz being the gentleman that may have done this?

4 A. No.

5 Q. And I wanna talk to you a little bit about the layout of
6 the house, were you able to to see inside and outside of the
7 house?

8 A. Yes.

9 Q. Okay, and specifically let's talk a little bit about the
10 garage, what's the layout of that garage?

11 A. Well the original garage was a a two-car garage and I
12 think they, it -- I think another two-car garage was added or
13 a larger garage was added and a living space was added to that
14 above that garage.

15 Q. And was the gun safe, gun safe still in the garage when
16 you were doing your investigation?

17 A. Yes, it was in the, one would -- I'd call the northwest
18 corner of the initial garage, main garage.

19 Q. And what, uh, are some things that are surrounding that
20 safe, that gun safe?

21 A. There was a metal, uh, shelving rack, steel, tubular
22 steel rack, wire rack with tubular steel pedestals on wheels
23 that apparently was in front of the safe which was covered
24 with a blanket I understand.

25 Q. And, uh, did Ms. Rose mention to you or indicate you at

WILLIAM PHILLIP BROOKS - DIRECT EXAMINATION BY MS. ABEE

1 any time that that shelving unit had been knocked down during,
2 uh, the break-in of the safe?

3 A. Well she explained that it had to have been moved because
4 she observed, uh, the bald-headed man, uh, turning a dial on
5 the safe or at the dial.

6 Q. And when you saw the safe was it in a laying down posi --
7 I'm sorry, not the safe, the metal rack, was it in a laying
8 down position or was it upright?

9 A. It was upright.

10 Q. Okay. Did you conduct any sort of fingerprint analysis
11 or dusting for fingerprints while you were there?

12 A. Yes, I did.

13 Q. Okay, were you able to lift a fingerprint off of
14 anything?

15 A. Yes, uh, I lifted two partial latent fingerprints off
16 the, uh, off the shelving unit.

17 Q. And this is the shelving unit that when you were there
18 was upright?

19 A. Correct.

20 Q. And approximately where on the shelving unit were these
21 fingerprints located?

22 A. Well if I was facing the shelving unit which consists
23 of four tubular steel post and the rack slide down over the
24 post, the, uh, latent prints were -- prints would have been on
25 the, uh, right-hand side front post.

WILLIAM PHILLIP BROOKS - DIRECT EXAMINATION BY MS. ABEE

1 Q. Okay, and approximately how far up from the ground were
2 those fingerprints located?

3 A. Oh, geez, you know, I don't remember sitting here today.
4 I don't know if I have it in my notes or not.

5 Q. If I showed you your report, would that help refresh --

6 A. It ---

7 Q. --- your recollection?

8 A. --- probably would, yes.

9 MS. ABEE: Apologies, Your Honor, I have one second.

10 Your Honor may I, approach?

11 THE COURT: Yes, ma'am.

12 MS. ABEE: (Indiscernible cross-talk.)

13 THE WITNESS: Oh, I have, think I have the information.

14 BY MS. ABEE:

15 Q. Okay.

16 A. Let's see, the, uh, there was one print lifted from the
17 right post that woulda been 3.8 inches from the floor and the
18 second print was lifted from the left post.

19 Q. Okay, approximately how far up from the floor was that
20 lifted?

21 A. It was about the same: 3.8.

22 Q. So so both of these fingerprints were found very low to
23 the ground or or close to the ground on the safe, I'm sorry,
24 on the metal shelving rack.

25 A. 3.8 feet, yeah, from the floor, ---

WILLIAM PHILLIP BROOKS - DIRECT EXAMINATION BY MS. ABEE

1 Q. And so ---

2 A. --- I, 3 feet 8 inches I think as well.

3 Q. Sorry, is it inches or feet, I just wanna be clear on ---

4 A. Three, uh, 3 feet 8 inches, yes.

5 Q. 3 feet 8 inches.

6 A. Yeah, so . . .

7 Q. Okay. And if that metal rack was photographed laying
8 down at the time of the break-in and then when you saw it it
9 was up, can -- would it be a fair assumption that someone had
10 to move that rack and place it back up?

11 A. Yes.

12 Q. Okay. And can fingerprints be transferred to your
13 knowledge, uh, by simply lifting up a safe, I'm ---

14 A. Cer ---

15 Q. --- sorry, lifting up a metal rack?

16 A. Certainly.

17 Q. Tell me what your observations were about the safe.

18 A. Uh, the safe was a Titan, uh, a steel safe, uh, with a
19 dual combination lock and there were some impressions that we
20 concentrated mainly on the upper right-hand side of the door
21 and and part of the frame. Uh, the impressions were
22 apparently made, uh, with a metal object that contacted the
23 paint, chipped the paint off in about ele -- 11 and 12, 13
24 different locations in that upper right-hand corner.

25 Q. And is the upper right-hand corner close to the where the

WILLIAM PHILLIP BROOKS - DIRECT EXAMINATION BY MS. ABEE

1 dial is on the safe?

2 A. There were, there were several impressions near the dial;
3 in other words, someone struck the safe near the dial with an
4 object, metal object most likely, and some of those were near
5 the dial but none of them contacted the dial.

6 Q. And what was your observation as to the marks on the
7 safe, were they very deep?

8 A. They were superficial mark.

9 Q. And "superficial marks," what do you mean by that?

10 A. Meaning they were just hit, uh, that the tool was used to
11 hit the safe and it just simply chipped the paint off, it
12 wasn't an attempt to, uh, it wasn't a serious attempt to
13 enter the safe.

14 Q. Now at some point in time you attempted to get some
15 information from the Greenville County Sheriff's Office, am I
16 right?

17 A. Yes.

18 Q. Okay, were they able to share information with you at that
19 time?

20 A. No.

21 Q. And is it common in your law enforcement experience for
22 law enforcement officers not to share information during an
23 ongoing investigation?

24 A. Yes.

25 MS. ABEE: Your Honor, may I have one moment?

WILLIAM PHILLIP BROOKS - CROSS-EXAMINATION BY MR. RIORDAN

1 THE COURT: Yes, ma'am.

2 BY MS. ABEE:

3 Q. Uh, Mr. Brooks, did Ms. Rose mention to you that she was
4 writing a book?

5 A. Yes, she did.

6 Q. Okay, do you recall the name a that book?

7 A. "Good Cop, Bad Cop."

8 MS. ABEE: Your Honor, I have no further questions for
9 Mr. Brooks at this time.

10 THE COURT: Cross-exam.

11 MR. RIORDAN: May it please the Court.

12 CROSS-EXAMINATION BY MR. RIORDAN:

13 Q. Hello, Phil, who's the sheriff in, uh, Richland County
14 when you were there?

15 A. It was, uh, Mr. Sheriff Frank Powell.

16 Q. Alright. We met out there on the scene that day,
17 correct?

18 A. Yes, sir.

19 Q. Nothin' unusual about that someone have their attorney
20 when someone comes to investigate, is there?

21 A. No, sir.

22 Q. I didn't interfere with your investigation at all, did I?

23 A. No, sir.

24 Q. Try to just be helpful and watch and see what you were
25 doin', right?

1 A. That's correct.

2 Q. Alright, and, uh, talked about Cruz, I mean, I look, I I
3 see in your note it was mentioned, uh, she gave ya a two-page
4 handwritten text detailin' Cruz's activities on the date a the
5 fire, didn't she?

6 A. That's correct.

7 Q. Alright, so you -- do you know if the Greenville County
8 Sheriff's Office ever even spoke to Cruz, do you know?

9 A. I do not.

10 Q. I mean, you're not suggesting he's a suspect, are ya?

11 A. No, sir.

12 Q. Okay, in fact, did -- and yes, she did speak to you about
13 the, uh, the unfair treatment from Oconee County.

14 A. Yes.

15 Q. Book titled "Good Cop, Bad Cop," right?

16 A. Correct.

17 Q. In fact, I think you and I spoke about some of the
18 experiences we went through, uh, with her up in Oconee, didn't
19 we?

20 A. Yes, sir.

21 Q. You didn't have any reason to disbelieve any a that, did
22 ya?

23 A. I really don't have an opinion. I don't, uh, I can't say
24 that didn't happen, I certainly can't say that it did.

25 Q. I'll suggest to ya even the investigators in this case

WILLIAM PHILLIP BROOKS - CROSS-EXAMINATION BY MR. RIORDAN

1 that heard it ran her rap sheet, got the whole rap sheet and
2 saw every charged filed against her dismissed, you know about
3 that?

4 A. No, sir, I'm not sure I do.

5 Q. That's the kinda thing that might make a good book
6 actually, wouldn't it?

7 A. Well it could ---

8 Q. Certainly could, ---

9 A. --- I suppose.

10 Q. --- couldn't it?

11 A. Yes, it could, ---

12 Q. I mean, is ---

13 A. --- you like that sorta thing.

14 Q. Alright. Did any, did anyone suggest to you that, uh, at
15 that time, I mean, State Farm didn't hire you to see if she
16 had, uh, set a fire to gain publicity for a book, did they?

17 A. No, sir.

18 Q. No, they were lookin' to see if it was, uh, for
19 finance -- for insurance fraud, right

20 A. Well my objective was just to determine the origin and
21 cause of the fire.

22 Q. Sure, with with a large loss fire they're there they just
23 cover themselves, they get a private investigator like
24 yourself to come out and look into it, correct?

25 A. That's correct.

1 Q. And there is -- and you filed a detailed report, right?

2 A. Well a summary report.

3 Q. A summary report, and, uh, you did some testing as
4 well?

5 A. Yes.

6 Q. You took fingerprints?

7 A. I did.

8 Q. And actually your fingerprints, and it's a good policy
9 when you find a fingerprint, you, all you gotta do is get a
10 camera, take a picture of it, right, so we can actually see
11 what ya did, you did that, didn't ya?

12 A. Yes.

13 Q. That's a good practice, isn't it?

14 A. It is.

15 Q. It's a very good practice. Did -- and with that you
16 asked Greenville County Sheriff's Office to share their file
17 with you, didn't you, share some information?

18 A. Well and -- yes, sir.

19 Q. They give ya anything?

20 A. No, sir.

21 Q. You turned your file in to State Farm, right?

22 A. That is correct.

23 Q. And to your knowledge they subpoenaed or obtained, I
24 mean, there's like some insurance fraud network you can access
25 and get the whole file, right, Greenville County Sheriff's

WILLIAM PHILLIP BROOKS - CROSS-EXAMINATION BY MR. RIORDAN

1 Office can get the whole file from State Farm, can't they?

2 A. Yes, they can file an arson letter and and obtain that
3 complaint.

4 Q. We got, we got two investigators here, we got, uh,
5 Investigator Gonzalez and Chief Investigator Cannon involved,
6 did either one a these investigators ever call you at any
7 time?

8 A. Yes, sir, I think, uh, Investigator Gonzalez did call.

9 Q. When did, when when was that?

10 A. I have to look at my notes.

11 Q. That's interesting. Do you know if you're referenced in
12 all of the -- any of his notes?

13 A. I'm sorry?

14 Q. Do you know if if you're referenced in any of his
15 notes?

16 A. I do not.

17 Q. Tell me about that conversation, when was it? What page
18 you lookin' at?

19 A. Uh, pages are not numbered. See, on 8/12, 8/2 of 2012 I
20 called, uh, Mr. Gonzalez, left a message for him to return the
21 call, uh, and I've got a note under the same date August 2nd
22 2012, uh, "Received a telephone call from Investigator
23 Gonzalez, he said that 911 call data would be made available
24 but not any time in the near future, he said the records will
25 be maintained and would be available through normal channels.

1 He cited an active criminal investigation is the reason why
2 the records cannot be accessed presently."

3 Q. Is that the extent a your conversation with him?

4 A. Pretty much.

5 Q. That the only conversation you had?

6 A. It's the only -- I, only conversation I I recall and made
7 a note of.

8 Q. And that was the day after you had been out at the house
9 when I was with you, right?

10 A. That's correct.

11 Q. So your investigative report hadn't even drafted yet,
12 there -- that's why that note's in your report, right?

13 A. Well I make a note of, uh, any time I speak with a law
14 enforcement officer on a case.

15 Q. Yeah, so I, and I misspoke, I'm sorry, I didn't remember
16 that was in there, but after your file was generated and
17 you've got a report, did any a these investigators ever speak
18 with you about your investigation?

19 A. No, sir.

20 Q. Alright. Now you are a certified fire investigator,
21 aren't ya?

22 A. Yes, I am.

23 Q. You been doin' this a long time, haven't ya?

24 A. Yes, I have.

25 Q. You know what any of the qualifications are of

1 Investigator Cannon in this case?

2 A. Uh, no, sir, I'm not familiar with Investigator Cannon.

3 Q. You know how many, uh, -- do you know what courses he was
4 taking in fire investigation before he handled this case and
5 charged my client?

6 A. I'm sorry?

7 Q. Do you know how many cases he had handled before he took
8 on this case and sought warrants for arrest for Paula?

9 A. No.

10 Q. No idea, do ya?

11 A. No.

12 Q. You know -- and and you're, I mean, he had, he had a
13 resource with you, you're you're -- how long -- how many
14 years?

15 A. Well, uh, over forty years.

16 Q. Alright, if he'd a called ya, you would have assisted
17 him, wouldn't ya?

18 A. Of ---

19 Q. You ---

20 A. --- course.

21 Q. --- you woulda shared information with him, right?

22 A. Yes.

23 Q. If they were sending off clothing and -- well let me ask
24 this: I know you don't have to but sometimes in an arson case
25 would you speak with the first firefighter on the scene?

1 A. Yes.

2 Q. I mean, especially if the homeowner who's involved in a
3 fire is there that might be a good person to talk to to learn
4 what the evidence they're purporting to prove, uh, for
5 complicity in the event just to see if it makes sense, you
6 you'd like to do that, right?

7 A. Yes, and primary reason for contacting the first in fire
8 fighting crew is to determine how advanced the fire was, where
9 the fire was coming from and, uh, in this particular case in
10 fairness to any investigator this was a very simple fire, was
11 a very small, simple fire.

12 Q. That's key too simple fire. When the call came in, a
13 lotta times you look at fires and it burns everything up and
14 the real question is is this arson, that's unusually what
15 you're brought in for, right?

16 A. No, sir.

17 Q. Well, I mean, that's often what you're brought in for,
18 isn't it?

19 A. Well reason I'm brought in is to determine a lot of
20 origin and cause of the fire, uh, they're not, a lot of arson
21 cases that I work these days ---

22 Q. Okay.

23 A. --- primarily they're accidental fires involving
24 products, products that fail and cause fires.

25 Q. Alright, and we have in this case we, I mean, we know

WILLIAM PHILLIP BROOKS - CROSS-EXAMINATION BY MR. RIORDAN

1 it's an arson from the start, right?

2 A. (Laughs.) Well it was fairly obvious, yes.

3 Q. Yeah, I mean, there's a, there's a diesel can on the back
4 porch and a gas can on the front porch, right?

5 A. Well, when I got there that I didn't see any ---

6 Q. Oh, I ---

7 A. --- cans, ---

8 Q. --- know that.

9 A. --- uh, I just saw two two areas of, uh, separate fires;
10 in other words, there are two points of fire origin that were
11 not connected.

12 Q. Alright, was -- the point bein' if if you were
13 investigating a case and you did determine you'd speak with
14 the first firefighter on the scene and he told you that he had
15 seen the homeowner coming out of the burning house, being on
16 the front porch where a gasoline fire was, staying there
17 'cause she wanted her pets out, basically having to shoo her
18 off the porch, huggin' her animals when she comes, picking up
19 the dogs and holdin' 'em that are walkin' through there, if
20 you got a test result back that said there was trace evidence
21 of ignitable liquid residue, if that's -- if that testimony
22 had been given to you, would you be cautious to assign any
23 significance of that, uh, to that?

24 A. Well I'd I'd have to eliminate possibility of
25 contamination.

1 Q. Yeah, I mean, that that's a real possibility, right?

2 A. Well it's a real possibility in almost every case.

3 Q. Sure, it's reasonable to assume, that's one of the
4 explanations as to how when a trace evidence test is run that
5 you have ignitable liquid residue on clothing, right?

6 A. I'm sorry?

7 Q. If if the scenario I just, I just put to you is true well
8 the that one of the plausible explanations, a reasonable
9 explanation is that the presence, the trace evidence of
10 ignitable liquid residue is because of that, correct?

11 A. Well it's certainly possible yes, sir.

12 Q. Yeah, as opposed to I guess the sinister motive other the
13 sinister, uh, explanation of gasoline being poured and somehow
14 dripping on clothing, right?

15 A. Well, yes, it could be, I mean, both explanations are
16 possible.

17 Q. Sure, and when ya have two explanations you all, you you,
18 if those are the two options, you would never seek a warrant,
19 uh, for someone's arrest with that information, would ya?

20 A. Well in in my position I don't seek warrants but in that
21 situation as a private fire investigator I have to give the
22 benefit of the doubt to the policyholder.

23 Q. Absolutely, that's part of the code for the different,
24 uh, arson organizations that you're in, right?

25 A. Well I I don't know if it's a code but it's State Farm

WILLIAM PHILLIP BROOKS - CROSS-EXAMINATION BY MR. RIORDAN

1 policy, uh, for for them to give the benefit of the doubt to
2 their policyholder.

3 Q. You're a certified fire investigator, right?

4 A. Yes, sir.

5 Q. You're part of International Association of Arson
6 Investigators?

7 A. I am.

8 Q. You you abide by their code of ethics, right?

9 A. Yes, I do.

10 Q. I mean, that's important, isn't it?

11 A. It is.

12 Q. Havin' a code and and abiding that you're gonna follow
13 that code, that oath, that's real important, isn't it?

14 A. It is.

15 Q. Uh, when it says, I will bear in mind that I am not a
16 tr -- that I am a truth seeker not a casemaker, you live by
17 that, don't ya?

18 A. Yes.

19 Q. That it is more important to protect the innocent than to
20 convict the guilty, right?

21 A. That's correct.

22 Q. I mean, that's the base of your code of ethics, right?

23 A. That's true.

24 Q. Let me ask ya this: If you had a fire investigation scene
25 with some evidence that's sent off for trace, uh, testimony --

WILLIAM PHILLIP BROOKS - CROSS-EXAMINATION BY MR. RIORDAN

1 oh, the other thing, cri -- it's real important to preserve
2 the crime scene, right?

3 A. Yes.

4 Q. Crime scene's very important 'cause, again, in a fire
5 case you have residue there that could easily be transferred,
6 have contamination, right?

7 A. Can be, yes.

8 Q. Alright, I will represent to you -- well Greenville
9 County, again, they never shared anything with you, right?

10 A. No, D -- but to be fair that I think they had
11 communicated with Doug Acker with State Farm and Doug actually
12 was my contact with State Farm so I think.

13 Q. I'm gonna show you what's marked as Defendant's Exhibit
14 No. 1 and I submit to you that that (indicating) is a
15 photograph taken by Investigator Ben Cannon the morning of the
16 fire at around 10:32, you can see the bottom corner pair a
17 moccasins here (indicating) sittin' next to some tennis shoes,
18 you see that?

19 A. Yes.

20 Q. And can you see that the left, at least the left, maybe
21 both, but the left one, the back a the moccasin is is right
22 there (indicating) at about the middle of the tennis shoes,
23 right?

24 A. Yes.

25 Q. Alright, and, uh, I'll submit to ya also that ServPro,

1 the scene's released at 12:20, ServPro's on the scene workin',
2 that's not unusual, right?

3 A. No.

4 Q. You wanna get in there, start cleanin' up when your house
5 has burned, you you know it's gotta be repaired and you might
6 as well start immediately, right?

7 A. That's correct.

8 Q. And when that's bein' done people are walkin' through and
9 mixin' up the debris and everything else, correct?

10 A. Yes, there's a possibility of that.

11 Q. Yeah, when people are walkin' through it, it's no longer
12 a crime scene, it's not preserved, is it?

13 A. No, it's not.

14 Q. Nothin' reliable could come of it after that point, can
15 it?

16 A. Well it can and depends on the evidence.

17 Q. Sure, it depe -- it can but it is certain, you you wanna
18 look real closely before you relied on anything found in a
19 released crime scene were ServPro's cleanin' up, wouldn't
20 ya?

21 A. Yes.

22 Q. Alright, so let me show ya this: Defendants Exhibit
23 No. 2, I submit to you ServPro. Now when a company like that
24 needs to clean up they need to assess the project, right,
25 that's your experience?

1 A. Yes.

2 Q. They come out there and take photographs of everything to
3 see what the scope a work's gonna be, right?

4 A. That's correct.

5 Q. So it's not unusual when they first get there to go room
6 to room and take some photos, right?

7 A. That's correct.

8 Q. And I submit to you, and well look at here, we got a,
9 just to make sure, I haven't really put it in yet, I keep
10 forgettin' but even on this (indicating) picture, shotgun
11 still on the bed, right? See the shotgun there (indicating),
12 least the butt of it? See this?

13 A. Okay, well it's a gun, a long gun.

14 Q. Long gun, alright. And ya see, look, I I submit to you
15 that's (indicating) the bed, here's lookin' at it when you're
16 standing at the, at the foot of it, here's (indicating) goin'
17 to that left side, would you agree the person taking this
18 photograph is standing over there in the area where these
19 (indicating) moccasins are?

20 A. Appears to be, yes.

21 Q. Appears to be and that that's kinda thing if you saw
22 that, you'd have some fear of possible contamination, right?

23 A. Yeah, this cert -- certainly would be possible for ---

24 Q. Sure, that's a plausible explanation, isn't it?

25 A. It is.

WILLIAM PHILLIP BROOKS - CROSS-EXAMINATION BY MR. RIORDAN

1 Q. Alright, and you're familiar with, uh, arson dogs, uh,
2 accelerant sniffin' dogs?

3 A. I am.

4 Q. Alright, and they, and and when they're trained, I mean,
5 some a the products that are accelerants are just common
6 household products, aren't they?

7 A. Well yes, an accelerant can be a house, common household
8 product.

9 Q. Well, I mean, well gasoline is is common household
10 product too, right?

11 A. Yes.

12 Q. But but what like paint thinners? If someone's painting
13 in a house and has paint thinner, uh, it's not a -- if the dog
14 might hit on paint thinner, that doesn't mean anything in
15 regard to complicity in an arson, does it?

16 A. Well it depends on whether the paint thin -- thinner is,
17 whether or not it was indigenous to the fire scene.

18 Q. Okay, that's that's a good answer. I guess point bein'
19 you'd have to have, you'd have to guess or speculate as to
20 whether it's one or the other. If the dog's trained to to hit
21 on paint thinner and gasoline or charcoal starter fluid, you'd
22 have to guess or speculate when the dog alerts as to what it
23 was even smellin', wouldn't ya?

24 A. Yes, well when the dog alerts, you'd know that there's a,
25 or you can assume that there's something there, ---

1 Q. Okay.

2 A. --- some petroleum distillate.

3 Q. And we see here (indicating) a photograph of Misty,
4 that's the dog used in this case, lying down on the front
5 porch, that's how Misty alerts, ---

6 A. (Laughs.)

7 Q. --- lies right down in it, huh?

8 A. Yeah, I didn't know that, yes.

9 Q. Yeah, she get -- she's got a hair or two, doesn't
10 she, ---

11 A. Yeah.

12 Q. --- I mean, that's that's just common sense and then she
13 walks around. Is it possible when the dog lies down in the
14 middle of it and walks around that she could track some of
15 that somewhere else, there's a possible contamination just by
16 the dog, isn't there?

17 A. Yes, there is.

18 Q. Absolutely, and so, uh, and that's that's key too, at
19 least if it is gonna alert, it's good to get a photograph so
20 we can see it, right?

21 A. Yeah, but one one a the things I should mention when
22 you're talkin' about the dogs contaminating a scene, once
23 liquid it poured onto a porous surface ---

24 Q. Yeah.

25 A. --- it's absorbed into the

1 surface ---

2 Q. Sure.

3 A. --- so that the possibility of contamination from a
4 wooden deck or wooden boards from gasoline poured on the
5 door -- boards, by the time the dog gets there ---

6 Q. Yeah.

7 A. --- that the possibility is is very remote.

8 Q. But it's, but it's not remote when it's minutes after,
9 right?

10 A. It's not remote when it's minutes after, it's not remote
11 when there's a a surface like a doormat or something that
12 could absorb the fuel and hold the fuel there. The dog walk
13 through that there's a good possibility that the dog could
14 contaminate the interior a the house.

15 Q. Okay, but you can't a -- you can't hundred percent out --
16 overrule it, can ya? I mean, even hours later there's a
17 possibility of a dog lying here that it could contaminate
18 somethin', right?

19 A. Well ye,s anything's possible, I mean, that's certainly a
20 possibility but it's not a probability ---

21 Q. Okay.

22 A. --- in my opinion.

23 Q. Alright. Do you know when the dog was there?

24 A. Do I know when the dog was there?

25 Q. Um-hum.

1 A. Uh, no, sir, I don't.

2 Q. No one's ever shared that with ya, right?

3 A. No.

4 Q. Alright. Getting back to -- so we've established this:
5 We've got the ServPro folks then later, again, there's no
6 picture of of the dog alerting on the shoes, you'd rather have
7 it alerting. If you're gonna take a picture when it's outside
8 on a deck that we know is is a place that has igniteable
9 liquid residue, you'd at least want a picture when it's
10 alerting inside on a possible spot, right?

11 A. Well I don't know if I was handling the dog, uh, whether
12 I would take a picture ---

13 Q. It's ---

14 A. --- alert spots or not.

15 Q. Well well well you think if you were sittin' on a jury
16 and you got one showing that it's sitting down here
17 (indicating), it it might help ya a little bit more to
18 actually see it when it's sitting near the shoes which are
19 claimed to be a significant piece of evidence?

20 A. I mean, I don't, I don't know and the photograph the dog
21 sitting doesn't mean anything ---

22 Q. Okay.

23 A. --- or dog sitting down like that.

24 Q. Alright. I show you State's Exhibit No. 7, would you
25 agree the shoes have been, at least the left one for sure has

WILLIAM PHILLIP BROOKS - CROSS-EXAMINATION BY MR. RIORDAN

1 been moved? There you go, ---

2 A. Compare the ---

3 Q. --- look again.

4 A. --- compare the two?

5 Q. Yes, absolutely.

6 A. You -- the left, uh, well I can't say that it's been
7 moved because the photographs are taken from two different
8 perspectives, uh, so no, I can't say for sure. It certainly
9 appears to be that they are not in the s -- exact same place
10 but if you look on the left tennis shoe the blue or black
11 color, black and white colored shoe, you see the shoestring
12 and it's, uh, going down near the, uh, the brown color shoe
13 and about the same vision on both photographs so I can't say,
14 I mean, ---

15 Q. Just can't say.

16 A. --- photographs where they've taken from the same vantage
17 point I could say yeah, but no, I can't.

18 Q. Okay. Let's assume this: Assu -- assume others disagree
19 with you and they, and they think it's clear the shoe has been
20 moved from the middle of the tennis shoe now to where it is
21 about halfway above the tennis shoe, assume that is true,
22 it -- would that be a concern for you as possible
23 contamination?

24 A. I I don't know that I would be concerned about possible
25 contamination if a shoe is moved four or five inches, I

1 certainly would be, uh, something to consider.

2 Q. Okay, be somethin' to consider, wouldn't it?

3 A. Yeah.

4 Q. And you're really, you you if you're gonna do somethin'
5 like that, you wanna do it when the crime scene's pres --
6 preserved, right?

7 A. Yes, absolutely.

8 Q. Once it's released it's really questionable as to whether
9 it actually is preserved anymore, right?

10 A. There's always a question of contamination.

11 Q. And even then. Alright, you're not sure if, certain if
12 it's been moved, you've been doin' this a long time, right?

13 A. Yes, sir.

14 Q. Tell this jury who John Lentini is.

15 A. Uh, John Lentini is a former ATF chemist, uh, who's, uh,
16 recognized in the field of fire investigation as an expert in
17 origin and cause, determination. He's produced or published
18 number of papers relating to, uh, sample analysis and he's
19 also a member of the NFPA 921 Technical Committee, the
20 committee that writes the standards or the guidelines for fire
21 investigators in this country.

22 Q. He sets the guidelines, right? He's part a the group
23 that sets the guidelines, isn't he?

24 A. That's correct.

25 Q. I mean, really a field that he he's one, he's one a the

WILLIAM PHILLIP BROOKS - CROSS-EXAMINATION BY MR. RIORDAN

1 top, if not the top experts, isn't he?

2 A. He is recognized by some people as being one of the top
3 experts in the country.

4 Q. Would you say he's a, he's a fire expert's expert?

5 A. That's what it is reported in some circles.

6 Q. Alright, you, and and so you read articles John Lentini's
7 written, those are authoritative in your field, right?

8 A. They are.

9 Q. Alright, and I show you an article, have you ever read
10 this one, "The petroleum-laced background?"

11 A. Uh, I don't know that I read that particular article but
12 I'm familiar with the the concept.

13 Q. You're f -- you're familiar with his, uh, with the
14 concerns they have in regard to shoes, aren't ya?

15 A. Right, we ---

16 Q. Yeah.

17 A. Read me the date we ---

18 Q. Let's see, okay, 1996.

19 A. Okay.

20 Q. It's been out there a long time, right?

21 A. Right.

22 Q. Still a concern. Toluene still inclu -- still used:
23 adhesives, solvents, things a that nature, right?

24 A. Right.

25 Q. Alright. What what does, what does John -- and Cheryl,

1 you know, you familiar with Cheryl Cherry, you know her?

2 A. I do not.

3 Q. Okay. Have you ever read any a John's books?

4 A. I took a course from John, uh, in Columbia last year.

5 Q. He taught ya last year at Columbia? where?

6 A. Columbia, ---

7 Q. Di ---

8 A. --- South Carolina.

9 Q. Oh, okay. Alright, well you can just, you just skip the
10 line, we've already read it once but since you're here what
11 does the last, what does the last paragraph say in regard to
12 testing shoes?

13 A. Uh, "Toluene toluene is apparently trapped of
14 adhesive ---

15 Q. No, the last paragraph, that's alright, they've already
16 heard the rest of it, just do the last one.

17 A. A pair a shoes, a pair a shoes for comparison would seem
18 to be absolutely essential prior to making any decisions about
19 the significance of petroleum products identified on shoes.

20 Q. And so what that means is you've got a pair of shoes from
21 their studies, the petrole -- the testing they've done, the
22 petroleum components in actually, actually in the shoe, uh,
23 are such that they say is essential, you see what the shoes
24 are, L.L. Bean shoes, right?

25 A. I don't ---

WILLIAM PHILLIP BROOKS - CROSS-EXAMINATION BY MR. RIORDAN

1 Q. Well ---

2 A. --- know what kinda shoes.

3 Q. Yeah, ya go, ya go online and buy a new pair a L.L. Bean
4 shoes and test 'em ,right?

5 A. Yeah, you could.

6 Q. Alright, that didn't happen here, did it?

7 A. I I don't know.

8 Q. You don't know. That's what Lentini⁷ says you should do,
9 right?

10 A. Correct.

11 Q. It, 'cause it's absolutely essential to do that before
12 you make any decision about the significance of petroleum
13 products identified in shoes, isn't that right?

14 A. That's correct.

15 Q. Is gasoline a petroleum product?

16 A. Yes, it is.

17 Q. I've got nothin' further, thank you.

18 THE COURT: Redirect?

19 MS. ABEE: Your Honor, I have no redirect for this
20 witness.

21 THE COURT: May this witness be excused?

22 MS. ABEE: There's no objection from the State.

23 MR. RIORDAN: Yes, Your Honor.

24 THE COURT: Thank you, sir, you may be ---

25 THE WITNESS: Thank Your Honor.

1 THE COURT: --- excused.

2 (Whereupon, the witness left the stand.)

3 THE COURT: Alright, Mr. Foreman, I'm gonna ask the jury
4 go back to your jury room one one, right quick, I'm gonna let
5 you order your lunch, we're gonna eat in today again, you
6 don't mind, once you're through you can turn those into the
7 bailiff and then we'll bring you back to the courtroom.

8 (The following takes place outside the presence of the
9 jury.)

10 THE COURT: Alright, guys, we'll be in recess for about
11 five ya'll are gonna send someone ---

12 MS. ABEE: Your Honor, we need to set up the projector so
13 we'll do that during this.

14 THE COURT: Okay, that'll be great.

15 (Whereupon, a recess was taken.)

16 THE COURT: Alright, you ready?

17 MS. ABEE: We are, Your Honor.

18 THE COURT: You ready?

19 MR. RIORDAN: Yes, Your Honor.

20 THE COURT: Could you bring the jury in, please.

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

22 (The following takes place in the presence of the jury.)

23 THE COURT: Call your next witness, please.

24 MS. ABEE: Your Honor, the State calls Ben Cannon to the
25 stand.

BEN CANNON - DIRECT EXAMINATION BY MS. ABEE

1 (Whereupon, the witness came forward.)

2 THE CLERK: Raise your right hand.

3 BEN CANNON, having been first
4 duly sworn, testified as follows:

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

7 THE WITNESS: Ben Cannon.

8 DIRECT EXAMINATION BY MS. ABEE:

9 Q. Please tell us all where you're currently employed at.

10 A. Uh, currently Greenville County Sheriff's Office.

11 Q. And what's your current position there?

12 A. I'm assigned to the Criminal Investigation Division in
13 the arson unit.

14 Q. And what is your your title in the arson unit?

15 A. Uh, arson investigator.

16 Q. And how long have you been with Greenville County?

17 A. Uh, this September will be ten years.

18 Q. And, uh, how long have you been in law enforcement?

19 A. The same amount a time, yes, ma'am.

20 Q. Okay, and prior to being in law enforcement what did you
21 do?

22 A. Uh, prior to bein' law enforcement I was, uh, in the
23 Marine Corp. right after high school, yes, ma'am.

24 Q. An honorable discharge?

25 A. Yes, ma'am.

BEN CANNON - DIRECT EXAMINATION BY MS. ABEE

1 Q. How long have you been assigned as an arson
2 investigator?

3 A. I was, uh, moved to that position October of 2011.

4 Q. And do you have any special types of certifications or
5 trainings as an arson investigator?

6 A. Uh, yes, ma'am. Uh, I've been to the National Fire
7 Academy in Maryland, I've also been to a, uh, fire pattern
8 certification course, uh, multiple other courses, a a basic
9 fire investigation course through Criminal Justice Academy and
10 approximately a hundred and thirty hours of, uh, online
11 certified fire investigative classes.

12 Q. And do you often take continuing education type
13 classes?

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

15 Q. Approximately how many hours per year, uh, do you obtain
16 as continuing education courses?

17 A. I try to, try to maintain myself probly 'bout forty hours
18 a year.

19 Q. Approximately how many arson cases have you
20 investigated?

21 A. Uh, we kinda break 'em down to residential, commercial,
22 uh, and vehicular arsons. Uh, residential probly 50 to 55
23 this point, uh, cars and a vehicle 25, commercial probly 4 or
24 5 to this point, yes, ma'am.

25 Q. So have you investigated, uh, arsons similar, residential

BEN CANNON - DIRECT EXAMINATION BY MS. ABEE

1 arsons similar to this one in this case?

2 A. Yes, ma'am, I have.

3 Q. And were you able to use your training as an arson
4 investigator while conducting your investigation?

5 A. Excuse me, yes, ma'am.

6 Q. And tell us the types of training you have in regards to
7 origin and cause of a fire.

8 A. Uh, the, uh, National Fire Academy the 2-week class, a
9 80-hour class that is specifically, uh, designed for origin
10 and cause class.

11 Q. Have you ever testified as an expert before in court?

12 A. Yes, ma'am, I have.

13 Q. As an expert in what?

14 A. Origin and cause in Thirteenth Circuit.

15 Q. Here in general sessions court?

16 A. Ye -- yes, ma'am.

17 MS. ABEE: Your Honor, at this time the State would seek
18 to enter Investigator Ben Cannon as an expert in arson cause
19 and origin.

20 MR. RIORDAN: Your Honor, actually I I object. Uh, the
21 certifications that I understand he's not certified at all in
22 any of either the International Association of Arson
23 Investigators ---

24 THE COURT: Just one second. You wanna voir dire
25 this ---

BEN CANNON - DIRECT EXAMINATION BY MR. RIORDAN - VOIR DIRE

1 MR. RIORDAN: Yeah, ---

2 THE COURT: --- witness?

3 MR. RIORDAN: --- yes, Your Honor.

4 THE COURT: Okay.

5 DIRECT EXAMINATION BY MR. RIORDAN:

6 Q. Investigator Cannon, ---

7 A. Yes, sir.

8 Q. --- you guys, uh, you sent to, well I don't know if you
9 know, I got your CV the same time I got Gonzalez's, I think
10 last Thursday, right?

11 A. Uh, I -- that's ---

12 Q. Sound right?

13 A. --- what you say yes, sir.

14 Q. Less than a week ago but I have it, we just looked
15 through it, you've ---

16 A. Yes.

17 Q. --- certified I've got your most up-to-date one,
18 correct?

19 A. Correct, yes, sir.

20 Q. Alright, and as part of it we've had Phil Brooks and, uh,
21 and Investigator Gonzalez has come in here I guess are the two
22 that have, actually have certifications, right?

23 A. Yes, that's correct.

24 Q. I mean, they're a member of arson investigation, uh,
25 associations that follow a code of ethics, aren't they?

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1 A. Yes, sir, they are.

2 Q. And and and you you have to have adequate experience and
3 apply and be accepted into those organizations, correct?

4 A. Correct, yes, sir.

5 Q. And and you've done none of that, have you?

6 A. No, sir.

7 Q. You're not a member of that, are you?

8 A. No, sir.

9 Q. Okay. Your Honor, I I think he's he's not a certified
10 fire investigator. These courses you're taking, you ---

11 A. Yes, sir.

12 Q. --- you say you've had certifications, I mean, really
13 it's just training, right?

14 A. Uh, the the one in Maryland you had to have a certain
15 percentage to pass the class.

16 Q. Well let's look back ---

17 A. Sure.

18 Q. --- through. You've had, ---

19 A. Sure, absolutely.

20 Q. --- uh, it's not dated, it says, "Introduction to Fire
21 Investigation from the Donning (phonetic) Corporation," what
22 is ---

23 A. Correct.

24 Q. --- that?

25 A. Um, it's a independent fire investigation corporation,

1 sorta like Bloo -- Brooks reporting.

2 Q. You remember when that was, it's not dated on your ---

3 A. No, sir, I do not.

4 Q. Okay. Fire pattern certification. I mean, again, that's
5 not equivalent to being, uh, certified by one a these
6 organizations and providing testimony for a code of ethics, is
7 it?

8 A. No.

9 Q. All of these, in fact, everything you've done, are some a
10 these online courses?

11 A. Uh, yes, sir, that's what I stated earlier.

12 Q. And, uh, I mean, can I go on the computer and sign up and
13 pay a fee and take that course?

14 A. Uh, yes, sir, ---

15 Q. Okay.

16 A. --- as long as you pass the written test in the end.

17 Q. Do you even know as you sit here how many, how many of
18 those type courses you've taken that have anything to do with
19 fire?

20 A. I'm pretty sure most of 'em have to do with fire, ---

21 Q. I see, uh, ---

22 A. --- they're they're from the CFI website.

23 Q. And let me s -- let's make sure we're on the same page.

24 A. Sure.

25 Q. Fire pattern certification August 2012, so you had that

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1 one before this fire, correct?

2 A. This was July 27th I believe.

3 Q. Oh, that's right, I'm I'm I'm wrong, yeah, that's my bad
4 so ---

5 A. Yeah.

6 Q. --- you -- they -- you didn't even have that course yet.

7 A. No, sir.

8 Q. And the next one's Fire Arson Origin and Cause
9 Investigation, that was in December a 2012, you you hadn't
10 taken that at the time a this one, have you?

11 A. No, sir.

12 Q. In fact, we look through 'cause everything else is
13 sequential after that, had you taken any arson course at the
14 time you were assigned as the lead investigator in this ca --
15 physical evidence at the fire scene is that a CFITrainer.net,
16 that's online, correct?

17 A. Yes, that's correct.

18 Q. Oh, okay, I do see the two. Digital photography and fire
19 investigation December of 2011, you've taken that class,
20 right?

21 A. Yes, sir.

22 Q. Alright, I don't need to pull out my laptop to stick your
23 disk in to look at the source info on your photographs, do
24 I?

25 A. No.

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1 Q. You you acknowledge that even on the photographs you took
2 when we look at the date stamp it's off by an hour, isn't it?

3 A. Yes, that's correct.

4 Q. Okay, and the other one you took is December 21st 2011,
5 uh, that's the Fire Investigator Scene Safety, that's another
6 online course, correct?

7 A. Correct, yes, sir.

8 Q. Everyone of 'em thereafter's an online course anyone can
9 take.

10 A. Yes, sir.

11 MR. RIORDAN: Your Honor, I think his, uh, qualifications
12 fall woefully short to to testify as an expert on fire
13 investigation in this case and I would ask that he not be
14 allowed to be, uh, uh, deemed as an expert.

15 THE COURT: Any response?

16 MS. ABEE: Response, yes, Your Honor. Under Rule 702 it
17 states that expert should have a knowledge, skill, experience,
18 training or education and, uh, the State would contend that
19 Investigator Cannon does have all of those.

20 THE COURT: You hadn't presented any evidence as to his,
21 uh, uh, you gave a little bit about his education, you have a
22 little bit about his training, you haven't shown any about his
23 experience, I hadn't heard anything about it at all.

24 MS. ABEE: Your Honor, I believe I questioned
25 Investigator Cannon as to how many arsons he has in

BEN CANNON - CROSS-EXAMINATION BY MS. ABEE - VOIR DIRE

1 --investigated in his ha ---

2 THE COURT: I'm sorry, if you did, I did not catch that.

3 Would you ---

4 MS. ABEE: I I ---

5 THE COURT: --- repeat that.

6 MS. ABEE: --- can re-ask those questions again, Your

7 Honor, ---

8 THE COURT: Please do.

9 MS. ABEE: --- if you'd like to.

10 THE COURT: Yes, ma'am.

11 CROSS-EXAMINATION BY MS. ABEE:

12 Q. Investigator Cannon, approximately how many arsons have
13 you investigated?

14 A. Uh, as I stated earlier, we break 'em down into
15 residential, commercial, vehicular. Uh, residential probly 50
16 to 55, 25 or so vehicle and 4 or 5 commercial ---

17 THE COURT: Okay, I got that.

18 A. --- far as, as far as arsons.

19 THE COURT: I'm sorry, I I wrote those down in
20 percentages, I'm sorry.

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

22 MR. RIORDAN: Thank you, it's a little bit more, I should
23 have asked that.

24 REDIRECT EXAMINATION BY MR. RIORDAN:

25 Q. How many of those had you investigated prior to this

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1 fire?

2 A. Uh, I don't, I don't have that record with me.

3 Q. You don't, you don't know, do ya?

4 A. No, sir.

5 Q. You don't know if this was the first case you ever did as
6 we sit here, do ya?

7 A. I'm sure it was not the first case.

8 Q. Okay, you know which one it was?

9 A. No, sir.

10 Q. What is your educational background?

11 A. As far as like high school or college? just high
12 school.

13 Q. Where?

14 A. Uh, Travelers Rest High School.

15 Q. That's the only education you got.

16 A. That's correct.

17 Q. Okay. How many of your cases have you brought to
18 trial?

19 A. Uh, prior to this one just one.

20 Q. What kinda case?

21 A. As far as an arson?

22 Q. Yes.

23 A. Just just an arson third.

24 Q. Where was that?

25 A. Uh, Thirteenth Circuit.

BEN CANNON - REDIRECT EXAMINATION BY MR. RIORDAN - VOIR DIRE

1 Q. Well I know it's Thirteenth Circuit ---

2 A. Yes, sir.

3 Q. --- but what -- where -- what were the circumstances in
4 that case?

5 A. Uh, ---

6 MS. ABEE: Your Honor, we would object.

7 THE COURT: I sustain that objection.

8 MR. RIORDAN: Your Honor, may may I approach or or not?

9 THE COURT: Mr. Foreman, would you mind takin' the jury
10 to the jury room, please.

11 (The following takes place outside the presence of the
12 jury.)

13 THE COURT: I don't mind and I, not that I don't mind, I
14 think it's appropriate, more appropriate for me to say, uh,
15 you'd ask the nature, the specifics of that case is beyond
16 what's necessary to challenge his credentials as expert in my
17 view. Now I think you must disagree so tell me where I'm
18 wrong.

19 MR. RIORDAN: Well, I mean, we go to training, experience
20 and background to learn what that actually is and what
21 experience he has. I think the facts behind the only case
22 he's ever testified, been qualified could be of import. Now,
23 Your Honor, is the gatekeeper in this and it's up to you ---

24 THE COURT: Well I understand that, ---

25 MR. RIORDAN: --- and so ---

MOTIONS AND MATTERS

1 THE COURT: --- I'm familiar with, uh, Justice Pleicones'
2 opinion about whether or not that they'll be qualified as to
3 the particular area. I don't think anybody in this courtroom
4 would disagree the cause of origin as well known to be
5 appropriate subject for expert testimony, you don't disagree
6 with that?

7 MR. RIORDAN: No.

8 THE COURT: You're challenging his particular
9 credentials, experience, etc., etc., ---

10 MR. RIORDAN: Correct.

11 THE COURT: --- correct? And let me say this: I I
12 apologize to Ms. Abee I was writin' down percentages of the
13 cases he investigates as bein' residential, cars, businesses.
14 What he was sayin' was, I investigated 80 arsons. You're
15 saying time he made this potential or he made his
16 determination he hadn't had any or very few ---

17 MR. RIORDAN: He can't tell us.

18 THE COURT: --- and I question training he got, the
19 2-week, 80-hour trainin', the other things had online, I
20 understand what you're sayin', okay, uh, but as to specifics
21 of the other case, I mean, I I think it's fine to say this was
22 a vehicle case that was burned by some, uh, accelerant, uh, a
23 residential case by accelerant but give me the facts of it,
24 beyond that I would sustain the objection 'cause it gets ---

25 MR. RIORDAN: Okay.

MOTIONS AND MATTERS

1 THE COURT: --- too far afield for the jury ---

2 MR. RIORDAN: We just ask him while he's sittin' here
3 just so we ---

4 THE COURT: Sure.

5 MR. RIORDAN: Is it vehicle or ---

6 THE WITNESS: Residential.

7 MR. RIORDAN: Residential.

8 THE WITNESS: Yes, sir.

9 THE COURT: Was it a, was it a liquid, uh, accelerant?

10 THE WITNESS: Yes, sir.

11 THE COURT: Okay, let let me say this: ---

12 MR. RIORDAN: Yeah, I'm I'm sorry, Judge, I just
13 wanna ---

14 THE COURT: That's okay, that's okay, this, I'm gonna do
15 this on record with the jury, I'm gonna find that he is an
16 expert ---

17 MR. RIORDAN: Same instruction?

18 THE COURT: --- and and -- huh?

19 MR. RIORDAN: That same instruction you've been givin'?

20 THE COURT: Yes.

21 MR. RIORDAN: Great.

22 THE COURT: And and let me just tell ya this, it's based
23 not on experience he had at the time he made his decisions,
24 based on his experience he's had through this date, okay. Now
25 that is based on him doin' 80 arson cases, him having his

MOTIONS AND MATTERS

1 experience or his educational background which I don't find to
2 be overly, uh, strong but the same time I I don't know enough
3 about it otherwise to say that it's not sufficient, ---

4 MR. RIORDAN: Alright.

5 THE COURT: --- okay, uh, but having been in the the
6 field since at least four years, close to four years and
7 having' eighty cases under his belt I think that would be
8 sufficient to make him ---

9 MR. RIORDAN: It's not ---

10 THE COURT: (Indiscernible cross-talk.)

11 MR. RIORDAN: --- even three years, Judge, it's like two
12 and a half.

13 THE COURT: 2010 is when -- oh, excuse me, okay, October
14 two thousand, I'm s -- okay, three, uh, or two and a half,
15 anyway, I'm still gonna find he's expert. It's more of a
16 matter of cross-examination as to, ---

17 MR. RIORDAN: Yes.

18 THE COURT: --- you know, where he was at the time to me,
19 okay.

20 MR. RIORDAN: While while we're broken can I, can I just
21 make sure do you guys have all the rest a these photos out
22 here anywhere?

23 MS. ABEE: I I can't guarantee that we have every single
24 one printed, uh, but we do have a large majority of them
25 printed.

MOTIONS AND MATTERS

1 MR. RIORDAN: May I see some a those and pick a few out
2 if I wish?

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

4 THE COURT: You premark these exhibits?

5 MS. ABEE: Your Honor, we're all premarked and ready to
6 go and everything's in order over there. Uh, I will ask that
7 he be able to step down so that light doesn't blind him when I
8 publish them.

9 THE COURT: That's fine, I I don't have, I have no
10 problem. Alright, you ready to go or you need another ---

11 MR. RIORDAN: Well ---

12 THE COURT: --- minute, Mr. ---

13 MR. RIORDAN: --- just a moment, Judge, I should should
14 be much bri ---

15 THE COURT: Okay.

16 MR. RIORDAN: You already put this (indicating) one in,
17 right?

18 MS. ABEE: It is.

19 (Pause.)

20 MR. RIORDAN: I'm ready, Judge, thank you.

21 THE COURT: Do you need some help from the court
22 reporter?

23 MR. RIORDAN: No, I'm good.

24 THE COURT: Okay, go -- ready?

25 MS. ABEE: Yes, sir.

BEN CANNON - DIRECT EXAMINATION BY MS. ABEE

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

2 (The following takes place in the presence of the jury.)

3 THE COURT: Alright, Ms. Abee, at this point I'm gonna
4 find that, uh, Mr. Cannon is an expert in the field of cause
5 and origin of fires, that's the request, correct?

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

7 THE COURT: Alright, ladies and gentlemen, I'm gonna
8 remind you, not to be repetitive, but to make sure you
9 remember that, uh, this person's been designated expert in the
10 field of cause and origins of fires. Uh, unlike most
11 witnesses, he'll be allowed to give his opinion in that field,
12 state the basis of his opinion, uh, expert testimony, however,
13 is like any other testimony you'll hear in this case, you may
14 accept it, you may reject it or give it as much weight as you
15 think it deserves based on the testimony and evidence in this
16 trial.

17 MS. ABEE: Thank you, Your Honor.

18 THE COURT: Yes, ma'am.

19 DIRECT EXAMINATION BY MS. ABEE:

20 Q. Investigator Cannon, uh, please tell us how you became
21 involved in this case.

22 A. It was, uh, July 27th 2012, uh, I was contacted, uh,
23 either by dispatch or maybe even a deputy on scene, maybe a
24 supervisor on scene, uh, stating that a residential, uh,
25 burglary had occurred and also an arson, uh, just moments

BEN CANNON - DIRECT EXAMINATION BY MS. ABEE

1 afterwards.

2 Q. And what was the location of this burglary and arson?

3 A. It's, uh, [REDACTED] Riley Smith Drive in Greenville, South
4 Carolina.

5 Q. And what road is Riley Smith Drive near?

6 A. Uh, it's kinda in between Roper Mountain and Pelham Road.

7 Q. And are those decently busy roads?

8 A. Yes, ma'am.

9 Q. And approximately what time are you dispatched out to the
10 scene?

11 A. Uh, the fire came in probly around eight eight o'clock
12 the call came in, I got there probly 9:20, 9:30 a.m.

13 Q. And what was your specific role in the case?

14 A. Uh, I was dispatched to investigate the arson portion,
15 the fire portion of the, uh, of the call for service.

16 Q. And throughout the course of your investigation were you
17 able to observe the entire scene?

18 A. Uh, yes, ma'am, I was.

19 Q. And is that inside and outside a the house?

20 A. Yes, ma'am.

21 MS. ABEE: Your Honor, may I approach?

22 THE COURT: Yes, ma'am.

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

24 BY MS. ABEE:

25 Q. Investigator Cannon, I'm approaching you with what's been

BEN CANNON - DIRECT EXAMINATION BY MS. ABEE

1 marked, premarked as State's Exhibits No. 26 through 34, ---

2 A. Yes, ma'am.

3 Q. --- if you could please look through those photos and
4 tell me if they accurately depict the ---

5 A. Um.

6 Q. --- scene of, the scene of the crime during your
7 investigation.

8 (Whereupon, the witness examined the exhibits.)

9 A. All this one picture's from Riley Smith but rest of 'em
10 are are from the incident location.

11 Q. The other picture does that depict, uh, something that
12 you observed during the course of your investigation?

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

14 MS. ABEE: Your Honor, at this time the State would seek
15 to enter State's Exhibits 26 through 34.

16 MR. RIORDAN: No objection.

17 THE COURT: Admitted without objection.

18 (State's Exhibit Nos. 26, 27, 28, 29, 30, 31, 32, 33 and
19 34, photographs, admitted into evidence.)

20 MS. ABEE: Permission to publish to the jury, Your Honor.

21 THE COURT: Yes, ma'am.

22 BY MS. ABEE:

23 Q. Investigator Cannon, what is it that we're seein' here in
24 this (indicating) photo?

25 A. Uh, this is a, uh, picture of side one of front side of

BEN CANNON - DIRECT EXAMINATION BY MS. ABEE

1 the residence, uh, that morning.

2 Q. And, uh, is this exactly what the residence looked like
3 when you first got on the scene?

4 A. Yes, ma'am.

5 Q. So was this garage door here (indicating) open?

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

7 Q. And what about this (indicating) car, was that in the
8 driveway as well?

9 A. Yes, ma'am.

10 Q. And you said this is side one of the house, ---

11 A. Yes, ma'am.

12 Q. --- to your knowledge or throughout your investigation
13 was there fire damage done to the side one a the house?

14 A. Uh, yes, ma'am, the there's a a covered porch to the
15 right, uh, ---

16 Q. Here (indicating)?

17 A. Yes, ma'am. The -- we had some minor superficial burns
18 on the, uh, the wooden deck and close to the house where the
19 siding meets the deck area and also ---

20 Q. And ---

21 A. --- a, like a dog bed type thing was also also set on
22 fire.

23 Q. --- and this window right here (indicating), ---

24 A. Yes, ma'am.

25 Q. --- what window is that in the Ro -- in the house?

BEN CANNON - DIRECT EXAMINATION BY MS. ABEE

1 A. To my knowledge that's part of the, uh, master, uh,
2 master bedroom area yes, ma'am.

3 Q. Now when you first got onto the scene, did you do, uh, an
4 inspection around the entire house?

5 A. Yes, ma'am, I walked around the exterior of the home.

6 Q. And other than the front porch where else was there fire
7 damage?

8 A. Uh, there was a greater amount a fire damage on side
9 three. If you, uh, we we label the house one; two, three,
10 four in a clockwise loca -- clockwise, uh, method.

11 Q. So side three is commonly what we refer to as the ---

12 A. Sure.

13 Q. --- back a the home?

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

15 Q. Now showing you State's Exhibit 26, is this side three or
16 the backside a the home?

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

18 Q. Okay, and where is the the fire damage here?

19 A. As you can, you can see, we've got a wooden deck that
20 connects to a, uh, sunroom area, uh, the majority of the
21 damage was to the right side of if you can see the chimney
22 comin' down, uh, it's gonna be to the right side of the
23 chimney, uh, in the sunroom area.

24 Q. This area right here (indicating)? Am I pointing that
25 out correctly?

BEN CANNON - DIRECT EXAMINATION BY MS. ABEE

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

2 Q. And if you could tell us what the damage was like here on
3 this wooden porch.

4 A. Uh, the damage greater, uh, under the sunroom and as you
5 extend it to the right the damage lessens, uh, dramatically.

6 Q. I'm gonna scoot this over just a little bit.

7 A. Yes, ma'am.

8 Q. What is this (indicating) a door to?

9 A. This door goes to the garage.

10 Q. Okay, was there any sorta fire damage in this
11 (indicating) area?

12 A. No, ma'am, it probly extended to, uh, to just the left of
13 the, uh, ladder that's located in the picture.

14 Q. So approximately here (indicating) is where the fire
15 damage extended to?

16 A. Yes, ma'am.

17 Q. And if you could please tell us what you did, uh, once
18 you got on the scene, after you took a a glance around the
19 house, a cursory look at what had happen.

20 A. When I first got on the scene, I made contact with the,
21 uh, first responding deputy, he told me some things and also
22 Chief Edwards, uh, with the fire department was on the scene,
23 I made contact with him first and then after I did my, uh,
24 exterior search I made contact with the victim briefly.

25 Q. Okay, and the victim you mean Ms. Rose?

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1 A. Yes, ma'am.

2 Q. Okay, what did the two of you talk about?

3 A. Uh, basically talked about why I was there and what I
4 would be investigating, if I had permission to continue my
5 investigation, uh, that was the the basic beginning of our
6 conversation and I done made contact with her later on and
7 determined what what she saw the fire to look like, uh, when
8 she saw it, uh, on the back porch area.

9 Q. And when you first saw Ms. Rose, what was she wearing?

10 A. Uh, she had on a open-toed shoes, some blue jeans and a
11 black shirt.

12 Q. And are those, uh, the blue jeans and the black shirt the
13 ones that you subsequently sent for testing?

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

15 Q. The ones that Ms. Fletcher or Agent Fletcher was talking
16 about earlier?

17 A. Yes, ma'am.

18 Q. Now from investigating residential fires previously, do
19 you often speak with the victim of the fire?

20 A. Yes, ma'am, unless they've been transported to the
21 hospital or somethin' a that nature.

22 Q. Okay, do you typically have the, uh, the ability to
23 observe them and their demeanor?

24 A. Yes, ma'am.

25 Q. And from your experience when you typically observe

BEN CANNON - DIRECT EXAMINATION BY MS. ABEE

1 victims of house fires, uh, their demeanor to be like once you
2 talk to them?

3 A. They're usually fr -- they're they're usually frantic,
4 uh, you know, not very composed, most the time they just lost,
5 you know, their their home, uh, you know, maybe even some a
6 their pets, uh, maybe even a family member, uh, in in a fire
7 and they're usually just just very distraught, uh, very
8 frantic basically.

9 Q. And did you observe Ms. Rose to have the same demeanor?

10 A. Uh, no ---

11 MR. RIORDAN: Object -- well go ahead, I'm sorry. Go
12 ahead.

13 THE COURT: Proceed.

14 BY MS. ABEE:

15 Q. Did you observe Ms. Rose to have the same demeanor?

16 A. No, ma'am.

17 Q. Okay, what was her demeanor like when you got on the
18 scene?

19 A. She was relatively calm and, uh, you know, didn't
20 hesitate when I asked her the questions, you know, I didn't
21 ask her many questions but when I did, uh, she answered fairly
22 quickly and accurately.

23 Q. Now do you often work investigations by yourself?

24 A. Usually I have another investigator there with me.

25 Q. Okay. Did you ask for help from another investigator

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1 during, uh, your inspection of this house?

2 A. Uh, yes, ma'am, at one point I contacted Investor [sic]
3 Gonzalez, uh, by phone, asked him to bring his canine to the
4 scene.

5 Q. And why would you think that having a canine, an arson
6 detection canine would be important in this situation?

7 A. As I did my, uh, walk around I saw a gas can on the front
8 porch and also a yellow can on the back porch. Uh, I could
9 smell the aroma of gasoline on the front and probly kerosene
10 or diesel-type on the back porch. Uh, we utilize her to
11 actually pinpoint, uh, where the ignitable liquid if present
12 was poured at.

13 Q. I wanna talk to you now a little bit about the front
14 porch. Did you and Investigator Gonzalez and his canine
15 Misty, uh, inspect the front porch?

16 A. Yes, ma'am, we did.

17 Q. Okay, and I'm gonna show you, uh, State's Exhibit No. 27,
18 is this from the front porch?

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

20 Q. And what is this that we're seein' here?

21 A. Uh, it appeared to be a a dog bed, uh, probly a cushion,
22 uh, that was in the bed to the right.

23 Q. Okay, and I'm gonna show you State's Exhibit No. 28, what
24 is this that we're seein'?

25 A. That appears to be to the left of where the dog bed is,

BEN CANNON - DIRECT EXAMINATION BY MS. ABEE

1 the left a the door, front door.

2 Q. And these black marks, can you explain to us what these
3 black marks are on the wood?

4 A. Yes, ma'am, they're, we refer to those irregular burn
5 patterns, uh, they probly were caused by, uh, the pouring of
6 ignitable liquids.

7 Q. And earlier you talked about a a red gas can on the front
8 porch is that what's up here at this (indicating) corner?

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

10 Q. Now did Investigator Gonzalez run Misty the canine on the
11 front porch?

12 A. Yes, ma'am, he did.

13 Q. Okay, did she alert?

14 A. Multiple times.

15 Q. Okay, and were you able to take samples from the front
16 porch?

17 A. Yes, ma'am, we we or I took two samples from the porch.

18 Q. Okay, and if Misty was alerting in several different
19 places, why did you only take two samples?

20 A. If we did that, we would have, you know, eight, ten, just
21 ever how many times we wanna take 'cause she was hitting
22 practically all over the the whole entire porch.

23 Q. So did you take two separate samples from different areas
24 of the porch?

25 A. Yes, ma'am, we did.

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1 Q. Okay, and did you eventually send those off to be
2 tested?

3 A. Yes, ma'am, we did.

4 Q. And is that the material or the debris that Agent
5 Fletcher was talking about earlier?

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

7 Q. Were you able to determine the origin and cause of the
8 fire on the front porch?

9 A. Uh, yes, ma'am, the the origin and cause, uh, is from
10 reliby -- readily available combustibile material, the
11 construction a wood, the the siding, uh, only after ignitable
12 liquid was poured and human element, uh, produced an open
13 flame to ignite the, uh, the fumes.

14 Q. What does that mean "human element produced an open
15 flame?"

16 A. That there had to be someone who placed an open flame
17 whether it's a lighter, a match, torch, anything a that nature
18 to ignite the gasoline.

19 Q. And you didn't find any matches or anything like that at
20 the scene?

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

22 Q. In comparison to the back porch, what did the pack porch
23 fire look like?

24 A. It was a greater great damage than the front porch. The
25 front fir -- the front porch appeared to have burned itself

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1 out, uh, the back porch, uh, had more combustible materials on
2 there: chairs, uh, accordin' to the victim there's a a wicker
3 couch, wicker loveseat right beneath the, uh, the double
4 window beside the, uh, the chimney area.

5 Q. And the front porch was this dry all of this while you
6 were there?

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

8 Q. Okay, I'm gonna show you some pictures of the back porch,
9 this is State's Exhibit No. 32. What is this (indicating)
10 area that we're seein' in this photo?

11 A. This is actually the right side inside the room with the
12 chimney where the double windows are located or were
13 located.

14 Q. In State's Exhibit No. 33 what is this (indicating) that
15 we're seein'?

16 A. It's still the same area, it's just, it's just panned
17 around to the right. If you see the strip, uh, across the
18 bottom right here (indicating), this is where the, uh,
19 entryway was onto the, uh, the sunroom area.

20 Q. So in comparison to that larger picture of the back that
21 we saw earlier, this is the sunroom?

22 A. Correct.

23 Q. And then this'd (indicating) be that wooden porch that
24 leads down to the garage?

25 A. Yes, ma'am, you can see the the ladder at the very top of

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1 it.

2 Q. Were you able to determine the cause and origin of this
3 fire?

4 A. Yes, ma'am, it was exactly the same as the front:
5 ignitable liquid was present and human element had to, uh,
6 ignite the the the fumes.

7 Q. What else did ya do while you were there that morning?

8 A. Uh, we we did end up takin' two samples from the back
9 porch area and again, uh, Misty hit in multiple locations.
10 Uh, we decided to take one from the threshold going into the,
11 uh, into the sunroom area and also took one under the window
12 between the threshold and the, uh, the ladder located right
13 here (indicating).

14 Q. And again, is it the same reason of why you only took two
15 samples as opposed to multiple samples of the back porch?

16 A. Yes, ma'am, she continuously hit throughout the -- that
17 area.

18 Q. And when you take the samples, are you the one that puts
19 'em in these (indicating) paint cans?

20 A. This particular time I did, yes ma'am.

21 Q. Okay, why is that? Why do you use the paint cans?

22 A. Uh, it -- the the paint cans are are sealed when we
23 receive them from the manufacturer, they're not open until we
24 actually place some evidence inside them, that way they're
25 sterile.

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1 Q. And do you wear gloves when you do this?

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

3 Q. Okay, do you use one pair a gloves for collecting all the
4 samples?

5 A. No, after we collect each pair, uh, each sample we
6 discard the gloves and put a fresh pair on.

7 Q. And what is that for, why do you do that?

8 A. Just for cross-contamination purposes.

9 Q. And what about how do you actually get the wood and the
10 debris up from the porch?

11 A. Um, this particular time we use a Sawzall Reciprocating
12 Saw, uh, and cut the, cut the wood with it.

13 Q. And do you use the same blade on that saw to cut each
14 portion?

15 A. No, ma'am, we we typically all the time use use the same
16 method as the gloves: we discard the blade after use and put a
17 fresh one in.

18 Q. Is that for the same purpose?

19 A. Yes, ma'am.

20 Q. And this wood here (indicating) on the back porch was
21 this, uh, wet when you got there or was it dry?

22 A. This this this area right here (indicating), uh, was wet
23 due to the the, uh, uh, fire suppression from the fire
24 department so it was still damp. The wooden deck portion, uh,
25 to my best recollection it it was relatively dry from the sun

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1 but as far as the covered portion, uh, it was just still damp,
2 soggy from the, from the, uh, water from the fire hoses.

3 Q. So you were the arson investigator, am I right on that?

4 A. Yes, ma'am.

5 Q. Okay, and you said there was a burglary as well, who was
6 that investigator?

7 A. Uh, Randy Morgan arrived just, you know, a few minutes
8 maybe, I don't know, thirty minute, twenty minutes after I did
9 and he was investigating the actual burglary portion of the
10 event.

11 Q. And is it common in cases like this when there's an arson
12 and a burglary for ya'll to have a meeting of the minds or or
13 to share information with one another?

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

15 Q. Okay, why you do that?

16 A. Uh, just to make sure that, uh, each team hadn't missed
17 anything, just to compare notes on what one person may have
18 saw versus the next person or may ---

19 Q. And did ---

20 A. --- have seen or it better to have, you know, two pair a
21 eyes than one.

22 Q. --- did you do that this case?

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

24 Q. When?

25 A. It was later in the afternoon, uh, it was after Randy

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1 Morgan had interviewed the victim.

2 Q. And at any point in time while you were outta the house
3 collecting these samples, was Ms. Rose a suspect?

4 A. No, ma'am.

5 Q. Okay, after you met with Investigator Morgan who else was
6 with you?

7 A. Uh, Investigator Gonzalez was there also.

8 Q. Okay, and did ya'll share notes?

9 A. Yes, ma'am, we did.

10 Q. Okay, did that lead to a further investigation?

11 A. Yes, ma'am, it did.

12 Q. Why?

13 A. Uh, while comparing notes, uh, Investigator Morgan, uh,
14 again advised how calm she was durin' the interview, uh, and
15 only became passionate when talking about a, uh prior case in
16 a different, uh, county, also about her book. Uh, he also
17 talked about the demeanor of her assistant, how calm she was
18 durin' this time, uh, then we began to talk about the safe a
19 little bit and talked about the safe, uh, Investigator Morgan
20 had took a closer look than I did, I just glanced at it at
21 that time, uh, he advised that the paint chips were
22 superficial or he, in his opinion they were superficial and
23 that there was no real attempt to get into the safe and then
24 talkin' about the fire itself, usually if there's a burglary,
25 uh, a murder or an attempt to conceal financial record or some

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1 a that nature, uh, usually dur, uh, we call it a "concealment
2 fire," uh, usually the area where the subjects were at,
3 suspects were at, usually that that is the first point, uh, of
4 origin, uh, in a fire.

5 Q. So is it fair to say that the pieces of the arson puzzle
6 and the pieces of the burglary puzzle they weren't quite
7 matching up?

8 A. Yes, ma'am, that's correct.

9 Q. So did you return to the scene?

10 A. Yes, ma'am, we did.

11 Q. Okay, who was with you when you returned?

12 A. Uh, Investigator Gonzalez and Investigator Morgan also.

13 Q. Alright, what's the first thing you did when you got back
14 to the scene?

15 A. Uh, prior to return to the scene I made contact with
16 Mr. Rose via telephone, uh, advised him that we would be doin'
17 a follow-up investigation at his residence. He stated that
18 ServPro was on scene and he would get them to stop doin'
19 whatever they were doing 'til we finished our investigation.

20 Q. Now did that concern you that ServPro was on the scene?

21 A. Not really ---

22 Q. Okay, ---

23 A. (Indiscernible cross-talk.)

24 Q. --- explain to us why.

25 A. ServPro us -- you know, is a a typical company, there's

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1 several of 'em in the area and they, uh, they assist with fire
2 damage homes, uh, cleanin' 'em up, uh, boarding them up,
3 things a that nature.

4 Q. When you returned to the house, did it appear as if
5 ServPro had begun their cleaning process?

6 A. No, ma'am, it did not.

7 Q. And why do you say that?

8 A. Uh, eventually when I went back to interior of the home,
9 it appeared, it appeared to be the same in the same, uh, the
10 same state that I had left it earlier.

11 Q. So when you walked through the home at the beginning of
12 the day, it appeared to be similar as when you came back
13 later?

14 A. Yes, ma'am.

15 Q. Okay. And where did you start your subsequent
16 investigation when you returned?

17 A. I started, uh, it in the actual, uh, garage area where
18 the safe was located.

19 Q. I'm gonna show you State's Exhibit 3, is this that
20 (indicating) area?

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

22 Q. Okay. And you said that there was some questions about
23 the safe, that it didn't appear to be extremely, uh, deep
24 marks in it, is this (indicating) the safe that we're talkin'
25 about?

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

2 Q. Approximately how tall is that safe?

3 A. I'd probly say about maybe four feet tall.

4 Q. And what do you know about this (indicating) rack and
5 this (indicating) blanket?

6 A. Uh, to my knowledge the the rack was against the safe and
7 either the blanket was over the safe or over the rack itself.

8 Q. So if you were standing in the driveway looking in
9 through the open garage door, would you know that there was a
10 safe underneath there?

11 A. Uh, in my opinion I would say not, no, ma'am.

12 Q. And so what did you observe when you took a closer look
13 at the safe?

14 A. There's multiple marks, uh, I did I didn't count 'em to
15 be honest but probly a dozen or so marks on the safe, uh, the
16 upper right hand corner and also a few around the dial area of
17 the safe.

18 Q. And in your opinion were these, uh, marks on the safe
19 were they deep?

20 A. No, ma'am, it just appeared that the the paint had just
21 been chipped away at the safe, it didn't really have a, any
22 kinda sink marks for somebody to really put any power behind
23 it tryin' to get into it.

24 Q. So what did you do after you, uh, visually observed the
25 safe?

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1 A. Um, I took some closer pictures of the the marks
2 themselves, uh, then we began to look around the garage, uh,
3 just to see if we seen any tools that may have been dropped or
4 were present that could have made these marks.

5 Q. And did you ultimately find something?

6 A. Yes, ma'am, we did ---

7 Q. What did you find?

8 A. We found a small hatchet, uh, it was on a, uh, 3 or
9 4-tier rack in the left hand corner of the, uh, garage.

10 Q. Gonna you show State's Exhibit Number 31, is this the 3
11 or 4-tier shelf that you were just talking about?

12 A. Yes, ma'am, it's a 3-tier, yes, ma'am.

13 Q. And this is where you found the hatchet?

14 A. Correct, it was a head down, handle up.

15 Q. Okay, and if you could, I'm not gonna point it out, but
16 I'll let you tell us where you actually saw it.

17 A. Uh, if you look, uh, there's like a paper towel, two
18 bottles, it's right in between those two bottles standin' up
19 right there (indicating).

20 Q. This right here (indicating)?

21 A. Yes, ma'am.

22 Q. Okay, were any a these bottles knocked over at all when
23 you saw the hatchet?

24 A. No, ma'am.

25 Q. Okay. When you took a look or a a closer look at the

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1 hatchet, did you see anything on it?

2 A. Uh, yes, ma'am, appeared to have, uh, burgundy maroon
3 color paint chips on the the hatchet head of it.

4 Q. What color's that safe?

5 A. Maroon, bur -- burgundy and dark red.

6 Q. Show you State's Exhibit Number 30, is this the head a
7 the hatchet?

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

9 Q. And are these (indicating) the paint chips that you're
10 talkin' about?

11 A. Yes, ma'am.

12 Q. What did ya do with those paint chips?

13 A. Uh, we collected those paint chips, placed them into a,
14 uh, new paper bag, sealed it and they were eventually sent off
15 to SLED as well.

16 Q. And are those the paint chips that Agent Fletcher was
17 referencing earlier ---

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

19 Q. --- as coming from the same and and consistent, uh,
20 material?

21 A. Yes, ma'am, then went to the safe and, uh, some a the
22 paint chips were still attached to the safe and those were
23 basically just pulled off the safe by hand and placed into
24 another clean paper bag.

25 Q. So they were a control sample ---

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1 A. Yes, ma'am.

2 Q. --- and that is what you sent to SLED.

3 A. Yes, ma'am.

4 Q. What else did you do after you found the hatchet?

5 A. I also, I believe I also collected some, uh, some gloves
6 from the garage this time.

7 Q. Okay, and why would you collect, uh, gloves from the
8 garage?

9 A. Uh, in the initial investigation, uh, there were, to my
10 knowledge there were two gloves located on the property, one
11 at the front porch, up in the front porch and the garage and
12 also one on the back porch next to the yellow can that was
13 burned.

14 Q. Show you State's Exhibit 19, is this (indicating) the
15 glove by the front porch that you're talkin' about?

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

17 Q. Okay, and then State's Exhibit Number 18 is this the
18 glove on the blo -- the back porch that you were talking
19 about?

20 A. Yes, ma'am, appears to be yes, ma'am.

21 Q. Okay, and you said you collected some gloves from the
22 garage, what what do you mean?

23 A. Uh, there was a, to the, uh, to the left of the safe
24 there's another rack, uh, and it had a box of gloves that were
25 similar, uh, to these gloves and I I took two gloves outta

BEN CANNON - DIRECT EXAMINATION BY MS. ABEE

1 the -- this, uh, box and collect those as well.

2 Q. Show you State's Exhibit No. 29, is this the bo -- well
3 here we go, is this (indicating) the box a gloves that you're
4 referencing?

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

6 Q. And were there still gloves left inside a this box?

7 A. Yes, ma'am.

8 Q. After you collected the gloves wha'd ya do?

9 A. During this time probly around the same time, uh,
10 Investigator Gonzalez and, uh, Investigator Morgan were inside
11 the house with the, with the canine checkin' the interior
12 portion of the home.

13 Q. And were you in there at all, uh, while Misty was doing
14 her job or searching the area?

15 A. No, ma'am, I was not.

16 Q. And when did you walk into the room?

17 A. I was, I went into the room after Investigator Gonzalez
18 advised me that the, uh, dog had alerted to a pair of shoes,
19 uh, and he actually point out what shoes the dog alert to.

20 Q. Was there anything different about the room from when you
21 were in it earlier?

22 A. The only thing that I could tell, you know, right offhand
23 was there was a a, Mr. Rose's trooper uniform was laying on
24 bed.

25 Q. And was that on the bed earlier?

BEN CANNON - DIRECT EXAMINATION BY MS. ABEE

1 A. No, ma'am, it was not.

2 Q. And what did you do after Investigator Gonzalez showed
3 you where the shoes were?

4 A. I collected the, uh, slippers in the same method that I,
5 that I did the, uh, samples from the porch area: clean pair a
6 gloves for each slipper and also a clean unused paint can for
7 each slipper.

8 Q. Now at that point was Ms. Rose a suspect?

9 A. She was a potential suspect in my mind that time.

10 Q. Why?

11 A. Uh, due to everything that we had discussed earlier now
12 the shoes have an accelerant, possible accelerant on them and
13 also the hatchet found on the property still, uh, like it been
14 placed there, like nobody had -- like if I were a burglar
15 suspect I would toss it, take it with me, some a the nature
16 and it was hi -- appeared to have been placed head down
17 amongst the bottles and also, again talkin' about the
18 concealment fire, we went back and look, no fire was present,
19 uh, or it even appeared to be a, you know, a third additional
20 fire inside of the garage.

21 Q. And we've heard some testimony earlier about a retrieving
22 clothes, the clothes that Ms. Rose was wearing earlier in the
23 day, were you over at Ms. Hansen's apartment when that
24 happened?

25 A. Yes, ma'am, I did arrive over there, yes, ma'am.

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1 Q. And if you could, tell us why you wouldn't split the
2 clothes in half?

3 A. It is possible that if you split clothes in half that one
4 portion may have, uh, some type of ignitable liquid and the
5 other portion may not have it.

6 Q. So why do you not do it as far as the integrity of your
7 investigation goes?

8 A. That would, that would, you know, that would, uh, that
9 would be detrimental to the integrity of it pretty much. Uh,
10 when they do the, as as she testified earlier, when they do
11 the samples, you know, they just open the can and whatever is
12 in there is what they they they do, they don't actually
13 pinpoint where the actual, uh, ignitable liquid is located on
14 the clothing.

15 Q. Now while you're at Ms. Hansen's apartment was Ms. Rose's
16 demeanor similar to earlier in the day?

17 A. No, ma'am, she had been calm even, uh, even at the house,
18 uh, when we were takin' the slippers, uh, she basically was
19 the same demeanor. When I arrived on scene, uh, at
20 Ms. Hansen's apartment, she was irate and was like a totally
21 different person. She was screamin', yellin', uh, and on the,
22 she was on the phone and from what I've learned, uh, it was
23 her attorney she was on the phone with.

24 Q. And those are the clothes that you sent down to SLED?

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

BEN CANNON - DIRECT EXAMINATION BY MS. ABEE

1 Q. When you collected those clothes, did you use the same
2 manner and method the paint cans and the fresh gloves?

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

4 Q. After collecting of the clothes and and all of the
5 different samples, did you submit those down to SLED?

6 A. Yes, ma'am.

7 Q. Okay, and then what did you do as the next step in your
8 investigation?

9 A. If I can look through real quick.

10 Q. I I can ask you this: Are you aware of whether or not
11 Ms. Rose called 911?

12 A. Yes, ma'am, I believe that was my next step was to, uh,
13 pull the 911 tape, have it, have it pulled by the, uh, uh, 911
14 operator.

15 Q. And why would you do that as a step in your
16 investigation?

17 A. Just to see if what she said durin' the 911 tape matched
18 up to, uh, what she, what the statement she had made to
19 Investigator Morgan.

20 Q. And did it match up?

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

22 Q. Okay, what were some things that were different?

23 A. Uh, the main thing, uh, that I noticed was in the
24 beginnin' of the statement of the 91 [sic] call. She said
25 there were three men threatening her trying to get her to open

BEN CANNON - DIRECT EXAMINATION BY MS. ABEE

1 the safe, uh, and what that means to me is someone is actively
2 threaten me tryin' to get me to open the safe, exactly what it
3 said, uh, and that's that's mentioned nowhere any any
4 statements that I've seen about this case.

5 Q. Is there anything else that was different?

6 A. Um, at at one point she said she looks outside, uh, to
7 check the gates, see if they're open or not, uh, and from her,
8 the early, earlier picture if she was lookin' out there, I
9 believe that she would be able to see if the porch was on fire
10 or if anyone's tryin' to set the porch on fire.

11 Q. Is that this photo that we're talkin' about here
12 (indicating)?

13 A. Yes, ma'am.

14 Q. And at any point in time when she's on the phone with
15 911, does she mention seein' the front porch on fire?

16 A. No, ma'am.

17 Q. Was there anything else?

18 A. Not not right offhand I can recall without lookin' at my
19 notes.

20 Q. When did you receive the results back from SLED?

21 A. Uh, August 13th 2012.

22 Q. When did you seek warrants on Ms. Rose?

23 A. I believe it was September 11th, believe the date was
24 September 10th.

25 Q. Did those results, uh, influence your investigation at

BEN CANNON - DIRECT EXAMINATION BY MS. ABEE

1 all?

2 A. Uh, they they had a to -- they had part a totality of
3 circumstances, yes, ma'am.

4 Q. What about, uh, we've heard some talk about DNA and
5 rubber gloves, ---

6 A. Yes, ma'am.

7 Q. --- what did you do with those gloves that you saw at the
8 scene?

9 A. Uh, they were collected by, uh, forensics and later they
10 were swabbed for DNA.

11 Q. Okay, do you recall when those results came back?

12 A. No, ma'am, not right offhand no, ma'am, I sure don't.

13 Q. Do you know if you had those results prior to seeking a
14 warrant on Ms. Rose?

15 A. I did not have those.

16 Q. Okay, and why would you seek a warrant without having
17 those results?

18 A. Uh, I had, I I had probable cause and lookin' at the
19 entire, at that point lookin' at all the information I had
20 from Brooks reporting, State Farm, uh, the 911 calls and
21 speakin' with all the investigators, uh, and solicitor we felt
22 we had probable cause to, uh, seek the warrants that I did
23 obtain.

24 MS. ABEE: Your Honor, may I have one second?

25 THE COURT: (No audible response.)

BEN CANNON - DIRECT EXAMINATION BY MS. ABEE

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

2 BY MS. ABEE:

3 Q. Uh, briefly just jumping backwards to the hatchet, did
4 you send those off to be tested?

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

6 Q. And to your knowledge were there any prints found on the
7 hatchet?

8 A. No, ma'am.

9 Q. Are you aware, uh, of the different classifications of
10 fires?

11 A. Yes, ma'am.

12 Q. Okay, and how many different classifications are there?

13 A. There's four classifications, uh, they're incendiary,
14 natural, uh, undetermined, I'm gonna draw a blank 'cause you
15 just asked me that, uh, ---

16 Q. But you just ---

17 A. --- accidental, I'm sorry.

18 Q. Okay. And what did you rule this fire to be?

19 A. Uh, it was definitely incendiary in nature both both, uh,
20 areas.

21 Q. Explain to us what "incendiary in nature" means.

22 A. Uh, it's where as I, as I stated early earlier it's where
23 a fire is intentionally set.

24 Q. And are there different reasons why a an individual would
25 set, intentionally set a fire?

BEN CANNON - DIRECT EXAMINATION BY MS. ABEE

1 MR. RIORDAN: Object to ---

2 THE COURT: Sustained.

3 MR. RIORDAN: He's ---

4 BY MS. ABEE:

5 Q. Can you explain to us what a concealment fire is.

6 A. Uh, yes, ma'am. I stated earlier concealment fire is
7 used to, uh, conceal an act that's al -- that's been, an act
8 that's already been, already ha -- that has already occurred
9 such as a burglary, murder, uh, concealment of documents,
10 things a that n -- things a that nature to conceal a crime.

11 Q. And to your knowledge how many entrances and exits were
12 there in this house?

13 A. Three.

14 Q. Okay, and which two entrances and exits were the fires
15 at?

16 A. The, uh, front porch and the back porch.

17 Q. And where was the other entrance or exit?

18 A. Uh, the garage area.

19 Q. And where did Ms. Rose say that she saw these three
20 individuals?

21 A. Uh, just outside the garage door at the safe.

22 Q. And was there material within that garage that could be
23 set on fire?

24 A. Uh, yes, ma'am, basically the entire garage is made of
25 wood construction, uh, there's cleaners everywhere, plastics,

BEN CANNON - CROSS-EXAMINATION BY MR. RIORDAN

1 all that stuff is very combustible.

2 Q. And did you see any sign that there was any attempt to
3 set a fire in the garage area?

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

5 MS. ABEE: Your Honor, I have no further questions.

6 THE COURT: Cross-examination.

7 MR. RIORDAN: May it please the Court.

8 THE COURT: Yes, sir.

9 MS. ABEE: Your Honor, if I may just have one second to
10 cover this up so it doesn't ---

11 THE COURT: Yes, ma'am.

12 MS. ABEE: --- blind anyone.

13 THE COURT: Mr. Riordan, would you like that, uh,
14 projector be cut off?

15 MR. RIORDAN: Yeah, you can turn it off.

16 MS. ABEE: I I will, Your Honor, it just takes one second
17 for it to ---

18 THE COURT: Sure.

19 MS. ABEE: --- cool down so I'm ---

20 THE COURT: Sure, sure.

21 MS. ABEE: --- gonna just go ahead and cover it so it's
22 not in anyone's way.

23 CROSS-EXAMINATION BY MR. RIORDAN:

24 Q. Investigator Cannon, you and especially, uh, Randy
25 Morgan, I mean, in your report you make a big point about your

BEN CANNON - CROSS-EXAMINATION BY MR. RIORDAN

1 observations of the demeanor of Mrs. Rose and how odd you
2 found that, right?

3 A. Yes, sir.

4 Q. You thought that was really important in this case,
5 didn't ya?

6 A. It was one factor.

7 Q. And again, part a that, I mean, that I haven't asked you
8 yet, let let ---

9 A. Sure.

10 Q. --- me, let me go through, you've been here the whole
11 time so I know you've heard it, but let me make sure we got
12 you sayin', answer the same things. As a fire investigator
13 you wanna be objective, don't ya?

14 A. Absolutely.

15 Q. You wanna be fair and impartial, explore and exhaust any
16 and all possible explanations, don't ya?

17 A. Yes, sir.

18 Q. You wanna do so, uh, by showing that you've maintained a
19 great record.

20 A. Yes, sir.

21 Q. You want it to be accurate and timely and professionally
22 done, ---

23 A. Yes, sir.

24 Q. --- correct?

25 A. Yes, sir.

1 Q. And you wanna be transparent, everything you produce you
2 know if you're gonna file, if you're gonna file charges, you
3 better turn that all over to the people so they know what
4 they're bein' charged with, right?

5 A. Yes, sir.

6 Q. You try to do that, that's what's fair, isn't it?

7 A. Correct.

8 Q. You wanna be meticulous, you wanna go through and make
9 sure everything you do is meticulous and it's correct.

10 A. I've tried to, yes, sir.

11 Q. You've talked about, you just talked about here some a
12 the discrepancies in her statement, right, ---

13 A. Correct.

14 Q. --- and that was important to you.

15 A. Yes, sir.

16 Q. Do you guys have any dis -- you've been here throughout,
17 are there discrepancies that exist between the reports of the
18 three investigators and the numerous officers that exist?

19 A. Yes, sir.

20 Q. And so to the extent you think that's important for her,
21 you think the jury should find that important too. The extent
22 you have, uh, discrepancies in your report, I mean, they've
23 got, they've got a burden to to to find her not guilty if
24 there's any reasonable doubt, correct?

25 A. Correct, yes, sir.

BEN CANNON - CROSS-EXAMINATION BY MR. RIORDAN

1 Q. And you're puttin' in this report that discrepancies like
2 that are the basis for probable cause to arrest this woman,
3 right?

4 A. It's one of the totalities, yes.

5 Q. That's part of what you did, right?

6 A. Yes, sir.

7 Q. Alright, and you're the lead investigator in this case?

8 A. Correct.

9 Q. And you unlike, uh, Investigator Gonzalez you have ne --
10 you are not a member of any, uh, arson investigation
11 professional association, are you?

12 A. No, sir.

13 Q. In fact, it's interesting but the main one we've been
14 readin' that code of ethics that he's involved in, he was, he
15 was accepted into that in March a this year, right?

16 A. I ---

17 Q. You need to look at his resume?

18 A. No, if you say so I'll I'll go with ---

19 (Indiscernible cross-talk.)

20 Q. You agree with me, don't ya? You got no reason to
21 dispute it, do ya?

22 A. I don't have a reason to, no, sir.

23 Q. Alright, so March a this year the first time we talked
24 about this case with the AG, this case was set to be tried in
25 February, wasn't it?

BEN CANNON - CROSS-EXAMINATION BY MR. RIORDAN

1 A. I'm not sure.

2 Q. You don't know?

3 A. It's it's it was the beginning a the year, yes.

4 Q. Okay, and but now we're here, ---

5 A. Yes, sir.

6 Q. --- alright, but if it had been done early February, he
7 wouldn't have been in, uh, certified investigator would he?

8 A. I believe he had some prior certification to that.

9 Q. Okay, not not in the main one with the code of ethics
10 we've talked about with the other experts, was he?

11 A. No, sir.

12 Q. Had a code of ethics about bein' a truth seeker instead
13 of a case maker, ---

14 A. Yes, sir.

15 Q. --- that you better protect the innocent rather than
16 worry about anything with anyone guilty, right?

17 A. Correct.

18 Q. You've heard that said about our criminal justice system:
19 We'd rather have ten or maybe it's a hundred, hundred guilty
20 people go free rather than one innocent person to be
21 convicted, right?

22 A. Okay, sound ---

23 Q. You've heard those arguments, right?

24 A. No, sir.

25 Q. You've never heard that?

BEN CANNON - CROSS-EXAMINATION BY MR. RIORDAN

1 A. No, sir.

2 Q. Would you agree if you're the one innocent person?

3 A. Absolutely.

4 Q. Absolutely you would, right? You agr -- we have some
5 agreement here.

6 A. Yes, sir.

7 Q. Okay. The, uh, if this case had been tried in February,
8 early February, ---

9 A. Yes, sir.

10 Q. --- when we, when did we have our meeting? When did I
11 first meet you face-to-face for sure, I may have met you
12 before but I don't remember it, when's the first time,
13 February 27th?

14 A. It was in February, yes, sir.

15 Q. That was our big, we talked about bein' transparent, that
16 was our big date set since before the end a the year to get
17 together so we could come finally, what, a year is twelve
18 months, five, seventeen, eighteen, nineteen months plus to
19 finally see, let's see this evidence that you've got, we need
20 to know as we prepare so we at least have some time to prepare
21 for this case, right?

22 A. Yes, sir.

23 Q. And at that time again, if we'd a tried the case three
24 weeks earlier, we didn't even have the DNA results yet, did
25 we?

BEN CANNON - CROSS-EXAMINATION BY MR. RIORDAN

1 A. Not to my knowledge, I think we ---

2 Q. Yeah, it was provided the next day, right?

3 A. Yes.

4 Q. Yeah, and you're supposed to turn that stuff over,
5 right?

6 A. Yes, sir.

7 Q. You guys had those results from November 8th of 2012,
8 right?

9 A. All the evidence was turned over to the solicitor's
10 office originally, oh, and I turned over everything that I
11 had.

12 Q. You turned that over to the solicitor's office?

13 A. Yes, sir, I did.

14 Q. Solicitor's office isn't tryin' this case, are they?

15 A. No, sir, they're not.

16 Q. Yeah, they didn't wanna try this case, did they?

17 MS. ABEE: Objection.

18 THE COURT: Sustained.

19 BY MR. RIORDAN:

20 Q. Who did you deal with at the solicitor's office, let me
21 make sure I understand that then?

22 A. I believe it was Solicitor Fretwell, I'm not mistaken.

23 Q. Okay. When did you turn that over to him?

24 A. I don't have a ---

25 Q. Was I involved at that time?

BEN CANNON - CROSS-EXAMINATION BY MR. RIORDAN

1 A. Well you were involved from when she was charged so I'd
2 have to say ---

3 Q. Yeah, ---

4 A. --- yes, sir.

5 Q. --- I never got it before February 28th, did I?

6 A. I ---

7 (Indiscernible cross-talk.)

8 Q. If you gave it to a prosecutor, they've got a duty under
9 my Rule 5 request to give it right over to me, right?

10 A. Correct.

11 Q. That's what transparency's all about, isn't it?

12 A. Yes, sir.

13 Q. That didn't happen here, did it?

14 A. I'm not aware.

15 Q. Okay. Back to it though, you're not a certified fire
16 investigator at all, are ya?

17 A. No, sir.

18 Q. We talked earlier about all the qualifications you have
19 in regar, uh, that you had, your experience at the time of
20 this fire, correct?

21 A. Yes, sir.

22 Q. You had taken a course, what was it fire scene
23 safety, ---

24 A. Uh, ---

25 Q. --- is that what one of 'em was?

BEN CANNON - CROSS-EXAMINATION BY MR. RIORDAN

1 A. Yes, sir.

2 Q. Well we know you took the photography course, right?

3 A. Yes, sir.

4 Q. We've already talked about that with your ph ---

5 A. Yes, sir.

6 Q. --- photographic skills in this case, right?

7 A. Yes, sir.

8 Q. Uh, you get out there on the scene, let let's talk 'cause
9 you talk about demeanor. Again, you guys ---

10 A. Sure.

11 Q. --- make a big point about her demeanor, no videotape
12 whatsoever of her demeanor, is there?

13 A. No, sir.

14 Q. Alright, when you, when you arrive on the scene, you make
15 a comment about that. You arrive there, per the log you're
16 there at 9:27, right?

17 A. If that's what it says, I -- around 9:30, yes.

18 Q. You're the investigator have you looked to see?

19 A. Yes, I looked at it before.

20 Q. Important to know the facts, right, as when you arrive
21 and start gaining information.

22 A. Correct.

23 Q. And I will tell you my understanding is, if you wanna
24 agree with that's good, 9:27 you're there, that's over an hour
25 after Robbie Brown's come down with a shotgun and arrived on

BEN CANNON - CROSS-EXAMINATION BY MR. RIORDAN

1 the scene, right?

2 A. Yes, sir, it is.

3 Q. And all kinds of other law enforcement's there followin',
4 right?

5 A. Correct.

6 Q. And by then the fire fighters have saved all their pets,
7 correct?

8 A. To my knowledge yes, sir.

9 Q. Okay. Any danger that existed was long gone by the time
10 you got there, right?

11 A. I would hope so yes, sir.

12 Q. Yeah, any -- and you're talkin' about her bein' frantic,
13 you said losin' pets, you know he or she was thankful they had
14 saved all her pets, right?

15 A. Right.

16 Q. Well so what is it about her demeanor that you found
17 strange?

18 A. To me that's a dramatic event.

19 Q. To you ---

20 A. Yeah.

21 Q. --- and it was dramatic ---

22 A. Yes, sir.

23 Q. --- right?

24 A. Yes, sir.

25 Q. Par -- part of making, it it's kinda dangerous to make

BEN CANNON - CROSS-EXAMINATION BY MR. RIORDAN

1 determinations and and and draw opinions as to how someone
2 should act, isn't it?

3 A. Well I think I just referenced it one time.

4 Q. You you guys seem like you've never been interested. You
5 heard about all her arrests and writin' a book but not a one
6 of yas been curious enough and I, and I sent ya a whole packet
7 of information this weekend, didn't I?

8 A. No, sir.

9 Q. You di -- you didn't get yours?

10 A. No, sir.

11 Q. Why not? Didn't show up?

12 A. No, sir.

13 Q. Alright, well Gonzalez got his, right?

14 A. To my knowledge yes, sir.

15 Q. And, uh, Morgan got his, right?

16 A. No, sir, I don't think so.

17 Q. Well he said his mom got it.

18 A. Correct.

19 Q. Yeah, he didn't get it. You coulda got it from either
20 one a them, right? Your name was on it, you knew you were
21 supposed to get it, right?

22 A. No, sir.

23 Q. You didn't know that? You haven't seen the letter ---

24 A. No.

25 Q. --- your name on it?

BEN CANNON - CROSS-EXAMINATION BY MR. RIORDAN

1 A. No.

2 Q. Okay, okay. Well even with that, I mean, you guys don't
3 seem to have any curiosity 'bout what she went through, do
4 ya?

5 A. No, sir.

6 Q. Doesn't matter to you, does it?

7 A. No, sir.

8 Q. You make opinions about her and her demeanor without
9 knowing a thing about her background and what she's been
10 through, right?

11 A. Correct.

12 Q. That's dangerous, isn't it?

13 A. I don't think so, no.

14 Q. That's makin' presumptions, isn't it?

15 A. Just my opinion.

16 Q. Yeah, your opinion.

17 A. Yes, sir.

18 Q. No basis to it other than your opinion, right?

19 A. Correct.

20 Q. You don't give this jury any reason do it, so that's an
21 interesting thing so that day threat was over, right, that's
22 the time you arrive, you make these ob -- and and you didn't
23 make that observation immediately, did ya, it's probly much
24 later after you've observed her that you make that the form
25 that opinion ---

BEN CANNON - CROSS-EXAMINATION BY MR. RIORDAN

1 A. Yeah, it's a few minutes, probly ---

2 Q. --- and you ---

3 A. --- 15, 20 minutes later.

4 Q. Alright, and you, I mean, you had, you had two fire
5 courses, you've never taken any course on human factors or
6 psychology or anything like that, have ya?

7 A. I've taken some interview classes, yes, sir.

8 Q. Interviewing witnesses?

9 A. Uh, both in at witnesses and suspects.

10 Q. You don't suggest to be an expert in psychology ---

11 A. No, sir.

12 Q. --- to try to give an opinion on regard to somebody's
13 demeanor or behavior, do ya?

14 A. Absolutely not.

15 Q. And Randy Morgan he was up here, I mean, you you've got
16 his report, right?

17 A. Yes, sir.

18 Q. He can't even spell demeanor, can he?

19 A. There's some spelling issues in his ---

20 (Indiscernible cross-talk.)

21 Q. Yeah, big issues with him, he can't even spell the word
22 but he's commenting her -- alright, well let's talk about it
23 just 'cause we've -- you don't have any witness o -- it's you
24 and Randy Morgan are the only people. You can come in here
25 and talk about her demeanor, right, that's what ya'll say her

BEN CANNON - CROSS-EXAMINATION BY MR. RIORDAN

1 demeanor wasn't appropriate but we've got thirteen witnesses
2 here and you've been in here the whole time, right?

3 A. Yes, sir.

4 Q. Because of your charges this (indicating defendant)
5 lady's life ma -- she -- her liberty's on the line right now,
6 she's been here all week, what's your observation of her?

7 A. She's been relatively calm except for, ---

8 Q. Relatively calm, hasn't she?

9 A. --- except for a few times.

10 Q. You'd agree there's been much more danger from the start
11 a this week as there was when you arrived on the scene,
12 right?

13 A. This week yes, sir, I ---

14 Q. That's a good, that that's a good thing to to consider
15 when someone wants to consider somebody's demeanor and how
16 they act, that be a good way to do it, isn't it?

17 A. No, uh, ---

18 (Indiscernible cross-talk.)

19 Q. Yeah, let them observe it and see, ---

20 A. Sure.

21 Q. --- right?

22 A. Sure.

23 Q. Yeah, that's fair. And again, I -- the curiosity, the
24 lack of curiosity you guys have. Randy Morgan ran her rap
25 sheet, correct?

BEN CANNON - CROSS-EXAMINATION BY MR. RIORDAN

1 A. Uh, that's what he said on the stand yes, sir.

2 Q. Burglary second grand larceny [sic] those are serious
3 offenses, aren't they?

4 Q. Yes, sir?

5 Q. There's one count a that, another one burglary second
6 grand larceny, right?

7 A. Yes.

8 Q. And insurance fraud, boy that perked up your ears, didn't
9 it, when ya'll heard about insurance fraud and that type a
10 case.

11 A. I didn't know anything about that.

12 Q. You didn't know anything about it, okay.

13 A. No, sir.

14 Q. Harassment, all kinds a charge, he ran the whole rap
15 sheet, correct?

16 A. Yes.

17 Q. It, and the rap sheet shows every case dismissed,
18 correct?

19 A. Not guilty, yes.

20 Q. Not guilty, not guilty 'cause she came in and said no
21 matter who's arrested me somebody bringin' charges and getting
22 indictments she says I'm not guilty, I'm gonna trust a jury,
23 you know by her record, takes it to trial and finds out what?
24 What what's her result? not guilty. Not guilty. And he
25 talked about it, he said, yeah, the burglary second grand

BEN CANNON - CROSS-EXAMINATION BY MR. RIORDAN

1 larceny there musta been two January 26th and then the rest of
2 'em are dismissed, what does that tell ya about the cases
3 brought against her?

4 A. May have been weak cases.

5 Q. May have been weak cases.

6 A. Or maybe the solicitor didn't wanna try 'em.

7 Q. Yeah, well then then since you guys didn't look let's
8 assume this that you wanna talk about her demeanor and how
9 someone should act, ---

10 A. Sure.

11 Q. --- let's assume, let's assume SLED brings allegations
12 that someone robbed their former em -- place of
13 employment, ---

14 A. Okay.

15 Q. --- they bring that person in for questioning and
16 initially gives a statement just like every other employee
17 that worked there but then five hours later there's another
18 statement, you said you'd taken confir -- uh, interro --
19 inter -- interrogation courses?

20 A. Yes, sir.

21 Q. You got, when you take those interrogation courses,
22 again, it's a good thing -- well, you guys said you have a
23 policy you never video or audiotape those, do ya?

24 A. I never have no, sir.

25 Q. Never ha -- is that, is that true, now Randy Morgan said

BEN CANNON - CROSS-EXAMINATION BY MR. RIORDAN

1 that's the policy, is that true?

2 A. I don't know if it's a policy or not, I hadn't heard that
3 before.

4 Q. It's not a good policy if it is, is it?

5 A. No, sir.

6 Q. And he said we just don't do it, didn't he?

7 A. Yes.

8 Q. You heard him on the stand under oath Greenville County
9 Sheriff's Office doesn't do it. Tell this jury do -- are you
10 aware of any investigator Greenville County Sheriff's Office
11 that videotapes statements?

12 A. I've seen 'em video before.

13 Q. Yeah, they video 'em all the time, don't they?

14 A. I never have but I've seen 'em, yes.

15 Q. Yeah, you'd get 'em and they'll put 'em up on the
16 solicitor website, that's how you get discovery, they send ya
17 a little link and ya come in and ya watch it, right?

18 A. I'm not aware a that.

19 Q. So that, so you'd agree his testimony that's false
20 testimony, isn't it?

21 MS. ABEE: Objection, Your Honor, pitting the witnesses.

22 THE COURT: Sustained.

23 BY MY RIORDAN:

24 Q. That's one way to jud -- that's credibility though,
25 right, that's what it goes to, things people say and, uh,

BEN CANNON - CROSS-EXAMINATION BY MR. RIORDAN

1 discrepancies that exist. We're talkin' about discrepancies,
2 you're talkin' about how big these discrepancies are and
3 wha -- and why that's so suspicious and she's here, right?

4 A. Yes, sir.

5 Q. You guys amongst yourselves on the witness stand have
6 discrepancies, right?

7 A. I'm sure there's a difference of recollection yes, sir.

8 Q. Yeah, back to my example, and so after five hours let's
9 assume this person, get to interrogations, police and
10 interrogations ya'll can lie, can't ya?

11 A. We can lie to get to the truth, yes.

12 Q. Yeah, you can lie to 'em. You can tell 'em friends of
13 theirs, highway patrolmen saw them at the scene of a burglary,
14 right, you can tell 'em that if you want to.

15 A. Absolutely.

16 Q. Yeah, you can tell 'em your husband says ya did it,
17 right?

18 A. Sure.

19 Q. You can tell 'em, Hey, I think you did this but troopers
20 say ya did it with with a man and we think it's this paramour,
21 a friend, think you can lie to 'em about that, right?

22 A. Sure.

23 Q. You can drag up that paramour and let the person see that
24 the guy's there, see that he's there and then come back and
25 lie to him and say, Hey, he says he didn't do it but he says

BEN CANNON - CROSS-EXAMINATION BY MR. RIORDAN

1 you did, they can do that, right?

2 A. Yes, sir, they can.

3 Q. And then, and then after after five hours a questioning
4 they come in and say, We know ya did it, he said he wasn't
5 there, we think you're with your 17-year-old son, we're gonna
6 charge both of ya, you know what they do to little boys like
7 that in jail, you think a mother hearin' all that might do?
8 Might she give a statement that can be interpreted as being a
9 confession?

10 A. I I wasn't there, I would never ---

11 (Indiscernible cross-talk.)

12 Q. I know, that's my hypothetical, don't you agree?

13 A. Yes, sir.

14 Q. That would be plausible, right? She's not given any real
15 good option there, is she?

16 A. No.

17 Q. And and when you guys, just like this case, you guys have
18 the power to determine what probable cause is, right?

19 A. Yes, sir.

20 Q. You can take that information and say, I got a statement,
21 I got a confession, go to a ju -- to go to a magistrate judge
22 and they're liable to write out a, write out a warrant,
23 correct?

24 A. Yes, sir.

25 Q. Yeah, then you can put 'em in jail. Let's assume you put

BEN CANNON - CROSS-EXAMINATION BY MR. RIORDAN

1 that person, no record whatsoever in their life, put 'em in
2 jail, no record, usually person with no record gets a PR bond,
3 don't they?

4 A. That's up to the judge.

5 Q. That's not unusual, is it?

6 A. It's not unusual.

7 Q. Alright, but for some reason get a high bond and they're
8 stuck in here for a couple days, that can happen too, can't
9 it?

10 A. Absolutely.

11 Q. And so an an and and when you're in jail there's all
12 kinds a people in jail that can't get out, can they?

13 A. I'm sure.

14 Q. I mean, there's people if if you, if you have warrants
15 and you don't show up, there might be a bench warrant issued
16 for ya, right?

17 A. Yes, sir.

18 Q. And a bench warrant once you're apprehended you sit in
19 ja -- you don't get bond on a bench warrant, you sit in jail
20 'til your case is handled, right?

21 A. Uh, usually until you see the magistrate who issued the
22 warrant.

23 Q. You ever use a jailhouse informant?

24 A. No, sir.

25 Q. Someone comes up and says, Hey, so and so's in here I can

BEN CANNON - CROSS-EXAMINATION BY MR. RIORDAN

1 take ---

2 MS. ABEE: Objection, Your Honor, ---

3 THE COURT: Sustained.

4 MS. ABEE: --- relevance.

5 MR. RIORDAN: Okay.

6 BY MR. RIORDAN:

7 Q. Let me ask ya this: ---

8 A. Yes, sir.

9 Q. --- say that same person when they're being questioned,
10 'cause this is key in this case, gives consent to search to
11 their home ---

12 A. Yes, sir.

13 Q. --- and just like in this case consent to search items
14 are taken and ya write 'em out, correct?

15 A. Correct.

16 Q. Let's assume the consent to search says, "Financial
17 records taken," can ya envision this?

18 A. Sure.

19 Q. Alright, and then by the time you get to trial there are
20 no financial records, that that's interesting, isn't it?

21 A. Yes, sir.

22 Q. Alright, but but you, but luckily you've got the sheet
23 that says that, let's jump ahead though. We've got this
24 arrest, second arrest, dor, uh, dormant case of a break-in
25 same place, Hey, let's draft a SLED report that says, This

BEN CANNON - CROSS-EXAMINATION BY MR. RIORDAN

1 case is dormant but this new case happened, we've arrested
2 her, she's confessed, while she was in jail we got a jailhouse
3 confession sayin' that she did it and then the search,
4 remember the sear -- remember the consent, ---

5 A. Yes, sir.

6 Q. --- all the same financial records and then the SLED
7 report that's drafted says, And per a consent to search found
8 inside her home were a set a keys that fit all the locks at
9 the place that was robbed, you read that SLED report that's a
10 pretty powerful report, isn't it?

11 A. Sure, yes, sir.

12 Q. Alright. And SLED, you draft sumtin' like that, a judge
13 is liable to sign it right off the bat, aren't they?

14 A. For a warrant?

15 Q. Yep.

16 A. Yes, sir.

17 Q. 'Nother, 'nother, 'nother case right there.

18 A. Yes.

19 Q. Alright. And so what it's -- well it's and again, more
20 charge and more charges but you go to trial, hey that's the
21 first case, just assume this as the hypothetical: ---

22 A. Right.

23 Q. --- you go to trial, SLED agent's up on the stand, bein'
24 ni -- you know, the attorney involved's bein' nice to him say,
25 Look, you know we understand you mighta got off on the wrong

BEN CANNON - CROSS-EXAMINATION BY MR. RIORDAN

1 foot, her husband and others put in your mind that she's a bad
2 person, that's why you treated her that day when you
3 interrogate her for five hours and threatened her and he says,
4 No, no, no, no, under oath mind you, no, no, no, that's not it
5 at all, ---

6 MS. ABEE: Objection.

7 Q. --- didn't even talk to him.

8 THE COURT: State your objection.

9 MS. ABEE: It, this right here is calling for hearsay and
10 also, Your Honor, relevancy as ---

11 MR. RIORDAN: Uh, ---

12 MS. ABEE: --- well.

13 THE COURT: I'm not sure about the relevancy issue.

14 MR. RIORDAN: Goin' to the consent to search, Judge, it's
15 gon -- is that okay?

16 THE COURT: Tie it up quickly.

17 MR. RIORDAN: Alright.

18 BY MR RIORDAN:

19 Q. Denies, denies, denies the husband had anything to do
20 with it and on the stand just like yourself after denying it,
21 he's the one that took the statement, Okay, he said bad things
22 about you, right, told her -- told ya did this, right? What's
23 the date on the statement? Oh, made a mistake, yeah that
24 statement was ten days before I met with her. Okay, one
25 search was done in this case, right, here's the, here's the

BEN CANNON - CROSS-EXAMINATION BY MR. RIORDAN

- 1 consent, all that's taken's financial records, right? yep.
- 2 Then why do you draft a report in this case saying ya found
- 3 keys that fit all the locks because what's interesting the
- 4 manager of the place had testified earlier and said, Hey when
- 5 she left employment years ago she and another employee left we
- 6 changed all the locks and after the break-in three months
- 7 before we spoke to her and got consent we change the locks
- 8 again, that be powerful stuff, right? That that would be
- 9 concerning to a person that they'd been treated like that by
- 10 law enforcement, wouldn't it?
- 11 A. Sure.
- 12 Q. Wouldn't wanna give a consent to search anymore in their
- 13 life if they could help it, right?
- 14 A. I don't know, be thinking that.
- 15 Q. Yeah, well, it be reasonable, wouldn't it?
- 16 A. It could be, yes.
- 17 Q. You guys act like her reaction when she, when she
- 18 realizes you guys are comin' after her, if what I've talked
- 19 about is true, is there anything unreasonable about that?
- 20 A. No, sir.
- 21 Q. No, she's got a right to a attorney, doesn't she?
- 22 A. Absolutely.
- 23 Q. Absolutely.
- 24 A. Yes, sir.
- 25 Q. You guys write your report though as if that's some

BEN CANNON - CROSS-EXAMINATION BY MR. RIORDAN

1 evidence of guilt, right?

2 A. About what what portion?

3 Q. Well assu -- you deny that Charles Gonzalez when when
4 she -- he found out she's on the the phone with an attorney
5 said, Why do you need to talk to an attorney, do you deny
6 that?

7 A. I don't recall him sayin' that.

8 Q. You don't recall him sayin' that, okay. Let's get back
9 to this matter here. You arrive 9:27 and you say you wanna be
10 accurate 'cause discrepancies that's a big thing with you
11 guys, Dustin Kretschmar testified yesterday, didn't he?

12 A. Yes, sir.

13 Q. Alright, he says he got there about 11:20, somethin' like
14 that?

15 A. Yes, sir.

16 Q. Yeah, he says he spoke with you, you're you're the
17 officer and you're the investigating officer so he's speaking
18 with you, correct?

19 A. He didn't speak with me.

20 Q. Well that's that's what he testified to yesterday,
21 right?

22 A. I know what he said.

23 Q. Alright, so another officer under oath gives testimony
24 that you disagree with, is that correct?

25 A. I did not speak with him.

BEN CANNON - CROSS-EXAMINATION BY MR. RIORDAN

1 Q. Okay. He says, he says you told him, this is, this is at
2 11:30, that the incidents happened at seven o'clock.

3 A. That's what he said, yes.

4 Q. That's what he said, right?

5 A. Yes, sir.

6 Q. That's a big discrepancy, right?

7 A. Absolutely.

8 Q. H -- more than an hour off.

9 A. Yes, sir.

10 Q. Yeah. And and we didn't talk too much about, I mean,
11 again, after the way Paula was treated she filed a complaint
12 against, uh, Gonzalez, didn't she?

13 A. Yes, sir.

14 Q. Alright, you guys all hadn't responded, I just got the
15 results of or the report the other day, right, last week I
16 think last Thursday?

17 A. I'm not sure, we're not privy to that information.

18 Q. Not even a week ago, right? You're not privy?

19 A. No, sir.

20 Q. You gave a statement in there, right?

21 A. Yes, sir.

22 Q. Alright, so that's another thing that was out there that,
23 uh, had been levied against Mr. Gonzalez before you decided to
24 bring charges, right?

25 A. Yes.

BEN CANNON - CROSS-EXAMINATION BY MR. RIORDAN

1 Q. Okay. Talkin' about concealment fires, ---

2 A. Yes, sir.

3 Q. --- well do you consider this a concealment fire,
4 right?

5 A. I believe it was attempted to be yes, sir, ---

6 Q. Was attempted to be.

7 A. --- or what ---

8 Q. What ---

9 A. --- perceived to be ---

10 Q. When ---

11 A. --- initially.

12 Q. --- when you gain that information, talked about with
13 Gonzalez the database, what information did you all input into
14 a database to, uh, talk about the, uh, concealment fire in
15 this case?

16 A. I'm not sure about a database that you're talkin'
17 about.

18 Q. You don't know about it?

19 A. No, sir.

20 Q. Had y -- a -- well just to make sure, you're the lead
21 investigator, you got access to everybody's investigative
22 reports in this case, right?

23 A. Absolutely, right, yes, sir, I can look at 'em.

24 Q. Okay, and that includes the officers on the scene as
25 well.

BEN CANNON - CROSS-EXAMINATION BY MR. RIORDAN

1 A. Correct.

2 Q. Okay. Alright, is there any indication in any of those
3 reports that anyone ever checked any database to determine
4 the, uh, existence of other concealment fires in the area?

5 A. Well we haven't had any in Greenville, I'm not sure about
6 the surroundin' areas, I'm not sure if there is a database
7 that shows that.

8 Q. Okay, what about in the Upstate?

9 A. Sir?

10 Q. In the Upstate a South Carolina?

11 A. I'm not sure if there is a database.

12 Q. Not aware of any other concealment fires similar to this
13 one?

14 A. No, sir.

15 Q. Not at all?

16 A. Not not this time.

17 Q. Okay. Nothin's in your report that shows that, does
18 it?

19 A. No.

20 Q. Alright. Uh, let me do it, I'm sorry, skip around a
21 little bit. You did eventually take a or Randy Morgan, uh,
22 took a statement from from Mr. Rose, correct?

23 A. Yes, sir.

24 Q. And you're the lead investigator in this case and you got
25 copies of all that, right?

BEN CANNON - CROSS-EXAMINATION BY MR. RIORDAN

1 A. Yes, sir.

2 Q. First line, the first sentence in his, uh, ---

3 MS. ABEE: Objection, Your Honor, this is Homer Rose's
4 statement taken by Investigator Morgan.

5 THE COURT: And what is your objection?

6 MS. ABEE: Hearsay.

7 THE COURT: Sustained.

8 BY MR. RIORDAN:

9 Q. Okay. You you did -- did you ever speak with Homer?

10 A. Uh, on scene yes, sir, ---

11 Q. Okay.

12 A. --- not after that.

13 Q. I mean, you're the, you're the investigator in this case,
14 right?

15 A. Yes, sir.

16 Q. You're supposed to be familiar with every aspect of this
17 investigation, right?

18 A. I've seen ---

19 Q. You're the one guy I can go to to talk about what was
20 learned and and to figure out what your motives were and what
21 this case is about, correct?

22 A. Correct.

23 Q. Alright, and you're aware of what what Mr., uh, Rose had
24 to say in regard to the s -- you know about the safe, right?
25 Their -- this (indicating) is their safe, correct?

BEN CANNON - CROSS-EXAMINATION BY MR. RIORDAN

1 A. Yes.

2 Q. You don't ha -- I mean, there's nothing incriminating
3 about havin' the owners of the property have their
4 fingerprints on the safe, is there?

5 A. No, not at all.

6 Q. Okay. Alright. Talkin' about time, at at the, uh, at
7 the time of the arrest, ---

8 A. Yes, sir.

9 Q. --- had you spoken with any person who had called in to
10 911?

11 A. No, sir.

12 Q. Why not?

13 A. Uh, no reason. To be honest with ya, ---

14 Q. Okay.

15 A. --- I don't have a legitimate reason.

16 Q. Alright, but after after that you did, you continued your
17 investigation even after the arrest, right?

18 A. Correct.

19 Q. But the investigation was all against Paula, right?

20 A. Yes.

21 Q. You didn't look any pl -- any other avenues, did ya?

22 A. Uh, not after the evidence that we obtained at the
23 scene.

24 Q. Okay. That was the clothing and the shoes, right?

25 A. Paint chips, etc., ---

BEN CANNON - CROSS-EXAMINATION BY MR. RIORDAN

1 Q. Alright, okay.

2 A. --- and then after, also after receiving the reports from
3 Brooks reporting and also from State Farm.

4 Q. Well tell me what Brooks reported, what did they add to
5 this? Phil Brooks didn't have anything to add that
6 incriminated Paula, did he?

7 A. Uh, if ya give me, can I look at notes ---

8 Q. Sure.

9 A. --- now.

10 (Whereupon, the witness examined the notes.)

11 I have, uh, two discrepancies but that's just as to all
12 of 'em together ---

13 Q. Right.

14 A. --- Brooks reporting.

15 Q. Alright, well he he he he summarizes his report, right?
16 He he comes to a conclusion in his report, right?

17 A. Brooks?

18 Q. Yeah.

19 A. Yes.

20 Q. There's no -- I mean, you heard his testimony too, he
21 didn't have any evidence to add, uh, in regard to, uh, Paula's
22 complicity in an arson, did ye -- did he?

23 A. No.

24 Q. He never made that assertion, did he?

25 A. No, sir.

BEN CANNON - CROSS-EXAMINATION BY MR. RIORDAN

- 1 Q. No one at State Farm did either, right?
- 2 A. No, sir.
- 3 Q. And you never spoke to anyone at State Farm, did ya?
- 4 A. No, sir, I just ---
- 5 Q. Di ---
- 6 A. --- obtained the reports.
- 7 Q. No one at State Farm asked you to bring a case for
- 8 insurance fraud or burning to obtain insurance proceeds, did
- 9 they?
- 10 A. No, sir.
- 11 Q. And, I mean, and again, I I understood yesterday that the
- 12 motive in this case is for publicity, right?
- 13 A. That's what the Attorney General said, yes.
- 14 Q. Okay, well you -- do do you disagree?
- 15 A. I think there might be more to it than that yes.
- 16 Q. Okay, so you're not -- you don't wanna dismiss the other
- 17 charges then, right?
- 18 A. No, sir.
- 19 Q. Okay. Uh, the gun safe, I mean, that that was the,
- 20 that's where the guys were, correct, at the gun safe?
- 21 A. Yes.
- 22 Q. You have a gun safe?
- 23 A. Yes, sir, I do.
- 24 Q. Keep guns at home?
- 25 A. Absolutely.

BEN CANNON - CROSS-EXAMINATION BY MR. RIORDAN

1 Q. Family use 'em if they need to to defend themselves?

2 A. Yes, sir.

3 Q. You hope your wife will be calm if she had invaders come
4 into the house?

5 A. I'm not married but my girlfriend, yes, sir.

6 Q. Okay, you'd hope, you'd hope she'd do what Paula did,
7 right?

8 A. Take care a business yes, sir.

9 Q. Yeah, lock the door, get in the back, assess the threat
10 and get ready.

11 A. Sure.

12 Q. Shotgun on the bed, pistol in the, in the waist, right?

13 A. That's what was said yes, sir.

14 Q. Well that's what the first responder said, yeah, he was
15 kinda scared, he wanted to get her off the porch but she
16 had -- she was, ya know, pistol in her waistband, ---

17 A. Yes, sir, that's what, ---

18 Q. --- right?

19 A. --- that's what he testified to, yes.

20 Q. That's what he testified to, you never talked to him
21 before that.

22 A. No, sir.

23 Q. Never talked, you're the arson investigator in this case,
24 you never talked with the first fireman on the scene, right?

25 A. No, sir, I just talk to the, uh, who's ever in charge:

BEN CANNON - CROSS-EXAMINATION BY MR. RIORDAN

1 chief or assistant chief that's on the scene ---

2 Q. Well ---

3 A. --- usually.

4 Q. --- what what's the chief gonna give ya? He's not in
5 there fightin' fires and seein' what's goin' on, is he?

6 A. He's usually one a the first ones there.

7 Q. Who? Chief Randy Edwards?

8 A. Yes, sir.

9 Q. He hadn't been here testify, has he?

10 A. Not to my knowledge, no, sir.

11 Q. Yeah, okay. Real quick before I forget, ---

12 A. Sure.

13 Q. --- uh, last Wednesday I went down there, he tell ya I
14 went down to their department and sat around with a bunch of
15 'em?

16 A. He never told me that no, sir.

17 Q. You -- do you know if he called Gonzalez?

18 A. Yes, sir, he did.

19 Q. Yeah, after I left. I notice when I came in door was
20 open, when I left the door was closed. He called Gonzalez
21 right after I left?

22 A. I don't know when he, when he called.

23 Q. What did Gonzalez share with you as to what the chief at
24 the fire department had to say about our meeting?

25 MS. ABEE: Objection, Your Honor, hearsay.

BEN CANNON - CROSS-EXAMINATION BY MR. RIORDAN

1 THE COURT: Sustained.

2 MR. RIORDAN: Okay.

3 BY MR. RIORDAN:

4 Q. You never were curious as to what was in that gun safe,
5 di -- were ya?

6 A. No, sir.

7 Q. I mean, you say you're gonna be thorough and and and
8 check every avenue, right? We just agreed upon that, right,
9 that's what you wanna do to be thorough.

10 A. Sure.

11 Q. Isn't it, isn't it important to look to see what mighta
12 been enticing to three guys getting at a gun safe?

13 A. And to my know -- my knowledge nothin' was taken and if
14 the homeowner knew of somethin' there, I would imagine that
15 they would say, Hey, they may have been after this or this.

16 Q. Is it your testimony that neither of the Roses in giving
17 information in this case told you, Hey, there's only one other
18 person that has the combination to the gun safe, they told you
19 who had that, right?

20 A. No, sir.

21 Q. Never did?

22 A. No, sir.

23 Q. Well assuming that was Homer's ex-wife, ya'll did speak
24 with her, right?

25 A. I did not no, sir.

BEN CANNON - CROSS-EXAMINATION BY MR. RIORDAN

1 Q. You, yeah, you never did in this case, did ya, ---

2 A. No.

3 Q. --- Randy Morgan did.

4 A. Yes.

5 Q. Okay. Well assuming that they had advised there's only
6 one other person had the combo, it would be important to ask
7 them about their knowledge of the safe, wouldn't it?

8 A. The person had the combination?

9 Q. Yeah, yeah, ---

10 A. --- absolutely.

11 Q. --- ask 'em if they ever spoke with anyone and gave it
12 out, right?

13 A. Sure.

14 Q. Ask 'em if they knew durin' their marriage what kinda
15 things were kept in there, right?

16 A. I would assume so.

17 Q. And those those would be questions that you almost would
18 expect in investigation like this, correct, if you're bein'
19 thorough?

20 A. I don't, I don't think so.

21 Q. You don't think so, okay. You think other investigators
22 could disagree though, right?

23 A. I'm sure ---

24 Q. You do agree that others ---

25 A. --- but I can't ---

BEN CANNON - CROSS-EXAMINATION BY MR. RIORDAN

1 Q. --- can think that's important, correct?

2 A. --- I can't speak for other people.

3 Q. I mean, that that you've been involved with cases, you
4 said this safe was 4 feet tall?

5 A. Yes, sir.

6 Q. Okay. That's your test -- so you, so you were taller
7 than this safe that's your testimony ---

8 A. Yes, sir.

9 Q. --- under oath?

10 A. Yes, sir.

11 Q. Okay. Did, uh, and well then, Hey, a 4-foot safe it's
12 not too hard to pick up and take the whole safe, is it?

13 A. I I don't think I could do it by myself, for three men'd
14 be hard.

15 Q. Yeah, you couldn't do it by yourself but ---

16 A. No.

17 Q. --- three men might be able to do it, huh?

18 A. It would be tough.

19 Q. Well did you try?

20 A. No.

21 Q. Did you even try to move it?

22 A. No, sir, I did ---

23 (Indiscernible cross-talk.)

24 Q. Your fingerprints weren't on there, right?

25 A. No, sir.

BEN CANNON - CROSS-EXAMINATION BY MR. RIORDAN

1 Q. You don't know how much that safe weighed, do ya?

2 A. No, sir.

3 Q. Okay. You heard the testimony Randy Morgan got, what did
4 he say? What what did the neighbor say that was, when they
5 asked anything strange this mornin', wha'd they tell him?

6 A. I think the only thing they said one one vehicle was in
7 the area.

8 Q. Yeah, a red pickup truck with a utility trailer on the
9 back, right?

10 A. Yes, sir.

11 Q. No mention of anything on the utility trailer, was
12 there?

13 A. Not to my knowledge no, sir.

14 Q. And again, we don't know but did so -- did it, did cross
15 anyone's mind perhaps utility trailer could back up in there,
16 throw the whole safe on it and drive out? Did that cross
17 anyone's mind as a possibility?

18 A. Uh, my opinion I woulda drove the truck and had it threw
19 on the back and took off.

20 Q. You would have, right?

21 A. Yeah.

22 Q. That's plausible way to do it.

23 A. I wouldn't sit there try to open it up.

24 Q. Okay. Well if if you thought you had the combo and could
25 open it up, that be another way to do it, right?

BEN CANNON - CROSS-EXAMINATION BY MR. RIORDAN

1 A. Well since they were try -- supposed marks on the safe I
2 don't think they had the combination, ---

3 Q. Okay.

4 A. --- if they did they woulda opened it up.

5 Q. You don't know though, do ya?

6 A. Yes, sir, it's my opinion.

7 Q. And inside the safe, let me ask again 'cause inside the
8 safe when you, when you've got guns in your safe, do you go
9 out and shoot 'em?

10 A. Yes, sir.

11 Q. Shoot 'em at firin' ranges?

12 A. Yes, sir.

13 Q. What kinda guns, what kinda weapons you have?

14 A. I have handguns and long guns.

15 Q. I mean, I -- mark this please. I'm sorry.

16 (Photograph marked Defendant's Exhibit No. 6 for
17 identification.)

18 Here's marked as Defendant's Exhibit No. 6, ---

19 A. Yes, sir.

20 Q. --- you've seen that picture before, haven't you?

21 A. No, sir, I have not.

22 Q. Never have? Okay, take a peek.

23 A. I recognize the location.

24 Q. Okay, so location. You never seen that gun safe open,
25 have you?

BEN CANNON - CROSS-EXAMINATION BY MR. RIORDAN

- 1 A. No, sir, I have not, not ---
- 2 Q. And, ---
- 3 A. --- until this point.
- 4 Q. --- uh, you don't have any reason to to doubt that all
- 5 those weapons were inside that safe, right?
- 6 A. I don't have opinion either way, they could be, they
- 7 could not have been.
- 8 Q. Okay, you don't have any pro ---
- 9 A. I'll take your word for it.
- 10 Q. Sure. You don't have any problem with a law man of forty
- 11 years havin' a nice collection of weapons, do ya?
- 12 A. Absolutely not.
- 13 Q. You got an AR-15?
- 14 A. Yes, sir, I do.
- 15 Q. You do?
- 16 A. Yes, sir.
- 17 Q. Ba -- back, uh, this was September of, uh, or excuse me,
- 18 July of 2012, right?
- 19 A. Yes, sir.
- 20 Q. Yeah. This gun, well they talk about outlawin' those
- 21 guns, right?
- 22 A. They have been talkin' about it, yes.
- 23 Q. Kinda kinda of a wanted weapon, right?
- 24 A. No, you still gonna buy 'em.
- 25 Q. Sure, you can now, back then there's talk about 'em being

1 outlawed, wasn't there?

2 A. Yeah, I'm pretty sure there's ---

3 (Indiscernible cross-talk.)

4 Q. Lotta people gettin' 'em so they could grandfather 'em in
5 before the government came in ---

6 A. Sure.

7 Q. --- and stopped people from havin' 'em ---

8 A. Sure.

9 Q. --- so the government wasn't the only one that had 'em,
10 right?

11 A. Right.

12 Q. Uh, all kinds of other neat guns in there, aren't
13 there?

14 A. It's pretty nice, yes.

15 Q. Yeah, it be a nice, it be a nice ce -- it be a good
16 incentive for three guys to come in if they thought they knew
17 what was in there and thought no one was home, right?

18 A. Sure.

19 Q. And you guys talked about the picture of the car in the
20 driveway, tell the jury what your investigation showed when
21 you looked to see how many vehicles were registered to the
22 Roses.

23 A. I never looked see what ---

24 Q. Never looked, did ya?

25 A. No.

BEN CANNON - CROSS-EXAMINATION BY MR. RIORDAN

1 Q. You got no, you can't tell this jury anything about
2 whether or not her vehicle that's normally there was in the
3 shop, correct?

4 A. It it was in the shop.

5 Q. It was in the ---

6 A. Her ---

7 Q. --- shop, you knew that, right?

8 A. Yes, sir.

9 Q. Alright, get back to the 911 calls. After ---

10 A. Sure.

11 Q. --- her arrest and again, did you know, were you aware,
12 'cause it's your investigation, ---

13 A. Sure.

14 Q. --- when you guys decided to go ahead and arrest Paula
15 based upon the examination from SLED, what did you remember
16 about the DNA with the gloves?

17 A. We hadn't had the DNA at that point.

18 Q. Yeah, you had said you -- why did you wait over a month
19 to send it off?

20 A. I I I think at one point we realized that there was not
21 analysis form done 'cause the forensics hadn't collected it
22 and I had assumed that they, uh, had sent it off ---

23 Q. Alright, when you're th ---

24 A. --- but they they did swab it, they just didn't send it
25 off.

BEN CANNON - CROSS-EXAMINATION BY MR. RIORDAN

1 Q. --- when you're thorough you stay on top a those things
2 to make sure, correct?

3 A. Sure.

4 Q. Mean, when you're sendin' things off, you sent these off
5 and got 'em back by August 7th, right?

6 A. Yes, sir.

7 Q. And it's three more weeks plus before you even realize
8 the DNA hadn't been sent out and DNA usua -- it takes up to
9 ninety days, right, you know that.

10 A. An -- anywhere between that time yes, sir, don't know how
11 backed up the lab is.

12 Q. But ya'll went ahead as Gonzalez said you felt you had
13 probable cause, right, ---

14 A. Yes, sir.

15 Q. --- 'cause you got that power, don't ya?

16 A. Yes, sir.

17 Q. And you you don't have to, again, you don't have to abide
18 by the Code of Ethics of that, from that organization,
19 right?

20 A. I'm not a part of it no, sir.

21 Q. Yeah, you're not part of it and G -- and Gonzalez wasn't
22 at the time a this case either, was he?

23 A. I'm not sure. If you ---

24 Q. Well ---

25 A. --- say he's not then I'll go what you say, ---

BEN CANNON - CROSS-EXAMINATION BY MR. RIORDAN

1 Q. Okay.

2 A. --- I don't have a reason to think you'd like to me about
3 it.

4 Q. Alright, because if ya, if ya follow that code that he
5 at least is a part of now since March, there's no way you
6 would have brought charges at that time, is there?

7 A. I'm not sure about what what their code is but ---

8 Q. To be a truth seeker and not a case maker.

9 A. Right.

10 Q. You got a case where you got DNA evidence, don't --
11 shouldn't ya wait before you jump the gun, rush to judgment
12 and file arrest warrants against somebody?

13 A. I don't think I did that.

14 Q. Okay. And just before, I mean, is there -- you've been
15 in, you the only one that's been in here the entire time,
16 right?

17 A. Most a the time yes, sir.

18 Q. I mean, having listened to this testimony, is there
19 anything about this investigation that you woulda done
20 differently if you had the chance?

21 A. I'm sure everyone would do sumtin' different.

22 Q. Well what?

23 A. Al -- there's there -- nobody will never have a perfect
24 case.

25 Q. What would you do differently?

BEN CANNON - CROSS-EXAMINATION BY MR. RIORDAN

1 A. I haven't made a, you know, a mental log or anything, ---

2 Q. You've been ---

3 A. --- it's ---

4 (Indiscernible cross-talk.)

5 Q. --- here listened to the whole thing, would you have ---

6 A. Sure.

7 Q. --- even brought a case?

8 A. Absolutely.

9 Q. Okay, so you'd still do it, right?

10 A. Yes, sir.

11 Q. You trust this investigation.

12 A. Yes, sir, I do.

13 Q. Okay. After after the arrest you did, you did pick up
14 again start callin' the 911 people, right?

15 A. Correct.

16 Q. And and it -- they ha -- you guys haven't talked about it
17 but we'll bring it up ---

18 A. Sure.

19 Q. --- 'cause since you wanna talk about, uh, discrepancies
20 that exist that might be of import ---

21 A. Sure.

22 Q. --- and and things that might go to someone's
23 credibility, you got three 911 calls within a short period a
24 time, correct?

25 A. Within minutes I believe of each other.

BEN CANNON - CROSS-EXAMINATION BY MR. RIORDAN

1 Q. Well within seconds of each other, right?

2 A. I'm not sure about seconds but it was very close
3 together, yes.

4 Q. Well it's easy to look at the call log. You're the chief
5 investigator, easy to look at the call log and see when the
6 911 calls came in, right?

7 A. I did at the time.

8 Q. You wanna be precise, right?

9 A. Sure.

10 Q. When's the first 911 call come in and who is it?

11 A. I don't have the record in front of me.

12 Q. You don't remember?

13 A. No, sir, I don't reme ---

14 Q. It's your case.

15 A. I don't remember that.

16 Q. Okay. Well I'll suggest to you it's Mrs. Denly s -- that
17 calls in.

18 A. Okay.

19 Q. Do you know who she is?

20 A. Yes.

21 Q. You spoke to her, didn't ya?

22 A. Yes, sir, I did.

23 Q. Sh -- but you didn't get a statement from her, she's the
24 one that called 911.

25 A. Uh, give me just a second just to make sure. I ---

BEN CANNON - CROSS-EXAMINATION BY MR. RIORDAN

1 Q. Absolutely, take ---

2 A. --- got, I got three, ---

3 Q. --- all the time you need.

4 A. --- got three statements but I can't remember if that was
5 one of 'em.

6 Q. Find the 911 log, you might wanna look at ---

7 A. Scott ---

8 Q. --- it as well.

9 A. --- Scott Denly, is that who you're talkin' about?

10 Q. What's that?

11 A. You say Scott Denly?

12 Q. No, no, we establish Linda's the one that made the call,
13 hi -- his wife, right?

14 A. Yes, sir.

15 Q. Yeah, but you didn't get a statement from her, did ya?

16 A. No, sir.

17 Q. Why not?

18 A. She made a 91 [sic] call but to my, uh, understandin' the
19 husband, uh, observed most of the incident while she was
20 drivin'.

21 Q. While she was drivin', that's your understandin', thank
22 you. Alright, let's let's, 'uh, you -- have you listened to
23 that 911 call?

24 A. Uh, yes.

25 Q. You have. You -- so you guys put out a transcript of it,

BEN CANNON - CROSS-EXAMINATION BY MR. RIORDAN

1 right?

2 A. Uh, listen to this 911 call?

3 Q. Yeah.

4 A. No, ---

5 Q. Yeah.

6 A. --- sir.

7 Q. Yeah. You haven't listened to it?

8 A. No, sir. The original ---

9 Q. How'd you get ---

10 A. --- 91 [sic] call ---

11 Q. --- the information to know?

12 A. --- the original 911 call I did.

13 Q. What's that?

14 A. The the, uh, 91 [sic] call from Mrs. Rose I did.

15 Q. Oh, okay, you didn't listen to the other 911 calls that
16 came in while she's on the phone still but you you do have
17 Scott's statement, right?

18 A. Yes, sir.

19 Q. You just told us she was drivin' and he observed more
20 'cause she was drivin', correct? That's what you just told
21 us, isn't it? That's the easy que -- easy one to answer,
22 isn't it?

23 A. Yes, sir, that's what I said.

24 Q. Now what does his statement say? He says, and again,
25 mind you, the 911 call doesn't say anything about a gate, does

BEN CANNON - CROSS-EXAMINATION BY MR. RIORDAN

1 it?

2 A. Again, I I didn't list it or if I did I do not remember.

3 Q. Okay. Alright, just answer this question: ---

4 A. Sure.

5 Q. --- Look through the statement is it clear that he says
6 he's driving?

7 A. Yes, sir, it does.

8 Q. Yeah.

9 A. I was scannin' through and made a mistake.

10 Q. What does she say that she reports the fire and says
11 what?

12 MS. ABEE: Objection, hearsay ---

13 Q. Is this -- just -- can you te ---

14 THE COURT: Overruled.

15 BY MR. RIORDAN:

16 Q. They're reportin' the fire, right, that's important
17 stuff, isn't it?

18 A. Sure, yes, sir.

19 Q. This the first 911 call says that Riley Smith Road, on
20 Pelham and Riley Smith Road it looks like there's a house fire
21 probly less than half a mile from Pelham Road, correct?

22 A. Correct.

23 Q. Alright, and so after the arrest, after you've -- you
24 guys put out a press release for her arrest, didn't ya?

25 A. The sheriff's office did, yes.

BEN CANNON - CROSS-EXAMINATION BY MR. RIORDAN

1 Q. Jonathan Smith put out a press release says ya'll showed
2 that she was lyin', your investigation showed she's lyin',
3 correct?

4 A. Uh, if that's what you say he said.

5 Q. Well you -- your -- who does he get that information
6 from, you're the chief investigating officer?

7 A. He gets the reports and reads 'em, ---

8 Q. Okay.

9 A. --- that's how he gets infor ---

10 Q. Who's his boss anyway?

11 A. Uh, Sergeant Jennings.

12 Q. Sergeant Jennings?

13 A. Yes, sir.

14 Q. Who's his boss?

15 A. Uh, at that time it was Lieutenant Hildebrandt
16 (phonetic).

17 Q. Who's your boss?

18 A. Sergeant Jarvis.

19 Q. Who's his boss?

20 A. Lieutenant Beaver.

21 Q. Keep goin' up the chain?

22 A. Captain Westmoreland.

23 Q. Who else?

24 A. Sheriff.

25 Q. All the way up to Sheriff Loftis. Okay, alright. So

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1 after everyone has seen that she's arrested ya'll basically
2 say it's, you've proved that, you prove that she was lyin',
3 that's what the press release says, doesn't it?

4 A. Yes, sir.

5 Q. Yeah, but but re -- I mean, the jury knows everyone's
6 innocent 'til proven guilty, right?

7 A. Correct.

8 Q. Why do ya'll put out those press releases?

9 A. You would have to ask them and their boss.

10 Q. Yeah, this is wh -- this is when July? When was it two
11 thousand twe -- that's an election year, wasn't it?

12 A. Bein' honest I can't remember.

13 Q. Good to have big headlines on election year, "Trooper's
14 wife found to be lying," that's a good headline, isn't it?

15 A. You so say.

16 Q. I don't think it's a good one, uh, unless unless you
17 wanna put that stuff out, especially if you got this kind of
18 evidence. Wouldn't it be more appropriate to say, "Charges
19 have been brought against Paula Rose. Samples are clothing,
20 had trace evidence of ignitable, uh, liquid residue, DNA
21 results are pending but in the meantime we've brought charges
22 against," that that would be more factual in this case,
23 wouldn't it?

24 A. They don't put out facts of the case in that ---

25 Q. Yeah, they don't put out any facts, they just put a big

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1 headline, She's lying, right?

2 A. That's what they said, yes.

3 Q. And so nice people like this that have called 911 to be
4 helpful feel betrayed, they think I can't believe she's done
5 this and that's when you come in and call 'em so when you talk
6 to 'em they've got in their minds she's guilty, don't they,
7 from your press release?

8 A. I don't know what they have in their mind.

9 Q. They wanna be helpful at that time, right?

10 A. I'm sure anyone would be.

11 Q. No one said anything about a gate before, did they, but
12 but you get this and they say well we could, Oh, I was gonna
13 help, I was gonna pull in the driveway and knock on the door
14 but I couldn't pull in the driveway 'cause the gate was
15 closed, that's what he says, right?

16 A. Yes, sir.

17 Q. That's not what she said, was it?

18 A. I didn't, if it's on 911 I didn't listen to it.

19 Q. No, it's not on 911, you've spoken to her, right?

20 A. Briefly ---

21 Q. Yeah, ---

22 A. --- at ---

23 Q. --- she didn't give ya any a that information, did she?

24 A. No, sir.

25 Q. You put in, you put in your report 'cause let's get to

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1 that. We talk ---

2 A. Sure.

3 Q. --- about discrepancies, you, at some point in this
4 report you point out all the discrepancies, all the reasons
5 you think Paula Rose is guilty when you, when you find these
6 warrants, right?

7 A. Part ---

8 (Indiscernible cross-talk.)

9 Q. And one a things you put in there is talkin' about you
10 say there's a discrepancy, she says at this point in the call
11 911 she says gate's open but we get a 9 -- the first 911 call
12 says the gate's closed. Well we heard the o -- yeah, I think
13 it was a good decision try to avoid this so the only person we
14 see's Ben Temple that comes in, right?

15 A. That's the only person ---

16 Q. And you were here when Ben testified, right?

17 A. Yes, sir.

18 Q. He actually does pull in the driveway, doesn't he?

19 A. Correct.

20 Q. And when he pulls in the driveway, remember his
21 testimony, pulls in the dri -- he's already told his friend
22 I'm gonna stop, pulls in the driveway, puts the phone down,
23 stops, unbelt seatbelt, leaves the door open, walks away say
24 30 feet towards the house to make sure it's on fire, ---

25 A. Yes, sir.

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1 Q. --- goes back to his car then calls 911.

2 A. Correct.

3 Q. Yeah, his 911 call comes in nine seconds after the, uh,
4 the Denly's, doesn't it?

5 A. That sounds right.

6 Q. Sounds right, doesn't it?

7 A. Yes.

8 Q. In fact, but when you took his state -- it's funny, you
9 took his statement and, in fact, the statement you wrote when
10 you spoke to him orally over the phone says he got there, he
11 went out, he spoke to her, she comes runnin' outta the house
12 then he goes back and calls 911, that would be even more time
13 that would have elapsed before he called, correct?

14 A. Yes, sir.

15 Q. But you wanted to get the point that the first people out
16 there saw a gate closed, right?

17 A. Correct.

18 Q. You wrote in your report that was somethin' important
19 that she -- as if, as if in that window a time and you hear it
20 on 911 'cause it's just before she says, My 200-pound dog's in
21 there and ya hear a voice and she says, No, dogs and cats
22 'cause they call back sayin' are there people in there.
23 You've heard that 911 call, right?

24 A. Yes, sir.

25 Q. That's that's when Ben Temple's in in, uh, in her

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1 driveway, right?

2 A. Yes, sir, but no one knew that 'til we interviewed
3 Mr. Temple, she didn't mention that to anyone.

4 Q. Yeah, well 'cause the 911 tape says they should be there
5 and she says she hears 'em, doesn't she?

6 A. Yes.

7 Q. Yeah. You ever been o -- you ever been out and I I know
8 you probly have, you been out plain clothes, hear a call, you
9 can respond, right?

10 A. Yeah.

11 Q. That's not unusual, first responders do that, don't
12 they?

13 A. Yes, sir.

14 Q. No reason to suspect he was other than that. Well
15 they're tellin' he's gonna be there and the guy's good enough
16 to come and then ya hear when he pulls away she almost gives a
17 s -- oh, know, like he's leavin', she thinks he's leavin', you
18 heard that, didn't ya?

19 A. I don't recall that part.

20 Q. You don't recall that 'cause ---

21 A. I don't have any reason to dis ---

22 Q. --- you hadn't listened to it to hear for that part, have
23 ya?

24 A. I listened to it in here yes, sir.

25 Q. 'Cause what do you write about in your report? What do

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1 you say about the big discrepancy to show there's somethin'
2 funny about that gate, the gate must a been closed and by the
3 way you read it -- write it it sounds like you think she runs
4 out there to open the gate, that she's blocked it before then
5 not wantin' people to be there until she wants 'em in, that's
6 how you write your report, isn't it?

7 A. No, sir.

8 Q. No? Okay. Well what were you tryin' to say with that?

9 A. Just markin' discrepancies.

10 Q. Just markin' the discrepancies.

11 A. Yes, sir.

12 Q. And what do you say to boost the Denly's version of
13 events versus Ben Temple?

14 A. I'm not sure what you're referring to but I can look and
15 see.

16 Q. Well you talked about the fact you said the Denlys came
17 by, I I'm paraphrasing a bit, we can find the exact stuff if
18 you want, the Denlys came by, they saw the gate closed so they
19 drove up near Pelham Road and called 911 ---

20 A. Right.

21 Q. --- and then what do ya say, That distance is .7 miles,
22 it woulda taken 'em about two minutes, that's what you write
23 in your report, isn't it?

24 A. Yes, sir.

25 Q. Yeah, I ask Ben before he came up here, remember his

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1 testimony, I said, Ben when ya spoke to I asked you to drive
2 that distance, didn't I, you remember that?

3 A. Yes, sir.

4 Q. Yeah, what did he say?

5 A. I don't recall his testimony.

6 Q. He said -- well I'll I'll -- we can get the court
7 reporter read back if you need to or they can, I'm pretty sure
8 he said, Yeah, I didn't reset it like you asked me to but I
9 did look down and and he said he actually come in the other
10 way so from the driveway to Pelham Road he said it was, it was
11 between .3 and .4. And how much time did it take? less than
12 a minute? You're off by more than double on the t -- on the
13 distance and much more than double on the time, aren't ya?

14 A. I'm sure I used, uh, MapQuest so . . .

15 Q. You think you used MapQuest and you got .7.

16 A. I'm sure I used sumtin' beside just guessin' at it.

17 Q. Ben Temple drove up there, he drove into a fire, you you
18 tellin' this jury Ben Temple's a liar?

19 A. I'm sayin' may be mistaken ---

20 Q. You say he may be mistaken.

21 A. --- or I may be mistaken.

22 Q. Yeah, you may be mistaken, right?

23 A. Sure.

24 Q. You can envision it right now, you -- the caller that
25 you're basin' this upon told you it's less than half a mile,

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- 1 it's in her 911 call, isn't it?
- 2 A. Yes, sir, ---
- 3 Q. Yeah, ---
- 4 A. --- that's ---
- 5 Q. --- so ---
- 6 A. --- that's her estimation.
- 7 Q. Yeah, so two people are saying it's less than a half
- 8 mile ---
- 9 A. One's in -- one never did drive it, ---
- 10 Q. Yeah.
- 11 A. --- we concur with that?
- 12 Q. What's that?
- 13 A. One one didn't, one never drove it.
- 14 Q. Who?
- 15 A. You said estimation was half a mile.
- 16 Q. Who didn't?
- 17 A. Uh, Mrs., uh, De ---
- 18 Q. Who didn't drive it?
- 19 A. --- Denly? She ---
- 20 Q. She had just driven it. She just called 911 and said
- 21 it's, they they said they pull up in the parkin' lot and it
- 22 was, it was less than a half mile from Pelham Road, right?
- 23 A. What she said.
- 24 Q. That's exactly what she said. I didn't know if you were
- 25 sayin' that somebody else didn't drive it. You drove it,

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1 didn't ya?

2 A. No, sir.

3 Q. You got out to the scene at some point, didn't ya?

4 A. Yes, sir.

5 Q. You've never driven that distance between the Rose's
6 driveway to Pelham Road?

7 A. No, sir.

8 Q. Okay.

9 A. I mean, if I did didn't look at the time or the distance,
10 I'm sure I have.

11 Q. One way to read that is you exaggerated the time to make
12 it look like the gate was closed, right?

13 A. No, sir.

14 Q. Anyone readin' this report would see that, wouldn't they?

15 A. I would say not.

16 Q. So you don't think this jury should trust Ben Temple, is
17 that ---

18 A. I'm not sayin' ---

19 Q. --- what you're sayin'?

20 A. --- that either no, sir.

21 Q. Okay. Okay.

22 A. That's their own, that's their own opinion.

23 Q. If we have a lunch break, will you drive out there and do
24 it for us?

25 A. No, sir.

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1 Q. You won't do it, will ya?

2 A. I'm gonna eat lunch.

3 Q. Okay, you you don't wanna, you don't wanna come back in
4 here report what that distance is, do ya?

5 A. You can do it.

6 Q. I -- okay.

7 THE COURT: Stop. Argumentation, you ---

8 MR. RIORDAN: Okay.

9 THE COURT: --- can stop it.

10 MR. RIORDAN: Alright.

11 THE COURT: You as well, you understand?

12 THE WITNESS: Yes, Your Honor.

13 MR. RIORDAN: Alright.

14 BY MR. RIORDAN:

15 Q. After the arrest you went about trying to get some
16 financial records on the Roses, right?

17 A. Yes, sir, I did.

18 Q. Who gave you the information to access or obtain those
19 records?

20 A. Uh, one of our white collar crime investigators.

21 Q. Who?

22 A. One of our white collar crime investigators in our, in
23 our, uh, division actually ran the name and came back with
24 these.

25 Q. Who's that person?

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1 A. I don't recall which one helped me with it.

2 Q. His name's not on my report anywhere, is it?

3 A. No, sir.

4 Q. This very type stuff defense attorneys are supposed to
5 have, isn't it?

6 A. He didn't do anything but run a name for us.

7 Q. Okay, well he got you what like fi -- how many, how many
8 different financial records you run?

9 A. Five or seven.

10 Q. All of 'em was came back closed, right?

11 A. Yes, sir, they did.

12 Q. I mean, you didn't even get 'cause 'cause you thought
13 financial, you thought this was a financial case with some
14 financial benefit, right?

15 A. That was part a my, uh, ---

16 Q. I mean, that's that's ---

17 A. --- motive.

18 Q. --- what you've char -- that's what you guys charged on
19 September ---

20 A. Correct.

21 Q. --- 10th though, isn't it?

22 A. Correct.

23 Q. Never even spoke to the State Farm fella. State Farm
24 fella Nick Gregory comes in here this mornin' and talks, why
25 didn't you speak to Nick?

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1 A. I have his report already.

2 Q. Yeah, oh, so you had it before the arrest?

3 A. Yes, sir, I did.

4 Q. Even better, so you had it before his arrest, ---

5 A. Correct.

6 Q. --- he tells ya he sits down with Paula, he says she
7 shows you -- she shows him all their financial information and
8 he's, and he says he does not see how financial incentive is
9 even, is even a motive in this case, doesn't he?

10 A. I do not see that in his report at all.

11 Q. That's how you read it, isn't it?

12 A. I didn't see that in there.

13 Q. Well when he says he checked and they showed adequate --
14 well, you hear -- let's let's not even worry about his report,
15 you heard him talkin' today, didn't ya?

16 A. Sure, yes, sir.

17 Q. Okay. That's exactly what he said, wasn't it?

18 A. Sure, yes, sir.

19 Q. He didn't have -- State Farm thought this was a typical
20 victim case, didn't they?

21 A. I don't know if he used that exact term but he said it
22 was a typical way he handled the case.

23 Q. Typical fire loss case I thought he said, maybe I'm
24 wrong, ---

25 A. Some ---

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1 Q. --- you remember that, right?

2 A. Yes, sir, I do.

3 Q. Seemed very typical.

4 A. Correct.

5 Q. So what, so what outta the State Farm report contributed
6 to your decision to charge Paula?

7 A. Uh, it said that they had been paid out approximately
8 5,000 at that time.

9 Q. Okay. Alright. And your report said, as we, as we
10 start, I mean, you start the report, when do you draft your
11 report? August 5th?

12 A. No, sir, that's when it's printed out.

13 Q. Okay, when did you draft it then?

14 A. I started on on Monday.

15 Q. Okay. Where's it say that on here?

16 A. It doesn't, it ---

17 Q. Doesn't say that anywhere, does it?

18 A. No, sir, it doesn't.

19 Q. It's not on the report, not -- didn't happen, right?
20 You've heard that, haven't ya?

21 A. Yes, sir.

22 Q. Yeah, alright, so when you start writin' it out says you
23 made contact with Deputy Brown and, uh, you stated the fire
24 that it started on the front porch had apparently burned
25 itself out prior to their arrival, that's how you read the

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1 report, Prior to their, prior to deputies arrival, the fire on
2 the front porch had burned out, ---

3 A. Correct, ---

4 Q. --- and yet we heard ---

5 A. --- that ---

6 Q. --- from two di ---

7 A. --- that's from, that's from Chief Edwards.

8 Q. Okay, that's from Chief Edwards, okay.

9 A. Yes.

10 Q. You knew -- well well well the fire department got there
11 the same time as Robbie Brown, right?

12 A. Correct.

13 Q. Scott Proffitt's runnin' up there, right?

14 A. That's what he said, yes.

15 Q. You had two of your deputies write reports here and they
16 testified under oath that, yeah, there was still a small fire
17 burning on the front porch, right?

18 A. I'm not sure if that's what Deputy Brown said or not.

19 Q. I didn't say Deputy Brown, it coulda been. There's at
20 least two guys that have come in and said small fire on front
21 porch and then fires on both porches, in parenthesis it said
22 front and back porch fire still burnin', ---

23 A. Right.

24 Q. --- right?

25 A. Yes.

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1 Q. So there's another discrepancy.

2 A. Correct.

3 Q. You act like those are real big but you've got 'em all in
4 here, don't ya?

5 A. Yes, sir.

6 Q. Okay. You at least note she's got, uh, you got that you
7 could still, the smell of gasoline still very strong, right?

8 A. Yes, sir, it is.

9 Q. Gonzalez said that as well, right?

10 A. Yes, sir.

11 Q. And what dri -- wasn't all dried up at that time, was
12 it?

13 A. Yes, sir.

14 Q. Really?

15 A. I never saw any liquid.

16 Q. Okay. Yeah, that's right you got there an hour plus
17 later, right?

18 A. Yes, sir, about.

19 Q. And Gonzalez we -- what time did Gonzalez get there?

20 A. I'm not sure.

21 Q. What time does the call log say?

22 A. He's not on there.

23 Q. Yeah, he's not on the call log, is he?

24 A. No, sir.

25 Q. His report said he got there, what, about 11 or maybe

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1 10:45?

2 A. That's probly about an hour after I did yes, sir.

3 Q. Yeah, more than two hours after -- Scott Proffitt first
4 firefighter on the scene says, Yeah, wouldn't surprise me a
5 bit she's right in it, it's what he testified ---

6 A. He testified to ---

7 Q. --- to, right?

8 A. --- yes, sir.

9 Q. He's been in fires, hadn't he?

10 A. Yes, sir.

11 Q. What did you determine had, uh, cut the phone line?

12 A. I never did locate anything laying around or see anything
13 that coulda cut it.

14 Q. When you called the service provider for -- who was the
15 service provider for the phones anyway?

16 A. AT&T.

17 Q. When you called them, what did they tell you about their
18 knowledge of when the phone line ---

19 A. I never ---

20 Q. --- was cut?

21 A. --- did contact them.

22 Q. Never contacted 'em, did ya?

23 A. No, sir.

24 Q. When when when were the, uh, the -- when when were the
25 ignitable liquids poured on the porch?

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1 A. I do not know that.

2 Q. When were they lit?

3 A. Had to be before she had called in the fire ---

4 Q. Before she called in?

5 A. --- or durin' the call.

6 Q. Yeah, you don't know, do ya?

7 A. No, sir.

8 Q. How was it lit?

9 A. What now?

10 Q. How was it lit?

11 A. Had to be an open flame of some sort.

12 Q. You didn't find any evidence what it was, did ya?

13 A. No, sir.

14 Q. Someone with a lighter coulda litten it and takin' it
15 with 'em, right?

16 A. Yeah, sure.

17 Q. Just as plausible an explanation as any, isn't it?

18 A. Yes, but it's not what happened this case.

19 Q. Oh, how do you know?

20 A. She was the only one present according to her.

21 Q. Okay. Wait, what?

22 A. According to her she was the only one present besides the
23 alleged three men.

24 Q. Yeah, if one of them lit it and ran with the lighter that
25 he used, that's a plausible explanation, isn't it?

BEN CANNON - CROSS-EXAMINATION BY MR. RIORDAN

- 1 A. Left a hatchet, no, I don't think so.
- 2 Q. Okay. Ha -- a -- okay. The biggest, the biggest, uh,
- 3 burn was on the back porch, right?
- 4 A. Correct, yes.
- 5 Q. And that's where the 5-gallon diesel was, right?
- 6 A. The container, yes, sir.
- 7 Q. And the diesel you guys actually when it's found the cap
- 8 is off of it, right?
- 9 A. Yes, sir, it is.
- 10 Q. And you guys didn't do anything to check for fingerprints
- 11 on it, did ya?
- 12 A. I'd have to look thro -- back through my notes but it may
- 13 not have been a a surface where we could get prints from.
- 14 Q. Well you di -- a fella was in here, he acknowledged no
- 15 one even asked that, right?
- 16 A. Okay.
- 17 Q. You never asked for it, did ya?
- 18 A. No, sir, I did not.
- 19 Q. Alright, and certainly somebody unscrewed it, put it
- 20 down, right?
- 21 A. Yes.
- 22 Q. Coulda been important thing to to try if you wanna be,
- 23 uh, exhaustive of all leads, right, ---
- 24 A. Yes.
- 25 Q. --- wanna be thorough?

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1 A. Yes, sir.

2 Q. Alright, uh, and so that's the 5-gallon, that's the
3 bigger one. If it doesn't have a, if it doesn't have the top
4 on it if it's bein' poured out, that would be the one if it's
5 pouring out you'd expect it be splashin' and gettin' her
6 everywhere, right?

7 A. It depends on the contents, yeah.

8 Q. Could could be, right?

9 A. Sure.

10 Q. Sounds logical, right?

11 A. Could be.

12 Q. You agree that it's not a bit of kerosene or diesel or
13 whatever's on that back porch, heavy distillate, none a that's
14 on anything that you all took from Paula, right?

15 A. Can I look real quick to remind me?

16 Q. Well what about this: You've been sittin' in here, I
17 asked of the lady, uh, that was on the stand, you can look all
18 you want but I remember askin' her was there any diesel,
19 Megan.

20 A. I don't see a, I don't see a heavy on this contain -- on
21 any of this, ---

22 Q. Yeah, there's none ---

23 A. --- heavy ---

24 Q. --- on on there, right?

25 A. --- heavy, yes.

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1 Q. Yeah, your theory is she did both but there's nothin' on
2 there from from the diesel, the one that apparently was the
3 bigger fire and therefore arguably had more liquid, right?

4 A. No, sir.

5 Q. And the, and the gas can on the front had a spout on it,
6 correct?

7 A. Yes, sir, it did.

8 Q. And and again just to make sure, any statement you took
9 from anybody in this case, uh, or or that we read about
10 statements they're all drafted by you guys or you guys are
11 testifyin' to it, right?

12 A. Yes, sir.

13 Q. And you agree with that that's a good policy that none a
14 this stuff's recorded?

15 A. I don't, I don't, I personally or my unit personally
16 doesn't have the ability to do that, we don't have a interview
17 room with that capability.

18 Q. Okay. Alright, real quick, I thought I heard some -- you
19 talkin', I mean, ServPro you guys had released the scene,
20 right, ---

21 A. Yes, sir, we did.

22 Q. --- in the morning, 12:20 per the log report, right?

23 A. Correct, yes, sir.

24 Q. And and you knew at that point Mr. Rose was gettin', I
25 mean, that's as anyone would do, he's ready to get movin' on,

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1 uh, clean up of his house, right?

2 A. I didn't know that, no.

3 Q. Okay, well ServPro is definitely called, right?

4 A. Oh, yes, sir.

5 Q. In fact, you guys called ahead wanted to come out and he
6 said ServPro's on the scene already.

7 A. Correct, yes, sir.

8 Q. And you seen the photos, the photos taken there from the
9 bed, you've seen that, right?

10 A. Correct, yes, sir.

11 Q. You don't have any reason to dispute that that photo was
12 taken before you and Gonzalez and Morgan and Misty arrive in
13 the afternoon, do ya?

14 A. I don't have any reason to believe otherwise, no, sir.

15 Q. Okay. And Paula had told folks, I mean, you guys were
16 askin', I don't know if it's you or the others were askin'
17 about people that had been there, I mean, she told ya that
18 Schneider's tree people had been there the day before,
19 right?

20 A. Believe it was Investigator Morgan but yes.

21 Q. Okay, and there's a strap out on a tree in the same are
22 where the footprints are, right?

23 A. Correct.

24 Q. And then you guys took the picture of footprint and it
25 matched up with her Crocs, right?

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1 A. Yes, sir.

2 Q. I mean, it's entirely plausible that's what she was
3 wearing the ni -- the day before and left the footprint,
4 right?

5 A. Sure.

6 Q. You're not intending Dustin Kretschmar's photograph of
7 that footprint to be evidence that Paula did anything, are ya?

8 A. No, sir.

9 Q. That's of no significant evidentiary value in this case,
10 is it?

11 A. Not anything that I, that I ---

12 Q. But ---

13 A. --- in my opinion ---

14 Q. --- but ---

15 A. --- no, sir.

16 Q. --- but with that did you see that in some a those
17 pictures you've got the little footprint that he's focused on
18 and then next to it are a couple other footprints so it looks
19 like heel marks, two of 'em right next to each other.

20 A. Right.

21 Q. Nothin' was done with those, was there?

22 A. No, sir.

23 THE COURT: Just one second, may I see ---

24 MR. RIORDAN: Yes, Your Honor.

25 THE COURT: --- see counsel up here, please.

BEN CANNON - CROSS-EXAMINATION BY MR. RIORDAN

1 (Whereupon, a bench conference was held off the record.)

2 BY MR. RIORDAN:

3 Q. Has John Lenti -- have you been in in John Lentini's
4 courses?

5 A. No, sir.

6 Q. Should ya?

7 A. If they're available, that be a good idea.

8 Q. I mean, Phil Brooks and Fre -- and the, uh, SLED agents
9 say he is authoritative in the field, right?

10 A. He is an expert yes, sir.

11 Q. And you heard his article say unless you do, he talked
12 about that's the whole purpose of the article's talkin' about
13 the dangers of of, uh, doing testing on shoes, right?

14 A. Yes, sir, I did hear that.

15 Q. Okay, and and and per his article the evidentiary value
16 of the shoes in this case is nil, isn't it?

17 A. It, uh, he believe it can go either way, yes, sir.

18 Q. Oh, you think so, that's how you heard that? Okay.

19 Again, last thing, again, at the end a lotta these warrants
20 you guys talk about case will remain open 'til we get all the
21 forensics back, clearly you guys did -- you didn't wait 'til
22 you got all the forensics back, right?

23 A. I I think the only thing we did get back wa -- were the,
24 uh, DNA results.

25 Q. Okay, yeah, yeah, oh just the DNA ---

BEN CANNON - CROSS-EXAMINATION BY MR. RIORDAN

1 A. Yes.

2 Q. --- okay, I'm sorry. That seems important, doesn't it?

3 A. Not not at the point that I got the warrants no, sir. I
4 don't think it woulda made an impact either way.

5 Q. That's interesting 'cause after, 'cause 'cause 'cause you
6 wri -- the last thing you write, This case is cleared by
7 arrest.

8 Q. Correct?

9 Q. That's how you feel too, isn't it?

10 A. Yes, sir.

11 Q. Oh, yeah, real quick, and I know you're the one that
12 brought, you said financial stuff but now here that we're
13 here ---

14 A. Yes, sir.

15 Q. --- and we've learned a little bit about their finances,
16 right, ---

17 A. Correct.

18 Q. --- you don't have any reason to dispute the testimony
19 that's been given about Homer Rose, have ya?

20 A. No, sir.

21 Q. I mean, that's interesting story, isn't it?

22 A. Absolutely.

23 Q. And and and good m -- and it's, and it's, and it's -- the
24 the good thing about it it's money that's put out that allows
25 him to serve the public as a highway patrolman, isn't it, ---

BEN CANNON - CROSS-EXAMINATION BY MR. RIORDAN

1 A. Sure.

2 Q. --- that's one way to look at it.

3 A. Sure.

4 Q. Okay. But it's changed now when we hear, we hear, Look,
5 okay, we understand this was done for publicity for for the
6 book, right?

7 A. I've got my own opinion about that.

8 Q. Okay. Well you agree that's what we heard I guess in
9 openin' statement, right?

10 A. Yes, sir, that that's part ---

11 Q. Alright, ---

12 A. --- of it.

13 Q. --- and just real quick, are you tellin' this jury when
14 ya'll heard the that the book was called "Good cop, bad cop"
15 that none of ya'll took offense to that?

16 A. I didn't know ---

17 Q. Anyone talk to Paula and say, Good cop, bad cop, that's
18 disrespectful to your husband, you remember somebody sayin'
19 that?

20 A. No, sir.

21 Q. There are good cops and bad cops, right?

22 A. I'm sure they are.

23 Q. And with that, ---

24 A. Yes, sir.

25 Q. --- with this book between the July fire reported as she

BEN CANNON - CROSS-EXAMINATION BY MR. RIORDAN

1 did, the arrest, uh, the yeah, arrest on September 12th,
2 si -- at least six weeks, right?

3 A. Yes, sir.

4 Q. Go ahead and play for for the jury the, uh, first press
5 conference Paula held in this case about her book.

6 A. I'm not aware of any. I don't know anything about her
7 book.

8 Q. Well go ahead and share with 'em the first interview she
9 gave talkin' about her book and how she had a book comin' out
10 and this was look what's happened to me and this is a big
11 thing and you guys should listen, this is a publicity case, go
12 ahead and tell 'em about that.

13 A. I just told ya I don't know anything about her book.

14 Q. None a that exists, does it?

15 A. No, sir, not to my knowledge.

16 Q. Not a bit of evidence whatsoever, is there?

17 A. Not to my knowledge.

18 Q. And again, you're comfortable with your case, right?

19 A. Absolutely.

20 Q. Absolutely.

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

22 (Pause.)

23 MR. RIORDAN: No further questions.

24 THE COURT: Do you intend to have any redirect?

25 MS. ABEE: I do, Your Honor.

BEN CANNON - REDIRECT EXAMINATION BY MS. ABEE

1 THE COURT: How long will your redirect be?

2 MS. ABEE: Relatively brief, yes, sir.

3 THE COURT: Ma'am?

4 MS. ABEE: Relatively brief, ---

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

6 MS. ABEE: --- yes, sir.

7 THE COURT: --- just go ahead, please.

8 MS. ABEE: Would you like me to go ahead?

9 THE COURT: Yes, ma'am.

10 MS. ABEE: Thank Your Honor.

11 REDIRECT EXAMINATION BY MS. ABEE:

12 Q. Investigator Cannon, was Ms. Rose's demeanor the only
13 reason why you investigated her as a suspect?

14 A. No, ma'am, was not.

15 Q. What about, uh, the discrepancies in the 911 call, was
16 that the only reason?

17 A. No, ma'am.

18 Q. Fact, did you use a totality of the circumstances in
19 order to investigate her as a suspect?

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

21 Q. And why didn't you have any curiosity about the previous
22 charges in Oconee County?

23 A. Uh, they didn't have anything to do with the the case
24 that I was investigating at the time.

25 Q. And as Mr. Riordan said you're supposed to be fair and

BEN CANNON - REDIRECT EXAMINATION BY MS. ABEE

1 impartial, is that ---

2 A. Ye ---

3 Q. --- what Mr. Riordan said?

4 A. Yes, ma'am.

5 Q. Do you agree with that statement?

6 A. Yes, ma'am.

7 Q. Could reading about previous charges possibly, uh, have
8 some sort of effect on your investigation?

9 A. I would hope it wouldn't but it it could put sumtin' back
10 a your mind or taint the case.

11 Q. Of the things that you took after the consent to search
12 form was signed, ---

13 A. Yes, ma'am.

14 Q. --- none of that has disappeared, am a right?

15 A. No, ma'am, it's all present.

16 Q. None of the the evidence has been hidden in any way?

17 A. No, ma'am.

18 Q. And are you related to any of the, uh, investigators in
19 the Oconee County case?

20 A. No, ma'am.

21 Q. Are you even aware of who those investigators are?

22 A. No, ma'am, I'm not.

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.)

BEN CANNON - RECROSS-EXAMINATION BY MR. RIORDAN

1 MS. ABEE: Your Honor, I have no further questions.

2 RECROSS-EXAMINATION BY MR. RIORDAN:

3 Q. You said ya never read any a the documents, right, from
4 the Oconee County information, right?

5 A. No, sir.

6 Q. How how do you know you're not related to anybody?

7 A. Uh, I don't know anybody in Oconee.

8 Q. You know who Billy Looper is?

9 A. I've heard ---

10 MS. ABEE: Objection, outside a the scope.

11 THE COURT: Sustained.

12 MR. RIORDAN: Thank you.

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

14 THE WITNESS: Thank Your Honor.

15 (Whereupon, the witness left the stand.)

16 THE COURT: Alright, State have anymore witnesses?

17 MS. ABEE: No, Your Honor.

18 THE COURT: That'll be State's case?

19 MS. ABEE: Your Honor, the State at this time rests.

20 THE COURT: Okay, very good. Uh, Mr. Foreman, ladies and
21 gentlemen of the jury, we have your lunch there. Uh, State
22 has advised that they have presented all the witnesses they
23 intend to in their case in chief, that means I have certain
24 administrative matters we have to go over now, uh, I'm gonna
25 go ahead and send you back to your jury room, it'll be at

MOTIONS AND MATTERS

1 this point?

2 MR. RIORDAN: Yes, Your Honor.

3 THE COURT: Alright.

4 MR. RIORDAN: This point, uh, close a State's case and,
5 uh, even in light most favorable to the State, uh,
6 insufficient evident [sic] exists in this case to proceed at
7 this point. Uh, how how things have gone up we don't think
8 there's any substantial circumstantial evidence, uh, that
9 would allow this case to go to a jury and, uh, from what we've
10 had testimony in this case, especially the DNA evidence, truly
11 we we submit the and in totality of the evidence that's put
12 before you a jury would merely be speculating as to the
13 accused guilt, uh, and that's what the evidence, the evidence
14 in this case only is sufficient to raise a mere suspicion of
15 guilt, we'd ask for a directed verdict.

16 THE COURT: Okay. I'm gonna take that under advisement,
17 uh, I I do not think this is the strongest case I've seen. I
18 am really concerned about the issuing false statements to
19 obtain benefits from insurance policy or certificate of fire
20 loss or explosion under Code Section 16-11-125, uh, the reason
21 bein' lookin' at the elements of that charge, I have 'em
22 before me, is under that stat -- code section person has to
23 willfully and knowingly present or cause to be presented a
24 false or fraudulent claim or any proof in support of such, uh,
25 claim by for the payment of loss incurred by fire, explosion,

MOTIONS AND MATTERS

1 uh, that's pursuant to a contract -- contract insurance.
2 Number one, the undisputed evidence in this case is that the
3 defendant is not the insured, she dis -- that no payments were
4 made to her, there were absolutely nothing, uh, says that she
5 initiated the claim or filed any claim papers. The only
6 evidence I heard in this case, I'm asking the State, uh, with
7 regard to anything that could arguably be considered, uh,
8 given proof in support a the claim was the testimony from the
9 State Farm agent where he talked to, uh, Ms. Rose concerning
10 improvements made to the house as so they can look at
11 valuation purposes and payment outta the policy, do you agree
12 or disagree with that testimony?

13 MR. UNDERWOOD: Uh, Your Honor, uh, we agree that, uh,
14 there was testimony that she did participate in the claim and
15 provided information ---

16 THE COURT: That's, not -- no, sir, that's not ---

17 MR. UNDERWOOD: (Indiscernible cross-talk.)

18 THE COURT: --- what I'm s -- that is not what I'm asking
19 and what I'm askin' is the only testimony in this case as I've
20 heard was the about this lady's participating in any aspect of
21 the claim was that her speaking with the adjustor or the
22 claims rep concerning improvements had been made to the house
23 for purposes of determing -- determining what will be paid
24 out, is that true or untrue?

25 MR. UNDERWOOD: Uh, that that is, uh, incorrect, Your

MOTIONS AND MATTERS

1 Honor, the -- she also gave information to the adjustor
2 concerning the facts leading up to the loss, that was his
3 testimony, she also gave information to Phillip Brooks
4 concerning the loss who was a contractor hired by State Farm.

5 MR. RIORDAN: Who ---

6 MR. UNDERWOOD: And and, Your Honor, if I, if I might
7 add ---

8 THE COURT: Hang on. You said in other words he told her
9 'bout 'bout how the fire occurred.

10 MR. UNDERWOOD: Yes, Your Honor.

11 THE COURT: Okay. Well you're right about that.

12 MR. UNDERWOOD: And and further, Your Honor, the statute
13 also allows for not only someone who willingly and knowingly
14 actually presents the claim but causes a claim to be
15 presented. If Ms. Rose is the one who caused the damage which
16 resulted in a claim being made, she has caused the the claim
17 to be 7---

18 THE COURT: That's not what that means, that is not what
19 that means. I could burn your house, that would cause a claim
20 to be presented but if you turned around and filed a claim,
21 uh, that didn't mean I'm guilty of any kind of insurance
22 fraud, if I'm the one that entices you into making that claim
23 is what that means I believe.

24 MR. UNDERWOOD: Well, Your Honor, the the person who
25 makes the claim does not need to be a guilty party, that in a

MOTIONS AND MATTERS

1 situation like this, a person who caused the claim to be made
2 that is a -- if I can restart, Your Honor. When a person
3 causes a fire with the intention of an insurance payout being
4 made, that is a fraudulent claim. Whether or not that person
5 is the one who is the insured on the policy isn't the issue,
6 the issue is whether or not the cause of the loss was to cause
7 the insurance payout, that's what creates the fraud, so in a
8 situation as this the fraud occurs, according to the State's
9 presentation of the case, when Ms. Rose causes the fire, the
10 intention of it being paid for by the insurance company, the
11 fact that she has a another party to stand in between her as a
12 shield, so to speak, does not change the fact that this was
13 fraud.

14 THE COURT: What what substantial circumstantial evidence
15 is there in the record to support that it was her intent, just
16 a fact that the claim was made?

17 MR. UNDERWOOD: Uh, the fact that a claim was made, Your
18 Honor, uh, the the fact that a situation where someone causes
19 a fire that ---

20 THE COURT: Again, I could cause a fire, that doesn't
21 mean I'm guilty of insurance fraud.

22 MR. UNDERWOOD: Right. And, Your Honor, and and the
23 State's presentation a the case is that or point I guess on
24 the case is that the reasoning for the fire was, you know, in
25 part to get the attention and the publicity that we mentioned

MOTIONS AND MATTERS

1 but ---

2 THE COURT: There's absolutely ---

3 MR. UNDERWOOD: --- part of it ---

4 THE COURT: --- no ---

5 MR. UNDERWOOD: --- can ---

6 THE COURT: --- evidence other than your opening
7 statement of that except for the fact that somebody said, Was
8 there press out there at the scene, that doesn't, that though
9 and ---

10 MR. UNDERWOOD: And ---

11 THE COURT: --- that's not even substantial
12 circumstantial ---

13 MR. UNDERWOOD: --- and ---

14 THE COURT: --- evidence ---

15 MR. UNDERWOOD: --- and ---

16 THE COURT: --- in my view.

17 MR. UNDERWOOD: --- and I, and I was moving beyond that,
18 Your Honor, and in addition to that though, Your Honor, when a
19 person knows that there is a policy on the, on the residence
20 and that they are the person who lives in that residence, they
21 are a family member of the party who does have the policy,
22 that person is goin' expect for the insurance payout to affect
23 them and benefit them.

24 THE COURT: That that is makin' a huge assumption in this
25 case, I understand why you would think that. Now my wife

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1 understands we have insurance ho -- know that she knows how
2 much we have on the house, that kinda thing but you have no,
3 uh, knowledge, you have put no evidence up that she had
4 knowledge of the policy, that she knew knowledge of the amount
5 of the policy that I'm aware of. Now if I'm incorrect I don't
6 mind you correct me, please do, but I, and and I, and I think
7 there is evidence in the record, the jury can make a finding
8 of the other causes of actions potential but this one has
9 given me particular concern especially the day when I heard
10 testimony that all the payments -- she wasn't a insured, she
11 wasn't, she didn't file the claim, Mr. Rose did, she only
12 provided information as to, okay, the occurrence itself and
13 the, uh, ba -- and the additions to the house, it caused me
14 concern, okay.

15 MR. UNDERWOOD: Yes, Your Honor, but but again, Your
16 Honor, as to the presenting the information for the claim, I I
17 think that that is sufficient to send the matter to the jury,
18 that she was involved with presenting information on the claim
19 and that it was a claim for a fire loss.

20 THE COURT: It's gotta be false information, ---

21 MR. UNDERWOOD: And, Your Honor, ---

22 THE COURT: --- that's not ---

23 MR. UNDERWOOD: --- and and, Your Honor, we have put up
24 information and evidence that I believe supports that the
25 information she provided about the burglars coming in and

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1 causing the fire is false ---

2 THE COURT: You may be right on that one.

3 MR. UNDERWOOD: And and I believe that's sufficient to
4 send it to the jury, Your Honor.

5 THE COURT: Alright. Okay, uh, I need if you would ---

6 MR. RIORDAN: Let's go, we'll go huddle.

7 THE COURT: Okay. Um, I'm gonna be back in in chambers,
8 grab counsel, don't come back in ex parte, you just let me
9 know, okay.

10 MR. RIORDAN: Remind ---

11 THE COURT: Alright.

12 MR. RIORDAN: --- me what, uh, time we're coming back,
13 Judge.

14 THE COURT: Well that's gonna be dependin' on what you
15 tell me, ---

16 MR. RIORDAN: Alright, sir. Okay.

17 THE COURT: --- okay. We'll be in recess until we hear
18 you, okay. Thank you guys.

19 MS. ABEE: Thank Your Honor.

20 (Whereupon, a recess was taken.)

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

22 THE COURT: Alright, you 'bout ready to go?

23 MR. RIORDAN: Your Honor, I need to put on the record few
24 exhibits we had marked I'd forgot to put into evidence and
25 they're -- that's by stipulation.

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1 THE COURT: Okay.

2 MR. RIORDAN: I guess anything I've -- you got 'em all?

3 Any defense exhibits you marked is in, right?

4 COURT REPORTER: (Nodded in the affirmative.)

5 THE COURT: Is that ---

6 MS. ABEE: There ---

7 THE COURT: --- the print ---

8 MS. ABEE: --- there's no objection, Your Honor.

9 THE COURT: They'll be admitted without objec -- do you
10 have those numbers?

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

12 THE COURT: Hang on, well hang on.

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

14 THE COURT: Do you have those numbers please,

15 Mr. Riordan.

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

17 MR. ABEE: Your Honor, I would have an objection to these
18 additional photos that weren't introduced or no one can say
19 what they were, anything like that. Anyones that were marked
20 and talked about I have no objection to that but the these new
21 ones I would.

22 MR. RIORDAN: We'll, I mean, I've got his son, I can put
23 'em in, that's my question earlier. You want me, I mean, I'll
24 put him up there to do the photos if you want me, otherwise no
25 big deal, is it?

MOTIONS AND MATTERS

1 THE COURT: Uh, your case, I mean, at this
2 juncture ---

3 MR. RIORDAN: Okay.

4 THE COURT: --- where we are, you know, what you told me
5 in my conference room and, uh, you know, you certainly have
6 the right change your mind is that your your client chooses to
7 exercise her rights under the Fifth Amendment and will not
8 testify, is that correct?

9 MR. RIORDAN: That's correct.

10 THE COURT: And, Ms. Rose, have you made that, uh,
11 decision freely and voluntarily of your own accord?

12 THE DEFENDANT: Yes, sir, I am.

13 THE COURT: Anybody force, threaten, or promise you
14 anything to get you to waive, uh, to exercise your rights from
15 your Fifth Amendment and not testify?

16 THE DEFENDANT: No, sir.

17 THE COURT: You understand the consequences of doin' so,
18 the protections afforded to you?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Okay. Uh, that bein' done you also told me
21 you did not intend to call any witnesses but if you intend to
22 call a witness I'll will, I grant you right to do so.

23 MS. ABEE: Your, and, Your Honor, this may be able to be
24 taken care of. Uh, ---

25 THE COURT: Okay.

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1 MS. ABEE: --- we would have an objection to these based
2 on the relevancy and depending on the way that Your Honor
3 would rule would depend on whether or not we'd stipulate.

4 THE COURT: You know you guys are holdin' up two pieces
5 white paper to me, how I would know what they are I have no
6 clue.

7 MR. RIORDAN: Sure.

8 MS. ABEE: Yes, sir, we'll approach, there's pictures of
9 two of her dogs.

10 MR. RIORDAN: Just just part a the evidence in the case,
11 we've talked about wanted to put them in, part a the two is to
12 show that Paula's not and that ---

13 THE COURT: Okay, well ---

14 MR. RIORDAN: Yeah.

15 THE COURT: --- the rules would be the same and ---

16 MR. RIORDAN: Sure.

17 THE COURT: --- you know, the same procedures like any
18 other trial, if you wanna get 'em in, you can put somebody up
19 put 'em in, if ya don't, ya don't, just that others, if the
20 State objects to it then you have to go through your
21 evidentiary ---

22 MR. RIORDAN: Sure, ---

23 THE COURT: --- processes.

24 MR. RIORDAN: --- this I know. That's what you want me
25 to do, I'll put him up there. Kinli, ---

MOTIONS AND MATTERS

1 MS. ABEE: Your Honor, we'll stipulate to 'em.

2 THE COURT: Thank you. What numbers would those be,
3 madam clerk -- madam court reporter?

4 COURT REPORTER: Seven and eight.

5 (Photographs marked Defense Exhibit Nos. 7 and 8 for
6 identification and admitted into evidence.)

7 MR. RIORDAN: Thank ya.

8 COURT REPORTER: You're welcome.

9 THE COURT: Okay, with that bein' done, uh, does the
10 defense, Mr. Riordan, intend to call any witnesses in this
11 case?

12 MR. RIORDAN: None, Your Honor.

13 THE COURT: Very good. Alright, so do you -- have ya'll
14 discussed whether you're gonna require the State to open on
15 the law or you're gonna let them just follow you in after you
16 do your closin'?

17 MS. ABEE: Who ---

18 MR. RIORDAN: What you guys wanna do? I thought was
19 he's ---

20 MS. ABEE: I thought he's ---

21 MR. RIORDAN: --- doin' the law first.

22 MS. ABEE: --- was gonna do the law first so we would not
23 open on the law if Your Honor's gonna charge on the law first.
24 It would go Your Honor ---

25 THE COURT: So ya'll -- okay, ya'll ---

MOTIONS AND MATTERS

1 MR. RIORDAN: I wanna do the, I wanna do the Tavernier
2 move, that's what I want.

3 MS. ABEE: I'm not sure what that means but it would
4 be ---

5 THE COURT: It means you won't argue anything, I charge
6 the law, the jury ---

7 (Indiscernible cross-talk.)

8 MS. ABEE: No, okay, well then I'm not okay with that.

9 (Laughter.)

10 MS. ABEE: Uh, my understanding, Your Honor, would
11 charge on the law, then Mr. Riordan, then myself and that'll
12 be it, ---

13 THE COURT: Okay.

14 MS. ABEE: --- we would not be opening on the law.

15 THE COURT: So ya'll want me to go ahead and charge
16 first?

17 MS. ABEE: Yes, sir.

18 MR. RIORDAN: Yeah, I'm fine with that, yeah, ---

19 THE COURT: Okay.

20 MR. RIORDAN: --- Judge.

21 THE COURT: Okay, so then I charge first, Mr. Riordan
22 goes and you go after him.

23 MS. ABEE: Finish it up yes, sir.

24 THE COURT: Alright.

25 MS. ABEE: And, Your Honor ---

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1 THE COURT: If ya'll start hearin' sumtin' durin' your
2 closin' arguments, you start (knocks on bench) hearin' sumtin'
3 like that, you, I'm not gonna call it down necessarily but
4 ya'll need to start roundin' it, uh, endin' it up.

5 MR. RIORDAN: I hate to say it, can I go to the restroom
6 real quick, I am so ---

7 THE COURT: Go ---

8 MR. RIORDAN: --- sorry.

9 THE COURT: --- go do it.

10 MR. RIORDAN: I am so sorry then I'll ---

11 MS. ABEE: I'll be brief.

12 (Whereupon, defense counsel left the courtroom.)

13 MS. ABEE: And, Your Honor, uh, he's out the door, I just
14 wanna say the DV ruling on the record. The directed verdict
15 ruling is not on the record right now, I just ---

16 THE COURT: Thank you.

17 MS. ABEE: --- wanna make sure.

18 THE COURT: Thank you very much.

19 MS. ABEE: Yes.

20 THE COURT: That's what I told you in chambers, Kinli.

21 MS. ABEE: Yes, sir.

22 THE COURT: Okay.

23 (Pause.)

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

25 (Whereupon, defense counsel returned to the courtroom.)

CLOSING ARGUMENTS

1 just to be safe, 'fore you knock, ---

2 THE COURT: Let me just ---

3 MR. RIORDAN: --- is that okay?

4 THE COURT: I I, alright, let me just tell ya I'm not
5 gonna promise you any amount a time like ---

6 MR. RIORDAN: Okay, ---

7 THE COURT: --- accept for thirty ---

8 MR. RIORDAN: --- I won't be repeating myself, at least
9 I'll be tryin' not to.

10 THE COURT: Okay. Thank you. Alright, ya'll ready?

11 MS. ABEE: Yes, sir.

12 THE COURT: Bring the jury in, please.

13 (The following takes place in the presence of the jury.)

14 THE COURT: Mr. Riordan, you ready as well as the State
15 closin' argument?

16 MR. RIORDAN: Yes, Your Honor.

17 THE COURT: Def -- State ready?

18 MS. ABEE: Yes, Your Honor.

19 THE COURT: Let me hear from Mr. Riordan.

20 MR. RIORDAN: May it please the Court.

21 THE COURT: Yes.

22 MR. RIORDAN: Three days now you've been here, you and
23 I've talked about how important it was that very first day
24 about burdens of proof, civil versus criminal. Even in a
25 civil case proof beyond conjecture, guess, speculation, that's

CLOSING ARGUMENTS

1 a civil case, we're here in a criminal case. Thankfully the
2 highest burden that exists prove every element beyond any and
3 all reasonable doubt. You've heard the charge from the judge
4 so important that he gave you that to start so you can hear it
5 and have it in your mind as you, as you, as you hear the
6 arguments that comes, uh, to you. State again burden a proof
7 so they get to go first, they get to go last, it's only
8 opportunity they have to speak. Probly heard enough from me
9 already, get up here and I wonder did I do enough? Talked to
10 you guys earlier, we talked about oaths and we'll talk about
11 it more, I've got an oath, I've got an oath that I'm sworn to
12 uphold to represent my clients zealously within the bounds a
13 the law and and I know in this case we sat here pickin' a jury
14 I probly scared some folks, maybe some a you, I know I scared
15 some other ones that didn't get picked, I wanted to make sure
16 people were up for the task to accept that oath that's so
17 important and I told ya I couldn't remember but hopefully one
18 a you twelve do, how important Judge Stilwell's words down
19 there were when he qualified ya, spoke so eloquently about our
20 system, greatest system in the world, Constitution, you guys
21 one a the six constitutional offices and how important it is,
22 separates America from all these places that have police
23 states and and and he he's the one that said that it's so
24 important 'cause when we give up our liberties, give up our
25 liberties that's when we're gettin' closer and closer to a

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1 police state and still thankfully we're here 'cause at the end
2 a the day we've seen awesome power of the State. I told ya, I
3 used to wield it myself, I know it it's so concerning but the
4 beauty of our system at the end a the day twelve a you guys
5 get to be the final ones that that make a call. They've got
6 power unbelievable, I mean, you've see, you've seen the power,
7 you heard it up here (indicating), yeah, it's what I can do,
8 probable cause. As I said before they had all the power to
9 get us here and it totally switched, all the power's with you,
10 it's been with you since Monday since you were qualified,
11 instructed and asked questions, everyone agreed you understood
12 what it was all about, what our Constitution's about, what the
13 burden's of, burden of proof is about, what the presumption of
14 innocence is about and that's so important, that's what
15 liberty is all about. Stilwell said and I said too, Judge
16 Stilwell, We hope you find this experience fulfilling and
17 rewarding, think I said, I hope you enjoy it thoroughly. I
18 don't know that it's enjoyable to come in and see power
19 inflicted and directed on somebody on this kinda proof.
20 Remember your oath and the judge just instructed you again,
21 you all agree Paula ya had it in your mind from the start,
22 he's had it now, innocent, you know it. Outside before your
23 oath you might, and I hope you don't fall back into that, I
24 hope you've seen and you'll question now every time you see a
25 news report be a little bit skeptical 'cause if you get --

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1 remember, first impressions can be lasting impressions. If
2 you get off track from the start, you might never get back but
3 thankfully you guys are gonna uphold your oath, you've held --
4 upheld your oath and it's gonna continue 'cause she's
5 innocent, remember, she's innocent. Look at 'em now, you
6 know, you know they got it wrong. Bring an innocent person in
7 here and want you to bail 'em out. They can bring 'em here,
8 prosecution, State vs. Paula Reed and I said "they," yeah, I'm
9 not prosecutin' anymore, loved bein' a prosecutor, I'm on the
10 defense now though, I still feel like it, I still act like it
11 and I wanna, I wanna prosecute it, that's what I said, we're
12 gonna prosecute this investigation, we're gonna dig it out and
13 find out if you all, you twelve fact-finders, investigators,
14 think this is just, is this the type of investigation you
15 would conduct? Would you have had -- 'cause I asked him. You
16 guys have sat in here, the one guy Investigator Cannon sat
17 here the whole time and still today after all we've heard,
18 wha'd they put eight, I don't know how many witnesses, let's
19 say there were fifteen, probly eighteen, twenty, 'bout twenty
20 people, told ya I was gonna try cross-examination my best to
21 prosecute this. I tried my best and and again, if you got mad
22 at me, thought I was too aggressive, too overzealous, I
23 absolutely understand, hold that against me though, please
24 don't hold that to my client, try to do the best I can for my
25 clients, what I hope someone would do for my family mem -- if

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1 there were in this predicament. They're gonna put a witness
2 up there and want you to say 'cause they got a badge or
3 whatever, you you're supposed to accept their testimony and
4 wouldn't that be interesting if we just accepted some a, some
5 a the testimony, remarkably most a the witnesses anyway even
6 on direct examination help our case, right? Folks come in
7 here and and support our case, three fellas though, two of 'em
8 are in here still, Investigator Cannon, Investigator Gonzalez
9 is here, Randy Morgan's not here and, again, I know, I know I
10 may have overpushed on some things bein' petty, talkin' about
11 spellings, I submit to you that's important, you're gonna have
12 your liberty on the line, you wanna know about the people
13 doin' it, what's their competency. What is the competency
14 level of people we're givin' to exercise this much power and
15 does it appeal to your common sense or your sense a justice,
16 this case is about, you guys gonna have to look at. Look,
17 I'll try to go sequentially on this and there's a lot here, I
18 kn -- I know I'm gonna forget to cover somethin', what -- we
19 had a lotta good good things in here I thought and I threw out
20 some things, themes that that could have played a role in
21 here, I'll throw 'em out, you guys can play with 'em back
22 there. As I said earlier, you know, in a case like, I told
23 even before ya heard anything I suggested you probly thought,
24 Man, he's bein' too bold, arson investigator's more dangerous
25 than the arsonists. Arsonists set the house on fire, arson

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1 investigators set her life on fire, still burnin' it, it's
2 still smoldering now. We had brave fireman in this case,
3 again, I said before that's that's part of the roll you that
4 we're gonna ask you to play, put out that fire, same with the
5 investigation. They put investigation up here, you guys
6 decide what's a good investigation. Play with some other
7 things in here, I mean, it was interesting story, I mean,
8 again, the the the score, he vented [sic] the baseball
9 scorecard, pretty neat, huh? What if we had a scorecard here?
10 What's the scorecard have on it? errors. How many errors you
11 think you can put on a scorecard for things we talked about in
12 this case on this investigation, different little things you
13 can play with, comes down to credibility though, that's what
14 this is all about, credibility.

15 They wanna talk about her demeanor and think about how
16 perverse some a these things were that were written in these
17 reports. Talk about her demeanor. After the fire, after all
18 her animals are saved, she's calmly over there and seems to
19 only care about her animals, doesn't seem to have much care
20 about her property. Can you ima -- they they bring the case
21 sayin' she's lookin' for financial gain. I mean, what do we
22 see when there's disasters? That, what does that show you?
23 That, does that show you someone who recognizes what's
24 important in life, huh? Does that appeal to your common sense
25 that that should be perversely turned around but, again, they

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1 wanna bring it up and say, Well that's from my experience, my
2 demeanor. Isn't it interesting, they're gonna talk about this
3 again. I told you before, again, if ya listen to it and ya
4 wanna find fault, you might be able to 'cause we could hear,
5 you know, we hear what we wanna hear. If you listen to it
6 again presumin' she's innocent, knowing she's innocent,
7 knowin' she's dealin' with the danger, you won't have those
8 doubts. Danger is there, she's callin' for help and brave
9 people come to help. Firefighters, deputies come on the
10 scene, put out the fire, save the animals, uh, get rid of all
11 the danger, heroic efforts and then diminished, within a few
12 hours diminished, the guys had come a hour plus after the
13 danger's gone. Yeah, it's a shame what's happened to her,
14 it's a shame for those folks too, the brave folks that came in
15 here, all of 'em supporting her (indicating the defendant).

16 Credibility. Morgan, Investigator Morgan, again, what --
17 they wanna judge you on recorded call, isn't that interesting.
18 Isn't that interesting when he says their policy, their policy
19 is they don't get recorded, they don't wanna be recorded, we
20 don't do it. Now we heard contrasting testimony, again,
21 credibility isn't that somethin', he's up there sayin' one
22 thing and his partner's sayin' another. Credibility, the
23 judge is gonna talk to you about, uh, credibility.
24 Competency. Morgan, we saw some a the things he wrote his
25 report, mean, again, a flunky, you know, wants to too much, he

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1 wants to talk about demeanor and he can't even spell the word
2 that's part of his case.

3 We talked about oath, some a these folks came up. Phil
4 Brooks State Farm. You know, their their witness came in
5 here, he's part a the International Association of Arson
6 Investigators, what's their oath, their code of ethics? I
7 will bear in mind always, I'm a truth seeker, not a casemaker,
8 that is more important. It is more important to protect the
9 innocent than to convict the guilty. What do we say? rather a
10 hundred guilty go free than one innocent person be convicted
11 'cause if you got one innocent person, you're all for that,
12 aren't ya, that's what it should be, that's what our system's
13 based upon, that's why we have a burden of proof and the
14 presumption of innocence but it's interesting, again, at the
15 time of the fire Gonzalez is n -- he's he's part a this now,
16 time a the fire neither one of 'em involved, neither one of
17 involved. Credibility, credibility in the case.

18 Megan Fletcher from SLED with reports, what's her code of
19 ethics? If the law has made you a witness, remain a woman of
20 science. You have no victim to avenge, no guilty or innocent
21 innocent person to convict or save, knew most her testimony
22 within the limits of science. Good to have codes 'cause then
23 you don't have to worry about anything else, you can always
24 stick with a code. You got a bedrock foundation you can
25 always rely upon and come back to, just like your oath, you

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1 can always come back to it.

2 Let's talk about the evidence in this case or let's do it
3 this way and, again, I, there's gonna be sumtin' I forget, I
4 know it, even when I'm done, I'll say it now just 'cause I
5 might forget when I'm done she gets to say the last word, you
6 guys been watchin' this case, you know the evidence in this
7 case. I'm not gonna get -- be able to stand back up but you
8 guys know it better than I do, the twelve of you, you all know
9 it better than I do, anything that's said be ready to counter
10 it, talk about it, bring it up on your own as you should per
11 your oath. Every time you left here at a break, even at the
12 end a the day judge instructed ya don't talk about the case,
13 don't talk about the case with anybody. Soon enough gonna get
14 to talk about the case, if ya do what the investigators want
15 you to do and what the State I guess is gonna come up here and
16 ask ya to do, you convict Paula of all four charges, that's
17 what you'd do if you do what they ask you to do, you still got
18 that power, that's why it's so concerning, you've got that
19 that power, it's there for ya. All we ask, all I ask everyone
20 in my case, I try not to tell my jurors what to do, goodness,
21 I try to present a case and put the evidence out there so they
22 can just lead it to the just decision, that's all that can be
23 asked, that's all that can be asked. What we need you to do
24 is be able when you talk about your verdict, if it's that
25 verdict, to make sure you can explain yourself, that you can

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1 explain your actions competently, confidently, if you can,
2 when you get outta here and talk about the case, nothin' more
3 we can do, all I ask is that you are able to do that. I'd
4 hate for you to go back and have conversation, you know, your
5 friends, family askin' you, Wha'd you do this week? served on
6 jury duty. What happened? we convicted the, uh, trooper's
7 wife that was accused of lyin' and burnin' down her house.
8 Oh, yeah, saw that, remember, remember seein' an article about
9 that, I remember seein' a press release about that, so I guess
10 the evidence was pretty strong, huh? I guess since they
11 charged her with insurance fraud and burning to obtain
12 insurance funds I guess you saw she had, I guess she got a big
13 check, didn't she? Uh, actually, she wasn't even on the
14 policy, she wasn't named on the policy. State Farm
15 representative came in and said she didn't get anything
16 directly to her, the house was her husband's. Okay. I I
17 guess, I guess they had to have money though, somebody, sh --
18 he must have had to have money. Well well that's what we
19 thought and it seems like that's what the investigators
20 thought, you know. Check, they checked, they checked bank
21 records and you, -- they, yeah, I think, yeah, checked bank
22 records, checked six or they couldn't find any money so, well
23 actually the, actually bank accounts were closed, they didn't,
24 they didn't check for the right amount accounts, didn't get
25 income tax returns. We actually had the fella from State Farm

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1 who came in, the one company that's got a vested interest in
2 really lookin' in the s -- in the scene, findin' out whether
3 insurance fraud was done and what did he say? I was
4 satisfied. Homer's Homer's family, his grandfather invented
5 the scorecard and the ba -- and and baseball scorecard and
6 basically the hot dog and had concessions for major league
7 ballparks all from the turn a the century, all the way up into
8 the seventies, part o --or part ownership a the Red Sox,
9 spills off a hundred and forty something' thousand dollars a
10 year extra income. Okay, well, and anyway despite the charges
11 of insurance fraud the State came in in the openin' statement
12 and said it's about publicity. Aah, was about publicity, she
13 was gonna write a book. So so you guys must have seen her big
14 press conferences and big press releases about her book. No,
15 there wasn't, there weren't any, wasn't such a thing. Six
16 weeks between the fire and the arrest, none a that happened.

17 Well let's talk about the other evidence. Cut phone
18 line. Wha'd they find out about the cut? they checked who the
19 service provider was but they never even called 'em to find
20 anything about it, never even found out who -- how the line
21 was cut. Well what else do ya have? Well there was, the
22 other ev -- there was a cell phone. Aah, cell phone on the
23 scene, cell phone tracker somehow got invol -- well actually
24 I, now that I think about it they had a cell phone, they
25 didn't even check to see who it was registered to. Two gas

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1 cans, they say, Well there's a red one, there's some dispute
2 over the other one, I mean, as if it would make a difference.
3 If it was theirs who cares, it's right there for convenience,
4 it said don't have the yellow can, there's, and there's a
5 screw, it looks brand new, the top's screwed off. Okay, so so
6 the screwed off top, I guess the investigators did a good job
7 and got some prints off of it of Paula Rose. Actually, they
8 didn't, they didn't even run a print. What about the yellow
9 gas can? tracked it down, didn't they? Well actually, Randy
10 Morgan he spent a lotta time lookin' for it, found out a few
11 people, uh, that had bought it. Aah, so they had the footage,
12 took pictures of it. Well, no, was never Paula and the
13 footage they had he just said it didn't fit the description,
14 di -- we never even saw the photos. We just, ya know, we had,
15 we had to listen to him. One of 'em bought by a construction
16 company. Well what did the construction say about what
17 happened to the yellow gas can they bought? Never even called
18 'em, didn't even find out if the construction company might be
19 workin' in the area, have a crew involved. Hey, I see you
20 bought this within the last two weeks, can ya tell me where
21 yours is, do you know what happened to it, whose had it last?
22 Seem like fair questions, don't they? Found Jeff Aughtry, I
23 don't know who he is, I -- poor guy doesn't know his name's
24 bein' banded about the court this week but they do even check?
25 well he was a s -- he was a thin man with a kid. Well did you

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1 find out who his -- if he bought it, let his, let his burly
2 brother-in-law or somebody borrow it? I don't know. I mean,
3 the the level of the lack of curiosity in this thing 'cause
4 it's clear, again, from the start as soon as they go out
5 there, they see this house and they think they know, they
6 presume to know how much a trooper makes, red flags, and they
7 talk to Paula and she's truthful to 'em, yeah, that's we'll
8 get to, talkin' to your friend, tell 'em what you did. Musta
9 been a criminal record, she she had a criminal record, didn't
10 she? Aah, that's it, she's a criminal. Yeah, had a criminal
11 record; in fact, the attorney, half the time when the attorney
12 tried to talk, when her own attorney tried to talk about her
13 criminal record to explain it, he's gettin' objected to. The
14 normal, the normal thing where the defense side is tryin' to
15 keep it out, they're tryin' to keep it out 'cause if you've
16 got a criminal record and you're guilty, you don't wanna talk
17 about it but if you got a criminal record 'cause you're
18 dealin' with bad cops, you wanna talk about it and tell people
19 about it yeah, it gets ya upset, you do wanna talk about it,
20 you wanna tell people things are bad, police state it can
21 exist, absolute power that comes on ya it's rough. I'll get
22 off base a little bit on that 'cause I do wanna bring out how,
23 again, perverse. The safe's involved here. They say well
24 Homer Rose never told us any -- the only other person that had
25 a combination to the safe they do go talk to her, their buddy

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1 down at the local magistrate's office and what do they get
2 outta, what do they get out -- what does he get outta the
3 conversation? Paula's crazy, Paula broke up Homer, uh, her
4 marriage with, uh, Homer, and what was, listen to this one,
5 and Homer, wait, well I can't even remember the the words,
6 Homer spent a lotta money keepin' her outta jail, isn't that a
7 neat phrase, "spent a lotta money keepin' her outta jail,"
8 sounds like paid somebody off, huh? Awesome power the State
9 comes on ya, decides after a little bit a evidence, before
10 other evidence comes back they've got probable cause, gonna
11 bring warrants and arrest somebody and you're innocent, what
12 do ya do, you just lay down and take it, keep 'em out of jail?
13 What do you have to do? you gotta hire an attorney. You gotta
14 fight it, you gotta come here and hope that twelve people in
15 the community are gonna see what's happenin'. Is there
16 somethin' wrong with that? Somethin's wrong that ya have to
17 do that cases like this with this evidence, that's what I
18 would suggest but, again, I mean, is there anything more
19 admirable somebody, he knows some -- he believes in her, hears
20 her story of bad cops up in Oconee County, he can afford to
21 pay for her attorney to fight it, fight it and beat it and
22 they're gonna write, they're gonna write somethin' like that
23 so perverse as if there's somethin' wrong with that, amazing.
24 It's amazing. Must not have been any evidence, uh, other than
25 it was her. Since you convicted her, well actually they went

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1 out and spoke to neighbors that mornin' and the neighbor said
2 it's a pretty remote area, houses here, right up the road to
3 the left the next place, the barbershop, red pickup truck with
4 the utility trailer, no testimony from anyone anything's on
5 it; in fact, they said they assumed there must be grass being
6 cut. Again, look, remember, please remember, we have no
7 burden of proof at all, we don't have to prove a thing and
8 yet, what do they prove? nothing, other than they have no
9 imagination, curiosity whatsoever about investigating anything
10 other than Paula on their presumptions in this case. At least
11 Cannon was honest and said, Yeah, if I was gonna do it, that
12 be what I do, they said but but but why was he there try --
13 doin' the dial? well again, somebody look into it, no one even
14 asked. The one other person that had the combo did ya ever
15 ask if they gave it to anyone else? The safe that's involved,
16 can you believe this case, never even asked to open the safe
17 to see what is inside. Never done. Well the witnesses musta
18 been strong against her. The first responders on the scene
19 they must have had some strong testimony against her, huh?

20 Arson. An arson case where the first fireman on the
21 scene is never even talked to by an investigator. Is that, is
22 that amazing? Lieutenant Scott Proffitt comes in here, what
23 does he say? get up there and she's she's on the front porch,
24 still burnin' on the front porch say this still, he still
25 writes, Again, he's here today, said, Oh, it was already out,

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1 this is dried up, there's nothin' here. Two of the o -- two
2 of his own officers testified, you go back and ask but you can
3 talk amongst yourself and remember, I mean, I had the reports
4 and made sure I I had to remind him ya wrote it in your
5 report, two of 'em from his own department say yes, it's still
6 burning, two officer, the the the firemen come in here and
7 testify on her behalf. Yeah, she's right in it, we have to
8 get her outta the way, fact, I was kinda scared to get her
9 outta the way 'cause she's got her gun. She's sayin', Save
10 the dogs, they saved me, save them, and they do, not the
11 firemen, they -- they're with us.

12 So let's get to the evidence, I mean, again, they come
13 back, here it is and and and it it makes no sense either.
14 They finish their investigation, they clo -- they they they
15 release the crime scene at 12:20, they've collected all the
16 evidence, not gonna collect anything unless it's important,
17 they collect all the evidence. I mean, is there any doubt
18 it's Morgan's conversation with Paula and a revelation
19 regardin' Ocone stuff that changes everything. I mean, that
20 just perks up their ears hear about insurance, ooh, there it
21 is, that's the case. Instead of lookin' into the facts, no
22 curiosity, still to this day no cur -- I sent him a whole
23 packet, not curious to even read it, isn't that some, well it
24 didn't have anything to do with this case. Well if ya don't
25 read it how do ya know? If ya don't read it, look into the

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1 folks and see, how do ya know?

2 The evidence in this case. I've done it five times, I
3 guess you guys haven't gotten close enough to see it but
4 you'll you'll see it, I mean, the crime scene's preserved,
5 thank goodness Cannon, I mean, that's -- remember, the two
6 classes he had, well I can't even remember one of 'em, it was
7 Crime Crime Scene, uh, Fire Scene Safety and Photography, he
8 did at least get a picture that helped us in the case. Time
9 stamp's wrong, does have the pic -- you look at it, I couldn't
10 believe Phil Brooks back here sayin', Well, I'm not sure, I
11 don't know if he needs gla -- well he did have glasses on.
12 You look at it, look at it. Everyone talks about how
13 important it is preserve the crime scene and make sure there's
14 no cross-contamination, we've got it in regard to shoes, the
15 clothes same thing. Oh, she she wanted to cut 'em in half,
16 she's talkin' to any attorney, she's bein' defensive, well
17 goodness, gracious, she's been through what she's been
18 through, she's get -- it's clear these guys have already
19 turned on her and focused on her. Is there somethin' wrong
20 with that? Wasn't that a reasonable offer? Let's cut 'em in
21 half. Well heck, we didn't know then ho -- I didn't even
22 know, didn't know how you did the tests, and that's important
23 too, I tried to remind you as soon as the State finished their
24 case, you remember that, come in here suggest that you gonna
25 find ignitable liquid on the clothes, it's not what this

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1 trace evidence test is. Trace evidence test ignitable liquid
2 residue and we talked about that. Megan Fletcher, person of
3 science has to come in here and we say, Well here's the facts
4 are down there, yeah, I mean, you've got the, you've got their
5 own pictures here, they try to come up and say, Well it's all
6 burned off and dried. Well the folks said it was still on
7 fire at the time, even the pictures it looks wet and the
8 bigger point they cut, she acknowledged if ya had the piece
9 they cut off the top, if you touched it and touched somethin'
10 else, that's contamination, that's the transfer. Pulled out
11 the clothes, you guys pull 'em out and look, we talked about
12 the dogs were on 'em, couldn't -- wouldn't that be somethin'
13 you'd be concerned about, well of course it is. The dogs are
14 hair, pickin' it up, puttin' on your shirt, the two of 'em
15 balled up to together, is there really of any significant
16 evidentiary value? no.

17 The shoes. Again, despite what the testimony said, the
18 whole contamination issue puts it into question. Gettin' back
19 to the conversation, yeah, that that would be part of it.
20 Well what else was out there? Oh, the clothes, well that had
21 gas on 'em. No, well it really didn't have gas, actually,
22 what they do they put it in a can and put it in an oven for
23 sixteen hours at a hundred and fifty to hundred and si --
24 hundred and forty to hundred and fifty-eight degrees and, you
25 know, vaporize and whatever's in there vaporizes up and ya get

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1 a little piece ya put it in a machine and ya get trace
2 amounts, as little as a drop, a drop a gasoline, can't tell
3 where it came from or how long it's been there and the, and
4 the firefighter's sayin' well of course it was, course she has
5 it on her, she's right there in it just like we are. Even
6 with the shoes, I mean, that was important. Megan I
7 appreciate her comin' in, again, ya know just got the -- just
8 get the stuff, that's, again, so so much of this case
9 transparency, ha -- havin' the information you have to prepare
10 for a case, tryin' the best I can to to be able to
11 cross-examine these witnesses. She got up here (indicating),
12 Josh is is examin' her and tells you, Yeah, uh, ya know,
13 toluene, she talks about the toluene and says it's so volatile
14 evaporates within two days. Talked about the society she's in
15 and peer review articles and things, what does she say, what
16 does she say and Phil Brooks say and we pull out John Lentini,
17 fire investigator's investigator, teaches the course, teaches
18 the guys. He's the one that comes in and says, A pair a
19 shoe -- a pair a shoes for comparison would seem to be
20 absolutely essential prior to makin' any decision about the
21 significance of petroleum products identified in shoes, that's
22 gasoline too, right? yep. No evidentiary value whatsoever in
23 this case. The dog sniffs, again, you got the dog sniffin' on
24 it, goes to credibility, credibility in this case. The dog
25 certifici -- he can't even spe -- again, I know it's, you'd

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1 say it's petty except it's important when you're tryin' to to
2 gauge the credibility of the persons comin' before you that
3 are tryin' to take away your liberty, can't even spell
4 charcoal, I mean, that's what we're dealin' with, but your
5 friend would say, Well that's that's a, okay, well what else
6 is out there? fingerprints. Aah. Well, got her on
7 fingerprints, well goodness, she lives there, we expect to
8 have her fingerprints, that probly didn't mean too much since
9 ya convicted her. Well, yeah, we did convict her but now I
10 think about it guy said there were two prints. Yeah, one of
11 'em was her's as expected. As everyone said first thing Homer
12 told 'em, he stated, Yeah, we use it, we just put somethin' in
13 there and just just last Fri -- just 4/29 whenever that was,
14 Friday I can't even remember, I can't even remember what day
15 it is today, I think it's Wednesday, yeah, there's another
16 print, forgot to report that. There's enough of it there that
17 it eliminates Paula and Homer. Any other prints? Oh, yeah,
18 Phil Brooks went out there a couple days late, maybe it was
19 somethin' somebody put up pickin' it up but he had two two
20 more fingerprints, they're not curious enough to even ask to
21 look, is that amazing? Your friend's wonderin' what in the
22 world did ya do but but ya, but they say, But was there DNA
23 evidence, and you say, Yeah, there was, they say, Well that's
24 how ya convicted him, the DNA evidence, the DNA evidence, well
25 now I understand what ya did. Well, I guess I should tell ya

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1 the warrants were actually brought before the DNA evidence
2 came back and it wasn't even turned over till twenty months
3 plus, is that what it is, nineteen plus months after the
4 arrest? This is scandalous stuff, isn't it? What does it
5 say? Well the State will say, Well it's inconclusive, except
6 when you read the report, Inconclusive because it contains a
7 mixture of DNA in three or more individuals. What's the only
8 chromosome you can identify? XY chromosome, male.
9 Conjecture, guess, speculation, guys, it's up to you. I ask
10 that you don't have that conversation, you don't need to. I'm
11 done, I I know I've, I know I've spoken, I didn't speak about
12 the dog too much, he's lyin' down in it, runnin' around, I
13 know I'm forgettin' some important things but you know what,
14 it doesn't matter 'cause you guys have been listenin', you
15 guys have been payin' attention, the twelve of you know more
16 than any one person could know. You all talk about this when
17 you go back there, discuss it fully, spend all the time that
18 you need, don't spend a second more than you have to. Three
19 days on the job, you've got to solve your first case, about to
20 do justice, 'bout to do justice. Said from the start as long
21 as you use your common sense, your sense of justice, you
22 follow your oath, confident you're gonna reach a verdict in
23 this case which does justice, that's all we ask for, nothin'
24 more, certainly nothin' less. Thank you.

25 THE COURT: Ms. Abee.

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1 MS. ABEE: Your Honor, if I just might have a minute to
2 remove Mr. Riordan's notes ---

3 MR. RIORDAN: Oh, I'll ---

4 MS. ABEE: --- up there.

5 MR. RIORDAN: --- get 'em, I'm sorry.

6 MS. ABEE: That's alright, that's fine.

7 THE COURT: Well just one second. Mr. Foreman, would
8 your jury like to take a quick break in between arguin' or
9 would like to proceed?

10 JURY FOREMAN: Think we're okay.

11 THE COURT: Very good.

12 MS. ABEE: May it please the Court, Your Honor.

13 THE COURT: Yes, ma'am.

14 MS. ABEE: "Good Cop, Bad Cop," you've heard that
15 throughout the course of this trial and that seems to be what
16 the focus is, the focus is on bad police work or bad cops but
17 that is just a convenient distraction, a convenient
18 distraction from the fact that Paula Rose set her home on fire
19 then she lied about it and created a story of three burglars
20 and that story, well it's just not true. Now Judge McIntosh
21 has already instructed you on the law and is asking you to
22 return a verdict of guilty or not guilty and we, the State,
23 are asking that you find Paula Rose guilty of all the four
24 crimes that we charged her with. You've heard all the
25 elements of those crimes, in order for you to find her guilty

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1 we had to prove to you each and every one of those elements
2 beyond a reasonable doubt.

3 Now I wanna go through the evidence in this case and talk
4 about how we've met that burden, that reasonable doubt burden.
5 On July the 27th of 2012, Paula Rose calls 911 a little bit
6 after 8 a.m. in the morning and she says that she has seen
7 three men in her garage, two of them masked, and they're
8 trying to get into her gun safe. She says she went back into
9 her bedroom after she locked the door in the garage, she
10 grabbed a shotgun, she grabbed a pistol, she realized she was
11 wearing a nightgown and didn't have a place to put her pistol
12 so she takes off her nightgown, changes while on the phone
13 with 911, places the gun in her waist or places the gun in her
14 waistband and she says she hears some loud bangs, she hears
15 some crackling, she opens the door, a cat runs out, she goes
16 and she sees that her back porch is on fire, the sunroom, the
17 wicker couch, she realizes that her animals are exposed to
18 that fire, she starts askin' for help and she realizes that
19 the front porch also is on fire. She runs into Ben Temple
20 outside, Mr. Temple the individual that pulled in, and fire
21 trucks come and police officers come, they put out the fire,
22 they clear the scene, make sure that three burglars are not
23 there and they listen Ms. Rose, they treat her as a victim but
24 eventually that changes and one of the crimes that
25 Ms. Rose is charged with is filing a false police report.

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1 Now, as Mr. Riordan said and as Judge McIntosh said, that
2 burden of proof rests here with us, the defense does not have
3 to prove a single thing to you. Mr. Riordan coulda sat there
4 at that table, picked up his feet, not said a single word
5 'cause they don't have to prove to you that the burglars
6 actually were there, we just have to prove to you beyond a
7 reasonable doubt that they weren't there, so let's look
8 through some things that are questionable. This (indicating)
9 is the house, you heard that this house is located on Riley
10 Smith Road which is near Pelham Road which as many people
11 classified is a rather busy road. Now the phone call came in
12 at 8 a.m., you heard Mr. Temple himself say he was on his way
13 to work and that's when these burglars were at the house. Now
14 this (indicating) is what the house looked like when officers
15 got there minus these two individuals right here (indicating).
16 You see a open garage door and a car in the driveway; however,
17 these three alleged burglars thought no one was home but you
18 can look at that and you can see and decide for yourself
19 whether or not it looks like someone might be home if you
20 drove past that house. Then we have the gun safe, that's
21 where Ms. Rose says that she sees these three individuals.
22 This (indicating) is the garage, this (indicating) is the gun
23 safe, this (indicating) is where she says the three
24 individuals are. You notice this (indicating) rack on the
25 ground and this (indicating) blanket which we've learned

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1 throughout the course of this trial the blanket was over the
2 safe and the metal rack was in front of the safe so in order
3 for these three burglars to get to the gun safe surely they
4 had to know it was there, right, 'cause if not just looking
5 into the garage you see a metal rack and you see a blanket,
6 you don't see a gun safe, but these three burglars, these
7 three burglars they find the safe and they either know the
8 combination and never get it open or they realize that they
9 don't have the combination and so what do they do? they find a
10 hatchet located at the house and they start striking it, they
11 start striking the front door. These burglars they don't
12 strike the hinges, there are no strike marks on the dial, no,
13 the strike marks are superficial, not deep and they're on the
14 door of the safe but then what do these burglars do with the
15 hatchet, well they are some of the nicest burglars because
16 they place it gently on this rack here (indicating), they
17 don't disturb any of these (indicating) bottles, they placed
18 it upside down right there (indicating). Then what happens?
19 Well we hear that Ms. Rose sees them, right, she sees the
20 three of them in there so she locks the door and she goes back
21 into her bedroom with her dog, she grabs a shotgun, she grabs
22 a pistol, she calls 911 and during this time while these three
23 burglars what are they doing, they're setting Mrs. Rose's
24 house on fire, right, they're getting the gasoline cans and
25 they're dousin' the front porch, they're dousing the back

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1 porch, they're setting it on fire but what does Ms. Rose say
2 that she did? she said she looked out her front bedroom
3 window, this (indicating) window right here by the porch,
4 doesn't say she sees anyone pouring gasoline, doesn't say that
5 she sees any sort of fire and these three individuals well
6 they found gloves in the garage as well. You saw that there
7 was a box a gloves in the garage and this (indicating) photo
8 was taken because these gloves looked similar to the gloves
9 found around the scene, the gloves with the DNA in it, the the
10 mixture of three or more individuals, so as these three
11 individuals are setting fire and pouring gasoline on the
12 porch, well surely if it has three different types a DNA in
13 it, one wears the glove and then takes it off and passes it to
14 another who takes it off and passes it to another and that's
15 how we get this mixture three or more DNA even though there's
16 an entire box there, no, these burglars they all three wanna
17 wear the same gloves and they're smart enough to wear gloves
18 but then they just discard them there on the scene, hmm.
19 Ms. Rose is back in her room, these individuals they're
20 settin' the place on fire and she says she hears two loud
21 bangs comin' from the garage. Now, remember, according to her
22 story there are three men of muscular stature about 6 feet
23 tall in her garage and she hears two bangs and so what does
24 she do? she opens the door? She retreats all the way back to
25 her bedroom to get away from these individuals and after

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1 hearing loud bangs she opens the door and she hears crackling
2 and her cat runs out and she sees that her front porch is on
3 fire, she sees that her back porch is on fire, she goes out
4 and she sees Ben Temple, right, Mr. Temple is the very first
5 person that took the stand. He told you that when he got
6 there he asked, Is anyone in the house, she said no, she's
7 asking about her animals. At no point in time does she tell
8 Mr. Temple, Hey, there are three men here, there are three men
9 burglarizing this house tryin' to get in, she never says that
10 at all, of course it could be said well maybe she thought
11 Mr. Temple was a first responder. Mr. Temple told ya he was
12 on his way to work in his Mercedes wearing roughly what he was
13 wearing the other day, was a blazer and some slacks. House is
14 set on fire, the firefighters come in, they put everything out
15 then the investigators start. Like I said, they're treating
16 her as a victim, they're askin' her what happened, they're
17 making sure she's okay, you heard Deputy Osbor -- or Deputy
18 Brown say he gotta outta the car with his shotguns, there were
19 three individuals there, he was gonna be prepared and he was
20 gonna have more manpower, why? because it's not about them
21 being bad cops, it's not about them blaming Paula Rose
22 immediately now they didn't do that, they treated her like the
23 victim and they went there to protect her, they cleared the
24 scene, they tried to find tracks, they walked all the way
25 around the house, they went upstairs, they went downstairs,

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1 all try and make sure that this house was safe for Ms. Rose
2 and eventually the tide shifted and Ms. Rose went from being
3 the victim to being a potential suspect but unlike what
4 Mr. Riordan wants you to believe that is not or was not
5 testified to because she had a criminal history, that's not
6 what changed their mind, not at all. It wasn't the criminal
7 history, it wasn't the prior insurance fraud charge on her and
8 on her rap sheet that, that was not it at all and it was not
9 just her demeanor. You heard Investigator Cannon say it was a
10 totality of the circumstances, we got together, the arson
11 investigators and the burglary investigator, we got together
12 and we started thinkin', Man, stuff really isn't addin' up,
13 you know, they -- she says there's a burglary, there aren't
14 really a lotta marks on the safe and there's no fire in the
15 garage and as investigators they know about concealment fires
16 and burning evidence and she's sayin' the burglars are in the
17 garage but he didn't see anything on fire there, nothing
18 stolen. There's fire on the front porch and a fire on back
19 porch but, I mean, there's another exit to the house so if
20 these three individuals wanted to make sure she was trapped
21 inside of the house, why would they have set that extra exit
22 on fire as well? They knew that exit existed, they saw
23 Ms. Rose standing at that door with the garage door open so
24 what -- thing's aren't addin' but let's go back, let's go back
25 and try to find more evidence, so they go and that's when they

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1 find the hatchet with the paint chips that Agent Fletcher
2 testified to. Those paint chips on that hatchet came from
3 that safe, that's when you hear about Investigator Gonzalez's
4 arson dog, how it goes inside the house and it finds the
5 slippers, it alerts and says, Hey, over here, there's
6 somethin' over here, not anywhere else in the house but on the
7 slippers, there's something there, that leads to them getting
8 her clothing and sending it all off to SLED to be tested in
9 which it all comes back with ignitable liquids.

10 Well there's a few points that Mr. Riordan made and a few
11 things that have come out during the trial that I wanna
12 address and talk about. Let's talk about the fingerprints.
13 It's been said that, Well Phillip Brooks found fingerprints on
14 that metal shelf, he found it there and it was never tested
15 but you heard Mr. Brooks say when he got there that shelf was
16 upright and when the investigators got there and forensics got
17 there, Dustin Kretschmar, he said it was down like in the
18 picture that we just saw, so in between the time of Dustin
19 Kretschmar dusting the metal rack and Phillip Brooks bein'
20 there, somehow it got put back up, so does that fingerprint
21 have any value to the investigation? well, we'd say no that it
22 doesn't and this fingerprint that doesn't belong to Paula, it
23 doesn't belong to Homer, you heard Phillip Brooks say today
24 that he was talking with Ms. Rose and there were a ton a
25 people in and outta the house that previous week leadin' up to

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1 it: different lawn care people, the lawn care guy was even
2 there when Nick Gregory was there, different people in and out
3 of that garage. Can we tell you who that fingerprint belongs
4 to? no, it is not of a quality that we can run it through any
5 sorta system and tell ya who it belongs to. We can tell you
6 that it's not theirs but we can't tell you who it belongs to,
7 it's not a good enough quality to do so.

8 There were some comments made about this red truck, well
9 there's a red truck with a trailer up across the street in the
10 barbershop early that morning. Remember, Ms. Rose told
11 Phillip Brooks that her lawn care guy, Mr. Cruz, drives a
12 similar truck to that lawn care guy. Lawn care people like to
13 transport things, transport different types a lawn care
14 machinery, something that may necessitate a trailer on the
15 back, what doesn't necessitate a trailer on the back is a
16 getaway vehicle. When you're pullin' somethin' on the back,
17 that doesn't allow you to go quite as fast and so a truck with
18 a trailer on the back is not really the ideal getaway vehicle
19 from a burglary and an arson.

20 There's been some talk about competency and about
21 spelling errors. You saw there were several individuals, and
22 I know Judge McIntosh continuously instructed you on it about
23 expert testimony, there were several peper -- people qualified
24 as experts and spelling errors in reports don't mean that
25 they're not qualified. Mr. Riordan said it himself, talked

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1 about the baseball scorecard, right, he said there are errors
2 on a scorecard, well I know the game of baseball just a little
3 bit and I've seen teams with errors that still win games
4 because sometimes errors are not significant to the game, the
5 spelling errors of these individuals are not significant to
6 their investigation. Does misspelling the word "demeanor"
7 have any outcome on what Investigator Morgan was doing? no, it
8 doesn't. They're spelling errors, it doesn't mean that
9 they're incompetent, it means that they're human, they have .
10 typos, that happens, happens to the best of us on a regular
11 basis.

12 Talked about Agent Fletcher, Megan Fletcher and upholding
13 her oath to always be a woman of science, that's exactly what
14 she was when she took the stand today. She got up on the
15 stand, she explained to you that fire, when fire burns it
16 doesn't burn as a liquid, it burns as a vapor, as a gas so
17 when you see the flame, that is the liquid burning, is no
18 longer in liquid form. She told you that the ignitable
19 liquids found on the clothing and the shoe had to be in liquid
20 form when they were there, liquid form, not in gas form,
21 liquid form, so order for those toe -- those clothes to test
22 as they did, it had to be a liquid. Investigator Cannon told
23 you that when he got out at the scene that the floorboards
24 were dry. These, he told you, These are burn marks, not wet
25 marks, those are burn marks on the front porch. The front

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1 porch was dry, the back porch was wet from where the fire had
2 been put out, so these boards when dry did not put the
3 igniteable liquid on the clothing.

4 There's been this huge talk about these shoes and whether
5 or not they were moved because the picture shows that they're
6 in one place while Investigator Cannon is there, they release
7 the scene, ServPro comes on the scene and then they're in
8 another position. Well ServPro came after Investigator Cannon
9 came. Investigator Cannon told you this was dry so in order
10 for ServPro to track in an igniteable liquid into the house it
11 didn't exist, the porch was dry, so ServPro did not put that
12 gasoline on the slipper because there was no liquid form after
13 it's burned. Ignitable liquid it doesn't transfer smoke,
14 doesn't transfer soot, soot on a dog, smoke being inside a the
15 house, flat out it was a woman of science, Agent Fletcher told
16 you it doesn't work that way.

17 Now it wasn't just the shoes that tested, it was also the
18 clothing. We've heard a lot about the clothing. So the dogs
19 would have had to walk through the liquid in liquid form, not
20 after it had burned off, and they would have had to touch
21 Ms. Rose and one thing you'll hear is that you get to keep
22 your common sense with you throughout this entire trial so
23 does it make sense that as the fire is burning or is put out
24 that there's still igniteable liquid there. The clothing is
25 at Ms. Hansen's apartment, Ellie Hansen's apartment, and

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1 Investigator Gonzalez, Investigator Morgan, Investigator
2 Cannon they all told you that they were at the house with
3 Ms. Rose, they found the shoes then they asked for her
4 clothing, she said, Yeah, I'll show you where it is, calm,
5 demeanor calm, but once they get to the apartment, well her
6 demeanor changes and something changes inside her. She starts
7 saying, You're not gettin' these clothes, you're not doin'
8 this, I'm gonna cut 'em in half. You heard why they're not
9 cut in half. They're not cut in half because there's no way
10 to know where the ignitable liquids, if any, are placed on
11 the clothing so by cutting them in half you run the risk of
12 not being a woman of science or upholding your oath, you're
13 compromising your investigation which is one thing that
14 Investigator Cannon, Investigator Morgan and Investigator
15 Gonzalez were not gonna do, they were gonna test it whole but
16 Ms. Rose, well she was yelling, her demeanor had changed and
17 why'd her demeanor change because well we'll submit to you she
18 knew that there was ignitable liquid on her clothing, that's
19 why she was calm but then when they got to the apartment
20 complex well it changed, she was gonna do everything she could
21 to make sure that those investigators didn't get that clothing
22 and send it down to SLED for testing.

23 Let's talk about the shoes, the the toluene which is
24 found, can't been found in adhesives for these types of shoes
25 except for Agent Fletcher told you that toluene is very

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1 different, they have very different mixtures of toluene and
2 levels of toluene on each shoe so then we're to assume that
3 L.L. Bean makes one shoe with more toluene than the other or
4 can use your common sense realize that it's placed on that
5 shoe at a later point in time. Mr. Riordan talks about the
6 article that says it would make sense and you would want to
7 have a base to compare from. Well the shoe tested for
8 gasoline and I, and I don't know, I haven't purchase an L.L.
9 Bean slipper in a really long time but I don't think L.L. Bean
10 would put gasoline on a slipper but let's not forget about
11 what Brandon Barwick said, the firefighter that came in later
12 yesterday, remember, he said he was at the fire and he was
13 there and that's how he knew who Mr. Rose was but that later
14 in September she came about ask -- or asking about burn
15 permits, remember that, burn permits. She wanted to know if
16 she could get a record a the last time she did controlled
17 burns because according to her the dog had hit on her slipper
18 and she wanted to show that she was burning brush outside.
19 Well Jeff Baumann from the South Carolina Forest Commis -- uh,
20 Forest Commission came in, he told ya he ran the phone
21 numbers, he said the house line came back and the last
22 controlled burn was the end of May 2012, May 25th I believe of
23 2012, this fire July the 27th of 2012, two months, and what
24 did Agent Fletcher say about the mixture on the shoes? not
25 longer than two days, that's because the gasoline did not get

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1 on those slippers from a controlled burn pile, it got on there
2 from when Ms. Rose was pouring gasoline on the front porch.

3 Now there's been some talk about what happened in Oconee
4 County and Mr. Riordan made sure that all of the investigators
5 understood that you wanna be fair and you wanna be impartial
6 during the course of your investigation, they all told you
7 that, Yeah, they didn't look into the Oconee County
8 incidents because they didn't wanna be biased in any way
9 against Ms. Rose's case. They didn't wanna look and see that
10 she was charged before and then automatically think that she
11 committed this crime so they were being fair and they were
12 being impartial, they were doing their job by not looking into
13 the Oconee County incidents 'cause the Oconee County incident
14 has nothing to do with this one, the only reason that it's
15 important is because it's important to Ms. Rose and that's it,
16 it's what I like to call the "Wizard of Oz defense." You know
17 at the end of the Wizard of Oz when they finally get there and
18 it's the Great Powerful Oz and they're askin' for hearts and
19 brains and all this fire, Great Powerful and then Toto,
20 remember, he runs over and he pulls back the curtain and he
21 sees that well the Great Powerful Oz is just a man, right,
22 running a wheel. The minute Toto pulls it back the man starts
23 shooting fire and smoke he says, Pay no attention to the man
24 behind the curtain, look up here, look up here, that's what
25 that is, that's the Wizard of Oz distraction. Pay no

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1 attention to the ignitable liquids found on her clothes, pay
2 no attention to the ignitable liquids found on her shoes, pay
3 no attention to the hatchet marks, pay no attention to any of
4 the evidence, pay attention to the fact that something
5 happened to her six years ago where she was found not guilty,
6 look, look over here, pay attention to that, that has nothing
7 to do with this investigation.

8 Now Mr. Riordan he said at the beginning, he said, First
9 impressions are important, he's absolutely right and the very
10 first impression of Paula Rose in this case was her 911 call
11 where 911 picks up, she says the following, she says, Yes,
12 ma'am, uh, there are three men out my garage that are, um,
13 threatening me and wanting me, uh, that want to open my gun
14 safe, I lock the door and I'm inside here, that's her first
15 impression, that didn't match with anything else she said,
16 that is the only time she says that the three men were
17 threatening her and asking her to open the gun safe and that
18 is a piece of the puzzle that Investigator Cannon used, that
19 is something that is relevant. Inconsistencies, going from
20 being threatened to not being threatened. Goin' from bein'
21 asked to open the gun safe to not being asked to do anything,
22 to just goin' back into your bedroom 'cause that's what these
23 investigators did, they took pieces of the puzzle and there is
24 not one big nail in a coffin that we can throw down and say,
25 Here it is, it's pieces of a puzzle, but when you put the

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1 pieces of the puzzle together what the puzzle shows you is
2 that Paula Rose is guilty 'cause it shows you that she set the
3 fire on the back porch, she set the fire on the front porch
4 and then she staged a burglary scene, that's what the evidence
5 shows you, that's what the pieces of the puzzle show. They
6 don't show bad investigators or corrupt cops, it shows that
7 Paula Rose is guilty.

8 Now just as it is important talk about what a reasonable
9 doubt is, it is equally as important talk about what a
10 reasonable doubt isn't. A reasonable doubt is not an
11 imaginary doubt and it is not a fanciful doubt and it is not a
12 doubt that merely allows the defendant to escape penalty of
13 law, it is based on reason, it is based on common sense
14 growing out of the evidence or sometimes the lack of evidence
15 in a case like in the filing false police report and it is
16 beyond a reasonable doubt, not beyond all doubt, not beyond
17 the shadow of a doubt, that is a burden that we have not shied
18 away from because the facts and the evidence in this case are
19 clear: Paula Rose set her house on fire knowing that she could
20 get the insurance money and then she staged a burglary scene
21 then filed the insurance claim after using Homer Rose, her
22 husband and named insured as the shield. She's the one that
23 told the insurance agent what had happened and they pay based
24 off what she said and what she said was all about a false
25 report, that burglary it did not happen 'cause that house was

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1 set on fire by Paula Rose, that's why I'm asking you now as
2 Mr. Underwood asked you at the very beginning of this trial to
3 find Paula Rose guilty of all the crimes that we charged her
4 with. Thank you.

5 THE COURT: Alright, Mr. Foreman, the verdict form is
6 gonna be sent back with the other exhibits in just a few
7 minutes, uh, I wanna go over it with you now. If at any time
8 you have any question about how it should be filled out, just
9 write it down pursuant to the procedure I went over with you,
10 I believe, however, it's pretty self-explanatory. Uh, each
11 charge as I told you is a separate independent charge and must
12 be considered separate and independently of the others. Uh,
13 the first charge is, uh, making false insurance claim to
14 obtain benefits. Your options, and again the order is of no
15 consequence, they have to be in some order, the first option
16 be as to Indictment 2013-GS-23-678 making false insurance
17 claim to obtain benefits, We, the jury, unanimously find the
18 defendant not guilty, second option would be de -- under the
19 same language to find the defendant guilty. Whichever the
20 jury unanimously agrees to you will just simply check, okay,
21 sir. Uh, the next option would be burning personal property
22 to defraud insurer and then your option would be as to
23 Indictment 2013-GS-23-679 burning personal property to defraud
24 insurer, We, the jury, unanimously find the defendant not
25 guilty is the first option, second option the same language is

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1 guilty, whichever the jury unanimously agrees to you check,
2 okay, sir.

3 JURY FOREMAN: Alright, sir.

4 THE COURT: Uh, third option is filing a false police
5 report. Uh, the first option would be to find defendant not
6 guilty, next will be guilty and you check the one that's
7 applicable. And, finally, under arson third degree, uh, the
8 first option's not guilty, second option's guilty. Once the
9 jury has unanimously reached a verdict to all four of the
10 indictments then I'm gonna ask that you sign the, uh, verdict
11 form, knock on the door and we'll receive you back here here
12 with your verdict from the jury room, okay, sir.

13 A couple thoughts, again, if you need anything, you have
14 any questions, write it down. Uh, uh, since we have been
15 working you hard, it is now five o'clock, I'm gonna let the
16 jury decide how long they wanna work tonight, uh, and so you
17 just, before you begin your deliberations, before the exhibits
18 get back to ya, if you would, uh, go over with your jury, uh,
19 how long they was wanna work, if you don't have an answer yet,
20 that's okay, okay, just at some point, you know, I leave it up
21 to you 'cause you've been work with us, that bein' said I'm
22 gonna ask you go back to your jury room, I will send word back
23 to you begin your deliberations in a minute or I'll bring you
24 back in to correct somethin' I said, okay. Oh, Mr. Alternate,
25 I'm gonna ask you to stay.

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1 THE BAILIFF: You have anything back there?

2 JUROR NUMBER 158: Yes.

3 THE COURT: Yeah, you, would you get her back and get
4 your personal belongings and I'll meet you out in the hallway.

5 (The following takes place outside the presence of the
6 jury.)

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

8 THE COURT: Any additions or exceptions from the State my
9 latest instructions?

10 MS. ABEE: No, Your Honor.

11 THE COURT: From the defense?

12 MR. RIORDAN: No, Your Honor.

13 THE COURT: Alright, let me say this, uh, I may even say
14 this to the officers out here who investigated the case and
15 to, uh, you, Ms. Rose, since you're the client: I travel all
16 over South Carolina, I watch attorneys of all shapes and sizes
17 in all age groups and and experience classifications and I
18 wanna say that I am extre -- extremely proud of both these
19 attorneys, all three a these attorneys who prepared their
20 case, this has been a hard case, ya'll have did a good job
21 bein' professional, prepared and presented your matter and
22 with me snappin' rope behind you and makin' ya'll hop along
23 ya'll did a fantastic job regardless of whatever happens, you
24 gotta, you gotta end one way or the other, I wanna thank you
25 just for that, okay.

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1 MR. RIORDAN: Thank you.

2 MS. ABEE: Thank Your Honor.

3 MR. UNDERWOOD: Thank Your Honor.

4 THE COURT: That bein' said, don't go anywhere, if you
5 do, leave your number close by so if the jury has a question
6 so you can be able to get to ya or we can just get you real
7 quick, okay.

8 MS. ABEE: Yes, sir.

9 THE COURT: Thank you very much.

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

11 THE COURT: Here is the verdict form, if ya'll make sure
12 they agree on the exhibits and you wanna go back and tell them
13 once they get all the exhibits free to begin their
14 deliberations.

15 MR. UNDERWOOD: That's fine.

16 THE COURT: You mind doin' that?

17 THE CLERK: Oh, that's fine.

18 THE COURT: Okay.

19 THE CLERK: Okay.

20 (Whereupon, the alternate juror was released off the
21 record.)

22 (Whereupon, two notes were received from the jury.)

23 THE COURT: Here, here just you just get on -- yeah, can
24 we go ---

25 COURT REPORTER: Yeah.

CLOSING ARGUMENTS

1 THE COURT: --- on -- you ready?

2 COURT REPORTER: Um-hum.

3 THE COURT: Okay, they said they wanna work, first note
4 around six, ---

5 THE BAILIFF: Okay.

6 THE COURT: --- uh, one juror wants to go smoke so I
7 brought the exhibits back in, let 'em go smoke ---

8 THE BAILIFF: Um-hum.

9 THE COURT: --- and then they'll start their ---

10 MS. ABEE: Okay.

11 THE COURT: --- deliberation, any problem with that?

12 MS. ABEE: I have no objection to that.

13 THE COURT: Alright, thank you guys.

14 (Whereupon, the jury began deliberations at 5:15 p.m.)

15 (Notes from the jury marked Court's Exhibit Nos. 7 and 8
16 for identification.)

17 (Whereupon, a note from the jury was received at 5:20
18 p.m.)

19 THE COURT: No question, they just want the, uh, computer
20 or CD player. Normally unless we have a blank computer,
21 which ---

22 MS. ABEE: Yeah.

23 THE COURT: --- you don't have, I make 'em come back out
24 in the jury room, we listen to it out here.

25 MR. RIORDAN: I'd rather do that, Judge.

CLOSING ARGUMENTS

1 THE COURT: Okay, bring the jury in.

2 THE BAILIFF: Yes, sir.

3 THE COURT: You agree with that?

4 MS. ABEE: Give us one moment just to set it up, the
5 screen's already up.

6 THE COURT: Oh, okay. Okay.

7 THE BAILIFF: Um-hum. In the pa -- in the past we tried
8 to find a clean one, we looked all over and there's always
9 other stuff on there.

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

11 (The following takes place in the presence of the jury.)

12 THE COURT: Alright, Mr. Foreman, ladies and gentlemen, I
13 understand that the jury wants either CD player or get a
14 computer so you can play the CD, is that correct?

15 JURY FOREMAN: Yes, sir.

16 THE COURT: Uh, what we have is computers that already
17 have other information on 'em and so we don't let 'em go back
18 for fear that inappropriate information may come before ya.
19 If you are ready or when you're ready to listen to the CD, uh,
20 we will set it up and play it here in the courtroom as often,
21 as long as you like to do, okay, is is that satisfactory?

22 JURY FOREMAN: Yes.

23 THE COURT: Is the jury ready now listen to it?

24 JURY FOREMAN: Yes.

25 THE COURT: Okay, sir. Uh, would you mind por -- passin'

CLOSING ARGUMENTS

1 that CD to the bailiff, please.

2 THE BAILIFF: Yeah.

3 THE COURT: Mr. Bailiff, will you pass it to Ms. Abee.

4 MS. ABEE: Thank you, sir.

5 THE COURT: That's good. That's good.

6 (Whereupon, State's Exhibit No. 5, CD of 911 call, was
7 played for the jury.)

8 THE COURT: Did you return that -- does that answer
9 jury's request?

10 JURY FOREMAN: Yes.

11 THE COURT: Okay, would you return that, uh, disk to the,
12 uh, bailiff, please. Mr. Foreman, many times and as often the
13 jury like to hear that just let us know, please.

14 JURY FOREMAN: Okay.

15 (The following takes place outside the presence of the
16 jury.)

17 (Whereupon, the jury continued deliberations at 5:41
18 p.m.)

19 THE COURT: Any additions or exceptions from the State?

20 MS. ABEE: No, Your Honor.

21 THE COURT: From the defense?

22 MR. RIORDAN: None, Your Honor.

23 THE COURT: Alright, we'll be at ease if you'd stay
24 close.

25 (Note from the jury marked Court's Exhibit No. 9 for

CLOSING ARGUMENTS

1 identification)

2 (Whereupon, a recess was taken.)

3 (Whereupon, a note from the jury was received at 7:05
4 p.m.)

5 THE COURT: Alright, guys, we have a question. It says,
6 "Can we get clarification on exactly when the three 911 calls
7 came in, Denly, Temple, Rose." Um, it's my normal practice
8 tell the kinda standard that I I'm not allowed to comment on
9 the facts, uh, that would be my response unless you guys can
10 agree on some other response to them. Uh, from the State what
11 would be your position?

12 MS. ABEE: Your Honor, obviously I have no objection to
13 your standard response, uh, but I don't, I don't know if
14 there's something that we can actually -- I mean, we can't
15 answer and and send back without rehearing testimony and I
16 don't recall other than Mr. Riordan questioning questioning
17 Investigator Cannon about, you know, there being a nine second
18 difference between phone calls, that that's all I recall so I
19 don't even believe replaying testimony's gonna answer the
20 question itself.

21 THE COURT: Mr. Riordan?

22 MR. RIORDAN: May we discuss that first, Your Honor, just
23 to ---

24 THE COURT: Sure.

25 MR. RIORDAN: --- wrap my mind around it?

CLOSING ARGUMENTS

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

2 MR. RIORDAN: Judge, I, again, uh, the only testimony I
3 guess was when I was talking with Investigator Cannon about
4 it, that's, I'd ask replay that, that's about the only thing
5 that's on the record. You can suggest, Hey, this is the
6 record, we can't do anything more but here's what, here's, you
7 know, the one piece in regard those 911 calls and I'd ask that
8 be replayed.

9 MS. ABEE: Your Honor, my recollection of that is
10 Mr. Riordan saying they're nine seconds apart and Investigator
11 Cannon responding with, I don't have the call log in front of
12 me, if that's what you say then that's what you say, and
13 actually ---

14 THE COURT: Alright.

15 MS. ABEE: --- looking at the ---

16 MR. RIORDAN: I know that's ---

17 (Indiscernible cross-talk.)

18 MS. ABEE: --- they're they're not se -- I mean, the
19 evidence is what the evidence is, I just don't necessarily
20 think that replaying that's gonna give them the answer,
21 they're asking about time stamps on three different calls and
22 I just don't know, I mean, and I have no problems we wanna
23 replay that testimony but I just don't necessarily think it's
24 gonna give 'em an answer.

25 MR. RIORDAN: Your Honor, I ju ---

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1 THE COURT: I gotcha.

2 MR. RIORDAN: Right, ---

3 THE COURT: Okay, sir.

4 MR. RIORDAN: --- you know what I want.

5 THE COURT: Alright, and also what I was gonna run by the
6 jury too is me ask 'em if they feel like they're makin' fairly
7 good progress and they wanna continue or they wanna come back
8 and go tomorrow, uh, any objection me doin' that?

9 MS. ABEE: No, Your Honor.

10 MR. RIORDAN: It's to find out what they wanna do?

11 THE COURT: Um-hum. And I think but they're kinda
12 tellin' us a little bit what they wanna do by stayin' in there
13 'cause they said initially they're gonna stop by six. Uh,
14 madam court reporter, can you come up with that, that was
15 Officer, uh, Investigator Cannon's testimony, is that correct?

16 MS. ABEE: Yes, sir, the very last witness from the
17 State, uh, ---

18 MR. UNDERWOOD: That's right.

19 THE COURT: Can you see if you can locate that?

20 COURT REPORTER: Um-hum.

21 THE COURT: You mind?

22 COURT REPORTER: No.

23 THE COURT: Okay.

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

25 THE COURT: About Denly, Temple and Rose and timing of

CLOSING ARGUMENTS

1 that.

2 MR. RIORDAN: Sounds like ---

3 THE COURT: They were pretty close together if I recall.

4 MR. RIORDAN: Yeah.

5 MS. ABEE: Yes, sir, Your Honor, the the testimony is
6 in -- during the cross-examination, uh, of it, it's ---

7 THE COURT: Alright, ---

8 MS. ABEE: --- mentioned ---

9 (Indiscernible cross-talk.)

10 THE COURT: --- I mean, I wouldn't mind want to replay
11 the entire ---

12 MR. RIORDAN: Entire thing ---

13 MS. ABEE: (Indiscernible cross-talk.)

14 THE COURT: --- direct and cross.

15 MR. RIORDAN: (Indiscernible cross-talk.)

16 MS. ABEE: Your Honor, we have, we have no objection
17 to that to the ---

18 THE COURT: Okay.

19 MS. ABEE: --- and limiting it to the portion of the
20 phone calls.

21 THE COURT: Okay. Now I'll I'll shut up and let you get
22 your screen up.

23 (Whereupon, the court reporter reviewed the recordings
24 for the portions requested of Investigator Cannon's
25 testimony.)

CLOSING ARGUMENTS

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

2 (Whereupon, a portion of Investigator Cannon's
3 cross-examination testimony was played for the Court.)

4 THE COURT: Okay, stop that, that that's -- we we went
5 far beyond it I believe.

6 MR. RIORDAN: Well it it comes back to it though is the
7 only thing. I don't know 'cause that's when we talk about the
8 fact, the whole point is, and I think that is what they're
9 askin' judge, I'd ask ya to if you could just bear and let it
10 go 'cause that's the big point is ---

11 THE COURT: I mean, let's listen to it a little bit
12 longer then.

13 (Whereupon, a portion of Investigator Cannon's
14 cross-examination testimony was played for the Court.)

15 THE COURT: I I don't know that it's any other timin'
16 issues other than that ni -- seven second difference is way
17 up, mean, I I don't think the jury needs to hear all that, it
18 seems to me that what they need to hear is the first aspect
19 what was played about call when it came in and then when you
20 start goin' in about the the press release, skip down to
21 Temple and have that played, ---

22 MR. RIORDAN: Okay.

23 THE COURT: --- and sto -- I don't know there's any other
24 thing.

25 MR. RIORDAN: I don't know, but I I I don't disagree with

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1 skippin' of the the press release stuff ---

2 THE COURT: Right.

3 MR. RIORDAN: --- but but I think the key is the thing
4 that I was gettin' on Cannon about that in his report he
5 says ---

6 THE COURT: I know that's what you ---

7 MR. RIORDAN: Okay, ---

8 THE COURT: --- think he ---

9 MR. RIORDAN: --- yeah.

10 THE COURT: --- the jury is asking for the exact times
11 and that's what I want to give them information on if we have
12 it but I don't think it's in there, okay, and I, and I'm not
13 tryin' to cut ya off ---

14 MR. RIORDAN: Yes.

15 THE COURT: --- but that's what they're, that's what
16 they're askin' for and it be -- I would propose two things;
17 number one, madam, uh, court reporter, can you get back to
18 those two spots relatively simply?

19 COURT REPORTER: I can get back to the first spot but to
20 forward ahead I gotta listen to it.

21 THE COURT: Okay, let me get do -- okay.

22 COURT REPORTER: Okay.

23 THE COURT: Uh, let her do that, skip down, play that,
24 see if that answers their question, okay. Uh, if they wanna
25 hear it, they may not, then I'll reconvene after we excuse 'em

CLOSING ARGUMENTS

1 and that, I don't, I really don't think the other stuff's in
2 there and and and, Mr. Riordan, in all fairness to you if you,
3 if you think there's other timing testimony in there, I'll be
4 glad to, ya know, listen to it but I don't recall that there
5 was.

6 MR. RIORDAN: Well the big issue is is the distance
7 'cause, see, 'cause that's what I get to and and and I, and I
8 get but but that is, that is, that's integral to the timing
9 because Ben, 'cause 'cause I say, 'cause I ask Ben Temple to
10 do it and he tells ya ---

11 THE COURT: Well ---

12 MR. RIORDAN: --- from ---

13 THE COURT: --- I know that's integral ---

14 MR. RIORDAN: --- the driveway ---

15 THE COURT: --- to you but let me let the jury make that
16 call for us 'cause that's the, those are the ones who are
17 askin' questions and I think that's the appropriate way to
18 handle it, ---

19 MR. RIORDAN: Alright.

20 THE COURT: --- okay, and I I'll note your objection if I
21 don't do it.

22 MR. RIORDAN: Yeah, le -- please do, thanks, Judge.

23 THE COURT: Yes. Bring the jury in, please.

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

25 THE COURT: Okay, hang on. Hold, hold, tell him to hold.

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1 Tell him to hold.

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

3 THE COURT: We need -- Mr. Riordan, help me through this
4 if you would, uh, the second part when you start questioning
5 Off -- Investigator Cannon 'bout the, uh, Temple calls and
6 Temple call came in seven seconds after the Den ---

7 MR. RIORDAN: Think I said nine seconds ---

8 THE COURT: Nine seconds after the Denlys -- Dempsey.

9 MR. RIORDAN: Yeah, we'll -- if you -- yeah, I'd ask that
10 whole 'cause I remember bein' out here like doin' it to show
11 how much time it woulda taken to do that, uh, that was my
12 point that it, ya know, didn't make sense and that's ---

13 THE COURT: Uh, ---

14 MR. RIORDAN: --- not ---

15 THE COURT: --- I I I hear you, I hear you and, ya know,
16 if it doesn't answer it then maybe we'll have to get 'em to,
17 more clarification.

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

19 MR. RIORDAN: I'm sorry, Judge.

20 THE COURT: No, you're fine.

21 COURT REPORTER: Okay, just one second.

22 (Pause.)

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

24 COURT REPORTER: Okay, I'm ready.

25 THE COURT: Okay. Alright, would you bring the jury in,

CLOSING ARGUMENTS

1 please.

2 THE BAILIFF: Yes, sir.

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

4 (The following takes place in the presence of the jury.)

5 THE COURT: Alright, Mr. Foreman, ladies and gentlemen of
6 the jury, uh, I have a request that is as follows is that, Can
7 we get clarification on exactly when the three 911 calls came
8 in, uh, Denly, Temple, Rose, that correct?

9 JURY FOREMAN: (Nodded in the affirmative.)

10 THE COURT: Okay. First, let me, let me say this, uh, as
11 I told ya durin' the trial, ya know, trial judges are not
12 allowed to comment on the facts or have an opinion on the
13 facts so I cannot do that but what we've done with agreement
14 of the attorneys tryin', that's why we sat ya in there waiting
15 for a few, we tryin' to go through the transcript where we can
16 play a audio version of what we think may be responsive to
17 that and and we can play that, I can, uh, see if that is
18 responsive to what you're asking and then if it's not then,
19 uh, we'll see what we can do.

20 JURY FOREMAN: Okay.

21 THE COURT: That fair?

22 JURY FOREMAN: Yes.

23 THE COURT: Okay, madam court reporter, can you, uh, key
24 it up for us, please.

25 (Whereupon, a portion of Investigator Cannon's

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1 cross-examination testimony was played for the jury.)

2 (Whereupon, the audio was paused and a discussion was
3 held off the record.)

4 (Whereupon, a portion of Investigator Cannon's
5 cross-examination testimony was played for the jury.)

6 THE COURT: Alright, skip that, please.

7 COURT REPORTER: Oh.

8 (Whereupon, a portion of Investigator Cannon's
9 cross-examination testimony was played for the jury.)

10 THE COURT: Alright, Mr. Foreman, ladies and gentlemen, I
11 know that's not exact but does that tend to answer the
12 question bein' asked by your jury? And and let me, let me
13 just say that you don't have to sit here and discuss it
14 amongst yourselves in fronta the Court. Let me, let me
15 sumtin' back, uh, make a suggestion to ya, we'll do what you
16 wanna do but, uh, go back to your jury room, see what, if any
17 of this this response, uh, this question has been answered by
18 what we did, also, uh, is ten after eight, see if you wanna
19 continue or come back tomorrow finish up. Okay, if you'll
20 just let us know, please.

21 (The following takes place outside the presence of the
22 jury.)

23 THE COURT: Other other than previously stated objection
24 of Mr. Rior -- Riordan, uh, any objections or omissions to the
25 way we handled that?

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1 MS. ABEE: No, Your Honor.

2 THE COURT: Mr. Riordan?

3 MR. RIORDAN: Your Honor, I would have preferred just a
4 little bit more a that to be played.

5 THE COURT: Understand that, noted for the record.

6 MR. RIORDAN: Thank you.

7 THE COURT: I'll give this question -- let's just stand
8 at ease for a second 'cause I think they get back shortly.

9 (Whereupon, a recess was taken.)

10 (Notes from the jury marked Court's Exhibit No. 10 and 11
11 for identification.)

12 THE COURT: Guys, you know, I really anticipated they
13 would be responded to me back sooner but I'm gonna go ahead
14 and send 'em home for the evenin', I don't see any any benefit
15 to keepin' staff and everybody here past it's almost 8:30.
16 Any objection from the AG's Office?

17 MS. ABEE: No, Your Honor.

18 THE COURT: From defense?

19 (Attorney/client discussion held off the record.)

20 MR. RIORDAN: No objection.

21 THE COURT: Alright, I know everybody wants a resolution
22 but just gettin' late. How 'bout bring the jury in, please.

23 (The following takes place in the presence of the jury.)

24 THE COURT: Alright, two requests from the jury; number
25 one, is can we get a detailed, uh, verbatim description the

CLOSING ARGUMENTS

1 charge as a hard copy? The answer is I don't do that. I'll
2 charge it to ya as much as you want. The reason I don't is
3 that, uh, I've done it actually before here in Greenville, uh,
4 against the, uh, suggestions of older, more experienced
5 judges, what happened is jury ends up, that jury ended up
6 looking at certain passages in the charge and didn't work
7 about -- work on the facts a the case. I will give it to ya
8 as much as you want, uh, as often as you want, okay, and as
9 slow as you want. Uh, that bein' said, we've not reached a
10 verdict, 8:30 tomorrow, uh, if it -- that's fine with me.
11 Does everybody wanna come that early, 8:30?

12 UNIDENTIFIED JURORS: Um-hum.

13 THE COURT: Okay, we'll be at 8:30 in the mornin'.
14 Twelve-hour day, ya'll gone hard today so thank you.
15 Remember, you can't speak anymo -- okay, I'll stop your
16 deliberations now, you can't speak with anybody, uh, includin'
17 family, friends, or anyone about your case deliberations or
18 each other, can't read, hear or see anything about it on the
19 news if it happens to be on the news and we'll see you back
20 here at 8:30 in the mornin', okay, sir. And, Mr. Foreman, in
21 the mornin' what I'm gonna ask you to do is talk with your
22 jury see whether or not you want me to give you the
23 substantive law, the middle part where I start, uh, givin' you
24 law on the four different charges or you want the entire, uh,
25 charge, I'll be glad to do either one, ---

CLOSING ARGUMENTS

1 JURY FOREMAN: Okay.

2 THE COURT: --- okay. Thank you, you all have a nice
3 evening.

4 (The following takes place outside the presence of the
5 jury.)

6 THE COURT: 'Fore we, uh, break for the evenin' any
7 additions or exceptions to my instructions or response to the
8 jury from the State?

9 MS. ABEE: No, Your Honor.

10 THE COURT: From the defense?

11 MR. RIORDAN: No, Your Honor.

12 THE COURT: Thank you guys, we'll see you all in the
13 mornin' 8:30.

14 MS. ABEE: Yes, sir.

15 (Note from the jury marked Court's Exhibit No. 12 for
16 identification.)

17 (Proceedings May 8, 2014)

18 (Whereupon, a note was received from the jury.)

19 THE COURT: Alright, is there anything from the State
20 before we begin this mornin'?

21 MS. ABEE: No, Your Honor.

22 THE COURT: From the defense?

23 MR. RIORDAN: Yes, Your Honor, uh, given where we ended
24 last night with request for charge I've spoken with the State
25 and they they have, they have agreed they they would find that

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1 the entire charge I would humbly ask the Court this important
2 matter that you please, uh, recharge the jury the entire
3 charge rather than just portions, I checked, it's only
4 thirty-seven minutes, uh, we've got all day, I'd ask that you
5 please do that.

6 THE COURT: Uh, I already had planned to do that.

7 MR. RIORDAN: Thank Your Honor.

8 THE COURT: You're welcome.

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

10 THE COURT: Send the jury in, please.

11 (The following takes place in the presence of the jury.)

12 THE COURT: Good mornin', ladies and gentlemen, I hope
13 you had a nice evening. Uh, first, I had a note from the
14 fore, uh, the foreman of the jury says, If need be could we
15 have our phones as twelve, I'm not sure what you're meaning by
16 that.

17 JURY FOREMAN: I think I meant "at" if I wrote "as."

18 THE COURT: Sir?

19 JURY FOREMAN: I think I meant "at" if I wrote "as."

20 Oh, one of us needs to get in touch with a family member at
21 right around twelve and ---

22 THE COURT: Oh, oh, oh, yeah.

23 JURY FOREMAN: I ---

24 THE COURT: I tell you what what happens is if if that's
25 the case obviously you understand based on what I've been

CLOSING ARGUMENTS

1 telling you you you may not look up anything or in involvin'
2 self-communications outside of yourselves, uh, while you're
3 deliberating it's necessary that all twelve be together at all
4 times during your deliberations; however, if, uh, you have not
5 resolved yourself by twelve o'clock and there needs to be a
6 break then you'll stop your deliberations to person whoever it
7 is or all of you can make calls unrelated to this case we'll
8 allow you do that, okay. Any objection to that from the
9 State?

10 MS. ABEE: No, Your Honor.

11 THE COURT: From the defense?

12 MR. RIORDAN: None, Your Honor.

13 THE COURT: Alright. Mr. Foreman, we left last night,
14 uh, we had a request from the jury as to obtaining the jury
15 charge and I respectfully declined that 'cause my experience
16 is that the jury, not saying you would, but sometimes focuses
17 in on the law, debates the law instead of debates the facts
18 and so it switches your role from bein' finders a fact to
19 judges of the law which is my job and so what I asked was
20 whether you wanted me to charge you on the law that is
21 applicable to the charges or the entire charge. Uh, durin'
22 the break I spek -- I spoke with the attorneys, everybody has
23 agreed that I'll just recharge you on the law, the entire
24 charge, okay, ---

25 JURY FOREMAN: Okay.

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1 THE COURT: --- so just bear with me if you would, uh,
2 and let me remind you that what we're gonna do after the
3 charge is I'm gonna send you back, consult with the attorneys
4 to make sure I don't need to add or omit somethin' that I told
5 you, so durin' that period you may not engage in your
6 deliberations, excuse me, until we send word back that you may
7 resume your deliberation, okay, sir, that bein' said, alright,
8 ladies and gentlemen, now that you've heard all the evidence
9 of the case, you've heard the arguments of the attorneys, my
10 job as trial judge to instruct you on the law that applies to
11 this case, uh, these instructions will be in three parts. The
12 first part are the general rules that define and control your
13 duties as jurors, the second will be the law, uh, rules of law
14 that must apply to the charges in this case; in other words,
15 what the State must prove in order to make its case against
16 this defendant and; third, some considerations for your
17 deliberations, uh, that bein' said as I told you at the
18 beginnin' a the case it's your duty to find the facts from all
19 the evidence that's been presented to this case, been
20 presented in this case and to those facts you must apply the
21 law as I give it to ya, you must apply the law as I give it to
22 ya and you shall not be concerned of what you'd like it to be
23 or what you think it should be but what it is and that is your
24 obligations as sworn jurors and to answer a question that was
25 sent to me yesterday what that means in a, in in more layman's

CLOSING ARGUMENTS

1 terms is the evidence and testimony has been submitted so you
2 must make your decision based on that testimony and evidence
3 that has been received by you in this trial and sent back with
4 you to the jury, okay, and you must apply the law as I give it
5 to ya at this point. Also, in rendering your decision you
6 shall not be influenced by any personal likes or dislikes,
7 opinions, prejudice or du -- undue sympathy that you may have
8 from one side or the other; in other words, you have no
9 friends to reward and you have no pe -- en -- enemies to
10 punish and you are to make your decision based solely on the
11 evidence that's presented here during this trial and accordin'
12 to law as I give it to you at this point. Also, in following
13 my instructions you must follow all of them, you can't pick
14 out the areas that you agree with and apply those and not
15 apply the ones that you may not agree with, everything I tell
16 you is important and and you must follow my instructions.
17 Also, if I done anything throughout this trial that indicates
18 to you how you're supposed to find facts; in other words, the
19 verdict you are to reach, I'm a ask you, also I'll instruct
20 you to disregard that. Our Constitution does not allow any
21 trial judge to express an opinion about the facts, to comment
22 on the facts whatsoever, uh, you and you alone are the sole
23 judges of the facts in this case and so if I've done anything
24 please disregard that. Now, evaluating what the facts are you
25 will do this by usin' your good sense and and and and and and

CLOSING ARGUMENTS

1 sound judgment and your experiences in life. I can't give you
2 a set a scales where you weigh evidence in a literal sense but
3 it is a mental process that you'll go through by applying the
4 law as I give it to you, your common sense and sound judgment
5 in this case.

6 Now what is evidence? The evidence as I've told you
7 beginning a this case and I told you yesterday it's the sworn
8 testimony that you heard from the witness stand whether
9 through direct examination, cross-examination, redirect or
10 recross, also any exhibits that have been admitted into
11 evidence is evidence and that's only, that is the only
12 evidence that you may consider as evidence in this case, that
13 leads me to what is not evidence. First, the arguments, the
14 statements by the lawyers is not evidence, what they said is
15 helpful, it's designed to guide you through the maze a this
16 case to understand what their contentions are and what the
17 issues are but they've not been sworn in as witnesses, they've
18 not been put through the ringer cross-examination and so what
19 they tell you is not evidence. If, (coughs) excuse me, if
20 durin' your deliberations if you remember facts differently
21 that's been told to you by either side a this case then your
22 memory will control and that leads me to the discussion about
23 your notes. Remember, Mr. Foreman, ladies and gentlemen the
24 jury, just because sumtin' appears in one a the juror's notes
25 doesn't mean that it trumps somebody's memory, notes are no

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1 better than somebody's memory, that's why there deliberations,
2 you'll have to hash that out and come to a resolution
3 hopefully if you can. Also, questions raised by attorneys,
4 objections raised by attorneys is not evidence in this case.
5 As I've told you that attorneys have an ethical obligation in
6 every single case to object any time they think that there's
7 improper, uh, evidence or improper conduct goin' on the
8 courtroom. The fact that an objection was raised and and to
9 the extent I let you stay in here durin' my rulin' on those
10 objections is not and shall not be considered by you during
11 your deliberations and, Mr. Foreman, that'll be your job to
12 enforce that that that rule. Also, ladies and gentlemen,
13 anything you may have heard while court was not in session is
14 not evidence. Bottom line is what you heard from the witness
15 stand and what evidence has been submitted by way of exhibits
16 is the only evidence you may consider as evidence in this
17 case.

18 In South Carolina there are two types of evidence: we
19 have direct evidence and we have circumstantial evidence.
20 Direct evidence directly proves the existence of a fact and
21 does not require deduction. For example, is one I gave you
22 the other day: If I was a witness as to whether somebody ran a
23 stoplight and I said I saw Wie run the stoplight, that is
24 direct evidence 'cause it immediately establishes the fact in
25 question. On the other hand, circumstantial evidence is a

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1 proof of a chain of facts and circumstances indicating the
2 existence of a fact; in other words, it's by inference or
3 deduction. For example, I gave you the other day, if all of
4 you went to bed at night, you had a fresh sheet a snow in in
5 your front yard, if you're to walk up the next -- wake up the
6 next day and see tracks through that yard, you can infer that
7 someone or something walked through your yard durin' the night
8 although you did not see that person they walk through your
9 yard. Now crimes may be proven by circumstantial evidence,
10 the law makes no distinction between the weight or value to be
11 given either direct evidence or circumstantial evidence;
12 however, to the extent that the State relies on circumstantial
13 evidence, all of the circumstances must be consistent with
14 each other and when taken together point conclusively to the
15 guilt of the accused beyond a reasonable doubt. If these
16 circumstances merely portray the defendant's behavior as
17 suspicious, the fruit -- the proof has failed. The State has
18 the burden of provin' defendant guilty beyond a reasonable
19 doubt, this burden rests on which, uh, this burden rests with
20 the State regardless of whether the State relies on direct
21 evidence, circumstantial evidence, or a combination of the
22 two.

23 Now in deciding what the facts are, you must consider all
24 the evidence and in doing this you must decide which testimony
25 you wish to believe, which testimony you wish not to believe.

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1 You have a right to disbelieve all or part of any witness's
2 testimony, you may believe all of it. In making this
3 decision, you may take into account, uh, a number of factors
4 which would include was the witness able to hear or see or
5 know the things by which that witness testified, how well was
6 the witness able to recall and describe the things about which
7 they testify, what was the witness's manner while testify; in
8 other words, what was their demeanor while they're on the
9 witness stand. You can ask yourself if there's some reason
10 that a witness would wanna give testimony that would help or
11 hurt one side or the other, did the witness have a interest in
12 outcome a this case or any bias or prejudice concerning any
13 party or matter involved in this case. Also, you can consider
14 how reasonable was the witness's testimony considered in light
15 of all the testimony in this case and the evidence in this
16 case and whether that witness's testimony was contradicted by
17 what that witness had said or done at another time or by the
18 testimony of other witnesses or evidence in this case. Now,
19 ladies and gentlemen, those are certainly some a the factors
20 but not all the factors that you may consider in determining
21 which testimony to believe or not to believe and of course as
22 I told you you don't check your common sense at the door when
23 you become jurors and you shouldn't this case, you should use
24 those things in your day-to-day lives that you find indicative
25 of truthfulness or indicative of lack of truthfulness in

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1 making this decision a credibility of the witnesses. You may
2 believe one witness testimony over all the other witnesses or
3 all the witnesses testim [sic] over one, you may believe all,
4 or part, or none of any witness's testimony but what you
5 cannot do is add up the number a witnesses who testified and
6 appeared by -- on behalf a one side or the other in makin'
7 this decision of credibility 'cause it does not matter to you
8 where the truth comes from 'cause your sole objective in this
9 case is to try to find the truth from the testimony and
10 evidence that you heard in this case. Also, you heard
11 testimony from persons described as experts. As I told you
12 throughout the trial, people who by their education or
13 experience who become expert on field which would be assistant
14 to the jury or helpful to the jury may state their opinion in
15 matters in their field of expertise and state their reasons
16 for that opinion. Expert, uh, opinion testimony should be
17 judged just like any other testimony in this case: you may
18 accept it, you may reject it or give it as much weight as you
19 think it deserves considerin' the witness's education, the
20 witness experiences, their reasons given for their opinion as
21 well as all the other testimony in this case.

22 I'll remind you the fact that this, uh, defendant has
23 been arrested, charged and indicted is not evidence of her
24 guilt, it does not raise an inference of her guilt or any
25 presumption of her guilt, it is simply the mechanism by which

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1 the State of South Carolina brings the defendant for a trial
2 and a determination of their guilt or innocence by a jury such
3 as yourselves. Also, I also remind you that each indictment
4 is separate and distinct offense from the other, each one must
5 be independently determined by you unaffected by your opinion
6 on the other indictment or indictments so what that means is
7 that you have the right if you think's appropriate to find her
8 guilty or innocent on one indictment or find her guilty on the
9 rest or innocent on the rest, it doesn't matter, each
10 indictment must be independently decided by you, the jury,
11 okay.

12 Now in this case the defendant has said, I am not guilty,
13 to all four indictments, what that means is that puts the
14 burden on the State to prove her guilt. I'll tell you and
15 I'll charge you that a person charged with committing a
16 criminal offense in South Carolina is never required to prove
17 herself innocent and it is important rule of law that a
18 defendant in a criminal trial no matter what the seriousness
19 of the charge may be will always be presumed to be innocent of
20 the crime or crimes for which the defendant has been indicted
21 unless guilt has been proven by evidence satisfying you, the
22 jury, of guilt beyond reasonable doubt. The presumption of
23 innocence does not end when you begin your deliberations but
24 it accompanies the defendant throughout the trial until you,
25 the jury, reach a verdict of guilt based on evidence

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1 satisfyin' you of guilt beyond a reasonable doubt. It has
2 been said that the presumption of innocence is like a robe of
3 righteousness that has been placed upon the defendant's
4 shoulders where it remains until it has been stripped for by
5 evidence satisfying you of guilt beyond a reasonable doubt.
6 Presumption of innocence, ladies and gentlemen, is not a legal
7 theory, it is not just a legal phrase, it is a substantial
8 right which every defendant is entitled unless you, the jury,
9 are satisfied from the evidence of the defendant's guilt
10 beyond a reasonable doubt, so that leads me to a definition of
11 what a reasonable doubt is. This is the definition: A
12 reasonable doubt is the kind of doubt that would cause a
13 reasonable, sincere, honest and conscientious person to
14 hesitate to act in am -- in an important matter in their own
15 affairs. Proof beyond a reasonable doubt is proof that leaves
16 you firmly convinced of the defendant's guilt. There are very
17 few things in this world, ladies and gentlemen, that we know
18 with absolute certainty, in criminal cases the law does not
19 require proof that overcomes every possible doubt. If based
20 on your consideration of the evidence you are firmly convinced
21 that the defendant is guilty of the crime or crimes for which
22 she has been charged, it'll be your duty to find her guilty.
23 If, on the other hand, you think there's a real possibility
24 that the defendant is not guilty, you must give the defendant
25 the benefit of the doubt and find her not guilty. A

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1 reasonable doubt may arise from the evidence or it may arise
2 from the lack of evidence and I further instruct you the
3 defendant is entitled to every reasonable doubt that may arise
4 in the case. Now what that simply means is this: that if upon
5 any issue of fact essential to a conviction and a verdict of
6 guilty of the offense or offenses charged if you have any
7 reasonable doubt as to how that issue should be resolved, it
8 is your duty to resolve that doubt in favor of the defendant.

9 Now in order to establish criminal liability, criminal
10 intent is required. For example, the mental state required to
11 be proven by the State for a particular crime may be purpose,
12 intent, knowledge, recklessness or criminal negligence.
13 Criminal intent must be proven by the State beyond a
14 reasonable doubt. Criminal intent is always a matter which
15 must be determined by you, the jury, from the circumstances
16 surrounding the situation. Now, ladies and gentlemen, there's
17 no way to prove intent to a mathematical certainty, there's no
18 way to prove, there's no way medical science can dissect a
19 person's brain to determine what they had in mind so the law
20 says that criminal intent may be inferred from the
21 circumstances shown to have existed and this is how you'll
22 make a determination of whether the element requiring intent
23 is present, it is not necessary to establish intent by direct
24 and positive evidence but intent may be established by
25 inference in the same way as any other fact by taking into

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1 consideration the acts of the parties and all the facts and
2 circumstances of the case.

3 And, finally, as to the general rules that define and
4 control your duty, I'll instruct you and I will emphasize to
5 you the fact that the defendant did not testify is not and
6 shall not be a factor in your consideration and may not be
7 considered by you in any manner in your deliberation. Every
8 person the United States has their rights and protections
9 under the Fifth Amendment to United States Constitution and
10 the burden remains on the State to prove each and every
11 element of the charge or charges levied against this defendant
12 by proof beyond a reasonable doubt, that is the general rules,
13 ladies and gentlemen, that define and control your duties in
14 your deliberations, that will lead me to the four, the law on
15 the four charges that apply in this case, first of which is
16 making false insurance claim to obtain benefits. In order to
17 prove making a false insurance claim to obtain benefits, the
18 State must prove beyond a reasonable doubt that the defendant
19 willfully and knowingly presented or caused to be presented a
20 false or fraudulent claim or any proof in support of such
21 claim. Willfully means that it was not done by accident but
22 was done knowingly or intentionally. Knowingly means with
23 knowledge consciously, not accidentally. Next, the State must
24 prove beyond a reasonable doubt that the false or fraudulent
25 claim was made for, uh, made for the payment of a loss caused

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1 by fire or explosion. And, finally, the State must prove
2 beyond a reasonable doubt that the false or fraudulent claim
3 was made pursuant to a contract or certificate of insurance.

4 Next charge is that of burning property to defraud an
5 insurer. In order to prove burning of personal property to
6 defraud insurer, the State must prove beyond a reasonable
7 doubt that the defendant willfully and with intent to injure
8 or defraud an insurer set fire to, burned or caused to be
9 burned, aided, counseled, or procured the burning of personal
10 property. willfully means that it was not done by accident
11 but was done kn -- but was done knowingly or intentionally, it
12 must be shown that the burning was by the willful act of some
13 person and was not the result of a natural or accidental
14 cause. Next, the State must prove beyond a reasonable doubt
15 that the damaged personal property was goods, wares,
16 merchandise, or others, chattels or personal property of any
17 kind, whether property of herself or another, and; finally,
18 the State must prove beyond a reasonable doubt that the
19 personal property was at the time of the, uh, incident insured
20 by a person against loss or damage by fire.

21 The next claim is filing of a false police report. In
22 order to prove filing of a false police report, the State must
23 prove beyond a reasonable doubt that a report to police was
24 made by the defendant. Next, the State must prove beyond a
25 reasonable doubt that the report made by the defendant was

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1 knowingly false. Knowingly means with knowledge consciously,
2 not accidentally.

3 And, finally, ladies and gentlemen, the last charge is
4 third degree arson. In order to prove third degree arson, the
5 State must prove beyond a reasonable doubt that the defendant
6 willfully and maliciously caused an explosion, set fire to,
7 burned, caused to be burned, aided, counseled or procured the
8 burning of certain properties. willfully means that it was
9 not done by accident but was done knowingly or intentionally,
10 it must be shown that the burning was by the willful act of
11 some person and was not as a result of a natural or accidental
12 cause. Maliciously means with hatred, ill will or hostility
13 towards another person. A person who intentionally does a
14 wrongful act without legal justification or excuse does the
15 act maliciously. A malicious burning is an act done with a
16 condition of mind that shows a heart bent on mischief showing
17 a design to do an intentional wrong act towards another or
18 towards the public without any legal justification or excuse,
19 this malice need not be expressed but it may be inferred.
20 Burning means actual combustion of some portion of a piece a
21 property, it is not necessary that the property be consumed or
22 destroyed. Charring of the material of which the property is
23 constructed or a change in the fiber or composition of the
24 structure is required for a burning. Singeing, smoking,
25 blistering, scorching scorching or discoloring by the heat,

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1 however, is not enough to constitute a burning. Next, the
2 State must prove beyond a reasonable that the property which
3 was burned was a dwelling house, building, structure or any
4 other property. A dwelling is a building in which a person
5 ordinarily sleeps. Finally, the State must prove beyond a
6 reasonable doubt that the explosion or burning directly or
7 indirectly resulted in bodily injury to a person or damage to
8 property.

9 Ladies and gentlemen, those are -- that is the law on the
10 four charges that have been presented in this case so that
11 leads me to the end of my, uh, charge, has to do with your
12 deliberations. Uh, I pointed out to you yesterday and I'll do
13 so again that ya don't serve as jurors to be partisans or
14 advocates for one side or the other, you were choose -- chosen
15 in this case by both sides because they felt like and you said
16 that you could be fair and impartial and decide this case
17 solely on the evidence without bias or prejudice and accordin'
18 to the law as I give it to you, what that simply means is that
19 you'll use your experiences in life and common sense and your
20 sense of logic and reason and apply those to the facts as you
21 determine them to be and to the law as I give it to ya in
22 making your determination. Now deliberation is defined as
23 this: it is a careful consideration weighed up with a view to
24 a decision. Now regardless what any of you may believe about
25 our jury system I would submit to you that the genius of the

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1 system is that it allows twelve good men and women such as
2 yourselves who come from different backgrounds, who have
3 different life experiences and perspectives to listen to the
4 evidence, to listen to the law, to go back and deliberate on
5 those and ultimately to reach a verdict and we call them
6 consi -- deliberation for a reason, you are to carefully and
7 and deliberately go through all the evidence in a calm,
8 courteous and thorough manner and, remember, you're not
9 advocates favorin' one side or the other, you are judges of
10 the facts and your sole interest in this case is to try to
11 find the truth from the evidence that you heard from the
12 testimony and the evidence in this courtroom. You are to
13 listen to the views of your fellow jurors, consider other
14 people's points and their points of view, talk to and discuss
15 all the evidence, and, remember, if you're doin' sumtin'
16 deliberately, you should not be in a big hurry to do so and
17 you shouldn't be in this case. I'll point out to you that
18 this is both State's and this defendant's only day in court,
19 neither side has a second bite at the apple. In order for
20 your verdict to stand, it must be unanimous. Now with that
21 bein' said, each of you must decide this case for yourself but
22 you should only do so after you have impartially considered
23 all the evidence, you have discussed it with your fellow
24 jurors, you've listened to the views and their points of your
25 fellow jurors. Do not be afraid to change your opinion if the

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1 discussion persuades you that that is the thing to do but do
2 not come to a decision simply because the other jurors think
3 it is the right thing to do. It is important that you attempt
4 to reach a unanimous verdict but you can only do so only after
5 you have made your own decision. Do not change an honest
6 belief about the weight and effect a the evidence to simply
7 reach a verdict to appease your fellow jurors but do not be
8 afraid to change your opinion if you believe that is the
9 proper thing to do.

10 Now, Mr. Foreman, if at any time during the discussions
11 as you've been doing, you need any assistance, you have any
12 questions or you ask for anything, follow the same procedure
13 that you have followed: write it down, sign it, knock on the
14 door, the bailiff will receive it and we'll respond
15 accordingly. Again, never tell us or anyone where the jury
16 stands numerically, it is absolutely no one's business where
17 you are, ---

18 JURY FOREMAN: Um.

19 THE COURT: --- okay, sir. Uh, also, the verdict forms I
20 gave it to you and explained to ya, do you feel like it -- you
21 need anymore explanation on the verdict form?

22 JURY FOREMAN: (Nodded head in the negative.)

23 THE COURT: Okay, very good. What I'm gonna do is ask
24 that you go back to your jury room now, do not begin your
25 deliberations till I have a moment to consult with these