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STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

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Appeal from Greenville County

Honorable R. Lawton McIntosh, Circuit Court Judge

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

PAULA REED ROSE,

APPELLANT

APPELLATE CASE NO 2015-002445

RECORD ON APPEAL

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THE FOLLOWING EXHIBIT IS ON FILE WITH THIS COURT:

STATE’S EXHIBIT #5: TAPE OF 911 CALL

CLOSING ARGUMENTS

1 attorneys then we'll send word back to you or bring you back
2 to the courtroom, thank you very much. Thank you.

3 COURT REPORTER: You're welcome.

4 (The following takes place outside the presence of the
5 jury.)

6 THE COURT: Any additions or exception from the State?

7 MS. ABEE: No, Your Honor.

8 THE COURT: From the defense?

9 MR. RIORDAN: Yes, Your Honor, I'd ask that they they be
10 advised that they are allowed if they have, uh, questions, you
11 you mentioned their own memories and their notes but that also
12 court reporter can play back any testimony if they need ---

13 THE COURT: I'll respectfully decline to do so. I --
14 we've already done that, they understand that.

15 MR. RIORDAN: Well and all I'm sayin', Judge, they
16 brought -- they came back in with the 911 tape, they didn't
17 come back -- well they did, you're right, they did ask mine,
18 you're right. Thank you, you're right.

19 THE COURT: Thank you. I note your upse -- your
20 exception.

21 MR. RIORDAN: I thought you said it yesterday, I didn't
22 hear it today and I said I wanna make sure but you're right,
23 they did, that it wasn't just the tape, it was the testimony,
24 thank Your Honor.

25 THE COURT: Very good, alright. If you'll be at ease,

CLOSING ARGUMENTS

1 uh, we'll we'll let you know when we hear any further word.

2 Thank you.

3 MR. RIORDAN: Thank you.

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

5 THE COURT: Oh, yeah, we need to make sure, uh, will the
6 attorneys make sure they look at the exhibits, make sure they
7 have 'em all and once they have, uh, determined that is, take
8 'em in there and tell the jury to begin their deliberations.

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

10 (Whereupon, the jury began deliberations at 9:15 a.m.)

11 (Note from the jury was marked Court's Exhibit No. 13 for
12 identification.)

13 (Whereupon, a note was received from the jury at 10:55
14 a.m.)

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

16 THE COURT: Alright, we have another question. The
17 question is, "Can you reread the charge and description of
18 arson third," okay. Would you bring the jury in, please.

19 THE BAILIFF: Yes, sir.

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

21 THE COURT: Alright, Mr. Foreman, ladies and gentlemen of
22 the jury, my understanding is that the jury has requested that
23 I recharge them only on the law of third degree arson, is that
24 correct?

25 JURY FOREMAN: (Nodded in the affirmative.)

CLOSING ARGUMENTS

1 THE COURT: This is the law of third degree arson: In
2 order to prove third degree arson, the State must prove beyond
3 a reasonable doubt that the defendant willfully and
4 maliciously caused an explosion, set fire to, burned, caused
5 to be burned, aided, counseled or procured the burning of
6 certain properties. willfully means that it was not done by
7 accident but was done knowingly or intentionally. It must be
8 shown that the burning was by the willful act of some person
9 and not as a result of a natural or accidental cause.
10 Maliciously means with hatred, ill will, or hostility toward
11 another person. A person who intentionally does a wrongful
12 act without legal justification or excuse does the act
13 maliciously. A malicious burning is an act done with a
14 condition of mind that shows a heart bent on mischief showing
15 a design to do an intentional, an intentional wrong act
16 towards another or towards the public without any legal
17 justification or excuse, this malice need not be expressed but
18 may be inferred. Burning means actual combustion of some
19 portion of a piece of property. It is not necessary that the
20 property be consumed or destroyed. Charring of the material
21 of which the property is constructed or a change in the fiber
22 or composition of the structure is required for a burning.
23 Singeing, smoking, blistering, scorching, or discoloring by
24 the heat, however, is not enough to constitute a burning.
25 Next, the State must prove beyond a reasonable doubt that the

CLOSING ARGUMENTS

1 property which was burned was a dwelling house, building,
2 structure, or other property. A dwelling house is a building
3 within which a person ordinarily sleeps. Finally, the State
4 must prove beyond a reasonable doubt that the explosion or
5 burning directly or indirectly resulted in bodily injury to a
6 person or damage to the property. Mr. Foreman, ladies and
7 gentlemen, does that answer you question?

8 JURY FOREMAN: Yes.

9 THE COURT: Okay, as we've been doin' if you stop your
10 deliberation for a moment, let me have brief comments to the
11 attorneys then we'll send word for you to resume or bring you
12 back here, please.

13 JURY FOREMAN: Okay.

14 (The following takes place outside the presence of the
15 jury.)

16 THE COURT: Any additions or exceptions from the State?

17 MS. ABEE: No, Your Honor.

18 THE COURT: From the defense?

19 MR. RIORDAN: None, Your Honor.

20 THE COURT: Thank you, gentlemen and ladies. Uh, would
21 you tell the jury to resume their deliberations.

22 (Whereupon, the jury resumed deliberations at 11:00 a.m.)

23 (Note from the jury marked Court's Exhibit No. 14 for
24 identification.)

25 THE COURT: Just for your edification, I was speakin'

CLOSING ARGUMENTS

1 with the clerk, uh, what we're gonna do if we don't have a a
2 verdict prior to then is send in the menus around 11:30 'cause
3 it takes a period a time for them get that back, any o -- any
4 objection to that procedure?

5 MS. ABEE: No, Your Honor.

6 MR. RIORDAN: None, Your Honor.

7 THE COURT: Thanks. Alright, if ya'll be at ease,
8 please, ---

9 MS. ABEE: Yes, sir.

10 THE COURT: --- thank you very much.

11 (Whereupon, a recess was taken.)

12 (Whereupon, the jury reached a verdict at 11:16 a.m.)

13 THE COURT: Alright, ladies and gentlemen, we have a
14 verdict. Uh, attorneys know but for those of you who are in
15 the gallery, uh, there's not to be any outbursts regardless of
16 whatever the verdict is, please.

17 UNIDENTIFIED MAN: Yes.

18 THE COURT: Would you bring the ver -- jury in.

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

20 THE COURT: Alright, Mr. Foreman, I understand the jury
21 has reached a verdict, is that correct?

22 JURY FOREMAN: Yes.

23 THE COURT: Is it unanimous?

24 JURY FOREMAN: Yes.

25 THE COURT: Would you pass the verdict form to the

VERDICT

1 bailiff, please, sir.

2 JURY FOREMAN: Okay.

3 THE COURT: Please publish the verdict, please, ma'am.

4 THE CLERK: The State a South Carolina vs. Paula L. Rose;
5 number one, making false insurance claim to obtain benefits:
6 As to Indictment Number 2013-GS-23-00678 making false
7 insurance claims to obtain benefits, we, the jury, unanimously
8 find the defendant guilty. Number two, burning personal
9 property to defraud defraud insurer: As to the Indictment
10 Number 2013-GS-23-00679 burning personal property to defraud
11 insurer, we, the jury, unanimously find the defendant guilty.
12 As to third, filing a false police report: As to Indictment
13 Number 2013-GS-23-00680 filing a false police report, we, the
14 jury, unanimously find the defendant guilty. As to four,
15 arson third degree: As to Indictment 2013-GS-23-00681 arson
16 third degree, we, the jury unanimously find the defendant
17 guilty and this is signed by, uh, foreperson Michael J. Hart.

18 THE COURT: Ladies and gentlemen of the jury, if that was
19 your verdict in the jury room, if that is your verdict now
20 would you raise your right hand. Okay, let the record reflect
21 that all jurors raised their right hand.

22 Alright, ladies and gentlemen, uh, court is never ever
23 concerned with your verdict but we, the Court is concerned
24 with, uh, whether or not you engage and pay attention and
25 follow the instructions given by the Court. Uh, I wanna

VERDICT

1 commend you not on your verdict but on you willingness and
2 your hard work this week, uh, you came in early, you worked
3 late and you did your, uh, civic duty. Uh, most people or not
4 say most people but too many people when they're called upon
5 to fulfill their civic duties to the State, to the county, try
6 to run and hide, make excuses, you didn't do that, you stood
7 up and and and went through what is somewhat described, often
8 described as an ordeal. Uh, for your service to South
9 Carolina and Greenville County, we thank you, uh, and if you
10 would does anybody need a statement for their employer for
11 their service this week? You do? We'll provide that before
12 they leave here today, is ---

13 THE CLERK: Yeah, ---

14 THE COURT: --- that correct?

15 THE CLERK: --- someone has ---

16 THE COURT: Uh, he has 'em there, alright. Okay, plus,
17 also, let me just point out to you, uh, the obvious that it
18 it, uh, if we don't have a mechanism by which we can come in
19 in civilized manners, uh, manner hash out our differences and
20 come to a resolution, there's only one way to to resolve
21 disputes and that is take 'em to the streets that we do in
22 other ca -- that people do in other places, uh, I wanna thank
23 you for making sure that our system continues, that bein' said
24 I wanna speak with you very shortly in your jury room, I'm
25 gonna excuse you, uh, you're more than welcome to stay here, I

VERDICT

1 will pass sentence in just a moment, uh, you're free to leave
2 and not watch that or if you choose to watch you can come
3 around and sit in the gallery and there's there's security out
4 there and watch the sentencing just for a moment but if you go
5 to your jury room just one second I'll be back.

6 (Whereupon, the jury was released from the courtroom.)

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

8 THE COURT: Alright, Mr. Riordan, would you bring your
9 client around, please, sir.

10 MR. RIORDAN: Your Honor, may I first, you want me renew
11 all my renewals of motions up here?

12 THE COURT: You may do that now, please.

13 MR. RIORDAN: Do it now. Your Honor, this time I'd like
14 to renew my motion for a directed verdict. Uh, there was no
15 direct evidence in the case, we deny that there was
16 substantial circumstantial evidence reasonably tending to
17 prove guilt, uh, given the actual testimony the jury's left to
18 merely speculate as to her guilt 'cause the evidence was only
19 sufficient to raise mere suspicion of guilt. I would, uh,
20 reference *State vs. Johnson*, *State vs. Buckman*, *State vs.*
21 *Ballenger*.

22 THE COURT: Yes, sir, I'm gonna deny those motion.
23 Mr. Riordan, have you explained to your client that she has
24 ten days to appeal this verdict?

25 MR. RIORDAN: Yeah, well, yes, we talked.

VERDICT

1 THE COURT: Very good. Alright, please come around.

2 (Whereupon, the defendant came forward.)

3 MR. RIORDAN: Well, Your Honor, ---

4 THE COURT: Mr. Rose may come ---

5 MR. RIORDAN: --- my, my ---

6 THE COURT: --- up.

7 MR. RIORDAN: --- o -- yeah, I do need to make my other
8 motions too, I thought you wanted those. Directed verdict to
9 start, new trial motion as well, Your Honor, uh, especially
10 light of, uh, was we talked earlier the extensive discovery
11 that was bein' so tardy in the case, uh, is certainly of
12 concern, the fact that the DNA evidence in this case did not
13 exist either at the time of arrest or at the grand jury is
14 certainly of concern and remains of concern, uh, given the
15 testimony as it came up in this case, again, I'd ask that Your
16 Honor, uh, sincerely consider a new trial in this matter, a
17 judgment arrest a verdict as well. Um, you know, again, I --
18 the DNA evidence is so important in this case, uh, and was
19 given tardy after grand jury's even s -- even spoken I -- we
20 we know what -- we know that the grand jury proceedings are
21 secret but we know in this case DNA didn't exist. I was able
22 to go down there and view the evidence on July tve -- on
23 February 27th, I didn't get the DNA evidence till afterwards,
24 uh, I notice that the State didn't even bring the gloves in,
25 again, that's my fault but I'm

VERDICT

1 con -- I, even as we sat in trial I was waiting for one of the
2 the firemen to say that these were there gloves, uh, it didn't
3 happen and I don't think there's ever been, and it was my
4 fault I didn't ask Cannon, they took two gloves from my client
5 and I don't think those ever matched the gloves that were here
6 but in any event I think they're substantial thing, you know,
7 Your Honor, the stress I was under tryin' to get this thing
8 under the gun and I was hopin' to do that but I would ask that
9 you cerely, uh, sincerely consider a new trial in this matter.

10 THE COURT: Alright, I'm gonna respectfully decline your
11 motion, I wanna add to on the record, however, Mr. Riordan,
12 that, you know, you've attempted to assign, uh, fault or blame
13 to yourself on more than one occasion this trial, I I've
14 watched you throughout this trial, you were well-prepared, you
15 did a a a good a job as coulda been done in this case and so,
16 uh, regardless of your characterization it was not the way it
17 was viewed by this court, that bein' said is there any other
18 motions that you need to make before sentence is passed?

19 MR. RIORDAN: I don't think I know of any other motions I
20 could make, Your Honor.

21 THE COURT: Okay. Ms. Abee, what is Ms. Rose's prior
22 criminal record?

23 MS. ABEE: Your Honor, uh, Ms. Rose has no prior
24 convictions on her criminal record.

25 THE COURT: No prior convictions.

VERDICT

1 MS. ABEE: No, sir.

2 THE COURT: Okay. Alright, uh, and Mr. Rose is more than
3 welcome to come around with her if you would like.

4 THE DEFENDANT: Thank you.

5 MR. RIORDAN: Yes.

6 THE COURT: Alright, with all the motions been disposed
7 of, let me just say this: I'm gonna grant you an additional
8 ten days, uh, ---

9 MR. RIORDAN: Consider all motions, ---

10 THE COURT: --- in the event ---

11 MR. RIORDAN: --- thank Your Honor.

12 THE COURT: --- that you consider any additional motions,
13 just file them in writing and send 'em to me by way of my
14 clerk which would extend your time to appeal to ten days
15 beginning after those ten days ---

16 MR. RIORDAN: Thank you very ---

17 THE COURT: (Indiscernible cross-talk.)

18 MR. RIORDAN: --- much, Your Honor.

19 THE COURT: You're welcome. Uh, tell be about Ms. Rose
20 and I will be glad to hear anything you wanna say.

21 MR. RIORDAN: First I wanna say we absolutely respect the
22 jury, we understand, we knew coming in here how things could
23 be. This is one of the bravest, strongest ladies I've ever
24 met. Homer Rose, uh, and I ran into each other and against
25 each other in magistrate's court years ago and I became his

VERDICT

1 personal attorney and when he found out what was happen up in
2 Ocone with, uh, Paula who he used to work with, he was a
3 trooper, she was at the DMV, found out what was happening
4 Ocone, he hired me to defend her. We went through hell up
5 there, I've told ya some a that and I tried to get some up for
6 the jury and I regret I didn't put her up yesterday to tell
7 the whole story but we went through all that, Judge, uh, all
8 these charges, I mean, I sent the transcripts to all the, all
9 the officers hoping they could speak to some a that and see
10 some a that, I even had Billy Looper subpoenaed to be here
11 yesterday but foolishly thought I didn't need that. Uh, she's
12 she's a mother a Cha -- Chaz is here, she's been divorced from
13 Brad, the ones that, uh, really came after her up in Ocone, she
14 was able to get out of Ocone. Her parents Rachel and
15 Jimmy have been with us a little bit, uh, they are back, they
16 were strong up in Ocone when we went against the folks up
17 there, uh, and, uh, they're strong now, I know this is
18 heartbreaking to them but she's been down here after that with
19 Homer, you know, helping her out and defending her despite the
20 stuff from Becky Chisholm, I mean, I got her domestic records,
21 she didn't have anything to do with that but after Homer was
22 divorced, Paula was divorced, oddly from their situation they
23 had a bond from what we went through up in Ocone and she
24 moved down here. They lived together for a time, they got
25 married in 2010, they've been living out there on the estate.

VERDICT

1 These are folks that are on this, a on their property, these
2 are folks that, I mean, Homer again, he's got resources just
3 like he helped Paula they help other people. Amy is here.
4 Amy they found in Spartanburg had some charges, they didn't
5 believe that they were proper, they funded her defense and
6 went through with that and helped her out. I didn't put it
7 here 'cause I thought it would look like, Hey, we supported, I
8 still have questions about the drug dog, they gave a thousand
9 dollars to the fund, to to to fund the the the the Sniff Dog
10 Program for Nicholson fund. These are great people. I know
11 folks in here, she knows from what she went through before
12 with ten charges against her that stigma always exists. The
13 the solicitor's office after we defeated 'em we said line up
14 the next one and they dismissed it without prejudice so we
15 couldn't do anything about it. We couldn't expunge her
16 criminal record. They have, they have the, you know, the the
17 power to do it. You know, Walt Wilkins, the solicitor here,
18 that's that -- Paula came to us, uh, Homer was with us, we've
19 got the contract signed, again, I I didn't put it in, we
20 didn't know where we gonna go in this case to show, Hey, this
21 wasn't some, you know, affair going on breaking up marriages,
22 it was a contractual relationship to start with. We signed
23 it, said, Look, I've got serious charges, Homer's gonna fund
24 them, we hope we win, Homer believes in me, if we win we're
25 gonna bring a civil suit and I'll repay ya but we also know

VERDICT

1 that may never happen, may never happen. I mean, me and Walt
2 Wilkins signed that, Walt's a solicitor here, I mean, again,
3 we we go through all that, we did bring suit against them, we
4 prevailed on all those charges. We brought suit, uh, in in
5 court with G. Ross Anderson, Johnny Gasser, myself and, uh, we
6 we settled. The cap is \$300,000, we got 300, made her husband
7 pay a couple thousand more since he was involved. Her story
8 is worth writing a book about and it was also could have been,
9 again, we don't know, third-party guilt, we don't know who did
10 this, it coulda been someone watchin' Homer at the gun range,
11 it coulda been these guys, I don't know, and I guess I wasn't
12 out there as I've said, it could be Paula, but it's it's it's
13 a heck of a thing and
14 that's -- I I regret, again, I don't know these (indicating)
15 guys and that, and we've made, we've made some peace. Uh,
16 since this jury went out yesterday Mr. Gonzalez and and
17 Mr. Cannon have have gotten together, I probly did, I I spoke
18 to the jury 'bout havin', you know, improper first thoughts
19 and I did too and as explained to Investigator Gonzalez why
20 that was: I'd handled another arson case here and when I got
21 the discovery at the end a the case, you read the, you read
22 the report and it says we're gonna meet with the defendant and
23 then he's got a confession and the, and the poor young man
24 that when he comes to me, he's a knucklehead, he's a, loves to
25 smoke dope and his parents have kicked him outta the house and

VERDICT

1 he says, I didn't do it, and his father comes in and says,
2 Well, I took him down to the sheriff's office, he spoke up
3 there for three hours, I told him when he went in if ya did
4 it, go ahead and admit to it, if ya didn't do it, don't don't
5 admit to anything. Three hours we're there, he says, I wanna,
6 they said, Will you take a polygraph, he says, Heck, yeah, or
7 actually he said, I'll take a polygraph, and they weren't
8 ready. They go back the next night for three hours, takes a
9 polygraph and the folks with the arson team, the only thing I
10 did get, again, this wasn't in discovery, they come out and
11 and they had a video, they s -- or or an audio, they said,
12 Come listen to the audio and someone comes on there sayin',
13 Hey, polygraph examination that's black and white, you failed,
14 you know, you're gonna be charged with third degree arson but
15 if ya give us a statement, we can help. The kid gives a
16 statement, it says, I was cold, I set the fire, I got spar --
17 scared, it got outta control, I ran away, that was his
18 statement. Negligent burning. They charge him with thir --
19 arson third degree, fifteen years just like this. I go talk
20 to the solicitor and they and he finally real -- I said, Look,
21 these guys did this, there's nothin' in the report about these
22 inves -- about either the interviews or the polygraph, you
23 need to do somethin' about this and thankfully Allen Fretwell
24 looked into it, he comes back and thankfully that kid, he
25 couldn't afford to pay me anymore, we'd a, we'd a taken it to

VERDICT

1 trial, he comes in and pleads, he gets to plead to negligent
2 burning a thirty-day offense and he's given a \$500 fine, that
3 was what was in my mind when I get a call from Paula. If she
4 set this up, boy, she, I wish she'd a waited when I wasn't
5 outta town. I'm up in North Carolina at the Defense Trials
6 meeting when I got the call on Friday and it was, it was my
7 office and I, again, I made a mistake, didn't put in Homer's
8 video. Homer's Homer's on duty when they say, House is on
9 fire, robbery in progress at your house, and Homer, Homer
10 starts drivin' home and his fellas tellin' him media's
11 involved, he calls my office to see -- he -- you could hear
12 him sayin', Hey, call Pattie and tell him get Jack involved in
13 case we need him to help with the media. I get a call and I'm
14 distraught about it but I'm up in North Carolina, I I hate
15 I'm, my first thoughts are are bad, but I get a call later and
16 she says, and I told her then, I said, Well, look, we know
17 with your record they may look at ya, just be careful, call
18 me. I get a call that afternoon and they say, Gonzalez is out
19 here, they're after me, they're they're comin', they said they
20 got my shoes and now they want my clothes, and I told her, I
21 said, Look, I just got finished with that arson case, I don't
22 trust these guys, ask 'em if we can cut the clothes in half.
23 Won't do it. I told her, I said, Tell -- I ask to speak with
24 Gonzalez and again, he and I, again, we've we've made peace on
25 this thing, I trust we're not gonna ever have an investigation

VERDICT

1 like this again but I understood, he basically said, Uh, you
2 know, I don't wanna talk to him and I said, Tell him I was
3 just involved with the Pebble Creek fires case and I thought
4 he told, I thought he denied that and when I heard that I
5 said, I don't trust him, and that and this spun outta control.
6 I feel, I do feel responsible for part a this, that went on,
7 I've tried my best to defend this thing, uh, you know, I
8 proably shoulda tried harder, you gave me leeway.
9 We -- they kept out the thing in, uh, in Seneca that happened
10 after this, I shoulda used that in my closin' argument
11 yesterday, part of it I misjudged the jury yesterday, I
12 thought they were ready to go and I came back Paula's Paula's
13 been tellin' me throughout, I've gotta testify, they gonna
14 wanna hear me, they gotta hear me and I said, They're gonna
15 follow their oath. Came back there yesterday I said, I don't
16 think you need to do it, let's lea -- let's just go. I
17 shoulda put her up yesterday, she'd a told her story and I
18 coulda had Hart Kerlin here today, our our expert that's been
19 sittin' back there. He is a certified expert. He was gonna
20 be able to come in and say, At the time of their
21 investigation, neither a these guys worked, they didn't have
22 to follow the code that says be a truth seeker, not a
23 casemaker and if that, and if they'd a followed that oath
24 there's no way you would have brought an arrest warrant when
25 the DNA is out there, you'd have concead -- continued to

VERDICT

1 search for the concealment fires and that certainly which
2 shoulda been easy enough to find one in Seneca, the one that
3 said setting a fire five days after she's arrested. House
4 burns, guns, jewelry, electronics stolen, pets killed inside,
5 homeowner's away at work. It's my fault that we're here, I
6 should have -- I I'm I'm so sorry and I'm not blamin' the
7 jury, that's my fault, I do apologize, I appreciate you comin'
8 and I know, I know ya had a tough job, I'm so sorry. This
9 lady, this lady deserved better than what I gave her this
10 week, Judge, I'm very sorry for that but she's been strong,
11 she understands, she's been through hell before. I coulda got
12 up there talk about her dad dyin' when she was young, havin'
13 the abusive marriage with her husband and all these charges up
14 in Oconee and the jury would have seen all the stuff about her
15 demeanor, of course her demeanor's gonna be different. I let
16 her down, I I'm so sorry that that's the case, uh, I know I've
17 spoken enough, I shoulda, I should have done more and had this
18 talk today so I apologize but she's here, she understands,
19 Judge, this a good lady, I mean, even by, I know the jury had
20 a touch decision, I hope you would look at the fact there's
21 all she's been through, this lady's done nothing but help
22 people, even this case was not sumtin' to put anyone in in in
23 danger. If if the jury is convinced and and and they have
24 found her so guilty, I'd ask that you consider, you know, when
25 we talk with the AGs about this case they they had a sim, they

VERDICT

1 said, Hey, it's a similar case to up up in Darlington. Uh,
2 the case in Darlington the lady made it a racial thing,
3 claimed fellas had broken into her business and they were all
4 over town and SLED talked about all the the the things that
5 were done in that case, nothin' like that exists here, I mean,
6 again, to the extent this is done for for the book, goodness
7 gracious. Six weeks we had, there was, there was nothin' done
8 for a book to try to do anything. Again, I I I I failed her,
9 I'm sorry for that, but I'd ask that you consider in this
10 ca -- and I was gonna get to in that case I think it was five
11 years suspended on eighteen months, is that correct?

12 MS. ABEE: I have no idea.

13 MR. UNDERWOOD: Yes, Your Honor, I believe that is
14 correct.

15 THE COURT: I'm not concerned with that.

16 MR. RIORDAN: I know. Well I would ask that you at least
17 give consideration, that case, you know, was was much worse
18 than this one in in that regard. Mean, again, she's there,
19 she lives at this place where it's burned. I I would ask, I
20 know, I know these are serious charges she's been convicted
21 of, uh, I'd ask that you seriously consider at least some,
22 well, at least consider, I know it be unbelievable if you gave
23 it, a extensive sentence r -- uh, reduced to home
24 incarceration for a long period of time, she be right there on
25 her property with her dogs, wouldn't hurt a soul and can still

VERDICT

1 be helpful, if not I'd ask that you consider any any
2 suspended, uh, any sentence be, uh, uh, similar to what we
3 talked about with the other case, uh, that they, uh, had
4 discussed with me sayin' this is a similar case. Uh, the
5 final thing I'd ask just that somebody to instruct to her
6 mother, her mother had helped post bond in this case and we
7 wanna get that back and I'm gonna need that at some point ---

8 THE COURT: Alright, if you, ---

9 MR. RIORDAN: --- but ---

10 THE COURT: --- if you in your orders you need it for
11 that regard just pass 'em to ---

12 MR. RIORDAN: Alright.

13 THE COURT: --- me or send 'em to me and they'll be
14 signed if you need.

15 MR. RIORDAN: Alright.

16 THE COURT: Alright, Ms. Rose, Mr. Rose, any one of you
17 have anything you'd like to add to what Mr. Riordan say --
18 said?

19 MR. RIORDAN: Somethin' to say Paula?

20 THE DEFENDANT: There a lotta things I wanna say but I
21 don't think they would help at this point but . . .

22 THE COURT: I understand, uh, and let me just say this:
23 While I take exception to several things that Mr. Riordan
24 said, I find that and I viewed him bein' well-prepared in
25 making, in preparin' his case and presentin' his case in in a

SENTENCE

1 fine fashion and fact that you keep taking responsibility I
2 think is not warranted under what I saw. Strategic moves are
3 steg -- strategic moves and to think anything could change
4 anything is pure speculation, uh, that bein' said, uh, in this
5 case I am lookin' fact that Ms. Rose has not prior record, uh,
6 in in the sentence I'm about to impose. Uh, do you agree with
7 me, Mr. Riordan, that the arson third is 15, 0 to 15, the
8 remaining three charges 0 to 5?

9 MR. RIORDAN: That's correct, Your Honor.

10 THE COURT: Alright.

11 MS. ABEE: Your Hon -- Your Honor, sorry if I may, that
12 the statute on the second charge is 1 to 5, uh, but it it
13 doesn't say that can be suspended but the second ---

14 THE COURT: Which one ---

15 MS. ABEE: --- about it burn ---

16 THE COURT: --- is that, please?

17 MS. ABEE: --- burning personal property due to fraud
18 insurer says must be imprisoned for not less than 1 year nor
19 more than 5 years so ---

20 THE COURT: Burning personal property, okay.

21 MS. ABEE: Yes, sir, that be the second indictment
22 numerically.

23 THE COURT: Thank you, I appreciate you ---

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

25 THE COURT: Alright, all these will be concurrent. Under

SENTENCE

1 Indictment 2013-679 which is the burn personal property is 1
2 year HIP or Home Incarceration with 5 years probation. Uh,
3 under Indictments 2013-680, 2013-678 sentence is 1 year
4 suspended on 5 years probation, again, all those are
5 concurrent. Under Indictment 2013-681 arson in third degree
6 the sentence is 10 years suspended on service of 5 years Home
7 Incarceration Program, 5 years probation. Uh, the question
8 that I'm have, I'm gonna leave this up to the State, based on
9 my notes there's \$309,000 that should be, uh, paid in
10 restitution. I know it's an insurance company, people tell me
11 every day that, you know, that they're insurance company, well
12 that's still money outta their pocket, uh, but instead of
13 orderin' \$309,000 I'm gonna direct the State to notify the
14 insurance company in this matter and to determine whether or
15 not they requested a restitution hearing be held and if one is
16 requested I'm gonna direct that any circuit court judge may
17 conduct that hearing, not me, it can be me but anybody else
18 can conduct that hearing if requested, if not, if the
19 insurance company does not, uh, request restitution then none
20 will be ordered, okay.

21 MS. ABEE: Yes, sir.

22 THE COURT: Alright, can you take care a that notice
23 within thirty days?

24 MS. ABEE: I can, yes, sir, Your Honor.

25 THE COURT: If you will bear with me one second, please.

SENTENCE

1 (Pause.)

2 THE COURT: I'm also adding as a condition Home
3 Incarceration require that within thirty days from the date of
4 this order that the defendant undergo a mental health
5 evaluation. In the event that treatment is found to be
6 appropriate, I'm gonna order that she comply with all
7 treatment recommendation which would include any prescription
8 drug regimens that she is prescribed, also noted on the
9 sentencing sheet for the arson third that the, uh, Attorney
10 General is to notify the insurance carrier to determine if
11 restitution is required and that any circuit court judge may
12 conduct that hearing. Ms. Rose, uh, fact that you do not have
13 a a a a a record, the fact that you seem be otherwise fairly
14 decent person, I would have incarcerated you for a long time.
15 I wish you luck, good luck.

16 THE DEFENDANT: Thank you, Your Honor.

17 MR. RIORDAN: Thank you, Your Honor.

18 THE COURT: Yes, sir.

19 PROBATION AGENT: Have a seat on the front row, please.

20 THE COURT: Alright, members of the jury, that will
21 conclude the sentencing, you're free to stay, if you don't
22 you're free to go. Thank you for your service.

23

24

25

1
2
3 CERTIFICATE OF REPORTER

4 I, Margaret A. Woods, Court Reporter in and for the State
5 of South Carolina at Large, hereby certify that I reported the
6 preceding case on May 5, 6, 7 and 8, 2014 at the time and
7 place heretofore set forth; and that the foregoing pages
8 numbered from 10 through 1104, inclusive, constitute a true
9 and accurate transcription of my stenographic notes of the
10 said proceeding.

11 I further certify that I am neither attorney nor counsel
12 for, nor related to or employed by any of the parties
13 connected to the action, nor am I financially interested in
14 the action.

15 March 13, 2016

16 Margaret A. Woods

17 Margaret A. Woods, Court Reporter
18 in and for the State of South Carolina at Large.
19
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21
22
23
24
25

STATE OF SOUTH CAROLINA	)	COURT OF GENERAL SESSIONS
	)	2013-GS-23-678
COUNTY OF GREENVILLE	)	2013-GS-23-679
	)	2013-GS-23-680
	)	2013-GS-23-681
	)	
	)	
	)	
STATE OF SOUTH CAROLINA,	)	
PLAINTIFF,	)	
	)	
vs.	)	TRANSCRIPT OF RECORD
	)	
PAULA REED ROSE,	)	
DEFENDANT.	)	
	)	

September 2, 2015
Greenville, South Carolina

B E F O R E:

THE HONORABLE R. LAWTON McINTOSH, JUDGE

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

KINLI ABEE
Assistant Attorney General
Attorney for the Plaintiff

JOHN RIORDAN
Attorney for the Defendant

CHERYL A. SMITH
Circuit Court Reporter

INDEXPAGE

Certificate of Reporter

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EXHIBITSNO DESCRIPTIONID EVD

(Defendant's Exhibit)

1 Piecemeal Trial Transcripts

3

P R O C E E D I N G S

(WHEREUPON, Defendant's Exhibit No. 1 was marked for
identification.)

MR. RIORDAN: May it please the Court, Your Honor,
just some housekeeping to start with. We did mark the
exhibits. I think it's the same documents that I delivered
on Monday to you all.

We do have -- again, as you would recall, it's unusual
that we're here well over a year after trial. We
appreciate you giving us time to do this and get copies of
the transcripts. I acknowledged from the get-go having
gotten the transcript is a good idea as I noted to the
State and I'll put on the record that some of the portions
of my recollection after the trial of facts that I put in
my original post-trial motion were incorrect, and that was
good. At the same time, I do feel comfortable having
received the portions that we did receive and look through
that some of it was even stronger than we thought in
regards to some of these arguments. So -- but I do
apologize for that and I do acknowledge that. I've also
told the State.

The way I drafted this, again, was a renewal of all
the objections, so we do have all the directed verdict and
everything there. I acknowledge, however, that's not
something you can do today. I've talked to my client about

1 that, you know, Rule 19, based after Federal Rule 29, and
2 it's put in there often just to cover ourselves in case
3 something happens, so I've got it in there. I think it is
4 instructive here. Part of why I do it, though, is to show,
5 hey, we've got all these other cases, you know. When I
6 cite all these cases and you read through those, and it
7 seems like some of those have even worse factual scenarios
8 than here and, you know, after whatever appeals, the
9 Supreme Court had gone ahead and directed the verdict of
10 acquittal. I hope that you'll just use that as
11 consideration as we do at the end, all these things we've
12 already talked about, it all comes back to hope you'll
13 consider that in your consideration of a new trial in this
14 matter.

15 And I did try to be thorough. I know I'll probably
16 forget to go over something here. If that's the case --

17 THE COURT: If you missed something, I'll be
18 surprised.

19 MR. RIORDAN: If that's the case, I certainly will
20 rest upon what we filed. The most recent memorandum is
21 what we go for.

22 But, again, Judge, it comes back to what -- and I know
23 you've already ruled, and I appreciate that, but I do still
24 come back strongly and ask you to rethink the whole issue
25 with the searches from the start. You know, the State

1 conceded. We were here, you know, before you started and
2 was saying, look, I think it's pretty compelling. We've
3 got -- we do have two searches, but it's unusual in this
4 case that the defendant herself has nothing to do with it.
5 There are third parties that are doing it. So in that
6 case, you know, it's not the normal exception from an
7 admission by a defendant if it comes out, you know, is
8 there a hearsay exception. And we do feel strongly that in
9 both cases, there's a good argument that the -- everything
10 they relied upon was hearsay without exception.

11 And I'll go firstly to the apartment, and that's
12 Ellie's. And, of course, Ellie Hanson was never here. And
13 so I think on that -- and, again, I've got numerous -- as
14 you've seen, numerous different bases for all of these, and
15 I'll try to touch them.

16 Again, just we ask that with the searches, we think we
17 didn't have the proper ground to put that forth, that it
18 was hearsay, they didn't have an exception to put in the
19 clothing that they got eventually from the apartment. With
20 Ellie not being here, it was hearsay. They didn't have
21 exception to the extent they're wanting to be hearsay, that
22 was acknowledged, say, okay, well, let's bring in the
23 totality of the circumstances.

24 We've got the talk from the officers, well, that's why
25 we had her dad here with the affidavit. I mean, the girl

1 is -- we suggested was -- you know, didn't want to come
2 down here. She felt she was kind of harassed by the folks,
3 but in any event, gave an affidavit to the extent some
4 hearsay's going to be considered in the case. We thought
5 that her affidavit saying, yes, she felt coerced, didn't
6 want to do this but they kind of made her do it, we think
7 that was -- that should be weighed and that if hearsay's
8 being -- if hearsay documentation is being considered, then
9 her affidavit should rule in that regard.

10 Beyond that, though, let's assume she was here. We
11 still get back to this overnight guest scenario. And I do
12 acknowledge the -- what if I -- I would do the same thing
13 if I was the State and say, well, you've got some good
14 cases, but they're talking about co-occupants as opposed to
15 overnight guests.

16 THE COURT: Well, in the record, is there actually --
17 and I didn't, to be candid with you, read that entire
18 transcript you gave me, okay? I've read your briefs and
19 the State's brief. My memory -- and, Mr. Riordan, just
20 like yours, it's been over a year so it's probably suspect.
21 But I recalled that Ms. Rose would -- she had a key to the
22 place. She'd occasionally go over there and let animals
23 out, may even stay there, but on the day in question, had
24 just gone over there simply to change her clothes and clean
25 up.

1 MR. RIORDAN: No, sir. No. Well, I guess, part of
2 that, again, remember, she testified in limine herself, and
3 so certainly got her testimony, yeah, I spent the night
4 that night and every night thereafter. All the officers
5 talked about getting an overnight bag. I mean, I
6 understood even -- again, Your Honor, I understood just
7 from the transcript and recollection that you had agreed,
8 hey, she's an overnight guest, but I distinguish it on this
9 case.

10 THE COURT: Well, I stand corrected.

11 MR. RIORDAN: And so I was kind of assuming, hey, that
12 she's already been found even as an overnight guest.
13 Certainly we're here to try to talk about that, but I do
14 think the evidence was overwhelming that that was the case,
15 that she's an overnight guest, and with that status, she's
16 got rights. Certainly understand the State's version. I'd
17 be making the same argument if I were them saying, well,
18 you know, there's these cases that talk about co-occupants,
19 not necessarily co-occupant, but one case even says, well,
20 we know that an overnight guest has these -- has this
21 status and these privacy rights, and so a co-occupant
22 should at least have that, if not more. And so if I were
23 them, I'd say they're distinguishing it there, and so
24 there's at least some distinction, and yet I don't think
25 anything gets from the fact that that's interesting in this

1 case, she's the only person with the rights and privacy
2 rights as to those clothes.

3 Again, this wasn't -- that was kind of the whole thing
4 with the coercion that came back and said, okay, we're not
5 going to search the place, we're not going to look at any
6 of your stuff. All we want to do is gain access and seize
7 her clothes. And so, you know, again, I think that
8 distinction is there, and this case is -- I think stands
9 for that, that she would have that privacy right.

10 And so in this, the State's scenario -- or, again, a
11 warrantless search, and yet it's got to be strictly
12 construed. They don't have that. I mean, she is
13 physically there telling them she doesn't consent. And I
14 had numerous -- all of them -- I'm pretty sure every one of
15 them, I know at least a couple of them, and I've cited at
16 least a couple I found from the record that we went through
17 that they all agree, hey, she did talk earlier about if we
18 split it, so be it. I can give it to you. But otherwise,
19 I refuse. And so they all agreed, yes, she refused to do
20 it. And it was kind of used against her in the Court, too
21 that she's refusing, she must have something to hide. I
22 mean, I don't think that was anything they were hiding.
23 They agreed she had refused to let them in, didn't want her
24 to do it.

25 And the final thing with that, again, which I don't

1 think is necessarily a throwaway is the case law that says,
2 well, look, you know, what's your basis anyway? You say
3 you're going in. If, in fact, all Ellie Hanson gave you
4 was -- if all she can give you as the renter of the
5 apartment is the consent to enter the apartment, which I
6 think that's all she can do -- I mean, those cases still
7 talk about privacy rights that a guest or a common
8 occupant, whatever, that a guest would have within the
9 facility. We think that's with her clothes. There's still
10 a piece there of, well, what is it about these clothes?
11 What in and of themselves? Is there anything about the
12 clothes themselves that is indicative of criminal activity
13 or is evidence in and of itself?

14 Now, I think they'd be in a better spot if they
15 brought the dog in at that time and the dog hit on the
16 clothes and said, you know, so what? Even though, again,
17 I've got a whole other document with regard to the dog when
18 they say he also -- you know, he also hits on common
19 household accelerants, and I'll get to that.

20 But, again, the fact that they're taking it, there's
21 some case law there that suggests even then the clothing in
22 and of themselves must be indicative of some criminal
23 activity for them to have the ability to seize it, and we
24 don't have that here. They just had it in their mind, hey,
25 we're going to get it and we're going to send it off and do

1 whatever.

2 So I think -- so for all those notes, and the biggest
3 thing of that, again, with the seizure, we've got the
4 search, we've got the seizure, she's got a Fourth Amendment
5 right for privacy for persons, property, houses and
6 effects. I mean, these are effects. And all they were
7 doing with her standing there saying, "I object," they went
8 in and took them, and we think that's unreasonable and
9 that's violative of the Fourth Amendment and they needed a
10 search warrant. They could have gotten it here. They
11 thought they were doing it the way they did it, and we
12 think they've got to be held to that, you know. Item not
13 readily apparent as criminal evidence.

14 But even with that, Judge, I still step back, you
15 know, on that for that, assuming everything was fine with
16 it, you know, as far as taking it. You know, the bigger
17 thing was when they send it off for testing, what does it
18 mean? Does it really mean anything what they come back
19 with? And that's what I thought was so powerful with the
20 SLED Agent Fletcher that came in and we went through the
21 whole scenario.

22 Again, I was glad to get the transcript and see it
23 again to see also why I felt, you know, why I did what I
24 did which was, hey, we think we're in good shape. Let's go
25 to the jury, how, after the SLED agent herself has come in

1 and basically said, "What I tested doesn't necessarily lead
2 to criminal activity," I think -- I've got a quote in
3 there, I can't quote it right now, but basically was
4 saying, "Yeah, that's as plausible an explanation as any,"
5 and which was we had the initial firefighters, some of the
6 officers all coming in, testifying, "Look, the front porch
7 is on fire when we get there." Some of the officers wrote
8 it different in their notes. By the time they get there,
9 maybe it was out.

10 But they also testified as if things that -- they had
11 this theory that if you pour the gasoline on the front
12 porch and then it sets on fire, that it's gone. And that
13 if anything gets tested thereafter like the clothes and we
14 have some trace evidence of an ignitable -- they kept
15 calling it "ignitable liquid," and yet the agent, one of
16 the first things off the bat was, look, we're really
17 talking about ignitable liquid residue, weren't we? Yes.
18 That's what it is. And all it is is that when it's there
19 -- and I've got the photos, State's Exhibit 28, and then
20 another one is Defendant's Exhibit 3, and I'll bring those
21 up to you here in a minute.

22 But the big point was they're acting as if, hey, once
23 the fire's out, it's all burned off, and so her being on
24 the porch couldn't have done anything to it. And her
25 walking in the fire -- we had the officers say she's in the

1 fire. That doesn't mean anything because the liquid
2 residue can't get on there. And her testimony was not
3 that. The SLED agent on direct examination acknowledged,
4 look, we get these samples, we cut -- we eventually cut
5 samples. The dog is laying down saying here's where I hit
6 on the front porch. So we cut a piece out of the front
7 porch. Again, clearly it's stuff that was burned and
8 charred, but they cut a piece out of it and they put it in
9 the can, and that's it.

10 And the question was, well, look, if you're in the lab
11 and you take that out and you set it here and somehow you
12 touch it and touch something else, don't you agree that's
13 cross-contamination and you've got problems? Oh yes. We
14 don't -- we strive not to do that. And I think she thought
15 I was suggesting that happened in her lab. She said, "No,
16 that certainly didn't happen here." And the point was,
17 again, the officers are saying she's on the front porch.
18 The clothes that they take and they think are so important,
19 she's on the front porch with those. I think they said
20 she's kneeling down.

21 I went back and all I got were the investigators. I
22 didn't get the firefighters that are in there or not. But
23 I know they say she's in there, she's on the front porch,
24 and all this stuff is burning around her, at least when
25 they get there. That was part of what they said. We

1 needed her out of there so we could fight the fire.

2 Beyond that, the dogs, they all agree the animals are
3 running on the porch and that she's with the animals. And
4 we've got -- there's photos of her holding the animals.
5 And, again, we pulled out the stuff in trial and there she
6 acknowledges -- again, she was pretty -- and I put in what
7 she acknowledged, I mean, that her little admonition to me,
8 I said, "Well, look at all these white things." Here's her
9 two white dogs that the officers say, "Yeah, we're trying
10 to get her out of there." She's on the front porch with
11 her dogs. There's photos of her holding the smaller dog to
12 her chest. They said, Yeah, we're trying to get her -- we
13 realized all of a sudden she's got a gun, you know, from
14 when she'd been bracing herself for this to fight whatever
15 might happen.

16 But the clothes had hair all over them, and we talked
17 about the fact again. Just I suggest it's common sense the
18 investigator went pretty good when they acknowledged, yeah,
19 your hair -- that's what our hair does. It attracts oil.
20 I mean, I noted an article for what it's worth. I mean, I
21 remembered that from back in the oil spill that that was,
22 you know, some hairdresser, that was his thing. He knew
23 how the hair just soaked up oil. And that's what they do.
24 They collect all animal hair, people hair, whatever, put
25 them in these booms and it's super effective on soaking up

1 oil.

2 And so we know she's there with the dog. They talked
3 about the porch being dry where it's burned off. You can
4 see from their own State's Exhibit 28 the wetness on the
5 porch of gasoline on the porch, what they themselves have
6 produced and said it's gasoline. So we know for sure it's
7 on her shirt. If she is kneeling on it, it's on her pants.
8 But beyond that, we know it's on her shirt and she's in all
9 this stuff. I asked the officer again, okay, the same
10 thing. "When you get these, the clothing are separated,
11 you don't ever want to put them together, right?"

12 "No. Because if one's on here, it can get on the
13 other. We don't want to have cross-contamination." When
14 they went and got the clothes out of her overnight bag,
15 that's what they say. They're all balled up together.

16 And so, again -- and it gets down to it. The bottom
17 line is the way they do the testing, Judge, is they're in
18 the cans, the girl said, "I don't even really look at them
19 other than just to verify that's what it is." She opens
20 the lid, looks at it, puts her little carbon strip there
21 and closes it, puts it in the oven and heats it to 140 to
22 158 for 16 hours. Whatever's in there all vaporizes and
23 catches on the carbon strip. She can't tell you how much
24 it is. All she can say is there was some trace of it.

25 So that's the test. That's what they utilize,

1 basically. They waited until they got those tests back
2 from the clothes and the shoes and said, "Okay, we've got
3 probable cause. We're going to arrest her," and went
4 ahead, indicted her, you know, before they even got the DNA
5 evidence out, which I'll get to, and, again, put out the
6 big headlines in the paper, "Trooper's wife lying. We're
7 charging her," et cetera.

8 So there's the clothes. We think, again, even if
9 there weren't all these issues with the search and her pure
10 objection, even then, what does it mean? Did it really
11 mean anything, and is there reasonable doubt for which,
12 one, it could conceivably be a directed verdict, but more
13 importantly at this point, is she deserving of a new trial?

14 The shoes, we've got a whole other issue with the
15 shoes. Again, Homer did testify in limine. They didn't
16 call him at trial. I mean, that was the thing. I was
17 waiting for her to do it. You know, we'd already had --
18 we'd already agreed, hey, everyone, you're protected. We
19 know what it is. I thought they would call him. They
20 didn't. They just kind of skipped over it and went right
21 to the fact that he's in there with the dogs. I think
22 that's important. I think they had to have him here. That
23 still comes down to what's their basis for getting in
24 there. It's still a warrantless search. They've got to
25 show it, that there is an exception to it, and they didn't

1 even attempt to do it with him. So, again, I think there's
2 a real issue right off the bat on the hearsay portion of
3 that or how they even get in there and think that they can
4 seize these items.

5 Same issue, though, with that, the shoes, the big
6 thing with the shoes. Again, we come back, and even if
7 there weren't a search issue, what does it mean, you know,
8 that we've got this with the shoes. One, again, the dog
9 hits on it and they basically say, "Well, look, the dog
10 will hit on accelerants." Well, what are accelerants? And
11 they name all these things including household goods.
12 Toluene that's in paint thinners. Basically, paint
13 thinners and lacquer thinners, the guys acknowledge the
14 very type stuff people will be using, and if they're
15 painting a room or remodeling a room, they acknowledge
16 that, you know. Gonzales himself says, "Yeah, when I'm
17 doing my look around the house, yeah, I think I remember
18 the whole -- the upstairs was being -- there was a room
19 upstairs being repainted."

20 So, again, this whole thing of, hey, the dog hits on
21 the shoes, what does it mean? Not necessarily anything.
22 And as we get back to the expertise of this, you know, it's
23 got to have some basis to help explain things for a jury.
24 In fact, we suggest it confuses them. It puts out as if
25 it's something important, and certainly very prejudicial to

1 put it that way when, in fact, it may mean nothing.

2 The officer, again, comes back and says, "Look, I can
3 tell as little as one drop." If you're getting gas and you
4 pull it and that last little bit -- which I've done. I
5 don't know. Maybe nobody else has done it. Have a little
6 drop and you can smell it, you know, for some time, at
7 least, or you step out getting gas and it gets underneath
8 your foot and you get in your car and you can smell it.
9 You haven't done anything, and yet it's there. We know
10 it's there. Her testimony was basically that as little as
11 one drop is what they could testify to or that they can
12 find this presence that existed, and, again, acknowledged
13 that's the same as if it's a transfer from the porch or
14 whether it's something stepped in herself.

15 The issue with the shoes, as you recall, there was a
16 big issue. I thought it was real important. They're there
17 earlier when they say it's a crime scene. They're
18 protecting it to make sure no one can come in, but they
19 release it at 12:20. 12:20 in the afternoon they release
20 it, and here comes Servpro doing their stuff, doing
21 whatever.

22 There's three entrances in there: the front porch,
23 the back porch and the garage. And, you know, two of the
24 three you're going to be walking through some stuff to get
25 there. If the dog's hitting on one of its accelerants,

1 that's certainly an explanation for why it would be if
2 someone had been in there and moved the shoes. Well, is
3 there any evidence that happened? Well, I mean, again,
4 we've got photos that show the shoes in one position early
5 in the morning and then moved.

6 Now, as I acknowledged then and I'll acknowledge now,
7 maybe he's right. Maybe the shoe next to it moved, but I
8 don't -- I think when you look at it, it seems clear. The
9 shoe, the moccasins or one of those is the one that moved.
10 And I think the way they're positioned, it's the left one.
11 That ends up being the important shoe in this case. That's
12 the only one she comes in and says it's got something other
13 than toluene, which, again, can be in a household item, or
14 toluene as we've talked about eventually with the
15 persuasive article by Lintini where he acknowledges, you
16 know, she says, yeah, he's an expert in the field. This is
17 a source that's authoritative in the field. That wasn't
18 saying shoes, we found that -- I can't remember exactly the
19 quote, but, basically, there's no other substrate that
20 causes more problems in our testing that we see to suggest,
21 hey, you've got things that might test as if it means
22 something when it doesn't, when it's the backdrop, it's
23 something that existed before the fire, than shoes because
24 of the adhesive in shoes. And it's got toluene in it.

25 She had already said, "Well, toluene is very volatile.

1 It's usually gone within a couple days," suggesting, hey,
2 you know, she did something earlier. If she was painting
3 two, three days earlier, it wouldn't be there, or if she
4 were doing these other things. And the article itself
5 says, look, we've got toluene in shoes that were five years
6 old. It tests for it when we do our tests. And so she
7 acknowledges that could be an issue.

8 And part of the article, again, she acknowledged
9 that's what it says and it's authoritative. It says you
10 shouldn't trust any testing unless you do comparison
11 testing. Basically, here's the shoes, great. They're L.L.
12 Bean shoes. Go -- if you want to test those, you think
13 they mean something, go buy brand new from L.L. Bean, test
14 them -- test them independently and we'll see what kind of
15 results we get.

16 And so that was of the import here that the other side
17 tried to make a point, said, "Well, we had two shoes here
18 and they didn't test the same for toluene." That wasn't
19 what she testified to. She talked about the different
20 levels that existed, basically said, "Well, one level's
21 higher than" -- I don't even think she came back that way.
22 It's basically how comparatively the levels were.

23 The other issue, and I haven't opened it yet -- and
24 that's the other thing. Again, we're here for a new trial,
25 and Your Honor can do that. I think all these points are

1- very important, and certainly something that is just, you
2 know, of dire consequences to Paula as she sits here.

3 No. 10 -- and I know that Kinli didn't -- look. I've
4 acknowledged to you, and I was probably not as good at
5 trial as I needed to be, but I acknowledge I think some of
6 the issues that happened here -- and I know if the
7 investigators would be here I'd say the same thing. I know
8 part of the problem was is that this case got conflicted
9 out, and they're here, and she's in Columbia. And so we do
10 have things that I'm looking at from my past experience of
11 being very devious. Maybe they weren't. But the bottom
12 line was, we certainly didn't get -- and I'm going to save
13 it for last but it's one of the most important things, the
14 DNA evidence. We know that they had three gloves out
15 there, got DNA, they sent it off for DNA testing, and they
16 didn't even wait to get it back before they arrested her,
17 put out these headlines, all this other stuff. And Kinli
18 doesn't even get it. I mean, we're rocking along and we're
19 getting ready for trial and come down here, when was that,
20 February, and she doesn't even have the stuff.

21 We leave our meeting -- and part of the meeting --
22 that's what -- right now what I want her to acknowledge is,
23 hey, we're going to bring our guy to look at it, take some
24 photos. Everyone was very careful. I don't think Kinli's
25 guy even came close to touching these things. I remember

1 her basically with her hands behind her back looking at
2 stuff as they gingerly -- I can't remember if it was
3 Gonzales or Kinli put gloves on and pulled things out.
4 Well, pictures were taken and things done. We didn't look
5 at it too much.

6 Again, I didn't have even any of the testing that came
7 back. All I had were results. I didn't get test -- I
8 didn't get all the background stuff on the clothes or the
9 shoes until like two weeks before. It was whenever I was
10 dealing with defense trial attorneys in Columbia. I
11 remember walking up the street and we're talking and she
12 said, "Hey, you got a package of like 130 documents coming.
13 I just found out it's here."

14 But get back -- but the DNA, again, I know she didn't
15 have it, but, again, this DNA, we don't get it until like
16 two months before trial. It's 14 months after -- I think
17 after she'd been arrested that we finally get the DNA
18 testing, which I thought was so powerful, which comes back
19 and says, hey, it's, you know, DNA from -- it said three or
20 more people on the test, but he acknowledged to me at trial
21 he couldn't prove it was more than three.

22 And the same thing with the XY chromosomes. All he
23 can say definitively is that's male. She was good saying,
24 "Well, female is XX. Could they be there?"

25 And he comes back and says, "Theoretically."

1 But what's the only thing you could ever prove? That
2 it's male. And then we get this, you know, DNA that just,
3 you know, comes back and corroborates her story. We didn't
4 even know it was out there. We were sitting there pretty
5 -- we thought we were pretty good anyway with reasonable
6 doubt when they didn't even -- when we thought they didn't
7 even bother to wait for the test results or get test
8 results.

9 We knew that the gloves were there, but we never saw
10 test results. But then we get the test results and see
11 what they say, that they corroborate her version, and then
12 he's just acting like, well, that doesn't mean anything.
13 It's inconsequential because we can't prove it because
14 three people's DNA is mixed together, three -- all we can
15 prove is three -- three males -- three males' DNA mixed
16 together. We can't separate it apart. And so it's painted
17 as if that's inconsequential. Well, it's -- I mean, it's
18 certainly not inconsequential for her.

19 Back to the shoe, that No. 10. Here's the thing.
20 Photos were taken, and this one, I think this has got
21 something. Looking at it afterwards, it's got -- it's got
22 something black underneath it. I don't know if it's
23 bubblegum or what. I think it might be a piece of asphalt,
24 Judge. I'm going to open it right now and find out. Maybe
25 I'm crazy. I don't know. But it came to me. I want to

1 see what's there. It's the first time the thing's been
2 opened since trial, and we certainly, you know, we've got
3 our little pictures throughout. I'll just show it to you
4 again. I'm asking to get a new trial. I didn't know what
5 that was. It looks like it might be a damn piece of
6 asphalt or something. I mean, again, the agent basically
7 says, "All we do is -- all I do is look to make sure that's
8 what it is. I stick my little strip in and I heat it up."

9 I mean, again, getting back to that should we --
10 should I have done more or my expert? Perhaps, Judge.
11 But, again, I'm sitting here. In this is something that
12 the SLED investigator, again, she's already said how
13 troubling the shoes are, and then here we are, she's coming
14 back and saying it could be a trace amount of something.
15 If that's asphalt, again, I know -- I don't have to do my
16 asphalt driveway. I was just at my buddy's house the other
17 night and got his done. It all smells like the oil out
18 there, you know. I don't know what all is mixed asphalt,
19 gasoline, whatever. I think that in and of itself may be
20 part of what comes back.

21 And, again, whether that exists or not, I think that's
22 important. Whether that exists or not, this whole thing
23 about the shoes being of import when she acknowledges from
24 the article what the expert is saying, look, we've had
25 nothing. This is the most problematic substrate testing

1 things that might -- that might appear to have something to
2 do with the crime that don't necessarily do it. Here it
3 is. I think that's just powerful, and I hope that with
4 that you'll consider giving her a new trial.

5 I will just touch briefly, the other thing after the
6 fact, from the testimony, I went through a laundry list of
7 things, also, beyond those things which I think are
8 terribly important. The other thing is, look, again,
9 basically they're saying -- basically, the case comes down
10 to -- says, well, we know she was there, and so, you know
11 -- and we've got these little things that we think mean
12 something, so that's where we're going. She gave a story.
13 They didn't want to believe it, said -- you know, she's
14 telling them what happened. And we've got the 9-1-1 call
15 and what have you. She's saying all of this. They don't
16 do anything.

17 Again, the whole point of what did they do to really
18 look into that, because the jury is left with basically --
19 and, again, maybe I didn't do a good enough job with that,
20 but, I mean, the jury is left with, okay, what is it? You
21 know, we've got this. They didn't do any of the other
22 testimony. And I've got like, I don't know, 13, 14 things
23 there I touched upon.

24 But, I mean, we go from, all right, the whole deal is
25 they're dealing with this safe which we know has got all

1 these nice guns in it. You know, if you can't open the
2 safe -- and her testimony is the guy's at the dial trying
3 to open the safe. This whole thing about a hatchet and
4 whatever, we don't -- she didn't know anything about that.
5 That wasn't anything she knew about and tried to make a big
6 deal about that. It looks like somebody, you know, if they
7 were attempting to get in and they're using the hatchet to
8 do it, it doesn't look like they made an attempt. But we
9 don't know what that was. No one knows what that means or
10 what that -- if they even did it. Don't really know, and
11 they didn't even look into it to try to come up with any
12 explanation.

13 But we do have, you know, that morning. The little
14 bit -- I do appreciate them doing a little bit of search
15 that morning before he spoke with Paula and decided by her
16 attitude or talk about Oconee or whatever, he's going to
17 focus on her. The only people around there said, look,
18 that morning, they basically asked a few neighbors on the
19 front street, "Did you see anything funny?"

20 "Oh, yeah. There's a red pickup truck with a trailer
21 on the back. We assumed it was somebody doing yard work at
22 Bucky's Barbershop."

23 Well, they talked to the owner of Bucky's Barbershop
24 later. "Did you have any yard work being done?"

25 "No."

1 And so you've got a pickup truck with an empty
2 trailer. Is that something three guys can put a gun safe
3 on if they felt they had more time? Certainly. Look into
4 it a little bit more. Not done.

5 Neighborhood's right behind them. Again, another
6 thing to do if you're there looking at it and you wanted to
7 go to the back, there's a cul-de-sac back there, there's a
8 whole other neighborhood. All right. And that would be an
9 easy way to cut through the woods. No one sees you on the
10 front road. You cut through the woods, you get your stuff
11 and go. Did you talk to any of the neighbors back there?
12 No. Didn't even talk to any of the neighbors behind.

13 Did you look for any other similar burglaries in the
14 area? They all said -- they said, "We did. We didn't find
15 any." And, of course, Your Honor, I made it an exhibit and
16 you were kind enough to put that in at the end of the case.
17 And we've got that.

18 And there were numerous other incidences around this
19 area including afterwards, one of them afterwards that was
20 terribly important and almost mirrored this case. I think
21 it said, you know, as many as three -- three folks broke
22 in, stole jewelry, all this stuff, set the house on fire
23 and fled. Killed the pets. That was there. But these
24 investigators are saying none of it existed. And, again,
25 did they really investigate this? It doesn't appear that's

1 the case.

2 Phone lines cut. Did you call the phone provider and
3 check to see when it was cut? I don't know for sure, but
4 I'm thinking when your phone line goes dead, there might be
5 some signal that shows when you do it. Didn't ever check
6 with them. Did you check to see if anyone else's phone
7 line had been cut in similar instances? No. Didn't do
8 that.

9 And I think the same thing -- I don't think I put it
10 in here, but the same thing with the gate. There was a
11 whole issue was the gate open or closed. Well, did you
12 ever check to see if there was a code on the gate that
13 maybe logged when it's opened or closed? Did you look into
14 that? No. They didn't look into that.

15 Never looked into who had access to the combination of
16 the safe. Again, I didn't put anybody up. I mean, I asked
17 the question because I'm pretty sure that was the case.
18 Homer was basically saying the only person was my ex-wife.
19 And they said, "No, there's no documentation anywhere." We
20 asked -- we asked whether anyone had the combination to the
21 safe when she's saying a guy's in there doing it as if he's
22 got the combination. Certainly didn't ask her. All they
23 did was focus on Paula.

24 Never determined how the fires were started. That was
25 one of the things they never did. And I guess that's of

1 import. We go back and we look at some of these directed
2 verdict cases when they talk about those things. Well,
3 heck, we did this, that and the other. This is kind of an
4 incomplete investigation.

5 Could -- oh, yeah. A cell phone was found out in the
6 street. And, basically, he said, "Well, it looked like it
7 had been there for a while for me, so I didn't do anything
8 to it." I mean, you know, maybe it's the guys casing the
9 place the week before. I don't know. Look into it. They
10 didn't even look at it. Nothing done to investigate,
11 inspect or analyze the cell phone that's found out in the
12 street near their house.

13 Nothing, either the fingerprints or the photographs by
14 State Farm. Again, this whole thing is -- or at least
15 initially was, hey, she did this to get insurance money
16 from State Farm. Well, State Farm did their investigation.
17 Their guy goes out there and says he finds prints. They
18 get his whole file. And these guys come in, did you do
19 anything with the prints the State Farm guy found? And he
20 actually took pictures of his prints, you know, because
21 they didn't.

22 We really don't have much evidence of what they did
23 out here. And the State Farm guy said, "Hey, I get out
24 there. I don't see there's evidence anyone even did
25 anything." But they acknowledge, yeah, it's in the State

1 Farm report. We got the State Farm report, but no one did
2 anything with it. No one even looked into it.

3 They did get the two -- the two -- they said they got
4 two prints. Now, again, it's their safe. Homer had
5 already told them Paula had been in there in the days
6 before putting some of Ellie's stuff in there for
7 safekeeping, so we expect hers is going to be on there. And
8 they took the -- just as they do in every case like this,
9 they take the homeowners' prints to compare them to
10 eliminate those. Well, the investor came in here and said,
11 "Yeah, we got two prints and they were eliminated by
12 Paula."

13 I said, "Is that what you think?"

14 "Yeah."

15 Well, here's the investigator himself, says, No. We
16 had two prints. They were eliminated on one -- or excuse
17 me -- one of them definitely was hers, but the other one,
18 we eliminated her and the homeowner. It wasn't their
19 print. There's some other print that's on there. And,
20 again, they didn't -- the investigator didn't even read his
21 own forensic examiner's report to find out that that was a
22 fingerprint that he couldn't explain, did nothing further
23 to try to do anything with that. I mean, we know he didn't
24 because he said he didn't even know it existed.

25 Again, this whole talk about gas cans and who might

1 have seen things, they said they've got a yard guy who
2 might have a yellow gas can. They never even spoke to the
3 yard man with the diesel container. One, it's Morgan.
4 Morgan takes a photo of the gas can, which he never turns
5 over to the State, certainly, so we don't get it either.
6 At least he does try to do some investigation, but, again,
7 I was appalled on her behalf of how little he did. He
8 basically said he's going to check the local areas only.
9 We -- again, she already talked about, hey, if somebody
10 wants to do something to hurt me, please check Oconee.
11 I've had all kinds of problems before. But beyond that,
12 hey, we've got the whole Upstate. Why are you limiting it
13 to just the few places right around Greenville?

14 He limits it to the local places. At first he said,
15 "Well, I only went back a week, because my experience is if
16 somebody's going to do this, they'll buy that time." It's
17 like, okay. Whatever. At least one of the persons that
18 did say, "Yes, one of them's actually been sold," actually
19 went ten days back. So, actually, his investigation went
20 ten days back.

21 But even then, he had from two different places, he's
22 got surveillance footage. They had identification of folks
23 that had bought it, and at least a receipt on one said a
24 construction company had bought it. But he looks at it.
25 He says he looks at the surveillance video, doesn't get a

1 copy of it for anyone to know what the heck he saw and
2 basically says, "Well, they don't fit the description."

3 And I read back in the description, like, well, the
4 description is of masked men.

5 How can you tell?

6 He says, "Well, this guy's older. He's got white
7 hair," I think is what he says. Well, she said two of them
8 were masked, you know. Where are you going with that? But
9 he just eliminates them offhand.

10 Same thing. It's a construction company. Call the
11 construction company and see if they still have it. How
12 easy is that? See if the construction company happened to
13 work in the area, see who the guys were. No investigation
14 done whatsoever in regard to either of those two folks. I
15 think the other one he said was a guy with his son, and so,
16 again, just on his own eliminated them as a suspect and
17 didn't do anything further.

18 But, again, the DNA is the most -- is really, you
19 know, one of the, if not the most important thing beyond
20 all these things, which I think are great issues. Judge,
21 I'd ask for a new trial just on that basis along with the
22 DNA, with it coming back. Again, in just the way it was
23 handled and us getting it, you know, 14 months after the
24 fact, things come in piecemeal in regard to what actually
25 existed beyond it with the testing and, again, the

1 presentation by the fellow himself as to what it means.
2 Basically, he'd said, "Look, all I can say is three persons
3 and all I can say is it's male."

4 And so, again, as far as reasonable doubt, I almost
5 asked Your Honor to, you know, as a matter of law, you
6 know, at this point say, "Look, I think that probably is
7 something that probably should have been reasonable doubt,
8 and I'm going to give her a new trial."

9 The only other issues that exist, I made an exhibit
10 after-the-fact -- again, I know it's not Kinli's fault, but
11 she's getting stuff here and there. Part of it from
12 talking to some of those investigators, we found out other
13 things existed like with the fingerprint fellah. He's
14 saying he's got the two, and I'm kind of trying to
15 contrast, hey, the State Farm guy is pretty thorough. He's
16 taking pictures and doing all these things. We don't
17 really have anything from you.

18 And he says, "Well, yeah. I did draw it. I drew how
19 I did it." It's like, well, we've never seen it. Kinli
20 gets it after-the-fact. She did supply that to me
21 after-the-fact. I think it might be of import, something I
22 could have at least, you know, put more -- I didn't have it
23 even at trial. We didn't get it till afterwards. Maybe we
24 could have had some more questioning with regard to it.

25 Same thing with regard to the -- I think with the DNA

1 and how some of that is out. And, again, had we had that,
2 you know, is that something, you know, we look into a
3 little bit more? I think it's strong in and of itself, but
4 to get 30 pages more from the DNA experts on a fairly
5 important thing after-the-fact, you know, again, I would
6 just hope you'd consider giving her a new trial, Your
7 Honor.

8 I do have photos that I pulled out, again, for the
9 record, State's Exhibit 28, just showing the wetness.
10 Again, the attempted presentation was as if everything was
11 dry on the front porch, you know, and the stuff had burned
12 off. And I think that's clearly not the case. And, of
13 course, the dog's sitting down right in it.

14 That's the other thing with the dog. They acknowledge
15 that the dog -- never wore shoes and he never cleaned the
16 dog. In the morning -- from the morning when that's taken
17 until he's back there, basically he says he lets it run
18 free in the house to start. He's off leash and he's
19 running. We don't know what he's hitting on. And, of
20 course, again, I come back to, for all I know, he's hitting
21 on this piece of asphalt on this shoe, if not the toluene
22 within the sole.

23 Thanks, Judge. For everything else, I rest on my
24 memoranda. Thank you so much.

25 THE COURT: Thank you. Nice presentation.

1 All right. Ms. Abee?

2 MS. ABEE: Thank you, Your Honor.

3 First and foremost, let's start with the -- what
4 Mr. Riordan referred to as the newly discovered evidence
5 which is contained within that notebook back in the back of
6 that section. Those two pieces of evidence, one, as
7 Mr. Riordan said, the fingerprint analyst testified on the
8 stand and stated that he did, in fact, have a card where he
9 had kind of sketched where he took the fingerprints from.
10 Mr. Riordan discovered that when he testified on the stand,
11 and I gave it to him, I believe, end of May, so roughly a
12 couple weeks after the trial once it was in my possession.
13 There was that.

14 And then, secondly, was the notes from the DNA
15 testing. The report was given -- this would have been the
16 DNA analyst's handwritten notes as far as what he was doing
17 as he was doing it, which was memorialized in his report.
18 That was also sent to Mr. Riordan in May.

19 Under Rule 29 of the rules of criminal procedure, Your
20 Honor, the defense only has one year to make a motion for a
21 new trial on newly discovered evidence. That would have
22 been May of 2014. It's now September of 2015. Therefore,
23 we would argue that that motion is, in fact, untimely and
24 move on.

25 THE COURT: I'm with you. I'm going to deny it on

1 that. But the motion came very timely. We were waiting
2 for transcripts. I think that Mr. Riordan did everything
3 he could do to timely act in this matter, so on that basis,
4 I'm going to deny you. I'm saying I'm ---

5 MS. ABEE: Yes, Your Honor. I was talking
6 specifically just about on those two pieces of evidence.

7 THE COURT: I understand that.

8 MS. ABEE: Moving on, Your Honor, this is not a case
9 that either the State or the defense or Your Honor kind of
10 threw caution to the wind when we were arguing in ruling.
11 Pretrial took all day Monday. We called three
12 investigators to testify on Monday regarding the search, as
13 well as the defendant testified, and her husband testified
14 on that, Your Honor. Your ruling regarding the pretrial
15 issues on the search and seizure is five pages of the
16 transcript, so it wasn't something that just ruled on
17 throwing caution to the wind, Your Honor.

18 THE COURT: Let me ask you a question, because I'll
19 tell you something. Some of the concerns we always think
20 is to have the benefit of hindsight. But if I were to have
21 suppressed the search of the Hanson or whatever -- Ellie,
22 whatever her name is, the apartment, what effect would that
23 have had on the State's case against Ms. Rose?

24 MS. ABEE: Your Honor, that would have had an effect.
25 In fact, that's why we handled the pretrial motions kind of

1 late into Monday because we said that that would have an
2 effect on the State's ability to go forward. However, that
3 would have only affected the accelerant found on
4 Mrs. Rose's clothing. The shoes and everything else, all
5 the other evidence would have still come in. So that only
6 affected that one limited part. Granted, that was a big
7 part in the State's case, Your Honor. However, there was
8 still other competent evidence we believe presented
9 throughout the trial such as the type of fire that was lit.

10 If you remember or recall, the arson expert testified
11 regarding containment fires and concealment fires, and
12 basically, the scenario that Mrs. Rose put in at pretrial
13 stating that there were three men that came and tried to
14 break into the safe, that wasn't the type of fire that
15 would have been lit if they were trying to light that
16 house, Your Honor. For instance, they would have tried to
17 block off the entire house and the fire in order to conceal
18 the fact that she had seen them. However, they left that
19 exit very wide open in the garage. There wasn't a fire set
20 there. And they clearly knew that was an exit because,
21 according to Ms. Rose, that's where she saw them the first
22 time. So you have the arson experts, Your Honor,
23 testifying to that.

24 There was some questioning of the officers regarding
25 the burned pile back in the backyard saying, "Well,

1 couldn't that have been a reason for any type of accelerant
2 being on Mrs. Rose's clothing?" We had the person from the
3 forest -- I believe the Forestry Commission, I can't quite
4 recall, maybe it was DNR, somebody that looks over the burn
5 permits and whether or not there was any burning in that
6 area near that time, and there wasn't any burning during
7 that time, Your Honor. So we believe that that would go
8 towards the State's case, as well as I know we're talking
9 about the believability of Mrs. Rose's case.

10 But part of one of these charges was filing a false
11 police report, so we had to go into what the defendant's
12 story was. It wasn't just the burden on the State to prove
13 their case and what happened. We also had to talk about
14 how Mrs. Rose's story wasn't plausible. That was part of
15 our burden was to prove that it was, in fact, a false
16 police report, Your Honor.

17 And at that time, Mrs. Rose, the incident report
18 itself stated that three men came in back to the safe, and
19 it's very clear in the testimony that the safe was hidden,
20 that you couldn't see it from the road, that it was hidden
21 back, that there was a big long shelf in front of it, kind
22 of a stacked metal shelving unit in front of it and
23 blankets over it. So three men come in clearly with the
24 knowledge of where this safe is, yet they don't know the
25 combination, the combination is never opened, the safe

1

1 isn't opened, Your Honor.

2 And then there is that hatchet that is taken down from
3 the shelf itself. So not only did these men come in to a
4 safe where they know they don't know the combination or
5 maybe thought they knew the combination but it was wrong,
6 and then they rely on tools that, I guess, they're just
7 hoping are in the defendant's garage at the time that they
8 tried to break into it because they don't bring any sort of
9 tools or there are no indication that there were any types
10 of tools used by these three men.

11 So they grab the hatchet off the wall that is in the
12 garage, Your Honor. And then the hatchet marks themselves,
13 the height of them was relatively low compared to the
14 height that Ms. Rose said that the defendant's were. It
15 was more along the line of her height, Your Honor.

16 Briefly touching into some of Mr. Riordan's arguments,
17 first and foremost, we contend that all of this is
18 appellate issues, Your Honor. The search Your Honor ruled
19 on pretrial, it was raised again in the directed verdict
20 motion as well as throughout the trial it's been ruled on.
21 We believe that that's right for appellate issues, not
22 granting a new trial.

23 Your Honor, as you stated, the directed verdict
24 argument was relatively lengthy on both sides on each of
25 the charges. We went through all of that, and nothing else

1 happened between the directed verdict and the close of
2 trial other than closing arguments. So nothing really
3 changed to show that there was, in fact, evidence to -- or
4 a question of fact for the jury, a directed verdict, and
5 then where we are now. No other defense expert was put in
6 or anything like that that completely wiped away any of the
7 evidence that we had to sustain to overrule the directed
8 verdict motion at mid-trial.

9 To touch on some of Mr. Riordan's arguments -- and if
10 Your Honor doesn't want to hear argument on any of this,
11 just let me know and I'd be happy to move on to the next
12 part.

13 Regarding the search issue of Ms. Hanson's apartment,
14 first, Your Honor, Mr. Riordan argued that it was hearsay
15 and that there was no exception. We would argue that if it
16 is, in fact, hearsay, that the exception is the effect on
17 the listener, the listener being the officers that are
18 reading and reviewing her signature on the
19 consent-to-search side and how they acted afterwards. They
20 read that signature, and because of what they read, that
21 hearsay, they then went into the apartment. So that would
22 be an effect on the listener, Your Honor, which would be an
23 exception to the hearsay rule in regards to what
24 Mr. Riordan stated.

25 Further, Your Honor, the affidavit of Ms. Hanson that

1 her father came down and put in, we all agreed at pretrial
2 that that was improper. The State hadn't read it. We
3 didn't have the opportunity to cross-examine Ms. Hanson on
4 it. So anything contained within it can't be considered,
5 Your Honor.

6 Also, this was a totality of the circumstances
7 argument, Your Honor. The officers followed Mrs. Rose to
8 Ellie Hanson's apartment. When they were there, they asked
9 the defendant herself if they could get clothes. She said,
10 "I'll only give you the clothes if we can split them,"
11 right, because she wanted to be able to take part of them
12 and have their own independent testing run on it and then
13 give half to the investigators. However, the investigator
14 said very clearly, "That's not how we function. That's not
15 how we operate because we don't know where all the clothing
16 this possible accelerant could be; therefore, we only take
17 all of it," to which her response was, "Well, then I'm not
18 giving you the clothing." After that is when they went to
19 get consent from Ms. Hanson.

20 Your Honor, I have read through the pretrial testimony
21 of the defendant from her direct examination to her
22 cross-examination by me. She never states that she told
23 the officers themselves not to come into the apartment.
24 She tells Ellie Hanson, "Don't let them in," but she never
25 expressly tells them not to come into the apartment. She

1 tells them that she's not giving them her clothes, but she
2 never denies their access into the apartment.

3 However, Your Honor, once they are in the apartment,
4 Mrs. Rose doesn't have a right of privacy even if she is a
5 co-occupant or an overnight guest, however Mr. Riordan
6 wants to say it. The clothing was found in the living
7 room. It wasn't in the bedroom that Mrs. Rose was staying
8 in. It was open in the living room on top of an overnight
9 bag, not deep inside an overnight bag. They didn't have to
10 go through her bag. It was laid clearly on top, Your
11 Honor. So we'd argue that she doesn't have a right of
12 privacy to that specific bag with it being in the living
13 room after the officers have received consent to search
14 from Ms. Hanson.

15 Further, Mr. Riordan talked about the criminal nature
16 or the probative kind of nature of the clothing would have
17 to be apparent. Your Honor, it was very clear that she was
18 wearing those clothes earlier in the day. At that point in
19 time, the officers had ---

20 THE COURT: How was it very clear that she'd been
21 wearing those clothes earlier in the day?

22 MS. ABEE: Your Honor, she told them. They asked her
23 at the -- at her home, "Where are the clothes you were
24 wearing earlier today?" and she said, "They're at
25 Ms. Hanson's apartment." And they had seen her earlier in

1 the day wearing ---

2 THE COURT: Assuming that to be the case, assuming
3 that she did say that, I'm sure she did, what makes that,
4 the criminal nature of those clothes, readily apparent just
5 because she said she had them on earlier in the day?

6 MS. ABEE: Not just that, Your Honor. That coupled
7 with the fact that, as the investigators were going through
8 Ms. Rose's story, they thought that something was off,
9 again, the types of fire. Everything like that led to them
10 thinking that Ms. Rose's story wasn't 100 percent true.
11 Then they went to the home and that's when the dog hit on
12 the shoes. So at that point, they're thinking, Well,
13 there's accelerant on these shoes that she's telling us she
14 didn't wear. There could be accelerant on her clothing if
15 she was pouring the gasoline on the porch, the front or the
16 back porch at that time. So that's why they went and asked
17 her where her clothing was and she stated, "At Ms. Hanson's
18 apartment", and why they went to get it because they knew
19 she was wearing it that day. And if she was the person
20 that poured the gasoline -- or the accelerants on the front
21 and the back porch, then it is possible that that could
22 have splashed up on her clothing, Your Honor.

23 Talking about the search with Homer, Your Honor, that
24 was, again, very clearly ruled on in pretrial motions.
25 Mr. Rose has been an officer for years, signed a consent to

1 search.

2 THE COURT: That doesn't lead me anywhere. I'm not
3 concerned with that.

4 MS. ABEE: Your Honor, just to know on that, the
5 reason the State didn't call Homer Rose to testify during
6 the course of trial is that was a matter of law that was
7 ruled on pretrial. Whether or not the consent to search
8 was valid or was voluntarily given, that was a rule of law
9 -- or a matter of law that Your Honor ruled on pretrial.
10 The State had no reason to call and put that back in front
11 of the jury.

12 Moving on to the SLED agent, that's Agent Megan
13 Fletcher, Your Honor, again, these are all things that we
14 contend are appellate issues. She did testify that there
15 were different types of accelerant found on the shoes as
16 well as the clothing. Some did match the accelerant found
17 on the front and back porch, and I can't recall which,
18 front or back porch, but I knew there was a match somewhere
19 from the front or the back.

20 The fact that Mr. Riordan said that there is a
21 plausible explanation as to how that accelerant could have
22 gotten on there other than this does, in fact, mean that
23 there was a question of fact for the jury, Your Honor, and
24 that's what they did. The jury heard the State's side of
25 the story after putting the evidence up.

1 And I will say this, we put up evidence that didn't
2 necessarily help us because we weren't trying to hide the
3 ball at any point in time. We called the DNA expert that
4 had the three different DNA's, we called Megan Fletcher
5 even though all of the accelerants didn't match, we tried
6 to put everything out there as much as possible and then
7 put together what the State believed happened in this case
8 and what the evidence supported, Your Honor, and then it
9 was up for the jury to determine what they believed, in
10 fact, happened based on the evidence that was supported.
11 So, Your Honor, that was a question of fact for the jury to
12 determine.

13 When Megan Fletcher testified, she said she can't
14 determine how accelerant gets on the clothing or how any
15 sort of ignitable liquid gets on there. She can't
16 determine that. But what she can determine is how it's
17 there -- or, excuse me -- what is there is what she can
18 determine. How it got there, again, is the question of
19 fact for the jury based on what's presented throughout the
20 trial.

21 The shoes, Your Honor, again, with Agent Fletcher, she
22 did say that some of that could be common household stuff.
23 There was an investigator that testified that I believe
24 there was paint thinner upstairs or something like that.
25 But, again, that's a question of fact for the jury to

1 determine whether or not they believe that it -- that the
2 accelerant got there because of Ms. Rose painting earlier
3 or if they got there because she was setting the liquid on
4 the porches, Your Honor, to set the fire.

5 With the DNA evidence, Mr. Riordan stated that the
6 fact that the gloves had a mixture of three or more
7 possible -- I believe it was one glove that was tested had
8 a mixture of three or more strands of male DNA on it, and
9 he says that corroborates Ms. Rose's story, we don't agree
10 that it corroborates Ms. Rose's story. There were numerous
11 amounts of male firefighters going in and out at that
12 scene, numerous amounts of investigators. We don't know,
13 again, how that DNA got there. All we can say is that it
14 was, in fact, there. To say that there's three men that
15 somehow touched that one glove or wore that one glove, Your
16 Honor, again, with an argument that was made towards the
17 jury for them to determine whether or not they believed the
18 evidence, the evidence was admissible. The weight of it,
19 that was determined by the jury, Your Honor. And they came
20 back in favor of the State.

21 The lack of things being investigated that Mr. Riordan
22 brought up, it doesn't mean that there still wasn't
23 competent evidence to go forward to the jury, Your Honor.
24 That was ruled at the directed verdict motion. That
25 directed verdict motion was denied. We then did closing

1 arguments and went on to the jury, Your Honor.

2 And we ask that you just uphold the jury's verdict and
3 deny the defendant's request for a new trial since there
4 was competent evidence. When there's competent evidence to
5 sustain the jury's verdict, the Circuit Court can't
6 substitute its judgment, Your Honor. So we ask that you
7 uphold the verdict of the jury.

8 THE COURT: All right. Guys, go ahead. Very briefly,
9 Mr. Riordan. You've been very thorough.

10 MR. RIORDAN: All I'm saying is it was clear there was
11 no evidence any of the clothing or shoes had anything off
12 of the back porch, and that's why it's so important we've
13 got the dog there, and the testimony of her being on the
14 front porch minimizes really what the effect of this,
15 again, was.

16 And the only thing I'll say, Judge, look at this
17 point. You are the 13th juror, so there's still one juror
18 out there.

19 THE COURT: The 13th juror is a civil remedy. You
20 know that.

21 MR. RIORDAN: I know. But it's -- a new trial is in
22 your discretion purely at this point. And that's certainly
23 who I wish to appeal to, and I hope you will reconsider.

24 THE COURT: Let me just tell you, both parties have
25 done an excellent job putting this together. In all

1 candidness, Ms. Rose, I'll just tell you I have not read
2 back through this transcript. I haven't had an opportunity
3 this week. It got to me Monday, and today is Wednesday.
4 I'm going to give you the benefit of the doubt since you
5 have suffered the results of the jury verdict and the
6 sentence I gave you. I'll look at it. I'll give you my
7 decision and go from there.

8 I do, Mr. Riordan, agree with the State, however, that
9 much of your argument goes to the weight of the evidence.
10 I am a little bit concerned about some other issues that I
11 need to go back and review, make sure that I felt like I'm
12 still correct. Sometimes I'm not and sometimes I am, so
13 I'll look at it and let y'all know my decision, okay?

14 Thank you very much.

15 MS. ABEE: Thank you, Your Honor.

16 MR. RIORDAN: Judge, can we -- and I very much
17 appreciate you taking the time.

18 With that, as you said, she is -- I don't think it's
19 necessarily something that's different from your order, but
20 she is -- still remains on house arrest.

21 THE COURT: Sure.

22 MR. RIORDAN: A question of -- I don't think it's
23 specific as to where she needs to be, but in talking to her
24 folks, she doesn't want to be in the Upstate if she doesn't
25 have to be. Is it -- she said she needs something from --

1 they said they need something from the judge saying as long
2 as she's basically in South Carolina, they can monitor it.
3 Again, I don't know how practical any of it will be for her
4 if she's really going to have that option, but to even
5 think about it, apparently they wanted something from Your
6 Honor.

7 THE COURT: Do speak to Ms. Abee, see if y'all can't
8 come up with a consent order. I have no strong feeling one
9 way or the other.

10 MR. RIORDAN: I didn't think you would. And that's
11 why I told her, I said, "I don't -- you know, his order
12 didn't say you've got to do house arrest at this place."
13 And I haven't talked to Kinli about it yet because I didn't
14 know -- again, I didn't figure she'd care either.

15 THE COURT: It's Abee, right? Not Abee?

16 MS. ABEE: It's Abee.

17 THE COURT: Abee. I'm so sorry. I remember I
18 couldn't get that right the last time and I did it again.

19 MS. ABEE: That's fine. That's fine. I'm still
20 getting used to it, too.

21 THE COURT: But tell Mr. Riordan about that.

22 Ms. Rose, I don't have a feeling one way or the other,
23 okay?

24 MS. ABEE: Yes, sir.

25 THE COURT: And if y'all submit me a consent order,

1 I'll be glad to sign it.

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

3 THE COURT: Thank you, guys.

4 *****END OF TRANSCRIPT OF RECORD*****
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1 CERTIFICATE OF REPORTER

2
3 STATE OF SOUTH CAROLINA)
4 COUNTY OF GREENVILLE)
5
6

7 I, CHERYL A. SMITH, Official Court Reporter for the
8 Thirteenth Judicial Circuit of the State of South Carolina,
9 do hereby certify that the foregoing is a true, accurate
10 and complete Transcript of Record of the proceedings had
11 and evidence introduced in the trial of the captioned case,
12 relative to appeal, in the Court of General Sessions for
13 Greenville County, South Carolina, on the 2nd day of
14 September, 2015.

15 I do further certify that I am neither of kin,
16 counsel, nor interest to any party hereto.
17

18 January 12, 2016
19
20

21 
22

23 Cheryl A. Smith, CVR-M

24 Court Reporter
25

WITNESSES

BC Cannon-Greenville County Sheriff's Office

ARREST WARRANT NUMBER

2012A2330202127

ACTION OF GRAND JURY

TRUE BILL

FOREMAN GRAND JURY

Foreperson of Grand Jury
Date:

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2013-GS-23-

000678

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

FEBRUARY TERM 2013

THE STATE

VS.

PAULA L. ROSE

Indictment for

**Making False Insurance Claim to
Obtain Benefits for Fire or
Explosion Loss**

SC Code: 16-11-125
CDR Code: 0508
Class F Felony

After being fully advised as to my
legal rights, I hereby waive presentment
to the Grand Jury.

Defendant

I
hereby appear in my own proper person and
plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

INDICTMENT

At a Court of General Sessions, convened on February 19, 2013, the Grand Jurors of Greenville County present upon their oath:

Making False Insurance Claim to Obtain benefits for Fire or Explosion Loss

That Paula L. Rose did in Greenville County, on or about July 27, 2012, willfully and knowingly present or cause to be presented a false or fraudulent claim, or any proof of such claim, for the payment of a fire loss or loss caused by an explosion, upon any contract of insurance or certificate of insurance which includes benefits for such a loss, or did prepare, make, or subscribe to a false or fraudulent account, certificate, affidavit, or proof of loss, or other documents or writing, with intent that such documents may be presented or used in support of such claim. All in violation of Section 16-11-125 of the S. C. Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



Alan Wilson /NGC
South Carolina Attorney General

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF

GREENVILLE

STATE

VS.

PAULA L. ROSE

AKA:

Race: W Sex: F Age: 47

DOB: SS#:

Address: RILEY SMITH DRIVE

City, State, Zip: GREENVILLE, SC 29615

DL# SID#

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: MAKING FALSE INSURANCE CLAIM TO OBTAIN BENEFITS FOR FIRE OR EXPLOSION LOSS

In violation of § 16-11-125 of the S.C. Code of Laws, bearing CDR Code # 0508

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45(CSC w/minor 1st or Lewd Act)The charge is: ☒ As indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (def.'s initials)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Kiner B. Abee

100017

Paula L. Rose

goin

65287

Assistant Attorney General

SC Bar #

Defendant

Attorney for Defendant

SC Bar #

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center,
for a determinate term of 10 days/months/years or ☐ under the Youthful Offender Act not to exceed 5 years
and/or to pay a fine of \$ 5; provided that upon the service of 5 days/months/years and or payment
of \$ 5; plus costs and assessments as applicable*; the balance is suspended with probation for 5
months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are
incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:☐ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State
Department of Corrections.☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

PTUP

Total: \$ plus 20% fee: \$

days/hours Public Service Employment

Payment Terms:

Obtain GED ☐☐ Set by SCDPPPS

Attend Voc. Rehab. Or Job Corp. _____

Recipient: _____

May serve W/E beginning

Substance Abuse Counseling ☐

*Fine:

\$14-1-206 (Assessments 107.5%) \$

\$14-1-211 (A)(1)(Conv. Surcharge) \$100 \$ 100

\$14-1-211 (A)(2)(DUI Surcharge) \$100 \$

\$56-5-2995 (DUI Assessment) \$12 \$

\$56-1-286 (DUI Breath Test) \$25 \$

Proviso 47.9 (Public Def/Prob) \$500 \$

\$14-1-212 (Law Enforce. Funding) \$25 \$ 25

\$14-1-213 (Drug Court Surcharge) \$150 \$

\$50-21-114 (BUI Breath Test Fee) \$50 \$

\$56-5-2942(J) (Vehicle Assessment) \$40/ea \$

Proviso 90.5 (SCCJA Surcharge) \$5 \$ 5

3% to County (if paid in installments) \$

TOTAL \$

Clerk of Court/Deputy Clerk
Court Reporter:Paul B. W. deenamer
M Woods☐ Appointed PD or appointed other counsel,
\$47.12 requires \$500 be paid to Clerk
during probation.

Presiding Judge

Judge Code:

Sentence Date

3/8/14

1078
RECEIVED
DEC 16 2016
SC Court of Appeals

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

Respectfully Submitted,



John H. Strom
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S.C. 29211-1589

ATTORNEY FOR APPELLANT

This 16th day of December, 2016.