

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Sumter County
Honorable Kristi F. Curtis, Circuit Court Judge

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S.C. SUPREME COURT

JOSEPH MICHAEL MANNERS,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2018-002109

APPENDIX

ROBERT M. DUDEK
Chief Appellate Defender

ALAN WILSON
Attorney General

South Carolina Commission on Indigent
Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

JANELL GREGORY
Assistant Attorney General
1000 Assembly Street, Room 519
Columbia, SC 29201

ATTORNEYS FOR RESPONDENT

ATTORNEY FOR PETITIONER

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STATE OF SOUTH CAROLINA)
COUNTY OF SUMTER) COURT OF GENERAL SESSIONS

STATE OF SOUTH CAROLINA)

STATE,)

TRANSCRIPT OF RECORD
14-GS-43-0170

v.)

JOSEPH M. MANNERS,)

DEFENDANT.)

February 16, 2016
Sumter, South Carolina

BEFORE :

THE HONORABLE W. JEFFREY YOUNG, JUDGE;
AND JURY

APPEARANCES:

ERNEST A. "CHIP" FINNEY, III
JOHN P. MEADORS, ESQ.
Assistant Solicitor

TIMOTHY L. GRIFFITH, ESQ.
Attorney for Defendant

FRANCES B. RAY, RPR
Circuit Court Reporter

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THE COURT: Solicitor, you ready to

1 proceed?

2 MR. MEADORS: May it please Your Honor, at
3 this time the State of Sumter County true bill
4 indictment 2014-GS-43-0170, State of South Carolina
5 versus Joseph Michael Manners. Mr. Manners is
6 present in this courtroom with his attorney,
7 Mr. Timothy L. Griffin. At this time the State is
8 represented by John Meadors and Solicitor Ernest A.
9 Finney, III. Joseph Michael Manners has been
10 indicted to count one, murder, count two murder
11 count three arson in the first degree.

12 THE COURT: All right, thank you. All
13 right, ladies and gentlemen, as the State has
14 mentioned, we're now beginning the trial of State
15 versus Joseph Michael Manners who is charged with
16 two counts of murder and one count of first degree
17 arson. And ladies and gentlemen, I'm going to read
18 the indictments to you. This is under indictment
19 number 2014-GS-43-170, count one, murder, that
20 Joseph Michael Manners did in South Carolina on or
21 about June 1st, 2013, willfully, feloniously and
22 intentionally kill the victim James Topper, Jr.,
23 with malice aforethought either expressed or implied
24 by means of setting the victim's residence on fire
25 and the victim did die as a proximate result thereof

1 on or about June 1st, 2013, in Sumter County in
2 violation of section 16-3-10 of the South Carolina
3 Code of Laws 1976 as amended. Count two, that
4 Joseph Michael Manners did in Sumter County on or
5 about June 1st, 2013, willfully, feloniously and
6 intentionally kill the victim Joanne Topper with
7 malice aforethought either expressed or implied by
8 means of setting the victim's residence on fire and
9 the victim did die as a proximate result thereof on
10 or about in Sumter County in violation of section
11 16-3-10 of the South Carolina Code of Laws 1976 as
12 amended.

13 Count three, arson in the first degree,
14 that Joseph Michael Manners did in Sumter County on
15 or about June 1st, 2013, willfully and maliciously
16 cause an explosion, set fire to, burn, or cause to
17 be burned, or aided, counseled, or procured the
18 burning of a building which resulted in either
19 directly or indirectly in the death or serious
20 bodily injury of James Topper, Jr., and Joanne
21 Topper in violation of section 16-11-110(a) of the
22 South Carolina Code of Laws 1976 as amended. Ladies
23 and gentlemen, let me remind you, the fact that the
24 defendant was arrested, charged, and indicted in no
25 way is indicative that he has committed these

1 crimes. The defendant has pled not guilty and,
2 therefore, the State has the burden of proving each
3 and every allegation of each of these charges beyond
4 a reasonable doubt. Again, ladies and gentlemen,
5 the defendant does not have to prove himself to be
6 innocent. The State has the complete burden of
7 proving his guilt beyond a reasonable doubt.

8 Now ladies and gentlemen, before — and
9 let me ask the jurors, is there any member of the
10 jury panel who knows anything about this particular
11 charge that would make it so that you could not be
12 fair and impartial in this case? If so, please
13 stand.

14 Yes, ma'am, state your name and number.
15 Please come down here.

16 (WHEREUPON, potential juror approached the
17 Bench for an off-the-record discussion.)

18 THE COURT: What's your name and number?

19 THE POTENTIAL JUROR: 172, Mary Wooten.
20 I've heard some of the —

21 THE COURT: So you knew about it from when
22 the call came in?

23 THE POTENTIAL JUROR: Right.

24 THE COURT: You probably couldn't be fair.

25 THE POTENTIAL JUROR: Right.

1 THE COURT: I will excuse you from the
2 trial of this case. If you could hang around
3 courtroom I think we're gonna strike another jury.
4 You won't be on this jury.

5 THE POTENTIAL JUROR: Okay, thank you.
6 172.

7 THE COURT: This juror will not be on this
8 particular jury. All right, ladies and gentlemen,
9 I'm gonna, before we select the jury there are
10 several questions I'm gonna need to ask you. I'm
11 gonna remind you that you are still under oath from
12 the oath that you took earlier. And as I say, one
13 of the reasons that you're under oath is this is
14 such a crucial stage of the trial. You know, just
15 like a building must have a firm foundation to be
16 strong and protective of those who live in it, so
17 must a jury be strong for the basis of a fair and
18 impartial trial for those who participate, the State
19 and the Defendant who is on trial. And your answers
20 to these questions are the foundations by which
21 these attorneys will build a jury, and again,
22 they're relying on your truthful answers to help and
23 strike an unbiased jury who will diligently listen
24 to the facts and deliver a true and just verdict.

25 Ladies and gentlemen, the first question,

1 has anyone ever been related by blood or marriage or
2 had a close, personal, or business relationship with
3 the defendant Mr. Joseph Michael Manners —

4 Mr. Manners, if you'd please stand and
5 face the jury. You may be seated.

6 —or the alleged victims, Ms. Joanne
7 Topper and Mr. James Topper, Jr. and, or have had a
8 close, personal, business relationship or know the
9 victims or the defendant in this case, if so, please
10 stand.

11 (There was no response.)

12 THE COURT: Thank you, no one is standing.
13 Ladies and gentlemen, the following is a list of
14 potential witnesses in this case. I'm gonna go
15 through the entire list and then I'm gonna ask you
16 basically the same questions. Mr. James Atkinson,
17 Sumter County Sheriff's Department; Investigator
18 Derron Soloman of the Sumter County Sheriff's
19 Office; Rhonda Webster; Investigator Wayne Dubose of
20 the Sumter County Sheriff's Office; Lieutenant Tripp
21 Mayes of the Sumter County Sheriff's Office;
22 Investigator Michael McCauley of the Sumter County
23 Sheriff's Office; Captain Robert Burnish;
24 Investigator Julian Blair of the Sumter County
25 Sheriff's Office; Chief Brian Christmas of the

1 Sumter County Fire Department; Bryan Wright of the
2 State Law Enforcement Division; Doctor Janice Ross,
3 pathologist; Sergeant Jennifer Mitsch of the
4 Cincinnati Police Department; Sergeant Kimberly
5 Klare of the Erlanger Police Department;
6 Investigator Tim Herbert of the Sumter County
7 Sheriff's Office; Kenneth Joseph Powell of the South
8 Carolina SLED.

9 MR. MEADORS: Your Honor, that's a
10 misprint; it should be Sheriff's Office.

11 THE COURT: Oh, Sumter County Sheriff's
12 Office; Olivia Gibson of the Sumter County Sheriff's
13 Office; Shirlene Skipper; Engineer Case Goines of
14 the Sumter Fire Department; Detective Heath Gardner
15 of the Sumter Police Department; Jim Sutphin; and
16 Tina Manners-Frederick; Stacey Hannah; and Joseph
17 Manners. So, if any member of the jury panel have a
18 close, personal, or business relationship or related
19 by blood or marriage to any of the potential
20 witnesses in this case, if so, please stand.

21 Yes, ma'am, state your name and number.

22 THE POTENTIAL JUROR: Sara Hasbrouck, 67.

23 THE COURT: Okay. And which witness do
24 you know?

25 THE POTENTIAL JUROR: It would be Mr.

1 Christmas.

2 THE COURT: Would the fact that you know
3 Mr. Christmas, would that make it — or Captain
4 Christmas — make it so that you can't be fair and
5 impartial to the Defendant or the State in this
6 case?

7 THE POTENTIAL JUROR: I can be fair.

8 THE COURT: Thank you very much, ma'am.

9 Yes, sir.

10 THE POTENTIAL JUROR: Luther Jamison,
11 number 80.

12 THE COURT: All right, who you know?

13 THE POTENTIAL JUROR: Wayne Dubose was a
14 long time security officer with Piggly Wiggly,
15 worked very close with him for years. Also, Mike
16 McCauley is currently a security officer with Piggly
17 Wiggly.

18 THE COURT: If they are witnesses in the
19 case do you believe that you can listen to the
20 evidence and be fair and impartial to both the State
21 and the Defendant in this case?

22 THE POTENTIAL JUROR: Yes, sir.

23 THE COURT: All right, thank you very
24 much.

25 Yes, sir.

1 THE POTENTIAL JUROR: Jason Bray, number
2 20. I know Mr. Tripp Mayes.

3 THE COURT: All right. Who is it you
4 know?

5 THE POTENTIAL JUROR: Tripp Mayes.

6 THE COURT: Tripp Mayes. Would the fact
7 that you know Tripp Mayes make it so that you can't
8 be fair and impartial to the State or the Defendant
9 in this case?

10 THE POTENTIAL JUROR: No, sir.

11 THE COURT: All right, thank you very
12 much.

13 All right, ladies and gentlemen, the
14 attorneys who are the primary attorneys in this case
15 are John Meadors for the State.

16 Mr. Meadors, would you like to introduce
17 yourself and your staff?

18 MR. MEADORS: May it please Your Honor, I
19 am John Meadors, Assistant Solicitor. I work for
20 the Honorable Ernest A. Finney, "Chip" Finney, III,
21 your elected Solicitor, who will be trying this
22 case. Mr. Tom Miller is my investigator. Thank
23 you.

24 THE COURT: Thank you.

25 Mr. Griffith, would you like to introduce

1 yourself and your staff.

2 MR. GRIFFITH: I'm attorney Timothy L.
3 Griffith. I represent Mr. Manners in this case.

4 THE COURT: All right. Ladies and
5 gentlemen, has any member of the jury panel ever
6 been represented or related by blood or marriage to
7 these attorneys again, or ever represented by them
8 or their law firms, if so, please stand.

9 (There was no response.)

10 THE COURT: Thank you, no one is standing.
11 Has any member of the jury panel formed or expressed
12 any opinion about any issue or matter involved in
13 this case, if so, please stand.

14 (There was no response.)

15 THE COURT: Thank you, no one standing.
16 Ladies and gentlemen, have you or any member of your
17 immediate family ever been the victim of or charged
18 with a violent crime, if so, please stand.

19 Yes, sir, why don't you come down and talk
20 to me in private.

21 (Potential juror approached the Bench for an
22 on-the-record discussion.)

23 THE COURT: What's your name, sir?

24 THE POTENTIAL JUROR: Gordon Reynolds,

25 131.

1 THE COURT: Yes, sir.

2 THE POTENTIAL JUROR: My grandson is
3 currently serving a prison term for murder.

4 THE COURT: That's your grandson?

5 THE POTENTIAL JUROR: Yes, sir.

6 THE COURT: The fact that your grandson is
7 serving a sentence on murder, does that make it so
8 you can't be fair and impartial to the State or the
9 Defendant in this case?

10 THE POTENTIAL JUROR: No, sir.

11 THE COURT: So you cannot be fair?

12 THE POTENTIAL JUROR: No, I mean, I can be
13 fair.

14 THE COURT: You can listen to the
15 evidence?

16 THE POTENTIAL JUROR: Yes, sir.

17 THE COURT: Okay, very well. Thank you,
18 this juror —

19 THE CLERK: 131.

20 THE COURT: 131. Thank you, sir. You may
21 have a seat.

22 (End of Bench conference with Juror 131.)

23 THE BAILIFF: Ms. Hasbrouck is number 67,
24 Your Honor.

25 (Potential juror approached the Bench for an

1 on-the-record discussion.)

2 THE COURT: What's your name and number
3 please?

4 THE POTENTIAL JUROR: Sara Hasbrouck,
5 number 67. My husband (inaudible).

6 THE COURT: Would the fact that that
7 happened make it so you can be fair and impartial to
8 the State and the Defendant?

9 THE POTENTIAL JUROR: Yes.

10 THE COURT: Thank you very much. Have a
11 seat.

12 (End of Bench conference with Juror 67.)

13 THE BAILIFF: Number 57, Your Honor.

14 THE COURT: Ms. Green, come on down.

15 (Potential approached the Bench for an on-the-record
16 discussion.)

17 THE POTENTIAL JUROR: My son back in '98
18 two men sucker punched him to the jaw, broke some
19 bones, and that type of thing.

20 THE COURT: Would the fact that that
21 happened, would that make it —

22 THE POTENTIAL JUROR: No.

23 THE COURT: —so you can't be fair and
24 impartial?

25 THE POTENTIAL JUROR: No.

1 THE COURT: Very well, thank you very
2 much.

3 THE BAILIFF: 176, Mr. Young, Your Honor.

4 THE COURT: Come on, Mr. Young.

5 (Potential juror approached the Bench for an
6 on-the-record discussion.)

7 THE POTENTIAL JUROR: I'm not sure, the
8 question you asked me.

9 THE COURT: Have you or any member of your
10 immediate family ever been accused of or the victim
11 of a violent crime?

12 THE POTENTIAL JUROR: Yes.

13 THE COURT: Who was it? What was it?

14 THE POTENTIAL JUROR: See, it's a cousin
15 in Philadelphia.

16 THE COURT: He was charged with a violent
17 crime or was the victim?

18 THE POTENTIAL JUROR: He was charged.

19 THE COURT: Okay. The fact that you have
20 a cousin that was charged make it so that you can't
21 be fair and impartial to the State and the Defendant
22 on this case?

23 THE POTENTIAL JUROR: Can I ask you a
24 question?

25 THE COURT: Yes.

1 THE POTENTIAL JUROR: If I've been charged
2 with it?

3 THE COURT: Well, that's your, you're part
4 of your immediate family, yes, sir.

5 THE POTENTIAL JUROR: I been charged
6 before.

7 THE COURT: Would the fact that you've
8 been charged make it so that you can't be fair and
9 impartial?

10 THE POTENTIAL JUROR: No.

11 MR. MEADORS: What was the charge?

12 THE POTENTIAL JUROR: ABIK.

13 (WHEREUPON, counsel approached the
14 Bench for an off-the-record discussion.)

15 THE COURT: Okay, thank you.

16 Is there any member of the jury panel who was also
17 a member of the grand jury that indicted in this
18 case, if so, please stand.

19 (There was no response.)

20 THE COURT: Thank you, no one standing.
21 Is there any member of the jury panel who is a
22 member of or a contributor to any group which has as
23 its primary concern the promotion of law enforcement
24 or victim's rights? These groups would include but
25 certainly would not be limited to Mother's Against

1 Drunk Drivers, Students Against Drunk Drivers, or
2 Citizens Against Violent Crime. If so, please
3 stand.

4 (There was no response.)

5 THE COURT: Thank you, no one standing.
6 Does any member of the jury panel know of any reason
7 whatsoever why he or she should not serve as a juror
8 in this case with particular emphasis being placed
9 on your ability to be fair and impartial to both the
10 Defendant and the State, if so, please stand.

11 (There was no response.)

12 THE COURT: Thank you. Does the State
13 have any additional questions it would like for me
14 to ask?

15 MR. MEADORS: No, sir.

16 THE COURT: Does the Defense have any
17 additional questions?

18 MR. GRIFFITH: No, Your Honor.

19 THE COURT: All right, thank you. Ladies
20 and gentlemen, what will happen now is the computer
21 is gonna generate a list of potential jurors. If
22 your name is called, please come up to the podium,
23 face the exit sign, and then each side will have an
24 opportunity to strike you from this jury. Please do
25 not take it personally if you're stricken from the

1 jury. Each side has some idea as to what they think
2 the optimal jury will be for this case so. As soon
3 as the computer gives us our names we will proceed
4 to strike twelve primary and two alternate jurors.

5 (Pause.)

6 THE COURT: Yes, sir.

7 THE CLERK: Ladies and gentlemen of the
8 jury, if I call your name please come stand here in
9 front of the podium, face the back of the courtroom
10 and bring with you please any personal belongings
11 that you may have.

12 Juror number 173, Ta'jee Wright (black
13 male). Face the back of the courtroom please.

14 What saith the State?

15 MR. MEADORS: Please excuse the juror.

16 THE CLERK: Have a seat back with the
17 panel. You've been excused from this trial please,
18 sir.

19 Juror number 131, Gordon Reynolds (white
20 male). What saith the State?

21 MR. MEADORS: Please excuse the juror.

22 THE CLERK: Have a seat back in the panel.
23 You've been excused from this trial please, sir.

24 Juror number 20, Jason Bray (white male).
25 What saith the State?

1 MR. MEADORS: Please present the juror.

2 THE CLERK: What saith the Defendant?

3 MR. GRIFFITH: Please present the juror.

4 THE CLERK: Have a seat in the jury box
5 please, sir.

6 Juror number 177, Nasbia Miller (black
7 male). What saith the State?

8 MR. MEADORS: Please excuse the juror.

9 THE CLERK: Have a seat back in the panel.
10 You've been excused from this trial please, sir.

11 Juror number 80, Luther Jamison, II (white
12 male). What saith the State?

13 MR. MEADORS: Please present the juror.

14 THE CLERK: What saith the Defendant?

15 MR. GRIFFITH: Please excuse the juror.

16 THE CLERK: Have a seat back in the panel.
17 You've been excused from this trial please, sir.

18 Juror number 151, Edward Tucker (white
19 male). What saith the State?

20 MR. MEADORS: Please present the juror.

21 THE CLERK: What saith the Defendant?

22 MR. GRIFFITH: Please present the juror.

23 THE CLERK: Have a seat in the jury box
24 please, sir.

25 Juror number 159, Tonia Watson (white

1 female). What saith the State?

2 MR. MEADORS: Please excuse the juror.

3 THE CLERK: Have a seat back with the
4 panel. You've been excused from this trial please,
5 ma'am.

6 Juror number 17, Kanija Bolden (black
7 female). What saith the State?

8 MR. MEADORS: Please present the juror.

9 THE CLERK: What saith the Defendant?

10 MR. GRIFFITH: Please present the juror.

11 THE CLERK: Have a seat in the jury box
12 please, ma'am.

13 Juror number 115, Shirrie Miller (black
14 female). What saith the State?

15 MR. MEADORS: Please present the juror.

16 THE CLERK: What saith the defendant?

17 MR. GRIFFITH: Please present the juror.

18 THE CLERK: Have a seat in the jury box
19 please, ma'am.

20 Juror number 93, Ryan Ladda (white male).

21 What saith the State?

22 MR. MEADORS: Please present the juror.

23 THE CLERK: What saith the Defendant?

24 MR. GRIFFITH: Please present the juror.

25 THE CLERK OF COURT: Have a seat in the

1 jury box please, sir.

2 Juror number 143, Anthony Simmons (white
3 male). What saith the State?

4 MR. MEADORS: Please present the juror.

5 THE CLERK: What saith the Defendant?

6 MR. GRIFFITH: Please excuse the juror.

7 THE CLERK: Have a seat back in the panel.

8 You've been excused from this trial please, sir.

9 Juror number 109, Dale McGhee (black
10 male). What saith the State?

11 MR. MEADORS: Please present the juror.

12 THE CLERK: What saith the Defendant?

13 MR. GRIFFITH: Please present the juror.

14 THE CLERK: Have a seat in the jury box
15 please, sir.

16 Juror number 75, John Horner (white male).
17 What saith the State?

18 MR. MEADORS: Please present the juror.

19 THE CLERK: What saith the Defendant?

20 MR. GRIFFITH: Please present the juror.

21 THE CLERK: Have a seat in the jury box
22 please, sir.

23 Juror number 38, Jalen Cure (black male).
24 What saith the State?

25 MR. MEADORS: Please present the juror.

1 THE CLERK: What saith the defendant?

2 MR. GRIFFITH: Please excuse the juror.

3 THE CLERK: Have a seat back with the
4 panel. You've been excused from this trial please,
5 sir.

6 Juror number 68, Alexander Head (white
7 male). What saith the State?

8 MR. MEADORS: Please present the juror.

9 THE CLERK: What saith the Defendant?

10 MR. GRIFFITH: Please present the juror.

11 THE CLERK: Have a seat in the jury box
12 please, sir.

13 Juror number 55, Douglas Gant (white
14 male). What saith the State?

15 MR. MEADORS: Please present the juror.

16 THE CLERK: What saith the Defendant?

17 MR. GRIFFITH: Please excuse the juror.

18 THE CLERK: Have a seat back in the panel.
19 You've been excused from this trial please, sir.

20 Juror number 160, Willie Welch, Jr.,
21 (white male). What saith the State?

22 MR. MEADORS: Please present the juror.

23 THE CLERK: What saith the Defendant?

24 MR. GRIFFITH: Please present the juror.

25 THE CLERK: Have a seat in the jury box

1 please, sir.

2 Juror number 66, Kimberly Harvin (white
3 female). What saith the State?

4 MR. MEADORS: Please present the juror.

5 THE CLERK: What saith the Defendant?

6 MR. GRIFFITH: Please present the juror.

7 THE CLERK: Have a seat in the jury box
8 please, ma'am.

9 Juror number 110, Samuel McLean (black
10 male). What saith the State?

11 MR. MEADORS: Please present the juror.

12 THE CLERK: What saith the Defendant?

13 MR. GRIFFITH: Please present the juror.

14 THE CLERK: Have a seat in the jury box
15 please, sir.

16 Juror number 111, John McManus (white
17 male). What saith the State?

18 MR. MEADORS: Please present the juror.

19 THE CLERK: What saith the Defendant?

20 MR. GRIFFITH: Please excuse the juror.

21 THE CLERK: Have a seat back with the
22 panel. You've been excused from this trial please,
23 sir.

24 Juror number 140, Kimberly Scott (white
25 female). What saith the State?

1 MR. MEADORS: Please present the juror.

2 THE CLERK: What saith the Defendant?

3 MR. GRIFFITH: Please present the juror.

4 THE CLERK: Have a seat in the jury box
5 please, ma'am.

6 THE COURT: Two alternates, two and one on
7 Defense.

8 THE CLERK: Juror number 7, Brenda Atkins
9 (white female). What saith the State?

10 MR. MEADORS: Please present the juror.

11 THE CLERK: What saith the Defendant?

12 MR. GRIFFITH: Please present the juror.

13 THE CLERK: Have a seat in the jury box
14 please, ma'am.

15 Juror number 63, Robert Hardee (white
16 male). What saith the State?

17 MR. MEADORS: Please present the juror.

18 THE CLERK: What saith the Defendant?

19 MR. GRIFFITH: Please present the juror.

20 THE CLERK: Have a seat in the jury box
21 please, sir.

22 THE COURT: Would you please call out the
23 names of all the jurors.

24 THE CLERK: Yes, sir.

25 Ladies and gentlemen, when I call your

1 name please raise your right hand. Jason Bray,
2 Edward Tucker, Kanija Bolden, Shirrie Miller, Ryan
3 Ladda, Dale McGee, John Horner, Alexander Head,
4 Willie Welch, Jr., Kimberly Harvin, Samuel McLean,
5 Kimberly Scott, Brenda Atkins, Robert Hardy. Thank
6 you.

7 (All jurors responded by raising their hand.)

8 THE COURT: Thank you, Mr. Bradley.

9 Ladies and gentlemen, y'all have been
10 selected as the jury for this trial. I'm gonna send
11 you back in the jury room for just a few minutes
12 while I talk to the attorneys; but while you're back
13 there please do not discuss anything about the case.
14 Of course you're gonna get tired of me saying that.
15 I'm gonna say it to you every time before you go
16 back there. Also, if you could select among the
17 primary jurors, the first twelve selected, who you
18 want to be the foreperson of the jury. That person
19 will be with the jury spokesperson here in court.
20 I'm gonna send you back there for just a few
21 minutes. I'll bring you back out probably about ten
22 minutes and then I'm gonna dismiss you for the
23 afternoon. Thank you, ladies and gentlemen.

24 (WHEREUPON, the jury was removed from the
25 courtroom at 11:47 a.m.)

1 THE COURT: Are there any objections to
2 the jury that has been selected or the manner in
3 which they have been selected from the State?

4 MR. MEADORS: No, sir.

5 THE COURT: From the Defense?

6 MR. GRIFFITH: No, Your Honor.

7 THE COURT: All right. How long do you
8 think?

9 MR. GRIFFITH: Your Honor, I have one
10 witness, one of which will just basically confirm —
11 you stipulate to that. The other is the lady that
12 we're gonna work with SKYPE, and she might take on
13 my part maybe 15 minutes.

14 THE COURT: Okay.

15 MR. MEADORS: We have one officer. There
16 is a tape, I think, we'd like for Your Honor to
17 hear. We've got the audio.

18 THE COURT: How long is it?

19 MR. MEADORS: We don't have to hear the
20 whole tape, but at least the advice of rights part,
21 and then there's another part we may want you to
22 play but the whole tape is probably 30 minutes.
23 There is an issue — I don't know if he's gonna
24 bring it up but and I don't mean we have to address
25 it today, but there's at some point I think Your

1 Honor is gonna have to listen to the whole tape
2 outside of the jury. He does comment, a week before
3 this happened the police were called out to the
4 grandparents' house on Barnwell, [REDACTED] Barnwell,
5 because the defendant had allegedly struck his
6 grandmother. They declined to prosecute then, the
7 grandparents did. We think they then told him he
8 had to go back up north which is what led to this.
9 Anyway, some of that is on this tape, this audio,
10 when he talks about the week before and that's kind
11 of in the conversation. I'm not sure, that's just
12 something I think Your Honor — assuming he objects;
13 I don't know, I probably shouldn't have said that.

14 THE COURT: I would like to keep that out,
15 if possible.

16 MR. MEADORS: Just to run that up to the
17 Court; that's in there.

18 THE COURT: I would basically keep that
19 out.

20 MR. MEADORS: Okay.

21 THE COURT: That's kind of remote. If it
22 happened immediately before this, that'd be one
23 thing; but it happened the week before so.

24 MR. MEADORS: And it may tie into a little
25 issue that will come but we can get into that later

1 from what I understand.

2 THE COURT: Okay, all right. Why don't we
3 take about a five minute recess, bring our jury back
4 in, and then we'll start our Jackson v. Denno
5 hearing.

6 MR. MEADORS: Your Honor, she is coming
7 from the motel, she's in Sumter.

8 THE COURT: Okay.

9 INVESTIGATOR MILLER: She's here.

10 MR. MEADORS: She's here? Can we say
11 twelve just so we can...

12 THE COURT: Yeah, let's say 12:00, that
13 way we're all looking at the same...

14 (WHEREUPON, a recess was taken from the
15 proceedings.)

16 THE COURT: We can go ahead and bring the
17 jury in and then dismiss them for lunch.

18 (WHEREUPON, the jury was returned to the
19 courtroom at approximately 12:06 p.m.,
20 and the following proceedings commenced
21 in open court.)

22 THE COURT: And Mr. Bray, you're the
23 foreperson? Who is our foreperson? From now on
24 you'll sit right here. Don't worry about changing
25 out, but when you come back you'll sit there.

1 All right, ladies and gentlemen, I'm going
2 to excuse you for lunch now with instructions, first
3 of all, that you not talk about this with anyone.
4 And I wouldn't go out and tell everybody you saw
5 that you got jury duty 'cause what's gonna happen is
6 then somebody is gonna, you know, I had jury duty
7 one time and this is what happened when I was on a
8 jury. Well, you don't need to hear that, okay. You
9 need to keep your mind pristine so that just the
10 evidence from this court will help you in making up
11 your mind in this case. Be back here at 3:00, just
12 a little bit before 3, and then we will start the
13 trial for this afternoon. Thank you, ladies and
14 gentlemen, and I'll see y'all at 3:00. Thank you.

15 (WHEREUPON, the jury was removed from the
16 courtroom.)

17 THE COURT: Y'all ready to proceed?

18 MR. GRIFFITH: Your Honor, we do have the
19 motion for the Jackson Denno motion to exclude, and
20 you had said you wanted to hear that after lunch but
21 we're talking to the clerk. The Clerk is working on
22 setting up SKYPE for us.

23 THE COURT: Okay.

24 SOLICITOR FINNEY: Your Honor please, we
25 have a statement that was recorded at the arrest of

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1 Mr. Manners and the officer who took that statement
2 is from another jurisdiction, she's here. And we're
3 making you a copy of the transcript of that tape.

4 THE COURT: All right, thank you.

5 SOLICITOR FINNEY: And if you're ready
6 to —

7 MR. MEADORS: Judge, I made a copy for you
8 and the court reporter.

9 THE COURT: Are you ready to proceed?

10 MR. MEADORS: Yes, sir. Your Honor, we'd
11 like to make that, I guess for these purposes,
12 Court's 1.

13 (Court's Exhibit Number 1 was marked
14 and made a part of the record.)

15 MR. MEADORS: Your Honor, at this time, if
16 it please the Court, Sergeant Jennifer Mitsch,
17 M-I-T-S-C-H.

18 THE COURT: Ms. Mitsch, come forward to be
19 sworn please.

20 THE BAILIFF: Raise your right hand, place
21 your left hand on the Bible. State your name
22 please.

23 THE WITNESS: Jennifer Mitsch.

24 WHEREUPON,

25 **JENNIFER MITSCH,**

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1 having been duly sworn by the Clerk, testified
2 as follows:

3 THE BAILIFF: Please state your full name
4 and spell your last name for the record.

5 THE WITNESS: It's Jennifer Mitsch,
6 M-I-T-S-C-H.

7 **DIRECT EXAMINATION**

8 BY MR. MEADORS:

9 Q Good afternoon, Sergeant.

10 A Good afternoon.

11 Q You arrived yesterday from Cincinnati?

12 A I did.

13 Q Briefly for these purposes, Sergeant, is Mitsch
14 — am I pronouncing your name right?

15 A Mitsch, yes.

16 Q Tell Your Honor about yourself, specifically your
17 background in law enforcement and your education and
18 training in that field.

19 A Yes, sir. I've been a Cincinnati police officer
20 for 18 years, and of that, ten years in the homicide
21 unit.

22 Q And what kind of training have you received? I
23 know we down here have training, continuing legal
24 aid, Criminal Justice Academy. Do you have the same
25 sort of thing in Cincinnati?

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1 A We do. We have the police academy which is six
2 months long, and then we have ongoing in-service
3 trainings twice a year. In addition to that,
4 additional trainings that we voluntary for.

5 Obtained my Masters degree at Xavier University.

6 And like I said, ongoing training, in-services twice
7 a year to update us on updated law in Ohio.

8 Q I'm gonna take you back to June of 2013. And my
9 questions for these purposes in front of His Honor
10 outside the presence of the jury will relate or will
11 pertain to the time when the opportunity you had to
12 meet with the defendant Joseph Manners.

13 A Correct.

14 Q How did Cincinnati get involved in this,
15 Sergeant?

16 A Our agency was contacted by Sumter County
17 requesting mutual aid. Joseph Manners was at
18 University Hospital, which is in Cincinnati, Ohio,
19 Hamilton County which is under my jurisdiction and
20 so I was asked to respond to University Hospital to
21 speak with him.

22 Q And as far as you know was it Captain Burnish who
23 is in — I believe it was this guy. Was he the one
24 heading up, as far as you know, Sumter and
25 information that was given to your jurisdiction?

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1 A Yes, sir.

2 Q And you have come to know or did you learn the
3 name of an officer Kim Claire?

4 A I did.

5 Q And was she involved in a pursuit of Mr. Manners
6 in Kentucky prior to Mr. Manners going into Ohio?

7 MR. GRIFFITH: Objection, Your Honor,
8 leading.

9 MR. MEADORS: Your Honor, for these
10 purposes I don't think —

11 THE COURT: This is a preliminary hearing.
12 I'm gonna allow him. Go ahead, overruled.

13 BY MR. MEADORS:

14 Q Was she — did you become aware she had chased
15 Mr. Manners into Kentucky?

16 A Into Ohio.

17 Q From Kentucky into Ohio, I'm sorry.

18 A Yes.

19 Q And was that where your jurisdiction and how they
20 came involved?

21 A Yes.

22 Q Where did Mr. Manners — where did his car end up
23 in Ohio specifically?

24 A His car ended up in the Ohio River.

25 Q And after that was he apprehended?

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1 A He was.

2 Q Okay. Where was he, Mr. Manners, taken after he
3 was taken into custody by Cincinnati officials?

4 A He was taken to University Hospital.

5 Q And where is that?

6 A That is in Cincinnati, Ohio, Hamilton County.

7 Q And was he in custody there?

8 A He was.

9 Q And specifically was there an officer there
10 besides yourself that was with Mr. Manners?

11 A Yes. The officer there is from the Hamilton
12 County Sheriff's Office. Their deputies are
13 assigned to prisoners at the hospital.

14 Q And at this point did, whenever we call
15 investigation or — what did you know about
16 Mr. Manners?

17 A It was my understanding that there was a incident
18 in South Carolina and that he fled to, went to
19 Kentucky, and there was an attempt to locate on him.
20 And When officer Claire came in contact with him
21 pursuit ensued leading him into Ohio. It's my
22 understanding that there were two deaths and a fire
23 in South Carolina that he was wanted in questioning
24 for.

25 Q And were you asked to go and attempt to talk to

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1 Mr. Manners?

2 A I was.

3 Q And specifically what date and time are we
4 talking about?

5 A That was June 3rd that I spoke with him.

6 Q And do you remember approximately what time?

7 A I don't remember off the top of my head the time
8 of day.

9 Q And did you go by yourself or did you go with
10 another officer?

11 A I went with a coworker a the time, Detective
12 Howard Grant.

13 Q Tell the judge how you folks in Cincinnati, when
14 you're going to attempt to talk to somebody, what's
15 your procedure and what did you do when you came in
16 contact with Mr. Manners?

17 A Our procedure is if that person is in custody we
18 read them their Miranda rights which is what I did
19 at the hospital.

20 Q Do you have your original with you?

21 A I do.

22 Q Where is it?

23 A It's in my bag.

24 MR. MEADORS: Your Honor, permission to
25 hand it to her.

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1 THE COURT: Yes.

2 THE WITNESS: You can just grab the brown
3 folder out of that instead of carrying it all
4 around.

5 BY MR. MEADORS:

6 Q I'd rather not touch your stuff if you don't
7 mind.

8 A Okay.

9 (Pause.)

10 (WHEREUPON, State Exhibit No. 1 was
11 marked for identification only.)

12 BY MR. MEADORS:

13 Q I'm gonna show you what's marked State's 1 for
14 identification for these purposes, Sergeant Mitsch.
15 Can you tell His Honor what that is.

16 A This is a, has a form number in Cincinnati called
17 Form 600. This is our police, Cincinnati Police
18 Division Notification of Rights, which is the
19 Miranda rights. At the top it has a place for the
20 place, date, and time, the rights, and then a spot
21 for signature, the officer reading, and a witness.

22 Q And did you actually read the Miranda rights to
23 Mr. Manners?

24 A Yes.

25 Q And please do that as you did. Do it for the

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1 judge as you did for Mr. Manners.

2 A Okay. "Before you answer any questions you must
3 understand your rights. You have the right to
4 remain silent and anything you say can be used
5 against you in court. You have the right to talk to
6 a lawyer for advice before we ask any questions and
7 have him with you during questioning. If you cannot
8 afford a lawyer, one will be appointed for you
9 before any questioning if you wish. If you decide
10 to answer questions now without a lawyer present,
11 you will still have the right to stop answering at
12 any time. You also have the right to stop answering
13 at any time until you talk to a lawyer. Do you
14 understand your rights?"

15 Q And when you read that to Mr. Manners what did he
16 say?

17 A He understood his rights and he agreed to sign
18 the form, which we did.

19 Q And you read all these rights to him?

20 A Yes.

21 Q If you decide to answer any questions now without
22 a lawyer you'll still have the right to stop
23 answering at any time. You also have the right to
24 stop answering at any time until you talk to a
25 lawyer?

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1 A Correct.

2 Q I understand my rights?

3 A Yes.

4 Q And did he say, when you asked him if he
5 understood them, did he say, oh, yeah?

6 A He said, oh, yeah.

7 Q And did you have any trouble understanding that?

8 A No.

9 Q And for these purposes, were you aware that he
10 had been involved in the criminal justice system
11 before at that time? And if you weren't, that's
12 fine.

13 A I was not aware of his criminal history.

14 Q Actually, when he was a juvenile 'cause we
15 learned —

16 A I was not aware.

17 Q Okay. But after you read him his rights he said
18 he understood his rights; he said oh, yeah?

19 A That's right.

20 Q And I want to ask you about, did he sign here?

21 A He did.

22 Q Okay. And it appears to me his handwriting is
23 going up to the right a little bit.

24 A That's correct. I believe that was because my
25 recollection is he was handcuffed at the time.

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1 Q Okay.

2 MR. GRIFFITH: I'm sorry, he was what?

3 THE WITNESS: Handcuffed.

4 BY MR. MEADORS:

5 Q And we're gonna listen to the tape in a minute,
6 but is — you and I listened to the tape together
7 last night, correct?

8 A Correct.

9 Q And you listened to that previously?

10 A I have.

11 Q Is that you on the tape?

12 A It is.

13 Q Is that Mr. Manners?

14 A It is.

15 Q Is there a comment on there about him having
16 difficulty writing his name?

17 A Yes. I asked him whether or not his hand was
18 free, if he was right handed or left handed, and how
19 we were gonna get him to sign.

20 Q Okay. Beneath that is the witness. Who is the
21 first witness?

22 A That's myself.

23 Q And underneath?

24 A The next one is Detective Howard Grant.

25 Q Describe to the judge — and how far are you from

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1 Mr. Manners when you're talking to him?

2 A We're in a hospital room; it's a typical hospital
3 room. I was a matter of a couple of feet away most
4 of the time.

5 Q And where was he handcuffed?

6 A I don't remember.

7 Q Okay.

8 A I don't remember.

9 Q But you're sure he was handcuffed?

10 A I'm sure he was handcuffed after listening to the
11 tape 'cause I was asking is that hand free, are you
12 right handed or left handed.

13 Q And did he appear to understand the rights as you
14 were reading them to him?

15 A Yes.

16 Q And could you understand him when he said, oh,
17 yeah?

18 A I did.

19 Q And when he signed this you didn't force him to
20 sign that?

21 A No.

22 Q You'd read him his rights; he said he understood
23 them.

24 THE COURT: Do you have an objection?

25 MR. MEADORS: No, Your Honor, I just

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1 couldn't hear. She's whispering.

2 THE COURT: Oh, okay.

3 THE WITNESS: I'm sorry, I'll talk louder.

4 BY MR. MEADORS:

5 Q At that point did you start a conversation with
6 him?

7 A I did.

8 Q And do you audiotape all your statements in
9 Cincinnati?

10 A We try to.

11 Q Okay. And this is on audio tape?

12 A It is.

13 Q The entire conversation?

14 A It is.

15 Q At any time — let me ask you this first, when
16 you first saw Mr. Manners and through the entire
17 process did he appear to be under the influence of
18 alcohol or drugs or any other intoxicants?

19 A No.

20 Q Okay. Did you have any trouble understanding him
21 during the process?

22 A No.

23 Q Did he appear to understand the questions you
24 were asking him based on his answers?

25 A He appeared to understand everything I was

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1 asking.

2 Q Were his answers and subject matter appropriate?

3 A They were.

4 Q Were they timely?

5 A They were.

6 Q Okay. Did you talk to him about his education or
7 his background or?

8 A I don't know that I talked to him about his
9 education. I don't remember talking to him about
10 his education.

11 Q Now you're in a hospital. If he had asked for
12 food or to use the bathroom would he have been
13 allowed to?

14 A Absolutely.

15 Q Do you remember, did he when you were there?

16 A He did not.

17 Q Okay. At any time during the reading of his
18 rights and taking of the statements, did you
19 threaten or coerce Mr. Manners in exchange for
20 giving a statement?

21 A No.

22 Q Hold out any hope of reward or any type of
23 sentence for giving a statement?

24 A No.

25 Q What were you there for, Sarge?

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1 A I was just there to get a statement from him, a
2 mutual aid for Sumter County.

3 MR. MEADORS: Your Honor, at this time
4 with the Court's permission I'd like to at least —
5 the rights are right at the front if Your Honor
6 would...

7 THE COURT: All right.

8 MR. MEADORS: And I think, Your Honor, we
9 do have a transcript.

10 THE COURT: Any objection for the purpose
11 of this hearing?

12 MR. GRIFFITH: No objection, Your Honor.

13 THE COURT: All right. Without objection
14 it will be admitted for the purpose of this hearing.

15 (Playing of statement began.)

16 BY MR. MEADORS:

17 Q And "Jen," is you?

18 A That's me, I'm Jen.

19 Q Okay.

20 (Playing of statement continued.)

21 BY MR. MEADORS:

22 Q When you said can you take blanket down, explain
23 what he was doing.

24 A It was my recollection that he had this blanket
25 over his face and I couldn't see his mouth clearly

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1 to hear him when he was talking to me so I asked him
2 to pull the blanket down so that I could understand
3 him better.

4 Q And right after you asked him that did he do it?

5 A He did.

6 Q So did it appear to you he understood what you
7 were asking him to do based on his response?

8 A Yes.

9 (Playing of statement continued.)

10 BY MR. MEADORS:

11 Q And you asked him his name. And did he say it
12 and spell it right off the bat?

13 A He did.

14 Q And did you understand that then and do you
15 understand it now?

16 A I do.

17 (Playing of statement continued.)

18 BY MR. MEADORS:

19 Q Had you brought up the Kentucky charges or
20 Kentucky up at all before then?

21 A No, I hadn't.

22 Q So that was him asking you if there were going to
23 be Kentucky charges?

24 A Correct.

25 Q All right, thank you.

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1 (Playing of statement continued.)

2 MR. MEADORS: Stop it.

3 BY MR. MEADORS:

4 Q You got yes on the transcript; but after
5 listening to it last night again did he say, oh,
6 yeah?

7 A He did.

8 Q Is that based on your experience and training and
9 being there, did that indicate to you he understood
10 it?

11 A Yes.

12 Q Thank you.

13 (Playing of statement continued.)

14 MR. MEADORS: Judge, I think for time for
15 all we -- could we go ahead and play through it now.
16 There are a bunch of issues that if we did it now
17 we'd be able to refer back.

18 THE COURT: That's fine, it's only 12:30.

19 MR. MEADORS: Thank you.

20 (Playing of statement continued.)

21 MR. MEADORS: Thank you, Your Honor.

22 BY MR. MEADORS:

23 Q At the end there when he was talking about the
24 hospital policy and all, did it appear to you the
25 content was even more fluent?

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1 A Yes.

2 Q Or his voice patterns maybe?

3 A Yes.

4 Q Did any time in here did you have trouble
5 understanding him?

6 A No.

7 Q Or he, you, based on your conversation with him?

8 A No.

9 Q In your opinion, based on the times you spent
10 with him, was this freely and voluntarily given?

11 A Yes.

12 Q Did he ever ask for an attorney?

13 A No.

14 Q At one point in there I think he said, I don't
15 want to talk about this anymore. Did you take that
16 has an indication he didn't want to talk at all?

17 A No.

18 Q And what did you do after that?

19 A After that I explained to him, you know, that
20 it's better to get it off of his chest and then he
21 started telling me about what he thought he was
22 gonna be charged with.

23 Q And he started telling you what he was going to
24 be charged with?

25 A Yes.

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1 Q And that where's he mentioned the grand arson?

2 A Yes.

3 Q Two counts of murder?

4 A Yes.

5 Q And he started talking about that then?

6 A He did.

7 Q Right up before that point too was the
8 conversation oxy— did he actually correct you on
9 your oxy—

10 A My pronunciation —

11 Q Your pronunciation—

12 A He did.

13 Q You said cotton and he said codin?

14 A Codin.

15 Q So he corrected you on the drug?

16 A He did.

17 Q And that conversation was about the incident a
18 week or so prior when he had gotten into some of his
19 grandmother's drugs?

20 A It was. In fact, during the interview I had
21 known about that and so I — it took me a minute to
22 figure out he wasn't talking about what had just
23 happened, that it was something that happened prior.

24 Q And he clearly didn't want to talk about that
25 anymore apparently, correct?

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1 A Right.

2 Q He never told you unequivocally, I don't want to
3 talk to you?

4 A He did not.

5 Q Don't ask any questions, I don't want to talk to
6 you, correct?

7 A He did not.

8 Q If he had, would you have stopped?

9 A Yes.

10 Q And was the conversation progressing? I mean,
11 did you develop a rapport?

12 A I believe so.

13 Q And at some points there along, I asked you
14 earlier if his answers were timely. At some points
15 in there it seems like his responses, there's a long
16 break, if you will.

17 A A pause.

18 Q Is it after that he kind of gets the heart of it
19 each time?

20 A Yes.

21 Q All right. Does that make sense, my question?

22 A It does.

23 Q Is the person you took the statement — and this
24 was on June 3rd of '13?

25 A Yes.

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1 Q In Cincinnati?

2 A Yes.

3 Q At the hospital?

4 A You.

5 Q Is that person that you took this statement from
6 that we have as Court's Number 1 I believe, the
7 transcript, in the courtroom?

8 A Yes. He's sitting at the defense table next to
9 the defense attorney.

10 Q Next to Mr. Griffith.

11 MR. MEADORS: I ask the record to reflect.
12 That's all we have at this time.

13 THE COURT: The record will so reflect.
14 Mr. Griffith.

15 MR. GRIFFITH: Thank you, Your Honor.

16 **CROSS-EXAMINATION**

17 BY MR. GRIFFITH:

18 Q Sergeant, how do you pronounce your last name?

19 A Mitsch.

20 Q Mitsch. Sergeant Mitsch, could you identify this
21 as a document signing a waiver of Miranda rights?

22 A Yes, it appears to be a Sumter County Sheriff's
23 Office Miranda rights form.

24 Q And do you note the signature on the bottom?

25 A I see a signature on the bottom, yes.

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1 Q Does that appear to be the same signature as the
2 significant from Mr. Manners?

3 A It appears similar except on this one the
4 handwriting goes up and on this one it stays
5 straight.

6 Q And would you say then that the signature on the
7 one that you got in Cincinnati is very different and
8 looks very much more a person who may not be capable
9 of controlling themselves at the time?

10 MR. MEADORS: Your Honor, I object to that
11 question, speculation. I don't think she knows
12 where he was when this one was given.

13 THE COURT: I'm gonna let him, I overrule
14 it.

15 MR. MEADORS: Could he mark that too?

16 THE COURT: Yes.

17 MR. GRIFFITH: Yes. At this time I would
18 enter this as Defense Exhibit 1.

19 (WHEREUPON, Defense Exhibit No. 1 was
20 marked for identification only.)

21 BY MR. GRIFFITH:

22 Q We actually received this from the Solicitor's
23 office at some point and —

24 THE COURT: Defense Exhibit 1 is admitted
25 for purposes of this hearing only.

SW - MITSCH - DENNO

1 MR. GRIFFITH: Yes, Your Honor. For the
2 purpose of this hearing, Your Honor, I would have
3 Your Honor look at the two signatures to look at
4 that.

5 BY MR. GRIFFITH:

6 Q Ma'am, Sergeant, he was in the ICU; is that
7 correct?

8 A I don't recall what part of the hospital we were
9 in. He was in a private room.

10 Q Would it be reasonable to think that he might be
11 in the ICU?

12 A It could. It could.

13 Q Would it be reasonable—

14 A It could be reasonable.

15 Q Okay. And when in the ICU people are there
16 because it's called the intensive care unit; is that
17 correct?

18 A That's correct.

19 Q I have a transcript. Do you have a transcript of
20 the statement with you?

21 A I do.

22 Q Okay. And on page 5 of the transcript, the
23 second answer down from the top it says, between me
24 and you is not talk at all to — do you see that
25 statement?

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1 A I do.

2 Q And I was listening to it and you were listening
3 to it. He sound like he wasn't really understanding
4 what was going on or kind of wasn't with it there.
5 Is that?

6 A No, I don't believe that to be true.

7 Q Okay. Then on page 6 near the bottom where he's
8 talking about feeling like, feeling, like the
9 feeling of nothingness. And you asked the question,
10 "Depression. Did you see anyone from it? Or no."
11 Then he answered, I wanted to die. Do you see that?

12 A I do.

13 Q Would you say that he was, appeared to be
14 depressed at that time?

15 A I'm not a psychologist. I can't diagnose
16 depression. He appeared to be, you know, upset
17 about the circumstances surrounding his situation
18 there.

19 Q All right. Then on page 12 where he talks about
20 — it's right in the middle of the page, what made
21 you lose it, was your question. And his answer was,
22 I took 90, 90 oxycodone.

23 A I see that.

24 Q So he had taken 90 oxycodone. And then on page
25 14.

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1 A I'm sorry, are you asking me a question about the
2 thing on page 12?

3 Q No, I was wanting to show the Court that it's,
4 point that out to the Court.

5 A Okay.

6 Q 90 oxycodone.

7 A Okay.

8 Q Then on page 14 he was talking at the bottom, I
9 don't think I want to talk about this no more. You
10 see that?

11 A I see that.

12 Q You continued to talk with him anyway; is that
13 correct?

14 A We did continue to talk.

15 Q Even though he had stated he didn't want to talk
16 anymore.

17 A He said, I think I don't want to talk about this
18 no more.

19 Q And during the — on that same page when it was a
20 couple of questions before that said, did you try to
21 kill yourself again after that? Then he answered,

22 "I wanted to, I was trying to devise a way to do
23 something." And then at that point he seems to be a
24 bit confused. Would you say he was a bit confused?

25 A I would not. At what part are you referring to?

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1 Q Well, when he says he doesn't want to talk
2 anymore and then begins to feel like, that is,
3 begins to make statements about wanting to kill
4 himself again, above that.

5 A I never got the impression that he was confused.

6 Q Then on page 20, let me get to the right page.
7 Right at the bottom in the middle where you asked
8 the question, "No, did you know both your
9 grandparents are gone? Then his answer is, "Are
10 they?" It's a question mark here. "Because the
11 fire?" Did — would you say that he wasn't sure
12 whether his parents were dead, or grandparents were
13 dead or not?

14 A I can tell you what he said. I can't tell you
15 what he was sure of.

16 Q Okay, absolutely. I'm just trying to point it
17 out for the Court, I'm sorry. Then on page 21 when
18 you asked a question up near the top. "Okay, and
19 then, um, how did you start the fire? It's okay,
20 how'd you start the fire?" And he answered, "I
21 don't even know." So he seems to have not known,
22 been aware of what happened, would you take it to
23 mean that?

24 A That's what he said.

25 Q Then on page 22, this is the part I wanted to

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1 point out to the Court where at the top it says,
2 "From where? Joe, you said they — then you started
3 to fall asleep. You're talking about a gas can."

4 Seemed to be falling asleep; didn't he?

5 A To me he appeared to be faking that.

6 Q It says here on the statement it says, "Joe, you
7 said they — then you started to fall asleep." It
8 doesn't say you look like you were falling asleep or
9 pretend to. It says then you started to fall
10 asleep. Isn't that what it said?

11 A That's what I told him.

12 Q And, of course you had — he had come to the
13 hospital, but you were aware that he was brought to
14 the hospital because of an incident that occurred
15 with his car being driven into the river?

16 A It was my impression that he was at the hospital
17 because they wasn't sure if or how many pills he
18 took, that they found on the river bank.

19 Q And so he had been brought to the hospital
20 because of an incident involving taking pills and
21 his car was involved in an accident or went into the
22 river?

23 A Yes, 24 hours prior to me talking to him.

24 Q Okay. So how long — you stated that you are not
25 a medical doctor, but how long had it been since he

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1 was brought to the hospital that incident occurred?

2 You said 24 hours?

3 A I believe so. I talked to him on the 3rd, and I
4 believe he was — the whole incident where he was
5 taken to the hospital happened on the 2nd.

6 Q Do you know what time on the 2nd?

7 A I believe — my recollection is it happened in
8 the morning 8:30, 9:30ish, from listening to 9-1-1
9 calls and that sort of thing. And then the next day
10 I don't start work till 8 so it had to have been
11 after, 8 but I don't remember what time I was at the
12 hospital.

13 Q But it was pretty early?

14 A I don't remember. It could have been the
15 afternoon; I don't know.

16 Q So not a lot of time had gone by since he took an
17 overdose amount of pills?

18 A I don't know that he took an overdose of pills,
19 but I knew I was there a day after he went to the
20 hospital.

21 MR. GRIFFITH: I have no further questions
22 at this time.

23 THE COURT: Any redirect?

24 MR. MEADORS: Very briefly.

25 **REDIRECT EXAMINATION**

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1 BY MR. MEADORS:

2 Q Mr. Griffith just talked to you about the
3 Oxycontin and 90 pills. Do you, based on your
4 conversation, was that relating to the incident back
5 in Sumter a week prior?

6 A That's my understanding of it.

7 Q So not even related to this incident?

8 A Right, because he went on stay with -- the police
9 knew about that and charges weren't pressed so I
10 knew it wasn't there.

11 Q So a separate incident from this?

12 A Right.

13 Q Why did you think he was faking it? You told Mr.
14 Griffith you thought when he appeared asleep he was
15 faking it?

16 A Well, because the next thing he said was, I can't
17 relax. And we'd been having a conversation, he took
18 pauses. It appeared to me that he just shut his
19 eyes and was -- it didn't appear to me that he was
20 sleeping.

21 Q And after that did you have a fluent conversation
22 with him to the end about hospital policies and --

23 A Yes.

24 Q And finally about the cigarette and all, did he
25 appear he wanted to talk to you and wanted a

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1 cigarette and wanted to keep the conversation going?

2 A Correct.

3 Q So you're sure at least it was 24 hours after he
4 was arrested that you went to the hospital?

5 A Yes, it was the next day.

6 Q Beg the Court's indulgence. Would you have
7 talked to a doctor before talking to him?

8 A Not necessarily.

9 Q Thank you.

10 THE COURT: Any redirect? Or recross,
11 excuse me.

12 MR. GRIFFITH: I had one further question.

13 **RE CROSS-EXAMINATION**

14 BY MR. GRIFFITH:

15 Q You mentioned that he had a blanket over his face
16 when you started talking to him; is that correct?

17 A That's my recollection.

18 Q Why do you think he had a blanket over his head?

19 A Well, because I asked him.

20 Q I think you may have misunderstood my question.
21 You may be looking for —

22 MR. MEADORS: Your Honor, I'm gonna
23 object. He's asking her why he had a blanket. She
24 can answer —

25 THE COURT: Yeah, that's pure speculation.

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1 MR. GRIFFITH: Yeah.

2 THE COURT: You need to ask him I guess.

3 BY MR. GRIFFITH:

4 Q But the reason, of course, when you came in he
5 had a blanket over his face. I'm just trying to go
6 toward how he appeared when you came in that room.

7 A He was laying in his hospital bed and I asked him
8 to move something so that I could see him so we
9 could talk.

10 Q But you had begun speaking to him already before
11 you asked him to move the blanket; is that correct?

12 A Sure, I walked in the room and introduced myself
13 and let him know I was there to talk to him.

14 Q And then as you guys were conversing, then you
15 asked him to move the blanket?

16 A I guess.

17 Q Okay, thank you. I have no other questions.

18 THE COURT: Thank you. You may step down.

19 THE WITNESS: Thank you.

20 THE COURT: We've been in here for almost
21 an hour-and-a-half. We need to take about a five
22 minute recess.

23 MR. MEADORS: Thank you.

24 THE COURT: Court is in recess until, I'll
25 go ahead and say until 1:30. How much more

1 testimony?

2 MR. MEADORS: I think we're through.
3 We'll be in recess until 1:30.

4 (WHEREUPON, a recess was taken from the
5 proceedings.)

6 MR. MEADORS: Judge, we don't have
7 anything else.

8 THE COURT: All right, Mr. Griffith.

9 MR. GRIFFITH: I'm trying to hook up the
10 SKYPE — Court's indulgence, Your Honor — but in
11 the meantime I would ask — her name is Tina. Okay,
12 good. Your Honor, if we can't get this SKYPE hooked
13 up, would the Court object to us doing it by
14 telephone?

15 THE COURT: Y'all have any objection?

16 MR. MEADORS: I'll have to ask the boss,
17 Your Honor. I told him SKYPE. I don't want to make
18 a decision. I've never done one by telephone or
19 SKYPE. I'd like to see the person, but I'm probably
20 willing to do it.

21 MR. GRIFFITH: I'm not having any luck
22 with that. Your Honor, if it please the Court, I
23 would ask that we could use the telephone.

24 THE COURT: Do y'all have any objection to
25 that? You know, this witness, if they need to be

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1 they will not testify at trial by phone or anything.

2 MR. GRIFFITH: No, Your Honor.

3 THE COURT: Okay. That's based on a
4 travel problem that was not caused by them so I'm
5 gonna allow it.

6 MR. MEADORS: And who are we talking to?

7 THE COURT: That's what he's gonna -- I
8 don't know.

9 MR. GRIFFITH: She will identify herself.
10 This lady is Stacey Hannah. She's on the witness
11 list there.

12 (Examination of witness by telephone.)

13 **DIRECT EXAMINATION**

14 BY MR. GRIFFITH:

15 Q Stacey Hannah?

16 A Yes.

17 Q This is attorney Timothy Griffith. We're in the
18 courtroom in South Carolina. First of all, you
19 would need to be sworn in. Would you identify
20 yourself please.

21 A Yes, my name is Stacey Ray Hannah.

22 Q And the clerk is gonna swear you in now.

23 A Okay.

24 WHEREUPON,

25 **STACY HANNAH,**

1 having been duly sworn by the Clerk, testified
2 as follows:

3 THE COURT: All right. Are y'all
4 satisfied that's her on the phone and that's her
5 testifying for the purpose of the oath and the
6 purpose of this preliminary hearing?

7 MR. MEADORS: Yes, sir.

8 BY MR. GRIFFITH:

9 Q Thank you. Ms. Hannah, you recall arriving at
10 the hospital when Joseph Manners was in the
11 hospital?

12 A Yes, I do.

13 Q Can you let us know when you arrived at the
14 hospital?

15 A The day that he was — the day that he had taken
16 off and had come up here to Kentucky to the hospital
17 and so I came up that day with one of the attorneys
18 so that way he could be able to speak to his mother
19 and also so that we could let him know that not talk
20 to anyone until he has a court appointed attorney.

21 Q Now did he say anything about having been
22 interviewed by the police already, the Cincinnati
23 police?

24 A Yes. As a matter of fact, he said that we had
25 just entered into at the time that he had just

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1 finished with a statement. And the only reason why
2 I knew it was a statement because he said, well,
3 they came in and they were asking me a lot of
4 questions for me to answer. And then I'm like,
5 well, you didn't get a introduction did you? And he
6 said, well, what do you mean, what —

7 MR. MEADORS: I'm gonna object to what the
8 defendant says.

9 THE COURT: Yeah, sustained.

10 THE WITNESS: —what do you mean by that?

11 And —

12 BY MR. GRIFFITH:

13 Q Now of course, he objects to you saying what the
14 defendant said and the judge has —

15 THE COURT: Sustained.

16 BY MR. GRIFFITH:

17 Q —sustained his objection which means you can
18 talk about things that you noticed. You can talk
19 about what you said, but you can't relate to the
20 Court what Joseph said.

21 A Okay.

22 Q So how long have you known Joseph?

23 A I've known Joseph since he was probably around
24 13, 14 years old. I've been a friend of his mother
25 since high school. We, you know, after high school

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1 we went separate ways and then in our mid 20's we,
2 30's, we ended up reconnecting and being friends
3 ever since.

4 Q Okay. And so are you aware of any conditions he
5 has? For instance, ADHD?

6 A Oh, yes. I know he was on medication for ADHD.
7 He did admit to me a learning disability also
8 probably with that that was never really diagnosed
9 with; but definitely ADD, ADHD and he was on Ritalin
10 and Lortab.

11 Q How did he appear to you when you went into the
12 hospital room?

13 A He was definitely confused. He was definitely in
14 a state of confusion. I can understand why
15 considering everything that had just happened. But
16 he definitely wasn't saying things that I would
17 probably hear somebody say that, you know, under
18 their condition 'cause he was asking me, you know,
19 hey, do you know how long I'll probably be detained,
20 do you know when they're gonna let me go? So we
21 kind a knew there and then the attorney looked over
22 at me and kind of gave a look like what are you
23 talking about, you're not getting out, you're not
24 getting out.

25 Q And so was this at a not normal for him?

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1 A Yeah, he was definitely in a state of confusion
2 with everything that had happened. But Joseph has
3 always been the type of child that you had to break
4 it down to him the nuts and bolts of everything. We
5 had to explain to him what intervention/statement
6 was. And after we explained it to him, you know, he
7 was, you know, he was really confused by that point.

8 Q And so the fact that he had HD— ADHD, and you'd
9 known him for all those many years, would you say
10 that if someone in your opinion and knowing him,
11 your impression would be if someone tried to tell
12 him that you had a right to a lawyer or didn't have
13 to say anything, that he would understand it right
14 away, being told that one time?

15 A No. I think he would have to have that broken
16 down to him a little bit more.

17 Q Now you're not a medical professional; is that
18 true?

19 A Correct.

20 Q Okay, but you're basing this how on the number of
21 years you've known him and number of times you tried
22 to see to explain things to him?

23 A Absolutely, absolutely.

24 Q Okay. Please answer any questions that the
25 Solicitor may have.

1 A Sure.

2 THE COURT: Mr. Meadors.

3 MR. MEADORS: Thank you, Your Honor, may
4 it please the Court.

5 THE COURT: Yes.

6 **CROSS-EXAMINATION**

7 BY MR. MEADORS:

8 Q Ms. Hannah, I'm John Meadors, how are you?

9 A Yes, I'm good. How are you?

10 Q You said there was an attorney there. Who was
11 that?

12 A Yeah, his name was Garrett Worley. He — I
13 worked for a law firm myself, and I knew that that
14 would be my only way of really seeing Joseph so his
15 mother could speak to him and so I had Garrett
16 Worley go with me to the hospital.

17 Q So you kind of — I don't mean this bad, but you
18 kind of used him to get in so you could talk to him?
19 He wasn't really his attorney, correct?

20 A He is an attorney so we went over there with the
21 attorney, I went over there with the attorney, to
22 get to him not to say anything to anyone until he
23 gets an attorney and then let his mother speak to
24 him.

25 Q So he was not his attorney, correct?

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1 A Correct, yes, that's correct.

2 Q So you were going to go and speak to him, explain
3 to him not to talk to anybody, not to give a
4 statement and let me — when he came in he
5 recognized you, correct?

6 A Yes, he'd seen me coming from the hall way and he
7 was in a contained area in the hospital room and he
8 seen me down and he was very happy to see me.

9 Q Happy to see you and wave — did he wave at you?

10 A No, he didn't wave. He was just like, he just
11 looked up and he tweeted his eyes that he could see
12 me. He was very happy.

13 Q So he's coherent enough to recognize you and
14 express his happiness in seeing you?

15 A Yeah.

16 Q And —

17 A And I have — sorry.

18 Q I'm sorry, you go ahead, I apologize.

19 A Well, you know, with everything that had been, he
20 had been gone all of that time that, you know,
21 probably see a familiar face probably very nice.

22 Q But you never had trouble — he could understand
23 you when you were talking to him, correct?

24 A Yeah, he could understand things that were going
25 on. It was like he wasn't — he was in a state of

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1 confusion. He wasn't incoherent.

2 Q And so he could answer your questions and you
3 understood him when he talked, right?

4 A I didn't really ask him a bunch of questions. I
5 felt really strange about the whole thing because
6 there was a police officer that was sitting in there
7 in the hospital room. And we didn't want to have
8 more like, you know, really any type of deep
9 conversation with him.

10 Q But what you did talk about you understood,
11 correct?

12 A That I understood? Well, we had to break it down
13 for what his statement was; but you know, and try to
14 understand that, you know, he was know his rights,
15 but you know.

16 Q He'd been through the system before; hadn't he?

17 A Yes, he had.

18 Q What was that for?

19 A That was for a charge of — the one that I'm
20 aware of that you're talking about, that was for his
21 for him and his cousin had a relationship and that
22 they were really minor at one point. He — so I
23 think it was like it was like molestation. I
24 apologize, I don't know what the actual, what the
25 actual charge, charges.

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1 Q Some sort of sexual charge but you knew he'd been
2 through the system and was familiar with the system,
3 correct?

4 A Yes.

5 Q And — thank you.

6 A I never went to any of the court hearings. I
7 never, you know, see how he behaved through any of
8 that. I was never there to appreciate that so, I
9 mean, I really didn't — if anybody was explaining
10 anything to him like that, you know, didn't hear
11 what was going down, I don't know. I just know
12 about the allegations and the charges.

13 Q Where are you from, Ms. Hannah?

14 A The Cincinnati area, northern Kentucky. I live
15 in northern Kentucky.

16 Q You kept saying a couple of times — I'm almost
17 through — everything that had happened. Were you
18 aware of what happened in Sumter?

19 A I am aware of what happened in Sumter.

20 Q Okay. And how are you aware of it?

21 A His mother calling me and telling me.

22 Q Did Joseph ever tell you he did it?

23 A Oh, no. I think, again, I didn't get to talk to
24 him. That would be the only time I spoke with him
25 because, you know, after that we kept him there for

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1 maybe 15 minutes. And again, we couldn't really say
2 anything to him. We didn't know what we could say
3 or anything because the police officer being there,
4 but you know, he —

5 Q Why were you telling him not to talk to police?

6 A Not to — I wasn't saying not to talk to police.
7 I was saying you shouldn't be speaking and giving
8 statements or confessions, if that's the case, until
9 you have an attorney, don't speak to anyone. That's
10 good solid advise for anyone. I mean, I don't know
11 what all —

12 THE COURT: Ma'am, talk —

13 THE WITNESS: —he knew.

14 BY MR. MEADORS:

15 Q Did you ask him about any injuries he had?

16 A No, huh-uh. Not that I'm aware.

17 Q He didn't appear to be under the influence of any
18 alcohol or drugs, did he?

19 A You know, maybe that's where the confusion set
20 in. I know that he had been tested for overdose
21 from what I understood.

22 Q When was that, do you know?

23 A Well, I was assuming it was that same day, you
24 know, all allegedly had happened.

25 Q That may have been a week prior to that. Would

1 that change your opinion about your visit?

2 A Huh-uh, no, not at all. Now I know that he did
3 have, there was already an issue with him prior to
4 that so an overdose.

5 Q Have you listened to his taped confession?

6 A No.

7 Q Thank you. That's all.

8 THE COURT: Mr. Griffith, any redirect?

9 MR. GRIFFITH: No, Your Honor.

10 THE COURT: All right, thank you ma'am.

11 MR. GRIFFITH: Thank you, ma'am.

12 THE WITNESS: Okay, thank you.

13 MR. GRIFFITH: Your Honor, I have no other
14 witness.

15 THE COURT: This is one of those
16 situations where you're really glad you get to
17 listen to the audio and not have just a transcript
18 available. Having followed the transcript and
19 listening to the audio, I find that it was — and
20 viewing his notification of rights, I find that the
21 defendant voluntarily waived his rights, that he
22 gave his statement freely and voluntarily and that
23 provided the proper foundation is laid during the
24 trial the statement will be admitted into evidence.
25 All right, anything further at this point?

1 MR. GRIFFITH: Thank you, Your Honor.

2 MR. MEADORS: Judge, as far as, I know
3 we'll open at 3 after Your Honor gives his
4 instructions. Is it all right if we do one witness
5 today just to set the scene?

6 THE COURT: Whatever y'all want to do. I
7 mean, I don't, I intend to go about 5 or 5:30 if
8 necessary.

9 MR. MEADORS: Your Honor.

10 THE COURT: Yes, sir.

11 MR. GRIFFITH: You intend to bring the
12 jury back about 3 you said?

13 THE COURT: I already told them to be back
14 here at 3. Court is in recess until 3:00.

15 (Whereupon, a lunch break was taken.)

16 MR. GRIFFITH: Your Honor, as a matter of
17 first business I would like to enter an objection to
18 the findings of the Jackson hearing in that the
19 statement will be protected under objection.

20 THE COURT: Okay, I figured that. Thank
21 you, not a problem.

22 MR. MEADORS: Judge, we have just a couple
23 of preliminary matters. First of all, we'd ask that
24 — Mr. Manners was ordered to undergo a competency
25 and responsibility exam.

1 THE COURT: Yes, sir.

2 MR. MEADORS: I have a copy of the
3 competency exam, Your Honor, where he was found
4 competent. He was also found responsible. We both
5 thought we had that report here today; we don't.
6 We're gonna ask the competency be made Court Exhibit
7 1. There's no —

8 THE COURT: Well, for this hearing.

9 MR. MEADORS: And then the responsibility
10 which we hope to have by the end of the day or in
11 the morning, there's no dispute; we're both
12 stipulating he was competent and responsible on the
13 report and we'd ask Your Honor to make a finding.
14 That will be here shortly; but for the record, both
15 parties are stipulating Mr. Manners was competent,
16 is competent and was responsible at the time.

17 THE COURT: All right. After I see the
18 other one I will make the, establish that on the
19 record. Is that correct?

20 MR. GRIFFITH: Yes, Your Honor.

21 THE COURT: All right. Anything else
22 before we start?

23 (Court's Exhibit Number 2 was marked
24 and made a part of the record.)

25 MR. GRIFFITH: Your Honor, there is a

1 matter of some evidence that we have agreed to
2 concerning photographs before the jury were to be
3 presented with that.

4 THE COURT: You intend to use them during
5 opening?

6 MR. MEADORS: Judge, I think if we can do
7 opening and maybe one witness, those — there's only
8 like two. We really spent a long time last week.
9 There's really only two in dispute. After we get
10 through, if Your Honor let the jury go I think we
11 can go over those and those will be the body
12 pictures for tomorrow.

13 THE COURT: Okay.

14 MR. GRIFFITH: Thank you, Your Honor.

15 THE COURT: Sounds good. Mr. Bradley,
16 let's bring the jury in.

17 (WHEREUPON, the jury was returned to the
18 courtroom at approximately 3:07 p.m., and
19 the following proceedings commenced in
20 open court.)

21 THE COURT: Ladies and gentlemen, I'd like
22 to thank y'all for your timeliness in getting back
23 here so we can go ahead and get things started.

24 Mr. Bradley, would you please swear the
25 jury.

1 THE CLERK: Yes, sir. Ladies and
2 gentlemen of the jury, please stand and raise your
3 right hand.

4 (WHEREUPON, the jury was sworn.)

5 THE COURT: Before we begin the trial I
6 want to tell you, this trial will probably be
7 different from what you might expect. You know,
8 most people never have an opportunity to attend and
9 participate in an actual court session as y'all are
10 today and may think from watching TV, movies, or
11 reading in books that trials are always full of high
12 drama, intense action, and rivetting circumstances.
13 Now while all these things might be true, this trial
14 is not for entertainment. This is a real trial
15 which is a fundamental part of our democracy, and
16 it's a search for the truth to insure that justice
17 is done and to make sure that the truth is brought
18 out in this matter. And like I said, searching for
19 the truth is often slow, repetitive, and deliberate,
20 the exact opposite of what you've seen on TV, read
21 in books, or seen in movies.

22 Now ladies and gentlemen, this courtroom
23 is a place of honor that is dedicated to the
24 protection of our citizens' rights through what has
25 been called and I truly believe with the bottom of

1 my heart, to be the greatest justice system ever
2 created. The attorneys who are appearing before you
3 are advocates for the parties that they represent.
4 Now, ladies and gentlemen, first and foremost,
5 they're officers of this Court who are sworn to
6 uphold the integrity and the fairness of our
7 judicial system and to help you in your search for
8 the truth. Ladies and gentlemen, you should expect
9 them to be professional, competent, and ethical in
10 the representation of their client's interest. And
11 remember, ladies and gentlemen, you also just took
12 an oath to listen to the evidence in this case and
13 represent a fair and just verdict and you're
14 expected to be professional, reasonable, and ethical
15 as well. And let me thank you again for accepting
16 this very important responsibility of jury service
17 and for your contribution to our justice system.

18 Now, ladies and gentlemen, what I'm gonna
19 say now is just intended to serve as an introduction
20 to the trial of this case. These remarks are not a
21 charge on the law. I will charge you the law that
22 is applicable to this case at the end of the trial.
23 This is merely an explanation of the procedures that
24 we will follow so you may better understand what has
25 happened. Let me tell you up front, ladies and

1 gentlemen, that you will not be allowed to take
2 notes during this trial; therefore, it's very
3 important that you listen closely throughout this
4 trial.

5 Now ladies and gentlemen, the defendant is
6 charged by indictment filed in this court with two
7 counts of murder and one count of arson in the first
8 degree and the specific elements of these charges
9 will be explained to you later. I'll remind you
10 again, that the indictment charging the defendant is
11 merely the document by which this case is brought
12 into court and is not in any sense any evidence of
13 any of the allegations contained therein. The
14 defendant has pled not guilty to the charges in the
15 indictment so the State, therefore, has the burden
16 of proving all of the elements of each indictment
17 beyond a reasonable doubt. And ladies and
18 gentlemen, it will be your responsibility and your
19 duty to decide whether the State has met that
20 burden.

21 Now ladies and gentlemen, your purpose is
22 to determine the facts in this case, and you'll
23 determine the facts from the testimony that you'll
24 hear from this witness stand and any other evidence
25 that is introduced here in court. It will be up to

1 you to determine the information which you believe
2 may be properly drawn from the evidence that is
3 presented. And ladies and gentlemen, it is
4 especially important that you perform your duty
5 diligently and conscientiously because ordinarily
6 there is no way to correct an erroneous
7 determination of facts by a jury.

8 On the other hand but with equal emphasis,
9 the same law that makes you the judges of the facts
10 makes me the judge of the law. And the law as given
11 to you by me is the only law that you may consider.
12 You must accept the law as I give it to you and
13 follow it even though you may disagree. And I'll
14 make an agreement with you right now, that I will
15 not tell you what the facts are and you cannot
16 disagree with me about what the law is or what the
17 law ought to be. Your job is to take the law as I
18 give it to you and apply it to the facts as you find
19 them from the testimony of the witnesses and any
20 other evidence that is presented. And after hearing
21 the evidence you will deliberate and render a just
22 verdict under the solemn oath that you just took as
23 jurors.

24 Now ladies and gentlemen, until I advise
25 you to begin your deliberations at the conclusion of

1 this case you must not discuss the case with others,
2 including your fellow jurors except when authorized
3 to do so by me. You may not use a computer,
4 cellular phone or other electronic device with
5 communications capabilities while here in attendance
6 at court or during your deliberations. Of course,
7 these devices may be used from your break for lunch
8 of when you go home for the evening; but even then,
9 they may not be used to contain or disclose any
10 information about a case when you're not in court.
11 And information about a case would includes but is
12 not limited to any information about a party, a
13 witness, an attorney or court officer. Any news
14 accounts about the case, again, regardless of the
15 medium than that you see it on. Any information
16 collected through juror research or any topic raised
17 or testimony offered by any witness or information
18 collected through juror research on any other topic
19 that you think would be helpful in deciding this
20 case.

21 Now ladies and gentlemen, after the case is
22 submitted to you you must discuss it only in the
23 jury room with your fellow jurors. The attorneys
24 and the parties in this matter are advised that they
25 are not to talk to you at all. If you see anyone

1 who is involved in this case in this small
2 courthouse square and they don't even say hello,
3 well, they're not being unfriendly; they're just
4 following my instructions.

5 Now ladies and gentlemen, it is important
6 that you keep an open mind and not decide any issue
7 in this case until all of the evidence has been
8 presented, the attorneys have made their closing
9 arguments, and I have instructed you on the law of
10 this case. Now ladies and gentlemen, it is your
11 solemn responsibility to determine the guilt or
12 innocence of the defendant and your verdict must be
13 based solely on the evidence as it's presented in
14 this courtroom and on the law as I give it to you,
15 instruct you at the close of this trial. Now ladies
16 and gentlemen, in just a moment the Solicitor will
17 make what is called an opening statement where he
18 will explain to you what he believes the issues are
19 in this case. The attorney for the defendant may
20 also make an opening statement; however, he is not
21 required to do so. But I will remind you, what the
22 attorneys tell you during their opening statement is
23 not evidence in this case. It is only their
24 contention as to what the evidence or what the
25 issues are in this trial.

1 Now ladies and gentlemen, from time to time
2 during this trial you may hear one of the lawyers
3 say something like, Your Honor, I believe we have a
4 question or matter of law to discuss with you; or
5 Your Honor, may we approach the Bench. Or sometimes
6 I might find it necessary to excuse you from the
7 courtroom for a short while so the attorneys and I
8 can discuss a matter of law. Now the reason for
9 this is because as I've told you, you are the judges
10 of the facts and sometimes when I'm discussing
11 matters of law with the attorneys, it may be
12 necessary for me to make some comment on the facts
13 in connection with ruling whether or not a
14 particular law applies. And as I said, I'll not
15 tell you what the facts are, so I will excuse you
16 from the courtroom while these discussions take
17 place so you will in no way be influenced by
18 anything that I might say or do in connection with
19 the facts.

20 Also, ladies and gentlemen, during the
21 trial you may hear one of the attorneys make an
22 objection to certain evidence that is about to be
23 presented. Whether I sustain, which would be to
24 grant the objection, or overrule, which would be to
25 deny the objection, should not be construed that I

1 favor one side or the other; I do not. Nor, should
2 you infer that the objecting party is trying to hide
3 something from you. Ladies and gentlemen, in this
4 court as in all situations in life, there are
5 specific rules that must be followed and the
6 attorneys as officers of this Court are merely
7 trying to follow the rules of evidence of this Court
8 in making their objections and I am only ruling
9 based upon what I believe the law of the state of
10 South Carolina to be concerning the evidence being
11 presented.

12 Now ladies and gentlemen, in determining
13 what the facts are in this case you must decide
14 whether or not the testimony of a witness is
15 believable. It will be my responsibility to rule as
16 a matter of law as to whether certain testimony is
17 admissible; but once I admit it, whether or not you
18 decide to believe it is something solely for you to
19 determine. In deciding whether to believe a
20 witness, you have a right to consider the interest
21 of any witness, the bias of any witness, the
22 prejudice of any witness, the opportunity for the
23 witness to have observed the matters and things
24 about which the witness might testify, and you may
25 consider the way the witness acts on the witness

1 stand. Ladies and gentlemen, you have a right to
2 consider anything that is in the record in this case
3 that will help you evaluate the testimony of a
4 witness. That means as jurors it is your duty to
5 pay close attention to the witnesses, to observe the
6 witnesses, and listen to the witnesses and pay close
7 attention to the attorneys and to the Court.

8 Ladies and gentlemen, please don't let your
9 thoughts wander, but give strict attention to the
10 testimony in this case so at the end of all the
11 testimony, after the argument of counsel and the
12 charge on the law by me, you will then be in a
13 position to determine what the facts are and to
14 apply those facts to the law and, thus, render a
15 true and just verdict.

16 In addition, Mr. Foreman, it will be your
17 responsibility to preside in the jury room and be
18 the jury spokesperson here in court. It will also
19 be your duty to write down the verdict on the
20 verdict form that I give you, but I will give you
21 further instructions on that at the appropriate
22 time.

23 Now in order to preserve everyone's rights,
24 I will give the parties an opportunity to object to
25 anything that I have stated to the jury.

1 Does the State have any objection to
2 anything I've stated to this jury?

3 MR. MEADORS: No, sir.

4 THE COURT: Does the Defense have any
5 objection?

6 MR. GRIFFITH: No objection, Your Honor.

7 THE COURT: All right, thank you. Ladies
8 and gentlemen, we will now begin the trial of this
9 case.

10 Mr. Meadors.

11 MR. MEADORS: May it please the Court.

12 THE COURT: Yes, sir.

13 MR. MEADORS: Grandmother, grandmother
14 died of carbon monoxide poison and thermal injury.
15 Grandmama died from carbon monoxide poison and
16 thermal injury. Grandmama burned to death while she
17 was alive. Granddaddy was knocked out and died of
18 thermal injury; he burned to death. Grandmama was
19 alive when she burned to death. Granddaddy was
20 already knocked out. That's what this case is
21 about. The willful malicious, murder, killing of
22 grandmama Joan Topper, and granddaddy James Topper,
23 by Joseph M. Manners, grandson.

24 Ladies and gentlemen, good afternoon.
25 Good afternoon. Thank you for being here. My name

1 is John Meadors, I'm assistant solicitor as I was
2 introduced to you earlier. I have the privilege and
3 honor of working for your elected solicitor Earnest
4 A. "Chip" Finney, III. We are here today with the
5 Sumter County Sheriff's Office, Sumter Fire
6 Department, the Cincinnati Police Department, the
7 Erlanger Kentucky Police Department representing the
8 people of the State of South Carolina, the people of
9 Sumter, against the defendant Joseph M. Manners who
10 is represented by Mr. Timothy L. Griffith.

11 He's charged with two counts of murder,
12 one count of arson in the first degree. As His
13 Honor told you, I'm gonna briefly tell you about
14 those crimes, what the elements are, what we must
15 prove. Y'all know what murder is; you see it on TV.
16 Just like the judge said, this isn't TV, this is
17 real. It doesn't get much more real than what
18 you're gonna experience this week. Murder is the
19 intentional unlawful malicious killing of another
20 living, breathing human being with malice
21 aforethought. You've all heard that term malice.
22 Malice is a meanness, it's an evilness, it's a
23 wickedness, it's a spitefulness one person show to
24 another. Aforethought is just a term of art. You
25 don't have to — we don't have premeditation in the

1 state of South Carolina. You don't have to plan
2 something out in advance, I'm gonna kill that person
3 a week from now, a month from now, a minute from
4 now. Aforethought is just a term of art. It's got
5 to exist the instant you fire a gun, the instant you
6 stab somebody, the instant you start a fire with
7 gasoline near your granddaddy's head. At that
8 instant. Malice aforethought. We have to prove
9 that he killed, malicious intentional killing with
10 malice aforethought, that a person died as a
11 proximate result of that. You're gonna hear from
12 Doctor Ross probably tomorrow morning, maybe
13 Thursday morning whenever fits the judge's schedule
14 or the doctor's schedule. And she's gonna come in
15 and tell you what the Toppers died of, carbon
16 monoxide, poison, and thermal injury for Ms. Topper;
17 thermal injury for Mr. Topper. But we have to prove
18 to you what their cause of death was and we'll do
19 that through the pathologist. In addition, we'll
20 have to prove this happened in Sumter County.

21 Mr. Manner, as the defendant, is also
22 charged with arson in the first degree, and that's
23 where an individual or person causes an explosion or
24 sets fire to — in this case a dwelling — and it
25 either directly or indirectly leads to the death of

1 another — in this case anothers, two people,
2 Mr. and Ms. James Topper, James and Joanne Topper.
3 Well, that's what the law is and y'all will
4 understand that. You understand what he's charged
5 with. And what's our burden of proof? What's the
6 burden of proof on the State? Well, it's the same
7 in this case as it is in every case that's tried in
8 this state and in great country; it's beyond a
9 reasonable doubt. We have to prove the defendant
10 killed his grandparents maliciously, intentionally,
11 beyond a reasonable doubt. And we don't have to
12 prove beyond all doubt. The judge will instruct you
13 that. If that was the burden, you don't need to be
14 in the courthouse; you could never prove anything
15 beyond all doubt. But we must prove it beyond a
16 reasonable doubt, beyond a doubt that makes
17 reasonable folks hesitate to act. I respectfully
18 submit you won't have any hesitation we believe the
19 evidence will show in this case.

20 What type of evidence are you gonna hear
21 in this case specifically? Well, evidence is
22 divided up; there are different types. One is
23 direct evidence. Y'all know what it is. It's
24 evidence that you gather, a person gathers, with
25 their senses. They touch it, they feel it, they

1 smell it, they hear it. And they come into this
2 courtroom, take an oath from Mr. Bradley, and they
3 take the witness stand and they tell you that's what
4 I heard, that's what I saw, that's what I smelled,
5 that's what I touched. And they tell you, hey, this
6 is what I saw; that's direct evidence.

7 Circumstantial evidence is evidence of a
8 fact or facts which lead to another fact. You
9 didn't necessarily see it but the combination of all
10 these facts, well, you know that's what happened.
11 The classic, and it's getting timely right now is,
12 you didn't see it snow perhaps when you go to bed
13 but if you see the snow the next morning, you know
14 it snowed. That's a great example of circumstantial
15 evidence. You're gonna see it in this trial with
16 some evidence of gasoline that was poured and
17 officers who took some samples and some dogs that
18 may have come in and sniffed and checked for some
19 samples that the chemist says, yea, hey, that was
20 gasoline that was used as an accelerant which will
21 be circumstantial evidence that was used to kill the
22 Toppers to start the fire.

23 You'll also hear or see evidence of
24 documentary evidence. You will see a bunch of
25 pictures. You're gonna see a bunch of pictures of

1 fires and a burnt house, some other pictures of the
2 body and we've narrowed them down. You're gonna
3 hear a 9-1-1 tape from the first witness this
4 afternoon as she called in when she saw the fire.
5 And you're gonna hear from the testimony of a SLED
6 witness Brian Wright who is here, who's gonna tell
7 you his dog went through the scene and tell you
8 where his dog hit and what was found there and the
9 samples that were gathered. And you're gonna hear
10 from a chemist, Joseph Powell, probably at the end
11 of case and he's gonna analyze what the Sheriff's
12 Department and SLED and the fire department, the
13 head of chief, with the head of chief — help the c
14 chief Brian Christmas, brought to them and he's
15 gonna tell you what was, he found was an accelerant
16 or gasoline and you're gonna hear all that.

17 What's the other issue? What's the other
18 thing that flows through this case and every case
19 more so than anything else? What's credibility?
20 Really, what's every case is about. You fourteen
21 now, but twelve, the twelve — assuming y'all stay
22 healthy when you go back to the jury room — you
23 twelve will decide the credibility and the
24 believability of the witnesses from this stand
25 'cause that's the only place you can decide what's

1 credible. The evidence that His Honor lets in,
2 either documents or tapes or witness testimony, you
3 will have to decide what's credible, what's
4 believable, and that's what's true in every case.
5 And that's what it boils down to, what is credible,
6 what's believable. And that's your job. We've got
7 out job, Solicitor Finney, myself, law enforcement,
8 Mr. Griffith. His honor, the judge of this
9 courtroom, he tells us all what the law is. But
10 respectful to all of you, y'all are like a judge too
11 and y'all have the most important role of all;
12 you're judges of the facts. As Your Honor has told
13 you, he's not gonna invade your province, you won't
14 invade his, but y'all decide what the truth is.
15 You're the judge of the facts, no more important
16 job. Why do I do that? Mr. Campbell, the fine
17 clerk, didn't put me through a jury school and tell
18 me how to be a jury, but you've been going to that
19 school your whole life. It's just called living
20 everyday common sense in evaluating people in your
21 home, in your business. What's the truth? I think
22 you kind of know it when you see it and hear it.
23 But y'all are to use all those experiences in
24 deciding what the truth is. When you have, when you
25 decide what the facts are and when the judge tells

1 you it's time, he's gonna give you the law at the
2 end of the case and he'll say, you take this law,
3 y'all determine what the facts is, you come up with
4 a verdict, either gonna be guilty or not guilty.
5 And it's a beautiful system. All we ask is you pay
6 attention. It doesn't get anymore important this
7 week, no more important than this case to the
8 defendant and to the Toppers and to their family so
9 thank you for the attention we know you'll give.

10 Well, what happened? I'm allowed to give
11 you a brief overview of the evidence. Well, let's
12 go back in time and we're gonna take you back to the
13 pictures and witnesses to June 1st, 2013, [REDACTED]
14 Barnwell. Some of y'all may know where it is. If
15 you're heading out of town on 378, you take a right
16 on 261, they got the flashing light before you get
17 there. Go down 261, you go down a couple of streets
18 to I think it's Deveaux. We're gonna show you these
19 maps. You'll go down and you'll take a left on
20 Barnwell. You're gonna see it. If you don't know
21 where it is now, hopefully you know the general
22 area, but that's where this happened. That's where
23 the Toppers lived on June 1st, 2013, and their
24 grandson was living with them at that time too.

25 It's about 8:00 approximately on June 1st,

1 2013. One of their neighbors across the street, I
2 think it's [REDACTED] — I'm not sure. This young lady
3 right there.

4 Raise your hand, Rhonda.

5 That's Rhonda Webster. She hears and sees
6 some fire and some glass break and something; and
7 she's gonna tell you what she saw. She calls 9-1-1.
8 That's who started it. He started it all. But
9 that's the first person who saw it, and you're gonna
10 hear and see her re-live it in a minute. And she
11 says as she's looking and she sees the fire and the
12 wind is cracking she's sees a white car come out of
13 a driveway, circular driveway, take a left away from
14 her and head away from her house and head away from
15 the Toppers' house, and the evidence will show
16 that's Joseph Manners. That's Joseph Manners after
17 he set the house on fire and I'll tell you where
18 he's heading to in a minute. Ms. Webster is on
19 9-1-1, the fire department is called, Bryan
20 Christmas' crew. Captain Robert Burnish, Captain
21 Robert Burnish with the Sheriff's Department, they
22 come out there. I think Mike McCauley is the first
23 on the scene for his group. Julian Blair comes with
24 the Sheriff's Department arson unit. They all
25 respond to the fire. Again, we're gonna show you

1 pictures. They determine there's no life that could
2 be living in there anymore. They knew there were
3 potential occupants but it's so hot there wasn't a
4 rescue mission to start with. You'll hear testimony
5 about that. So they start putting out the fire.
6 The evening of June 1st, 2013, they're putting out t
7 he fire, they're putting out the fire. They get the
8 fire extinguished sometime late that night in the
9 morning. They'll tell you the exact time. Bodies
10 found on the front level. Body turns out to be
11 Ms. Topper, Joan Topper. Fire is extinguished; we
12 go into the next morning. The second body is found
13 in what I call the bottom, the basement if you will
14 and that's the body we determined and show you to be
15 Mr. James Topper. Firemen working all night, police
16 working all night. They start taking the debris,
17 moving the debris out, and you'll see pictures of
18 that. They locate the bodies. They move the bodies
19 and take them to the pathologist in Newberry who is
20 going to testify to what she found. SLED is called
21 in, Mr. Wright, runs his canine through. He
22 determines where points of potential origin and
23 cause are, and that's a phrase you'll hear as we go
24 through this, how'd this fire start, what's the
25 origin and cause. And that's what the Sheriff's

1 Department, Mr. Blair, Mr. Wright, they're trying to
2 determine. First Mr. Blair takes samples from
3 around where Mr. Topper was. They go in for
4 analysis. Mr. Wright's dog comes through hits; they
5 take those. And they all send them to be analyzed.

6 Well, the fire is out. They get
7 information that Mr. Manner has lived there; he's no
8 longer there. Law enforcement found, well, there
9 are usually three cars, there are only two, two
10 there now, one is missing. They get a phone number
11 for Mr. Topper and Mr. Manners. They start
12 following those phones, start pinging, if you will.
13 You're gonna hear testimony about that through
14 Captain Robert Burnish and others. They start
15 pinging the phones, tracing the phones of where
16 they're going. Mr. Manners is up from Kentucky the
17 evidence will show. They start seeing Mr. Topper's
18 phone is hitting these cell towers. You see them
19 out there. They know where everybody is. It's
20 hitting the cell towers; it's moving up north. Law
21 enforcement puts on a bolo, puts out a bolo,
22 be-on-look-out-for Joseph Manners in this white
23 Honda Accord. They give the license tag number and
24 they start sending it up as the — they determine
25 he's going north and north. Send it up to Kentucky

1 as they realize he's heading up that way, determine
2 that's where he's from. Early, night becomes
3 morning, morning becomes dawn of June 2nd. They
4 learn that an officer from Erlanger Police
5 Department in Kentucky — we bringing in all
6 jurisdictions from all, from here and up north, that
7 an officer after a roll call, had been given this
8 information, found this vehicle in her jurisdiction.
9 She gets behind this car, doesn't turn the lights
10 on, follows him, car follows all the street signs,
11 does the right sign, does the turn signal, does
12 everything appropriately. The officer waits till
13 she gets another officer there and she turns her
14 blue lights on. The offices is Kim Blair right
15 there.

16 Raise your hand, Kim.

17 As soon as she does that, Joseph Manners
18 in front of her takes off, and they go through a 90
19 to a hundred mile an hour chase. He starts running
20 from Kentucky, Erlanger Kentucky into Ohio which I
21 found out is very close and into Cincinnati. These
22 two cities are very near to each other. She follows
23 him into Cincinnati. He's being chased there. He
24 started getting chased by some Cincinnati folks,
25 ends up — Joseph Manners does — running into the

1 Cincinnati River. That's what the evidence will
2 show. He gets out and he starts fleeing. She goes
3 and determines that's the same car she's been
4 chasing. He's apprehended, Joseph Manners, after a
5 foot chase shortly from there. He's taken to the
6 area hospital to see if he had any injuries. June
7 2nd becomes January 3rd. We're now in Cincinnati,
8 Ohio. Jennifer Mitsch, please raise your hand.
9 Jennifer Mitsch — with Cincinnati Police
10 Department, is called. She's talked with the
11 individuals from Sumter, South Carolina, asked if
12 she can go, will she go speak with Joseph Manners.
13 She and another officer go and talk to Joseph
14 Manners. And ladies and gentlemen, she reads him
15 his rights and they talk. And he says he just lost
16 it. And he says, yeah, I hit my granddaddy, I think
17 I knocked him out. What about your grandmama?
18 Well, she was still upstairs when I left, but I know
19 she was there. Now that's not 'cause I say it.
20 It's not 'cause she says it; it's because he says
21 it. And you're gonna hear it on an audio. Jennifer
22 Mitsch read him his rights. The judge has
23 determined you've got a right to hear that and you
24 will decide whether he read his rights, understood
25 his rights. She read him his rights and talked to

1 him about 40 minutes or so and he says, talks about
2 this, talks about setting the house on fire, hitting
3 his granddaddy, leaving his grandmama there and
4 you're gonna hear it.

5 That's what this case is about. It's not
6 complicated, but it's important. It's as important
7 a case will be tried — and I'm not — in this
8 country this week, to the defendant, to the Toppers,
9 and to all the family. Ladies and gentlemen, we're
10 gonna start with Ms. Webster and maybe another
11 witness or two, but at that point I think the bulk
12 of the testimony will be tomorrow and Thursday but
13 we'll finish this week. All we ask you — thank you
14 first of all, again, for being here — but to
15 listen, listen and watch, and use your common sense.
16 We believe after you've heard all the evidence, seen
17 the pictures, you'll come back with a verdict, the
18 only verdict we will respectfully submit, that says
19 on June 1st of 2013 Joseph Manners set his
20 grandfather and grandmother's house on fire, they
21 burned to death, and we're gonna find him guilty.
22 Thank you.

23 THE COURT: Thank you, Mr. Meadors.

24 Mr. Griffith, from the Defendant.

25 MR. GRIFFITH: Thank you, Your Honor.

1 Ladies and gentlemen, thank you very much for
2 participating in this great opportunity actually to
3 serve on a jury; we appreciate your sacrifice.
4 Mr. Manners — I mean, I'm sorry, Mr. Meadors just
5 gave a 20 minute testimony, but he wasn't there.
6 All the things he said, he has some witnesses that
7 he'd like to present to you; but he wasn't there.
8 All the things he said cannot be considered until
9 you hear all of the evidence. A grandparent,
10 grandmother and grandfather perished in a fire.
11 They perished in a fire, and the autopsy report will
12 show they died of smoke inhalation. But they died
13 in a fire; it's horrible. Mr. Manners lived with
14 them, and they were his grandmother and his
15 grandfather. He lost his grandmother and
16 grandfather. I want you to just listen to the
17 evidence, listen to it all. You made statements.
18 Remember those statements, when you listen to that
19 statement listen carefully. When they say, well,
20 how'd the fire start. They might say, well, I don't
21 know how it started. Listen very carefully, weigh
22 all the evidence, find in your own minds whether you
23 can find him guilty beyond a reasonable doubt. And
24 you must find beyond a reasonable doubt that he is
25 actually guilty. But the testimony of Mr., Attorney

1 Meadors, is not all of the story; but we do want you
2 to listen to the evidence and make up your own mind
3 and do appreciate you being here with us today and
4 look forward to your verdict in this case. Thank
5 you.

6 THE COURT: Thank you, Mr. Griffith.

7 The State ready to call its first witness?

8 MR. MEADORS: Please, Your Honor.

9 THE COURT: Yes, sir.

10 MR. MEADORS: May it please the Court, we
11 call Rhonda Webster.

12 WHEREUPON,

13 **RHONDA WEBSTER,**

14 having been duly sworn by the Clerk, testified
15 as follows:

16 MR. GRIFFITH: My client says he needs to
17 go to the restroom again.

18 THE COURT: All right, we'll take a ten
19 minute recess. Let me send the jury out.

20 Ladies and gentlemen, I'm gonna send you
21 back to the jury room before we have this testimony.
22 Do not discuss anything about this case while you're
23 back there. Thank you.

24 (WHEREUPON, the jury was removed from the
25 courtroom at 3:43 p.m.)

SW - R. WEBSTER - DIRECT

1 (WHEREUPON, State Exhibits No. 2 and 3
2 were marked for identification only.

3 THE COURT: Court will be in recess for
4 ten minutes.

5 (WHEREUPON, a recess was taken from the
6 proceedings.)

7 (Court's Exhibit Number 3 was marked and
8 made a part of the record and State's
9 Exhibits 4 and 5 were marked for
10 identification only.)

11 THE COURT: All right, the witness will
12 come back to the witness stand please. Let's bring
13 our jury in.

14 (WHEREUPON, the jury was returned to the
15 courtroom at approximately 3:52 p.m., and
16 the following proceedings commenced in
17 open court.)

18 THE CLERK: May it please the Court,
19 please state your full name and spell your last name
20 for the record.

21 THE WITNESS: Rhonda Kay A. Webster,
22 W-E-B-S-T-E-R.

23 **DIRECT EXAMINATION**

24 BY MR. MEADORS:

25 Q Good afternoon, Ms. Webster.

SW - R. WEBSTER - DIRECT

1 A Good morning, sir.

2 Q Would you please tell the ladies and gentlemen of
3 this jury about Rhonda Webster, where are you from?

4 A I'm originally from West Virginia, Jefferson
5 County. It's the eastern panhandle fifty miles
6 outside of DC area. They call us the tristate area
7 because of the Maryland, Virginia, and Pennsylvania
8 all surrounds our little county.

9 Q Were you born and raised there?

10 A I have — was.

11 Q And how long was it before you came?

12 A I was 40 when I left.

13 Q Okay. And where did you go?

14 A I came here. My husband retired air force so he
15 invited me down to South Carolina, told him I had
16 vacationed here many a times, I knew the State, that
17 I didn't need to come and see it, that I loved it,
18 and loved the climate that it had. Up there it's,
19 you have four seasons, but it gets very cold so down
20 here it's nice to have sometimes two seasons.

21 Sometimes our winters are two weeks. I think this
22 year it's stretching just a little bit further than
23 what I'm used to down here. I came down 2006,
24 October the 1st. We first went to the northeast
25 side of Columbia. We was taking, he was taking —

SW - R. WEBSTER - DIRECT

1 my husband was taking, fiance, was taking care of a
2 house at that time for another military person.
3 Then we actually moved down here to Sumter County,
4 the Quinby road area over where Thomas-Sumter is.
5 We rented a house there so that we could get a
6 better layout of the actual county and see exactly
7 where we would like to go, where not to go. So
8 three years later we moved to Barnwell, [REDACTED], and we
9 reside there today.

10 Q I've got accounting, bookkeeping, and paper route
11 on my notes; why is that?

12 A That's what I did back home before I moved here.
13 I was a bookkeeper, accountant, and I ran a paper
14 route so I worked 7 days a week, 365 days a year. I
15 was out there.

16 Q Your husband had been at Sumter before?

17 A He was. He was stationed here in Sumter back in
18 the early '70s.

19 Q You moved to Barnwell, [REDACTED] Barnwell, what we're
20 about here today for, in what year?

21 A It was 2009, end of May. It was right around
22 Memorial day weekend of that year so I'm just not
23 sure if it was a Friday or a Saturday that we had
24 moved in, but it was the weekend of Memorial day.

25 Q And was this a new residence or a ---

SW - R. WEBSTER - DIRECT

1 A This was an older residence. It was built back
2 in 1970 so it has went through the war, shall we
3 say, because after the owners actually sold the
4 place — well, they rented it for many years and we
5 actually bought it later. But they rented it to
6 military so the landscaping kind of fell away and so
7 we was trying to do some restoration into the
8 landscaping and try to get things back together and
9 make it a little more beautiful.

10 Q In 2009 where were you working?

11 A 2009?

12 Q When you moved here, Sumter, were you working?

13 A 2009 I was with Wal-Mart.

14 Q Okay. And you had some different jobs until you
15 have your employment right now, right? What are you
16 doing now?

17 A Right now I'm manager of produce.

18 Q Okay, where?

19 A Produce manager with Food Lion.

20 Q And how long have you been with Food Lion?

21 A I'm going into my third year right now.

22 Q And are you the Food Lion past Shaw on the left
23 heading out of town?

24 A Yes, sir.

25 Q Well, that's Broad I guess.

SW - R. WEBSTER - DIRECT

1 A That's Broad Street, yes, sir.

2 Q Okay. What's your schedule?

3 A Usually open, it's anywhere between 7 to 3 or 6
4 to 2.

5 Q All right, Ms. Webster, I want to talk you back
6 to June of 2013, specifically June 1st of 2013, were
7 you working then?

8 A I was not working at the time. I was in between
9 jobs.

10 Q And your husband is retired?

11 A Yes, sir.

12 Q If you'll speak up and with the Court's
13 permission I want to ask you to step down real
14 quick.

15 THE COURT: Yes, please speak up when
16 you're down there.

17 BY MR. MEADORS:

18 Q Get over here so the court reporter can see your
19 mouth and then stand right there. This is -- and
20 Your Honor, I've talked to Mr. Griffith about, and
21 this is State 5 and 6 and I believe without
22 objection.

23 THE COURT: Is that correct?

24 MR. GRIFFITH: Without objection, Your
25 Honor.

SW - R. WEBSTER - DIRECT

1 THE COURT: All right. State's 5 and 6
2 admitted without objection.

3 (WHEREUPON, State's Exhibit No. 5 was
4 admitted into evidence and State's
5 Exhibit 6 was marked for identification
6 and admitted into evidence.)

7 BY MR. MEADORS:

8 Q Now looking at 5, State's 5, Ms. Webster, do you
9 recognize this as an overview of where you live?

10 A Yes, sir.

11 Q Point it to you see if you can find it.

12 A This would be Barnwell. This is the ruins.
13 Right here.

14 Q And what's that address?

15 A [REDACTED].

16 Q If I'm heading from right here out to your house,
17 tell the jury how to get there.

18 A From here to the courthouse. From the courthouse
19 you're gonna get on 378, 76, 378. You're gonna hit
20 toward Columbia which would be west. When you get
21 to the last light if you travel that way enough,
22 it's the last light leaving Sumter before hitting
23 over any of the bridges, you're gonna turn right on
24 261. And then 261 there's three roads. I always
25 get the first one messed up 'cause I never can think

SW - R. WEBSTER - DIRECT

1 of it 'cause it's only a one way in, one way out.
2 The second road is Barnwell Drive, but it's a very
3 rough road, lot of holes. It's not a paved road so
4 it's a wooden road we don't travel in or out of
5 because of the way it is. We go in on Deveau which
6 I don't know — here, okay. So this is Deveau so
7 Barnwell —

8 Q What is this road right here?

9 A This is 261. Kings Highway is what it's also
10 called. So when you take Deveau it brings you down
11 to Barnwell.

12 Q If you take a right off 261 you get on 261,
13 correct, off 378?

14 A Right, take a right.

15 Q Can you go down to where to take a right to go to
16 your house?

17 A We always come in on Deveau because of the road
18 surface is not a hard top surface.

19 Q So this road is Barnwell also?

20 A It's also Barnwell which circles down and all the
21 way out to a stop sign next to it's called Raccoon
22 Road.

23 Q But you don't use this because —

24 A I don't use that because of the hard, the
25 surface, it's not a hard surface, it's just, I mean,

SW - R. WEBSTER - DIRECT

1 there's parts that have black top and then parts
2 that doesn't have black top. It's just very holey,
3 it's rough on vehicles so we don't travel that. So
4 we come in on Deveau and at Deveau we take a --
5 it's a stop sign and you take a left and the left
6 comes up and our actual drive is called Cowpens
7 Road. It's a private drive. There's only two
8 houses on it. It actually goes back and meets into
9 the very back property of the ruins that are back in
10 through the back here of the woods so we are a
11 wooded area back behind our house. To follow the
12 road straight down which is still Barnwell will take
13 you down toward the golf course road Beach Creek.
14 Hidden Haven is one of the roads that come off
15 around the golf course there, as well as when you
16 get to the stop sign it's Raccoon Road. By taking a
17 right there would take you out to a 441 road and by
18 taking a left it'd take you back to the 261 road.

19 Q Thank you.

20 A Yes, sir.

21 Q And whose house is this?

22 A That would be Mr. Topper's house, [REDACTED].

23 Q And that is State's 5 we've been using. I want
24 to -- if you will please stay up there I want to
25 show you State's 6. And does this appear to be a

SW - R. WEBSTER - DIRECT

1 closer picture of your house?

2 A If I find it..

3 Q Larger picture of your house?

4 A Yes.

5 Q So that's your house?

6 A This is me right here. Uh-huh, this is Barnwell.

7 Q And where are the Toppers?

8 A The Toppers are here.

9 Q What kind of driveway did they have in front of
10 their house?

11 A Its a circular drive. There was gravel in it.

12 It was almost like — what's the word, like a
13 refurbished concrete so it was kind of solid in some
14 places, but it was loose gravel in other places.

15 But it came in from this end and would circle around
16 in the front of the house and then come out.

17 Q Is that still there today, the driveway?

18 A The driveway is still there; it is.

19 Q Do you mind standing for some of your testimony
20 to use this?

21 A Sure.

22 MR. MEADORS: Is that okay, Judge?

23 THE COURT: As long as she speaks up.

24 BY MR. MEADORS:

25 Q We're back on June 1st, 2013.

SW - R. WEBSTER - DIRECT

1 A Okay.

2 Q Do you remember anything unusual happening?

3 A I just heard — the noise is what caught my
4 attention. It sound like a sheet of glass being
5 dropped so you just hear this (makes sound) glass.
6 And then I hear gravel, and I notice and spot a car
7 coming out of this driveway which is the driveway at
8 the top of the hill. It turns left and heads north
9 down Barnwell. I hear another pane of glass; it's
10 like somebody just dropped it. And then I see
11 smoke, I see fire. I'm running trying to find my
12 husband.

13 Q Where were you when you observed and heard all
14 this?

15 A My house here, this is our back deck. I'm on the
16 west side of my house which is right against the
17 road. And I can actually, I was out there like I
18 say, where I was explaining earlier about the
19 landscaping of my home. I had cactuses everywhere
20 so the reason why we were out that evening was I was
21 relocating my cactus and putting them all in one bed
22 so that was the reason at this point in time when I
23 heard and seen all this. That's what I was doing.
24 I was in the yard working. At around this location,
25 like I said, on the west side.

SW - R. WEBSTER - DIRECT

1 Q Is it still light outside?

2 A It was light, yes.

3 Q Can you — how close in time was all this
4 happening, the glass, the fire, the car going out?

5 A Seconds, I mean seconds.

6 Q Can you — could you tell what kind of car it was
7 that was leaving the Toppers?

8 A I knew it was a white car that came out of that
9 driveway.

10 Q What were you feeling like once all this was
11 happening?

12 A Emotional. I mean, if you're scared you don't
13 know if someone is in the house, if they're alive,
14 if they're in there, not in there. When I seen the
15 car leave — we've seen ambulance down there before.
16 I couldn't understand why the car came out of the
17 driveway and went the way it did. It was going the
18 wrong way to go to a hospital. So I'm hollering for
19 my husband. I like this, I don't have my cell phone
20 with me so I'm hollering for my husband to get his
21 cell phone. And I like, and he hears me 'cause I'm
22 hollering, I'm ecstatic. I'm trying to, you know,
23 I've got to get down there to them. I get his phone
24 away from him. He can't seem to get 9-1-1 punched
25 in so I took it from him. I punched in 9-1-1 and

SW - R. WEBSTER - DIRECT

1 I'm running as fast as I can down to the house so I
2 can see if anybody is in there and if I can possibly
3 save them. When I get there the house, it's just,
4 it's engulfed, flames are coming everywhere. You
5 could see it running out the front door, out the
6 back door. I go around the backside of the house.
7 It's — the deck is gone. It's just a huge ball of
8 fire that's sitting there. We're hollering, I'm
9 hollering, is anybody in there, anybody in there.

10 Q You knew there were other people that lived
11 there, correct?

12 A Yes.

13 Q And let me ask this much, you knew the Toppers?
14 I'm not — did you know them well?

15 A No, I did not know the Toppers well. In passing
16 if they were out mowing the grass, you know, hey, as
17 a neighbor would do.

18 Q Good neighbors, just didn't bother each other?

19 A No, we didn't. We were all, we're all kind of
20 like alone, loner type people. You know, everybody
21 just kind of stays to theirself.

22 Q Could you show the jury where you ran to on
23 State's 4. If you want to use this, what's easiest
24 for you.

25 A From this direction I'm looking for my husband so

SW - R. WEBSTER - DIRECT

1 I'm circling my house trying to find him. When I
2 finally get to him and I get the phone, I come up
3 this way and it's a small hill that I have to come
4 down out of my driveway; and after my driveway, this
5 actually is a hill that goes down. So I'm running
6 down as I'm calling 9-1-1. And when I come in I
7 come in through this driveway right here. I'm
8 checking to see if anybody is in the RV, in the van,
9 I'm trying to see if the doors are locked or
10 unlocked, trying to see if there's somebody in
11 there. I don't know what's going on. I holler, is
12 everybody okay, can anybody hear me, is everybody
13 okay. And I have no response so that's when I'm
14 grabbing the phone and I'm taking off running and
15 I'm running down the hill and into the driveway.
16 And like I say, there's a patio here. My husband
17 goes around this side. You can't get to this side
18 around it. I come around the patio that they have
19 here toward the backside and that's when it's all
20 engulfed. I mean, it's just a big old fire ball
21 that's sitting there.

22 Q When you say engulfed, was that on the backside?

23 A It was here on the backside. It's a back deck.
24 What I could see it was just timbers that was red
25 hot, cherry hot, and that's all you could see. You

SW - R. WEBSTER - DIRECT

1 could see that it was a deck; but to tell you
2 whether it was a cover deck, it was gone. All you
3 could see was just bits and pieces of two-by-fours
4 around the area. No way in the back door. There
5 was no way in the front door.

6 Q No way for you to get inside?

7 A I couldn't.

8 Q Let me ask a couple more questions before I let
9 you step down. You said the white car left this
10 way. How did you get out that way?

11 A Well ---

12 Q How could you get out that way?

13 A By going down Barnwell Drive following it north,
14 you could take Hidden Haven, which circles around
15 the Beach Creek golf course. Or you take down to
16 the stop sign where Raccoon is, and you have access
17 again to either go 441 and out to 261 and out.

18 Q All right. Now Ms. Rhonda Webster, when you --
19 you already called 9-1-1 before you came down there?

20 A I'm in the process. I'm running and calling.

21 Q After that -- so you're the first, you're
22 actually the person that saw it, weren't you?

23 You're the first person down there. Did you -- did
24 law enforcement, the police, obviously the police,
25 the fire department and other folks come shortly

SW - R. WEBSTER - DIRECT

1 thereafter?

2 A Uh-huh, it seemed like forever when you're
3 standing in that type of circumstances though. I
4 called 9-1-1 back and I said, where is everybody,
5 this house is going too quick, you got to get
6 somebody here, it's going quick.

7 Q Okay. Take back your seat real quick please,
8 ma'am, thank you.

9 MR. MEADORS: Next Your Honor, we've taken
10 out, will be Number 6, the 9-1-1 call, I believe
11 without objection.

12 THE COURT: Any objection, Mr. Griffith?

13 MR. GRIFFITH: No, Your Honor.

14 THE COURT: State's number 6 is admitted
15 without objection.

16 BY MR. MEADORS:

17 Q Ms. Webster, you've listened to this actually
18 with me before. Is this your voice in the call you
19 made?

20 A Yes, sir.

21 Q Okay.

22 (State's Exhibit No. 6 was played for the jury.)

23 MR. MEADORS: Just a few more questions.
24 This is State's 2 and 3, Your Honor, without
25 objection.

SW - R. WEBSTER - DIRECT

1 MR. GRIFFITH: Without objection, Your
2 Honor.

3 THE COURT: State's 2 and 3 admitted
4 without objection.

5 (WHEREUPON, State's Exhibits
6 Nos. 2 and 3 were admitted into
7 evidence.)

8 BY MR. MEADORS:

9 Q Showing you what's State's 2 and State's 3, do
10 you recognize that?

11 A I do.

12 Q Still kind of brings it back to you?

13 A It does.

14 Q And is that the fire at the Toppers?

15 A It is.

16 Q Did you see Ms. Topper out much in the yard?

17 A I've never seen the lady out and about.

18 Q And did you know Joseph Manners?

19 A No, sir. I mean, I have seen two males down in
20 that area. I've heard two males voices and seen two
21 figures in the area of the front part of the house;
22 but as far as knowing the gentleman myself, no, sir.

23 MR. MEADORS: Beg the Court's indulgence.

24 THE COURT: Yes.

25 MR. MEADORS: Thank you, Judge, that's

SW - R. WEBSTER - CROSS, REDIRECT

1 all.

2 THE COURT: Mr. Griffith.

3 **CROSS-EXAMINATION**

4 BY MR. GRIFFITH:

5 Q Ma'am, you say you saw a white car coming out of
6 there and leaving.

7 A Yes, sir.

8 Q And you did not see who was in that car; is that
9 correct?

10 A No, sir.

11 Q And so you have no idea who drove that car away?

12 A No, sir, it left fast.

13 MR. GRIFFITH: I have no further
14 questions, Your Honor.

15 THE COURT: Thank you. Any redirect?

16 **REDIRECT EXAMINATION**

17 BY MR. MEADORS:

18 Q What's the last thing you said? It left what?

19 A It left out of there fast.

20 Q How do you remember that?

21 A Because I heard the gravel and the spin when —
22 when they come up to the driveway there was no
23 hesitation of a stop sign or to look either way. I
24 mean, it was like it come up out like a rocket or
25 something and boom, shot right down the road. It

SW - R. WEBSTER - RECROSS

1 was just something that it was just so fast, quick
2 moving.

3 THE COURT: Any recross?

4 MR. GRIFFITH: Yes, Your Honor.

5 **RECROSS-EXAMINATION**

6 BY MR. GRIFFITH:

7 Q When a car pulls out would you say it's on gravel
8 and it's spinning, it makes a lot of noise; doesn't
9 it?

10 A I have a gravel driveway, no, I do not spin
11 gravel when I leave my driveway, sir.

12 Q No, I understand that, but the sound of gravel
13 spinning under a car, that really is noisy; isn't
14 it?

15 A Yes, sir, I mean, it'll catch your attention when
16 you're hearing it, yes, sir.

17 Q And that's what you heard?

18 A I heard that.

19 Q Okay. No further questions.

20 THE COURT: Thank you. You may step down.
21 State's 7 through 15.

22 (WHEREUPON, State's Exhibits Nos. 7
23 through 15 were marked for identification
24 only.)

25 MR. MEADORS: May it please the Court,

SW - M. MCCAULEY - DIRECT

1 Michael McCauley. We would now call Michael
2 McCauley.

3 THE CLERK: Place your left hand on the
4 Bible, raise your right. State your name please.

5 THE WITNESS: Michael Thomas Mark
6 McCauley.

7 WHEREUPON,

8 **MICHAEL MCCAULEY,**
9 having been duly sworn by the Clerk, testified
10 as follows:

11 THE CLERK: Thank you, have a seat.
12 Please state your full name and spell your last name
13 for the record.

14 THE WITNESS: Michael Thomas McCauley.
15 Last name, M-C-C-A-U-L-E-Y.

16 **DIRECT EXAMINATION**

17 BY MR. MEADORS:

18 Q Good afternoon, Investigator Michael McCauley.

19 A Hello, sir.

20 Q Could you tell these folks about yourself, where
21 you're from, and your background and training,
22 especially in law enforcement?

23 A Yes, sir. I was born in Oklahoma in 1980. I
24 came to South Carolina in 1981. My dad was air
25 force. We moved here and several other states and

SW - M. MCCAULEY - DIRECT

1 countries. He eventually settled back in Sumter in
2 1996 and retired. I graduated from high school in
3 1998. I graduated from the University of South
4 Carolina in 2002. I attended the South Carolina
5 Criminal Justice Academy in the beginning of 2004.
6 Shortly after I was hired by the Sumter County
7 Sheriff's Office. I graduated on April 16th, 2004.
8 I was immediately assigned to the uniform patrol
9 division, and I was in that division until 2014 when
10 I transferred to the investigations division
11 specializing in crime scene.

12 Q And that's what you do now for the sheriff?

13 A Yes, sir.

14 Q And what primarily you mostly do crime scenes,
15 correct?

16 A It's—

17 Q Back when this happened you were in the
18 investigative unit?

19 A No, sir, I was in uniform patrol at the time.

20 Q Okay. Were you one of the first officers that
21 got there?

22 A Yes, sir.

23 Q All right. So you were on patrol?

24 A Yes, sir.

25 Q And are you familiar with the area?

SW - M. MCCAULEY - DIRECT

1 A Yes, sir.

2 Q And I want to show you — and Your Honor, for the
3 record 7, 8, 9, 10, 11, 12, 13, and 14 and 7 through
4 15, I believe, without objection.

5 THE COURT: Is that correct, Mr. Griffith?

6 MR. GRIFFITH: What he showed me, yes,
7 Your Honor.

8 THE COURT: All right. State's Exhibits
9 7, 8, 9, 10, 11, 12, 13, 14, 15 are admitted without
10 objection.

11 (WHEREUPON, State's Exhibits Nos. 7
12 through 15 were admitted into evidence.)

13 MR. MEADORS: Your Honor, we'll try to use
14 the Elmo for this.

15 THE COURT: All right.

16 BY MR. MEADORS:

17 Q This is State's 7. Just for element purposes
18 what is that, whose address is that?

19 A That is the mailbox indicating Mr. Toppers'
20 address.

21 Q ■■■ Barnwell went?

22 A Yes, sir.

23 Q And is that in Sumter County?

24 A Yes, sir.

25 Q Now when you first got there how did you know,

SW - M. MCCAULEY - DIRECT

1 who noticed you to come?

2 A I was notified through dispatch. They gave a
3 general bulletin that a house was on fire and people
4 may have been inside.

5 Q Okay. When you got there tell these folks what
6 you observed first.

7 A Upon my arrival I saw the house fully involved in
8 flames. A small crowd of neighbors had begun to
9 arrive. I came into the part of the driveway
10 closest to the top of the hill, the same one Ms.
11 Webster indicated earlier where she initially came
12 to. I parked there slightly out of the roadway so
13 the oncoming fire units could see my blue lights.
14 It's -- coming from the top of the hill where most
15 of the fire units would be coming from, it's
16 somewhat of a blind curve.

17 Q And what's is your job then when you get there as
18 first officer on the scene, the fire is going, you
19 know, people are there, what is your job?

20 A My first job is actually to assess what the
21 situation is. Since most house fires fall primarily
22 under the fire department I see where I can help
23 begin with. If people I know are inside and I'm the
24 only person available, I will attempt to rescue. If
25 I cannot determine at that time or it's not safe for

SW - M. MCCAULEY - DIRECT

1 me to do so I will not, I'll wait for fire to
2 actually make the assault on the house itself. In
3 this situation I determined it wasn't safe enough to
4 actually enter the house. It was fully engulfed,
5 flames were shooting out. As opposed to this fire
6 flames were a little higher, the roof was still on
7 at the time.

8 Q We're just going to go through these. This is
9 State's 9.

10 A Yes, sir. After determining that, my second
11 priority is crowd control to keep most of the people
12 back there and to begin coordinate and relay to
13 other oncoming what to do and the best way to come.
14 Since I was familiar with the area I advised
15 everyone to come down 261 to Deveau and that on to
16 Barnwell. That would be the straightest shot with
17 the fewest curves and with the least possibilities
18 of a wreck.

19 Q You've actually got family that lives in that
20 area. That's one way you're familiar with it,
21 correct?

22 A Yes, sir, I grew up near there.

23 Q And I didn't mean to interrupt your answer a
24 minute ago and I apologize. 9 is on the board now.
25 You recognize 9?

SW - M. MCCAULEY - DIRECT

1 A I do.

2 Q 10?

3 A I do.

4 Q 11?

5 A I do.

6 Q 12?

7 A I do.

8 Q How long was it before Captain Burnish's folks,
9 Sheriff Dennis's folks, and the fire department got
10 there approximately?

11 A In my estimation it would have been about a half
12 hour, 45 minutes, before I noticed Investigator
13 Blair appear on scene.

14 Q Okay. State's 13. How long did you stay there?

15 A The full duration.

16 Q Okay, so you stayed till the fire was
17 extinguished?

18 A Yes, sir, approximately four-and-a-half to almost
19 five hours.

20 Q Did you recognize 13 for the record?

21 A Yes, I do.

22 Q Was the fire being worked on then?

23 A Yes, sir.

24 Q 14?

25 A Yes, sir.

SW - M. MCCAULEY - DIRECT

1 Q You recognize that?

2 A I do.

3 Q What is that?

4 A That is the rear of the house down from the hill.

5 The house itself actually sits on a slight radiant.

6 The den and basement are essentially the same thing

7 leading down from the hill. Facing the house you

8 would only think it one story; but if you walk to

9 the back, it was actually two.

10 Q So from the front you'd walk on to one story?

11 A Yes, sir.

12 Q And then around in the back there was something

13 kind of underneath?

14 A Yes, sir.

15 Q State's 15?

16 A I recognize it.

17 Q Did you basically secure the scene until the fire

18 department and the rest of your bosses got there

19 from the Sheriff's Department?

20 A I did.

21 Q Did you notice any vehicles in the driveway?

22 A There was, I believe, and Aerostar van and a RV

23 in the driveway at the time.

24 Q Thank you. That's all.

25 THE COURT: Mr. Griffith.

SW - M. MCCAULEY - CROSS

1 MR. GRIFFITH: Thank you.

2 **CROSS-EXAMINATION**

3 BY MR. GRIFFITH:

4 Q Mr. McCauley, did you know the occupants of the
5 building?

6 A Only in passing, sir. It was mostly a smile and
7 a wave setup.

8 Q So you didn't see anybody on the outside of the
9 building or. —

10 A Other than neighbors, no, sir.

11 Q —neighbors? Okay. Thank you.

12 THE COURT: Any redirect, Mr. Meadors?

13 MR. MEADORS: No, sir.

14 THE COURT: All right, thank you. You may
15 step down.

16 MR. MEADORS: May we approach.

17 THE COURT: You may.

18 (WHEREUPON, counsel approached the
19 Bench for an off-the-record discussion.)

20 THE COURT: That's all the evidence that
21 you're going to hear for today so I'm gonna release
22 you for today with the strict instructions that you
23 get a good night's rest because we're gonna have a
24 long day tomorrow, strict instructions not to look
25 at any news. If there's anything in The Item, do

1 not read The Item tomorrow. Ladies and gentlemen,
2 have a nice evening and we'll see y'all at 10:00
3 tomorrow morning. Just be here just a little bit
4 before ten so we can start. Thank you.

5 (WHEREUPON, the jury was removed from the
6 courtroom at 4:26 p.m.)

7 THE COURT: Thank you. Anything before we
8 break for the day?

9 MR. MEADORS: No, sir.

10 THE COURT: Court is adjourned until
11 10 a.m. tomorrow morning.

12 (WHEREUPON, the proceedings were concluded
13 and reconvened on February 17, 2016 at
14 10:00 a.m.)

15 (WHEREUPON, State's Exhibits Nos. 16
16 through 66 were marked for identification
17 only.)

18 THE COURT: Anything before we bring our
19 jury in, from Defense?

20 MR. GRIFFITH: Nothing, Your Honor.

21 THE COURT: From the State?

22 MR. MEADORS: No, sir.

23 THE COURT: Let's bring our jury in.

24 (WHEREUPON, the jury was returned to the
25 courtroom at approximately 10:07 a.m.,

1 and the following proceedings commenced
2 in open court.)

3 THE COURT: Good morning, ladies and
4 gentlemen. I hope you had a nice evening. We'll
5 probably have a pretty long day today so, like I
6 said, I ordered you to get a good night sleep and I
7 hope you did that.

8 Is the State ready to proceed with the
9 next witness?

10 MR. MEADORS: State's ready, Your Honor.

11 THE COURT: You may call your next
12 witness.

13 MR. MEADORS: Your Honor, the State would
14 call Julian Blair.

15 THE CLERK: Place your left hand on the
16 Bible, raise your right hand please. State your
17 name please.

18 THE WITNESS: Julian H. Blair, Jr.

19 WHEREUPON,

20 **JULIAN BLAIR, JR.,**
21 having been duly sworn by the Clerk, testified
22 as follows:

23 THE CLERK: Please state your full name,
24 spell your last name for the record.

25 THE WITNESS: Julian A. Blair, Jr..

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1 B-L-A-I-R.

2 **DIRECT EXAMINATION**

3 BY MR. MEADORS:

4 Q Good morning, Investigator Blair.

5 A Good morning.

6 Q Would you please tell the ladies and gentlemen of
7 the jury about Julian Blair, where you're from, your
8 background, your training and in particular your
9 training and experience in the field that I'm going
10 to offer you as an expert in today please, sir.

11 A I will. I'm originally from Buffalo, New York.
12 I went to the Air Force in '63 and was stationed at
13 Shaw. I met my wife down here. We got married in
14 '67. I got off active duty in '67. We went back to
15 New York for about a year; she didn't like it
16 because of the snow. So we came back to Greenville
17 and I went to work with the fire department in
18 Greenville, Gant Fire Department as a volunteer
19 while I was working at a place called LTV doing
20 aircraft inspection on jet engines. I was a
21 volunteer at Gant. A new chief came in at Gant and
22 he hired me as a lieutenant at Gant coming off as a
23 volunteer and that was my first full-time job in
24 fire service. A couple of years later I moved over.
25 They had an opening for assistant chief at Belmont

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1 Fire Department. I moved over and took that
2 position, and about 1977 I got involved in doing
3 fire arson investigation with Belmont and with the
4 Greenville County Sheriff's Office. And from then I
5 just started going to classes and schools and they
6 started a South Carolina Chapter of the
7 International Association of Arson Investigators
8 back in the early '70s and I was involved in getting
9 that agency chartered and I was a charter member of
10 it and I was on the board of directors for a number
11 of years. For that I just got too busy, I couldn't
12 do it anymore. Let's see, from there I went to, I
13 went back in the Air Force Reserve in '75. I was a
14 flight engineer flying 141s out of the Charleston
15 for about 18 years. In 1980 we moved to Charleston
16 because the commute was so bad, and I went to work
17 as a fire investigator for James Island Fire
18 Department. I stayed with them for a few years and
19 I went over to St. Johns as a fire marshal. At that
20 time I got involved in doing more of the law
21 enforcement side of it, and I became a reserve
22 officer with the City of Charleston. And from there
23 I went full-time with the Charleston Police
24 Department. On 9-1-1 I was — let me back up. From
25 there I went to — I changed my job with the air

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1 Force. I went to OSI. I was a special agent with
2 the Air Force Office of Special Investigations.
3 When I came back from training from them I went to
4 work with Dorchester County Sheriff's Office as a
5 detective doing basically the same thing, fire and
6 arson investigation. My job with OSI I was, besides
7 doing arson investigations and post bond blast
8 investigation for the Air Force, I was also teaching
9 those classes at the OSI Academy in Maryland,
10 Andrews Air Force base. On 9/11 I was activated and
11 went to work the pentagon crash cite for about month
12 with the FBI and ATF. Along with the other military
13 special agents up there we cleared all the pentagon
14 stuff.

15 From there I spent my last two years on
16 active duty in Andrews. I came back and we — I
17 retired from Dorchester County. We moved up here to
18 Charleston — to Sumter. We had property up here in
19 Dalzell so when we moved up here I became a
20 volunteer with the fire department. And then in
21 2010 Sheriff Dennis offered me a part-time job as an
22 investigator doing what I'm doing now as fire arson
23 investigator.

24 Q And you, have you gone through extensive training
25 regarding fire and arson investigation, arson

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1 recognition, and numerous other courses through the
2 years?

3 A Yes, I sure have.

4 Q And have you taught courses?

5 A I have. I've taught the National Fire Academy's
6 fire and arson in-taction course, to a lot of many
7 agencies in the state, as well as when I was
8 teaching at Andrews. I was teaching it up there to
9 a lot of different federal agencies, the FBI, ATF,
10 the Capitol Police Bomb Squad, and various federal
11 agencies and I was teaching it at Andrews.

12 Q And were you or are you a member of the
13 International Association of Arson Investigators?

14 A I'm a member of the South Carolina Chapter of the
15 IWI. I'm not a member of the International any
16 longer.

17 Q You used to be?

18 A I used to be.

19 Q And you've been offered — have you been offered
20 and accepted as an expert in the field of fire and
21 arson detention to include origin and cause —

22 A Yes, several years ago down in Charleston area.

23 Q —in courts of record in this state? How many
24 fires have you been to?

25 A Oh, gosh.

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1 Q Approximately. I'm not looking for exact number.

2 A Over the years maybe 8 or 900. If not, I haven't
3 kept track of them. I did keep track just for
4 accountability purposes on my case management for
5 the Sheriff's Office. Last year I worked over 120
6 hours just doing fire and arson investigation, the
7 scene work.

8 MR. MEADORS: Your Honor, at this time the
9 State would offer Julian H. Blair, Jr., as an expert
10 in the field of fire and arson investigation to
11 include origin and cause.

12 THE COURT: Mr. Griffith, do you have —

13 MR. MEADORS: I have no objection.

14 THE COURT: Okay. Ladies and gentlemen,
15 the State has presented him as an expert and the
16 Defense has not objected so I'm gonna deem him to be
17 an expert in arson. And ladies and gentlemen, the
18 rules of evidence ordinarily do not allow a witness
19 to testify as to opinions or conclusions. Usually
20 when they have to testify to as to what they heard,
21 saw, smell, tasted or felt; however, there's an
22 exception that a witness has exceptional education
23 and experience and has become an expert in some art,
24 science, profession, or calling, they may give a
25 conclusion and give their opinion about something

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1 that they claim to be an expert in. Now ladies and
2 gentlemen, whether or not you want to accept his
3 testimony is up to you, and you should give it no
4 greater weight simply because he's an expert.
5 Listen to his testimony and give it the weight that
6 you think it should have with all the other evidence
7 in this case. All right, thank you.

8 You may proceed to question him as an
9 expert.

10 MR. MEADORS: Thank you, Your Honor.

11 BY MR. MEADORS:

12 Q In June of 2013 your role for Sheriff Dennis was
13 what?

14 A Fire and arson investigation.

15 Q Exclusively?

16 A I did that and I worked automobile thefts.

17 Q Okay. On June 1st of 2013 did you get called to
18 a —

19 MR. GRIFFITH: Would you turn on his
20 microphone or —

21 THE WITNESS: I'm not close enough. Is
22 that better?

23 MR. MEADORS: It's turned on.

24 THE COURT: Very good.
25

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1 BY MR. MEADORS:

2 Q Did you get called to [REDACTED] Barnwell on June 1st
3 of 2013?

4 A I didn't get called specifically as a volunteer.
5 I have a radio and a pager, and when it was toned
6 out for the fire department was what they said on
7 the message about possibly somebody being trapped
8 and all, that I responded on the initial call —

9 Q Okay.

10 A —to the scene.

11 Q Tell these ladies and gentlemen what you
12 observed, Investigator, when you arrived at [REDACTED]
13 Barnwell.

14 A When I first arrived the fire department was very
15 busy trying to get the fire extinguished. I grabbed
16 my camera out of the car; and usually as an
17 investigator, if I didn't get to the scene early
18 enough I always start taking pictures and that's
19 primarily what I did. I took most all the pictures
20 and walked around the scene, and as I was walking
21 around the scene, of course, I was observing things.
22 And what I was observing was things up to what the
23 fire — where the fire was burning, where it wasn't
24 burning. And it always helps as an investigator if
25 you're there early on the scene you can look at

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1 areas where there's no fire, and you can pretty much
2 rule those out as a area of origin in the fire
3 because you're there, and it just eliminates a lot
4 of excess time of interviewing the firefighters and
5 asking where they saw the fire, what they seen, and
6 things like that because I observed it personally.

7 Q So the pictures -- Your Honor, I think we're
8 gonna use the Elmo. I didn't know if --

9 THE COURT: All right. Are they in
10 evidence?

11 MR. MEADORS: The ones I'm fixing to show
12 him are, just from briefly from yesterday.

13 THE COURT: Okay, good.

14 BY MR. MEADORS:

15 Q So Investigator, these pictures we've seen and
16 the pictures we're gonna introduce today, did you
17 take all of them?

18 A I did.

19 THE COURT: And these are already in
20 without objection; is that correct?

21 MR. MEADORS: That's correct. This is
22 State's No. 2. Mr. Brown is going assist me I
23 think.

24 BY MR. MEADORS:

25 Q This is State's 2. Do you recognize this?

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1 A I do.

2 Q Describe — this sounds like a crazy question,
3 but describe the fire to these folks.

4 A That's the backside of the house. That's the
5 overhang that was pretty well involved. There's a
6 concrete pad at the bottom of that overhang where
7 they walked at, but that's just the backside of the
8 house.

9 Q And State's Number 3, Investigator.

10 A That's the front view I took from the front yard,
11 probably about where the edge of the driveway was at
12 the corner of Barnwell Street.

13 Q Is there any part of the fire that appears to be
14 more intense than the other?

15 A If you look at that window, and I can't point to
16 it, but if you look at the window on the right hand
17 side you can see the flame is pretty bright and
18 curly, intense there as compared to the area more to
19 the left of it. But by that time the roof is gone
20 down and already burned out pretty much anyway.

21 Q Does that mean anything to you as an expert in
22 the field of arson detection that there's more heat
23 and more air than the other?

24 A It was an area that I wanted to certainly look at
25 after the fire was put out just to see what was

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1 causing that more intense flame as opposed to other
2 areas in the house.

3 Q Let's tell these folks, Investigator, when you
4 get there, I mean, just practically what's your job,
5 what are you trying to do?

6 A I'm trying to find out what started the fire.

7 Q Okay.

8 A And of course we're looking at, as I said, I look
9 at if we arrive on scene early enough I can look at
10 burned areas versus unburned areas. I can watch the
11 path of the fire travel as the fire department
12 extinguishes it because sometimes they can't get to
13 the fire itself and it just keeps moving through the
14 resident. So if I can watch it and see that where
15 the fire is going, then I can eliminate those areas.

16 Q Were you aware that there may be some individuals
17 still in this house when you got there?

18 A I was.

19 Q All right. And in your opinion when you got
20 there could anyone in the house have been saved?

21 A I don't think so. The fire was so intense when I
22 arrived there it was that the fire department
23 wouldn't commit anybody into that for rescue
24 purposes.

25 Q They wouldn't commit anybody for rescue purposes?

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1 A Yeah, because the fire was so intense that if
2 anybody was there there was — it would have been a
3 recovery, not a rescue.

4 Q I'm going to show you State's 13 which is also in
5 evidence. What is this?

6 A That's a side of the house that's a little bit to
7 the left of the picture, the first picture we looked
8 at where it showed the overhang area which would
9 have behind it on the backside to the right of that
10 photograph.

11 Q And State's 14?

12 A That's the corner of what we just looked at where
13 the two firemen are standing. That's just that
14 corner of that previous picture.

15 Q So you photographed the fire?

16 A Yes.

17 Q And can you do anything before the fire is
18 extinguished.

19 A Not really, not from an investigative standpoint
20 other than just look and observe.

21 Q At some point the fire department put out the
22 fire, correct?

23 A Yes.

24 Q And what did you do after that?

25 A I was still looking at, looking around as an

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1 investigator. I was trying to determine the area of
2 the origin of that fire and trying to eliminate
3 other areas where there was no fire, where there was
4 no concern as a point or barrier or origin.

5 Q How long were y'all — well, how long were you
6 out there?

7 A I was there pretty much all night long.

8 Q Okay, so you got there on June 1st, 2013?

9 A Yes, sir.

10 Q And tell the -- you say pretty much all night.
11 Now what was your schedule that night, the next day?

12 A The -- after the fire was out and I was still
13 looking at various things, aspect from an
14 investigative standpoint, the fire department was in
15 the process of doing what we call overhaul once the
16 fire is extinguished. Then they have to look for
17 hidden fire and putting out hot spots and things
18 like this. Of course, that's a time consuming
19 thing. So while they were doing that I was still
20 looking at investigative standpoint and looking
21 around to see what I could find. I was still taking
22 pictures.

23 Q Would you look at what's been marked as State's
24 16 through 28, and were these pictures you took and
25 do they relate to your testimony in what you did

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1 next in the investigation?

2 A They do.

3 MR. MEADORS: I don't think I've reviewed
4 all these with counsel. Just beg the Court's
5 indulgence.

6 THE COURT: All right.

7 MR. GRIFFITH: No objection, Your Honor.

8 THE COURT: State's 16 through 28 are
9 admitted without objection.

10 (WHEREUPON, State's Exhibits Nos. 16
11 through 28 were admitted into evidence.)

12 BY MR. MEADORS:

13 Q This is State's 16, Investigator, what is this?

14 A That's a picture of the backside of the house.
15 If you go up in that right-hand corner, that goes up
16 into the kitchen area. There's some outside steps
17 there.

18 Q And what time of day was this taken?

19 A This would have been the next day I believe. It
20 was daylight. It was after the fire was pretty well
21 extinguished and the fire department was, had left.

22 Q So this is June 2nd of 2013?

23 A I think so. We were doing the investigation part
24 at that point.

25 Q The fire happened on the 1st, correct?

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1 A Yes.

2 Q Okay. The next morning would have been the 2nd
3 or the next day?

4 A Yes.

5 Q State's 17?

6 A That's one of the rooms in the house. If you
7 remember the picture that showed the overhang where
8 the firemen were standing, that window that's right
9 in the center, that's the doorway where the firemen
10 were standing on that one corner of the previous
11 picture we looked at. It appears to be like a shop
12 or garage area. There's a toolbox in there. And of
13 course, all that wood and stuff for the floor joists
14 that had fallen and burned through from the fire.

15 Q Are you trying to document the whole house?

16 A Yes, best I can.

17 Q State's 18?

18 A Of what I can get to.

19 Q Sir?

20 A Of what I can get to, yes, sir.

21 Q State's 18?

22 A That's the same picture, just a little bit
23 different angle looking or back to it. The one at
24 the room in the front comes off that room. There's
25 a door right there at the lower left-hand corner.

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1 That goes out to that overhanging patio area, and
2 the steps left of the step risers you can see them
3 going up the wall, goes up to the ground level floor
4 of the house.

5 Q You were talking about down here at the bottom
6 left where there's a doorway here?

7 A Yes.

8 Q And that goes into what?

9 A That goes outside to that back area, that patio
10 area.

11 Q State's 19?

12 A That's a kitchen area. And the morning after we
13 started working at it, we're looking for burn
14 patterns and anything that might have caused that
15 fire. And generally, we clean the floor to look for
16 burned patterns, things like that.

17 Q States' 20?

18 A This is just a different view of the kitchen
19 area. You got the refrigerator on the left-hand
20 side and the stove on the right. If you look around
21 right behind that stove and you go out to the right
22 of that, that's where those back steps were at that
23 we looked at in the previous picture going to the
24 outside.

25 Q State's 21?

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1 A That's another picture of the house as we were
2 cleaning it and digging it out looking for burn
3 patterns.

4 Q When you say "we," who else is assisting or who
5 all is involved in the cleanup?

6 A We had the fire department, the fire department
7 investigators there, myself. I think we had one or
8 two, one guy from the Sheriff's Office besides
9 myself. And I believe at this point when I was
10 doing this the guys from SLED was there.

11 Q Okay. We have Bryan Wright here from SLED; is
12 that correct?

13 A Yes, sir.

14 Q This is State's 22. What is that?

15 A The same area. That shows the kitchen and it
16 shows the refrigerator right there on the right-hand
17 side. If you can follow that path around, it goes
18 out to the front door of the house; and if you look
19 right into the background you can see just the top
20 of that wall where the stairs were at from a
21 previous picture.

22 Q 23 is another angle of the same picture?

23 A Same thing. It's looking back from the opposite
24 direction. The refrigerator is to the left, the
25 stove is on the right, looks like the washer and

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1 dryer in the upper right-hand corner upper center
2 corner of the house of the photograph.

3 Q State's 24 there's seems to be, is that a back
4 house or a shed in the back of the top right of 24?

5 A Yes.

6 Q So would that be the back yard?

7 A That's the back yard.

8 Q State's 25?

9 A Another picture of the kitchen area and that
10 hallway where we were cleaning it.

11 Q 26?

12 A That's a picture of the downstairs area, which I
13 call the downstairs. It was the back side of the
14 mouse that would have been dug out from the bank.
15 That's the staircase right there. You can see the
16 first two, the first couple of steps on the
17 left-hand side. The rest of it is the two by fours
18 that attach to the floor. You can see part of the
19 floor, or the wall joist in that corner, and there
20 was an entrance there where you don't see the seal
21 plate and that was probably a storage area
22 underneath the steps.

23 Q Right here you're saying where the two steps are?

24 A No, back to the top right-hand corner is the,
25 what appears to be a doorway that goes into probably

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1 a storage area under the steps.

2 Q I understand that. On State's 26 though, to the
3 middle left, do those appear to be steps there?

4 A That's the first couple of steps of that stair
5 case.

6 Q Okay. And the rest of the ---

7 A That's all that was left of it.

8 Q The rest of the stair case is gone?

9 A Yes.

10 Q Just a couple of more of this and we'll move on.
11 State's 27?

12 A That's a picture of the same thing, just from a
13 different angle. You can see the back door I was
14 referring to, the area in the left-hand side, that
15 square area, was a, what we thought appeared to be a
16 bathroom or shower in there. And on the right-hand
17 side about center you can see what is left of the
18 staircase as well.

19 Q Finally, for these group of pictures, State's 28.

20 A That's a same view looking back standing at that
21 doorway looking into that room. You can see the
22 steps on the left-hand side and just the edge of the
23 buildup area where the bathroom was at.

24 Q How many levels did this house have?

25 A It had two I believe. It had the floor level,

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1 the ground level, and then where we're looking at
2 these photographs here on the backside it looks like
3 it was dug out from the bank and built into the bank
4 of the yard.

5 Q So —

6 A Kind of like a split level house.

7 Q The main level, did you come in the front door
8 and then a bottom level underneath from behind?

9 A Yes, yes.

10 Q You ended up finding the bodies, right, of the
11 Toppers?

12 A We did. The firemen found them.

13 Q I don't want to get to that yet, but —

14 A All right.

15 Q You're an expert and been offered as an expert in
16 the field of origin and cause. Did — is it part of
17 your job is attempt to rule out — you're trying to
18 find out what started the fire?

19 A That's correct.

20 MR. GRIFFITH: No objection, Your Honor.

21 MR. MEADORS: 29 through 33, Your Honor.

22 THE COURT: 29 through 33 are admitted.

23 (WHEREUPON, State's Exhibits Nos. 29
24 through 33 were admitted into evidence.)
25

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1 BY MR. MEADORS:

2 Q Investigator, State's 29, please tell the ladies
3 and gentlemen of the jury, what's that?

4 A That's a kitchen stove. That photograph was
5 taken the night of the fire while we were initially
6 there as I was doing the initial photographs. You
7 can see that's the hood, the hood above it that's
8 falling down and there's a tea kettle or key pot on
9 the stove.

10 Q At this point in your investigation did you know
11 what started the fire?

12 A No.

13 Q Okay. Did you attempt to make a determination
14 whether the stove had started the fire?

15 A I did.

16 Q This is State's 30.

17 A We did that by cleaning off the stove and looking
18 at the burner top, the glass top part of the stove
19 just looking for burn damage.

20 Q And did you see any?

21 A There was burn damage there; but after, as you go
22 through the photographs you'll see that we were able
23 to rule out stove had started it and I'll explain
24 that in a minute.

25 Q State's 31?

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1 A You see the tea pot or the water pot, the kettle
2 on the stove. The stove is cracked from heat; but
3 if you look at the kettle itself, it's still red and
4 shiny just like it was brand new. And from
5 experience, if the fire had started on the stove
6 there would have, that would have been burned black,
7 the paint would have been gone. And if it had been
8 on a conventional stove that had the ring burners
9 you would see the rings on that bottom of the pot.
10 In this case, if it was a glass top stove it would
11 be clean, it would be no rings because there's no
12 rings on a glass top but it would be all burned
13 away. It would then be black.

14 Q And you're talking about the crack on the glass
15 top. This is State's 32. Is that what you're
16 talking about?

17 A The crack right running down the center from that
18 the center burner coming out towards the front right
19 burner.

20 Q But based on State's 31 and your observation and
21 experience of the stove and the kettle or pot,
22 what's your opinion as to whether or not the stove
23 caused this fire?

24 A We eliminated the stove as source of ignition for
25 that fire.

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1 Q Now State's 33, can — you had this grouped in
2 the same pictures.

3 A We did the same thing with that one. That's the
4 hot water heater —

5 Q Before we get to that —

6 A I'm sorry.

7 Q No, it's my fault. Was the stove on the first
8 level as we'll call it, not the second level?

9 A The stove was, yeah, on the first level.

10 Q Okay. Go back down to 33 now, I apologize. Back
11 you started to say something about hot water heater
12 I think.

13 A We did the same thing in the process of
14 elimination the best we could find, to eliminate all
15 accidental causes. And we looked at the water
16 heater and always ruled that as out as a source of
17 ignition for the fire.

18 Q How did you do that?

19 A By looking at the wiring and looking at the burn
20 patterns around it.

21 Q So it's your opinion that did the hot water cause
22 the fire at [REDACTED]?

23 A No, sir.

24 MR. MEADORS: Beg the Court's indulgence.

25 THE COURT: Yes, sir.

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1 MR. MEADORS: And may I approach.

2 THE COURT: You may.

3 BY MR. MEADORS:

4 Q I show you what's marked 60, 61, 62, 63, 64, 65,
5 66. Do you recognize those?

6 A I do.

7 Q And do those relate to your testimony or your
8 testimony that's coming up?

9 A It does.

10 Q And as far as State's -- well, let's just keep it
11 in order.

12 MR. MEADORS: May it please the Court.

13 THE COURT: Yes, sir.

14 MR. MEADORS: Your Honor, at this time
15 we're offering 60 through 66. There is no objection
16 to 64 through 66. There is an objection to 60, 61,
17 62, 63. We discussed this yesterday. There's one
18 we reviewed with Your Honor yesterday.

19 THE COURT: All right, 64 through 66 are
20 admitted without objection. We had a in-camera
21 hearing yesterday where I went over the photographs,
22 excluded some, required some editing of others; but
23 the ones, 61, 62, 63 are admitted over your
24 objection.

25 MR. GRIFFITH: Thank you, Your Honor,

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1 noting the objection.

2 THE COURT: Yes, sir.

3 (WHEREUPON, State's Exhibits Nos. 61, 62,
4 63, 64, 65, and 66 were admitted into
5 evidence.)

6 MR. MEADORS: These are the photos of Mr.
7 Topper, Your Honor.

8 BY MR. MEADORS:

9 Q At some point in the investigation were bodies
10 discovered?

11 A Yes, sir.

12 Q And do you know which body was found first?

13 A Ms. Topper was found first.

14 Q Okay. Where in the house was Ms. Topper found?

15 A She was in the kitchen right in the area between
16 the stove and the refrigerator.

17 Q I ask you to look at 57, 58, and 59 and do they
18 relate exactly to what you just said?

19 A They do.

20 MR. MEADORS: Your Honor, these are 57,
21 58, 59. There was objection to 57 and 58 without
22 objection. 59 was the —

23 MR. GRIFFITH: Redacted.

24 MR. MEADORS: Picture of Ms. Topper that
25 Your Honor instructed us to redact and we did.

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1 THE COURT: Okay, very well. Over your
2 objection they are admitted into evidence.

3 MR. GRIFFITH: Thank you, Your Honor.

4 (WHEREUPON, State's Exhibits Nos.

5 57, 58, 59 were admitted into evidence.)

6 BY MR. MEADORS:

7 Q Investigator Blair, this is what's entered as
8 State's 57. Can you tell the ladies and gentlemen
9 what is this?

10 A That's the area where Ms. Topper's body was
11 removed from. Whenever we have a fatality in a fire
12 we always take pictures of the area after the body
13 is removed, and what that shows is the protected
14 area that was on the kitchen floor indicating that
15 she was there prior to when the fire started. If it
16 had been otherwise, then she might have, there might
17 have been some burned area there.

18 Q So the —

19 A That was her body was protecting that floor.

20 Q What does that mean to you as an investigator?

21 A That she was there before that fire got to that
22 point and burned. Everything was burned around it.

23 Q And her body kind of protected that part of the
24 floor?

25 A Yes, sir.

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1 Q What area of the house was this?

2 A That's the kitchen, the kitchen area.

3 Q And what's right to the — if I'm facing like I'm
4 facing right now, what's right to the left of the
5 body diagram?

6 A I think that is the stove, the corner of the
7 stove.

8 Q Let me show you State's 20. I'm gonna put it
9 right on top of State's 57, okay?

10 A All right.

11 Q Looking at State's 20 in relation take you back
12 to 57, what would be her body be next to?

13 A Right there by the refrigerator.

14 Q So it's the refrigerator, not the stove?

15 A Yeah, that's the refrigerator on that side.

16 Q And State's 58, is that another angle of the body
17 silhouette where it was laying?

18 A Yes, it is.

19 Q Now at His Honor's instruction we have redacted
20 State's 59, Investigator. Did you take this photo?

21 A I did.

22 Q And what is this?

23 A That's the upper torso of Ms. Topper and her arm
24 coming up to right-hand side, and right in the
25 center of the photograph is her skull.

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1 Q Was she on her back?

2 A I'm sorry?

3 Q Can you tell, was she on her back?

4 A I think she was on her back, yes, sir.

5 Q When Ms. Topper was discovered were you there
6 when the, her body was taken?

7 A Yes.

8 Q And was it taken to the pathologist?

9 A It was put in a body bag and the coroner's office
10 took it.

11 Q Approximately what time was Ms. Topper found?

12 A That I'm not sure. It was later that night after
13 the initial fire during the overhaul process.

14 Q Okay.

15 A It might have been 11, 11, 12:00, give or take a
16 little bit.

17 Q The fire is out obviously?

18 A Yes.

19 Q At some point was Mr. Topper found?

20 A He was found later on.

21 Q Okay. That next?

22 A The same night I think he was — they found him
23 2:00, 1:30, 2:00 in the morning.

24 Q This is State's 60. Can you tell the ladies and
25 gentlemen of the jury what is this?

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1 A That was one of the initial photographs of
2 Mr. Topper when he was found.

3 Q State's 61?

4 A That's him also as we started to what we call the
5 layer method. We started to dig him out and take
6 the debris down a little bit at the time and just
7 uncover him like an archeologist does. We do the
8 same thing with a body as to look for evidence as we
9 take it down to remove the body. And if you look up
10 in the, on the mid, first, third of the upper
11 right-hand corner just to the left of, lower to the
12 left of the tag you can see his head.

13 Q So you said like an archeologist. You find
14 something and is it —

15 A You take it down layer by layer.

16 Q Okay. Trying to protect the body?

17 A Trying to protect the body and looking for
18 evidence.

19 Q So give us an idea, when you first see the body,
20 I mean, you see it here, are there ashes all around
21 it?

22 A Yes, sir, that's the first picture we just looked
23 at.

24 Q As you're taking off the layers are you taking
25 pictures?

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1 A Yes.

2 Q And State's 62?

3 A I did. That's the body as we were starting to
4 take it down, and there's more of him exposed now
5 than was in the first pictures.

6 Q Go back to 61 please, sir. And top left to
7 middle, and if I could use this pointing right here
8 on the screen, what is that?

9 A That's part of the stairway, part of the one
10 lower two steps of the stairway.

11 Q So referring back to State's 28, is that stairway
12 depicted in State's 28 that we see here in State's
13 61?

14 A Yeah, I think that's just right, the lower corner
15 of it on the left-hand side right about where your
16 finger was at.

17 Q Okay. 62?

18 A That's Mr. Topper, again, as we started digging
19 him out.

20 Q What is the two for?

21 A That's just a tag that I put down to identify for
22 my photographs.

23 Q You prepared a diagram, didn't you?

24 A I did.

25 Q Do you have that with you?

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1 A I don't. I think you have it somewhere.

2 Q I think the Captain has it. We'll handle it in
3 just a second. State's 63?

4 A That's not a good shot, but that's part of Mr.
5 Topper in that area. You can see the steps in that
6 upper right-hand corner again of the photograph.

7 Q You see more of the steps there but is this
8 before Mr. Topper was dug out?

9 A He was early on in digging him out at that point,
10 yes, sir.

11 Q State's 64?

12 A After we dug, after he was dug out and turned
13 over I took a sample of the clothing that he was
14 wearing and we believe it to be part of his
15 underwear, what was left of his underwear, and I put
16 that in the can and took that as a sample and that
17 would have been item number 3.

18 Q Did you document that picture of the underwear
19 and the body?

20 A We did.

21 Q I believe His Honor correctly ruled that we could
22 not show that, but you did document that you —

23 A Yes.

24 Q It was his underwear?

25 A Yes. When we rolled him over it was right there

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1 under his back.

2 Q And you took a sample of that underwear?

3 A Yes, I took the actual underwear and put it in a
4 can, part of it.

5 Q And did you take a sample of anything else in
6 that area?

7 A Just some fire debris and stuff that came up with
8 it.

9 Q Why did you do that?

10 A Just to see if there was anything there relating
11 to any type of ignitable liquids.

12 MR. GRIFFITH: No objection.

13 THE COURT: Which exhibit is this?

14 MR. MEADORS: Your Honor, I'm gonna get
15 him to identify it first.

16 THE COURT: They're all without objection.

17 MR. GRIFFITH: Without an objection.

18 (WHEREUPON, State's Exhibits Nos. 67-A,
19 67-B, 67-C were marked for identification
20 and admitted into evidence.)

21 THE COURT: Without objection.

22 MR. GRIFFITH: Without objection, Your
23 Honor.

24 THE COURT: All right, thank you.

25

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1 BY MR. MEADORS:

2 Q I'm gonna show you what's in as 67-A. I was just
3 asking you about your placard or the, number 3 in
4 State's 64. Is that the can that's depicted in
5 State's 64?

6 A It appears to be. It's pretty well rusted right
7 now, but it looks like my number is on it.

8 Q A couple of things. Again, what's in there?

9 A That would be the fire debris from around him and
10 what remains of his underwear that he was wearing.

11 Q And again, why are you collecting that?

12 A Just to have it tested by the lab to see if
13 there's any type of flammable liquids or fibers
14 found on it.

15 Q One of your jobs or the reason of your
16 investigation is to discover whatever, if you can?

17 A The origin and cause of a fire.

18 Q Okay. So Mr. Topper's underwear and a sample of
19 the debris near his body —

20 A From underneath him.

21 Q —in State's 67?

22 A Yes.

23 Q From underneath him?

24 A From underneath him.

25 Q Okay. What do you do with that? What did you do

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1 with that?

2 A I turned it into our lab at the Sheriff's Office
3 and he processed it.

4 Q State's 65?

5 A That's another sample that I took in the area
6 after Mr. Topper's body was removed, and it's fire
7 debris from around the steps there, bottom of the
8 steps.

9 Q And can you see the steps in State's 65?

10 A Yes, sir.

11 Q Where was Mr. Topper's head in relation to the
12 steps?

13 A His head would have been back over to the right
14 side to the right of the blue gloves.

15 Q So this is fire debris from near his body?

16 A Yes.

17 Q And that is in State's 67-B?

18 A That should be 4. Yes, that's it right there.

19 Q And again, you have number 4 marked here?

20 A I do.

21 Q Does that correspond with the 4 in this picture?

22 A Yes.

23 Q State's 66, Investigator Blare?

24 A All right. I'm sorry, I didn't hear you.

25 Q State's 66, what's that?

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1 A That's another sample we took right in that area.

2 Q And — beg the Court's indulgence.

3 (WHEREUPON, State's Exhibit No. 68

4 was marked for identification only.)

5 BY MR. MEADORS:

6 Q Do you recognize State's 68?

7 A It's a diagram I did of the scene.

8 Q A drawing you did of the scene?

9 MR. GRIFFITH: Without objection, Your
10 Honor.

11 THE COURT: Without objection State's 68
12 is admitted into evidence.

13 (WHEREUPON, State Exhibit No. 68 was
14 admitted into evidence.)

15 BY MR. MEADORS:

16 Q And it's admitted, but 67-C, is this number 5
17 that's depicted in State's 66?

18 A Uh-huh, that's 5 right there.

19 Q You have to say yes for the record, I'm sorry.

20 A Yes, sir.

21 Q And this again is what in here?

22 A Fire debris.

23 Q Okay. Did you prepare a drawing based on your
24 observations at [REDACTED] Barnwell?

25 A I did.

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1 Q And is this to-scale?

2 A No.

3 Q Now let's look specifically back at the items we
4 just put in 67-A, -B, and -C. Does it show on your
5 diagram where you collected those?

6 A You see item 4 on the steps and item 3 is right
7 by the body and 5 is over right in the corner by the
8 doorway going into the other room.

9 Q Where is item 4?

10 A On the steps. Looks like on the second step.

11 Let me back up. I can't tell on this one.

12 Q This is State's 65.

13 A It should be right on the steps.

14 Q Is that the step depicted in State's 65?

15 A That's the steps, yeah. I don't see it on that
16 drawing.

17 Q And looking back at State's 28, is this the same
18 area after it's cleaned up?

19 A Yes.

20 Q I show you State's 34, 35, 36, 37, 38. You
21 recognize those?

22 A Yes.

23 Q And did you take them?

24 A I did.

25 Q Accurately reflect the condition of the house

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1 when you took the picture?

2 A They do.

3 MR. MEADORS: 34 through 38 without
4 objection, Your Honor.

5 THE COURT: State's 34 through 38 are
6 admitted without objection.

7 MR. GRIFFITH: Yes, Your Honor.

8 (WHEREUPON, State's Exhibits Nos. 34
9 through 38 were admitted into evidence.)

10 BY MR. MEADORS:

11 Q With the help of the rest of your department, the
12 fire department, and SLED, give these folks an idea
13 how high were the ashes after the fire in the house?

14 A They were pretty deep in that lower area because
15 everything had burned down. The roof had burned,
16 what remained of the roof, that first floor evolved
17 down into that area.

18 Q So how did you or the rest of these folks remove
19 the ashes?

20 A With shovels and a lot of labor.

21 Q So you're literally shuffling ashes and moving it
22 out?

23 A Yes, sir.

24 Q In these pictures, 34 through 38, along with some
25 of the others, they depicted after it was cleaned,

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1 correct?

2 A Yes.

3 Q Now going back to your drawing, 68, and thinking
4 about keeping 34 in everybody's mind, Mr. Topper's
5 body is where?

6 A Right at the bottom of the steps in that drawing.

7 Q This is Mr. Topper, correct?

8 A Yes, where you got your marker at.

9 Q So that's Mr. Topper?

10 A Yes.

11 Q 35?

12 A That's the upstairs area. That's the kitchen
13 area and hallway coming out to the front door.

14 Q 36?

15 A That showing a view of the stairs from the top
16 down after it was cleaned up.

17 Q Can you tell anything or from like looking at the
18 step here about that, any burn pattern or way the
19 fire was burning?

20 A It was so hot and burning in that area the way
21 the rest of the steps was remained, was burned away,
22 we couldn't really tell too much burn patterns in
23 that area, from that area. Everything was down on
24 top of everything.

25 Q State's 37?

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1 A That's the kitchen area.

2 Q And Ms. Topper would have been in here?

3 A Yes, sir.

4 Q And 38?

5 A That's the kitchen area around that front hall
6 way going out to that front door again.

7 Q You took hundreds.

8 A I took a bunch of them.

9 Q This is what we've narrowed it down to, correct?

10 A Yes.

11 Q Going back to your diagram State's 68, you said
12 this is Mr. Topper?

13 A You said —

14 Q Ms. Topper here?

15 A That's Mrs. Topper.

16 Q And is this — what level is this on?

17 A That would have been the first level, the ground
18 level as you come in from the front door from the
19 yard.

20 Q State's 39, 40, 41, and 42, did you take these
21 and do they relate to your testimony?

22 A I did, and they do.

23 MR. GRIFFITH: Your Honor, we don't object
24 to the pictures, but we do object to the relevance
25 of the sure volume of the pictures depicting the

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1 number.

2 THE COURT: Are these cumulative or do you

3 —

4 MR. MEADORS: No, sir. These are actually
5 from SLED, put these placards down there. Judge,
6 we've narrowed it down. They don't show bodies or
7 anything, just different objects that were placed by
8 SLED but he took the pictures. That's all I want to
9 ask him.

10 THE COURT: All right, let me see the
11 attorneys up here for just a second.

12 (WHEREUPON, counsel approached the
13 Bench for an off-the-record discussion.)

14 THE COURT: Ladies and gentlemen of the
15 jury, we're gonna take a recess at this point in
16 time. Please do not discuss anything about the case
17 while you're back there. We'll take a 15 minute
18 recess, then we will resume the testimony.

19 And you're on the stand so don't talk to
20 anybody.

21 THE WITNESS: Yes, sir.

22 (WHEREUPON, the jury was removed from the
23 courtroom at 11:00 a.m.)

24 THE COURT: All right, court will be in
25 recess for 15 minutes, till 11:15.

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1 (WHEREUPON, a recess was taken from the
2 proceedings.)

3 (WHEREUPON, State Exhibits Nos. 69 through
4 72 were marked for identification
5 only.)

6 THE COURT: Just for the record, I was
7 talking to the one we were talking about air force
8 when not talking about anything the case.

9 MR. MEADORS: Judge, when the jury comes
10 back I think, we've been working during the break
11 and we have 39 through 54 without objection.

12 THE COURT: All right.

13 MR. MEADORS: And 7 through 10 without
14 objection — excuse me, strike that. 69, 70, 71,
15 and 72 without objection, which are the final —

16 THE COURT: Is that correct?

17 MR. GRIFFITH: Yes, Your Honor. We had an
18 opportunity to look through them and no objection.

19 THE COURT: Very well.

20 (WHEREUPON, State's Exhibits Nos. 39
21 through 54 and 69 through 72
22 were admitted into evidence.)

23 (WHEREUPON, the jury was returned to the
24 courtroom at approximately 11:19 a.m.,
25 and the following proceedings commenced

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1 in open court.)

2 THE COURT: Mr. Meadors, you may continue.

3 MR. MEADORS: May it please the Court.

4 MR. MEADORS: Your Honor, Mr. Griffin and

5 I have reviewed State's 39 through State's 54 and

6 we're offering them without objection.

7 THE COURT: Is that correct?

8 MR. GRIFFITH: Yes, Your Honor, no

9 objection.

10 THE COURT: They're admitted.

11 MR. MEADORS: And in addition, Your Honor,

12 State's 69, 70, 71, 72 without objection.

13 THE COURT: All right, very well.

14 MR. GRIFFITH: No objection.

15 BY MR. MEADORS:

16 Q I'm going to attempt to go to those items as
17 efficiently as I can, Investigator Blair. Before I
18 get to that, I want to look back at State's 68. I'm
19 gonna have to say, we were having a hard time
20 finding it on number 4, correct?

21 A Yes, number 4.

22 Q If you look right here, right there. Is that
23 number 4?

24 A That is number 4, that's correct, to the entrance
25 of the doorway going into that other room.

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1 Q There appears to be a circle right beside which I
2 think I might have thought was 4 for a second. What
3 is that circle for?

4 A I probably just put that as a circle wherefore I
5 pulled the evidence from. I think my circle and 4
6 kind of ran together.

7 Q So 3, 4, 5?

8 A 5.

9 Q Is that correct?

10 A I think so. No, I take that -- no, 5 was on the
11 corner back here by the doorway.

12 Q 5 right here?

13 A 5 would be right there.

14 Q So the samples that we've already been in as
15 67-A, -B, and -C, are 3, 4 and 5 near Mr. Topper's
16 body.

17 A Yes.

18 Q Did SLED arrive to help in the investigation?

19 A They did.

20 Q And was that several days later after a search
21 warrant was issued?

22 A That was the day we did the search warrant.

23 Q Would that have been June 5th?

24 A I think that was the correct date.

25 Q And this gentleman back here, Bryan Wright, did

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1 he bring his dog?

2 A He did.

3 Q Just for these purposes, looking at State's 39,
4 there appear to be different colored, I call them
5 placards or whatever, markers than yours. Whose are
6 these markers?

7 A Those are the cones SLED use where his dog hit on
8 areas.

9 Q Okay. So State's Number 40, there's a 2 —
10 there's a 2, 5 and 3 here, correct?

11 A Yes, sir.

12 Q Those are whose cones?

13 A Those are SLED's.

14 Q Now at this point when the dog came on, I think
15 it was testified June 5th, was the body already
16 gone?

17 A Yes.

18 Q Had the debris been cleaned up?

19 A Yes.

20 Q Okay. State's 41, were these more cones?

21 A Yes, those side cones.

22 Q And those were there why?

23 A That's where the dog hit.

24 Q And you took these pictures?

25 A I did.

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1 Q Now had you already collected -- back to State's
2 40. Had you already collected in this area where
3 the body was there of Mr. Topper?

4 A We did.

5 Q Did you make more collections after that based on
6 what the dog, where the dog went through a few days
7 later of that area?

8 A I did.

9 Q Of that area?

10 A Yes, sir.

11 Q Did you take again?

12 A Yes.

13 Q 3, 4 and 5. Looking at State's 3, 4, 5.

14 A That is right at the top of the wall. If you
15 remember the photograph where we showed the bathroom
16 down in that lower part, that's right at the top
17 corner of that wall.

18 Q And there's a 10 and a 7 in here, explain that.

19 A The 10 is my 10 where I took the sample from.
20 The 7 is the SLED cone where his dog hit on the...

21 Q Do you have 10 in one of those cans of where you
22 took the sample?

23 A 10 is in that can right there. It's in that can.

24 Q And your number, where is that can on in front of
25 us right here?

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- 1 A How about right here, right here. That's 10.
- 2 Q And that's number 10?
- 3 A That's number 10.
- 4 Q And this has been entered as State's 69, correct?
- 5 And this is a, what's in here?
- 6 A Fire debris.
- 7 Q Fire debris from the area that's depicted in
- 8 State's 45.
- 9 A Yes.
- 10 Q State's 46, it's an 8 and a 5. Would you explain
- 11 that.
- 12 A 5 is where the SLED dog hit. 8 is where I pulled
- 13 my sample from my sequence of numbers.
- 14 Q We're going back to our drawing on 68. Is there
- 15 a — down at the bottom right there appears to be a
- 16 reference to Sheriff's Department number and SLED
- 17 number, correct?
- 18 A That's right.
- 19 Q And that's what we're going over right now?
- 20 A Yes.
- 21 Q And so number 8 of yours according to your scale
- 22 is number 5 of SLED?
- 23 A SLED'S 5.
- 24 Q And would 8 be on the stairwell in your 68?
- 25 A Right on the stairs.

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- 1 Q No question that's an 8, is it?
- 2 A Right behind that bottom stair.
- 3 Q Did you take a sample from there?
- 4 A I did.
- 5 Q And is that what's in 71?
- 6 A That's it, yeah, that's correct. That's number
- 7 8.
- 8 Q On your 68 is there a 9 on there?
- 9 A Yes.
- 10 Q Is that right here?
- 11 A Yes.
- 12 Q And looking at State's 47, and again, you took
- 13 these pictures?
- 14 A I did.
- 15 Q There's a 2 and a 9. Again, explain that for the
- 16 jury.
- 17 A 2 again is the SLED cone where the dog hit and 9
- 18 is my number for that sample I pulled in my
- 19 photograph.
- 20 Q And State's 72 would that contain the sample —
- 21 A That's it.
- 22 Q —number 9?
- 23 A Debris from 9.
- 24 Q And again, for the record, that's depicted in
- 25 State's 47, correct?

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1 A Yes.

2 Q The picture?

3 A Yes.

4 Q And finally, State's 48 is a picture of SLED'S
5 cone 7 and your —

6 A Number 10.

7 Q —placard or marker number 10, correct?

8 A Yes, sir.

9 Q Can you explain that?

10 A That's the same thing. 7 is where the dog hit at
11 and that's SLED'S marker. 10 is mine and the
12 photograph and the can is fire debris where I
13 collected from the area.

14 Q Again, was this several days after you took the
15 initial samples, correct?

16 A Yes, this is on the day of the search warrant.

17 Q And State's 70, number 7 or number 10 depicted in
18 — what's that number right there?

19 A 48.

20 Q 48? That's the sample?

21 A Yes.

22 Q Just a few more pictures, I'm about — State's
23 51, why were those cones there?

24 A Those were locations where the SLED dog hit also.

25 Q Were any samples taken from there?

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1 A I think we took number 4 is a sample I don't
2 think we took the 1 in the corner.

3 Q And where in the house was State's 51?

4 A That's down in the area where Mr. Topper's body
5 was found. If you look right in the left lower
6 corner of the photograph you can see particles up to
7 the stairway.

8 Q Here?

9 A Yes.

10 MR. MEADORS: Beg the Court's indulgence.

11 THE COURT: Yes.

12 BY MR. MEADORS:

13 Q Please give — on State's 39 you testified
14 earlier about amount of debris that was there. If
15 you look in this part of the picture on State's 39,
16 what is that?

17 A That's that room that was right adjacent to the
18 bottom of the steps in the doorway going out to the
19 back patio area, and that's the room we did not do
20 anything. We didn't clean anything in that room.
21 That's just debris that's fallen down from the fire.

22 Q All that's debris, that room?

23 A Yes. That's probably the floor from that room
24 above it, as well as roof material.

25 Q So what we have in here what's cleared now, it

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1 was filled up with debris also?

2 A Pretty much.

3 Q Can you give the jury an idea — and I didn't
4 pass it around. But when you talk about you take a
5 sample from all these, either State's 7 [sic] or
6 State's 69, how much of a sample are you taking?
7 Are you taking a spoon? How much debris are you
8 collecting?

9 A I use about — try to get about three quarters of
10 the can full.

11 Q Investigator Blair, in your field of expertise
12 and after examining the home of [REDACTED] Barnwell and
13 viewing the bodies and collecting evidence, do you
14 have an opinion as to the origin and cause of the
15 fire at [REDACTED] Barnwell?

16 A Yes, we determined it was an intentionally set
17 fire using a flammable material.

18 Q Arson?

19 A Arson.

20 Q And what do you base that on?

21 A The samples we took, burn patterns, everything
22 all cumulative together and the area and the point
23 of origin.

24 Q And the burn patterns, explain that again for us
25 please.

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1 A Well, the burns pattern you look at where the
2 fire started; and if it starts in a room you can see
3 I'm looking on the room on the wall, if it was to
4 start on, say, at the bottom of this TV screen here,
5 it would burn up and outward in a V shape pattern so
6 the two by fours, the wall studs, would be burned
7 short closest to the area of origin and they would
8 get higher as the fire went from the fire.' So we
9 looked at all the burn patterns in the house and the
10 amount of total amount of fire damage in this
11 particular room we're talking about where Mr. Topper
12 was burned and where we found him. We determined
13 that was most likely the room of origin based on the
14 evidence, the patterns in there, the evidence as
15 well as the fact that room was just totally
16 destroyed by fire.

17 Q And I haven't asked you, I'm just curious, on
18 State's 39, I mean, is there a picture that depicts
19 the burn patterns?

20 A Not really, not a good pattern. It shows a
21 possibly pattern for the, that the dog hit on for
22 accelerant.

23 MR. MEADORS: Thank you, Judge. That's
24 all.

25 THE COURT: Mr. Griffin,

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1 cross-examination.

2 **CROSS-EXAMINATION**

3 BY MR. GRIFFITH:

4 Q Investigator Blair, you stated that based on your
5 experience you've identified this as arson. Could
6 you — and you said that it was because from a
7 certain location the fire burned, and it was higher
8 burnt above that location.

9 A It was — I'm not sure if I follow your question
10 or not.

11 Q Well, you described it as saying the origin was
12 down here because the boards above were burned
13 higher is what I heard.

14 A We're looking at that as an area or we could not
15 identify a point of origin. We're looking at that
16 room down there where Mr. Topper's body was found as
17 the area or origin. We couldn't, in a general area
18 we couldn't pin it down to a certain point.

19 Q Okay. Now is this particular part of the house
20 lower than the rest of the house?

21 A Yes, this is the lower part underneath the back
22 side.

23 Q So basically this is a part of the house where if
24 things were gonna fall down, that's where they're
25 gonna fall down into; is that right?

SW - J. BLAIR - CROSS

1 A That's correct.

2 Q And so it wouldn't necessarily — could it be
3 possible, excuse me, that a fire started higher and
4 fell down into this area?

5 A It'd have to burn through the floor all that
6 first to get down where we're talking about.

7 Q Was the floor above this burned?

8 A It was gone.

9 Q It was gone. And so it could be that a fire
10 started up higher and fell down into this area; is
11 that correct?

12 A It's possible, but in reality I don't think so,
13 but based on what we're looking at anything is
14 possible.

15 Q Okay.

16 A But what we're looking at, very center of that
17 area is the area of origin.

18 Q That is a theory of where the origin is; is that
19 correct?

20 A Yes.

21 Q So not necessarily in that area is where the fire
22 started, possible that it could have started some
23 other area?

24 A Not based on the burn patterns and stuff they
25 were looking at. It's — we centered it pretty much

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1 in that room down there.

2 Q But this is the lowest room in the house?

3 A Yes.

4 Q Everything above it was burned?

5 A Uh-huh.

6 Q And that means everything could have fallen down
7 into that hole or burned down into that hole; is
8 that correct?

9 A It could have.

10 Q Okay. And as, so as to the point of origin there
11 is a possibility that that was not the point of
12 origin?

13 A As I said, we didn't identify a point of origin.
14 We identified an area of origin. We couldn't pin it
15 down to a small point.

16 Q Okay, I won't ask it again. The samples that you
17 took from there identified in these cans, you said
18 that you were present when the SLED's dog hit in
19 that area?

20 A Yes.

21 Q And that caused you to return to those areas and
22 pickup areas?

23 A It did in some of the areas.

24 Q So in your initial investigation you did not
25 select those areas?

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1 A No.

2 Q So in your initial investigation to determine
3 whether this was an arson or not, you selected some
4 number and then you added to those later after SLED
5 had been there with their dog?

6 A We use the SLED dog as a tool to assist us in
7 determining that.

8 Q So looking at it you didn't identify those
9 particular items when you initially saw it before
10 SLED was there?

11 A We saw them, but we did not take a sample from
12 those areas.

13 Q Okay. So nothing stood out about it to you to
14 make you want to take a sample?

15 A No, because if you remember the photographs, some
16 of those areas it was pretty well burned once we
17 cleaned it out. There wasn't much there.

18 Q I understand. But, so at that time you were not
19 certain that it was an arson, or you just suspected
20 it was an arson? When did you make your decision?
21 Was it before or after SLED came in?

22 A Oh, afterwards, after everything was completed.

23 Q Okay.

24 MR. GRIFFITH: I have no further
25 questions, Your Honor.

SW - J. BLAIR - REDIRECT

1 THE COURT: Any redirect?

2 MR. MEADORS: Very briefly.

3 **REDIRECT EXAMINATION**

4 BY MR. MEADORS:

5 Q How do fires burn?

6 A Up and out.

7 Q And Ms. Topper's body, was the floor still intact
8 where her body was?

9 A Yes.

10 Q Thank you.

11 MR. MEADORS: That's all.

12 THE COURT: Any recross?

13 MR. GRIFFITH: No, Your Honor.

14 THE COURT: Thank you. You may step down.

15 MR. MEADORS: The State would call Bryan
16 Wright.

17 THE COURT: Mr. Wright, come forward to be
18 sworn.

19 THE CLERK: Place your left hand on the
20 bible, raise your right hand please. State your
21 name.

22 THE WITNESS: Bryan W. Wright.

23 WHEREUPON,

24 **BRYAN WRIGHT,**

25 having been duly sworn by the Clerk, testified

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1 as follows:

2 THE CLERK: Have a seat up here please.
3 Please state your full name, spell your last name
4 for the record.

5 THE WITNESS: Bryan W. Wright,
6 W-R-I-G-H-T.

7 **DIRECT EXAMINATION**

8 BY MR. MEADORS:

9 Q Good morning, Agent Wright.

10 A Good morning.

11 Q You're with the South Carolina law enforcement
12 Division?

13 A Yes, sir.

14 Q Agent, please relate to the jury your, who you
15 are, your background, your training, your
16 experience, and in particular your training and
17 education in the field of expertise I'm gonna offer
18 you today please.

19 A Yes, sir. Again, my name is Bryan. I live in
20 Greenville, South Carolina. I work for South
21 Carolina Law Enforcement Division commonly called
22 SLED, assigned to the arson unit. We basically work
23 around the state investigating fires. That's a
24 full-time job for us, and any type of post-class
25 scenes. Through this we have come to know that the

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1 theory of fire and stuff, we go back and study the
2 reason why fires do what they do so we have a lot
3 of, you know, experience in that. On this day I had
4 came to SLED about four years ago. I was a police
5 officer in a city called Mauldin for ten years. I
6 was investigator there. My dad worked fires also
7 there. Before then I was a fire fighter
8 volunteering and so I. While I was at Mauldin we
9 kind of worked with the fire department on a lot of
10 stuff. If, you know they needed help at a scene or
11 anything like that we would come out and help them
12 whether it be, you know, pulling hoses or just doing
13 whatever we could do, hand them a Gatorade. So then
14 I graduated from Limestone College in 2004 and began
15 my career at Mauldin. So in 2012 I left and came to
16 SLED and to do this full time.

17 I have a canine. Through this we have
18 taken a lot of classes. I'm a member of the
19 National Association of Fire Investigators, the
20 National Association of Fire Investigators with — I
21 have a CFEI, which is a certified fire and explosion
22 investigator certificate that's national certified.
23 I have taken numerous classes through the IWAI,
24 which is the International Investigation of Fire
25 Investigators. we have chapter here in South

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1 Carolina which as Investigator Blair mentioned, I am
2 part of that. Also, the National Fire Fighters
3 Association, I'm a member of that. So I have a lot
4 of field in it, been on the fire side of it and on
5 the police side of it. 2013 I had the opportunity
6 to go receive a police canine. My dog is a black
7 labrador retriever; he's six. He is an accelerant
8 detection canine referring to — he's not your
9 typical house dog or anything like that. He is a
10 tool that we use. And what he does is he tries to
11 find hydrocarbon which is in fuels: Gas, kerosene,
12 things like that. So a lot of times it's a great
13 tool because a scene like this it would be hard for
14 us to find something like that. So the way, — his
15 name is Gunner, works is, he, every morning we put
16 out a like a hide of gas, fifty percent gasoline,
17 which covers a wide spectrum of all kinds of, you
18 know, different accelerants. So every morning we'll
19 go out there and we'll work and I actually feed him
20 with my hands so he doesn't eat out of a dog bowl.
21 He eats out of my hand every day. We have to vary
22 the amount of food. We have to vary amount of time
23 we spend on that, and we also have to keep up with
24 how much work he's doing. So every day, seven days
25 a week, 365 days a year, vacations Christmas,

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1 whatever, he's with us. So that's how we build
2 this, you know, this relationship between a handler
3 and a dog. It's a pretty cool thing to see them
4 work. So in this case I received a call from my
5 lieutenant and said that Sumter County Sheriff
6 Office needed some help in, you know, investigating
7 this fire. This fire was, it took us a couple of
8 hours to get here, like I said, I live in the
9 upstate. So we get there, I meet with investigators
10 there. We decide to take my dog in through the area
11 of, you know, just kind of in the area general
12 'cause normally what I do is I bring him in and run
13 him around the areas even though it's full of debris
14 and the debris being the wood, you know, everything
15 that's fallen down.

16 Q Let me stop you before you get to the scene. So
17 you — and your canine is Gunner?

18 A Yes, sir.

19 Q Okay, you and canine Gunner are, y'all are, are
20 y'all a certified canine team?

21 A Yes, sir.

22 Q And you both are?

23 A Yes, sir.

24 Q And you've been offered as an expert in courts of
25 record of this, in this state, for arson detection

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1 to include origin and cause and also as a canine
2 accelerant detection, correct?

3 A Yes, sir, two times.

4 MR. MEADORS: Your Honor, at this time we
5 would offer Agent Bryan Wright with SLED as an
6 expert in the field of arson detection to include
7 arson and cause and also an expert in the field of
8 canine accelerant detection with this canine Gunner.

9 THE COURT: Any objection?

10 MR. GRIFFITH: Without objection, Your
11 Honor.

12 THE COURT: Ladies and gentlemen, just
13 like the last expert, you can give him the, his
14 testimony the weight that you deem that it deserves.
15 Of course you don't have to accept it, but I am
16 gonna determine him to be an expert on his own
17 behalf and as a dog handler of accelerant. All
18 right, thank you, you may proceed.

19 MR. MEADORS: Thank you, sir.

20 BY MR. MEADORS:

21 Q Were you there, like, the first day after the
22 fire had happened?

23 A No, sir.

24 Q As a matter of fact, how many days after the fire
25 did you —

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1 A I believe three to four days after.

2 Q Okay. So would you say if the fire was on June
3 1st, would you dispute it was around June 5th when
4 you and canine Gunner came?

5 A Correct.

6 Q Was a search warrant issued there for y'all to go
7 in and look?

8 A Yes, sir.

9 Q Tell the ladies and gentlemen of the jury what
10 did you do when you got to [REDACTED] Barnwell and
11 describe it to us?

12 A We get there, a lot of people there, a lot of the
13 fire department guys, Sheriff's Office, Sumter
14 County, those guys were pretty worn down. This
15 house, I still remember it, it was really a lot of
16 debris that had to be moved. So when we get there
17 there's a lot of debris in the base— I call it a
18 basement, the bottom floor. I mean, probably I
19 would say three, four feet deep. And it was all
20 melted together solid. And so it took us a good
21 probably eight hours, I would say, six to eight
22 hours just to dig that one room out upstairs.

23 Q Do you remember what the weather was like back in
24 this time period?

25 A That year we got a lot of rain. It was a year

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1 when the spring had rained like every day and we got
2 a lot of rain. It was not like flooding or anything
3 like that but just a lot of rain that year.

4 Q And what did that mean or how did that affect
5 you, if any, and Gunner?

6 A A lot of times people think, or a lot of people
7 don't think that dugs can actually smell that scent
8 under water or on the water or anything like that.
9 Well, it did rain a good bit and that was wet. So
10 it was definitely, it wasn't troubling but it was
11 concerning to know if he was actually gonna be able
12 to find anything with all that water and all that
13 rain which we thought may have could have washed
14 stuff away; but luckily, the three or four foot of
15 debris stopped that.

16 Q We showed this earlier, but State's 39 you talked
17 about debris. This is the doorway adjacent to the
18 downstairs. What kind of debris was there? You
19 talked about the amount of debris was there.
20 Looking at 39, we see this here in the doorway.
21 What kind of debris are we talking about in this
22 area?

23 A Most of this debris was from that area. And for
24 a fire investigation, if you look to the left of
25 that picture you'll see a doorway threshold.

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1 Q Here?

2 A Yes, sir. You don't want to throw that debris on
3 that doorway threshold. That's kind of an important
4 part. So you got to get that floor and basically
5 what we call layering away is we want to get that to
6 the original shape before that fire. So when that
7 fire, as it burns up all that debris falls down so
8 your sheetrock and our insulation and your two by
9 fours on your next floor and then your roofing
10 material, all that stuff falls down. So a lot of
11 times that in area where it's clean will actually,
12 it'll protect that area which is what we want to
13 see.

14 Q So this debris came from where?

15 A This debris came from some of this come out of
16 this room that we had dug out.

17 Q So some of it was from here.

18 A And the reason the other area of where that
19 debris is, it was unsafe, we had a wall. The brick
20 facade on the side was leaning in towards it, a lot
21 of wood had fallen so it was just unsafe for us to
22 go in.

23 Q What did you do when you first got there?

24 A Grabbed my shovel and started beginning to try to
25 figure out where to even start because it was a lot

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1 of debris that had fallen down. Of course, the
2 first thing you do is you break your dog, you know,
3 and then we go in and we start investigating trying
4 to look at patterns.

5 Q You say you break your dog?

6 A Yes, sir.

7 Q And what does that mean?

8 A Use the bathroom.

9 Q Okay, sorry about that.

10 A So then we'll go in and we'll start looking at
11 areas. If something looks, if it doesn't look right
12 like an area where the, as like this wall and stuff,
13 we'll start kind of focusing in on that area. But
14 the dog can help us in having to dig this whole
15 house out like this. Like I said, he's a tool so
16 he's helping us get to a point where we can figure
17 out, you know, more, easier place instead of digging
18 the whole house.

19 Q Agent, with the Court's permission, this may save
20 a little time — can I ask him to come here, Your
21 Honor.

22 THE COURT: That will be fine as long as
23 you speak up when you're down there.

24 MR. MEADORS: There's a microphone, Your
25 Honor.

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1 THE COURT: All right, very well.

2 BY MR. MEADORS:

3 Q After you cleaned the debris where did you start
4 your dog?

5 A Usually I start my dog at the very top, work our
6 way down. And basically you want to go to where the
7 fire progresses and you want to go to egress
8 situation. So it's basically going to the area
9 that's burned the least, to the area that's burned
10 the worst is where we start.

11 Q Say that last thing again. Burn to what?

12 A To burn the least to the area where it has burned
13 the worst.

14 Q So where did you start?

15 A So we started upstairs.

16 Q This is State's 43.

17 A Yes. So we started, I ran my dog upstairs to
18 include everything upstairs that I could except for
19 that one area that was caved in. There was really
20 nothing we could do there. And once we do that, if
21 he alerts, which is what he does, when he alerts he
22 will sit at that point. And what basically the way
23 the scent cone works as a dog, we have about five
24 million oil factors in our nose so when your mom,
25 your dad, when they cook spaghetti or whatever, you

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1 know, you can smell the chili powder. You can smell
2 a little bit. Well, this dog can smell everything
3 really. He has about 220 million oil factors so one
4 eighth of their brain is, you know, devoted to scent
5 so that's how they work. So when you have an area
6 of an accelerant, you have a scent cone and so
7 you'll notice a dog, when they smell something they
8 go back and forth so he's hitting each side of that
9 cone. And what he'll do is he'll work his way back
10 to that area where it's the most concentrated and
11 that's where he'll sit. As he does that, I feed him
12 and then I place a cone and then we keep moving on.

13 Q Okay. Can — I think I see a cone number 7 on
14 43. You see that here?

15 A Yes.

16 Q And what does that mean, specifically that cone,
17 that that cone is there?

18 A Okay. So generally what I do is — can you mark
19 on this?

20 Q Yeah, explain it.

21 A So generally what I try to do with my dog is I'll
22 run these areas here and go around, and then I'll
23 work my way around the outside wall. Work this way
24 because I work my dog on the left-hand side so he's
25 on this side. So that's kind of the way you do it.

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1 It's kind of a systematic approach. That's how I
2 work him every time. He is on a lease. If I took
3 him off the lease he would probably do the same
4 thing. That's the way he normally does in training
5 so he's on a lease. So right here at this cone he,
6 he is in an area of odor and I don't know what that
7 odor is and he actually sits down and alerts us, so
8 I place a cone there and then we keep moving and to
9 the next area.

10 Q So let me show you a closeup of that just while
11 we're here. This is State's 45, and that's a
12 closeup of your cone and Investigator Blair has
13 testified they put a Sheriff's Department marker
14 there.

15 A Yes, sir.

16 Q And he took a collection from that area?

17 A Yes, sir, that is the area of baseboard on the
18 floor upstairs.

19 Q And again, back to 43 that's the area where your
20 cone is here?

21 A Yes, sir.

22 Q What area did you search next?

23 A I went downstairs. And the way I had to go in
24 since there was no steps, is I came in the doorway.

25 Q State's 48?

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1 A This doorway right here is the door going into
2 that bottom room. After we clear all that out — I
3 want to back up too. Before I ever go into a house
4 I check the exterior of the house also because a lot
5 of times things will, you know, can be poured
6 outside into the house or they use a trail which is
7 where they start and they finish, where they pour
8 out the door to keep them from getting hurt. So
9 before I did all this I actually checked around the
10 base of the house, and then I went upstairs and now
11 down here in the basement, or bottom floor.

12 Okay, this is the bottom floor where we
13 started. The doorway is back this way. So I walk
14 in, like I said. I walk around on the left and he
15 alerts to the steps that I'm moving around and this
16 is a mattress for a bed. And I work him over the
17 mattress and he alerts to the corner of that wall.
18 And then I'm walking down this way and he alerts
19 which I believe that was a rug or some type of
20 material there where he, the second alert is. And
21 so I'm walking around and walking back out.

22 Q And Wherever he alerts you drop a cone?

23 A Yes, sir. He gets fed there and he — that cone
24 goes down.

25 Q And you don't know what that means at that point,

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1 do you?

2 A No, I do not.

3 Q You don't know what he's detecting?

4 A No.

5 MR. MEADORS: Beg the Court's indulgence.

6 THE COURT: Yes, sir.

7 BY MR. MEADORS:

8 Q This is 41. Does that appear to be a picture
9 from the top —

10 A Yes, sir.

11 Q —layer down where number 7 is down?

12 A Yes, sir.

13 Q And again, show the jury where you came in on
14 this picture on State's 41?

15 A This is the bottom door right here. This is
16 where I walked in from the rear of the house which
17 is in the bottom floor.

18 Q Now what's, what do these three cones mean?

19 A As I was explaining, when I walk in we always
20 want to check that threshold and we want to go
21 around. And as soon as I get into this area I
22 notice my dog is into an odor which means his
23 behavior changes. He may start breathing a lot
24 harder through his nose. He may start, just an
25 obvious physical change in him. So as I walk by it

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1 he walks up the steps and the first one he hits is
2 the top. I believe that's the first one; I can't
3 see the numbers.

4 Q Will that help, State's 40?

5 A Yes. So he hits, he hits number two and then he
6 sits there. I feed him. I place, you know, the
7 cone there. I go again —

8 Q When you talk about he hits, how long does he
9 stay when he hits?

10 A He'll stay until I feed him; he will not move. I
11 can pull him, he'll not move. It's a solid thing,
12 just the way they're trained to do. It's pretty
13 cool. So he's, he sits here and then he goes on. I
14 want to say he comes down and hits at the corner and
15 then of course he hits here also. And from what I
16 understand this is where Mr. Topper was right here.

17 Q And at this point, obviously Mr. Topper is not
18 there anymore?

19 A No.

20 Q It's been cleaned, correct?

21 A Yes.

22 Q And it's four days later?

23 A Right.

24 Q Correct? Now in the — generally State's 40,
25 where is State's 51 in relation to State's 40, if

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1 that makes sense?

2 A Yeah, this is the same room.

3 Q Correct.

4 A This is the same room. It's to the left. It's
5 like the room is divided in half.

6 Q So were samples taken — and here's, it's already
7 been testified to but, briefly here's a 9 and a 2.
8 Your 2, Blair's 9, correct?

9 A Yes, sir.

10 Q State's 50, can you tell us what this is. That
11 appears to be number 6. Is that — tell me what
12 this area is right here.

13 A It looks like grass, driveway.

14 Q That's the door heading out?

15 A Yes, sir.

16 Q Beg the Court's indulgence. Back to 49, wait a
17 second. Here's 4 and 7, correct, 53?

18 A Yes, sir.

19 Q And that was the four, the missing four earlier,
20 but that is at the bottom of the steps?

21 A Yes, sir.

22 MR. GRIFFITH: Objection, he's leading the
23 witness. If he could have the witness testify
24 rather than telling the witness where these things
25 are.

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1 THE COURT: Yeah, don't lead him.

2 BY MR. MEADORS:

3 Q If I did this already, I apologize. State's 46.

4 A Yes, sir, that's my cone number 5 and

5 Investigator Blair's number 8.

6 Q Is that depicted on State's 68?

7 A Yes, sir.

8 Q Is that it?

9 A Yes, sir.

10 Q Kind of — what's this a picture of, State's 42?

11 A This is walking in, like I said, the steps again.

12 The — that back part was where the mattress and

13 that rug was and this is a, I think it's the

14 bathroom on this corner here.

15 Q Well, where was the mattress and the rug?

16 A The mattress was here and the rug was right in
17 here.

18 Q So it's been removed on State's 42, correct?

19 A Yes, sir.

20 MR. MEADORS: Beg the Court's indulgence.

21 THE COURT: Yes, sir.

22 BY MR. MEADORS:

23 Q State's 33, give us an idea when you got there,

24 is this the condition it was in?

25 A Yes, sir.

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1 Q Okay. So all this was cleared out and then you
2 ran your dog, correct?

3 A Yes, sir.

4 Q If you'll have a seat back, I think that's all I
5 have right now.

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

7 MR. GRIFFITH: No objection to this.

8 THE COURT: What exhibit number is this?

9 THE COURT REPORTER: That will be 73,
10 Judge.

11 (WHEREUPON, State Exhibit No. 73 marked
12 for identification and admitted into
13 evidence.)

14 BY MR. MEADORS:

15 Q As your investigation is going on and Gunner was
16 investigating, did you happen to find any teeth?

17 A Yes.

18 Q Where did you find those?

19 A At the base of the steps.

20 Q Base of the step. And were they collected in
21 here?

22 A Yes, sir.

23 Q All right. Beg the Court's indulgence?

24 THE COURT: Yes.

25

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1 MR. MEADORS: Your Honor, I'm looking for
2 one picture and I'll be through.

3 THE COURT: All right.

4 BY MR. MEADORS:

5 Q Do you remember the three — the stairs?

6 A Yes, sir.

7 Q And was the whole stairwell intact downstairs?

8 A No, sir.

9 Q And did you investigate those or look at those
10 bottom three stairs?

11 A Yes, sir.

12 Q What can you, and I'll find the dadgum thing in a
13 minute — but what were you able to determine or
14 just looking at those stairs and how they burned, is
15 there anything you could tell us about that?

16 A On one side of it seemed to be a lot of heavy
17 charring which is indicative of a lot hotter. The
18 sides of the wall was not as hot, but the degree of
19 charring, which is basically taking the wood and
20 just hotter and hotter, got hotter towards the edge
21 of the room and went away from the wall.

22 Q Relate that to firewood. If I'm burning a fire
23 in my house is —

24 A If you're burning a fire at your house you're
25 usually in the middle of, your wood will get really

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1 burnt first before the ends do so the charring will
2 be heavier in the middle and then burns out, kind of
3 the same scenario.

4 Q I found it. State's 36. Is that kind of what
5 you were just explaining?

6 A Yes, sir. As you get closer to the wall you
7 start seeing more of the wood. As you're getting
8 away from the wall the wood is actually
9 deteriorating.

10 Q And right here, what does that show?

11 A It shows a lot of heat on that corner of the
12 wall, well, the corner away from the wall.

13 Q Do you have an opinion based on your experience
14 and in your field of expertise as to the origin
15 and/or cause of this fire?

16 A Yes.

17 Q What is that?

18 A I believe that this was a cinerary fire. The —
19 like I said, the stuff upstairs ruled out, the
20 stove, the water heater downstairs was ruled out.
21 There's nothing in that room as far as receptacles
22 to begin this fire.

23 Q And finally State's 55 and 56 I believe without
24 objection.

25 MR. GRIFFITH: Without objection.

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1 BY MR. MEADORS:

2 Q Are these the picture of just where you collected
3 the ---

4 THE COURT: Mr. Griffin, is that correct,
5 without objection?

6 MR. GRIFFITH: Without objection, Your
7 Honor.

8 THE COURT: 55 and 56.

9 (WHEREUPON, State's Exhibits Nos. 55 and
10 56 were admitted into evidence.)

11 BY THE COURT:

12 Q Is that where you got the false teeth?

13 A Yes, sir.

14 MR. MEADORS: Beg the Court's indulgence.

15 THE COURT: Yes, sir.

16 MR. MEADORS: Thank you, Judge.

17 THE COURT: Mr. Griffith,
18 cross-examination.

19 MR. GRIFFITH: Thank you, Your Honor.

20 **CROSS-EXAMINATION**

21 BY MR. GRIFFITH:

22 Q Mr. Wright, Agent Wright.

23 A Yes, sir.

24 Q Number 43, is that up over here? Agent, this
25 cone is up on top of that, of the house. It's not

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1 down in that little room; is that correct?

2 A Yes, sir.

3 Q And so most of the cones you depicted were in
4 that middle room though; is that correct?

5 A Yes, sir.

6 Q They were down below. Is there a possibility
7 that a fire could have started up here or even
8 accelerant put up there or could there have been
9 something that started up there that moved down into
10 those rooms?

11 A There may be an accelerant up there, but the fire
12 did not start up top in this picture.

13 Q And this cone up on top, was that the only cone
14 that was found that, only place up on top where the
15 dog hit?

16 A I believe so.

17 Q Could it be that when the dog hit, could it be
18 that something fell down into that room during the
19 fire, an accelerant like gas, and the dog would then
20 hit on that after the fire, after it was all cleaned
21 up?

22 A That would be true if that floor was gone, but
23 that floor was still intact. And like I said, we
24 walked on that thing all day and that wouldn't be
25 the case in this.

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1 Q But as to the small room, could it be that
2 something from above, the floor was gone above that
3 small room.

4 A Yes, sir.

5 Q Could it be something above fell down into that
6 room, an accelerant then splashed as all over it?

7 A I guess, yeah, I don't — there's no way, I mean,
8 I don't know what was in that room or where the room
9 was but...

10 Q Exactly, yeah. You never saw the room before
11 that, right?

12 A No, sir.

13 Q So you don't know whether there was accelerant
14 piled on the floor up above it that could have
15 fallen down in there that would, that could make it
16 look like it was an accelerant down in the bottom.

17 A Usually though, if, when that happens if the
18 floor gives way the accelerant is gonna run off and
19 it's gonna show a area. It's not that concentrated
20 of an area; it would be all over the room, not in
21 concentrated areas in the room.

22 Q But it's possible it could have fallen down in
23 there; is that true?

24 A Sure.

25 Q Okay.

1 MR. GRIFFITH: No further questions, Your
2 Honor.

3 THE COURT: Any redirect?

4 MR. MEADORS: No, sir, thank you.

5 THE COURT: Thank you. You may step down.
6 Any objection to this witness being
7 excused?

8 MR. GRIFFITH: No, Your Honor.

9 MR. MEADORS: Can we approach.

10 THE COURT: You may.

11 (WHEREUPON, counsel approached the
12 Bench for an off-the-record discussion.)

13 THE COURT: All right, ladies and
14 gentlemen, after conferring with the attorneys now
15 seems to be a good time to break for lunch so I'm
16 gonna send you to lunch with instructions that you
17 be back here just a little bit before two so we can
18 start right at 2:00. Please do not discuss the case
19 with anyone including your fellow jurors. Thank
20 you, ladies and gentlemen, and I will advise you
21 don't eat a big heavy lunch 'cause that tends to
22 make jurors sleepy in the afternoon.

23 (WHEREUPON, the jury was removed from the
24 courtroom at 12:14 p.m.)

25 THE COURT: Court's in recess until 2 p.m.

1 (Whereupon, a lunch break was taken.)

2 THE COURT: Anything we need to take up
3 before we bring the jury in?

4 MR. GRIFFITH: Nothing from Defense, Your
5 Honor.

6 MR. MEADORS: Your Honor, we're in the
7 process, I think we agreed to redact that part of
8 the tape — Mr. Brown is doing it — so that will be
9 the last witness today. But before we do that we
10 just, I want to take a break to make sure everybody
11 is in agreement with that. I think we've got —
12 that's it.

13 THE COURT: So you're ready to proceed?

14 MR. MEADORS: Yes, sir, we're ready.

15 THE COURT: All right, let's bring our
16 jury.

17 (WHEREUPON, the jury was returned to the
18 courtroom at approximately 2:03 p.m., and
19 the following proceedings commenced in
20 open court.)

21 THE COURT: State ready to present its
22 next witness?

23 MR. MEADORS: May it please the Court, the
24 State will call Bryan Christmas.

25 THE CLERK: Place your left hand on the

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1 Bible, raise your right hand please. State your
2 name for the record.

3 THE WITNESS: Bryan L. Christmas.

4 WHEREUPON,

5 **BRYAN CHRISTMAS,**

6 having been duly sworn by the Clerk, testified
7 as follows:

8 THE CLERK: State your full name, spell
9 your last name.

10 THE WITNESS: Bryan L. Christmas,
11 C-H-R-I-S-T-M-A-S.

12 **DIRECT EXAMINATION**

13 BY MR. MEADORS:

14 Q Captain Christmas.

15 A Good afternoon.

16 Q Would you please tell the ladies and gentlemen of
17 the jury about Bryan Christmas, where you're from,
18 your background, your training, and in particular
19 your training in, well, in law enforcement including
20 law enforcement and the fire department please.

21 A My name is Bryan Christmas. I was born and
22 raised in Sumter, South Carolina. I joined the
23 military in 1991 in the air force. And at that time
24 became a firefighter in the US air force, stayed in
25 there for four years. I met my wife while I was

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1 stationed away in Florida. We have three kids. We
2 then moved back to Sumter. Once I moved back to
3 Sumter I ended up getting employed with the Sumter
4 Fire Department in 1997 and in 2000 they actually
5 offered a program public safety and I ended up
6 getting employed with the law enforcement with
7 Sumter Police Department. I worked with the police
8 department since 2000 and fire department since
9 1997. I'm assigned to the property crimes division
10 in the police department. At the fire department
11 I'm a division chief, kind of oversees the shifts
12 and administrative responsibilities at the fire
13 department.

14 And as far as law enforcement, I went
15 through the basic police academy which was nine
16 weeks in 2000. I've been to several, the two week
17 basic arson course at the State Fire Academy and
18 then I went to the National Fire Academy and took
19 the two week arson course there. I also took the
20 interviewing and interrogation courtroom testimony
21 dealing with fire investigations. That was a two
22 week course at the National Fire Academy. I'm also
23 involved where teaching in the two week fire
24 investigation course at the fire academy along with
25 other basic fire courses to teach new fire fighters

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1 coming in that have been doing since around 2000.
2 Teach on a pretty regular basis to the new
3 firefighters and in the arson curriculum. Actually
4 was the president of the Arson Association in South
5 Carolina which is the South Carolina Chapter of
6 International Association of Arson Investigators and
7 was on the board for several years and still
8 participate in that association and was responsible,
9 along with the Sheriff's Department, Sumter Police
10 Department and the Fire Department developing a fire
11 investigation task force here in Sumter that we
12 currently have and we all work together whenever we
13 get to scenes.

14 Q We've covered a lot of what I was going to ask
15 you with the previous witness so I'm not going to go
16 over all that. I just want to ask you a few general
17 questions please, sir.

18 A Yes, sir.

19 Q Your role of this night, Chief, was what when you
20 got to the fire?

21 A My role was actually to assist in the origin and
22 cause of the fire of the investigation.

23 Q And you're the chief, correct?

24 A Yes, sir.

25 Q What's your, what's the first thing you as a

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1 chief or firemen are thinking about when you come to
2 a fire?

3 A Life safety.

4 Q And was a decision made, was that decision --
5 tell us how that decision was made whether or not
6 there was a chance of finding life when you got
7 there.

8 A Whenever we go to a fire the incident commander,
9 which is the person that takes charge of the fire,
10 makes a decision based on the -- well, he'll a risk
11 benefit analysis, and based on the risk that we
12 would incur, would it be worth the risk from benefit
13 gained. And on this particular fire, when they
14 showed up there was so much fire involvement that
15 the chances somebody surviving in the fire would
16 have been slim to none and it wasn't worth risking
17 sending fire fighters in so they kind or went to a
18 defensive mode fighting fire from the outside.

19 Q And this is State's 2 which everybody has seen.
20 Is that the fire that you remember also?

21 A Yes, sir.

22 Q And your firemen put out the fire, correct?

23 A Yes, sir.

24 Q And at some point thereafter that, were you
25 present when the body of Mr. Topper was found?

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1 A Yes, sir, I was.

2 Q And how can you tell these ladies and gentlemen a
3 little bit about that. What did you do as far as
4 Mr. Toppers body?

5 A I was involved, once Mr. Topper was located I was
6 involved with removing the debris from around him
7 along with another one of the investigators. We
8 were actually there pulling the debris back, which
9 is kind of tedious because we have to be careful not
10 to, you know, mess with the body so we have to ease
11 stuff away and you have to get down in there, pull
12 them back with your hands and stuff all the way to
13 the bottom. And the debris was rather, rather deep
14 around Mr. Topper's body.

15 Q Is that State's 60 kind of what you're talking
16 about?

17 A Yes, sir.

18 MR. MEADORS: Your Honor, could I activate
19 the Elmo, the Elmo be activated?

20 THE COURT: Yeah.

21 BY MR. MEADORS:

22 Q And that's State's 60. Is that what you're
23 referring to initially as Mr. Topper's body?

24 A Yes, sir. And in that picture you can just
25 barely make him out which is why it was so difficult

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1 for us to locate him.

2 Q And does debris started to — you started to take
3 some of the debris away?

4 A Yes, sir, we started to remove the debris from
5 one side and then the other working around him and,
6 you know, around the steps which is where his head
7 was lying at.

8 Q And you said where his head is lying at. Looking
9 at State's 62, can you Mr. Topper's head?

10 MR. GRIFFITH: Your Honor, I would object
11 to this line in that we've already seen all these
12 pictures and —

13 THE COURT: They're already in evidence,
14 overruled.

15 MR. GRIFFITH: Okay.

16 BY MR. MEADORS:

17 Q In State's 62 you just said Mr. Topper's head and
18 the steps, can you show that on State's 62.

19 A Yes, sir. His head would be just to the right of
20 the number 2 placard right there which was actually
21 lying on the, up like on the bottom step.

22 Q Now what did you do or what did you observe after
23 the debris had been removed as to Mr. Topper's body?

24 A As we were removing the debris when, you know,
25 typical for us to would roll over the body to see if

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1 there's any kind of injuries or anything on the back
2 side. When we went to raise Mr. Topper's body up
3 there was a sudden rush of a smell what's similar to
4 be gasoline whenever we lifted the body.

5 Q And a picture was taken of that, correct?

6 A Yes, sir.

7 Q Your Honor obviously correctly ruled that we
8 could not show that picture, but when Mr. Topper's
9 body was rolled over what did you smell?

10 A Smelled what smelled similar to gasoline.

11 Q Okay. And was there anything else there beside
12 Mr. Topper that was collected or any, besides
13 samples? Was his underwear collected?

14 A Yes, part of his clothing was actually under him;
15 and like I said, it was an extreme, I mean, extreme
16 smell of gasoline once we rolled him over.

17 Q And do you know that from your experience in the
18 fire department and just from everyday living
19 pumping gas, that it smelled like gasoline?

20 A Yes, sir.

21 Q And finally to State's 68 which is a diagram
22 Investigator Blair did. Do see Mr. Topper's body
23 depicted on this?

24 A Yes, sir, it would be right to, right at the
25 bottom of the stairs is where Mr. Topper was

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1 located.

2 Q Right there?

3 A Yes, sir.

4 MR. MEADORS: Beg the Court's indulgence.

5 THE COURT: Yes, sir.

6 MR. MEADORS: I do think we've covered
7 everything else with the other witnesses and I —
8 that's all we have.

9 THE COURT: Thank you.

10 Mr. Griffin.

11 MR. GRIFFITH: No questions, Your Honor.

12 THE COURT: All right, thank you. You may
13 step down.

14 Any objection to this witness being
15 excused?

16 MR. GRIFFITH: No, Your Honor.

17 THE COURT: Thank you.

18 THE WITNESS: Thank you, Your Honor.

19 MR. MEADORS: Your Honor, at this time the
20 State of South Carolina would call Doctor Janice
21 Ross.

22 THE CLERK: Place your left hand on the
23 Bible, raise your right hand please. State your
24 name.

25 THE WITNESS: Janice Edwards Ross.

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1 WHEREUPON,

2 **JANICE ROSS,**

3 having been duly sworn by the Clerk, testified
4 as follows:

5 MR. GRIFFITH: Please state your full
6 name, spell last name for the record.

7 THE WITNESS: Janice Edwards Ross.

8 **DIRECT EXAMINATION**

9 BY MR. MEADORS:

10 Q Good afternoon, Doctor Ross.

11 A Good afternoon.

12 Q Doctor, will you please tell this jury about
13 Doctor Janice Ross, your background, your education,
14 and in particular your education in the field of
15 expertise I'm asking you to testify about today,
16 please, ma'am.

17 A Yes, sir. I'm a forensic pathologist which means
18 I've had four years of college. I went to the
19 University of South Carolina, and then from there I
20 went to four years of medical school in Upstate
21 Medical Center in Syracuse, New York. That's where
22 I did studying in the field of pathology. Pathology
23 as opposed to surgery or pediatrics is a field where
24 we learn how to identify cancers and diseases by
25 using the microscope and looking at tissue and by

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1 using the laboratory in a hospital to identify
2 diseases. We further learn now to do an autopsy
3 looking at the deceased, the deceased's organs to
4 identify the cause of death.

5 A forensic pathologist is further trained
6 to identify patterns of injury and to do a certain
7 type of autopsy including looking at each organ
8 finding patterns of injury, collecting specimens for
9 documentation of pertaining to the cause of death,
10 taking photographs, and submitting materials for a
11 court of law.

12 Q Are you Board certified in forensic pathology?

13 A Yes.

14 Q Where is your office?

15 A Newberry, South Carolina.

16 Q And where do you perform autopsies?

17 A In the morgue at Newberry County Memorial
18 Hospital.

19 Q And approximately how many autopsies have you
20 done?

21 A Over 9,000.

22 Q Okay. Have you been offered and accepted as an
23 expert in the field of forensic pathologies,
24 forensic pathology in courts of record of this state
25 before?

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1 A Yes.

2 Q About how many times?

3 A About two hundred times.

4 MR. MEADORS: Your Honor, at this time we
5 would offer Janice E. Ross in the field of forensic
6 pathology.

7 THE COURT: You request voir dire?

8 MR. GRIFFITH: No objection, Your Honor.

9 THE COURT: Without objection, all right.
10 Ladies and gentlemen, as with the other experts, she
11 will be able to testify and give her opinion and
12 conclusions. If you decide, though, she's not
13 qualified, that's up to you as a jury because as I
14 told you, you're the finders of facts and give her
15 testimony the weight which you believe it deserves.
16 You may continue to question her as an expert.

17 MR. MEADORS: Thank you, sir.

18 BY MR. MEADORS:

19 Q In an ideal world, Doc, where would like to first
20 see the body of someone you're gonna perform an
21 autopsy on?

22 A At the scene of death.

23 Q And that's not reality, is it?

24 A No, sir.

25 Q How do you get a body then before you perform an

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1 autopsy?

2 A The county coroner calls us and requests an
3 autopsy and authorizes the autopsy and also gives us
4 information of what the scene looked like and where
5 the bodies were found for instance.

6 Q And that happened in this case in the direction
7 of the coroner, correct?

8 A Yes.

9 Q How was the body brought to you?

10 A In a body bag.

11 Q And do you — again, in a best case scenario
12 would you like it to be in this close or similar
13 condition as it was, the body, to when something
14 happened when you look at it?

15 A Yes.

16 Q All right. Now in this case, Doctor, did you
17 have an occasion to perform an autopsy on Mr. James
18 Topper and Ms. Joanne Topper?

19 A Correct, yes.

20 Q And what date did you do that?

21 A June 3rd, 2013.

22 Q And this is at the morgue in Newberry?

23 A Correct.

24 Q Could we start with Ms. Joanne Topper?

25 A Yes.

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1 Q And specifically, it may be obvious, but a burn
2 victim is a little different from a gun — a burn
3 victim is different from a gunshot victim?

4 A Yes.

5 Q Okay. What's the first thing you did with
6 Ms. Topper's body once you got her in the body bag
7 in the morgue?

8 A We opened the body bag, took photographs, and
9 because the body was pretty well charred from the
10 thermal injury, the injury from the fire, we did
11 x-rays to look for any abnormality as far as
12 remaining bullets or something like that. So we did
13 x-rays, and then, then we would proceed with the
14 internal examination. In the case of Joanne Topper
15 she had a replaced shoulder which helped with
16 identification.

17 Q A replaced shoulder?

18 A A replaced shoulder.

19 Q Okay, and you were on the internal examination at
20 this point?

21 A That's by x-ray.

22 Q Okay.

23 A And then the internal, we followed with internal
24 examination.

25 Q All right. Externally to start with, describe

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1 what you found in your report.

2 A She was greatly charred with over 80 percent of
3 her body burned in a fourth degree manner. Fourth
4 degree just means burning went through the skin,
5 exposed underlying muscle and tissue.

6 Q Said she had an insulin pump on her left back?

7 A That was remaining on her back. There were some
8 small areas of skin still spared a little bit. On
9 the back was one of them.

10 Q Okay. And that also, x-ray showed as you
11 testified, a replaced right shoulder which helped
12 identify Ms. Topper?

13 A Correct.

14 Q How did she die?

15 A In the — she had evidence of smoke inhalation
16 which means when you inhale smoke you're inhaling
17 soot and you're also inhaling carbon monoxide.
18 Carbon monoxide connects with the red blood cells of
19 the body and the blood and causes a change in color;
20 it's a bright cherry red. So we had evidence of
21 cherry red discoloration of the blood and we had
22 soot in the airway.

23 Q And what did that tell you? What did that mean
24 to you?

25 A That she was alive and breathing in smoke.

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1 Q As the fire was going?

2 A Correct.

3 Q All right. You said one of the cause of carbon
4 monoxide, if you're breathing in smoke and this
5 soot, how long -- and you may not be able to tell
6 exactly, but how long, what would happen to
7 somebody's body as they're doing that, or their
8 mind?

9 A As you -- as the carbon monoxide level goes up in
10 the blood system it replaces oxygen so your brain is
11 not getting enough oxygen so you first may get a
12 little dizzy and get disoriented and then you go
13 unconscious. So unfortunately most of these people
14 don't feel the thermal injury, the burning, but they
15 will have, I don't know, I can't tell how long,
16 maybe less than a minute of disorientation.

17 Q But there's -- is there any question in your mind
18 that she was alive while the fire was going on?

19 A No question.

20 Q So, and again, just very briefly, the thermal
21 injury, what percentage of her body was injured?

22 A 80 percent.

23 Q And that's fourth degree?

24 A Correct.

25 Q So your opinion to a reasonable degree of medical

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1 certainty as to the cause of death of Joanne Topper,
2 Doctor Ross, is what?

3 A We put down carbon monoxide poisoning and thermal
4 injury, both of them together, due to the house
5 fire.

6 Q Moving on to Mr. James Topper, can you
7 describe — did you do these one right after the
8 other? I guess they both, did they, did you do one
9 autopsy one right after the other one?

10 A Yes.

11 Q Can you describe the external examination of
12 Mr. Topper.

13 A He also had about 80 percent thermal injury,
14 fourth degree thermal injury, had a little bit of
15 clothing left around the neck. And x-rays of his
16 body did not show any lead or any bullets or metal.

17 Q A fourth — and this may be a crazy question but
18 a fourth degree thermal injury, I mean — forget the
19 carbon monoxide as we had with Ms. Topper, how long
20 did it take you to die, I mean, to burn to death?

21 A I mean, it depends on a lot of things, where the
22 fire is and how soon the fire gets to you.

23 Q But minutes?

24 A Yes.

25 Q Just looking at your findings of Mr. Topper, I

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1 believe did you find there was a splitting of skin
2 over the left side of the chest and over the pubic
3 area?

4 MR. GRIFFITH: Objection to leading, Your
5 Honor.

6 BY MR. MEADORS:

7 Q Doctor, looking at your report, what did you find
8 on your external examination about specifically his
9 body?

10 A Externally it's all evidence the skin splitting
11 and the lack of tissue, it's all due to thermal
12 injury, heat, and flame.

13 Q That was my next question.

14 A That's external, external, yes.

15 Q Was there a fracture of the wrist, a thermal
16 fracture?

17 A Well, yeah, that's part of the — thermal injury
18 you can fracture. It looks like you fractured but
19 it's a heat related injury of the joints, wrists,
20 elbows, sometimes ankles and knees.

21 Q And specifically, and I'm just going right down
22 your external examination as far as the back and
23 thermal injury over the back, was there an area
24 around the buttocks area that was not charred or
25 burn?

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1 A Correct, yes.

2 Q And what does that mean?

3 A That this part of the body was away from the fire
4 so obviously he was on his back.

5 Q Okay, and that was — he was on his back?

6 A Correct.

7 Q The next to the last sentence on your external
8 examination, upper and lower jaws are —

9 MR. GRIFFITH: Objection, Your Honor, that
10 document has not been entered into evidence.

11 MR. MEADORS: If you want it in I have no
12 objection.

13 THE COURT: He's not putting it, he's just
14 asking questions, overruled.

15 BY MR. MEADORS:

16 Q Do you see where I'm talking about?

17 A Yes.

18 Q What is that? What's that word?

19 A Edentulous means he had no tooth.

20 Q So when you examined his body were his teeth in
21 his mouth?

22 A No.

23 Q Were you able to determine that this was a male
24 and that Ms. Topper was a female?

25 A Yes, the external genitalia were still there but

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1 burned.

2 Q And after examining Mr. Topper's body, Doctor, at
3 the morgue in Newberry, do you have an opinion to a
4 reasonable agree of medical certainty as to the
5 cause of death of James Topper?

6 A Yes.

7 Q Please tell the ladies and gentlemen what that
8 is.

9 A At first in him I saw some redness of the blood
10 but no soot in the airway so I pinned his cause of
11 death until I got the toxicology back which showed
12 no carbon monoxide, but he had thermal injury. And
13 he had one bad coronary artery, hardening of the
14 arteries that would make him succumb faster to
15 carbon monoxide. He also had some other natural
16 diseases going on, but he did — so my — the cause
17 of death in him was the thermal injury of the fire.

18 Q Burning to death in the fire?

19 A Correct.

20 Q And his degree was what?

21 A 80 percent, fourth degree.

22 MR. MEADORS: Beg the Court's indulgence.

23 THE COURT: Yes, sir.

24 MR. MEADORS: That's all. Thank you.

25 THE COURT: Cross-examination.

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1 MR. GRIFFITH: Thank you, Your Honor.

2 **CROSS-EXAMINATION**

3 BY MR. GRIFFITH:

4 Q Doctor Ross, when you talked about the male that
5 was killed, your report lists that a high nontoxic
6 level of alcohol?

7 A Yes.

8 Q And so would you say that he was probably
9 intoxicated at that time?

10 A Yes.

11 Q Also, it says coronary artery, arteriosclerosis,
12 98 percent occlusion of the right coronary artery.

13 A Yes.

14 Q And that is indicative of a heart problem that
15 could lead to, for instance, a stroke or heart
16 attack?

17 A Could lead to a heart attack, yes.

18 Q And did you see any signs that he had suffered a
19 heart attack or stroke?

20 A No, I did not.

21 Q You stated you did not find any soot in his
22 airways?

23 A That's correct.

24 Q But you, you did find the cherry red
25 discoloration of the blood indicative of carbon

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1 monoxide?

2 A It was very slight. It was a little bit reddish
3 pink of the surface of the airway indicating heat
4 related change, exposure to heat.

5 Q I have no further questions, Doctor. Thank you.

6 THE COURT: Any redirect?

7 MR. MEADORS: No, sir.

8 Thank you, Doc.

9 THE COURT: Thank you, Doctor. You're
10 excused unless there's an objection.

11 MR. GRIFFITH: No objection, Your Honor.

12 THE COURT: Thank you. Have a nice day.

13 THE WITNESS: Thank you.

14 MR. MEADORS: Captain Robert Burnish.

15 THE COURT: Come forward to be sworn.

16 THE CLERK: Place your left hand on the
17 Bible, raise your right hand please. State your
18 name.

19 THE WITNESS: Robert Boyd Burnish.

20 WHEREUPON,

21 **ROBERT B. BURNISH,**

22 having been duly sworn by the Clerk, testified
23 as follows:

24 THE CLERK: Have a seat up here please.
25 State your full name and spell your last name for

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1 the record.

2 THE WITNESS: Robert Boyd Burnish,
3 B-U-R-N-I-S-H.

4 **DIRECT EXAMINATION**

5 BY MR. MEADORS:

6 Q Good afternoon, Captain Burnish.

7 A Good afternoon.

8 Q Please tell the jury about Captain Robert
9 Burnish, where you're from, your background and
10 education, primarily focus on law enforcement
11 please.

12 A Okay. Born in Wilmington, North Carolina, moved
13 here with my parents in 1980, stayed, joined the
14 Sheriff's Office in 1992, went through basic academy
15 '93, graduated, took several other courses leading
16 into law enforcement, became an investigator in
17 2000. Went through several other courses, homicide
18 classes, arson investigation classes, got a
19 bachelor's degree in criminal justice from Saint Leo
20 University, and that's about it.

21 Q And this is the report you prepared in this case,
22 correct?

23 A Yes, that's correct.

24 Q Back in June of 2013 what was your role for
25 Sheriff Dennis?

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1 A I was lieutenant over the investigation division.
2 I over, oversee, well, I still oversee the
3 investigation division and I was in a lieutenant
4 capacity at that time.

5 Q And now you're the captain of investigations?

6 A Yes, sir.

7 Q What was your first involvement in this case
8 lieutenant, now captain?

9 A I was not on-call that night; but due to the
10 seriousness of the crime, or of the incident, I was
11 called and I responded to the scene basically to
12 help oversee the investigation.

13 Q And so you yourself weren't involved with putting
14 out the fire, finding the bodies necessarily?

15 A No, no.

16 Q Were you able to determine who resided at [REDACTED]
17 Barnwell?

18 A Yes. Through the investigation we — it was
19 determined that the Toppers resided at that
20 residence.

21 Q James and Joan Topper?

22 A Yes.

23 Q And were you able to determine what vehicles they
24 owned?

25 A Yes, we were.

SW - R. BURNISH - DIRECT

1 Q And were you able to determine whether or not
2 they owned a Honda?

3 A Yes.

4 Q And what kind of car was that?

5 A It was a white Honda Accord, a 2008 Honda Accord,
6 four door.

7 Q Did you have a license tag on it?

8 A Yes, we did.

9 Q What year was the Honda?

10 A 2008.

11 Q Did you determine who that Honda was registered
12 to?

13 A Mr. Topper.

14 Q Mr. James Topper?

15 A Yes, sir.

16 Q Once you had that — what other vehicles did they
17 have?

18 A They also had a 1998 Dodge caravan, it was blue
19 in color, and a 2002 Chevrolet RV.

20 Q How many of those vehicles were still at the
21 house after the fire?

22 A Just the two of them, the Dodge caravan and the
23 RV.

24 Q And had you determined in the investigation
25 whether the defendant had been staying at the

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1 Toppers' residence at [REDACTED] Barnwell?

2 A Yes, we had.

3 Q So Joseph Manners had stayed there?

4 A Yes.

5 Q You got a house that's on fire and it's been put
6 out. What do you do next in the investigation?

7 What did you do next, Captain?

8 A My part of it was to gather up all the
9 information that we could in reference to the
10 vehicle that was missing, the occupants of the
11 residence, who was accounted for, who was not
12 accounted for. We put out a, what we call a bolo,
13 which is be on the lookout, with a description of
14 that vehicle and a possible occupant of that
15 vehicle. We did that, did it throughout the state
16 for Sumter Police Department, the Sheriff's
17 Department, the Highway Patrol, and then we moved it
18 out to statewide jurisdictions.

19 Q And what was your purpose of doing that?

20 A In the hopes that vehicle would be seen by a law
21 enforcement agency or law enforcement officer and be
22 able to be stopped and get the occupant of that
23 vehicle back to Sumter for questioning.

24 Q Now in addition to that did you attempt to look
25 specifically for Joseph Manners?

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1 A Yes, we did.

2 Q How did you that?

3 A Well, after the two bodies were discovered within
4 the residence by the fire department, there was
5 determined that only two bodies left, it was our
6 conclusion that Mr. Manners was not present and
7 accounted for so he must be the occupant of that
8 vehicle.

9 Q Okay. You had Mr. Manners who was gone and one
10 of the vehicles that was gone, correct?

11 A That's correct.

12 Q And two bodies that were still there?

13 A That's right.

14 Q Your testimony you started looking for the
15 vehicle?

16 A Yes, we did.

17 Q And Mr. Manners?

18 A Yes, sir.

19 Q How did you go about looking for Mr. Manners?

20 A We included him on that be on the look— or that
21 bolo with the vehicle with his description. We got
22 his physical description best we could through his
23 driver's license information through the Department
24 of Motor Vehicles.

25 Q Okay. And that was on the bolo?

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1 A That's correct.

2 MR. MEADORS: And may I approach.

3 THE COURT: You may.

4 (WHEREUPON, State's Exhibit No. 74 was
5 marked for identification only.)

6 BY MR. MEADORS:

7 Q I'm gonna show you what's marked 74.

8 MR. MEADORS: Your Honor, 74 is without
9 objection.

10 THE COURT: Without objection, is that
11 correct?

12 MR. GRIFFITH: Without objection, Your
13 Honor.

14 THE COURT: 74 is admitted without
15 objection.

16 (WHEREUPON, State Exhibit No. 74 was
17 admitted into evidence.)

18 BY MR. MEADORS:

19 Q We were looking for the Honda tag a minute ago.
20 Is that the Honda that was on the bolo that you put,
21 also had included the tag?

22 A Yes, sir, this is it.

23 Q And what was the tag number on the Honda?

24 A [REDACTED].

25 MR. GRIFFITH: No objection.

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1 (WHEREUPON, State's Exhibit No. 75 was
2 marked for identification and admitted
3 into evidence.)

4 BY MR. MEADORS?

5 Q What is State's 75?

6 A State's 75 is the ten year driving record of
7 Mr. Joseph Manners to include his picture.

8 Q So Mr. Manners info and the Honda info were put
9 out in the bolo?

10 A That's correct, yes.

11 Q And did you obtain two phone numbers also of Mr.
12 Topper and Mr. Manners?

13 A Yes, we did.

14 Q And what did you do with those phone numbers?

15 A We got with the other agency and asked them to
16 ping those phones, in other words, to help us locate
17 his cell phone if he's being active or where they
18 were being used at. And that's when we gathered
19 information that Mr. Manners, excuse me, Mr.
20 Topper's phone was being used and Mr. Manners' phone
21 was not, and it was being pinged going further
22 north.

23 Q And Mr. Topper's phone number is what?

24 A His number is [REDACTED]-8173.

25 Q And Mr. Manners' number was what?

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1 A Area code [REDACTED] 6454.

2 Q And those were their cell numbers, correct?

3 A That's correct.

4 Q And so you had determined that one of those
5 numbers was pinging and it was Mr. Topper's phone?

6 A That's correct, yes.

7 Q Could Mr. Topper have been using his phone?

8 A No, sir, he couldn't.

9 Q So where did you follow the pings to, you being
10 law enforcement? And when you say what, do you
11 mean?

12 A Well, I'm not really, I didn't do it. We, and
13 I'm not an expert in that. I don't really have
14 any —

15 Q Is it hitting a cell tower?

16 A Right, yes.

17 Q And as a result of that are you able to tell what
18 direction the phone is going?

19 A Yes.

20 Q Okay. And as a result of that did you send a
21 bolo to different places?

22 A Yes, the last, the last ping that I was informed
23 of it was hitting in Knoxville, Tennessee, and
24 that's when I called our dispatch and instructed
25 them to further the bolo out to the

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1 Tennessee/Kentucky area because we had information
2 that Mr. Manners was from Kentucky.

3 Q And is that what you as investigating, you try to
4 find out where a potential suspect might be going?

5 A Yes.

6 Q And you used the term bolo. When it goes out do
7 all police agencies receive the bolo in that area?

8 A Yes.

9 Q Okay. January 1st, 2013 becomes January 2nd,
10 2013. Did you have occasion to hear from anybody as
11 a result of the bolos from another police
12 jurisdiction?

13 A Yes, we had heard from — the next morning would
14 be June 1st?

15 Q June 2nd.

16 A June 2nd.

17 Q Would be the next morning, correct?

18 A You said January.

19 Q Did I say January, I apologize for the record.
20 It's June 2013, my mistake?

21 A From Kentucky we did end up hearing from
22 Kentucky.. They had gotten into a vehicle chase with
23 a Honda Accord.

24 Q Same license tag number?

25 A Same license tag, yes.

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1 Q And did you determine was it an officer from
2 Kentucky who chased that vehicle?

3 A Yes.

4 Q Is that officer in the courtroom?

5 A Yes, she is.

6 Q That's Kimberly Klare?

7 A Yes.

8 Q Was Mr. Manners apprehended in Cincinnati, Ohio?

9 A Yes, information I gathered he was apprehended in
10 Cincinnati.

11 Q And as a result of that did you become familiar
12 with a lady named Jennifer Mitsch, right here?

13 A Yes, I was.

14 Q And had Ms. Mitsch had opportunity to talk to the
15 defendant in Cincinnati?

16 A Yes, at our request.

17 Q That was my next question. Had y'all requested
18 that she attempt to talk to the defendant?

19 A Yes, sir.

20 Q Subsequently did Mr. Manners come back to Sumter
21 in the next, shortly thereafter he was arrested?

22 A Yes.

23 Q Okay. And I believe he waived extradition and
24 came here, correct?

25 A That's correct.

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1 Q And did you go get him?

2 A Yes.

3 Q Okay. And how did you get up there?

4 A We flew a twin engine, left out of Sumter
5 airport, went to Cincinnati to pick him up and
6 brought him back, brought him back to Sumter.

7 Q And then finally, as a result of your
8 investigation did you determine what kind of health
9 Ms. Topper had been in?

10 A I was informed, without medical records, just
11 speaking with family, she was in poor health. It
12 was said that she may have been in a wheelchair at
13 some point. I don't know if that was her only means
14 of getting around. There was talk about her
15 possibly being in a wheelchair.

16 MR. MEADORS: Beg the Court's indulgence.

17 BY MR. MEADORS:

18 Q Thank you. That's all.

19 THE COURT: Mr. Griffin.

20 MR. GRIFFITH: I have no questions, Your
21 Honor.

22 THE COURT: Thank you. You may step down.

23 MR. MEADORS: Kimberly Klare.

24 THE CLERK: Place your left hand on the
25 Bible, raise your right hand please. State your

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1 name.

2 THE WITNESS: Kimberly Klare.

3 WHEREUPON,

4 **KIMBERLY KLARE,**

5 having been duly sworn by the Clerk, testified
6 as follows:

7 THE CLERK: Thank you. Have a seat up
8 here please. State your full name and spell your
9 last for the record.

10 THE WITNESS: Kimberly Klare, K-L-A-R-E.

11 **DIRECT EXAMINATION**

12 BY MR. MEADORS:

13 Q Good afternoon, Sergeant Klare.

14 A Good afternoon.

15 Q Sergeant, you know what I'm gonna ask you. Tell
16 these folks about Sergeant Kimberly Klare, where
17 you're from, your background, and tell them about
18 your experience in law enforcement, please, ma'am.

19 A Sure. My name is Kimberly Klare. I grew up in
20 the city of Erlanger where I now work.

21 Q Okay. Say that again slower. Orlando?

22 A Erlanger.

23 Q Erlanger, okay.

24 A Erlanger. I grew up in the city of Erlanger
25 where I now work. I went to, I studied 'criminal

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1 justice at the Northern Kentucky University and
2 began my career in law enforcement with the United
3 States Custom Service at the Greater Cincinnati
4 Northern Kentucky International Airport as an
5 intern. I completed a college internship with the
6 city of Erlanger and shortly thereafter was offered
7 a position and was hired by the Erlanger Police
8 Department. I attended our 16 week academy there,
9 came back, conducted another 16 weeks of field
10 training before I became a patrol officer with the
11 city of Erlanger. Since being with the city of
12 Erlanger, I've been there for just about 15 years.
13 I've served as a patrol officer. I served in our
14 detectives, in our investigation division as a
15 detective.

16 I am currently a field training officer and
17 a hostage negotiator for our emergency response team
18 and most recently promoted to the rank of sergeant
19 earlier this year.

20 Q Most recently got to rank of sergeant?

21 A Yes.

22 Q Now Sarge, back in June of 2013 your rank was
23 what?

24 A Patrol officer.

25 Q What did that mean in Erlanger, Kentucky, to be a

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1 patrol officer?

2 A Patrol officer, we respond to calls for service.
3 We're very much into, our department, we're very
4 proactive. We go out, we patrol our neighborhoods.
5 We look for activity that's in consistent with
6 normal activities and things like that in order to
7 try to prevent crimes and general response to patrol
8 calls.

9 Q How big is Erlanger?

10 A Erlanger is about 12 square miles.

11 Q And how big is your force?

12 A We have about fifty officers.

13 Q There's a Sheriff's Department also?

14 A We have the Kenton County Sheriff's Department as
15 well as Kenton County Sheriff's police, Kent County
16 Police and the Kenton County Sheriff's Office. And
17 then within several miles of our agency there's
18 smaller agencies, maybe eight to twelve man
19 departments.

20 Q And if there's an overlap, say a chase or
21 something, do the departments work with each other?

22 A Yes, they do.

23 Q Do y'all have a roll call every morning?

24 A Yes.

25 Q And on June 2nd of 2013 what time did you go to

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1 work?

2 A I was assigned to the first shift at that time
3 which was 6 in the morning until 2 p.m. in the
4 afternoon.

5 Q And what's the first thing you did that morning
6 at work?

7 A First shift roll call would be conducted right at
8 6:00. During roll call we receive equipment
9 assignments, we go over any news bulletins, extra
10 patrols for our city, requests from citizens for
11 things like that, or any things originating from
12 outside agencies for assistance or attempts to
13 locate.

14 Q And would the department at that point receive
15 any be-on-the-look outs or anything that might
16 coming in your area?

17 A Yes, we did.

18 Q And did you receive a bolo about this case?

19 A I did. On that morning my direct sergeant at
20 that time was Sergeant Mike Fleming. He provided
21 the information at roll call that we had received
22 attempt to locate from South Carolina for a vehicle
23 and a subject wanted for questioning in two
24 homicides and an arson.

25 Q And did you get a description of the vehicle?

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1 A We did.

2 Q Including license tag?

3 A Yes, we did.

4 Q Okay. And did you know the — did you have any
5 information that might be coming in your specific
6 area, this vehicle?

7 A The attempt to locate indicated that the possible
8 operator of the vehicle had ties to an address in
9 the city of Edgewood, which is a bordering
10 neighboring city of ours. We were told that the
11 vehicle may be in route to an address at [REDACTED] Royal
12 Windsor Drive in Edgewood, which is very close to —
13 we have three districts at that time. I was
14 assigned to district three which most closely
15 borders the city of Edgewood.

16 Q So you were familiar with Edgewood?

17 A Yes, I was.

18 Q Okay. Armed with a car, the license tag, and a
19 potential address, what did you do after roll call?

20 A I went immediately to an intersection closest to
21 the border of Edgewood in our city and my district.
22 At the intersection of Stevenson Road and
23 Turkeyfoot, there's a day care that sits on the
24 corner. I was able to observe both the direction of
25 travel from Turkeyfoot and the direction of travel

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1 from Stevenson Road, which given the address that we
2 were told might likely be the vehicle's direction of
3 travel, coming through our city would have been the
4 most likely way one of those two roads that would
5 have been traveled.

6 Q And did you go straight from roll call to this
7 spot you just told us about?

8 A I did.

9 Q What did you do when you got there?

10 A As I set up on the lot of the day care I observed
11 for at that point any white Honda Accord that would
12 be passing me as I didn't know if license plates may
13 have been changed or switched at that point. I
14 began checking every license plate of every white
15 Honda Accord that passed me. I had run several
16 license plates that morning. None of them came back
17 inconsistent with the vehicles that they were on.

18 Q So your initially checking just 'cause you don't
19 know if they switched the tag you testified —

20 A Correct.

21 Q —to see if the tag on a white Honda was really
22 belonged to that Honda?

23 A That's right.

24 Q Okay.

25 A I had a vehicle pass me northbound on Turkeyfoot,

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1 and I was unable to read the tag from my position so
2 I had pulled out to get the license plate from that
3 vehicle. At that time another white Honda Accord
4 passed me in a southbound direction; and in my side
5 view mirror I could see that that white Honda Accord
6 had out of state tags. I immediately turned around
7 on that vehicle and when I got behind that vehicle I
8 found that vehicle to be bearing the same tags as
9 the attempt to locate that we had been given that
10 morning.

11 Q So this kind of, this car kind of passed you and
12 you turned around and there it was?

13 A That's correct.

14 Q What did you do after that?

15 A I ran the plate to make sure that it did indeed
16 come back to that vehicle. I checked to make sure
17 that I was reading my attempt to locate correctly
18 with what I was seeing on the license plate in front
19 of me, and then it would be our policy and procedure
20 not to initiate what would have been a felony
21 traffic stop given the circumstances of the attempt
22 to locate without a second unit so I notified my
23 radio dispatch that I was behind the vehicle
24 matching them with the license plate, matching the
25 description from the attempt to locate and requested

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1 a second unit.

2 Q So it's your policy you're not going to stop a
3 felony stop unless there's another officer with you?

4 A That's correct.

5 Q In another vehicle?

6 A For officer safety.

7 Q What did you do while you were waiting for this
8 other vehicle?

9 A I was behind, I was traveling behind the vehicle
10 at a distance watching the vehicle occupant and the
11 operation of the vehicle, maintaining communication
12 to my dispatch as to our direction of travel, rates
13 of speed, traffic control and all of that, listening
14 for my backup unit to respond.

15 Q Can you tell the ladies and gentlemen how was
16 this vehicle being operated? Were they following
17 the rules of the road and the stop sign and speeding
18 when you were behind him initially ---

19 A At that time ---

20 Q ---when you were behind the car initially?

21 A At that time the vehicle was following all
22 traffic controls consistently, was very careful not
23 to make any traffic errors.

24 Q Did the car appear to be operated properly? I
25 mean, was it looked like person was having a hard

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1 time controlling the vehicle or anything?

2 A No, not at all.

3 Q Okay. What happened after that?

4 A I followed the vehicle; I believe it was
5 approximately four minutes. We continued out of my
6 city through into another city within Kenton County.
7 When we got to the intersection of Turkeyfoot and
8 Hunters Green, which entered into a subdivision, at
9 this point I had still not activated lights, my
10 backup officer had not been able to get to me at
11 that point. We turned and made a right into a
12 subdivision called Hunters Green which was a
13 subdivision in a neighboring city of Independence.
14 We traveled down through the subdivision of Hunters
15 Green which wound around several stop signs.

16 Q How far behind this car were you?

17 A - I was directly behind the vehicle at that point.

18 Q You're in the subdivision. I messed you up, go
19 ahead.

20 A We continued through the subdivision; and when
21 nearing the intersection of Hunters Green and where
22 it intersected with another major roadway industrial
23 road when a neighboring agency from Elsmere was able
24 to get an officer to me.

25 Q Now did you...

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1 (WHEREUPON, State's Exhibit No. 76 was
2 marked for identification only.)

3 MR. MEADORS: State's 76 without
4 objection, Your Honor.

5 THE COURT: Without objection State's
6 Exhibit Number 76 is admitted in evidence.

7 (WHEREUPON, State's Exhibit No. 76 was
8 admitted into evidence.)

9 MR. MEADORS: With Your Honor's
10 permission, and I think she'll her keep her voice
11 up, would you allow her to step down to the Elmo?

12 THE COURT: I will.

13 BY MR. MEADORS:

14 Q Sergeant, we have no idea what you're talking
15 about.

16 A Right.

17 Q Did you prepare a, State's 76 to aid you in your
18 testimony of the location of where you're talking
19 about?

20 A Yes, I did.

21 Q If you would like to — you can use this. You
22 can point or you can use a pointer. Is State's 76
23 something you prepared?

24 A Yes, it is.

25 Q And will this show you where — can you show us

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1 initially with you got behind this vehicle, the
2 Honda Accord?

3 A Yes, I can. If y'all will look right here where
4 the green line begins, this intersection at the top
5 of the green line is the intersection of Turkeyfoot
6 and Stevenson Road. That would be where I sat up
7 that morning on the parking lot of the day care.
8 The intersection that is just past that point is the
9 city limit of Edgewood which borders our city. It
10 was at that point that I saw the vehicle operating
11 in a southbound manner on Turkeyfoot Road going
12 toward the Independence area when I turned around to
13 get behind the vehicle. This green line indicates
14 the distance that I followed the vehicle without
15 lights. There were no lights, no sirens activated.
16 I was waiting for backup officer at that point.
17 From here, this green line here where it corners is
18 going to be the intersection that entered into the
19 residential subdivision. And the green line that
20 continues to wind around through there, that's the
21 subdivision that we followed that entered back out
22 to this more straight area is Industrial Road. It
23 was at this point where the green turns to purple.
24 My backup officer from Elsmere was able to catch up
25 to where I was and was with me. At that point in

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1 time that's when I initiated my emergency equipment.
2 Initially, it was my lights only, which would be
3 routine for a traffic stop. As soon as my lights
4 were activated the vehicle accelerated to an
5 extremely high rate of speed and fled in a west
6 bound direction down Industrial Road. And
7 Industrial Road continues into a neighboring county
8 of Boone County. It crosses a major intersection,
9 at U.S. 25. I don't recall what the light condition
10 was at that intersection that morning, but he
11 continued. We reached speeds very quickly because I
12 was calling my pursuit and advising my dispatch of
13 our direction of travel and rates of speed. He
14 reached ex— the vehicle reached rates of speed of
15 approximately 90-miles an hour down that roadway
16 almost immediately. We continued to Industrial —
17 Q And what was that road?
18 A Industrial Road.
19 Q And what was the traffic like?
20 A The traffic on that road that morning was — I
21 don't recall it being significant. It was a Sunday
22 morning. That's more an industrial area. And
23 it's — there's parts of it that are very straight
24 so higher rates of speed were able to be reached
25 pretty quickly. We continued down Industrial Road,

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1 and when you see this little mark here — when you
2 see the little mark there, that intersection is the
3 Intersection U.S. 42. That intersection was very
4 populated that morning. The light was turning red
5 as we were approaching the intersection, and there
6 was a semitrailer that was coming off of Industrial
7 Road on to 42. The vehicle nearly struck as it
8 continued through the intersection against the red
9 light.

10 Q Show me that intersection again please.

11 A That intersection is gonna be — it's small here
12 but there's a little, a little line in that area
13 where it goes from the straight and zigzags down
14 before it reaches this point here.

15 Q Okay. You're still behind, still blue lights on?

16 A I am. At this point —

17 Q Sirens on?

18 A At this point, as soon as he speeds and didn't
19 stop for my initial emergency lights, I had
20 initiated my siren as well as per our policy. Once
21 we got on to U.S. 42, we were on U.S. 42 for a very
22 short period of time. He went back southbound, the
23 vehicle did, and entered a ramp from southbound U.S.
24 42 on to northbound I-75.

25 When we hit — I'm sorry. When we reached

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1 I-75 northbound, that opened up into an interstate,
2 is what I-75 is. There was actually quite a bit of
3 traffic at that point. I was able to keep a safe
4 distance behind the vehicle and maintained following
5 the vehicle as we continued. At this point we were
6 in a neighboring county, Boone County. Their
7 dispatch had been notified and they were teams to
8 get officers in my direction as well. Because of
9 the rates of speed we exited Boone County and went
10 back into my jurisdiction, Kenton County rather
11 quickly. That area of Kenton County through
12 Erlanger is gonna be what's considered our district
13 one. We had officers trying to get back from where
14 they had come to me in district three back out to
15 district one as I continued along I-75 northbound.
16 Northbound I-75 through that area of Kentucky is the
17 direction that you would go to head towards Ohio.
18 We continued through there, and we entered into,
19 into Kenton County and several other agencies from
20 our county had been monitoring our channel and had
21 been notified through dispatch. They were able to
22 respond and two neighboring agencies were able to
23 set up on interstate northbound as I was approaching
24 the area. The first one here where you see the
25 first red arrow, they were able to respond out there

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1 and they had stop sticks deployed across the
2 interstate.

3 Q What are stop sticks?

4 A Stop sticks are a spike strip that is able to be
5 thrown out away from the officer and then wheeled in
6 to attempt to puncture the tires of the vehicle in
7 order to get it to slow down.

8 Q Did the car avoid the stop sticks?

9 A It did in a rather reckless manner at that point.
10 He swerved — we were in a high speed lane of
11 northbound I-75. Served very, in a jerking manner
12 to the right across four lanes of travel and into
13 the emergency strip nearly striking an occupied
14 vehicle traveling northbound. We continued past
15 that point and before right police were several
16 tenths of a mile down, they had deployed a second
17 set of spikes, stop sticks across the interstate in
18 which the vehicle maneuvered to maneuver around and
19 avoid as well.

20 Q How fast were where you going at this point?

21 A At this point we reached speeds of approximately
22 115-miles an hour. We continued northbound. Our
23 dispatch was continuing to radio ahead to other
24 dispatches. The Covington Police Department, which
25 is on the border of Kentucky and Ohio, had set up

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1 exits because he started moving over and appeared to
2 take the Fifth Street exit into Covington but then
3 darted back in a northbound discretion just before
4 the exit. The vehicle traveled at that point across
5 the bridge into Ohio. When we, shortly almost
6 immediately after you cross the bridge into Ohio,
7 there's an exit for Route 50. The vehicle left that
8 exit and that goes down around a curve and back
9 down. There was a considerable amount of
10 construction through that area at that time, a lot
11 of construction barrels to maneuver and avoid. I
12 was not familiar having entered into another state
13 with a lot of that area at that point and there
14 were -- he continued to move through those emergency
15 or construction barrels at very high rates of speed.
16 I was very cognizant of the surroundings and what
17 vehicles may be coming from a place I was unaware of
18 at this point. I maintained a distance of
19 approximately two-tenths to three-tenths of a mile
20 behind the vehicle for reactionary distances the
21 pursuit.

22 Q How fast were you going at this point?

23 A We were still continuing at speeds of 80 to
24 90-miles an hour. When we got into the construction
25 barrels speeds did slow for a period of time, but

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1 then there were straight aways and curves on Route
2 50 and I would lose sight of the vehicle around a
3 curve and then I'd get into a straight away and I
4 would be able to see the vehicle again. At
5 approximately the intersection of Route 50 and Fair
6 Banks Road I was no longer able to see the vehicle,
7 I notified my dispatch that due to safety for other
8 vehicles and things like that I was going to be
9 calming my pursuit and terminating it. It was at
10 that time that my dispatch advised that Cincinnati
11 dispatch had been made aware and that he had
12 either — and I'm not a hundred percent sure whether
13 he had double backed and continued in an eastbound
14 direction back Route 50 or if after a collision
15 because the vehicle appeared to have struck a wall
16 and a curve in an area at the top of Southside Drive
17 there was debris from the vehicle and the vehicle
18 was located by Ohio officials as having driven down
19 Southside Drive and down the boat ramp into Ohio.

20 Q When you got into Ohio did the Ohio police join
21 you? Did somebody from Ohio —

22 A Yes.

23 Q Were they waiting as soon as you got in their
24 state and joined —

25 A Yes, they did. Our dispatch had contacted

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1 Hamilton County dispatch and they had made agencies
2 in Ohio aware they were set up and prepared to
3 assist us as we entered into the state of Ohio.

4 Q And approximately where did you lose or where did
5 you lose sight, if you will?

6 A If you look on this diagram, the end of this
7 purple line is gonna be where the boat ramp was
8 located, and shortly up from there Southside Drive
9 ran along Route 50. The intersection of Southside
10 and Route 50 was up here. I had continued down
11 Route 50 past the intersection of Southside, and I
12 called my pursuit in this area that would be
13 Fairbanks Road.

14 Q Did you go on at some point after that and go
15 observe the car where it had gone in the boat ramp?

16 A Yes, I did. I wanted to coordinate both with the
17 ability to be able to see the vehicle to insure that
18 it was the same vehicle that I've been pursuing, as
19 well as to coordinate with the Ohio officials that
20 were assisting me.

21 Q And did you do that? Was it the same vehicle
22 that you've been pursuing?

23 A Yes, it was.

24 Q And did you provide them with this information
25 about your pursuit?

SW - K. KLARE - DIRECT

1 A Yes, I did.

2 Q How long did you pursue this vehicle?

3 A It was approximately 22.48-miles.

4 Q And you said this person, was there a one person
5 in the vehicle?

6 A From what I was able to observe. While I was
7 following the vehicle I could only see one occupant
8 in the vehicle that I believe watching me back and
9 forth in the rearview mirror. At no time did I see
10 other occupants in the vehicle.

11 Q I think that's all at this point. If you'd just
12 have a seat back up there.

13 A (Complies.)

14 Q In preparation for this week did you provide your
15 information to the Sumter County Sheriff's
16 Department —

17 A Yes, we did.

18 Q —about your chase and your involvement in this
19 case?

20 A Yes, we did.

21 Q And at some point in the last few months did i
22 get in touch with you and request for you to come
23 down here?

24 A Yes, you did.

25 Q Did you fly in Monday?

SW - K. KLARE - CROSS

1 A Yes.

2 Q In Columbia?

3 A Yes. We flew from Cincinnati to DC and to
4 Columbia on Monday afternoon.

5 Q And you're leaving tomorrow?

6 A That's correct.

7 Q Beg the Court's indulgence. Did you see the
8 person that you had been chasing at the scene once
9 you saw the car?

10 A No, I did not.

11 Q The information that that person had fled?

12 A That's correct. The Ohio officials had
13 instructed had requested some assistance initially
14 stating that the occupant of the vehicle had been
15 seen fleeing from the vehicle after it went into,
16 from the boat ramp into the water along the river
17 bank.

18 Q Beg the Court's indulgence. Sergeant, thank you.

19 THE COURT: Mr. Griffith.

20 MR. GRIFFITH: Thank you.

21 **CROSS-EXAMINATION**

22 BY MR. GRIFFITH:

23 Q Sergeant, you say you did not see the occupants
24 of the vehicle?

25 A I could see the subject operating the vehicle

SW - K. KLARE - REDIRECT

1 watching me in the rearview mirror as I followed the
2 vehicle on my initial contact, but I did not ever
3 have contact with the occupant in the vehicle.

4 Q Okay. Did you say you saw the vehicle itself
5 after it had come to a stop in the —

6 A In the water, that's correct.

7 Q —water? And so were the doors closed or open?

8 A I don't recall.

9 Q Were there other officers there?

10 A There were.

11 Q Did you speak with those officers?

12 A I did.

13 Q Did they identify any objects around the car or
14 anything like that that you also saw?

15 A Not that I recall.

16 Q Okay. No further questions.

17 THE COURT: Any redirect?

18 **REDIRECT EXAMINATION**

19 BY MR. MEADORS:

20 Q That was the same car you'd been chasing,
21 correct?

22 A That is correct.

23 Q That's all.

24 THE COURT: Any recross?

25 MR. GRIFFITH: No, Your Honor.

1 THE COURT: This witness is excused unless
2 there's an objection.

3 MR. GRIFFITH: No objection, Your Honor.

4 MR. MEADORS: She's gonna be here till
5 tomorrow too.

6 THE COURT: All right, thank you.

7 MR. MEADORS: Your Honor, now would be a
8 great time for break.

9 THE COURT: All right, well, let's take a
10 break. Ladies and gentlemen, please do not discuss
11 anything about the case while you're back there and
12 if you could get them some Co'cola or something like
13 that. Do not discuss the case.

14 (WHEREUPON, the jury was removed from the
15 courtroom at 3:09 p.m.)

16 (WHEREUPON, a recess was taken from the
17 proceedings.)

18 THE COURT: Okay, bring them in.

19 (WHEREUPON, the jury was returned to the
20 courtroom at approximately 3:48 p.m., and
21 the following proceedings commenced in
22 open court.)

23 (WHEREUPON, State Exhibit No. 77
24 was marked for identification
25 only.)

SW - J. MITSCH - DIRECT

1 THE COURT: Ladies and gentlemen, I hope
2 you had a good break; y'all needed it. We all
3 needed a good break.

4 The State ready to proceed with the next
5 witness?

6 MR. MEADORS: Yes, sir. Your Honor, the
7 State of South Carolina calls Jennifer Mitsch.

8 THE COURT: Ms. Mitsch, come forward and
9 be sworn.

10 THE BAILIFF: Place your left hand on the
11 Bible, raise your right hand. State your name
12 please.

13 THE WITNESS: Jennifer Mitsch.

14 WHEREUPON,

15 **JENNIFER MITSCH,**
16 having been duly sworn by the Clerk, testified
17 as follows:

18 THE CLERK: Thank you. Have a seat up
19 there please. State your full name, spell your last
20 for the record.

21 THE WITNESS: Jennifer Mitsch,
22 M-I-T-S-C-H.

23 **DIRECT EXAMINATION**

24 BY MR. MEADORS:

25 Q Good afternoon, Agent Mitsch.

SW - J. MITSCH - DIRECT

1 A Good afternoon.

2 Q Please tell the ladies and gentlemen of this jury
3 about you, where you're from, your background, your
4 education and training, and please, ma'am,
5 specifically your education and training in law
6 enforcement.

7 A Yes, sir. My name is Jennifer Mitsch. I was
8 born and raised in Cincinnati, Ohio. I began my
9 adult career in social work before going into law
10 enforcement in 1998. I've been with the Cincinnati
11 Police Department for the last 18 years. I spent
12 the first two years on patrol. I then went to work
13 for a violent crimes squad for a couple of years and
14 then went to work for a personal crimes unit and
15 they investigate child abuse, sex abuse, and missing
16 persons. And from there I went to homicide unit
17 where I've been for the last ten years. I have been
18 to the police academy. The Cincinnati Police
19 Department has a six months police academy. I've
20 always been through several 80 hour death
21 investigation courses. I am trained in forensic
22 interviewing. I've taken interviewing and
23 interrogation courses, and we go through in-service
24 twice a year in Cincinnati to be updated on Ohio
25 laws. I have investigated several hundred death

SW - J. MITSCH - DIRECT

1 investigations. In our unit we investigate
2 homicides, suicides, kidnappings, any death of a
3 child under the age of seven, and patient abuse
4 cases. I've investigated about a hundred homicides.

5 Q How big is your department?

6 A Our department has about a thousand sworn
7 officers.

8 Q And it covers ---

9 A It covers ---

10 Q ---all Cincinnati?

11 A It covers all Cincinnati within the city limits
12 of Cincinnati. Our population is about 300,000.
13 During the work day we have about a million people
14 come into the downtown area for work.

15 Q And you got to South Carolina when?

16 A Monday.

17 Q Flew in from Cincinnati?

18 A I did.

19 Q Leaving tomorrow?

20 A I am.

21 Q Can you tell the ladies and gentlemen of the jury
22 how you got involved in this case, Sergeant.

23 A Sure. As part of my regular duties we field
24 phone calls from other agencies. We received a
25 phone call from at the time Lieutenant Burnish who

SW - J. MITSCH - DIRECT

1 asked us to assist with getting statement from a
2 person of interest in a case from South Carolina so
3 I agreed to go to University Hospital where that
4 person was to get a statement.

5 Q And where is University Hospital?

6 A University Hospital is in the city of Cincinnati,
7 Hamilton County, Ohio.

8 Q And what day did you go to University Hospital?

9 A June 3rd, 2013.

10 Q And who did you go with?

11 A I went with my partner at the time, Detective
12 Howard Grant.

13 Q And did you have an occasion to see Joseph
14 Manners?

15 A I did.

16 Q Okay. And approximately what time was it on
17 June 3rd that you saw Joseph Manners?

18 A Reflected on my notification of rights form
19 indicates it was 12:51 in the afternoon.

20 Q And at this point had Mr. Manners -- who
21 apprehended Mr. Manners?

22 A Mr. Manners was apprehended by another agency
23 which is called Delhi Police. They're in the
24 suburbs of Cincinnati.

25 Q And was this after he fled his vehicle?

SW - J. MITSCH - DIRECT

1 A It was.

2 Q And was he in custody when he was in the hospital
3 in Cincinnati?

4 A He was. He had a Hamilton County Sheriff's
5 Department assigned at his bedside the entire time.

6 Q Tell the ladies and gentlemen of the jury as you
7 walk into the motel — as you walked into the
8 hospital room what was your observations?

9 A My observations were that there was a deputy
10 bedside to Mr. Manners laying in a hospital bed. He
11 was shackled and/or handcuffed to the bed and that
12 was it really. A lot of medical equipment and
13 that's it. It was the only patient in the room.

14 Q What information did you have from lieutenant at
15 the time now Captain Burnish regarding the incident
16 here?

17 A I was told that there were, there was a fire and
18 that there were two deceased individuals and that
19 Mr. Manners was a person of interest and just asked
20 me to gather a statement from him about that.

21 Q And that's part of what you do; isn't it?

22 A It is.

23 Q And specifically when you first — did you tell
24 Mr. Manners who you were?

25 A I did.

SW - J. MITSCH - DIRECT

1 Q And did he appear to understand you and know who
2 you were when you first arrived?

3 A He understood me and I told him I was from
4 Cincinnati, yes.

5 Q And did you have an occasion to read him what is
6 known as his Miranda rights?

7 A I did.

8 Q And I'm gonna show you -- and we offer, I think
9 it's State's, I believe, without objection at this
10 point for the record.

11 THE COURT: That's correct.

12 (WHEREUPON, State's Exhibit No. 1 was
13 admitted into evidence.)

14 BY MR. MEADORS:

15 Q To start off with, did you have an occasion to
16 read Joseph Manners his Miranda rights?

17 A I did.

18 Q Could you read them now as you did to Mr. Manners
19 on June 3rd?

20 A Sure. "Before I ask you any questions you must
21 understand your rights. You have the right to
22 remain silent. Anything you say can be used against
23 you in court. You have the right to talk to a
24 lawyer for advice before I ask you any questions and
25 to have him with you during questioning. If you

SW - J. MITSCH - DIRECT

1 cannot afford a lawyer one will be appointed for you
2 before any questioning if you wish. If you decide
3 to answer questions now without a lawyer present,
4 you will still have the right to stop answering any
5 time. You also have the right to stop answering at
6 any time till you talk to a lawyer."

7 Q Did Mr. Manners appear to you to understand those
8 rights as you were reading them to him?

9 A Yes.

10 Q Did he indicate to you that he understood those
11 rights?

12 A Yes. I asked him do you understand your rights
13 and his response was, oh, yeah.

14 Q Oh, yeah. And could you understand the, oh,
15 yeah?

16 A Yes.

17 Q And did he also sign the advice of rights form
18 showing that he had been read his rights and
19 understood them?

20 A Yes.

21 Q And right underneath where it says, I understand
22 my rights, whose name is that?

23 A That's Joseph Manners'.

24 Q And underneath that there are two witness
25 signatures, who are those?

SW - J. MITSCH - DIRECT

1 A The first one is my signature with my badge
2 number, and the second is Detective Howard Grant's
3 signature with his badge number.

4 Q Now Mr. Manners' signature appears to be heading
5 up a little bit off the line. Can you explain that?

6 A I believe that was because he was handcuffed or
7 the way he was positioned in the bed, that it was
8 hard to get a good straight signature.

9 Q Now this is approximately, give or take, 40
10 minutes that you talked with Mr. Manners?

11 A Yes.

12 Q During that time period did you have any trouble
13 understanding what he said to you?

14 A In the very beginning of the interview I asked
15 him to pull a blanket or something down from his
16 face so I can see his mouth when he was talking to
17 me. Other than that, I had no problem understanding
18 what he was saying.

19 Q Did he, Mr. Manners, appear to understand you,
20 Sergeant Mitsch, when you asked him a question?

21 A Yes. He never asked me for clarification or to
22 repeat anything. He appeared to understand
23 everything I was saying.

24 Q Were his answers to your questions subject matter
25 appropriate?

SW - J. MITSCH - DIRECT

1 A They were.

2 Q And were they for the most part timely?

3 A They were.

4 Q Did he appear to be under the influence of any
5 drugs or alcohol or any other intoxicant when you
6 talked to him on June 3rd?

7 A No, he didn't.

8 Q Did you threaten or coerce Joseph Manners in
9 order to get a statement from him?

10 A No.

11 Q Did you promise him any help or reward regarding
12 the case in exchange for his statement?

13 A No.

14 Q Did he agree to talk to you?

15 A He did.

16 Q Now is it your practice or your department's
17 policy or practice that you memorialize a statement
18 from a suspect in some way? Did you audiotape it?

19 A We did. In our office we videotape if possible.
20 Otherwise, we try to audiotape as much as possible.

21 Q And that is your policy in the Cincinnati Police
22 Department?

23 A It is.

24 Q And did you have an audiotape of your
25 conversation with Mr. Manners on June 3rd?

SW - J. MITSCH - DIRECT

1 A I did.

2 Q What time did you read the rights?

3 A 12:51 p.m.

4 Q And that's on State's 1?

5 A Yes.

6 Q Okay. I've gotten to know you the last few days.

7 A Yes.

8 Q And during that time period have we had occasion
9 to listen to your statement that you took from Mr.

10 Manners?

11 A We have.

12 Q And is that you on there?

13 A It is.

14 Q Is that Mr. Manners on there?

15 A It is.

16 Q Does that accurately reflect the conversation you
17 had with him on June 3rd —

18 A Yes.

19 Q —2013?

20 A Yes.

21 MR. MEADORS: Your Honor, at this time
22 subject to Your Honor's ruling on redaction, we are
23 prepared to offer the audio into evidence and the
24 audio itself would be State's number, CD would be 77
25 we'd offer.

SW - J. MITSCH - DIRECT

1 THE COURT: Any objection?

2 MR. GRIFFITH: No objection, Your Honor.

3 (WHEREUPON, State Exhibit No. 77 was
4 marked for identification only.)

5 THE COURT: Ladies and gentlemen, we're
6 going to hear the statement made that she took that
7 I have ruled that certain parts are irrelevant and
8 should not be part of this case so I am taking those
9 sections out 'cause you're gonna see it as it plays
10 down. Do not infer anything for or against the
11 State because of the redaction. Please do not infer
12 anything for or against the Defendant because of the
13 redaction. I made the decision, but you will listen
14 to it with that redaction and we'll read it with
15 that redaction as well.

16 MR. MEADORS: May we approach.

17 THE COURT: You may.

18 (WHEREUPON, counsel approached the
19 Bench for an off-the-record discussion.)

20 THE COURT: I'm gonna send you back to the
21 jury room so you can relax in there just a minute.
22 We'll just stand at ease in here; we'll take them
23 back to the jury room to go to the restroom.

24 (WHEREUPON, the jury was removed from the
25 courtroom at 4:04 p.m.)

SW - J. MITSCH - DIRECT

1 THE COURT: We will stand at ease.

2 (WHEREUPON, a recess was taken from the
3 proceedings.)

4 (Court's Exhibit Number 4 was
5 marked and made a part of the record.)

6 MR. MEADORS: For the record, Court's 4
7 will be the redacted...

8 THE COURT: All right.

9 (WHEREUPON, the jury was returned to the
10 courtroom at approximately 4:09 p.m., and
11 the following proceedings commenced in
12 open court.)

13 THE COURT: All right. The State may
14 proceed.

15 MR. MEADORS: Thank you, Your Honor. I
16 believe this is State's Number 77 we're offering now
17 into evidence.

18 THE COURT: All right.

19 (WHEREUPON, State's Exhibit No. 77
20 was admitted into evidence.)

21 BY MR. MEADORS:

22 Q Now at the top of this page, that's your name
23 there?

24 A That is.

25 Q And next to that is police officer Howard Grant?

SW - J. MITSCH - DIRECT

1 A It is.

2 Q Okay. Where are, you're in the hospital room,
3 correct?

4 A We are, yes.

5 Q Okay. And you said there's another individual
6 there, an officer?

7 A A deputy.

8 Q Okay. And Mr. Manners is in his bed?

9 A Yes.

10 Q Okay.

11 Go ahead, Mr. Brown.

12 (State's 77 is published to the jury.)

13 BY MR. MEADORS:

14 Q That is you, the female voice?

15 A That is me.

16 Q That's Mr. Manners?

17 A Yes.

18 Q Now on page 3 he just answered, is Kentucky going
19 to charge me with anything?

20 A Okay.

21 Q Correct?

22 A I see it, yes.

23 Q Had you brought up Kentucky at all at that point?

24 A No.

25 Q He's the one that brought up Kentucky?

SW - J. MITSCH - DIRECT

1 A Yes.

2 Q All right, go ahead.

3 (Publishing of State's Exhibit No. 77 continued.)

4 BY MR. MEADORS:

5 Q Now he says "yes" on the transcript. What did
6 you hear him say?

7 A Oh, yeah.

8 Q Oh, yeah. And based on being there, hearing him
9 and your experience, did he understand the rights as
10 you had read them to him?

11 A He did.

12 Q You just said, I understand you're not in the
13 best position right here?

14 A That's correct.

15 Q And going back to State's Number 1, does that
16 explain his handwriting?

17 A Yes.

18 Q Okay.

19 Thank you, go ahead.

20 (Publishing of State's Exhibit No. 77 continued.)

21 THE COURT: Ladies and gentlemen, that is
22 the redacted part. Again, you're to infer nothing
23 for or against the defendant, nothing for or against
24 the State.

25 (Pause.)

SW - J. MITSCH - DIRECT

1 (Publishing of State's 77 continued.)

2 BY MR. MEADORS:

3 Q At this point in the interview had you mentioned
4 to him what he might be charged with?

5 A No, I had not.

6 Q So this is him telling you with what he thought
7 he'd be charged with in South Carolina?

8 A Yes.

9 (Publishing of State's 77 continued.)

10 BY MR. MEADORS:

11 Q Thank you. At the end there of what we just
12 heard he was ready to get out?

13 A He was.

14 Q And based on you going and listening to the tape
15 again, did his conversation appear to get more fluid
16 toward the end there?

17 A It did.

18 Q But throughout this statement did you have any
19 trouble understanding him?

20 A No.

21 Q And did he appear to have any trouble
22 understanding you?

23 A No.

24 Q I don't think I asked you this before; but if he
25 had wanted food and/or — he mentions the bathroom

SW - J. MITSCH - DIRECT

1 there at the end, food and to use the bathroom while
2 you were there, would you have made that available
3 or assist him in doing that?

4 A Yes.

5 Q Did he request for food or —

6 A No.

7 Q. —or bathroom privileges while you were taking
8 the statement?

9 A No.

10 Q He never asked for an attorney?

11 A No.

12 Q And he never told you to quit asking him
13 questions, correct?

14 A No.

15 Q At the bottom of page 14 he says, I don't think I
16 want to talk about this no more, but did he keep
17 talking about it?

18 A He did.

19 Q Okay. And had you developed, and were you trying
20 do this, did you develop a rapport with him, did you
21 think?

22 A I was speaking openly with him. I was telling
23 him things that I thought and things that I
24 believed.

25 Q Okay. And it appears there were pauses right

SW - J. MITSCH - DIRECT

1 before he would get to the heart of the matter each
2 time when you asked him something specific what
3 happened, correct?

4 A Yes, he would wait a few seconds and then answer.

5 Q I mean, in your opinion was this statement freely
6 and voluntarily given?

7 A Yes.

8 Q Okay. There's something on page 22 where you
9 had — and you would been over this so much. It's
10 on page 22 and after he had told you about hitting
11 his grandfather and several of the other items you
12 said that he was, you said you're about to fall
13 asleep. You know, what I'm talking about?

14 A I do.

15 Q Did that appear to be real to you?

16 A No, appeared to be faking sleeping, closing his
17 eyes kind of turning me out for a minute.

18 Q And what do you base that on?

19 A Basically the conversation had been flowing and
20 then when I mentioned that to him he said, I can't
21 relax right now, most people are relaxed when they
22 sleep.

23 Q And at the end of the tape here you mentioned
24 that he'd been there about 24 hours and he was
25 asking to be released, and I think you say in here,

SW - J. MITSCH - DIRECT

1 well, they usually only keep you 24 hours.

2 A Correct, for observation.

3 Q How long was it after he was apprehended that you
4 actually talked to him?

5 A I believe he was apprehended the day before in
6 the morning hours, and I was speaking to him a
7 little over 24 hours later.

8 Q And at that time he'd been in the hospital under
9 doctor's care with somebody from the Sheriff's
10 Department —

11 A Yes.

12 Q —there with him —

13 A Yes.

14 Q —for security reasons.

15 MR. MEADORS: Beg the Court's indulgence.

16 THE COURT: Yes.

17 BY MR. MEADORS:

18 Q Do you know, do you know when he was released
19 from the hospital?

20 A I don't know. I did plan on staying and getting
21 that cigarette, but I don't know what time it was
22 but I wasn't there anymore when he was discharged.

23 Q Is the individual in the courtroom who told you I
24 lost it, who told you, I hit granddaddy, I think I
25 knocked him out, who said I poured gas on here, who

SW - J. MITSCH - CROSS

1 said I set the fire, started the fire, who said
2 grandma was still upstairs when I left. Is that
3 person in the courtroom?

4 A He is.

5 Q Would you please point him out for the jury.

6 A He's sitting at the defense table next to the
7 defense attorney (indicating).

8 MR. MEADORS: We respectfully ask the
9 record to so reflect and that's all we have. Thank
10 you.

11 THE COURT: The record will so reflect.
12 Mr. Griffith, cross-examination.

13 MR. GRIFFITH: Thank you, Your Honor.

14 **CROSS-EXAMINATION**

15 BY MR. GRIFFITH:

16 Q Is it sergeant?

17 A When I get back home I'm the next one to be
18 promoted so.

19 Q Was Mr. Manners in the ICU when you went to see
20 him?

21 A I don't recall if it was the ICU or not. It was
22 an isolated room, one room only. I don't remember a
23 room number. He was in a hospital room, single bed,
24 with a deputy bedside.

25 Q Well, do you recall on page 26, if you'll turn to

SW - J. MITSCH - CROSS

1 that, where he says, all right, let's see, and above
2 all things I can get these damn wires off me. So do
3 you recall him having a bunch of wires plugged into
4 him?

5 A Obviously he did. I remember, you know, we could
6 hear the blood pressure cuff going and that's common
7 when you're in a hospital to have that attached to
8 you and usually a pulse ox to measure oxygen and
9 that's normal so, you know, he had stuff attached to
10 him, yes.

11 Q So he had stuff attached to him and they were
12 monitoring him and so he wasn't — they didn't feel
13 like he was in great condition so he didn't need
14 that kind of stuff?

15 A Say that again, I'm sorry.

16 Q They didn't feel like he was in great condition
17 enough that they could take all those things off of
18 him, did they?

19 MR. MEADORS: Objection, speculation.

20 MR. GRIFFITH: He had those wires.

21 MR. MEADORS: She's talking about —

22 THE COURT: Rephrase your question.

23 BY MR. GRIFFITH:

24 Q He did have wires and other kind of devices on
25 him to monitor him —

SW - J. MITSCH - CROSS

1 A Yes.

2 Q —continually. And on page 22, 23 — I'm sorry,
3 on 24, 23 and 24, at the bottom of 23 you're talking
4 to him, it says, did you have some pills with you
5 that we found on the ramp by the car and that's why
6 you're in the hospital, did you take any of them.
7 And then it says, you did with a question mark. Did
8 he like shake his head or something?

9 A Apparently.

10 Q Okay. When you take those and where did you get
11 those pills. And so evidently he was under the
12 influence of some pills?

13 MR. MEADORS: Your Honor, I don't think —
14 objection, Your Honor, speculation.

15 THE COURT: Sustained, speculation.

16 BY MR. GRIFFITH:

17 Q But he said he took some pills; didn't he?

18 A He did.

19 Q Okay. And on page 22 when he seems to be falling
20 asleep you said he looked like he was faking it when
21 the Solicitor talked to you, but that would be
22 speculation; wouldn't it? You didn't know whether
23 he was faking it or not, did he?

24 A It was my observation. I've seen people sleeping
25 before. I didn't feel like he was really sleeping.

SW - J. MITSCH - CROSS

1 Q Well, you listened to the tape and on the last
2 couple of pages of the tape the voice sound kind of
3 slurring off to me. Didn't it to you?

4 A His voice never appeared slurred to me, no.

5 Q Okay. On page 14 he did say that he didn't want
6 to talk about it anymore; isn't that correct?

7 A He said he didn't think he wanted to talk about
8 this no more.

9 Q But you continued to talk to him anyway?

10 A He continued to talk to me and we continued a
11 conversation.

12 MR. GRIFFITH: Beg the Court's indulgence.

13 THE COURT: Yes.

14 BY MR. GRIFFITH:

15 Q And when he signed that Miranda as you indicated
16 and as the Solicitor pointed out to the jury, it was
17 slanted; wasn't it?

18 A It is.

19 Q And Defense Exhibit 1 which is also Miranda —

20 THE COURT: Is that in evidence?

21 MR. GRIFFITH: Yes, it is, it's been
22 entered in.

23 THE COURT: Any objection to it going into
24 evidence?

25 MR. MEADORS: Is he offering it into

SW - J. MITSCH - CROSS

1 evidence?

2 THE COURT: I think he's offering it now.

3 MR. MEADORS: No objection.

4 THE COURT: Without objection.

5 (WHEREUPON, Defense Exhibit No. 1 was
6 marked for identification and admitted
7 into evidence.)

8 BY MR. GRIFFITH:

9 Q Okay. Defense Exhibit 1, would you look at this
10 signature?

11 A Yes./

12 Q Compare it to this one?

13 A Yes.

14 Q So this one is all messed up and this one is the
15 way he signed the next waiver that he looked at.

16 And it's nice and straight. So do you think there
17 was a possibility he could have been under the
18 influence of some pills or not really speaking
19 rationally at the time?

20 A No, I think it was slanted because he was
21 handcuffed to a hospital bed.

22 Q That's pretty wild if you ask me, but.

23 MR. GRIFFITH: Okay, no further questions,
24 Your Honor.

25 THE COURT: Mr. Meadors, redirect?

SW - J. MITSCH - REDIRECT

REDIRECT EXAMINATION1
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BY MR. MEADORS:

Q On page 24 Mr. Griffith asked you about some pills and all. On top of page 24 the question is, did you take them before you set the fire and the answer started to say, I didn't take — you see that?

A I do.

Q What he — State's 1 — may I approach?

THE COURT: You may.

BY MR. MEADORS:

Q This is what you, the advice of rights that you had Mr. Manners sign?

A It is.

Q Okay. And you testified that he had trouble signing that because of why?

A Because he was handcuffed and/or shackled to the hospital bed at the time. It's difficult to get a good position to sign something.

Q Is that on the tape? Did you address that on the tape?

A I did.

Q Where is it?

A After I read him his Miranda rights I asked him if he was right handed or left handed. And on page

SW - J. MITSCH - REDIRECT

1 4 at the top it says, "If you sign here it means you
2 understand your rights and that I read them to you
3 and I understand you're not in the best position
4 right here."

5 Q And that's where you're talking about him signing
6 his name?

7 A Right.

8 Q What's now been introduced as Defense 1?

9 A Yes.

10 Q Are you aware of this at all?

11 A No.

12 Q Okay. And did you have anything to do with
13 Defense 1?

14 A No.

15 Q Okay. Do you know what position, do you know if
16 Mr. Manners was in a hospital room when this was
17 done?

18 A I have no idea where he was.

19 Q And whose name is down here by law enforcement?

20 A Lieutenant Burnish.

21 Q And what date was this?

22 A This was on 7/29/2013.

23 Q Okay, so how long after that was your rights was
24 this?

25 A Over a month.

SW - J. MITSCH - RECROSS

1 Q And you don't know where this was read to the
2 defendant?

3 A No, I don't.

4 Q Was the information that you got from the
5 defendant on the audiotape consistent with the
6 information you got from South Carolina?

7 A Yes.

8 Q Did you tell him what to say or try to hint or
9 try to give him a hint of what he should say about
10 it?

11 A Never.

12 Q Did you know any of the details?

13 A Very few.

14 Q This was 24 hours after he was arrested, right?

15 A Yes.

16 Q Under oxygenation that whole time?

17 A Yes.

18 Q Thank you. That's all.

19 THE COURT: Any recross?

20 MR. GRIFFITH: Yes, Your Honor.

21 **RECROSS-EXAMINATION**

22 BY MR. GRIFFITH:

23 Q As the Solicitor pointed out, Defense Exhibit 1
24 was one month later after he was out of the
25 hospital, correct? I mean —

SW - J. MITSCH - RECROSS

1 A According to the date, yes.

2 Q According to the date.

3 A Uh-huh.

4 Q So now you would admit that that signature that
5 you received is really messed up; wouldn't you say?

6 A It's messed up. It looks similar but different
7 than the other one.

8 Q No further questions.

9 THE COURT: All right, thank you. You may
10 step down.

11 THE WITNESS: Thank you.

12 THE COURT: Any objection to this witness
13 being excused?

14 MR. MEADORS: No, she's here till
15 tomorrow.

16 THE COURT: All right.

17 MR. MEADORS: Can we approach.

18 THE COURT: You may.

19 (WHEREUPON, counsel approached
20 the Bench for an off-the-record
21 discussion.)

22 THE COURT: Ladies and gentlemen, that's
23 all the testimony that you will hear for today. Get
24 a good night's rest and be back here just a little
25 bit before 9:30. We'll start a little earlier

1 tomorrow morning. Have a good night's rest and do
2 not discuss anything about this, do not read the
3 Item tomorrow morning. Thank you.

4 (WHEREUPON, the jury was removed from the
5 courtroom at 5:10 p.m.)

6 THE COURT: All right, Mr. Meadors, I
7 understand there's something — I thought we'd
8 already placed that on the record.

9 MR. MEADORS: No, sir, when it first — I
10 said it, but then we didn't have the responsibility
11 to report at the time. We've sup—

12 THE COURT: Oh, that's right. That's
13 right.

14 MR. MEADORS: And I think, Your Honor,
15 respectfully we'd ask that you make a finding that
16 he was competent, which is Court's 2, and the
17 responsibility and capacity to conform which is
18 Court's 3, both from the South Carolina Department
19 of Mental Health and I think Doctor Frierson was the
20 doctor on both the competency and the
21 responsibility. There's no objection, but we ask
22 Your Honor to make a finding to both. Thank you.

23 THE COURT: All right. Based upon my
24 review of the Department of Mental Health
25 statements, and they state that Mr. Manners has a

1 factual as well as rationale understanding of the
2 legal system; therefore, he has adequate
3 understanding of the proceedings against him and has
4 the ability to assist his attorney in his own
5 defense. Therefore, in accordance with the opinion
6 of the Department of Mental Health I find that he
7 currently has capacity to stand trial and pursuant
8 to State versus Blair has the understanding of the
9 procedures going on. Also, that he was, that there
10 was no delusion and/or command or hallucinations or
11 other symptoms, and therefore was able to conform
12 his conduct to requirements of the law so he had the
13 capacity to understand right from wrong and he knew
14 how to help his attorney.

15 MR. MEADORS: He was criminally
16 responsible.

17 THE COURT: Criminally responsible, yes,
18 sir.

19 MR. MEADORS: Thank you, Your Honor. Your
20 Honor, I don't know if you were going to advise him
21 tonight or wait till in the morning.

22 THE COURT: I'll wait till in the morning
23 after you finish your case.

24 MR. MEADORS: Can I ask Your Honor briefly
25 for guidance tonight for planning tomorrow. Defense

1 1 has been introduced, which is an Advice of Rights
2 that Captain Burnish read to the defendant on
3 July 29th once he got back. Obviously the State's
4 not allowed to comment on someone's exercising their
5 rights. It's my understanding Captain Burnish told
6 him, I talked to my mom and they said not to give a
7 statement. I'm kind of in a box now where this is
8 in evidence that the rights were read and I'm just
9 trying to get some guidance what, if anything —

10 THE COURT: I don't know that you can make
11 a statement on it. It's in. The jury can make
12 whatever inference they want to, good or bad, for
13 him or against him.

14 MR. MEADORS: And Judge, as far as
15 potentially calling Captain Burnish about how the
16 signature was done, I would be able to do that?

17 THE COURT: You would certainly be able to
18 do that, concerning the actual taking of the
19 signature whether he was handcuffed at the time.

20 MR. MEADORS: Thank you.

21 THE COURT: Anything before we close for
22 the evening?

23 MR. MEADORS: No, sir.

24 THE COURT: We will send you a draft copy
25 of the proposed charges just so that you can be

1 looking at them overnight; and I'll have my law
2 clerk, which is sick today, send those to you and
3 then we'll discuss those tomorrow. We'll have a
4 charge conference after all the evidence has been
5 in.

6 MR. GRIFFITH: May we approach — or I'm
7 sorry, go ahead.

8 MR. MEADORS: No, I'm through, I said what
9 I wanted to.

10 MR. GRIFFITH: I just wanted to ask if the
11 judge would be also offering, that is, to tell the
12 jury along with the charges for murder, felony
13 murder, arson, if he's gonna allow the jury to
14 consider any other charge such as —

15 THE COURT: Depends on what evidence comes
16 forward.

17 MR. GRIFFITH: Okay.

18 THE COURT: I mean, I haven't heard all
19 the evidence yet so I don't know what other charge.
20 I would, that's the only three that were on the
21 indictment. At this time that's the only once I
22 would anticipate that we will be charging to the
23 jury.

24 MR. GRIFFITH: Okay, thank you, Your
25 Honor.

1 THE COURT: All right, thank you. Thank
2 you. Court's adjourned till 9:30 tomorrow morning.

3 (WHEREUPON, the proceedings were concluded
4 for the day to be reconvened on
5 February 18, 2016.)

6 MR. GRIFFITH: May we approach.

7 THE COURT: Yeah.

8 (WHEREUPON, counsel approached the
9 Bench for an off-the-record discussion.)

10 THE COURT: Mr. Griffith, there's
11 something you want to put on the record?

12 MR. GRIFFITH: I thought you wanted to
13 determine that after —

14 THE COURT: You want to do that? All
15 right. Everybody ready?

16 MR. MEADORS: Yes, sir.

17 THE COURT: All right, let's bring our
18 jury.

19 (WHEREUPON, the jury was returned to the
20 courtroom at approximately 9:41 a.m., and
21 the following proceedings commenced in
22 open court.)

23 THE COURT: Good morning, ladies and
24 gentlemen. I hope you had a good night's rest.
25 It's certainly a beautiful day out there today and

SW - J. POWELL - DIRECT

1 tomorrow is going to be nice and Saturday even nicer
2 than that. We should have you out of here by
3 Saturday.

4 Is the State ready to call its next
5 witness?

6 MR. MEADORS: May it please the Court.

7 THE COURT: Yes.

8 MR. MEADORS: Investigator Joseph D.
9 Powell.

10 THE CLERK: Place your left hand on the
11 Bible, raise your right hand please. State your
12 name.

13 THE WITNESS: Joseph Powell, P-O-W-E-L-L.
14 WHEREUPON,

15 **JOSEPH POWELL,**
16 having been duly sworn by the Clerk, testified
17 as follows:

18 THE CLERK: Have a seat up here please.
19 State your full name for the record.

20 DEFENSE: Joseph D. Powell, P-O-W-E-L-L.

21 **DIRECT EXAMINATION**

22 BY MR. MEADORS:

23 Q Good morning, Investigator Powell.

24 A Good morning, sir.

25 Q Investigator, will you please tell these folks

SW - J. POWELL - DIRECT

1 about Joseph D. Powell, just a little about where
2 you're from and your background, your training, and
3 in particular your background and training in the
4 field of expertise that I'm offering you this
5 morning.

6 A Okay. I originally was, went to school at the
7 University of Southern Mississippi where I obtained
8 my BS degree in chemistry. After receiving my BS
9 degree I came to South Carolina with the purpose of
10 continuing my education to work on my doctorate
11 degree, but I had to stop after one year of study.
12 I then became employed at SLED and began an
13 extensive in-house training regimen in the area of
14 drug analysis as well as trace evidence. Trace
15 evidence is an area which deals with such things as
16 paints, fibers, explosives, and also flammable
17 material. After going through the training, I then
18 took on case work where I analyzed cases and went to
19 court and testified. I performed this duty for
20 almost 27 years and decided I had enough and were
21 tired out.

22 After retiring I was at home and my wife
23 felt like it might be a good idea I go back to work
24 so opportunity was offered here in Sumter County so
25 I'm now working in their laboratory working in drug

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1 analysis as well as flammable, also known as arson
2 samples. One other area that I've dealt with arson
3 samples, I was involved with a symposium that was in
4 Orlando, Florida where we actually discussed issues
5 involving flammables, the protocols, the methodology
6 to be used and it's now been adopted both federally
7 as well as many of the states through that
8 symposium.

9 Q How many cases have you been involved in where
10 you've examined either accelerant or trace evidence?
11 Have you got a number on that?

12 A Oh, there, as far as in the area of trace
13 evidence you're talking thousands, many thousands.
14 In area of accelerants I probably worked in my
15 career — and this is just a guess on my part — two
16 to three hundred cases which directly involved in
17 analysis accelerants.

18 Q And have you been offered, been offered and been
19 accepted as an expert in courts of record of this
20 state in the field of expert, in the field of trace
21 evidence, forensic chemistry, and petroleum,
22 accelerant detection?

23 A Yes, sir, I have. I have been accepted several
24 cases and was accepted to be able to be an expert
25 witness in area of flammables or accelerants.

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1 MR. MEADORS: Your Honor, at this time we
2 would offer Joseph D. Powell as an expert in
3 petroleum accelerant detection, forensic chemistry,
4 and trace evidence.

5 MR. GRIFFITH: No objection, Your Honor.

6 THE COURT: All right. Ladies and
7 gentlemen, like I have told you on the prior four
8 expert witnesses who have testified, he's got
9 sufficient education and experience that he can
10 render an opinion about something other than what he
11 saw, smelled, tasted, felt, or heard. Whether you
12 choose to accept his opinion will be something for
13 you to decide as jurors. Again, you should give it
14 no greater or lesser weight simply because he is a
15 an expert so.

16 You may proceed to question him as an
17 expert.

18 MR. MEADORS: Thank you, Your Honor.

19 BY MR. MEADORS:

20 Q How long have you been with Sheriff Dennis?

21 A I've been working at the Sheriff's Office now
22 going on four years.

23 Q Okay. And your job here is what?

24 A My job here is to deal primarily with the area of
25 drug analysis, but I've asked and they've granted me

SW - J. POWELL - DIRECT

1 the opportunity to expand the laboratory in the area
2 of arson as well as explosives and some other types
3 of trace evidences. We don't have the equipment
4 necessary that I had at trace to carry out all the
5 types of trace evidence; but as much as we do have
6 equipment for, I'm available to do the test.

7 Q And a lot of jurisdictions — and I've dealt with
8 you when I was in Richland County — a lot of
9 jurisdictions send items to SLED to be analyzed,
10 correct?

11 A That is correct.

12 Q And that's where you were for the bulk of your
13 career?

14 A That is correct.

15 Q Sheriff Dennis has now has you so you're able to
16 examine, and this — like in this case, items
17 pertaining to an arson, correct?

18 A That is correct.

19 Q And you do that in your laboratory here?

20 A Yes, I do.

21 Q Do you have your report with you?

22 A I do, sir.

23 Q And did you have an occasion to examine some
24 items of potential evidence in the case we're
25 talking about, State versus Joseph Manners?

SW - J. POWELL - DIRECT

1 A Yes, sir, I did. I received numerous items and
2 what we call metal cans. These are basically line
3 cans to prevent any kind of loss of chemicals that
4 may be found inside, and I analyzed all these cans
5 and then issued report as to my findings.

6 Q And we've seen pictures of cans and cans are
7 introduced. Why cans? Why are cans used?

8 A A can is the best mechanism we have found over
9 time to be able to keep petroleum accelerants
10 contained. The problem with any type of accelerant
11 is that they tend to become — they actually
12 evaporate and hold themselves in the gas portion of
13 any container that you have. If you sit down you
14 try to keep this contained with, say, within
15 something paper, it will just go right through the
16 paper, it won't even stay. We have tried using
17 things like glass which is an excellent container
18 until someone drops it and then it goes away. We've
19 also worked with plastic, but plastic itself is
20 actually porous so many of the chemicals can go
21 through. Plus, plastic is a petroleum product so a
22 lot of times we have contamination from that. So
23 what we found was is the paint can, it's not just a
24 paint can you just go buy. It's actually a lined
25 paint can. The inside of it, there's a liner to be

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1 able to keep any of the acids and things eating away
2 of the can and so we can keep it for long term
3 storage. In most burn products there's actually
4 acids that are formed; and if you put it into a
5 non-lined pan, within a year you'll have a pile of
6 rust. It will just go right through it.

7 Q I'm gonna show you what's been entered as 67-A,
8 an item which has been identified as number, item
9 three on your report.

10 A Yes, sir.

11 Q Can you recognize that?

12 A Yes, sir. What's listed as item three bears my
13 initial. And the rust I was telling about, this
14 part is not lined. You can already see it's
15 beginning to eat away at this can. The interior
16 actually has a liner, but this has gotten touched
17 with some fire debris from outside being collected
18 and it's already beginning to eat away at it. Yes,
19 sir, this is sample number three that I analyzed.

20 Q And what was sample number three? Do you have
21 that reflected in your notes?

22 A Yes, sir, there is some cloth like material
23 that's found in here along with fire debris.

24 Q And for today's purposes you're a chemist?

25 A Yes, sir.

SW - J. POWELL - DIRECT

1 Q Did you go to the scene?

2 A No, sir, I did not.

3 Q So prior to looking at this you wouldn't have
4 known what was collected or picked up for your
5 analysis?

6 A No, sir. Everything will come to me as in, since
7 I'm in the blind, I know nothing about what the
8 investigators have done. I look at the contents. I
9 will then take and analyze what I find and then
10 issue a report. But by being in the blind it
11 minimizes the chance of any kind of bias or any kind
12 of suggestion it might be. It's what I find, what I
13 find, and I report on it.

14 Q Can you tell the ladies and gentlemen of the jury
15 how you went about analyzing item three.

16 A Item three came with several other cans and what
17 I do is I will take and I'll open the can up and the
18 first thing I do, believe it or not, is take a
19 smell. Your nose is a wonderful detector. You want
20 to be able to know what a mean, fill up your car, I
21 smell gasoline, or put one drop on your clothes and
22 get back in your car and everybody will tell you
23 about your gasoline 'cause the nose is a wonderful
24 detector. So I'm looking to see if I smell any
25 gasoline. Then once I have smelled, then I will

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1 take and put a piece of, it's basically pressed
2 carbon that I've got hanging on a piece of wire. I
3 will then attach it to the interior of this can and
4 close it back up. I will heat it overnight at about
5 60 decrees C which puts it about 140 degrees F so
6 that way any of the material that's there that's
7 trapped in the fibers or fire debris will come up
8 and be in the actual gas pocket, or air pocket
9 that's on top of this. That carbon will absorb any
10 organics that are there. Then the next morning
11 we'll take, open it back up and took the carbon out,
12 extract it out with a chemical that will strip
13 everything off of that piece of carbon and then ran
14 it through an instrument which allows me to look at
15 every component that it picked up. I then can go
16 through and analyze those components to determine if
17 I'm dealing with a single component such as ethanol
18 or acetone or if I'm dealing with a complex
19 component such as gasoline, kerosene, diesel fuel.
20 So I'm able to determine any of those type
21 components based upon the composition and the
22 patterns produced.

23 Q Let's get back to just the old Joe pile human
24 test. What'd you smell when you opened the can?

25 A In this case, let me make sure. I believe I

SW - J. POWELL - DIRECT

1 smelled gasoline; let me double check my notes.

2 Yes, number three when I opened it I smelled
3 gasoline.

4 Q And after you conducted your test overnight what
5 was the result of that?

6 A The instrument I used confirms that my nose is
7 correct; it is gasoline.

8 Q And so your finding as to item three in the metal
9 can containing cloth and fire debris was?

10 A Gasoline found.

11 Q Okay. 67-B which is item 4 I believe and 67-C
12 which is item 5, did you also examine those?

13 A Yes, sir, item 4 and item 5 were given to me for
14 analysis also. And as you can see, again, this
15 chemical reaction I was telling about you is
16 actually eating through this so what happened was is
17 the liner had a scratch on it or had been damaged
18 and so now it's got just metal eating right on
19 through. I analyzed both of these cans also, and do
20 the same procedure. On item number 4 I found
21 gasoline. On item 5 I did not find any kind of
22 petroleum accelerant.

23 Q So item number 4 — and you don't even know where
24 these were found?

25 A No, sir, I just have based upon these were listed

SW - J. POWELL - DIRECT

1 as a metal can, it could be fire debris is what
2 comes in to me.

3 Q So item 4, your analysis was that gasoline was
4 found?

5 A That is correct.

6 Q And then item 5 your analysis was that?

7 A It was there was no petroleum accelerants found.
8 That doesn't mean there was nothing there. It just
9 means that the material that I did find was not any
10 type of combustible material that would, anyone have
11 used to be able to start a fire or to use for that
12 purpose.

13 Q And before that I think you used the phrase no
14 petroleum.

15 A No petroleum deciliter (ph) found. It basically
16 meaning we're looking for a certain pattern to be
17 able to make a call. In the case of a fire there's
18 all kind of organics being produced from melting
19 plastic in the woods and everything else. So I'll
20 see those peaks and I identify what they are, but
21 they do not, they're not a petroleum pattern that
22 I'm looking for to be identified as a certain
23 component.

24 Q Does that mean gasoline wasn't there?

25 A There's no gasoline there.

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1 Q So 3 and 4 gasoline found, 5 not?

2 A That is correct.

3 Q Okay, just bear with me. I'm gonna put — this
4 is State's 70, which I believe is item 7.

5 THE COURT: Are these in evidence?

6 MR. MEADORS: Yes, sir, they are. I'm
7 sorry. This is in evidence, State's 70.

8 THE WITNESS: Yes, sir.

9 BY MR. MEADORS:

10 Q Do you recognize that as you analyzed State's 70?

11 A Yes, sir, I analyzed State's 70, also 71, 69, and
12 72.

13 Q Okay. And they are all in evidence. Can we just
14 start with — I know it's out of order but item
15 number 7 on your report which is State's 70. Could
16 you start with that and did you have an opportunity
17 to examine item number 7?

18 A Item number 7, I ran the same type of analysis.
19 There is no gasoline found in that sample. There is
20 no petroleum accelerants there.

21 Q And specifically what do you have listed that was
22 in item 7?

23 A What I have listed is know ignitable liquids
24 found.

25 Q But it was fire debris?

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1 A It was fire debris, yes.

2 Q And that was 7. And number 8, which for the
3 record is number 71.

4 A Yes, sir. What's listed as State's Exhibit 71
5 has my number 8 on the lid. I ran analysis of the
6 contents of this can and it's fire debris here does
7 contain gasoline.

8 Q And again, tell the ladies and gentlemen of the
9 jury how you came up with that.

10 A In this case with number 8, I don't think I
11 smelled it. Let me look to make sure one moment.
12 No, when I did the smell test on it I did not smell
13 gasoline, but my instrument was still able to pick
14 it up and so I was able to determine if there is
15 gasoline in sample number 8.

16 Q And from item number 9 and item number 10 — and
17 item 9 is State's 72 and item 10 is State's 69, did
18 you have occasion to analyze both of those?

19 A Yes, sir, I did.

20 Q And tell the ladies and gentlemen about that
21 analysis and what your conclusion was.

22 A Again, I did find some materials but none of them
23 were any type of petroleum accelerant. There's no
24 gasoline here or anything such as diesel fuel or
25 anything. The materials that are there are going to

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1 be byproducts from the burn of material at the fire.

2 MR. MEADORS: Beg the Court's indulgence.
3 State's 78 and 79.

4 (WHEREUPON, State's Exhibits Nos. 78 and
5 79 were marked for identification only.)

6 BY MR. MEADORS:

7 Q I'm going to show you what's marked State's 78
8 and State 79. Do you recognize those and do they
9 relate to what you just talked about?

10 A Yes, sir, these are going to be the report that I
11 issued. I had two sets of samples at different
12 times submitted to me and these are the reports
13 reflecting the samples submitted and the results
14 from those samples.

15 MR. MEADORS: Your Honor, State's 78 and
16 79 without objection.

17 THE COURT: Is that correct? Without
18 objection?

19 MR. GRIFFITH: No objection, Your Honor.

20 THE COURT: All right, 78 and 79 are
21 admitted without objection.

22 (WHEREUPON, State's Exhibits Nos. 78
23 and 79 were marked for identification and
24 admitted into evidence.)
25

SW - J. POWELL - DIRECT

1 BY MR. MEADORS:

2 Q Investigator Powell, would it matter if some of
3 the items were collected on day one and others on
4 day five?

5 A Each day — it can. Each day that you get
6 further away from a scene, the more material is
7 lost. All this material will evaporate out. Or you
8 can also have bacteria that will begin to degrade if
9 it's contained in someplace where there's air
10 getting to it. So the longer you get away from a
11 scene it can diminish; however, if something is
12 trapped it will extend the life time longer than it
13 would, say, something open on the ground.

14 Q So if something was underneath the body, let's
15 say, and trapped between the body and the floor,
16 would it be more likely to retain the gasoline or
17 the accelerant?

18 A Yes, its life span — what I mean by life span is
19 how long it would remain there — would be longer
20 than it would be if it had just been poured out on
21 concrete floor or just out open exposed to the air.

22 Q And in your experience how many years you have
23 with accelerant determination and chemistry and
24 arson, have you had cases where a dog may have hit
25 on something but you didn't find anything?

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1 A Yes, sir, it's quite common. When a dog is
2 looking for material he has been trained to pick up
3 on certain smells. Well, we train a dog, for
4 example, on gasoline. We'll have gasoline sample
5 for him to learn from. Within that gasoline sample
6 there may be several hundred different components
7 and we do not even know which one that dog actually
8 picks up on. So it very well may be something that
9 it smells the same way, but that one component was
10 being produced by burn byproducts, he goes, aha,
11 there's something here 'cause that's what he was
12 trained on; but that doesn't mean — I'm not
13 disagreeing with the dog if he hit on something. He
14 just hit on something that he thought was in his
15 training was gasoline.

16 Q And finally, you were off this week. Thank you
17 for being here today.

18 A No problem.

19 Q Finally, Investigator Joseph D. Powell, do you
20 have an opinion based on your examination of items 3
21 through 5 and 7 through 10 as to whether or not a
22 petroleum accelerant was at [REDACTED] Barnwell Road here
23 in Sumter County?

24 A Yes, sir, that petroleum accelerant would be
25 gasoline so we did find gasoline in several of the

1 samples and that is a petroleums accelerant. It can
2 be used to be able to be used as fuel for a engine
3 or it can be used to start a fire and so, yes, it
4 would be, there is a petroleum accelerant there.

5 MR. MEADORS: Beg the Court's indulgence.

6 THE COURT: Yes.

7 MR. MEADORS: Thank you, Joseph, that's
8 all.

9 THE COURT: Mr. Griffith, any
10 cross-examination?

11 MR. GRIFFITH: Thank you, Your Honor.

12 **CROSS-EXAMINATION**

13 BY MR. GRIFFITH:

14 Q Mr. Powell, you said that you searched for
15 petroleum only; is that correct?

16 A Petroleum accelerants, yes, sir.

17 Q So you don't do any search for ethanol?

18 A Ethanol is petroleum, petroleum accelerant.

19 Q Okay, well, it's alcohol, all right.

20 A See it — I mean, if I may explain. Any chemical
21 that has carbon as it backbone is, can be classified
22 as a petroleum and if it will aromatize and go into
23 the atmosphere, then that can be used as a petroleum
24 accelerant so that's what determines it. So
25 anything ethanol is going to have two carbons in it,

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1. it's a petroleum accelerant.

2 Q So you did find petroleum but not all of them had
3 gas in it, did it?

4 A That is correct.

5 Q You did find petroleum in some of the others that
6 you could not identify as gasoline?

7 A It was not gasoline. The material that I found
8 was petroleum material; but it, you know, from my
9 expertise or -- yeah, I believe it's gonna be
10 byproducts of the burning of the fire debris and
11 it's lingers around and I picked it up.

12 Q And so it could have been alcohol; is that
13 correct?

14 A No, sir, I actually run for that. There was no
15 -- when we see alcohol which one are you talking
16 about? There's actually a whole family --

17 Q Drinking alcohol.

18 A Ethanol.

19 Q Ethanol.

20 A I looked for ethanol. There was no ethanol that
21 I found in this case.

22 MR. GRIFFITH: I'm looking for a
23 particular picture -- with the Court's indulgence,
24 I'm sorry. Here we are. This is State's Exhibit
25 34. I'm gonna show it to the witness.

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1 THE WITNESS: Yes, sir, you handed me a
2 picture of it looks like a, some burnt debris and
3 obviously some tile and other materials there.

4 BY MR. GRIFFITH:

5 Q Okay. And does it look like there's a staircase
6 there?

7 A Yes, sir, there's some type of staircase. I
8 don't see the whole thing, but it's some type of
9 stairwell staircase.

10 Q Okay. And would it surprise you to know that
11 underneath that stair case was stored a whole lot of
12 alcoholic beverages?

13 A No, sir, people store alcohol in many places so
14 it would not surprise me at all.

15 Q But if there were a bunch of alcoholic beverages
16 stored under there why wouldn't they show up?

17 A Well, it would depend upon (a) that the container
18 was ruptured; and (b) had, was the samples that were
19 collected, were they collected right there where the
20 ethanol bottles were at. Remember too, with ethanol
21 or whiskey, if you will, you have to have what's
22 called one hundred proof for it to burn. The word
23 proof actually comes from the past where what
24 happened was is be able to prove you had good
25 whiskey is that you would be able to burn it so

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1 that's where proof came from. If it's less than a
2 hundred proof it won't even burn.

3 Q And that's really fifty percent?

4 A It's fifty percent, yes, sir. And now, it can, I
5 found alcohol that can burn 47 so it's a rough
6 number; but 50 percent is what was, is the value of
7 one hundred proof.

8 Q But alcohol, ethanol too, isn't it true, that if
9 you heat whiskey, let's say, as the alcohol begins
10 to evaporate off that that is very flammable?

11 A Oh, yes, it will burn. It will burn in a blue
12 flame and very hot.

13 Q That's very hot?

14 A Yes, sir.

15 Q According to previous testimony we heard that
16 those stairs were a point of origin because it's so,
17 the fire was very hot there?

18 A Okay.

19 Q I'm, just for information. But if there were a
20 bunch of alcohol stored under that stair case and
21 the evaporating alcohol began to come up and burn
22 and that blue flame, wouldn't that cause it look for
23 hot, like a very hot fire was there?

24 A If you have a sufficient amount of alcohol with a
25 burning flame, yes. Now you also realize you're

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1 burning up your sample as you're going so you're not
2 going to have much alcohol left after this process.
3 But in this case I was looking for ethanol, I did
4 not find any, but I did find gasoline.

5 Q Well, if it were true that the alcohol bottles
6 burst and there was sufficient numbers of them to
7 cause a hot flame, that those alcohol and that
8 temperature would have evaporated out and burned
9 out?

10 A Everything that would be coming up into the
11 atmosphere would have burned out, absolutely
12 correct. Now anything that had burst and went into
13 the floor would have been, would have been trapped
14 there and possibly could have been detected. Now
15 the point you're making is that alcohol is very
16 volatile, much more volatile actually than gasoline
17 so it can actually evaporate quicker than gasoline
18 will evaporate. But normally when I do find
19 ethanol, I will find it trapped in some barrel or
20 find it somewhere where it's been wicked into the
21 fiber of some wood products and that's where we'd
22 find it out.

23 Q But that would only be true if you were provided
24 those particular spots to sample; isn't that
25 correct?

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1 A Well, yes, sir. My determination is simply
2 determine by where the samples are collected. I
3 depend upon the expertise of the person collecting
4 them to evaluate the scene and be able to collect
5 the best viable samples.

6 Q So if the alcohol evaporated away during hot
7 flame and they did not take a sample from where the
8 alcohol may or may not have spilt, then you wouldn't
9 know whether they were alcohol there or not?

10 A That is correct. If it had not, if samples had
11 not been collected there, then I would not have
12 known it was there; but what I do know is there is
13 gasoline there.

14 Q But you — what you could not say is whether that
15 gas came from, could you?

16 A Oh, no, sir, it came from some source. I don't
17 have a way of tracking. I worked over the years
18 trying to do a fingerprint where we could take the
19 gasoline from one gas station, see if we can match
20 it back; but there are just too many variables. It
21 just never was found inconsistent. No, sir, there
22 is no way to really track gasoline back unless
23 someone has had something so unique and something
24 should not even be there to be able to track it
25 back.

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1 Q And you also could not say how much gasoline
2 there was there to begin with, could you?

3 A No, sir, there's no way to quantify the amount
4 that's there because, again, as the fire is burning
5 it's consuming the, whatever the gasoline. So
6 what's wind up happening is that what we capture is
7 what's been entrapped or been held into because of
8 something that occurred at the scene, and that
9 can — there's no way to make any kind of
10 quantitational determination based upon just those
11 samples.

12 Q So there's no way to know how much gasoline was
13 there, there's no way to know where the gasoline
14 came from, and there's no way to know whether the
15 gasoline was either poured there or even sat there
16 for, let's say, 24 hours?

17 A Well, no, that's not necessarily true. Once you
18 have poured out the gasoline you start losing part
19 of what's called the front end. What I mean by that
20 is the gasoline is mixed — is a mixture of very,
21 very, very volatile components all the way to very
22 nonvolatile components, and the very volatiles
23 actually evaporate off very quickly. If you ever
24 open up your gas tank you'll see them streaming out.
25 The hexylene thing just come pouring out of your gas

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1 tank. Well, that's actually changing your
2 formulation of gas because you're losing a lot of
3 your very volatile stuff. You see this in common
4 effect if you leave equipment sitting around very
5 long and the gasoline will turn into what they call
6 varnish. It becomes a sludgy type material because
7 of the very volatile materials come off of it. If
8 you put out something at a crime scene it begins to
9 age; the material begins to be lost on it. Now one
10 day is not a lot of time on the aging, but depending
11 upon where it was poured out at, I can see the
12 difference because I lose that front end. These,
13 this gasoline here had all the components there.

14 Q And if somebody poured gasoline on the floor,
15 dropped gasoline on the floor, some gasoline somehow
16 fell on the floor and something fell on top of it,
17 that gas would stay there for quite a long time;
18 wouldn't it?

19 A It'd stay there for a good while. It will go
20 away after a period of time but — and I can't tell
21 you exactly how long because it's going to be
22 dependent on the material, the condition inside, and
23 things like that. But it would stay longer than
24 just pouring it out on open floor.

25 Q So it's possible that gasoline was there for some

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1 time before the fire if something had fallen on it
2 and been dropped for whatever reason and it had
3 stayed there for some period of time before this
4 fire then was ignited by the fire?

5 A What I found what you're describing had to be
6 something happened in a very short period of time
7 because if it had been a long period of time I would
8 have had a different formulation or look of it. So
9 what I had was basically fresh gas or what we call
10 raw gasoline so it has to be something that's very
11 short in nature as far as exposure to air.

12 Q If there were a container of gasoline in the
13 room, fresh gas, even a very small container, and
14 during the fire that were opened or burst by the
15 heat or whatever, then that would give off the same
16 result as if someone had poured gasoline on there;
17 is that correct?

18 A That is correct 'cause there what you're taking
19 something is contained so it none of the volatile
20 components can escape and then when it does rupture,
21 it's — you got raw gas which would be poured out on
22 everything.

23 Q So we have alcohol that may or may not have
24 contributed to the intensity of the fire in a
25 certain location, but we can't tell that, can we?

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1 A Well, I can tell you I did not find any ethanol
2 so what I did find was gasoline. Is gasoline a
3 petroleum product that can be used to burn
4 something, yes.

5 Q But this is speculative in that we don't know
6 whether there was alcohol there or not, we have not
7 heard any testimony about that.

8 A I have no evidence to be able to say anything
9 about ethanol 'cause I have not, I did not find any
10 in my analysis.

11 Q We did have an autopsy report which identified
12 that the grandfather had consumed a good bit of
13 alcohol so we might assume there was a lot of
14 alcohol in there; but that would call for
15 speculation, we don't know.

16 A I have no way of knowing whether he was just went
17 out and bought a six pack or whether he had sit down
18 here and went and bought some hard liquor 'cause the
19 alcohol found in him would still show the same as
20 far as we don't know the source of it. We don't
21 know — beer won't burn. It may have been beer. It
22 could have been whiskey. Whiskey won't burn unless
23 it's 600 proof.

24 Q In that four percent.

25 A No.

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1 Q Until you heat it up hot enough?

2 A If you at 4 percent you're gonna have to be
3 cooking it a lot; and unfortunately what happens you
4 get a lot of moisture coming up that's gonna keep
5 that flame pretty much snuffed out. You're just not
6 gonna have it happen. You have to get up about 25,
7 30 percent before you're gonna really start seeing
8 the burn that you're describing.

9 Q I understand. Thank you. I have no more
10 questions.

11 THE COURT: Any redirect?

12 MR. MEADORS: No, sir, thank you.

13 THE COURT: Thank you. You may step down.
14 This witness is excused unless objected to.

15 MR. MEADORS: Thank you, sir.

16 Beg the Court's indulgence.

17 THE COURT: Yes, sir.

18 MR. MEADORS: May it please the Court,
19 the State of South Carolina rests.

20 THE COURT: All right. Ladies and
21 gentlemen, now is a good time for a break. We have
22 some matters of law to take up. Please go back to
23 your jury room. Now if you want coffee or something
24 like that, Co'cola, they'll be glad to provide that
25 for you. Please do not discuss anything about the

1 case while you're there. Thank you.

2 (WHEREUPON, the jury was removed from the
3 courtroom at 10:15 a.m.)

4 THE COURT: Are there any motions to be
5 made at this time?

6 MR. GRIFFITH: Your Honor, I would like to
7 move that we be allowed to add some witnesses
8 because we've come across discovery during the
9 course of the trial and some witnesses that can
10 identify that there were a lot of alcohol products
11 in that area that the State claims was the source of
12 the fire and the hot point of the fire. Also, that
13 can speak to the fact of Mr. Manners' condition
14 during the, his time of being given his statement.
15 And because we found out this information late in
16 the trial we were not be able to bring those before
17 the Court based on what the Court has informed us,
18 and we would just like to object to not being able
19 to call this witness.

20 THE COURT: All right. He's objecting to
21 it. Do you want to place something on the record?

22 MR. MEADORS: Judge, —

23 THE COURT: I've made my ruling that he
24 would not be allowed to call this witness.

25 MR. MEADORS: I know one of the witnesses

1 has been available for them; he's been here all
2 week. I think after listening to the tape from what
3 I understood, that he wanted to ask, provide some
4 witnesses based on evidence that came into court.
5 He thinks now will provide — I just respectfully
6 object to that. I don't think you can see what
7 evidence develop and then bring in witnesses so I
8 just, I don't think that's appropriate.

9 THE COURT: All right, your objection is
10 on the record. My ruling stands.

11 MR. GRIFFITH: Thank you, Your Honor.

12 THE COURT: Any other motions?

13 MR. GRIFFITH: Defense has, calls no other
14 witness, Your Honor. Defense rests. I would move
15 for a directed verdict, Your Honor.

16 THE COURT: All right. On what basis?

17 MR. GRIFFITH: On the basis that the State
18 has not proved beyond a reasonable doubt that the
19 defendant is guilty. They've not presented
20 sufficient evidence to cover all the elements of
21 what he's accused of, Your Honor.

22 MR. MEADORS: Any evidence at this point I
23 think there's ample evidence to go to the jury that
24 there was an arson, that there was a malicious
25 killing. There's been an accelerant found. The

1 defendant did confess to Sergeant Mitsch the next
2 day that he started the fire and that he hit his
3 grandfather. He knew his grandmother was there when
4 he left when he set the fire.

5 THE COURT: All right. Mr. Griffith, the
6 Court is more concerned about the existence of
7 evidence at this stage of the trial. Of course, it
8 will be the jury who has to determine whether the
9 evidence beyond a reasonable doubt. But at this
10 point in time there just has to be some evidence
11 that is more than a mere suspicion that will allow
12 the jury to consider that so I'm gonna respectfully
13 deny your motion. I think they presented enough to
14 at least get it to the jury.

15 MR. GRIFFITH: Thank you, Your Honor, with
16 objection.

17 THE COURT: Yes, sir. Let me go ahead and
18 question your witnesses, or your client, as to
19 whether or not he wants to testify. So please place
20 the defendant under oath for the purpose of this
21 questioning only.

22 THE CLERK: Please stand. Raise your
23 right hand. State your name please.

24 THE DEFENDANT: Joseph Michael Manners.
25 WHEREUPON,

1 **JOSEPH M. MANNERS,**
2 having been duly sworn by the Clerk, testified
3 as follows:

4 THE COURT: Mr. Manners, at this time I'm
5 going to explain to you certain of your rights. If
6 you do not understand what I'm getting ready to tell
7 you, please let me know. If you want me to explain
8 in greater detail I will be glad to explain it in
9 greater deal. Do you understand?

10 THE DEFENDANT: Yes, sir, Your Honor.

11 THE COURT: Now we've reached the stage of
12 your trial where you may present your defense. Now
13 you have the right to claim the protections granted
14 to you by the Fifth Amendment of the United States
15 Constitution that says in part that no person shall
16 be compelled in any criminal case to be a witness
17 against himself. Now that means that you cannot be
18 required to testify in this case. Of course, you do
19 have the right to testify on your own behalf even
20 over the advice of your attorney. So if your
21 attorney says, I don't think you should testify,
22 it's still up to you as to whether you want to
23 testify and I will still allow you to testify even
24 if your attorney would not call you to the stand.
25 However, but again, no one can make you testify.

1 This is a personal right and no one can waive this
2 except for you.

3 Now if you decide to testify, you'll be
4 subject to the same rule s that govern other
5 witnesses in this trial and you may be examined and
6 cross-examined on any relevant issue in this case.
7 In addition, if you have any convictions involving
8 dishonesty or false statements or for crimes
9 punishable more than one year in prison and I
10 determine that the probative value of allowing these
11 in evidence outweighs the prejudicial effect on you,
12 then the State will be able to use these crimes to
13 attack your credibility.

14 Let me ask the State, are there any
15 charges that he has or convictions that the State
16 would use to question him and impeach him should he
17 take the stand?

18 MR. MEADORS: He's got a juvenile
19 conviction which I don't think we can go into unless
20 he opens the door.

21 THE COURT: Okay. So in other words,
22 unless you say something while you're testifying,
23 they will not be able to use those convictions to
24 impeach your credibility. Now again, the decision
25 on your part to testify must be made freely and

1 voluntarily, intelligently made with the knowledge
2 and protections given to you by the Fifth Amendment
3 and the consequences of your decision to testify.

4 Now if you decide not to testify, I will
5 instruct the jurors that they cannot give the fact
6 that you do not testify any consideration whatsoever
7 and that there's to be absolutely no prejudice to
8 you because you do not testify. Now it's left
9 entirely up to you whether or not you want to
10 testify. You may talk to your attorney, your
11 family, and friends or anyone else; but the final
12 decision will be yours. And what we will do is, we
13 will take a ten minute recess so that you can talk
14 to your attorney, talk to any family members about
15 whether or not you want to testify, and then I'll
16 come back and ask you the ultimate question at that
17 time. All right. Thank you.

18 Court is in recess for ten minutes. Thank
19 you.

20 (WHEREUPON, a recess was taken from the
21 proceedings.)

22 THE COURT: All right, if the defendant
23 would please rise. All right. Mr. Manners, have
24 you had an opportunity to speak with your attorney?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: Have you had opportunity to
2 speak with any of your family members?

3 THE DEFENDANT: Yes, sir, Your Honor.

4 THE COURT: All right. You need anymore
5 time to speak with your attorney?

6 THE DEFENDANT: No, sir.

7 THE COURT: Do you wish to testify?

8 THE DEFENDANT: No, sir, Your Honor.

9 THE COURT: Okay, thank you. You may be
10 seated.

11 Mr. Griffin, are you gonna call any
12 witnesses?

13 MR. GRIFFITH: No, Your Honor, Defense
14 rests.

15 THE COURT: Okay, very well. Then we will
16 bring the jury out; you will rest on the record.
17 You anticipate — obviously can't have any reply
18 testimony if he's not gonna call any witnesses so
19 I'll send them back out for a few minutes. We will
20 go over the charge. Have you had opportunity to
21 review the proposed charge?

22 MR. GRIFFITH: I have, Your Honor. And I
23 have no objection to the charge.

24 THE COURT: Okay.

25 MR. MEADORS: We'd like to add, voluntary

1 intoxication is not a defense only.

2 THE COURT: That would be appropriate.

3 MR. MEADORS: That's all we ask for.

4 THE COURT: Since that was in the evidence
5 that he had taken some pills and so add that in
6 there as well. Anything further?

7 MR. MEADORS: Your Honor, if we will have
8 about five minutes just to get...

9 THE COURT: Yeah, I'm gonna give you a few
10 minutes to get your thoughts together.

11 MR. GRIFFITH: I would object to that.

12 THE COURT: 'Cause you put in evidence you
13 will not get the closing argument.

14 MR. GRIFFITH: I would object to that
15 being added into—

16 THE COURT: Okay. I'm gonna put it in
17 there, overruled. Thank you. Let's bring the jury
18 in, briefly.

19 (WHEREUPON, the jury was returned to the
20 courtroom at 10:40 a.m., and the
21 following proceedings commenced in open
22 court.)

23 THE COURT: Thank you, ladies and
24 gentlemen. The State has rested.

25 Mr. Griffin.

1 MR. GRIFFITH: The Defense rests, Your
2 Honor.

3 THE COURT: All right. Then ladies and
4 gentlemen, all the testimony that you're going to
5 hear in this trial has now been heard. I'm gonna
6 send you back to the jury room. I know don't get
7 too comfortable just a few minutes to give the
8 attorneys an opportunity to prepare for their
9 closing arguments. I'll bring you back out for
10 closing arguments. I will then charge you the law
11 applicable to this case and then you will begin your
12 deliberations. And the county will provide you
13 lunch find so we will just stay right here until you
14 reach a verdict, all right. Thank you. Please do
15 not discuss anything about the case while you're
16 back there.

17 (WHEREUPON, the jury was removed from the
18 courtroom at 10:42 a.m.)

19 THE COURT: Do y'all have any objection to
20 me sending a copy of the charge back to the jury
21 room with the jury? I can do it if I want to, I
22 don't need your permission, but I try to work with
23 the lawyers. So if there's an objection I won't use
24 it; but if a bunch of questions start coming back,
25 then I'm going to send it.

1 MR. MEADORS: I'd rather wait for the
2 questions. I've always been consistent on that. I
3 hate to disagree with you; I know you control. If
4 you want to do it, I understand that. I'm just,
5 I've have always been taking that position
6 especially initially; but whatever Your Honor
7 decides, obviously we respect it.

8 MR. GRIFFITH: Your Honor, I would rather
9 it not be sent. Of course it's up to Your Honor.

10 THE COURT: Okay. Then I won't unless
11 they start helping with us some questions, then I
12 will send it back. Court will be in recess for ten
13 minutes.

14 Yes, sir.

15 MR. MEADORS: Were you through? I'm
16 sorry.

17 THE COURT: And then we will come back,
18 you will open on the law and —

19 MR. MEADORS: That was my question. Is he
20 going to require me to open on the law which is,
21 that's fine, I just didn't know if he wanted, wants
22 to waive opening but I'll be prepared.

23 THE COURT: Are you going to require them
24 to open on the law?

25 MR. GRIFFITH: We'd be willing to waive.

1 THE COURT: Okay. So you will argue and
2 then he will close on everything.

3 MR. MEADORS: Thank you.

4 THE COURT: Very well, court is in recess
5 for ten more minutes.

6 (WHEREUPON, a recess was taken from the
7 proceedings.)

8 THE COURT: Did y'all look at the verdict
9 form as well?

10 MR. GRIFFITH: I did.

11 THE COURT: And the way I postured it, if
12 they find him not guilty on the arson, then they
13 cannot consider the murder because the means of
14 alleged murder is by the arson. You agree with
15 that, Mr. Meadors?

16 MR. MEADORS: I'm sorry, I was talking to
17 the solicitor.

18 THE COURT: If they find him not guilty on
19 the arson, that they could not find him guilty on
20 murder 'cause arson was the means by which the
21 murder took place.

22 MR. MEADORS: Correct, I'm sorry, I'm with
23 you.

24 THE COURT: I mean, if there's like a
25 shooting and —

1 MR. MEADORS: I follow you.

2 THE COURT: —they found nobody didn't
3 shoot somebody,—

4 MR. MEADORS: One hundred percent, I
5 apologize.

6
7 THE COURT: —there's no way they could
8 find committed the murder.

9 MR. MEADORS: Yes, sir. Let's bring our
10 jury in.

11 (WHEREUPON, the jury was returned to the
12 courtroom at approximately 11:00 and the
13 following proceedings commenced in open
14 court.)

15 THE COURT: All right, ladies and
16 gentlemen, as I said, all the evidence has been
17 presented. The attorneys will give you their
18 closing arguments, and then I will let you begin
19 your deliberations after I give you the charge on
20 the law for this particular case.

21 Mr. Meadors, I understand the State waives
22 opening.

23 MR. MEADORS: Yes, sir.

24 THE COURT: Mr. Griffith.

25 MR. GRIFFITH: Thank you, Your Honor.

1 Please the court. Ladies and gentlemen, first of
2 all, thank you so much. We kept you here for three
3 days and for your service. We do appreciate it.
4 But as of course, the judge explained when we
5 started, this is an essential part of our freedom.
6 And I would want you to consider all the evidence
7 you've heard, of course, and I also would like for
8 you to consider every little piece of evidence you
9 heard from both sides of this argument and of course
10 your finding must be beyond a reasonable doubt. If
11 you find reasonable doubt, then you cannot find my
12 client guilty. This was a tragedy. Two people did
13 die in a fire. However, the — there are questions
14 about the fire, about its origin. There were
15 questions as to what really started the fire. The
16 State witness testified that the room, one room was
17 the place of origin because it was so hot in there.
18 More than one thing could have caused that to be
19 hot, as you heard testimony from the person who
20 talked about the kit. Also, the State's witness
21 testified that the area beside that room was a
22 garage area and so a lot of things happen in
23 garages. I mean, there's gasoline, all kinds of
24 things that could be in the garage. So the origin
25 of the fire is questionable as far as what really

1 caused this fire and what caused the intensity in
2 that one room. And so, I do not believe the State
3 has shown beyond a reasonable doubt exactly the
4 origin of the fire.

5 And in order for there to be an arson of
6 course, there has to be several things present.
7 One, there has to be proof beyond a reasonable doubt
8 that this was a fire set on purpose and that it was
9 malicious. The State offered up no witnesses that
10 there was any malice present. The State offered up
11 no witnesses that the, in fact, fire was willful,
12 purposeful, and not an accident, but not malicious.
13 They have to show that there was some malice ahead
14 of time. And so because the State has not shown
15 beyond a reasonable doubt that there was no malice,
16 also, the statement that was given by the witness,
17 he was in a hospital. You saw the signatures on the
18 consent forms for understanding his rights. He
19 signed one when he was in the hospital one month
20 later. One month later, wasn't straight on the
21 line, the one while he was in the hospital not only
22 went off the line, it kind of curved around in a
23 circle. But if my hands are tied, I mean, I can
24 still write a straight line; but we would have shown
25 or have discussed whether or not he was capable of

1 understanding, whether or not he understood what was
2 going on at that time. And we talked about the fact
3 that he'd fallen asleep while he was in the hospital
4 while he was giving his statement, that he was
5 brought in there for overdose purpose because he had
6 taken too many pills. And the evidence, of course,
7 has to show that beyond a reasonable doubt he
8 performed these acts, that in particularly the
9 arson, and he would have to understand what he was
10 saying in order for him to have admitted or made any
11 statements concerning those items.

12 And I would ask you to consider all of
13 this evidence and to weigh each piece where he said,
14 and his statement — of course you'll have the
15 evidence back there in the room with you. He didn't
16 know exactly how the fire started he began with. He
17 wasn't — he seemed that he did not really
18 understand that his parents had, his grandparents
19 had perished. And of course, you know, the officer
20 that was questioning him did know what had happened
21 and was able to guide him somewhat, continued to ask
22 him questions after he said maybe we shouldn't talk
23 about this anymore. But I would like you to
24 consider all of the evidence. I would like for you
25 to come to the conclusion that there may be some

1 doubt as to whether he knew what he was saying as to
2 whether or not there was malice when, if there was a
3 fire that was actually started on purpose, whether
4 there was some kind of a willfulness or malice
5 involved in starting a fire, where the fire started,
6 what started the fire. There's some question as to
7 actually was it an arson, or was it an accident that
8 something else contributed to the fire.

9 In your considerations I would certainly
10 like for you to help us in finding the truth, and
11 but we have to be to a point of beyond a reasonable
12 doubt. Now reasonable doubt, we have a reasonable
13 doubt. It's something that sounds reasonable. It's
14 reasonable. That perhaps something else caused this
15 fire. It may be you would weigh the evidence, look
16 at the evidence and decide whether or not it's
17 reasonable that a person may not understand what
18 they're saying and may not be able then to give
19 statements that they understood or that they knew
20 what they were talking about or that they could have
21 been confused. It's reasonable to think a person
22 could have been very confused considering the
23 circumstances, considering their condition. And
24 when you find, if you find after looking and
25 considering the evidence, you've heard the evidence,

1 that it is reasonable that those things are true,
2 that there is reasonable doubt, then you could not
3 find him guilty because you have to find him guilty
4 beyond any reasonable doubt. And I would ask as you
5 go back there, of course, to, with us, as we try to
6 find the truth and as we try to seek justice, be
7 mindful, prayerful, and considerate of all the
8 evidence that you have heard. Thank you.

9 THE COURT: Mr. Meadors.

10 MR. MEADORS: May it please the Court,
11 Solicitor Finney, Mr. Griffith, ladies and
12 gentlemen, good morning. First of all, Mr. Griffith
13 said thank you all for being here this week. I'm
14 not a jury watcher. I don't sit and look at all of
15 you; but a few times I glanced over here, no
16 question about it, y'all are paying attention. You
17 know, this is serious and we know you've been
18 listening and that's all we can ask you, and thank
19 you. I just ask you to listen, to continually
20 listen to me and obviously His Honor's charge on the
21 law. And then it will be your time to make your
22 decision.

23 Very briefly I'm gonna talk to you about
24 the law. As you know, the defendant is charged with
25 two counts of murder and arson in the first degree.

1 Mr. Griffith said a minute ago we have to show
2 malice ahead of time. You just don't —
3 premeditation is not required in this state. You
4 don't have to plan it. You don't have to devise a
5 plan. That's one way of showing expressed malice if
6 you had it, but premeditation is not a requirement
7 in this state. Malice is a meanness, an evilness, a
8 wickedness one person shows to the other. You kind
9 of know it when you see it when you feel it.
10 Expressed malice can be, I'm gonna kill you. You
11 don't usually have that in a case, but that's an
12 example of expressed malice. But the judge will
13 also tell you there's something called inferred
14 malice. You can infer malice from the circumstances
15 and the events of the crime, a total disregard of
16 human life; it's called malignant heart. That's
17 inferred malice, a total disregard for human life.
18 In this case, human lives. That's inferred malice.
19 Knocking your grandfather out, knowing your
20 grandma is upstairs and can't get around, setting
21 a fire and leaving. That is inferred malice, and
22 we've proven that beyond a reasonable doubt we
23 respectfully submit.

24 Aforethought again, malice aforethought is
25 a term of art. You do not have to plan it in

1 advance. It can exist as soon as you drop the
2 match, as soon as you pour the gasoline. Malice
3 expressed or implied. We've also got to prove that
4 the defendant killed Mr. and Ms. Topper and they
5 died as a proximate result of that fire. We brought
6 Doctor Ross here. It's not pleasant to listen to.
7 Pictures aren't really fun to look at, but that
8 shows the malice too and the maliciousness of.
9 She's still alive at least for a little bit. My
10 God, it wasn't long Doctor Ross said, but she's
11 still alive for a little bit when the fire is going
12 on. That's the carbon monoxide; it's still inside
13 her. I said how long would she have lived, Doc?
14 Well, thank goodness just a minute or so. But the
15 flames are going up and she's still there alive.
16 That's malicious, that's mean. Knowing she's there,
17 total disregard for a human life. Malice.

18 The other crime is arson in the first
19 degree and obviously you find guilty of arson, you
20 find murder, that's if somebody cause an explosion
21 or sets a fire intentionally and that somebody dies
22 as a direct result of that. Well, that's what this
23 case is all about. He set a fire there and they
24 both died. Arson in the first degree and murder.

25 Beyond a reasonable doubt, the judge is

1 going to tell you we don't have to prove beyond all
2 doubt. You can never prove that, and that's not
3 what the law requires. We'll tell you that. It's
4 beyond a reasonable doubt, beyond a doubt that makes
5 reasonable folks hesitate to act. I respectfully —
6 I don't think there's any reasonable doubt here. I
7 think we've gone beyond our burden of all doubt. We
8 don't have to, but I submit to you it's there.

9 I'm getting old, I've been doing this a
10 long time. I love this job. I love right here.
11 And somewhere in my career I realized sometime you
12 might just have questions about something, but that
13 doesn't mean reasonable doubt. Good defense
14 attorneys will try to take a question or something
15 that might be out here and say, hey, that's
16 reasonable doubt. But when you sit down and analyze
17 and think about it, well, that's not reasonable
18 doubt. Is any question he set this fire, knew his
19 grand folks were still there and took off? There's
20 no question about that.

21 Y'all remember the first — I love
22 starting off with a good lay witness. I love my
23 police officer, don't get me wrong, but I love a
24 case where you have that lay witness is just real.
25 Do y'all remember the first witness in this case?

1 And you can't answer me. This is closing argument,
2 that assumes we can talk back and forth, I wish we
3 could, but we can't. Who was the first witness?
4 Ms. Rhonda Webster. Y'all remember Rhonda? Do you
5 remember seeing and feeling her emotion when she
6 testified. She was actually up here showing us
7 where it happened. We had to prove to Sumter
8 County. We got that in through Rhonda and McCauley.
9 Rhonda, what did you see? Ms. Register, what did
10 you see? Well, I was outside. She even told us
11 about her garden she'd been working on. And she
12 said she sees this fire, hears glass breaking, sees
13 it. You can see she's still reliving the emotions
14 two-and-a-half years later. Is that real? And what
15 does she do? This struck me sometime this morning.
16 What does she do? She runs toward the fire. She
17 knows people living there. She runs toward the
18 fire. She's going to try to help. She wants to see
19 if somebody is still alive.

20 McCauley, he's trying to come and see if
21 somebody helps. The firemen come. Everybody is
22 rushing toward the fire, firemen, the police. SLED
23 comes. Everybody comes to try to put out the fire.
24 Everybody is coming, let me help. Everybody but
25 Joseph Manners. And Rhonda Webster actually sees a

1 white car, not just turning out. To his questions
2 squealing and throwing up rocks booking it the other
3 way. As the fire is going up as, the glass is
4 breaking, everybody is coming, Joseph Manners is on
5 his way up north. That's evidence of guilt, of
6 flight. You know, we talk about direct and
7 circumstantial evidence. That's incredible
8 circumstantial evidence. We later find out they got
9 three cars. One of them is a white Honda registered
10 to Mr. Topper and then get the license tag and they
11 send that information up north, and I'm gonna get to
12 that in a minute. They send it up north. Hey, the
13 suspect may be in this vehicle. We got two dead
14 bodies at [REDACTED] Barnwell. We know Joseph Manners
15 stayed there with him; he's no longer there and the
16 car is there. Good law enforcement, good common
17 sense, that's what we need to look for. But he
18 leaves. What is it for more when you're little till
19 even today perhaps, when you do something wrong, you
20 know what, you just run, you flee. That's what he
21 did. Flight, evidence of guilt. Where does he go?
22 He starts heading up north. What happens in the
23 investigation? And I'm sorry if some of this
24 evidence was tedious, but we have to prove there was
25 an arson. We have to prove the fire. We have to

1 prove it was put out and then we painstaking going
2 through shifting through the ashes literally and
3 finding the bodies. And we have to prove we found
4 the bodies and we have to prove that Mr.
5 and Ms. Topper were there. And we have to prove
6 what their cause of death was. We have to do that
7 so we had to go through that and I apologize. I
8 appreciate your patience as we went through that.
9 But they find Ms. Topper upstairs, if you will, find
10 her up there. And then later on they find Mr.
11 Topper downstairs. So we know we have two bodies.
12 At this point too, Captain Burnish has determined
13 that there's a cell phone for Mr. James Topper and a
14 cell phone for Joseph Manners. Gets those numbers
15 with the help of Heath Gardner. With the Sumter
16 Police Department they start pinging or checking to
17 see if those phone numbers are being used. Well,
18 Mr. Manners' isn't being used, but Mr. James
19 Topper's is being used. Well, we know Mr. Topper is
20 not using it; he's dead. So they start following
21 that phone. Well, I submit you he's using Mr.
22 Topper's phone somehow. He wants to say, well, I'm
23 not gonna use my, maybe that will help me get away.
24 But he's using James Topper's phone and they start
25 pinging showing it from tower to tower heading up

1 north. They learn from their investigation, you
2 know what, he's from the Kentucky area, let's send
3 out a bolo, be-on-the-look-out for this car, for
4 this license tag -- that's in evidence -- registered
5 to Mr. Topper. Somebody named James Manners made
6 the hit, and that information heads up north, heads
7 to Kentucky, as he's going through Knoxville heading
8 in that area. Law enforcement is looking for him.
9 While they're doing that, on the ground these
10 people, these guys don't care. You think they don't
11 care? They're on the ground putting out the fire,
12 finding the bodies trying to make a determination of
13 the bodies. A few days later SLED comes in. Bryan
14 Wright, he runs his dog through there, and I'm gonna
15 talk about this accelerant in a minute. And then
16 Bryan Christmas, remember when he took the stand,
17 arson. You remember what he said when he rolled
18 over Mr. Topper's body? And this expert said it
19 today too, said one of the first things you do is
20 just use your good old nose. What happened when he
21 rolled Mr. Topper's body over? And he said there
22 was a piece of fabric for his underwear there. You
23 could see his buttocks. He smelled gasoline. And
24 doesn't that make sense? That's what was trapped
25 under Mr. Topper. That's where he poured it on him.

1 And thank God Mr. Topper saved that evidence for
2 them, protected that. That was on him, under him.
3 And when you rolled him over it was there. What'd
4 it smell like? It was gas. Mr. Powell, what was
5 it? That was gasoline. Is it more likely to be
6 protected if it's covered by something? Oh, yeah.
7 And there was fabric and debris taken from there.
8 That's the accelerant that started the fire, the
9 arson. He smelled it, Chief Christmas.
10 Investigator Julian Blair collected it, put it in
11 these cans and brought it back in here, brought it
12 to Joseph Powell so he could do his tests. That's
13 accelerant; that's gasoline.

14 They take three other some samples there
15 that day. We're still not quite — officers going
16 on the same time fighting the fire, putting out the
17 fire, trying to determine what happened here, trying
18 to catch the suspect up north. It's all going on,
19 realtime for law enforcement. They take samples 3,
20 4 and 5. And if I can find the diagram. This
21 diagram 68, that's Mr. Topper the testimony shows.
22 3 is underneath the body when they took the sample
23 from his underwear and the sample of the debris. It
24 smelled like gas and was gas then Mr. Powell said.
25 They also take samples — and this is initially

1 samples 4 and 5. And he had trouble finding 4 to
2 start with but we finally figured it out that 4 was
3 here near Mr. Topper and 5 was here, all near the
4 body that samples were taken that next day by Julian
5 Blair with the Sumter County Sheriff's Department.
6 3 and 4 came back positive for gasoline. 5 came
7 back, no ignitable liquids. Two out of three there
8 was gasoline there. That's gasoline that started
9 the fire. That's how you prove an arson. Okay.

10 The next few days Bryan Wright comes in
11 here, runs his dog. The dog initially hits 7, 8, 9
12 and 10; and this is four days later after it's
13 cleaned up, four days later. 7, 8, 9, 10, 7, 8, 9,
14 10. 7, no ignitable liquids found. Could have been
15 the time, it doesn't mean the dog didn't hit on
16 something, could have been the four days. 9,
17 gasoline found — excuse me, 8, gasoline found.
18 That's right on the stairs. Gasoline found, no
19 question about it, right there where Mr. Topper's
20 body is right where he said he poured it. I don't
21 forget about that. We'll get to that in a minute.
22 9 and 10, 10 up here in gasoline found. 7, no
23 gasoline found.

24 Ladies and gentlemen, what happened to the
25 samples right in here? There weren't any. The

1 stairs were gone. They were gone. I submit to you
2 it's reasonable to infer he was pouring gas there
3 and dropping it as he ran out of the house. We'll
4 never know that 'cause the stairs burned away. I
5 guarantee you one thing we know is proof beyond all
6 doubt, there was gasoline around his body, gasoline
7 around his body that was poured by the defendant.
8 Smelled, too, on the scene testified by an expert
9 after the samples came in and saved for you by
10 Mr. Topper with his fabric on his underwear. Any
11 question about that, what started this fire?

12 The fire is out, bodies found, items
13 collected, collected and saving it up to present to
14 y'all so I can argue it right here in a minute.
15 That's all, bringing it all together for y'all.
16 Okay, so what happens? He heads up north. Why is
17 he running? Why is he running? Well, the
18 transcript, "Where'd it start? On Industrial Road,
19 okay." Then he says, he says — and I will get to
20 about his state of mind at the hospital. He said
21 where the Erlanger cop started chasing him, he
22 brings up the Erlanger cop started chasing me.
23 Okay, and you didn't stop for the Erlanger cop? No.
24 How come? Why is he running? Why is he running?
25 'Cause I knew I was going to jail anyway. That's

1 what he tells Jennifer Mitsch, I knew I was going to
2 jail anyway. That's a confession. I knew I was
3 going to jail, that's why I ran, that's why I booked
4 out of there, that's where Ms. Webster saw me.
5 Total disregard for the life of another. Well,
6 let's, before we get to that, June 1st becomes
7 June 2nd. Raise your hand again, please. Kimberly
8 Klare. Kim Klare is here. She does the roll call.
9 You can't make this up. She goes to roll call about
10 6:00 in the morning. She gets a bolo. They get a
11 bolo, hey, be looking out for this car. Potential
12 failing to stop, may have done something down here
13 in Sumter, it's serious, it's real, might be in the
14 Edenwood area. She said, I know where that is, I'm
15 gonna go out and start looking, and she does. And
16 she actually sets up, she tells us she sets up
17 exactly where she goes. She starts looking for
18 white hondas with out of state tags. And then she
19 starts running tags. Well, maybe he switched tags.
20 That's pretty good police work, I'm gonna run the
21 tag and see if that tag really belongs to that car
22 if he's tried to switch it. That's good police.
23 Thank you for your police work. And as she's doing
24 that going down chasing, or following the car, she
25 sees another car come by and she looks in the

1 rearview mirror, that's the car, that's the car,
2 it's got the tag on it. So she gets behind it. She
3 gets behind it. And for 22.48-miles she follows
4 him. And what'd she do when she first followed him?
5 She gets behind him -- and y'all saw this map and
6 she went over it with you. I'm not going to go over
7 it in any detail. She said at first he was doing
8 every, following every traffic rule, every one of
9 them, not running a stop sign. Was he in control of
10 his faculties? No question about it. He knew the
11 police was behind him. He was trying not to act
12 erratic. She is looking at him through the window.
13 She saw him. He was following every rule, could
14 handle the car. She had to wait for a backup. I
15 think she said a backup came from another
16 jurisdiction. As soon as that happened she put on
17 her blue light and he fled. And he didn't just
18 book, he put the pedal to the metal, and they
19 reached speeds of up to 115 miles an hour at certain
20 points. Why were you running? 'Cause I was going
21 to jail anyway. He knew evidence of flight. Police
22 were there; he knew what was up. He fled. She
23 finally catches him and he finally goes into
24 Cincinnati, goes into the river, flees there again
25 and is caught, and that's where Jennifer Mitsch

1 comes in our world and his world. And thank
2 goodness she's got a audiotape.

3 And she starts talking to him. And right
4 off the bat she introduced himself, did you
5 understand him? Yes. Did he understand you? Yes.
6 Asked him what his name is, Joseph Manners. Spells
7 his name right off the bat, didn't have any problem
8 understanding him, he could answer her. And then
9 right after the bat he says is Kentucky going to
10 charge me. You think he doesn't know what's going
11 on in his mind thinking about the chase he was just
12 in?

13 I'm gonna read you your rights, okay. She
14 reads him his rights. You all saw the form up here.
15 You heard it on the audio. Do you understand your
16 rights? Oh, yeah, I understand them. That's what's
17 on the tape; that's what she said he said. Did he
18 appear to understand his, know his rights? No
19 question about it. No question about it. Now here
20 is one of those where I say, I'd have to say it's a
21 smoke screen. Mr. Griffith's Defendant's Number 1
22 has put in a, I think he's trying to show a
23 signature saying, well, the fact his signature is on
24 the line and this isn't — says something about his
25 condition I guess. That's horse hockey. You listen

1 on that, listen on that tape. You hear her say,
2 "Look, I know you're not in a position, I understand
3 you're not in the best position right now, okay.
4 Right-handed, if you'll sign right here that means
5 you understand your rights and I read them to you,
6 okay?. I understand you're not in the position."
7 That's why his signature was up. He's handcuffed to
8 something in the bed in the hospital. It's a
9 failing to stop. That's all that explains that. I
10 submit it's pretty simple. If you just turn that up
11 like that, those are pretty close. That's not a
12 reasonable doubt.

13 What does he say later? I'm pretty sure
14 my life is kind of over here. How come? Did they
15 tell you guys what I'm probably facing in South
16 Carolina? This is him telling Jennifer Mitsch, do
17 you know what I was facing, I mean, do you know what
18 I'm — it's not her asking. That's him saying, do
19 you know what I'm facing in South Carolina? And
20 then she talks to him, develop a rapport; that's
21 what she does. Yeah, but you'll still be able to
22 see your family, you'll still be able to. I'm not
23 going over everyone of these, I've cut it down, I
24 promise you. Mitsch said, here, all right, who are
25 you staying with? With grandma and grandpa. He's

1 staying there. He had been staying there; there
2 wasn't any question about it. I was living there, I
3 was living there, I was staying with them. I was
4 staying there.

5 About halfway through the transcript his
6 state of mind, did he understand what he was doing?
7 There's no question about it; it's beyond all doubt
8 we submit to you. What does he say? What does he
9 say to Jennifer Mitsch? Maybe — now that's s deal,
10 we can do that on — I'm gonna get charged probably
11 with — this is her telling him. Y'all understand
12 that sometimes I lose the picture. I lose sight of
13 the forest for the trees. This is Manners telling
14 Mitsch who is in Ohio, this is what I did down here.
15 He's volunteering to her. It doesn't get purer than
16 that. I'm gonna be getting charged with, I don't
17 know if they call it grand arson. She says okay.
18 Grand arson. Grandmama and granddaddy arson, yeah.
19 Grand arson. Okay. But probably arson of some
20 kind. He said arson; he said that to her.

21 Okay. What's his next word? And probably
22 murder. And probably murder. She said okay. On
23 top of that grand theft auto, okay. And his next
24 answer, I'm pretty screwed. He then says — and I
25 think this goes to the maliciousness total disregard

1 of the lives of others. Question: You're right,
2 you can't take it back, but you can get out in front
3 of it." "But I love them so much, they were so good
4 to me. They were so good to me. Nothing in this
5 world they never done to me." Is there anything
6 more valuable cherished than a grandmother/granddaddy
7 relationship? They'd get me out of here right now
8 if they could. They just had me come over, go to
9 sleep. They would say, you know, he's leaving, he
10 can go home to his room sleep all day and watch TV.
11 They loved him. They loved him.

12 So you think you're gonna be charged with
13 murder, how'd they die? They would have died in the
14 fire. That's what he said. They weren't dead when
15 you left? They weren't dead when you left? They
16 weren't dead when you left? Not grandmama, not
17 grandmama. Total disregard for human life. Not
18 your grandma. Your grandpa was. Answer: He might
19 have been knocked out. What'd you hit him with?
20 Hit him with my hand. Okay. His answer, knocked
21 out cold. And it ain't funny.

22 Knocked his teeth out. This is
23 Mr. Topper. It's Mr. Topper here saying this. He
24 left this, he left this for me to show y'all, and
25 they found it. (indicating with exhibit.) He knocked

1 his teeth out. Total disregard of life. Just old
2 people fighting, all right, so you hit him, you hit
3 him with your fist, where'd you hit him? I don't
4 know, I wasn't paying much attention. But you knew
5 he might be knocked out and not even known there was
6 a fire. Yes. So what made you start the fire? I
7 don't know. There ain't a reasonable doubt he
8 didn't start the fire; he just said, I don't know.

9 So where was — where were you? On the
10 first or second floor in the hall? First floor.
11 That's this bottom down here folks. That's where
12 Mr. Topper is, right in here. She's asked him, did
13 you use a match, what did you do? Something just
14 happened. Did you look around for something to help
15 you start the fire or did you have a plan? And
16 Jennifer Mitsch is trying to get to the bottom.
17 She's trying to say, all right, tell me, and she's
18 talking to him. At one time — I don't know if
19 y'all picked up — every time you get to a question
20 that's the question, you know, did you hit him? Was
21 grandma — there was this pause. Like getting it
22 out, well, I got to tell it now and every time right
23 before it came, I hit him. Did you have like
24 gasoline or charcoal stuff or something in the
25 garage? Big old tank of gas. That's the gas that

1 Bryan Christmas smelled. That's the gas that Mr.
2 Topper had underneath him. That's the gas that Joe
3 Powell after analysis found. Is there anything
4 that's important that you think we should know about
5 what happened that I can ask about that you didn't
6 tell me? Then he says, well, the part where I
7 supposedly the car. Well, you needed to get out of
8 there, right, and where did you find the keys?
9 Answer: Usually my grandpa carried them in his
10 pocket. Did you get them out of his pocket? He
11 knocks him down, knocks his teeth out and then he
12 gets his keys out of his pocket and takes the car.
13 Did you get them out of his pocket? Yeah.
14 Talking about pills, did you take them
15 before you set this fire? All we heard was I didn't
16 take it. And I'm almost through. Question: When
17 you had the gas did you spread it around the entire
18 house, or spread it around the entire house or just
19 one part of it? Just one part of it, the hall.
20 Right, right, it just went, it went up. I submit to
21 you this is where the hall is, in this area right
22 here, you come in. That's where he put the gas. He
23 said it just went up. What do you mean? I mean it
24 was quick. That's what Rhonda said too. Oh, okay,
25 with the gas? Yeah, with the gas. So did you think

1 he was dead? Is that why you wanted to set the
2 fire? Answer: I didn't. To cover that up?
3 Question. Answer: I didn't know; I had absolutely
4 no clue. When you had the gas did you spread it
5 around the entire house or one part of it? Just one
6 part of it, the hall. The hall where grandpa was or
7 a different hall? Right, right, and it went up.
8 Right, right, went up. He admits to spreading the
9 gas where grandpa was. That's where the gas was
10 found, underneath grandpa. That's where the dog
11 hit. That's where the initial accelerant, two out
12 of three cans was gasoline. That's direct,
13 circumstantial evidence. It doesn't get any better
14 than that, and I don't mean that any other way.
15 Then there's no reasonable doubt in this case,
16 ladies and gentlemen.

17 It's sad. I had four of the best
18 grandparents in the world, would have done anything
19 for them, did do anything for them, just like these
20 did. And I -- you can't explain some things, but
21 we don't have to explain it and it doesn't have to
22 be motive. It's just wrong. It's malicious. Makes
23 it even worse, malicious. To kill the people that
24 probably love you more than anything in the world.
25 Tired of them crying? Who knows. But he made a

1 choice. He made a choice to hit granddaddy, knock
2 his teeth out, start a fire, leave grandmama up
3 there, let them both burn to death, and then he
4 fled. And then he got caught, and then he said I
5 did it. And he made a choice. And my dad gave me a
6 book when I was a little boy that said the greatest
7 power is power to choose. And he chose. And he
8 chose to run. But now it's your time. He's not in
9 control anymore. He's not in control of that house.
10 He's not in control of dropping that gas or starting
11 that fire. And I'm almost through. I appreciate
12 y'all bearing with me. He is not in control
13 anymore; y'all are in control. You're in control of
14 the facts, and you're going to decide in just a
15 little bit what the facts are, what the truth is.

16 His Honor is going to give you the law and
17 then he's gonna instruct you to go to your room,
18 decide what the facts are and once the facts are,
19 y'all agree with, apply it to this law and come back
20 with a verdict. And that's your choice. And a
21 verdict means to speak the truth. And we
22 respectfully submit, respectfully submit in this
23 case, there's only one verdict that speaks the
24 truth. On June 1st of 2013 Joseph Michael Manners
25 decided he was going to end the lives of his grandma

1 and grandad, hit his granddaddy, knocked him out, set
2 the house on fire, and they died as a direct result
3 of that fire. And he's guilty of murder, murdering,
4 and arson in the first degree. Thank you.

5 THE COURT: Thank you. Please secure the
6 courtroom.

7 Ladies and gentlemen, all the testimony
8 and other evidence has been presented to you in this
9 case. Now is the time of trial where I will charge
10 you the law that is to be applied in this particular
11 case. Ladies and gentlemen, I remind you that
12 during this trial you and I have certain duties to
13 perform. As the trial judge it is my responsibility
14 to preside over the trial of this case. And I also
15 have the duty to rule on the admissibility of
16 evidence that has been offered during this trial.
17 You are to consider only the competent evidence that
18 is before you. If there was any testimony ordered
19 stricken from the record in this case during the
20 trial you must disregard that testimony. You're to
21 consider only the testimony that came from this
22 witness stand, and any exhibits that have been made
23 a part of the record in this case and any
24 stipulations of counsel.

25 In addition, I have the duty to charge you

1 the law that is applicable to this particular case.
2 And as the presiding judge I am the sole judge of
3 the law of this case, and it is your duty as jurors
4 to accept and apply the law exactly as I now state
5 it to you. If you already have some idea as to what
6 the law is or what the law ought to be and it does
7 not agree with what I now tell you the law is, you
8 must abandon that idea because you are sworn to
9 accept and apply the law exactly as I state it to
10 you.

11 In every case tried in this court before a
12 jury the jury becomes the sole and exclusive judges
13 of the facts. As a trial judge I cannot intimate,
14 state, comment, or make any statement to a trial
15 jury about the facts in a case. Since you're the
16 jury, as I said, you are the sole judges of the
17 facts and you're not to infer from anything I have
18 said during the progress of the trial in ruling on
19 the admissibility of the evidence or otherwise, or
20 anything that I state to you now during the course
21 of these instructions that I have any opinion about
22 the facts in this case. The law simply does not
23 allow me to have an opinion about the facts. That
24 is a matter solely for you, the jury, to determine;
25 and as jurors, it is your duty to determine the

1 effect, the value, the weight, and the truth of the
2 evidence that is presented during this trial.

3 Now ladies and gentlemen, the indictment
4 in this case alleges three different offenses
5 against the defendant. The charges are under
6 indictment 2014-GS-43-170, count one, murder, count
7 two, murder, and count three, first degree arson.
8 Each count of the indictment is charged as a
9 separate and distinct offense, and you must decide
10 each count separately on the evidence and the law
11 applicable to this uninfluenced by your decision as
12 to any other count. The defendant may be convicted
13 or acquitted on any or all of the offense charges.
14 However, if the defendant is found not guilty for
15 first degree arson, he cannot be found guilty for
16 murder because there would have been no murder. You
17 will be asked to write a separate verdict of guilty
18 or not guilty on each account.

19 Now ladies and gentlemen, I remind you the
20 fact that the defendant was arrested, charged, and
21 indicted is not evidence in this case and cannot be
22 considered by you as evidence of guilt, nor does it
23 create any presumption or inference of guilt. The
24 indictment is simply the formal written instrument
25 which contains the charges made against a defendant.

1 It is the formal document of which this case is
2 brought into court.

3 Ladies and gentlemen the defendant has
4 pled not guilty to these charges and that plea puts
5 the burden on the State to prove the defendant
6 guilty. And I remind you that a person charged with
7 committing a criminal offense in South Carolina is
8 never required to prove himself innocent. I charge
9 you this is an important rule of law that a
10 defendant in a criminal trial, no matter what the
11 seriousness of the charge may be, will always be
12 presumed to be innocent of the crime for which the
13 indictment was issued unless guilt has been proven
14 by evidence satisfying you of that guilt beyond a
15 reasonable doubt. And the presumption of innocence
16 does not end when you begin your deliberations, but
17 it accompanies the defendant throughout the trial
18 until you reach a verdict of guilt based on evidence
19 satisfying you of that guilt beyond a reasonable
20 doubt.

21 The presumption of innocence is like a
22 robe of righteousness that is placed about the
23 shoulders of the defendant which remain with the
24 defendant until it has been stripped from that
25 defendant by, again, evidence satisfying you of the

1 defendant's guilt beyond a reasonable doubt. The
2 presumption of innocence is not just a mere legal
3 theory; It's not just a legal phrase that we use.
4 That is a substantial right to which every defendant
5 is entitled to, again, unless you, the jury, are
6 satisfied from the evidence presented of the
7 defendant's guilt beyond a reasonable doubt.

8 Now ladies and gentlemen, as I said and
9 they stated in the closing argument, the State has
10 the burden of proving the defendant guilty beyond a
11 reasonable doubt. Some of you may have served as
12 jurors in civil cases where you were told it is only
13 necessary to prove that a fact is more likely true
14 than not true, such as by the greater weight or the
15 preponderance of the evidence. In criminal cases,
16 however, the State's proof must be more powerful
17 than that; it must be beyond a reasonable doubt.

18 Now proof beyond a reasonable doubt is
19 proof that leaves you firmly convinced of the
20 defendant's guilt. It is the kind of doubt that
21 would cause a reasonable person to hesitate to act.
22 Ladies and gentlemen, there are very few things in
23 this world that we know with absolute certainty, and
24 in criminal cases the law does not require proof
25 that overcomes every possible doubt. If based upon

1 your consideration of the evidence you are firmly
2 convinced that the defendant is guilty of the crime
3 charged, then you must find the defendant guilty.
4 If on the other hand you think there's a real
5 possibility that the defendant is not guilty, then
6 you must give the defendant the benefit of the doubt
7 and find him not guilty.

8 Now ladies and gentlemen, there are two
9 types of evidence which generally presented during a
10 trial. There's direct evidence and there's
11 circumstantial evidence. Direct evidence is the
12 testimony of a person who claims to have actual
13 knowledge of a fact such as an eyewitness. It is
14 evidence which immediately establishes the main fact
15 to be proved. Circumstantial evidence is proof of a
16 chain of facts and circumstances indicating the
17 existence of a fact. A crime may be proven by
18 circumstantial evidence, and the law makes no
19 distinction between the weight or value to be given
20 to either direct or circumstantial evidence.
21 However, to the extent that the State relies on
22 circumstantial evidence, all of the circumstances
23 must be consistent with each other and when taken
24 together, point conclusively to the guilt of the
25 accused beyond a reasonable doubt. If these

1 circumstances merely portray the defendant's
2 behavior as suspicious, the proof has failed. And
3 the State has the burden of proving the defendant
4 guilty beyond a reasonable doubt and this burden
5 rests with the State regardless of whether the State
6 relies on direct evidence, circumstantial evidence,
7 or some combination of the two.

8 Ladies and gentlemen, I instruct you and I
9 emphasize, the fact that the defendant did not
10 testify in this case is not a factor to be
11 considered by you in any way in your deliberations
12 and in your consideration of the question of guilt
13 or the innocence of the defendant. It must not be
14 considered by you in any manner whatsoever. A
15 defendant has the constitutional right to remain
16 silent and the assertion of this right must not be
17 considered by you in your deliberations. And I
18 repeat, under the oath that you took you are to draw
19 no conclusions whatsoever from the fact that the
20 defendant in this case did not testify. The fact
21 that the defendant did not testify should not even
22 be discussed in the jury room. As I said, the
23 burden of proof is on the State. The defendant is
24 not required to prove his innocence. The burden of
25 proof is on the State to prove guilt beyond a

1 reasonable doubt.

2 Now necessarily, ladies and gentlemen, you
3 must determine the credibility of witnesses who have
4 testified in this case. Credibility simply means
5 believability, and it becomes your duty as jurors to
6 analyze and to evaluate the evidence and determine
7 which evidence convinces you of its truth. In
8 determining the believability of witnesses who have
9 testified in this case, you may believe one witness
10 over several witnesses or several witness over one
11 witness. You may believe a part of the testimony of
12 a witness and reject the remaining parts of the
13 testimony of that same witness. You may believe the
14 testimony of a witness in its entirety or reject the
15 testimony of a witness in its entirety. You may
16 consider whether any witness has exhibited to you
17 any interest, bias, prejudice, or other motive in
18 this case. You may also consider the appearance and
19 manner of a witness while on this witness stand.

20 Now ladies and gentlemen, the rules of
21 evidence ordinarily do not permit witnesses to
22 testify to opinions or conclusions. An exception to
23 this rule exists for witnesses we call expert
24 witnesses. A witness who by education, experience,
25 has become an expert in some art, science,

1 profession, or calling may state an opinion as to
2 relevant and material matter in which the witness
3 claims to be an expert and may also state the
4 reasons for the opinion. You should consider any
5 expert opinion received in evidence in this case and
6 like any other evidence give it the weight that you
7 think it deserves. And if you decide that the
8 opinion of an expert witness is not based on
9 sufficient education and experience, or if you
10 conclude that the reason given in support of your
11 opinion are not sound or that the opinion is
12 outweighed by other evidence, you may disregard the
13 opinion entirely. An expert witness' testimony is
14 to be given no greater weight than that of other
15 witnesses simply because the witness is an expert.
16 And further, you are not required to accept an
17 expert's opinion even though it is not contradicted.

18 Now ladies and gentlemen, the use of drugs
19 or alcohol may be a defense if it is permanent and
20 destroys the defendant's ability to know right from
21 wrong. However, when voluntary intoxication has not
22 produced permanent disability, it is not a defense
23 to a crime. A person who voluntarily becomes
24 intoxicated is just as responsible for the acts
25 committed while intoxicated as when the person is

1 not intoxicated.

2 Now ladies and gentlemen, the defendant is
3 charged with murder. The State must prove beyond a
4 reasonable doubt that the defendant killed another
5 person with malice aforethought. Malice is hatred,
6 ill will, or hostility towards another person. It
7 is the intentional doing of a wrongful act without
8 just cause or excuse and with an intent to inflict
9 an injury or under circumstances that the law will
10 infer an evil intent. Malice aforethought does not
11 require that malice exists for any particular time
12 before the act is committed; but malice must exist
13 in the mind of the defendant just before and at the
14 time the act is committed. Therefore, there must be
15 a combination of the previous evil intent and the
16 act.

17 And malice aforethought may be expressed
18 or inferred. These terms express or inferred do not
19 mean different kinds of malice, but merely the
20 manner in which the malice may be shown to exist.
21 That is either by direct evidence or by inference
22 from the facts and circumstances which are proved.
23 An expressed malice may be shown when person speaks
24 words which express hatred or ill will for another
25 person or when the person prepared beforehand to do

1 the act which was later accomplished. For example,
2 lying in wait for a person or any other acts of
3 preparation going to show that the deed was within
4 the defendant's mind would be expressed malice.
5 Malice may be inferred from conduct showing a total
6 disregard for human life. Inferred malice may also
7 arise when the deed is done with a deadly weapon.
8 And a deadly weapon is any article, instrument, or
9 substance which is likely to cause death or great
10 bodily harm. Whether an instrument has been used as
11 a deadly weapon depends on the facts and
12 circumstances of each case. Gasoline is a deadly
13 weapon.

14 Now ladies and gentlemen, in order to
15 prove first degree arson the State must prove beyond
16 a reasonable doubt that the defendant willfully and
17 maliciously caused an explosion, set fire to,
18 burned, caused to be burn, aided, counseled, or
19 procured the burning of certain properties. Willful
20 means that it was not done by accident, but was done
21 knowingly and intentionally and the State must show
22 that the burning was by the willful act of some
23 person and not as a result of a natural or
24 accidental cause.

25 Malicious means with hatred, ill will, or

1 hostility towards another person. And a person who
2 intentionally does a wrongful act without legal
3 justification or excuse does the act maliciously. A
4 malicious burning is an act done with a condition of
5 mind that shows a heart bent on mischief showing a
6 design to do an intentional wrong act towards
7 another or towards the public without any legal
8 justification or excuse, and this malice not — need
9 not be expressed, but may be inferred. And burning
10 means actual combustion of some portion of a piece
11 of property. It is not necessary that the property
12 be consumed or destroyed. Charring of the material
13 of which the property is constructive or a change to
14 the fibril or composition of the structure is
15 required for a burning, singeing, smoking,
16 blistering, scorching, or discoloring by the heat,
17 however, is not enough to constitute a burning.

18 Next the State must prove beyond a
19 reasonable doubt that the property which was burned
20 was a dwelling house, building, structure or any
21 other property, and a dwelling house is a building
22 in which a person ordinarily sleeps. And finally,
23 the State must prove beyond a reasonable doubt that
24 the explosion or burning directly or indirectly
25 caused the death of a person.

1 Now ladies and gentlemen, there are two
2 possible verdicts which you may find on each count
3 under indictment 2014-GS-43-170. Count three, first
4 degree arson, not guilty or guilty. If the
5 defendant is found not guilty you will stop your
6 deliberations. If the defendant is found not
7 guilty -- is found guilty of arson in the first
8 degree, proceed with your deliberations. And then
9 under count one, not -- murder, not guilty or
10 guilty. Then proceed to count two, which is murder,
11 not guilty or guilty. Now ladies and gentlemen,
12 there's no significance in the, whatsoever in the
13 order which I state the possible verdict being
14 guilty or not guilty or not guilty, guilty. It's
15 simply that one must be stated first.

16 Now ladies and gentlemen, your verdict must
17 be a unanimous one. All twelve of you must agree on
18 the verdict and your decision must not be based on
19 sympathy, passion, prejudice, emotion, or any other
20 consideration that is not in evidence in this case.

21 Mr. Foreman, when the jury agrees on a
22 verdict you will go through the list that we have
23 provided you on this verdict form and check each one
24 for each charge, sign your name on the second sheet.
25 And again, like I said, it says: We, the jury by

1 unanimous agreement find the defendant Joseph
2 Michael Manners on the charge of first degree arson
3 not guilty or guilty. And if you find him not
4 guilty you will stop your deliberations, sign your
5 name. If you find him guilty on that charge you may
6 proceed with the other ones concerning the
7 individual alleged victims in this case. Upon your
8 letting the bailiff know that you have reached a
9 verdict you will then be brought back here in the
10 courtroom for publication of your verdict.

11 Now ladies and gentlemen I'm gonna send you
12 back to the jury, but please don't begin your
13 deliberations until you're instructed to do so.
14 There's some matters I still need to take up with
15 the attorneys, all right.

16 If you will take them back and hold the two
17 alternates inside.

18 They should have your lunch here shortly.

19 (WHEREUPON, the jury was removed from the
20 courtroom at 12:03 p.m.)

21 THE COURT: Are there any objections to
22 the charge that was given?

23 MR. MEADORS: No, sir.

24 MR. GRIFFITH: None, Your Honor.

25 THE COURT: All right. Thank you. Y'all

1 want to look through the evidence. Here's the
2 verdict form. You can get it all together and then
3 send it back to the jury.

4 (Jury began its deliberations at 12:07 p.m. and
5 court was in recess.)

6 (Court's Exhibit Nos. 5 and 6 were
7 marked and made a part of the record.)

8 THE COURT: Let's bring our jury in. Let
9 me remind everyone please, if you can keep your
10 emotions in check as much as possible. The jury has
11 been involved in this case for three days. I don't
12 want anybody, in essence, with their emotions second
13 guessing this jury. So if you don't think you can
14 keep your emotions in check, now would be a good
15 time to leave the courtroom. Let's bring them in.

16 (WHEREUPON, the jury was returned to the
17 courtroom at approximately 1:36 p.m, and
18 the following proceedings commenced in
19 open court.)

20 THE COURT: Mr. Foreman, has the jury
21 panel reached a verdict?

22 THE FOREMAN: Yes, sir.

23 THE COURT: Is it unanimous?

24 THE FOREMAN: Yes, sir, it was.

25 THE COURT: Please pass it to Mr. Bradley.

1 All right, I've reviewed the verdict form. It
2 appears to be in order. Please publish the verdict.
3 The defendant will rise.

4 THE CLERK: The State of South Carolina,
5 County of Sumter, in the Court of General Sessions,
6 indictment number 2014-GS-43-0170, the State of
7 South Carolina, plaintiff, versus Joseph Michael
8 Manners, defendant. Question number one: We, the
9 jury by unanimous agreement find the defendant
10 Joseph Michael Manners on the charge of first degree
11 arson guilty. We, the jury, by unanimous agreement
12 find the defendant Joseph Michael Manners on the
13 charge of murder regarding James Topper, Jr.,
14 guilty. Question number three: We, the jury, by
15 unanimous agreement find the defendant Joseph
16 Michael Manners on the charge of murder regarding
17 Joanne Topper, guilty. Signed Jason Bray,
18 foreperson, dated 18th day of February 2016. Ladies
19 and gentlemen of the jury, if this is your verdict
20 so say you all by raising your right hand.

21 (All jurors complied by raising their hand.)

22 THE COURT: Let the record reflect all the
23 jurors raised their hands.

24 Mr. Griffith, you request polling of the
25 jury?

1 MR. GRIFFITH: We waive polling of the
2 jury, Your Honor.

3 THE COURT: Well, then the verdict stands.
4 You may be seated.

5 Ladies and gentlemen of the jury, let me
6 take this opportunity to thank you for reaching a
7 verdict. You know, it's never easy holding the life
8 of a fellow citizen in your hand; and it may look
9 easy on TV, but I think y'all know now that it is
10 not an easy thing to do. In coming up with a
11 verdict is what you took an oath to try to do and
12 you did that, and I want to thank you for that.

13 In about 30 minutes I am going to sentence
14 the defendant in accordance with your verdict.
15 You're welcome to come back in the courtroom and you
16 can sit in the jury box if you would like, rather
17 than go on. But at this time I'm going to dismiss
18 you. And ladies and gentlemen it would be my honor
19 to shake your hands as you go out of here for
20 reaching a verdict in this case.

21 (WHEREUPON, the jury was returned to the
22 courtroom at approximately 1:46 p.m., and
23 the following proceedings commenced in
24 open court.)

25 THE COURT: Are there any motions to be

1 made at this time?

2 MR. GRIFFITH: I would move for a verdict
3 notwithstanding the verdict.

4 THE COURT: For a new trial?

5 MR. GRIFFITH: For a new trial.

6 THE COURT: I'll accept that. For the
7 State?

8 MR. MEADORS: No, sir. Thank you.

9 THE COURT: I'm gonna deny your motion for
10 new trial. All right, in accordance with the jury's
11 verdict I will sentence the defendant at
12 approximately 2:15 so that will give y'all an
13 opportunity to get any witnesses that y'all have
14 concerning the deceased. And that will give,
15 Mr. Griffith, you an opportunity to get any
16 witnesses that you might want in mitigation. All
17 right, thank you. Court's in recess until 2:15.

18 (WHEREUPON, a recess was taken from the
19 proceedings.)

20 MR. MEADORS: May it please, Your Honor.
21 Judge, just a few brief comments. First of all, I'd
22 like to publicly thank the jury for their verdict.
23 In my 30 years, this evidentiary wise was probably
24 one of the strongest evidentiary wise arson cases
25 where death was involved that I've been involved in.

1 I do want to thank the jury for their verdict.
2 Also, briefly — I don't say this in every case, but
3 I want to thank, really thank law enforcement in
4 this case and not — we were talking about it
5 earlier when the jury was out. If there ever was a
6 corporation between law enforcement, it was this
7 case. Law enforcement, the first responders, with
8 fire, Sheriff's Department, South Carolina Law
9 Enforcement Division. Sumter Police Department came
10 in and helped with the towers, the pinging of
11 phones. And then that, it was on a weekend, I don't
12 think this came up in front of the jury, but I was
13 talking to Sergeant Kimberly Klare and she said when
14 she was in roll call she was looking at it, she knew
15 the neighborhood, she said, you know, I bet it's
16 about right now if I went out there. So she took
17 the initiative to go right there; and if she hadn't,
18 I don't know how that would have made this different
19 but she went out first thing that day and said, you
20 know, I think the timing is right. And then the
21 next day was a Sunday and that's where Jennifer
22 Mitsch from Ohio came in at the request of Robert
23 Burnish, took a statement which I think was very
24 powerful evidence in this case so it truly was a
25 combined effort. I know law enforcement, a lot of

1 bad things to say about them, but I want to say on
2 record they did a fantastic job cooperating and
3 investigating this, and I don't think it could have
4 been accomplished without all of them working
5 together and I don't always say that but I meant
6 that here and I want to thank them.

7 Obviously our staff here, Mr. Miller,
8 Mr. Brown, for this case helping me. Solicitor
9 Finney, I want to thank them too. Judge, law
10 enforcement is here. I don't know if they want to
11 say anything, I think they join me in saying I said
12 what I needed to say in my closing. I think these
13 facts kind of speak for themselves.

14 THE COURT: Any members of the victims —
15 MR. MEADORS: There is one if you would
16 allow. Ms. Janice Wolfe is here. Judge, she's from
17 Maryland. Her mother is Eileen Goode who is the
18 sister of Mr. James Topper who also goes by Jim.

19 Ms. Wolfe, Janice Wolfe, if you'd come up
20 please.

21 THE COURT: State your name for the record
22 please, ma'am.

23 MS. WOLFE: My name is Janice Wolfe.

24 THE COURT: Ms. Wolfe, what would you like
25 to say?

1 MS. WOLFE: I have — I have several
2 letters that have been written over the years from
3 my mother and my aunt. They were the only two
4 living relatives for my Uncle Jimmy. They loved
5 their brother. He was in the air force forever it
6 seemed. That's all he ever did. He was retired.
7 They'd call him back to do things. He'd retire
8 again, they'd call him back to do things. And he
9 lived a life of just being a bachelor until he met
10 Joanne, and it was later in life and they married.
11 And after they married she had brought with her an
12 adopted son who had a son, which was Joe Michael.
13 And the only time that we would ever see my uncle,
14 Joe Michael was always with him. He basically to
15 us, that's how the family living in Maryland, we
16 only knew Joe Michael to live with them. He seemed
17 happy. He was always — he called my Uncle Jimmy
18 Papa. They loved each other. You could tell how
19 much love there was. So, of course when we received
20 the news of what had happened, nobody could believe
21 it. But then as we went over the phone calls and
22 the trouble that they were having in the family, it
23 kind of wish we would have said something or done
24 something; but I guess people make their own choices
25 and decide to help people that maybe are too far

1 gone to help. Sometimes you can't stop people from
2 doing what they're going to. Do, and I think in
3 this case it went way too far and without regret,
4 without regret of taking two lives, and then
5 realizing that there's consequences, there's
6 consequences for what he's done. When the jury was
7 out whenev— when no one was in the courtroom, and
8 he's sitting there turned around talking to people
9 saying, well, it's okay, even when I'm in prison you
10 can still come visit me. He's already accepted that
11 he's going to prison and doesn't care because he's
12 still alive. He can still have visitors. I have to
13 visit a grave, and I have to come down south to
14 visit that grave because this is where they were
15 happy. And we didn't bury bodies; we buried ashes.
16 We had nothing but ashes to bury.

17 I don't know what you can do. I would
18 hope that you would give him the fullest extent that
19 you possibly could because to me a person that can
20 do that and walk away and feel nothing should not be
21 walking around in public, and he's gonna be here in
22 South Carolina if he ever gets out. And I don't
23 think that these good people should have to be put
24 through anything like what I went through or my
25 family.

1 THE COURT: Thank you, Ms. Wolfe.

2 MR. MEADORS: Judge, in closing, the jury
3 didn't hear this as well as Your Honor told us to
4 redact correctly so obviously that -- and I know we
5 don't have to prove motive in this case but seven to
6 ten days prior to this obviously there was an
7 incident at the house, Ms. Topper was struck by the
8 defendant. Law enforcement came out, actually
9 McCauley, Sergeant McCauley, the first officer that
10 responded came out. As a result of that the
11 Toppers, law enforcement went and asked if they want
12 to take a warrant out and the Toppers said we don't
13 want him prosecuted, we're gonna send him back up
14 north. And I think that was their plan to send him
15 back up home. And I don't know if that had
16 something to do with him doing this, but I don't
17 think he wanted to go back but I know that was an
18 event that started all this. And Judge, thank you
19 for the trial. That's all we have.

20 THE COURT: Thank you.

21 Mr. Griffith.

22 MR. GRIFFITH: Thank you, Your Honor.

23 There are three people who would like to talk. One
24 is one of his great aunts, Ms. Lee Harmon.

25 Ms. Harmon.

1 THE COURT: Ms. Harmon.

2 MR. GRIFFITH: She is sister to one of the
3 victims, Your Honor.

4 THE COURT: Hello, Ms. Harmon.

5 THE SISTER: Hello. I'm the youngest of
6 six children. My sister Joanne was my next to the
7 oldest sister, and I know that I'm sitting on the
8 side that she would have wanted me to sit on. When
9 she adopted Timothy Trishelle (ph), the husband that
10 she had married in California, they got divorced;
11 she got custody of Tim. Well, as a result she met
12 Jim Topper and they lived together for a while right
13 after meeting and then they got married and were
14 married for 28 years. I even helped him move into
15 the house with her 'cause I had a truck. And the
16 Jim Topper that I met then and knew in Kentucky was
17 not the same Jim Topper that I met here in South
18 Carolina when I came back after working in
19 California for years. He had become an alcoholic
20 and abusive. When my sister — I lived with them
21 when I first came back in California. Told I
22 couldn't take it anymore. I'm a devout Christian
23 and they were agnostics. They didn't believe in the
24 Lord, and they made fun of me for my beliefs. And
25 when Joseph came down it was continual arguing all

1 the time. And supposedly, and this is supposedly,
2 Jim had — was having affair. My sister was eleven
3 years older than me, than him. He and I are the
4 same age, within a few months of each other. And I
5 was, those times that I had went and stayed with
6 Joanne, I was supposed to stay with her the Sunday
7 that they were, Jim was to take him back up to
8 Kentucky. And before that there's a lot of times
9 that Joanne was there by herself and she would call
10 me and tell me Jim had been gone for hours and would
11 I please come over and give her her medication, and
12 so I would do that.

13 We didn't have an opportunity to testify,
14 but I know that if I had lived out there and stayed
15 out there when I saw him, all these stuff and
16 wanting to hit my sister, I would have fought back.
17 I would have fought him too. And I went to my other
18 sister and I just told her, I said, I can't stay
19 there anymore, I got to find another place to go.
20 Oh, she loved Joe to the moon and back, and she
21 would not want Joe to be punished now. I would even
22 assume that she was hit by her husband upstairs in
23 the kitchen and left her knocked out and he went
24 down the steps to start on Joe. And I feel maybe
25 Joe could have done this in self-defense.

1 And yes, I grieve, I lost three siblings
2 within that year. My oldest sister, she passed away
3 of natural causes and my only brother John, he died
4 of agent orange from Vietnam after my sister Joanne.
5 So yes, I'm emotional, I'm the emotional sister out
6 of all of us, but I was the baby. And they all
7 protected me 'cause my father died when I was 14
8 and my mother raised six children alone, and that
9 was hard on her but she made me the person I am
10 today. And I was a hardworking woman and I raised
11 three children single handedly too from divorce.
12 And my children —

13 THE COURT: Ma'am, this is not about you
14 today.

15 MS. WOLFE: No, it's not about me.

16 THE COURT: I understand your situation,
17 but this is not about you.

18 THE SISTER: But Joseph was loved by all
19 of us, and he was never a malice. He did not do
20 things out of malice.

21 MR. GRIFFITH: Thank you. Ms. Jane
22 Sutphin also would like to speak, Your Honor. Her
23 husband is coming with her. He would also like to
24 speak, James Sutphin, but to help her.

25 THE COURT: All right, Ms. Sutphin. How

1 are you, today?

2 MR. GRIFFITH: How are you related to Joe?

3 MS. SUTPHIN: Joe is my great grand

4 nephew, and he's not really by blood but we took him

5 in and loved him. And his mother, first time I saw

6 Joe was with his mother in after she had just had

7 the baby. And so I've seen Joe grow up over the

8 years, and I kind of feel like I do know his

9 character somewhat and I wrote some notes, I hope I

10 can read. We live here in Sumter; I forgot to tell

11 you that. After, I don't know how many years, my

12 husband can tell you, 20 years in the air force?

13 21, sorry. And 20 years at Kaydon, used to be

14 Kaydon Corporation when he was there. So we've been

15 in Sumter. We've been in our house 42 years I

16 think, and so we're in Sumter right now, love it.

17 Well, I found Jim — when we met Jim,

18 Joanne married him, we didn't think they should

19 marry so soon but it wasn't any of our business, you

20 know. So we welcomed Jim, Jim and I, into the

21 family and we learned to really love him, you know,

22 as a brother-in-law, which but somehow he did change

23 somewhat, you know. And there were very few times

24 when we had cookouts out at their house, my house.

25 There never was a time that they didn't drink a

1 whole lot.

2 THE COURT: Ma'am, I'm gonna interrupt you
3 for one minute. This is mitigation concerning the
4 defendant. I'm not gonna sit here and re-evaluate
5 the victim in this case and have their record
6 disbursed after the defendant has already been found
7 guilty of arson and two counts of murder. If you'd
8 like to say something on behalf of the defendant I
9 will be happy to listen to that. I'm not going to
10 have the victim of this murder case, the reputation
11 soiled on this day.

12 MS. SUTPHIN: Well, I will not do that
13 either so I'm not sure, I'm not trained in this line
14 so I don't know —

15 THE COURT: Well, I hope I've given you
16 instructions on what you need to do.

17 MS. SUTPHIN: I tell you what I think
18 about Joe. He seems to me, what we found about him,
19 is he's, he was also when we would go, even when he
20 was, he was, he would greet us with a hug and big
21 smile. And I never saw Joe even when his half
22 brother was there complain, you know. I never saw
23 Joe act up very much or anything. He was pretty
24 level headed. Now Joe does have some sort of
25 problems with ADHD and maybe some other things, you

1 know, too, but that's speculation but I think. So
2 one time Joe called me after he'd gotten down here
3 and he was pretty excited and he, he came down, and
4 I asked him if he was gonna be staying here this
5 time and he said, well, and it took him a while. He
6 hesitated some time. Aunt Jane, I'd like to but you
7 know how it is out here. And that's all he said.
8 He didn't say anything ugly, just that, you know how
9 it is out here, and I did. And I didn't say
10 anything else, you know, because I was hoping he
11 would stay.

12 MR. GRIFFITH: Would you ask the judge to
13 have consideration for Joseph?

14 MS. SUTPHIN: Yes. Joanne is my sister
15 and we should be over somewhere else; but I know
16 Joanne in her heart, and I think even Jim, I believe
17 too, that as much as they loved him, and Jim did
18 too, that he was the child they didn't have. I
19 think they thought of it that way. And they were
20 very good to Joe, and Joe loved them. I saw it in
21 the way he acted. And they say there was love
22 between all of them, and we did see that. And but
23 Jim, and I noticed about two years after he was here
24 after it seem like he started changing.

25 THE COURT: And again, ma'am, —

1 MS. SUTPHIN: I know, I know.

2 THE COURT: I'm not gonna —

3 MS. SUTPHIN: It's hard.

4 THE COURT: —let you make an excuse by
5 saying that the victim deserved to be cremated in
6 this case.

7 MS. SUTPHIN: No, listen, I'm his sister,
8 I know all about everything. And it's passed now.
9 It's two-and-a-half years or so and I'm sorry, but I
10 think that Joe needs help. And I think that he
11 could come out and be a really nice young man. And
12 even if he stays in prison till he dies, I still say
13 I think he'll be a good man. And that's all I can
14 say about him but. One thing I wonder about, why
15 was Jim down in the lower floor. His room was up
16 high.

17 MR. GRIFFITH: You can't go over the
18 trial.

19 MS. SUTPHIN: Oh, I —

20 THE COURT: The jury has heard that and
21 furthermore, it was his house.

22 MS. SUTPHIN: Yes, but Joe's room was
23 downstairs. And I've talked enough now.

24 THE COURT: Thank you.

25 MR. GRIFFITH: Mr. James Sutphin would

1 also like to speak.

2 THE COURT: Yes, sir.

3 MR. SUTPHIN: Your Honor, my name is Jim
4 Sutphin. I'm the brother-in-law of Jim and Joanne
5 Topper. Joanne is my wife's sister, and I've known
6 them many years. I've known Joe many years since he
7 was small. I've worked with him, talked with him,
8 taken him to church, explaining things to him. I
9 visited him many times since he's been at the
10 detention center. I talked with him. And I know we
11 had the trial and been convicted. But some of the
12 things I've talked to him about is he remorseful and
13 he says he is. And you know, I said, well, how
14 about telling me how it went down, I'd like to know.
15 You know, maybe I'm not supposed to ask stuff like
16 that, but I did. And he said, well, he snapped and
17 so I believe -- can I give my opinion why, what I
18 think happened?

19 THE COURT: No, sir, that's not in
20 evidence in this case. You're here for mitigation
21 for the defendant. If you have something nice you'd
22 like to say about this defendant please do.

23 MR. GRIFFITH: Thank you, Your Honor.

24 THE COURT: Would your defendant like to
25 say anything?

1 MR. GRIFFITH: One moment.

2 THE COURT: Thank you, sir.

3 (Mr. Griffith confers with defendant.)

4 MR. GRIFFITH: No, Your Honor.

5 THE COURT: Thank you. Anything further,
6 Solicitor?

7 MR. MEADORS: No, sir, Your Honor.

8 THE COURT: I'm gonna take a ten minute
9 recess, then I'll come back and pass sentence.

10 (WHEREUPON, a recess was taken from the
11 proceedings.)

12 THE COURT: All right, I've listened to
13 the State. I've listened to the Defense witnesses
14 in mitigation. As a judge I've had to preside over
15 many trials that involved some terrible situations.
16 This is one of the worst I've seen simply because
17 there's so much family involved, both sides in this
18 matter. These crimes that were committed are some
19 of the most horrific crimes that I've ever had to
20 preside over. You know, as I get older, and I'm
21 sure many others have also pondered how we will
22 transition into the eternity to be with our Lord.
23 But I don't believe that anyone, anyone ever thinks
24 that will be by the hands of a grandchild. This
25 situation is beyond my comprehension and I

1 understand and I read one of the, part of the
2 defendant's transcript when he was talking to the
3 police officer. And this is why I would wish that I
4 would have a whole classroom of high school students
5 who were considering getting into drugs. One of the
6 statements he made was that drugs did this to me and
7 it changed me. Well, that may be true at this point
8 in time and what happened almost three years ago by
9 this defendant is just, again, like I said, beyond
10 my comprehension. At this time the defendant is an
11 unrepentant cold hearted murderer. On that day he
12 intentionally cremated those, or attempted to
13 cremate those who by his own words, he said loved
14 him and that he loved them.

15 The Court at this time and on this day
16 finds that he is deserving of the harshest sentence
17 that I have the ability to impose. Under count one
18 of indictment 2014-GS-43-170 as to the murder, this
19 defendant — of Mr. Topper, the defendant is
20 sentenced to the State Department of Corrections for
21 the balance of his natural life. As to count two
22 under indictment 2014-GS-43-170 as to the murder of
23 Ms. Topper, the defendant is sentenced to the State
24 Department of Corrections for the balance of his
25 natural life. And as to count three on first degree

1 arson, the defendant is sentenced to 30 years in the
2 State Department of Corrections. It's the intention
3 of this Court that this defendant never walk as a
4 free man, and therefore, all of these sentences are
5 be consecutive. That is the order of this Court.
6 Court is hereby adjourned.

7

8 * * * END OF REQUESTED TRANSCRIPT OF RECORD * * *

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C E R T I F I C A T E O F R E P O R T E R

STATE OF SOUTH CAROLINA)
COUNTY OF FLORENCE)

I, FRANCES B. RAY, Registered Professional Reporter (RPR), court reporter for the State of South Carolina, Third Judicial Circuit, do hereby certify that the foregoing proceeding is a stenographic report and was transcribed through computer-aided transcription; that the foregoing transcript contains a true record of the proceedings.

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

Witness my hand at Florence, South Carolina, this 19th day of July, 2016.

Frances B. Ray

FRANCES B. RAY, RPR

FORM 5
RECORDED

STATE OF SOUTH CAROLINA

2017 NOV 27 PM 3:29

IN THE COURT OF COMMON PLEAS

County of SumterJoseph Michael Manners 367125

Full name and prison number (if any) of Applicant

v.

State of South Carolina

JAMES C. CAMPBELL
CLERK OF COURT
SUMTER COUNTY
SOUTH CAROLINA
2017-CP-43-2366

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Sumter Lee Regional
2. Name and location of Court which imposed sentence Sumter County Courthouse
in Sumter County
3. Name(s) of co-defendant(s) (if any) None
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2013A4310100503 Murder First Degree
 - (b) 2013A4310100487 Arson First Degree

(c) 2013A4312100504 Count Two Murder

5. The date upon which sentence was imposed and the terms of the sentence:

(a) MURDER - LIFE SENTENCE

(b) COUNT TWO MURDER - LIFE SENTENCE

(c) ARSON - 30 yrs.

6. Check whether a finding of guilty was made:

(a) after a plea of guilty _____

(b) after a plea of not guilty ☒

(c) after a plea of nolo contendere _____

7. Did you appeal from the judgment of conviction or the imposition of sentence?

Yes

8. If you answered "yes" to (7), list:

(a) the name of each Court to which you appealed:

i. Appeals Court - Direct Appeal

ii. _____

iii. _____

(b) the result in each such Court to which you appealed:

i. Dismissed

ii. _____

iii. _____

(c) the date of each such result:

i. October 18, 2017

ii. _____

iii. _____

(d) if known, citations of any written opinion or orders entered pursuant to such results:

i. NONE

ii. _____

iii. _____

9. If you answered "no" to (7), state your reasons for not so appealing:

(a) N/A

(b) N/A

- (c) N/A
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) Due Process Rights Violated under Violation of
- (b) MIRANDA Rights.
- (c) Ineffective TRIAL Counsel - Due to Plea Bargain
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) Petitioner was young and addicted to Drugs. He never
- (b) understood his Rights
- (c) There was a Plea Offer that Petitioner didn't understand completely
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? NO
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO
- (d) any other petitions, motions or applications in this or any other Court? NO
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. _____
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. _____
- ii. _____
- iii. _____
- iv. _____

(c) the disposition thereof:

- i. _____
- ii. _____
- iii. _____
- iv. _____

(d) the date of each such disposition:

- i. _____
- ii. _____
- iii. _____
- iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

- i. _____
- ii. _____
- iii. _____
- iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

Due Process Violation Yes.

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

- i. Due Process Violation
- ii. _____
- iii. _____

(b) the proceedings in which each ground was raised:

- i. Appeal
- ii. _____
- iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) _____
 (b) _____
 (c) _____

17. Were you represented by an attorney at any time during the course of:

(a) your arraignment and plea? Yes
 (b) your trial, if any? Yes
 (c) your sentencing? Yes
 (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? Yes
 (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?
Yes

18. If you answered "yes" to one or more parts of (17), list:

(a) the name and address of each attorney who represented you:
 i. Timothy L. Griffith, ESQ., Sumter County,

 ii. Taylor D. Gilliam, P.O. Box 11589 Columbia, SC.
29211-1589
 iii. _____

 (b) the proceedings at which each such attorney represented you:
 i. Timothy L. Griffith - Trial Attorney

 ii. Taylor D. Gilliam - Appeal Attorney

 iii. _____

19. State clearly the relief you seek in filing this application:

Petitioners conviction should be reversed and this case
remanded to the Sumter County Court for a New Trial or
at least a sentence Reduction.

20. Are you now under sentence from any other court that you have not challenged?

NO

STATE OF SOUTH CAROLINA)

County of Sumter)

VERIFICATION

I, Joseph Michael Manners, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Joseph M. Manners

SWORN to and subscribed before me this 5th
 day of December, 2017.

Tamara Conwell (L.S.)
 Notary Public

My Commission Expires: My Commission Expires
September 25, 2023

RECEIVED

DEC 05 2017

P.C.I. MAILROOM

**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, Joseph M. Manners, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Joseph M. Manners
Applicant

SWORN or affirmed to and subscribed before me this

5th day of December, 2017.

Tamara Conwell
Notary Public

My Commission Expires
September 25, 2017

My Commission Expires: _____

RECEIVED

DEC 05 2017

P.C.I. MAILROOM

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF SUMTER	)	IN THE THIRD JUDICIAL CIRCUIT
	)	
Joseph Michael Manners, #367122	)	Case No.: 2017-CP-43-2366
	)	
Applicant,	)	
	)	RETURN AND MOTION
v.	)	FOR MORE DEFINITE STATEMENT
	)	
State of South Carolina,	)	
	)	
Respondent.	)	

The State (Respondent), making its Return to the application for Post-Conviction Relief filed on December 12, 2017 would respectfully show this Court:

I.

Joseph Michael Manners (Applicant) is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Sumter County Clerk of Court. In February 2014, the Sumter County Grand Jury indicted Applicant for two counts of murder and first-degree arson (2014-GS-43-0170). These charges resulted from Applicant striking a victim and setting their residence on fire, resulting the death of two people. Timothy Griffith, Esquire represented Applicant. Assistant Solicitor John P. Meadors, Esquire prosecuted the case. On February 16, 2018, Applicant proceeded to trial before the Honorable W. Jeffrey Young. The jury found Applicant guilty as indicted. Judge Young sentenced Applicant to imprisonment for consecutive terms of thirty years for arson and life for each count of murder.

Applicant filed a timely notice of appeal. Taylor D. Gilliam, Esquire, of the Office of Appellate Defense filed an Anders¹ brief on Applicant's behalf. After review, the South Carolina Court of Appeals affirmed Applicant's conviction in an order dated October 18, 2017.

¹ Anders v. California, 386 U.S. 738 (1967).

State v. Manners, Op. No. 2017-UP-393 (S.C. Ct. App. filed October 18, 2017). The remittitur was returned to the circuit court on November 3, 2017.

Attached to this Return and incorporated by reference are the records of the Sumter County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the record on appeal, Applicant's appellate records, and the application. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

In his application for post-conviction relief, Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. "Ineffective Assistance of Counsel- Due To Plea Bargain"
 - a. "There was a plea offer that petitioner didn't understand completely"
2. "Due Process Violated Under Violation of Miranda Rights"
 - a. "Petitioner was young and addicted to drugs, he never understood his rights"

III.

Applicant alleges ineffective assistance of counsel, but has wholly failed to set forth any facts to support this allegation. Respondent submits Applicant's allegations of ineffective assistance of counsel are without merit. In a PCR action, Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland v. Washington, 466 U.S. 668. First, Applicant must prove that counsel's performance was deficient. Id.; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Id. (citing Strickland, 466 U.S. at 690). Applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. Second, counsel's deficient performance must have prejudiced Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

Respondent submits Applicant can satisfy neither requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

Applicant alleges a denial of due process of law. Applicant's allegation claims infringement of his rights under certain amendments to the United States Constitution including violations pursuant to Miranda v. Arizona, 384 U.S. 436 (1966). However, Applicant fails to set forth with specificity the grounds upon which these constitutional violations are based. The

Uniform Post-Conviction Procedure Act requires that Applicant must "... specifically set forth the grounds upon which the application is based." S.C. Code § 17-27-50 (2003). In an application for post-conviction relief, it is incumbent upon Applicant to make at least a *prima facie* showing which would entitle him to relief before an evidentiary hearing will be scheduled and held. Welch v. MacDougall, 246 S.C. 258, 143 S.E.2d 455 (1965); Blandshaw v. State, 245 S.C. 385, 140 S.E.2d 784 (1965). Since Applicant has failed to make even a *prima facie* showing that his due process and other constitutional rights were violated, Respondent would submit that this allegation should be summarily dismissed for failing to specifically set forth the grounds upon which the application is based.

V.

Respondent also hereby moves for a more definite statement. Applicant has failed to set forth any facts to "support each ground" or to explain with any specificity whatsoever the facts upon which his claims are based. The Uniform Post-Conviction Procedure Act requires the Applicant to "*specifically set forth the grounds upon which the application is based.*" S.C. Code Ann. § 17-27-50 (1985) (emphasis added). Respondent respectfully submits that it is incumbent upon Applicant, through counsel, to amend his application to set forth specific facts upon which his allegations are based so that Respondent may adequately prepare for an evidentiary hearing. Therefore, Respondent requests that Applicant be required to amend his application to set forth specifically the grounds on which his claims are based.

VI.

Applicant must specify any claims he intends to raise at the PCR evidentiary hearing. Any claims not specifically laid out in this PCR application or in amendments will be opposed by the State at an evidentiary hearing pursuant to §§ 17-27-10 to -160 of the South Carolina

Code of Laws and Rule 71.1 of the South Carolina Rules of Civil Procedure. See also Rules 15(a)-(b), SCRCP. All claims should be made well in advance of the evidentiary hearing. Because Applicant has been appointed an attorney, the attorney, and not Applicant, is the only individual authorized to file amendments to this application. See Rule 11, SCRCP. Pro se filings will not be considered at the PCR hearing. Respondent reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to Respondent. See Rule 15(a), SCRCP.

Pursuant to § 17-27-150 of the South Carolina Code of Laws, Applicant may not invoke formal discovery processes to issue subpoenas or otherwise obtain discovery materials unless granted leave from the Court upon a showing of good cause. Furthermore, Respondent requests that all potential exhibits and materials used to produce expert witness testimony be sent to Respondent well in advance of the evidentiary hearing. Respondent reserves the right to request a continuance and oppose witness testimony and exhibits that are withheld until the last minute resulting in undue prejudice to Respondent.

VII.

Respondent therefore requests that this Court convene an evidentiary hearing on the allegations of ineffective assistance of counsel. As to all other allegations, Respondent moves for summary dismissal pursuant to § 17-27-70 of the South Carolina Code of Laws on the basis that there is no genuine issue of material fact which would necessitate an evidentiary hearing and that those allegations should be dismissed as a matter of law.

VIII.

Each and every allegation contained within the application not expressly admitted, qualified, or explained in this Return is hereby denied.

IX.

WHEREFORE, Respondent requests that an evidentiary hearing be held on the claims of ineffective assistance of trial counsel, with the remainder of the allegations being summarily dismissed.

Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

JULIE A. COLEMAN
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

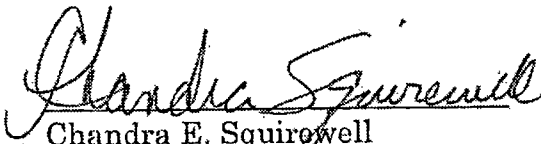
march 30, 2018

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF SUMTER	)	
	)	
	)	2017-CP-43-2366
JOSEPH M. MANNERS, #367122)	)	
	)	
Applicant,	)	
	)	
vs	)	AFFIDAVIT OF SERVICE BY MAIL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the Return and Motion for More Definite Statement in the above-captioned matter on the following person(s) by depositing same in the United States mail, postage prepaid:

Lance S. Boozer, Esquire
 1400 Laurel Street, Suite 4A.
 Columbia, SC 29201

DATED this 30TH day of March, 2018.


 Chandra E. Squirewell
 Legal Assistant For Respondent

State of South Carolina	)	Court of Common Pleas
	)	Third Judicial Circuit
County of Sumter	)	Case No. 2017-CP-43-02366
	)	
Joseph Michael Manners,	)	
	)	
Plaintiff,	)	
	)	
-vs-	)	Transcript of Record
	)	
State of South Carolina,	)	
	)	
Defendant.	)	
	)	

July 26, 2018
Sumter, South Carolina

B E F O R E:

The Honorable Kristi F. Curtis, Judge

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

Lance S. Boozer, Esquire
Attorney for the Applicant

Julie Coleman, Esquire
Attorney for the State

Krystal J. Smith
Circuit Court Reporter

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E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>

(No Exhibits Presented)

COURT REPORTER LEGEND

dashes	--	intentional or purposeful interruption
		or change in thought
ellipses	. . .	trailing off
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[sic]		written as said

1 JULY 26, 2018

2 (WHEREUPON, the proceedings began at 9:40 a.m.)

3 THE COURT: Okay. I'm showing our first matter is Leroy
4 Gibbs.

5 MS. COLEMAN: Your Honor, we're going to start with
6 Joseph Manners this morning.

7 THE COURT: Okay.

8 MS. COLEMAN: And those will be our only two cases
9 before the Court today. May it please the Court.

10 This is Joseph Michael Manners versus the State of South
11 Carolina, Docket Number 2017-CP-43-2366. Applicant is
12 presently confined in the South Carolina Department of
13 Corrections pursuant to orders of commitment of the Sumter
14 County Clerk of Court.

15 In February of 2014, the Sumter County Grand Jury
16 indicted applicant for two counts of murder and first-degree
17 arson. Timothy Griffith, Esq., represented the applicant.
18 Assistant Solicitor John P. Meadors, Esq., prosecuted the
19 case.

20 On February 16th, 2018 [sic], applicant proceeded to a
21 jury trial before the Hon. W. Jeffrey Young. The jury found
22 applicant guilty as indicted. Judge Young sentenced
23 applicant to imprisonment for consecutive terms of 30 years
24 for arson and life for each count of murder.

25 Applicant filed a timely notice of appeal. Taylor D.

1 Gilliam, Esq., of the Office of Appellate Defense filed an
2 Anders brief on applicant's behalf. After review, the South
3 Carolina Court of Appeals affirmed the applicant's conviction
4 in an order dated October 18th, 2017. The remittitur was
5 issued on November 3rd, 2017.

6 Applicant filed a timely application for post-conviction
7 relief on December 12th, 2017, alleging he was being held in
8 custody unlawfully based on the following allegations:
9 ineffective assistance of counsel, there was a plea offer
10 that petitioner didn't understand completely, and due process
11 violation of his Miranda rights. Petitioner was young and
12 addicted to drugs. He never understood his rights.

13 The State filed its return on March 30th, 2018.
14 Applicant filed an amended application on July 12th, 2018, and
15 he is present today and is represented by Mr. Lance Boozer.

16 THE COURT: Mr. Boozer?

17 MR. BOOZER: Thank you, Your Honor. If it pleases the
18 Court, we will go ahead and call Mr. Manners to the stand.

19 THE CLERK: Put your left hand on the Bible. Raise your
20 right. State your name.

21 THE APPLICANT: Joseph Michael Manners.

22 THE CLERK: Okay. Do you solemnly swear or affirm to
23 this Court to tell the whole truth and nothing but the truth,
24 so help you God?

25 THE APPLICANT: Yes, sir.

JOSEPH MICHAEL MANNERS - DIRECT BY MR. BOOZER

1 THE CLERK: Okay. Step around, sir. State your full
2 name and spell your last name, please, sir.

3 THE APPLICANT: Joseph Michael Manners, M-a-n-n-e-r-s.

4 JOSEPH MICHAEL MANNERS, being
5 first duly sworn, testified as follows:

6 DIRECT EXAMINATION

7 BY MR. BOOZER:

8 Q: Good morning, Mr. Manners. How are you?

9 A: Good.

10 Q: Good. All right. Mr. Manners, do you know what it is
11 that you're doing in court today?

12 A: Yes, sir. A post-conviction relief.

13 Q: All right. And you -- you had initially filed an
14 application for post-conviction relief that you and I later
15 amended?

16 A: Yes, sir.

17 Q: All right. Now, Mr. Manners, what are you currently
18 incarcerated for?

19 A: Two counts of murder and one count of arson.

20 Q: All right. And did you have a trial in your case?

21 A: Yes.

22 Q: And what type of sentence did you receive?

23 A: Double life plus 30.

24 Q: All right. Was that consecutive? Is that what you mean
25 by that?

JOSEPH MANNERS - DIRECT BY MR. BOOZER

- 1 A: Yeah.
- 2 Q: Okay. For your trial, who represented you?
- 3 A: Timothy Griffith.
- 4 Q: All right. You and I, of course, have been over this,
- 5 but do you understand that the only thing this Court can do
- 6 is to just essentially give you a new trial?
- 7 A: Yes.
- 8 Q: And is that what you want?
- 9 A: Yes.
- 10 Q: Okay. Now, let's -- let's talk about some things. You
- 11 said Mr. Griffith represented you for your trial. Prior to
- 12 Mr. Griffith, did you have any other lawyer who represented
- 13 you?
- 14 A: Yeah.
- 15 Q: Who was that?
- 16 A: Timothy Murphy.
- 17 Q: When was Mr. Murphy appointed to represent you?
- 18 A: I ain't exactly sure, sir. It was in the beginning of
- 19 my case after they found it to not be capital.
- 20 Q: Okay. Did you meet with Mr. Murphy?
- 21 A: Yes.
- 22 Q: Did you meet with him often or kind of describe that?
- 23 A: It was, like, every other month.
- 24 Q: All right. Were you and Mr. Murphy talking about
- 25 defenses or how you would handle the case?

JOSEPH MANNERS - DIRECT BY MR. BOOZER

- 1 A: Kind of, yes.
- 2 Q: All right. Based on your discussions with Mr. Murphy,
3 what -- what was sort of your understanding of how y'all
4 would be handling the case?
- 5 A: He said that I had a plausible case for manslaughter
6 through the Department of Mental Health, and it would be
7 something that they wouldn't let me plead to. It would be
8 something I would have to go to trial and I would have to
9 fight out. That -- that was exactly what he said actually.
- 10 Q: All right. Were y'all at any time preparing to go to
11 trial or --
- 12 A: Yeah..
- 13 Q: What -- were y'all making any actual trial preparations?
- 14 A: He -- he was trying to get me a plea offer. It was 60
15 originally and then he got it down to 50.
- 16 Q: Okay.
- 17 A: Day per day.
- 18 Q: And did you decline that?
- 19 A: At that time, yes.
- 20 Q: All right. At the time when Mr. Murphy was representing
21 you, were y'all talking about witnesses that he needed to
22 investigate or anything like that? And I'm talking about Mr.
23 Murphy, your first lawyer.
- 24 A: No. I don't remember that.
- 25 Q: All right.

JOSEPH MANNERS - DIRECT BY MR. BOOZER

1 A: I don't -- I don't believe we got along too well because
2 I started throwing conflict of interest in his face and
3 started -- started mentioning to the fact that he was in the
4 Air Force and that he actually stated out of his own mouth
5 that he had lived right down the road, and I felt that that
6 was good grounds for a conflict of interest.

7 Q: Well, let's talk about that. Eventually -- was Mr.
8 Murphy eventually relieved as your lawyer?

9 A: Yes.

10 Q: Why was he relieved?

11 A: He -- he actually withdrew from my case because we just
12 did not get along. He -- he didn't -- he didn't like the way
13 I talked to him.

14 Q: Okay. Is that when Mr. Griffith was then appointed to
15 your case?

16 A: Yeah, yeah. He was then appointed, yes.

17 Q: How many times do you think you met with Mr. Griffith?

18 A: I'm not exactly sure. Maybe three or four times.

19 Q: And what would you two discuss about the case?

20 A: He was -- he was on, you know, just getting me to sign
21 for a plea.

22 Q: What type of plea was he trying to get you to sign?

23 A: We had 50, day per day.

24 Q: Okay. And what was your response to that?

25 A: At that time, I didn't know. I wasn't for sure. Things

JOSEPH MANNERS - DIRECT BY MR. BOOZER

1 I didn't know then that I know now, like being able to make
2 minimum wage 10 years. I didn't know that.

3 Q: Well, let me ask you this, did you reject that plea
4 offer that was being made?

5 A: Ultimately, yes.

6 Q: Did you ever go to court and accept it or try and accept
7 it?

8 A: Yeah, yeah, yeah. We did. We did.

9 Q: And what happened? You backed out while you were in
10 court?

11 A: I couldn't make my mind up because I -- I'm too young
12 and I just -- I got -- I got a little girl and so, long story
13 short, I wound up not signing the paperwork.

14 Q: All right. What did you and Mr. Griffith do to prepare
15 for your trial?

16 A: Well, I mean I can recall asking Mr. Griffith what I
17 should study or anything, and he -- he didn't have nothing
18 for me. He just -- he recommended that I took that plea.
19 That was the only thing we really ever talked about.

20 Q: Did y'all ever talk about any sort of defenses to the
21 case you might have or how you would sort of --

22 A: Not that I can remember, no.

23 Q: Or how you would fight it at trial? Did y'all ever have
24 that discussion?

25 A: I really can't remember.

JOSEPH MANNERS - DIRECT BY MR. BOOZER

1 Q: Did he give you any sort of opinion as to what he
2 thought about you going to trial?

3 A: He -- I know he said that, you know, I would not make a
4 good witness and testimony. That's for sure.

5 Q: All right. And let's kind of segue into that. Did you
6 testify at trial?

7 A: No.

8 Q: Why not?

9 A: Because Mr. Griffith told me not to.

10 Q: Did you want to testify?

11 A: Yes.

12 Q: Okay. And do you recall the Court going over some of
13 your rights that you could testify or you could remain
14 silent? Do you remember any of that discussion?

15 A: Yes.

16 Q: All right. And did you choose not to testify based on
17 Mr. Griffith's advice?

18 A: Yes.

19 Q: Had you testified at trial, what is it that you would've
20 testified to?

21 A: Well, it would have certainly been, you know, the state
22 that I was in, the state that I had growing up, and just
23 things I had been through that led up to everything.

24 Q: Let's talk a little bit about the background of your
25 case. Now, you had come down to live with your grandparents

JOSEPH MANNERS - DIRECT BY MR. BOOZER

1 here in South Carolina?

2 A: Yeah.

3 Q: All right. Where did you come from?

4 A: Northern Kentucky.

5 Q: All right. And who was it that you were living with at
6 the time? Who's your grandparents? Who were they?

7 A: My gram and my pop.

8 Q: All right. How long did you live with them?

9 A: It was periodic. Sometimes 30 days, sometimes two or
10 three months. It was periodic.

11 Q: Okay. And eventually or ultimately, there was a fire at
12 this house where y'all were living and your grandmother and
13 your grandfather were dead? Is that accurate?

14 A: Yes.

15 Q: Okay. Tell the Court leading up to all of that what you
16 would've testified to as to what happened?

17 A: Is -- is that, you know, I -- that I know I took -- I
18 took my grandpa's life because in that -- not even
19 remembering at least at first, like, what happened was that
20 he had done killed my grandma and when that happened, I
21 didn't -- I don't even really remember. I remember being in
22 a car driving real fast, man.

23 Q: Okay.

24 A: Yeah.

25 Q: Well, leading up to that, you said your grandfather

JOSEPH MANNERS - DIRECT BY MR. BOOZER

1 killed your grandmother?

2 A: Yeah.

3 Q: Okay. Did you see that happen or talk about that?

4 A: Yeah. She -- she -- she was dead.

5 Q: Okay. Do you know how it happened?

6 A: Just -- it just did. I mean all I remember is -- is --

7 is -- is flipping out, man, after the fact.

8 Q: When you say after the fact, after the fact of --

9 A: And -- and -- and -- and prior to the fact. I mean I

10 knew something like that was coming because it had been -- it

11 had been that way for some time.

12 Q: Okay. When you say it had been that way, explain to the

13 Court what you mean by that.

14 A: Yes, sir.

15 Q: What were the conditions like at that house?

16 A: There -- there was a lot of drinking and my gram was

17 getting very old and my grandpa was tired of taking care of

18 her, and it was just really a matter of time before he got

19 drunk and flew over the edge, do something foolish, something

20 crazy, and put me in the situation.

21 I was already crazy. Man, I literally had just tried to

22 take my own life not a week before. I took a whole

23 prescription of Percocet, and Sumter County Sheriff's

24 Department was aware of this and they really -- they didn't

25 -- I mean it's not their responsibility, I guess, but they

JOSEPH MANNERS - DIRECT BY MR. BOOZER

1 didn't do anything about it.

2 Q: Now, what was your relationship like with your
3 grandfather?

4 A: He -- in his sober state and all, he was like the father
5 that I really never had because my dad wasn't there, but when
6 he was drunk or fighting with my grandma, it was just a
7 completely different story. I can recall one time that --
8 and my Uncle Jim actually just literally was talking to me
9 about this on the phone where he -- he put hands on me
10 because I stepped to him for how he was going at my grandma.

11 Q: Now, when you say your grandfather put hands on you --

12 A: He hit me.

13 Q: All right. When -- when did that happen?

14 A: Man, I can't really remember exactly when.

15 Q: Okay.

16 A: I'm not going to lie to you.

17 Q: Was that -- would your grandfather hit you -- was it
18 something he only did one time or was that something he had
19 done multiple times?

20 A: It was -- it was something that he had done one time.

21 Q: Okay. Did you fear your grandfather?

22 A: I feared what I might do to him.

23 Q: Okay. So had you testified at trial, would you have --
24 would you have testified to that, what you have just stated
25 today in court?

JOSEPH MANNERS - DIRECT BY MR. BOOZER

- 1 A: I think I would have been a little bit more prepared.
- 2 Q: Okay.
- 3 A: Or tried to be a little bit more prepared.
- 4 Q: Okay. Well, let's -- let's talk a little bit more about
- 5 -- about this. So your testimony is your grandfather first
- 6 killed your grandmother; is that right?
- 7 A: Yeah.
- 8 Q: And then you got upset about that and that's when you
- 9 flipped out and attacked him? Or let's get into a little bit
- 10 more detail from what you can remember.
- 11 A: I took his life with my bare hands. That's what
- 12 happened.
- 13 Q: Was he -- you found your grandmother dead and that's
- 14 when all this happened or was he coming after you and that's
- 15 when you acted?
- 16 A: I -- I'm assuming that after the fact because I really
- 17 didn't realize until I was running to the car and -- and had
- 18 the keys in my hand. I really didn't realize what was going
- 19 on until after the fact. That's called heat of the passion.
- 20 Q: Okay.
- 21 A: Yeah. I really didn't have no clue.
- 22 Q: You did not kill your grandmother; is that correct?
- 23 A: Absolutely not. No, sir.
- 24 Q: How -- how -- do you recall how the fire started?
- 25 A: No.

JOSEPH MANNERS - DIRECT BY MR. BOOZER

1 Q: All right. Did you admit that you had actually killed
2 your grandfather? Has that been something that you've always
3 admitted?

4 A: I'm not sure.

5 Q: Okay. But after this -- after this incident, did you
6 take a number of drugs?

7 A: Oh, yeah, yeah.

8 Q: Okay.

9 A: Yes, sir.

10 Q: And then you went and you fled or left the state and
11 went to -- is it Ohio?

12 A: Yes. Yes, sir.

13 Q: And ultimately, how were you apprehended in Ohio?

14 A: Well, it actually started in Kentucky. It turned into a
15 pursuit right there with Erlanger and Independence and
16 Florence police officers that went all the way to the
17 outskirts of Cincinnati, where I actually lost Kentucky law
18 enforcement. And had I not actually crashed, probably
19 there's a good chance I would've not been found by Cincinnati
20 police either.

21 Q: Where did you end up crashing?

22 A: This is a place where the Clays ferry comes to pick you
23 up. It takes you from -- from right there, which is Delhi,
24 Cincinnati, Ohio, and it takes you over to right where I
25 partially grew up on the Kentucky side of the Ohio River,

JOSEPH MANNERS - DIRECT BY MR. BOOZER

- 1 River Road. There's two different sides.
- 2 Q: Did you actually crash your car into the Ohio River?
- 3 A: Yeah. I sent -- I sent it in where the ferry comes.
- 4 Q: All right.
- 5 A: Because it had already crashed.
- 6 Q: Now, the testimony you've had today in court about the
- 7 altercation you had with your grandfather, that he had killed
- 8 your grandmother, did you have any of that discussion with
- 9 Mr. Griffith? Did you tell him any of that?
- 10 A: I can't really remember now, come to think of it.
- 11 Q: Okay. Now, during your trial, it's been pointed out to
- 12 me that your attorney asked the Court to add some witnesses
- 13 and that was -- that request was denied. And at the end of
- 14 your trial, beginning on page 383 and then 386 and 388, three
- 15 -- three people after you were convicted were called to
- 16 testify or present some mitigation on your behalf. One of
- 17 those was Lee Harmon. Who is that?
- 18 A: She's standing right next to my Uncle Jim on the left.
- 19 Q: Who is she? Is she your aunt?
- 20 A: Yeah.
- 21 Q: Okay. And what's her relationship with your
- 22 grandmother?
- 23 A: She -- she -- she's the baby. She's my grandmother's
- 24 youngest sister.
- 25 Q: All right. And how about Ms. Sutton?

JOSEPH MANNERS - DIRECT BY MR. BOOZER

1 A: She is -- that's my Aunt Jane.

2 Q: Okay. What's her relationship to your grandmother?

3 A: She's my grandma's sister.

4 Q: All right. So that's your great-aunt?

5 A: Yeah.

6 Q: Okay. And how about Mr. Sutton?

7 A: That's -- that's my Uncle Jim. That's my Aunt Jane's

8 husband.

9 Q: All right. At the end of the trial after you'd been

10 convicted, they -- they attempt to make some statements on

11 your behalf. Do you remember that?

12 A: Yes.

13 Q: All right. And specifically, Ms. Harmon begins talking

14 about some of your background and about alcohol and some

15 violence that was in the house and they're speaking on your

16 behalf and they're kind of shut down by the Court. Do you

17 remember that?

18 A: Absolutely.

19 Q: All right. Why were they there that day at your trial?

20 Were you anticipating -- anticipating them testifying on your

21 behalf during the actual trial?

22 A: Yes. I know that they would have.

23 Q: All right. Had you had any discussion with Mr. Griffith

24 about any of those witnesses testifying during the actual

25 trial?

JOSEPH MANNERS - DIRECT BY MR. BOOZER

1 A: We did. We talked not only about them, but my mom also.

2 Q: Okay.

3 A: That I do know.

4 Q: What was that discussion?

5 A: It -- it took place -- I believe it was in the jail and

6 right up here at the courthouse we talked about it, but the

7 thing was the process of letting the State do all their facts

8 and present everything they had and then try to enter them

9 in. The solicitor did not agree with it and so the judge

10 went with the solicitor and, for that reason, they did not

11 get to testify.

12 Q: All right. Let me ask you after you came back -- let's

13 kind of move back to when you were brought back to South

14 Carolina from Ohio and you had been released from the

15 hospital up there and brought back. Did you have a

16 discussion with your Aunt Lee while you were in the detention

17 center?

18 A: Yes.

19 Q: Okay. What did you tell her?

20 A: Well, we were talking and -- and -- and kindly healing

21 as we were talking, but ultimately, I let her know that, you

22 know, my grandma was already dead before I flipped out and

23 wiggled out. That was ultimately what we were talking about.

24 Q: Okay. Did you tell her anything else about what

25 happened other than your grandmother already being dead when

JOSEPH MANNERS - DIRECT BY MR. BOOZER

1. you say you flipped out?

2 A: I did. That he made contact with me, he hit me, and
3 from there it was partially what -- what made me fly over the
4 edge.

5 Q: Okay. So you're saying your grandfather hit you first
6 and then that's when everything sort of happened?

7 A: Right. Right. That's exactly what happened.

8 Q: All right. Is that what you would've testified to in
9 court? Had you -- had you testified on your own behalf and
10 taken the stand, would you have said that in court?

11 A: Yes.

12 Q: Okay. Did you -- did your lawyer know that that's what
13 you would have said?

14 A: I can't even be for sure. We did not -- the
15 conversations we had wasn't very long.

16 Q: Okay. Mr. Manners, you understand that I'll be calling
17 your aunt as a witness and then, of course, we have to
18 examine your former attorney. This is obviously your day in
19 court. I want to make sure that we haven't left anything out
20 that you feel is important or relevant to your PCR
21 application.

22 A: Yes, sir.

23 Q: Is there anything else? I think we've covered
24 everything, but I want to make sure. Is there anything else
25 that we're leaving out?

JOSEPH MANNERS - DIRECT BY MR. BOOZER

1 A: Not that I know of, sir.

2 Q: Okay.

3 MR. BOOZER: Please answer any questions Ms. Coleman may
4 have for you.

5 MS. COLEMAN: I don't have any questions. Thank you.

6 THE COURT: All right. Mr. Manners, you can step down,
7 please.

8 THE APPLICANT: Yes, ma'am.

9 THE COURT: Yes, sir.

10 MR. BOOZER: Thank you, Your Honor. We'd call Ms. Lee
11 Harmon to the stand.

12 THE CLERK: Raise your -- raise your right hand. Raise
13 your right hand. Thank you. State your full name.

14 THE WITNESS: Nora Lee Harmon.

15 THE CLERK: Do you solemnly swear or affirm to this
16 Court to tell the whole truth and nothing but the truth, so
17 help you God?

18 THE WITNESS: I do.

19 THE CLERK: Step around, please, ma'am. Be careful.
20 State your full name and spell your last name for the record,
21 please, ma'am.

22 THE WITNESS: Nora Lee Harmon, H-a-r-m-o-n.

23 THE COURT: Go right ahead.

24 MR. BOOZER: Thank you.

25 NORA LEE HARMON, being first

NORA LEE HARMON - DIRECT BY MR. BOOZER

1 duly sworn, testified as follows:

2 DIRECT EXAMINATION

3 BY MR. BOOZER:

4 Q: Ms. Harmon, how are you doing today?

5 A: I'm doing fine.

6 Q: Good. Ms. Harmon, you understand that I represent
7 Joseph Manners in this case?

8 A: Yes, sir.

9 Q: All right. And you and I have spoken previously on the
10 telephone?

11 A: Yes, sir.

12 Q: All right. Ms. Harmon, what is your relationship to Mr.
13 Manners?

14 A: I'm his great-aunt.

15 Q: You're his great-aunt? What is your relationship to the
16 deceased in the case?

17 A: Joanne was my second oldest sister. She was second
18 oldest in our family. I'm the youngest of six children.

19 Q: Okay. So you're her sister?

20 A: I'm her sister.

21 Q: Were you close with your sister?

22 A: Yes.

23 Q: Do you live here in Sumter or where do you live?

24 A: I live here in Sumter.

25 Q: Okay. Did you speak regularly to your sister?

NORA LEE HARMON - DIRECT BY MR. BOOZER

1 A: Oh, yes.

2 Q: And how about Mr. Manners? Were you close with him?

3 A: Yes.

4 Q: What was sort of the -- let me ask you this. Prior to

5 Mr. Manners' trial, did you ever speak with either his

6 lawyer, Mr. Murphy, or his second lawyer, Mr. Griffith?

7 A: No.

8 Q: All right. Did they -- did he ever contact you?

9 A: No.

10 Q: All right. You appeared in court at the trial?

11 A: Yes.

12 Q: Why were you there that day?

13 A: I thought I was going to be called to testify.

14 Q: Why did you think that?

15 A: Well, I had tried to call his office several times and

16 left messages. He --

17 Q: Who's office?

18 A: Mr. Griffith. And I went to his office and sit one day,

19 but he didn't come in. I wanted to talk to him about the

20 conditions that Joseph went through -- you know, he had to go

21 through when he stayed at my sister's house.

22 Q: Okay. So you actually went to Mr. Griffith's office?

23 A: Yes.

24 Q: Do you recall where that was?

25 A: I think it was off of Miller.

NORA LEE HARMON - DIRECT BY MR. BOOZER

1 Q: Off Miller here in Sumter?

2 A: Yes.

3 Q: All right. When Mr. Manners got brought back down from
4 Ohio to South Carolina, did you ever go visit him at the
5 detention center?

6 A: Yes, I did.

7 Q: All right. Did you do that shortly after he came back?

8 A: It wasn't too long after he came back.

9 Q: Tell me what discussion you had with him there at the
10 detention center?

11 A: I asked him if he killed his grandmother because I know
12 how much she loved him.

13 Q: What did he say?

14 A: And she said -- he said -- told me, no, he did not kill
15 her.

16 Q: Okay. Did y'all have any discussion about his
17 grandfather?

18 A: Yes.

19 Q: What was that discussion?

20 A: He said that he knocked him out.

21 Q: Did he give you any reason for it?

22 A: Because he was coming down after him. Joseph's room was
23 down in the basement and Joanne had her bedroom upstairs
24 above his. And Jim came down the steps. Joseph was going to
25 his room to get away from him, from what I understood.

NORA LEE HARMON - DIRECT BY MR. BOOZER

1 MS. COLEMAN: Objection, Your Honor. This is
2 speculation. This is outside the scope of her personal
3 knowledge.

4 THE COURT: That's sustained.

5 THE WITNESS: Okay.

6 BY MR. BOOZER:

7 Q: Based on your discussions with Mr. Manners at the
8 detention center that day, what was your understanding of
9 what had occurred?

10 MS. COLEMAN: Your Honor, I would object to this as
11 hearsay.

12 MR. BOOZER: I'm just asking what --

13 THE COURT: Do you want to respond to that?

14 MR. BOOZER: -- her understanding of the circumstances
15 were and, certainly, credibility of the witness would be left
16 up to Your Honor.

17 THE COURT: Well, I mean whether it would have been
18 admissible at court also.

19 MR. BOOZER: Sure.

20 THE COURT: But I'll allow it for -- I guess for what
21 it's worth. Again, I don't know that this hearsay testimony
22 would have been admissible at trial.

23 MR. BOOZER: Sure.

24 THE COURT: But I'll allow it.

25 BY MR. BOOZER:

NORA LEE HARMON - DIRECT BY MR. BOOZER

1 Q: What was your understanding of what had occurred?

2 A: I was under the understanding that the day that this
3 happened, they had been drinking heavily.

4 Q: The grandmother and grandfather?

5 A: Both, yes.

6 Q: Okay.

7 A: And probably Joseph too because they would let him
8 drink, even though he was underage, and there was alcohol in
9 the house all the time. It was in the refrigerator
10 downstairs, upstairs, everywhere. They were both alcoholics.

11 And when I would come home to visit in the summer when I
12 worked out in California, I would stay with them and so I
13 know what went on. I do not drink. Now, I used to, but I
14 quit a long time ago. And when you don't drink anymore, it's
15 hard to live with someone that does.

16 And when I first came back here to live in Sumter, I
17 stayed with them for an extended period of time, and I had to
18 leave because of the alcohol, but -- and the violence, but
19 Joseph -- when I went and talked with him, I asked him
20 because he doted -- his grandmother worshiped the ground he
21 walked on and I have never seen Joseph be mean with her. And
22 I just asked him how he could kill his grandmother and he
23 said he did not kill his grandmother.

24 Q: Let me ask you this. Do you need some water?

25 THE WITNESS: Thank you.

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1 MR. BOOZER: Please have some.

2 THE WITNESS: I appreciate that.

3 THE BAILIFF: Yes, ma'am.

4 THE WITNESS: I'm short.

5 THE BAILIFF: Okay.

6 BY MR. BOOZER:

7 Q: Ms. Harmon, did you ever have any occasion to see
8 Joseph's grandfather interact with him at the house?

9 A: Oh, yes.

10 Q: Okay. Tell me about it. Describe those interactions
11 that you witnessed?

12 A: Well, he could be very volatile with Joe when he was
13 drinking. Now, when he was sober, he was okay, but when he
14 was drinking -- I guess because his grandmother loved him so
15 much and did so much for him. I don't know -- and Jim was
16 quite a bit younger than my sister. He was the same age as
17 me, and she was 11 years older than him. And I was there one
18 time and it was over a guitar that they had gotten for Joseph
19 and he got mad about it and he hit Joe pretty hard.

20 Q: Okay. You said you've seen the grandfather hit --

21 A: Yes.

22 Q: -- Joseph?

23 A: And I've seen him shove him. I've seen -- this is abuse
24 since he was about eight years old.

25 Q: Okay. And was that abuse that you had seen though when

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1 he had come back and lived with them?

2 A: Yes. He was a teenager. I would say he was about 16 at
3 the time.

4 Q: All right. Now, at the trial, you were there. How did
5 you know that the trial was going on? Did Joseph tell you?

6 A: Well, it was in the newspaper and everything. We had
7 talked about it as a family, but as far as actually being
8 notified, I was not.

9 Q: Okay. When you got to -- were you there the entire time
10 for the trial?

11 A: Yes.

12 Q: All right. While there at the trial, did you ever speak
13 to Mr. Griffith while y'all were in the courtroom?

14 A: Yes.

15 Q: Or outside the courtroom?

16 A: No. Outside the courtroom, no.

17 Q: All right. Well, either way, while y'all were in the
18 courthouse?

19 A: I talked to him while I was sitting on the bench behind
20 him.

21 Q: What discussion did you have with Mr. Griffith?

22 A: I was telling him about the alcohol in the house. That
23 that could've accelerated with the fire. I thought that we
24 were going to testify and I think he brought it up to the
25 Court that day, but we were not allowed to.

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1 Q: Did --

2 A: But I did afterwards.

3 Q: Did you ever tell him about these prior instances of

4 abuse that you had personally witnessed?

5 A: I told him about the conditions out there.

6 Q: Okay. Might I say, would that include the abuse or --

7 or not?

8 A: Well, yeah. Yeah. I told him there was abuse and there

9 was abuse to my sister also.

10 Q: Okay. Do you recall Mr. Griffith at some point in the

11 trial asking the Court to allow additional witnesses?

12 A: Yes.

13 Q: And that was denied?

14 A: Yes.

15 Q: All right. Let me ask you this. Everything that you've

16 testified to today, would you have been prepared to have made

17 that same testimony at trial?

18 A: Yes. I was more emotional then than I am now because it

19 wasn't that long since my sister had left this earth.

20 Q: Now, at the trial, after he had been convicted, you

21 began to speak on Joseph's behalf to the Court. Do you

22 remember that?

23 A: Yes.

24 Q: But you were -- you were immediately -- or not

25 immediately, but you were kind of cut off and limited?

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1 A: Yes, I was.

2 Q: All right. Were you -- what were you trying to explain?

3 A: I was trying to explain that my sister had called me on
4 the Thursday night before she was killed on a Saturday. She
5 had called and she was drinking, but I was the one that --

6 MS. COLEMAN: Your Honor, I object to hearsay on this
7 line of testimony.

8 THE WITNESS: Well, that was not hearsay.

9 MR. BOOZER: Ma'am --

10 THE WITNESS: My sister talked to me.

11 MR. BOOZER: Ma'am, wait one second for the judge to
12 make a ruling.

13 THE COURT: I'm going to allow it at this point, but I
14 do note your objection. Thank you.

15 MS. COLEMAN: Thank you.

16 MR. BOOZER: Thank you, Your Honor.

17 BY MR. BOOZER:

18 Q: I'm sorry, Ms. Harmon. Continue.

19 A: Okay. I was the one that always stayed with my sister
20 when her husband would leave and she would call me. She
21 didn't have her medicine. She would need it. He'd be gone
22 for hours. I would go over and get her her medicine and stay
23 with her until he got home. She couldn't walk. She was an
24 invalid. And she had macular degeneration; so she couldn't
25 see.

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1 And on that Thursday night, I wish I'd have went over
2 there. She -- she had been beat and she said she wanted to
3 put herself in a nursing home where she'd be took care of.

4 Q: Who did she tell you had beaten her?

5 A: I asked her and I said was -- did Joe hit you, and she
6 says no. I said Jim. She wouldn't answer me.

7 Q: And Jim was her husband?

8 A: Yes.

9 Q: Okay.

10 A: Yes. But she was so very upset, and I wouldn't be here
11 to say so I can't say anymore.

12 Q: That information that you've just testified to, would
13 you have attempted to have testified to that --

14 A: Yes.

15 Q: -- at trial?

16 A: I was one of her family that talked with her.

17 Q: Okay. Did you have an opportunity to tell any of that
18 to Mr. Griffith?

19 A: Yes.

20 Q: When did you tell him that?

21 A: When I was sitting on the bench behind him the day of
22 the trial.

23 Q: And what did he tell you?

24 A: He was going to try to get me in.

25 Q: Okay.

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1 MR. BOOZER: I beg the Court's indulgence, Your Honor.

2 Thank you, Ms. Harmon. That's all the questions I have.

3 Please answer any that the State may have.

4 THE WITNESS: Okay.

5 CROSS-EXAMINATION

6 BY MS. COLEMAN:

7 Q: Hi, Ms. Harmon. I just have a couple questions. How
8 many times do you think you reached out to trial counsel to
9 try to get in touch with him before the trial?

10 A: Twenty.

11 Q: Twenty? Is that by telephone?

12 A: Yes.

13 Q: And you said you went to his office to try to speak to
14 him?

15 A: Yes.

16 Q: Okay. Did he ever get back in touch with you?

17 A: No.

18 Q: Okay.

19 MS. COLEMAN: Thank you. Nothing further.

20 MR. BOOZER: No further questions, Your Honor.

21 Your Honor, we'd call Mr. Timothy Griffith to the stand.

22 THE CLERK: State your full name, sir.

23 THE WITNESS: Timothy L. Griffith.

24 THE CLERK: Do you swear and affirm to tell the whole
25 truth and nothing but the truth, so help you God?

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1 THE WITNESS: I do.

2 THE CLERK: Step around, sir.

3 THE WITNESS: Thank you.

4 THE CLERK: State your full name and spell your last
5 name for the record, please, sir.

6 THE WITNESS: Timothy L. Griffith, G-r-i-f-f-i-t-h.

7 TIMOTHY L. GRIFFITH, being
8 first duly sworn, testified as follows:

9 DIRECT EXAMINATION

10 BY MR. BOOZER:

11 Q: Mr. Griffith, how are you doing today?

12 A: I am well.

13 Q: Good. Mr. Griffith, did you represent Mr. Manners at
14 trial?

15 A: I did.

16 Q: And tell us about how you came about representing him?

17 A: Mr. Murphy had, prior to my getting the case,
18 represented Mr. Manners and they didn't do well together and
19 the case was passed to me to take over.

20 Q: Do you know about when you were appointed?

21 A: Well, I can tell you when I was appointed, I think. It
22 was in 2015, at least before August of 2014 -- 2015. Let me
23 see if I can find the appointment sheet. It was before
24 August of 2014. I'll look for that sheet.

25 Q: That's okay. I was just curious. Do you think it was

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1 less than a year that you probably represented him if the
2 trial was in February of '16?

3 A: I'd say it was six, seven months, maybe eight.

4 Q: All right. What was your relationship like with Mr.
5 Manners during your representation?

6 A: We got along just fine.

7 Q: Were y'all -- what discussions did y'all have as far as
8 what the defense would be at trial?

9 A: Well, we did talk about the fact that he was facing two
10 sentences for murder, one for arson, and the maximum being
11 life for the murders, but the minimum being 30, and 30 years
12 for arson, up to. So we talked about the total. I was
13 hoping, of course, that it would not be consecutive
14 sentences, but I said that were he to go to trial, looking at
15 the evidence, in my opinion, it would be possible for him to
16 receive a life sentence.

17 Q: Were there any plea offers while you were involved in
18 the case?

19 A: When I took the case, there was a plea offer of 60 years
20 and, in talking to Mr. Manners, he rejected that and I was --
21 I had a lot of meetings with Mr. Meadors. We were trying to
22 see if we could work something out for a plea.

23 He at first said, no, he would have to plead to the 60
24 years. He had rejected that and so he would have to plead
25 straight up, but then he finally came to me with a plea offer.

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1 for 50 years.

2 Q: All right. And what was Mr. Manners' reaction to that?

3 A: Well, at first, he was reluctant and after I -- we went
4 over the discovery very carefully and our plans for going
5 forward with the trial and looking at the evidence.

6 Finally, because he was talking about the fact he was 22
7 years old at the time and in 50 years he'd be 70 years old
8 because he'd already been in there a couple years and that he
9 would have to serve day for day, but I talked about the
10 alternative of life in prison and he finally decided that he
11 would be willing to take the plea.

12 However, we were in court and we had discussed taking
13 the plea offer. In fact, we were sitting at that desk over
14 -- well, I'm not sure which room we were in. Anyway, we were
15 on the right and I had the sheet, the sign-up sheet, and he
16 was hesitant to sign it. I told him it had to be up to him.
17 I could not tell him one way or the other whether he ought to
18 take it. I told him that I would recommend based on what I
19 thought about the case, but it was totally up to him.

20 We actually sat in the courtroom there waiting on him
21 for about 40 minutes, as I recall, with his hand basically
22 ready to sign. He was nervous and I could certainly
23 understand it and I told him to take his time, and then he
24 eventually decided that he was not going to take the plea.

25 Q: Okay.

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1 A: The plea was withdrawn.

2 Q: What was the defense at trial?

3 A: At trial, he -- unfortunately, prior to my taking the
4 case, he had given some explanation of what had happened at
5 the house, a couple of different versions. Then when I
6 talked to him, during the course of talking to him, the
7 versions changed again and, in fact, during the trial, once
8 he heard some testimony and the fact that some of his
9 relatives did show up for the trial, that he changed it
10 again, the story, and so I didn't have a lot of confidence in
11 what he was telling me as far as what had actually happened
12 because that had changed so many times. I wasn't sure which
13 one it had been.

14 But our strategy was, of course, that the State had to
15 prove beyond a reasonable doubt that he had set the fire and
16 had killed the two people. He had not -- they had presented
17 evidence that the grandfather was deceased and that the
18 grandmother had died in the fire, and we argued as to whether
19 they were dead beforehand.

20 We argued that there was a lot of flammable stuff under
21 the steps that could have been caused the fire. And so
22 several ways of trying to show that it could have been some
23 other way that this all happened. We did talk about the fact
24 that his grandfather drank quite a bit and could've passed
25 out. But that is to say questioning the witnesses as to

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1 whether or not it could have been some other means that
2 caused the deaths and the fire.

3 Q: Going back to -- so the trial strategy was make the
4 State prove the case, question the witnesses on something
5 else could've started the fire?

6 A: Yes.

7 Q: Okay. Going back -- and you had indicated that he had
8 given you some different accounts of what had happened. What
9 were the versions that you recall?

10 A: Well, the first -- in the first couple of versions, he
11 had nothing to do with it at all. Then at one point, he did
12 say that he did know who did it and, in fact, that that
13 person had confessed to it. I subpoenaed that person, who
14 was at the time incarcerated, but then later he changed again
15 to he didn't know how it happened.

16 Most of the time, he didn't know how it happened until
17 during the trial he did tell me the version that he gave
18 today where, you know, his grandfather had killed his
19 grandmother and that he didn't exactly have any clear
20 recollection of what happened to his grandfather.

21 Q: Do you recall at what point in the trial that would have
22 been?

23 A: That would have been getting close to the end of the
24 State's case and coming close to our part of the case.

25 Q: Okay. What -- did you have a discussion with him about

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1 him telling that side or that version at trial?

2 A: I did talk to him about it. He, at the time in my
3 opinion, would not have been a very credible witness, for
4 one, and, for another, I could not condone as an attorney him
5 getting on the stand and telling something that -- because he
6 had changed his story so many times, I didn't know what the
7 truth was and I was afraid that I would be condoning him
8 getting on the stand and telling a falsehood.

9 And I told him that, well, if you get on the stand, I
10 can ask you to just tell us what happened and then I would
11 not be able to question him after that, but I told him also
12 that I wasn't sure that he would be a credible witness. That
13 in my opinion, that he might not ought to testify, but I told
14 him -- I did tell him it was up to him, and he decided that
15 he would not testify.

16 Q: Well, let me ask you, just as you alluded to, you felt
17 like you could be running afoul of some ethical obligations
18 to the Court in presenting false testimony, but you could
19 have -- as you indicated, you could have put him up and just
20 said what happened and just let him go. That would've been
21 fine; right?

22 A: Yes. I offered that to him and then after discussing
23 with him what I thought as far as how he would be perceived,
24 because he had actually given different statements to the
25 police and the police had presented those statements, and so

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1 -- some statements. And so at this point in the trial, the
2 story had become different and may not come across very
3 credibly. And that was my opinion, but I told him that he --
4 it was up to him.

5 Q: Y'all had actually tried to keep out a statement that he
6 gave that was taken while he was still in custody in the
7 hospital in Ohio?

8 A: Yes. We had a hearing specifically to keep that
9 statement out, to suppress that statement.

10 Q: Would you agree with me that that statement was not very
11 detailed as far as what actually happened at the house?

12 A: I would say it was not detailed.

13 Q: Okay.

14 A: He just said, I believe -- from my memory, he said,
15 yeah, okay, I killed them, but I don't think it was detailed
16 at all.

17 Q: Okay. But you would agree with me that he did not admit
18 killing his grandmother in that statement?

19 A: I don't recall.

20 Q: And whatever the statement says is the statement?

21 A: I'm not -- I don't recall.

22 Q: Okay. Well, let me ask you this. Had he testified, had
23 you just put him up there and let him -- let him go with
24 whatever it was he was going to say, when he said what he
25 said today in court, was that consistent to what he was going

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1 to testify to at court had he taken the stand, what you've
2 heard today in the courtroom?

3 A: It depends on what day it was. I mean, as I said, that
4 story changed.

5 Q: Well, I'm talking about when he -- when you said during
6 the trial before the State's case was closed, he told you
7 what happened. When he told you that during trial, was that
8 consistent to what he has said today?

9 A: Possibly. As I said, I'm serious when I say the story
10 changed three times during the trial. And it was near the
11 end of the trial when his latest version came up, which I
12 can't be certain that it was before the close of the State's
13 case or after, but in the meantime, it was kind of iffy in my
14 mind. I don't know what he would've testified to at that
15 time.

16 Q: Had he testified to what he testified to today in court,
17 do you think that there would have been opportunity for you
18 to at least ask for either a self-defense instruction or a
19 lesser charge, such as voluntary or involuntary manslaughter?

20 A: Had he testified to that, there would have been
21 opportunities, of course, for me to ask for a lesser.

22 Q: How about a self-defense charge?

23 A: Even in admitting that he killed his grandfather, he
24 never told me that his grandfather came at him. He told me
25 that he flipped out and killed his grandfather, but I mean it

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1 didn't sound to me at the time as self-defense.

2 Q: What were your thoughts and sort of -- now, I know I
3 never give clients a percentage of, well, I think it's a 90
4 percent chance you're going to win or lose, but looking at
5 this case, what were your impressions of him going to trial?
6 Were you expecting that he was going to be found guilty?

7 A: I did expect him to be found guilty based on the
8 evidence that I had reviewed with him and -- but I -- as I
9 tell my clients, we don't know what a jury will do and we
10 don't know what they'll believe, but based on looking at the
11 evidence and what the State is going to present, I do not
12 believe that you have -- it would be in your best interest to
13 go to trial.

14 Q: Let me ask you have you been in the courtroom for each
15 witness, both Ms. Harmon and Mr. Manners, today?

16 A: Have I been here during today?

17 Q: Yes.

18 A: Oh, yes. Yes.

19 Q: Did you ever speak to Ms. Harmon prior to the trial?

20 A: I did not. And while I was sitting back there, I asked
21 my paralegal if she recalled any communications with either
22 of his aunts. She said no and she -- and she records
23 everything, and she said she had no recording of
24 communicating with them, but I mean they may have. But we
25 don't have any recording of it and I don't recall it.

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1 The first time I met them, to my recollection, was in
2 the courtroom when the trial began. In fact, the first day I
3 had no idea who they were, and Joseph told me this is his
4 aunt. And so I then went back and talked to them.

5 Q: Would you know if she had tried to call the office or if
6 she had come by the office?

7 A: I would know. I would recollect and my paralegal
8 would've written it down because she -- she does record
9 because, for instance, we do keep time on every single case
10 and, as part of keeping time, she writes those things down.
11 But she says that, according to our records, she does not
12 have any record.

13 Q: Okay. But if she had just come in there and you're not
14 there, there's no reason to record any time, is there?

15 A: She would have recorded that time because she records
16 every communication with every client.

17 Q: Okay. Did you speak with Joseph about Ms. Harmon prior
18 to the trial? Did he ever tell you about her?

19 A: Prior to the trial, I do not believe he did mention her.
20 I did talk to him about potential witnesses who we could
21 call, and prior to the trial I didn't know that they would be
22 anyone we could use. I had not heard that from him.

23 At the trial, during the trial, I spoke to them and they
24 gave me information and I believe during the trial I told the
25 judge that some things had come up, new discovery, that had

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1 occurred that I had just gotten during the trial and asked to
2 include those witnesses. In fact, I believe I even asked for
3 that during the motion to suppress for them to be able to
4 speak and was denied.

5 Q: That would have been prior to the trial then; correct?

6 A: Prior to the trial. I mean that was the -- the motion
7 to suppress happened and the trial happened. It was all one
8 flow really. It was not, like, days before. It was --

9 Q: Okay.

10 A: -- the day.

11 Q: Did -- was Ms. Harmon's testimony today similar to what
12 she had previously told you?

13 A: She had told me similar, yes.

14 Q: Did she tell you that she had previously witnessed
15 Joseph being abused by the grandfather?

16 A: She did.

17 Q: All right. Did she tell you that she received a phone
18 call from the deceased that she had been abused by the
19 grandfather shortly before the incident?

20 A: I don't recall that, but she may have. I don't recall
21 that though. She had told me that the grandfather was
22 abusive to Joseph, and I was hoping to be able to use that as
23 part of our mitigation at the end of the trial.

24 Q: But you really weren't because they were pretty much cut
25 short at the end of the trial? Do you remember that?

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1 A: Well, I was -- I was hoping to use it. Yes, I was
2 hoping to use it, but I was not able to use it. Correct.

3 Q: Do you think that there was any way that you could have
4 introduced the testimony from Ms. Harmon that you've heard
5 today to show that he was either acting in self-defense or
6 sort of have her explain the condition -- the living
7 conditions at the house?

8 A: I could have used that testimony to show the living
9 conditions at the house. Her testimony as to whether he --
10 it was self-defense or not, that wouldn't have worked out.
11 Of course, that would have been hearsay.

12 Q: Well, how about --

13 A: Or speculation.

14 Q: -- she had personally witnessed Joseph being abused?

15 A: I could have used that and would have liked to have.

16 Q: Okay. After the case, did you have any sort of
17 interaction with any of the jurors? Did you seek them out to
18 get any -- any of their input in the case?

19 A: I did speak with one of the jurors, who I did not at
20 that time realize when he was selected that he attends church
21 with me. And after the trial, he did tell me -- give me some
22 information.

23 Q: What was your understanding of what that information
24 was?

25 A: That they had no doubts in their mind. I mean that

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1 there was no doubt.

2 Q: Okay.

3 A: According to them.

4 Q: Without any sort of testimony from Joseph, no matter
5 what you sort of thought about his credibility, and without
6 the testimony of Ms. Harmon, do you think there was any
7 chance you could've won this case or at least gotten a lesser
8 included?

9 A: In my opinion? In my opinion, no.

10 Q: But it certainly would've been more of a chance than
11 what he had without it; right?

12 A: Yes.

13 Q: Okay.

14 MR. BOOZER: I beg the Court's indulgence, Your Honor.

15 THE COURT: Yes, sir.

16 MR. BOOZER: Thank you, Mr. Griffith. That's all the
17 questions I have for you.

18 THE WITNESS: Okay.

19 THE COURT: Ms. Coleman?

20 MS. COLEMAN: Thank you.

21 CROSS-EXAMINATION

22 BY MS. COLEMAN:

23 Q: Mr. Griffith, I want to discuss the facts of this case a
24 little bit and some of the evidence that the State introduced
25 at trial. And Mr. Boozer has already been over this with the

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1 applicant a bit, but basically the trial was alleging that --
2 or excuse me. The State was alleging at trial that the
3 applicant had punched his grandfather in the face and knocked
4 his teeth out; is that right?

5 A: I don't recall anything about knocking the teeth out,
6 but I don't recall that.

7 Q: Okay. But had he knocked him unconscious, according to
8 them?

9 A: The State was alleging that he had either knocked him
10 unconscious or had killed him prior to the fire.

11 Q: And then the evidence showed that he doused the area
12 around his grandfather with gasoline; is that right?

13 A: The State alleged that an accelerant was used or was
14 part of the cause of the fire.

15 Q: And then -- and correct me if I'm wrong. I don't think
16 there was any statement or anything about him actually
17 setting the fire with a match or anything, but it was -- the
18 evidence showed that he started the fire; is that right?

19 A: The State alleged that he started the fire. They did
20 not present any evidence that he did. I mean they -- they
21 basically made an assumption that he started the fire.

22 There was no match. There was nothing else and, in
23 fact, part of our defense was -- in questioning the fire
24 person and all that was wasn't there a bunch of burnable
25 stuff underneath the steps, and so the State never presented

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1 any real evidence that -- that an accelerant was poured over
2 the body. I don't believe they did. I believe they just
3 said that gasoline caught the place on fire.

4 Q: Okay. And somehow there was a fire certainly?

5 A: There was a fire.

6 Q: And the neighbor across the street saw the fire and saw
7 somebody leaving, pulling out of the driveway in a white car;
8 is that right?

9 A: That's correct.

10 Q: Very quickly? Faster in speed?

11 A: Yeah.

12 Q: And the grandfather was unconscious in the -- on the
13 first floor; is that right?

14 A: That's what we assume.

15 Q: Right. And the grandmother was upstairs --

16 A: Yes.

17 Q: -- in the house during the fire; right? And she --
18 there's testimony today that she was in a wheelchair?

19 A: Yes.

20 Q: And couldn't walk or see. Now, after the applicant was
21 apprehended, I guess, in Ohio after he crashed his river in
22 the car -- or his car in the river and was taken to the
23 hospital, did the Cincinnati Police Department take a
24 statement from him?

25 A: I believe the Cincinnati department did, yes. I believe

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1 it was they who took the statement. I'm not -- I can't be
2 certain on that. I'd have to look, but yes.

3 Q: And was that the statement you tried to suppress before
4 the trial?

5 A: I do believe so.

6 Q: Okay. And basically, in this statement he -- he
7 admitted to starting the fire; is that right?

8 A: I believe so.

9 Q: Okay. And he admitted to knocking his grandfather out
10 and he knew his grandmother was in the house when he set the
11 fire; is that right?

12 A: I'm not sure of the specifics, but I -- I do recall that
13 he admitted that he had killed his grandparents.

14 Q: Okay. And in that statement, he seemed to be aware that
15 he was going to get criminal charges probably for murder and
16 arson; right?

17 MR. BOOZER: Objection, Your Honor. She's asking him to
18 assume what the defendant was thinking, that he would get
19 criminal charges while making this statement.

20 MS. COLEMAN: I'll rephrase, Your Honor.

21 THE COURT: Sure.

22 MS. COLEMAN: I apologize, because we don't know what he
23 was assuming.

24 BY MS. COLEMAN:

25 Q: But based on the statement, did he tell the police

TIMOTHY L. GRIFFITH - CROSS BY MS. COLEMAN

1 officer that he was probably going to get criminal charges
2 for murder and arson?

3 A: He did say that to the police.

4 Q: Okay. Was there also testimony presented at the trial
5 that the victim, particularly the grandmother, who was
6 upstairs, was killed by carbon monoxide poisoning and thermal
7 injury?

8 A: That is correct.

9 Q: Was there any other evidence of any other way she could
10 have been killed?

11 A: There was no evidence that she died for any other cause
12 other than from inhalation of the fire.

13 Q: Are you aware of or did you do any investigation into
14 other ways that the grandmother could've been killed?

15 A: Based on the medical report, which was pretty clear,
16 there was nothing I could fight on that.

17 Q: Okay. What other investigation did you do in this case?

18 A: I spoke with the investigators as to the people that
19 investigated the fire and to the investigators here with the
20 department here in South Carolina, and I did get a chance to
21 read the statements from the Cincinnati folks. I also spoke
22 with -- had several meetings with the solicitor and their
23 investigator.

24 And then, of course, I talked to Mr. Manners
25 extensively. He did not give me any information as to other

TIMOTHY L. GRIFFITH - CROSS BY MS. COLEMAN

1 witnesses that I should talk to, other than he said someone
2 else did it at first, of course, but I did subpoena the
3 fellow that was incarcerated. Then when his story changed,
4 then I didn't follow that one, but I --

5 Q: Let me ask you this about that, if you don't mind.

6 A: Sure.

7 Q: Who was the person who you subpoenaed?

8 A: I forget.

9 Q: Was it an inmate at the prison that you testified?

10 A: What, ma'am?

11 Q: Was it another inmate at the jail or the prison?

12 A: Yes.

13 Q: Okay. And what was your understanding? Were you told
14 he was going to confess to the crime?

15 A: He was going to confess to the crime.

16 Q: Okay.

17 A: Another inmate.

18 Q: And was this inmate -- do you know anything about his
19 charges or anything about him?

20 A: I believe he had already been charged with murder and he
21 was going to admit to these at the same time.

22 Q: I'm sorry. I didn't mean to cut you off. What other --
23 was there any other investigation beyond that?

24 A: I don't recall. I talked to -- I tried to find out as
25 much as I could from everybody I could, but other than the

TIMOTHY L. GRIFFITH - CROSS BY MS. COLEMAN

1 police reports and the officers and the investigators and the
2 fire person, there were no other witnesses that I could ask
3 their opinion.

4 I did talk to -- now, there was a lady as far as the
5 mitigation -- I mean as far as trying to suppress. I forget
6 the lady's name. She called on -- she couldn't be here for
7 the suppression hearing. She called on the telephone and
8 spoke during the suppression hearing.

9 I had spoken with her several times to get her opinion
10 about whether or not that statement should be brought in.
11 That is as far as his -- you know, what she thought he had
12 done. And she did call on the telephone and the Court did
13 allow that. But that's all I could -- there wasn't any other
14 investigation I could get through.

15 Q: What was your argument to the Court as to why the
16 statement should be suppressed?

17 A: As I recall, Mr. Manners -- during the time of the --
18 the investigators came in, some of the things were I did not
19 believe that he was coherent enough to understand that he was
20 being questioned about a crime. That was one of our
21 arguments.

22 Our other argument, of course, was that he was under the
23 influence of medication. He had taken a whole bottle of
24 something or another and, at the time, of course, he was
25 under a lot of stress and duress. Our arguments were that he

TIMOTHY L. GRIFFITH - CROSS BY MS. COLEMAN

1 did not fully understand what was being asked of him, he was
2 not properly mirandized, and that he was under the influence
3 of some drug at the time.

4 Q: Based on the evidence that the State presented at trial,
5 how would you characterize that evidence? Would you describe
6 it as strong or weak?

7 A: The case -- the case was very strong.

8 Q: Would you describe it is overwhelming?

9 A: Overwhelming? We tried to fight it as best we could,
10 but I would say that it was sufficient to convince a jury.
11 That's hard to say overwhelming because, you know, evidently
12 it was, but I would say that it was very strong.

13 Q: Okay.

14 MS. COLEMAN: Thank you. Nothing further.

15 MR. BOOZER: No redirect, Your Honor.

16 MS. COLEMAN: I beg the Court's indulgence just one
17 moment.

18 THE COURT: Sure.

19 MS. COLEMAN: Your Honor, the State recalls Timothy
20 Griffith to the stand just briefly.

21 THE COURT: Sure. Come on up.

22 MS. COLEMAN: Thank you, Mr. Griffith, and you're still
23 under oath, of course, and I apologize for recalling you.

24 TIMOTHY L. GRIFFITH, being
25 previously duly sworn, testified as follows:

TIMOTHY L. GRIFFITH - DIRECT BY MS. COLEMAN

DIRECT EXAMINATION

1
2 BY MS. COLEMAN:

3 Q: I asked you a moment ago about your testimony about the
4 other inmate that you had subpoenaed at some point who you
5 understood was the one that confessed to this murder. Do you
6 have any record in your file of who that was?

7 A: Yes, I do. I have the subpoena.

8 Q: And what was the name of the inmate, please?

9 A: Jason Compton and Alfred Wright.

10 Q: Okay. There were two of them?

11 A: Yes.

12 Q: Okay.

13 THE WITNESS: Is that it?

14 MS. COLEMAN: Yes, that's all. Thank you.

15 The State would call Bronwyn McElveen to the stand.

16 THE CLERK: Put your left hand on the Bible and raise
17 your right hand. State your full name, please, ma'am.

18 THE WITNESS: Bronwyn McElveen, M-c-E-l-v-e-e-n.

19 THE CLERK: Do you solemnly swear and affirm to this
20 Court to tell the whole truth and nothing but the truth, so
21 help you God?

22 THE WITNESS: Absolutely.

23 THE CLERK: Step around, please, ma'am. State your full
24 name and spell your last name for the record, please, ma'am.

25 THE WITNESS: Bronwyn McElveen, M-c-E-l-v-e-e-n.

BRONWYN MCELVEEN - DIRECT BY MS. COLEMAN

1 BRONWYN MCELVEEN, being first
2 duly sworn, testified as follows:

3 DIRECT EXAMINATION

4 BY MS. COLEMAN:

5 Q: Good morning, Ms. McElveen.

6 A: Good morning.

7 Q: Where are you currently employed?

8 A: The Sumter County Solicitor's Office.

9 Q: Okay. And were you involved at all in the case before
10 us today, Joseph Manners?

11 A: Someone in my office was, but I became involved through
12 the incorporation of Mr. Jason Dustin Compton.

13 Q: Okay.

14 A: Because I was prosecuting Mr. Compton's cases.

15 Q: Okay. So you are aware of Mr. Compton's charges and
16 trials he's had in the past?

17 A: Yes, ma'am. And I remember well that he inserted
18 himself in this situation as well.

19 Q: Okay. What do you know about his participation with
20 this case?

21 A: Okay. So Mr. Compton first came to us with one murder
22 where he bludgeoned his girlfriend over the head with a
23 hammer and then tried to get her daughter to perform sexual
24 acts on him and when she would not, he continued to bludgeon
25 her mother with a hammer in front of her. When police showed

BRONWYN MCELVEEN - DIRECT BY MS. COLEMAN

1 up, he was smoking a cigarette on the front porch. He had
2 tied someone to a bed, but she had gotten free and she had
3 called someone in another room.

4 At that point when he was incarcerated, he then
5 confessed to a murder where he burned two elderly people in a
6 home. It was not this case. It was a different case. We
7 investigated and he gave information that made clear that
8 what we thought was a coincidental house fire was, in fact, a
9 homicide.

10 He gave details that -- a point of origin, the fact that
11 the elderly individual had a cane, and he admitted that he
12 went there for a weapon to shoot his ex-wife and did not get
13 that far and the man confronted him in the hallway and he
14 burned the house down. Everything added up.

15 So at that point, he had three murders and an arson. He
16 wanted the death penalty. He wanted to be put to death. We
17 would not give him that request and, at that point, he then
18 inserted himself in this situation and tried to claim he did
19 these murders, again with the hopes of getting the death
20 penalty, but it did not add up.

21 In that situation, none of what he said made sense and,
22 in fact, a couple months ago I got a letter and he is trying
23 to confess to three more unsolved murders in Sumter County.
24 We have since sent investigators again, and major parts of
25 his allegations, like locations of the bodies, method of

BRONWYN MCELVEEN - DIRECT BY MS. COLEMAN

1 killing, are all wrong, and I have informed him that no other
2 charges would be coming and he has actually, in fact, sent me
3 love letters back.

4 So Mr. Compton continues to assert guilt in cases that
5 he is -- of which he is not guilty with the hopes of getting
6 the death penalty.

7 Q: Okay. So based on the information you have about Mr.
8 Manners' case, it did not make sense that Mr. Compton would
9 be involved with this?

10 A: From what our office had determined after lengthy
11 preparation of trial, no, Mr. Compton was not involved in
12 this situation at all.

13 Q: Okay.

14 MS. COLEMAN: Thank you. Nothing further.

15 THE WITNESS: Thank you.

16 MR. BOOZER: No questions, Your Honor.

17 THE COURT: Thank you. You can step down.

18 THE WITNESS: Thank you.

19 MS. COLEMAN: The State has no further witnesses.

20 THE COURT: Anything else from either party?

21 MR. BOOZER: Nothing further, Your Honor.

22 THE COURT: Okay. I do have a lengthy transcript to
23 read that I assure you I will read carefully, but I'm going
24 to take this under advisement.

25 MR. BOOZER: Thank you, Your Honor.

1 MS. COLEMAN: Thank you, Your Honor.

2 (WHEREUPON, the proceedings ended at 10:57 a.m.)

3

4 --- END REQUESTED TRANSCRIPT ---

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State of South Carolina)
)
County of Florence)

Certificate

I, the undersigned, Krystal J. Smith, Notary Public and Official Court Reporter for the Twelfth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing pages, numbered 1 through 56, constitute a true, accurate, and complete Transcript of Record of all the proceedings had and evidence introduced in the hearing of the above captioned case, relative to appeal, in the Court of Common Pleas for Sumter County, South Carolina, on the 26th day of July, 2018.

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

s/ Krystal J. Smith

Court Reporter

Florence, South Carolina
April 23, 2019

STATE OF SOUTH CAROLINA)
COUNTY OF SUMTER) IN THE COURT OF COMMON PLEAS
THIRD JUDICIAL CIRCUIT

Joseph Michael Manners, #367122,) 2017-CP-43-2366

Applicant,)

v.)

State of South Carolina,)

Respondent.)

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SOUTH CAROLINA

ORDER OF DISMISSAL

This matter comes before this Court by way of a post-conviction relief (PCR) application filed on December 12, 2017, by Joseph Michael Manners (Applicant). The State of South Carolina (Respondent) submitted its Return and Motion for More Definite Statement on March 30, 2018. Applicant filed an amended application on July 12, 2018. An evidentiary hearing was held on July 26, 2018, at the Sumter County Courthouse. Applicant was present at the hearing and was represented by Lance S. Boozer, Esquire. Respondent was represented by Assistant Attorney General Julie A. Coleman of the South Carolina Attorney General's Office.

At the evidentiary hearing, Applicant testified on his own behalf and presented testimony from his Aunt, Nora Lee Harmon. Respondent presented testimony from Timothy L. Griffith, Esquire ("Trial Counsel") and Assistant Solicitor Bronwyn McElveen. This Court had before it the records of the Sumter County Clerk of Court regarding the subject convictions, the record on appeal, Applicant's records from the South Carolina Department of Corrections and Applicant's appellate records and the pleadings. This Court finds as follows:

I. PROCEDURAL HISTORY

The records before this Court indicate Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Sumter County Clerk of Court.

In February 2014, the Sumter County Grand Jury indicted Applicant for two counts of murder and one count of first degree arson (2014-GS-43-0170). These charges resulted from Applicant setting the victim's house on fire, resulting in the death of both Applicant's grandparents.

Timothy Griffith, Esquire represented Applicant. Assistant Solicitor John P. Meadors, Esquire prosecuted the case. On February 16, 2018, Applicant proceeded to trial before the Honorable W. Jeffrey Young. The jury found Applicant guilty as indicted. Judge Young sentenced Applicant to imprisonment for consecutive terms of thirty years for arson and life for each count of murder.

Applicant filed a timely notice of appeal. Taylor D. Gilliam, Esquire, of the Office of Appellate Defense filed an Anders¹ brief on Applicant's behalf. After review, the South Carolina Court of Appeals affirmed Applicant's conviction in an order dated October 18, 2017. State v. Manners, Op. No. 2017-UP-393 (S.C. Ct. App. filed October 18, 2017). The remittitur was returned to the circuit court on November 3, 2017.

II. ALLEGATIONS

In his current application, Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. "Ineffective Assistance of Counsel- Due To Plea Bargain"
 - a. "There was a plea offer that petitioner didn't understand completely"
2. "Due Process Violated Under Violation of Miranda Rights"
 - a. "Petitioner was young and addicted to drugs, he never understood his rights"

Applicant filed an amended application on July 26, 2018, adding the following allegations:

- i. Counsel failed to investigate, advise Applicant of and put forth any defense at trial.
- ii. Counsel failed to investigate witnesses or present witnesses at trial.

¹ Anders v. California, 386 U.S. 738 (1967).

- iii. Counsel misadvised Applicant to not testify at trial.

III. SUMMARY OF RELEVANT TESTIMONY PRESENTED

Applicant's testimony

At the evidentiary hearing, Applicant testified he was first represented by Timothy Murphy, before Trial Counsel was appointed to represent him. He stated he met with Murphy every other month to talk about defenses to the indicted charges, and they were preparing for trial because the State would not give him a plea offer. Applicant testified he was eventually offered a plea deal for a sixty year sentence, which he rejected, and later was given a deal for fifty years, which he again rejected. Applicant testified that he did not discuss any witnesses with Murphy, and stated he felt Murphy had a conflict of interest. Murphy eventually withdrew from the case because he and Applicant did not get along, and shortly thereafter Trial Counsel was appointed.

Applicant testified he met with Trial Counsel three or four times before his trial. He stated Trial Counsel tried to get him another plea offer, and he was only able to get an offer for fifty years, day for day. Applicant stated he could not make his mind up about the plea because he was too young and he has a little girl, so he rejected the offer, even though Trial Counsel recommended he take it. Applicant testified that he could not remember discussing defenses or trial strategy with Trial Counsel and stated he wanted to testify at trial, but Trial Counsel told him he should not testify because Applicant would not make a good witness.

Applicant testified that he took his grandpa's life because his grandpa had killed his grandma, but stated he does not know how his grandma was killed. He stated he does not remember anything except "flipping out" and driving away fast from his grandparent's house. Applicant testified he lived with his grandparents, and there was a lot of drinking in the house. Applicant testified when his grandfather was sober, he was like his father, but when his grandfather was

drunk, he was very different. Applicant testified his grandfather hit him once, but cannot remember when. He stated he feared what his grandfather might do to him, and that it was a matter of time before his grandpa flew over the edge and killed his grandmother. He testified he tried to kill himself a week before the fire happened. Applicant testified he took his grandfather's life with his bare hands in the heat of passion, and he didn't realize what happened until he was running out of the house to his car. He stated he does not know how the fire started, nor could he remember if he told any of this to Trial Counsel.

Applicant testified that three witnesses spoke on his behalf during sentencing—his Aunt, Lee Harmon, his Aunt Jane, and his Uncle Jim. Applicant stated he told Trial Counsel about these witnesses while in jail and before the trial at the courthouse, and that Trial Counsel attempted to add these three witnesses to the witness list during the trial, but the Solicitor would not agree and they did not testify. Applicant testified that he told his aunts that his grandmother was already dead when he “flipped out” on his grandfather.

Nora Lee Harmon's testimony

Harmon testified she is Applicant's great-aunt, and the one of the victims, Applicant's grandmother, was her sister. She stated she lives in Sumter and she was close with her sister and with Applicant before the murder.

Harmon testified Applicant told her he did not kill his grandmother, but that he knocked his grandfather out.² She stated that, based on her conversations with Applicant, she believed there was alcohol in the house all the time, and both grandparents were violent alcoholics. She testified she had personally witnessed Applicant's interactions with his grandfather. She stated he was

² This testimony, and the following testimony, was allowed over Respondent's objection to hearsay. This Court allowed the hearsay testimony for purposes of the PCR hearing, but recognized that the hearsay testimony would not be admissible at trial.

volatile when he was drinking, and she saw him hit and shove Applicant on one occasion when Applicant was sixteen years old.

Harmon testified that she spoke with her sister, the victim, the Thursday before she was killed.³ She testified her sister was an invalid and had macular degeneration, so she was unable to see. Harmon stated her sister's husband, Applicant's grandfather, hit her, and she wanted to go live in a nursing home to get away from him.

Harmon testified she never spoke with Trial Counsel before the trial although she tried to contact Trial Counsel's office numerous times because she thought she was going to testify at trial, and wanted to tell him about the conditions of the house Applicant lived in with his grandparents. She testified she tried to get in touch with Trial Counsel twenty times before the trial but was never able to speak with him. She stated she was never notified of the trial, and that she wanted to say all of this at trial, but was not given the chance. Harmon testified that when she appeared at Applicant's trial, she told all of this to Trial Counsel, and he told her that he would try to get her in as a witness, but he was not able to.

Trial Counsel's testimony

At the evidentiary hearing, Trial Counsel testified he took Applicant's case after Timothy Murphy was relieved as Counsel, and was appointed sometime before August of 2014, about six or seven months before Applicant's trial. He stated he and Applicant got along just fine. Trial Counsel testified he discussed the potential maximum sentence with Applicant and tried to negotiate a favorable plea offer. He stated the State offered a plea deal for sixty years, which Applicant rejected. Trial Counsel testified he met with the Solicitor's Office numerous times and originally told him Applicant would have to plead straight up, but later offered Applicant a plea of

³ This testimony was admitted over Respondent's objection to hearsay.

fifty years. Applicant rejected this offer despite Trial Counsel's advice to take the deal. Trial Counsel testified he talked about the alternatives of a trial versus a plea with Applicant, and Applicant decided to take the plea offer, but was hesitant to sign the sign-up sheet at his plea. He stated he told Applicant it was his decision whether or not to accept the plea offer, and after about forty minutes, Applicant decided not to plead and the offer was withdrawn.

Trial Counsel testified he reviewed the discovery carefully with Applicant. He testified the defense strategy at trial was to argue that the victims were dead before the fire started, that Applicant's grandfather was drunk and passed out, and the large amounts of alcohol stored under the steps inside the house caused the fire. He testified he cross-examined all the witnesses on what else could have started the fire in the victims' home. Applicant told Trial Counsel that he had nothing to do with the house fire, and later told Trial Counsel that a man named Jason Compton, who Applicant met in jail facing similar charges, had set the fire that killed Applicant's grandparents.

Trial Counsel testified Applicant recounted multiple versions of the facts and kept changing his story, to the point that Trial Counsel stopped believing him to be credible. Further, Trial Counsel told Applicant that it was his decision whether or not he testify at trial, but advised Applicant not to testify out of fear he would lie and make it appear that Trial Counsel was condoning the false testimony.

Trial Counsel testified Applicant gave different statements to the police about Applicant's involvement in the house fire and deaths of his grandparents. Trial Counsel stated he tried to suppress the statement Applicant gave to law enforcement when arrested in Ohio on the charges, but was unable to do so. He stated the story Applicant told him was different than what Applicant testified during the PCR hearing, and his story has changed constantly. He testified Applicant's

story changed three times during the trial alone. Trial Counsel stated that had Applicant testified at trial as he had during his PCR hearing, he may have been able to argue a self-defense or manslaughter defense. However, Applicant never told Trial Counsel that his grandfather came at him. Instead, Trial Counsel stated Applicant told him he "flipped out" and killed his grandfather, and this led Trial Counsel to the opinion that Applicant did not have a valid argument for self-defense.

Trial Counsel testified he told Applicant it was not in his best interest to go to trial, because he expected Applicant to be found guilty. He stated that he did not speak to Applicant's Aunt, Lee Harmon, before the trial and he would have known and noted if Harmon had come by his office or called, because his paralegal records every communication with every client, but there is no record of such communication. Trial Counsel stated he met Harmon for the first time in the courtroom before Applicant's trial.

Trial Counsel testified he spoke with Applicant about potential witnesses before the trial. He stated that during the trial Applicant's family gave him information, and he tried to get them in to testify, but the trial judge would not allow it. Trial Counsel did not recall Harmon telling him about Applicant's grandfather's abuse of his grandmother. He stated he wanted to use any information about living conditions of the home in mitigation at sentencing, and he did. He stated that, after hearing what Harmon had to say, he would have liked to use her as a witness at trial to show the living conditions of the house and have her testify about her personal knowledge of Applicant being hit by his grandfather. But, he testified, he would not have been able to admit Harmon's hearsay testimony about Applicant's version of the story. Trial Counsel stated that, in his opinion, this evidence would not have changed the result of the trial, because, based on the autopsy report of the victims, the grandmother died as a direct result of the fire. He opined that the

State had very strong evidence of Applicant's guilt, and he believed it was sufficient to convince a jury.

Solicitor Bronwyn McElveen's testimony

Assistant Solicitor Bronwyn McElveen testified at the PCR hearing about the involvement of Jason Compton as a possible suspect in Applicant's case. She testified she is employed by the Third Circuit Solicitor's Office and was not involved in the prosecution of Applicant's case, but she did prosecute crimes that were committed by inmate Jason Compton. Trial Counsel testified he investigated Compton as a potential defense for third-party guilt after Applicant told him Compton was the one who set the fire. McElveen explained that Jason Compton was charged with other murders from a very similar arson case. She stated Compton wanted the death penalty, so he gave false confessions for crimes he had nothing to do with, including this murder, in the hopes that he would be found responsible. She testified she looked into his potential involvement in Applicant's case, but the evidence was insufficient to connect Compton with the house fire and resulting deaths, so she did not charge him with anything associated with this crime.

IV. APPLICABLE LAW

In a post-conviction relief action, the applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRPC; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, (1984); Butler, 286 S.C. 441, 334 S.E.2d 813 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered

adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, 286 S.C. 441, 334 S.E.2d 813 (1985). The applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland). Second, counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

V. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearing. Further, this Court has had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their testimony accordingly. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (1985).

INEFFECTIVE ASSISTANCE OF COUNSEL

Failure to explain plea offer

Applicant has failed to meet his burden of proving his allegation that Trial Counsel was ineffective in any regard in conveying the State's plea offers. Applicant claims that he did not fully understand the State's plea offer of fifty years because he was young. Trial Counsel credibly testified that he conveyed multiple plea offers to Applicant from the State, including an offer of fifty years, which Applicant originally agreed to accept. However, Trial Counsel stated when they

appeared at the guilty plea hearing, Applicant could not make up his mind about the plea, and after about forty minutes, he decided to reject the plea offer and withdraw his guilty plea. The testimony presented shows Trial Counsel fully conveyed and explained the offer to Applicant, as well as carefully reviewed the discovery and evidence against him and discussed the risks of going to trial and the amount of time he faced if convicted at trial. Trial Counsel testified that he advised Applicant to accept the plea offer because he believed he would be found guilty at trial in light of the very strong evidence against him. Trial Counsel advised Applicant that it was his final decision to make and he could not make the decision for him.

This Court finds Trial Counsel's advice to Applicant regarding the plea offers and the risks and benefits of going to trial versus entering a guilty plea was within the range of reasonableness under professional norms, and none of Trial Counsel's actions in this regard were deficient. Applicant was fully aware of the gravity of his decision and the risks and benefits of all his options, and it was his choice to make. He ultimately made the decision to proceed to trial, despite Trial Counsel's advice to accept the State's offered plea of fifty years. This Court finds Trial Counsel was not ineffective in this regard, and this allegation is denied and dismissed with prejudice.

Failure to investigate, advise Applicant of and put forth a defense at trial

Applicant's allegation that Trial Counsel was ineffective for failing to investigate, advise Applicant of, and present a defense at trial is meritless. "[C]riminal defense attorneys have a duty to undertake a reasonable investigation, which at a minimum includes interviewing potential witnesses and making an independent investigation of the facts and circumstances of the case." Edwards v. State, 392 S.C. 449, 456, 710 S.E.2d 60, 64 (2011). Failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to result. Porter v. State, 368 S.C. 378, 385-86, 629 S.E.2d 353, 357

(2006) (citing Moorehead v. State, 329 S.C. 329, 334, 496 S.E.2d 415, 417 (1998)). "In any ineffectiveness case, a particular decision not to investigate must be directly assessed for reasonableness in all the circumstances, applying a heavy measure of deference to counsel's judgments." Wiggins v. Smith, 539 U.S. 510, 521-22 (2003).

Trial Counsel credibly testified he investigated this case by hiring and speaking with his investigators, meeting with the solicitor to discuss the case and review evidence, and analyzing the police reports. He testified Applicant did not give him information on any witnesses to investigate, and there were no other witnesses. He testified that, based on the evidence and on his conversations with Applicant, there was no basis for a self-defense or a manslaughter defense. Trial Counsel's defense at trial was to call into question the way that the fire started by suggesting it may have been caused by the alcohol stored under the stairs in the home and argue that Applicant's grandfather was drunk and passed out on the floor before the house caught fire.

This Court finds Trial Counsel's investigation was reasonable under the circumstances and he presented a reasonable defense based on the evidence and the information he was given. None of his actions were deficient in this regard. This Court further finds Applicant has failed to present any credible or admissible evidence that could have been used in his defense to change the outcome of the trial, and has therefore failed to prove prejudice. Accordingly, neither prong of the Strickland test is met, and this allegation is denied and dismissed with prejudice.

Failure to investigate or present witnesses at trial

This Court finds Applicant's allegation that Trial Counsel was ineffective for failing to investigate or present witnesses at trial is meritless. At the evidentiary hearing, Applicant presented testimony from his Aunt, Lee Harmon. Harmon testified she attempted to get in contact with Trial Counsel twenty times before the trial to tell him about the conditions of the home Applicant was

living in, but she was unable to contact him. However, Trial Counsel credibly testified that he and his office had no record of her attempting to contact him. This Court finds Trial Counsel had no duty to investigate this witness, as Applicant did not provide him with any information about her. Regardless, when Harmon did finally speak to Trial Counsel during the trial, Trial Counsel attempted to add her to the witness list, but the trial judge would not allow it. ROA 323. Because Trial Counsel did speak with her before the trial and attempted to add her as a witness, this Court finds Trial Counsel was not deficient in this regard.

Most importantly, this Court finds there was no prejudice from Trial Counsel's failure to call Harmon as a witness at trial because her testimony was inadmissible hearsay evidence. Almost all of Harmon's testimony at the evidentiary hearing was based on her conversations with Applicant and with her sister, one of the victims. Her secondhand knowledge, which was based on conversations with others, was inadmissible under Rule 802 of the SCRE and therefore could not have been used at trial or affected the outcome of the trial. Although she could have testified about her personal experience when she witnessed Applicant's grandfather pushing Applicant and hitting him when he was sixteen years old, this Court finds this evidence would not have changed the outcome of the trial. This testimony alone does not qualify for a valid self-defense argument at trial, especially in light of Applicant's testimony at the PCR hearing. Applicant admitted to killing his grandfather with his bare hands, even though his grandfather had not threatened him or provoked him at that time.

Accordingly, this Court finds no deficiency and no prejudice in light of the very strong evidence against Applicant. This allegation is denied and dismissed with prejudice.

Counsel misadvised Applicant not to testify at trial

This Court finds Trial Counsel was not ineffective for advising Applicant not to testify at trial. First, this Court notes the decision to testify is Applicant's decision alone, as it is his constitutional right to choose to present a defense or to remain silent under his Fifth Amendment protections. Applicant was fully advised on the record of his right to choose whether to testify or not, and he was informed that his attorney could not make the decision for him. ROA 326-329. After speaking with his attorney and his family members, Applicant made the decision not to testify. Therefore, Trial Counsel should not be found deficient for Applicant exercising his constitutional right to decline to testify.

Second, this Court finds Trial Counsel was not deficient in advising Applicant not to testify at trial, because this advice was reasonable under the circumstances. Trial Counsel testified that Applicant was not a credible witness, as Applicant had changed his story numerous times during preparation for the trial, and Trial Counsel could not rely upon any of his recitations of the facts. Based on Applicant's testimony at the evidentiary hearing, there was no valid evidence of a self-defense argument. Even if Applicant had testified in this manner at trial, it's unlikely to have changed the outcome of the trial. In fact, it is likely that Applicant's testimony would have harmed his case more than helped, given the testimony Applicant presented at the evidentiary hearing, as well as the fact that he could be impeached by the State with his prior inconsistent statements. Finally, Trial Counsel voiced his ethical concerns about condoning Applicant's testimony on the stand. Because Applicant had changed his story numerous times, Trial Counsel did not believe he would present honesty testimony at trial.

Based on the facts and circumstances of this case, this Court finds Trial Counsel's advice that Applicant not testify at trial was reasonable and not deficient. This Court further finds that

Trial Counsel's advice did not result in prejudice to the Applicant as his testimony would likely still have resulted in a "guilty" verdict. Accordingly, neither prong of the Strickland test is met, and this allegation is denied and dismissed with prejudice.

DUE PROCESS VIOLATION

This Court finds Applicant's allegation of a due process violation raises a direct appeal issue that is procedurally barred by S.C. Code Ann. §17-27-20(b) (2003). Post-conviction relief is not a substitute for a direct appeal. Simmons v. State, 264 S.C. 417, 215 S.E.2d 883 (1974). A post-conviction relief application cannot assert any issues that could have been raised at trial or on direct appeal. Ashley v. State, 260 S.C. 436, 196 S.E.2d 501 (1973). At trial Applicant alleged his Miranda rights were violated when Trial Counsel moved to suppress his statement given to police while Applicant was at the hospital in Ohio. Applicant could have raised this issue on direct appeal, and the issue was, in fact, raised and ruled upon in his Anders brief on appeal. This allegation is therefore improper for post-conviction relief. Therefore, this Court finds the allegation should be denied and dismissed.

VI. CONCLUSION

Based on all the foregoing, this Court finds and concludes that Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application for post-conviction relief. Therefore, this application must be denied and dismissed with prejudice.

This Court notes that Applicant must file and serve a notice of appeal within thirty days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of post-

conviction relief. Rule 71.1(g), SCRCP, provides that if the applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a Notice of Appeal on the Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. That the application for Post-Conviction Relief is denied and dismissed with prejudice; and
2. Applicant must be remanded to the custody of Respondent.

AND IT IS SO ORDERED this 31st day of October, 2018.

Kristi F. Curtis

KRISTI F. CURTIS
Presiding Judge
Third Judicial Circuit

Sumter, South Carolina

7/19

03-03-2016

12:37:06 p.m.

WITNESSES

Robert E. Burnish Sumter County Sheriff

ARREST WARRANT NUMBER

2013A4310100503 2013A4310100504
2013A4310100487

ACTION OF GRAND JURY

True Bill

Michael S. Anderson
Foreperson of Grand Jury
Date: *2-6-14*

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2014-GS-43-0170

The State of South Carolina

County of SUMTER

COURT OF GENERAL SESSIONS

February TERM 2014

THE STATE

vs.

JOSEPH MICHAEL MANNERS

Indictment for

Murder
Arson First Degree

Ernest A. Finney III

ERNEST A. FINNEY, III, SOLICITOR

8034362223

482

STATE OF SOUTH CAROLINA)
COUNTY OF SUMTER)

INDICTMENT FOR

Murder
Arson First Degree

At a Court of General Sessions, convened on February 6, 2014 the Grand Jurors of
SUMTER County present upon their oath:

COUNT ONE - MURDER

That Joseph Michael Manners did in Sumter County, on or about June 1, 2013, willfully, feloniously, and intentionally kill the victim, James Topper, Jr., with malice aforethought, either express or implied, by means of setting the victim's residence on fire, and the victim did die as a proximate result thereof on or about June 1, 2013 in Sumter County, in violation of Section 16-03-0010, S. C. Code of Laws, 1976, as amended.

COUNT TWO - MURDER

That Joseph Michael Manners did in Sumter County, on or about June 1, 2013, willfully, feloniously, and intentionally kill the victim, Jo Ann Topper, with malice aforethought, either express or implied, by means of setting the victim's residence on fire, and the victim did die as a proximate result thereof on or about in Sumter County, in violation of Section 16-03-0010, S. C. Code of Laws, 1976, as amended.

COUNT THREE - ARSON, FIRST DEGREE

That Joseph Michael Manners did in Sumter County on or about June 1, 2013, willfully and maliciously cause an explosion, set fire to, burn, or cause to be burned, or aided, counseled or procured the burning of a building, which resulted either directly or indirectly in the death or serious bodily injury to James Topper, Jr. and Jo Ann Topper, in violation of Section 16-11-0110(A), 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.

Solicitor

