

21345

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM CHEROKEE COUNTY

Roger L. Couch, Circuit Court Judge

ANDERS
ORIGINAL
NO DEF. BRIEF
No Respondent's Brief Filed
AUG 21 2014
SC Court of Appeals

THE STATE,

RESPONDENT,

V.

MARSHA JANET SELPH,

APPELLANT

APPELLATE CASE NO. 2014-000115

RECORD ON APPEAL

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

3
4 THE STATE)

5 -vs-)

TRANSCRIPT OF RECORD
2011-GS-11-00938

6 MARSHA JANET SELPH,)

7 DEFENDANT.)

JANUARY 7, 2014
GAFFNEY, SOUTH CAROLINA

8
9 (VOLUME I)

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11 B E F O R E:

12 THE HONORABLE ROGER L. COUCH, JUDGE. ; And a Jury.

13
14
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18 ATTORNEY FOR THE DEFENDANT

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CIRCUIT COURT REPORTER

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7 (Curriculum Vitae marked as State's Exhibit No. 41
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9 (Heater marked as State's Exhibit No. 42 for
10 identification)

11 THE COURT: Ladies and gentlemen of the jury, we
12 are about to begin the trial of the State of South Carolina
13 versus Marsha Janet Selph.

14 I have been presented or given the indictment in
15 this case. The indictment is Case Number 11-GS-11-938.

16 The indictment is for the offense of arson.

17 I'm going to go over the indictment with you at
18 this time and then I'll explain to you a little bit about
19 the document and what it means.

20 The indictment in the body states that on or about
21 October 15th, 2011, the defendant, Marsha Janet Selph, did,
22 in Cherokee County, willfully and maliciously cause an
23 explosion, set fire to, burn, or cause to be burned, or
24 aided, counseled, or procured the burning of a building or
25 structure that was one, or more, of the following: A

1 dwelling house, a church or a place of worship, a public or
2 private school facility, a manufacturing plant or warehouse,
3 a building where business is conducted, an institutional
4 facility, or any structure designed for human occupancy, to
5 include local and municipal buildings: To-wit: A dwelling
6 located at [REDACTED] Gaffney, South Carolina,
7 belonging to Lida Bradshaw, all in violation of Code Section
8 16-11-10(b) of the Code of Laws of South Carolina, 1976, as
9 amended, against the peace and dignity of the State and
10 contrary to the statute in such case made and provided.

11 Now, ladies and gentlemen, the indictment is the
12 document that comes into this court. It informs this court
13 of the charge to be tried. It informs the defendant of the
14 charge that has been lodged against her.

15 The indictment can in no way be used by a jury as
16 evidence of guilt in the case and cannot be considered in
17 any manner whatsoever in that regard.

18 Again, I have gone over that document with you so
19 that you will understand the charge that's being tried. It
20 also will provide you some information from which you might
21 be able to more fully answer some questions that I'm going
22 to ask you concerning this case.

23 Before I begin to ask those questions I am going
24 to ask that the attorneys involved in this matter introduce
25 themselves to you. And in the case of the defense, if you

1 would introduce the defendant to this jury panel as well.

2 First of all, for the State of South Carolina.

3 MR. KENDALL: My name is Matt Kendall. I
4 represent the State of South Carolina.

5 THE COURT: And for the defense?

6 MR. THOMPSON: I'm Don Thompson and I am one of
7 the public defenders here in the county and I represent Ms.
8 Marsha Selph.

9 THE COURT: Ma'am, if you will stand up and face
10 the jury panel so they can put a face to that name.

11 Thank you, ma'am. You can be seated.

12 Now, there are some questions that I'm going to
13 ask you that will pertain specifically to this case. And
14 before I begin to do that, again it's important that the
15 information you provide in response to these questions is
16 truthful, honest and complete information. I know that you
17 were sworn earlier for your participation in jury
18 qualification. I'm going to ask that the clerk now swear
19 you concerning your participation in this trial.

20 Please swear the jury panel for me, Madam Clerk.

21 THE CLERK: Ladies and gentlemen, please stand and
22 raise your right hand.

23 Do you solemnly swear the information that you
24 give this court will be the truth, the whole truth, and
25 nothing but the truth, so help you God?

1 JURY VENIRE PANEL: (Collectively said I do.)

2 THE CLERK: You may be seated.

3 Now, if there was any member of the jury panel who
4 either failed or refused to take the oath that was just
5 administered by the clerk, please stand.

6 (No response).

7 THE COURT: The record then will reflect that all
8 potential jurors have been sworn concerning the responses
9 that you are about to give to the court.

10 We will follow the same procedure that we followed
11 for jury qualification. If you have a response to my
12 question, I'll be asking that you stand. Again, I will need
13 to identify you on the record before I discuss the response
14 that you might have to the questions that I'm asking.

15 The first question I have, is there any member of
16 this jury panel who has ever been related by marriage or are
17 you related by blood to either the defendant, Marsha Janet
18 Selph, or the alleged victim, Lida, or L-I-D-A, Lida
19 Bradshaw? If that's true, please stand.

20 (No response)

21 THE COURT: Has any member of this jury panel ever
22 had a close personal or a social relationship with either
23 the defendant or the alleged victim in this case? If that's
24 true, please stand.

25 Yes, sir, your name and number?

1 JUROR NUMBER 111: My name is Robert Sprouse,
2 juror number 111.

3 THE COURT: Yes, sir, your situation?

4 JUROR NUMBER 111: I served with associates with
5 some the people from the State.

6 THE COURT: You did what?

7 JUROR NUMBER 111: Served with what I would
8 consider an associate relationship with some of the State.

9 THE COURT: All right. Well, I'm going to be
10 asking you about the specific witnesses. Who I'm asking you
11 about now is either Marsha Janet Selph, or I guess it's Lida
12 Bradshaw. Do you know either of those individuals?

13 JUROR NUMBER 111: No, sir.

14 THE COURT: All right. I'll be going over
15 potential witnesses next, and you may have a response to
16 that when I'm finished, sir.

17 JUROR NUMBER 111: All right.

18 THE COURT: Thank you, sir.

19 Anyone else?

20 (No response).

21 THE COURT: I am going to now read to you a list
22 of people that have been identified to me as possible
23 witnesses in this case. The list is about sixteen people
24 long, so listen carefully to the names that I'm about to
25 call and then I will have some questions about these

1 individuals.

2 Again, the potential witnesses are the alleged
3 victim, Lida Bradshaw.

4 Todd Parker.

5 Sergeant Derrick Greer.

6 Buddy Earls, Jr..

7 Carlee Cantrell.

8 Tina Wray.

9 Firefighter Nathan Ellis.

10 Firefighter Scott Coleman.

11 Jimmy Henson.

12 Billy Anthony.

13 Brandon Gardner.

14 Preston Bell.

15 Jerry Blankenship.

16 Firefighter John Porter.

17 Firefighter Paul Wilkins.

18 And David Harrison.

19 MR. THOMPSON: I believe that's Dale.

20 THE COURT: As to the individuals that I just
21 named as possible witnesses in this case.

22 MR. THOMPSON: I believe that's Dale Harrison,
23 Your Honor.

24 THE COURT: Is it Dale?

25 MR. THOMPSON: Yes.

1 THE COURT: I'm sorry.

2 Dale Harrison.

3 Now, as to the people that I just identified as
4 possible witnesses in this case, has any member of the jury
5 panel ever been related by marriage, or are you related by
6 blood, or have you ever had a close social or a personal
7 relationship with any of the individuals I just named as
8 possible witnesses in this case? If that's true, please
9 stand.

10 Now, sir, your name and number?

11 JUROR NUMBER 111: My name is Robert Sprouse. My
12 juror number is 111.

13 THE COURT: All right. Of the people that I
14 named, can you tell me who you might have had some
15 relationship to?

16 JUROR NUMBER 111: Associate relationship with
17 Nathan Ellis.

18 THE COURT: Now, would that fact, if you were
19 selected to serve on the jury, and that person served as a
20 witness in this case, would that affect your ability to be
21 fair and impartial to both the State and the defense?

22 JUROR NUMBER 111: No, sir.

23 THE COURT: All right, sir, you can be seated.
24 Thank you.

25 Ma'am, name and number?

1 JUROR NUMBER 108: Hope Smith, 108.

2 THE COURT: Yes, ma'am.

3 JUROR NUMBER 108: I'm just friends with Nathan
4 Ellis and Brandon Gardner.

5 THE COURT: Would the fact that they may be
6 witnesses in this case, if they were, and you were on the
7 jury, would that affect your ability to be fair and
8 impartial to both the State and the defense?

9 JUROR NUMBER 108: No, sir.

10 THE COURT: Thank you, ma'am. You can be seated.
11 Ma'am, name and number?

12 JUROR NUMBER 112: Haley Stroud, 112. I know
13 Carlee Cantrell and Preston Bell.

14 THE COURT: Would that affect your impartiality in
15 this case if that person were a witness?

16 JUROR NUMBER 112: I think so.

17 THE COURT: All right, ma'am, I'll excuse you from
18 the trial of the case. You can be seated and you no longer
19 have to answer my questions.

20 Name and number, sir?

21 JUROR NUMBER 95: Brad Phillips, number 95. Just
22 friends just Brandon Gardner.

23 THE COURT: If he were a witness in this case,
24 would affect your impartiality as to the decision between
25 the State and the defendant?

1 JUROR NUMBER 95: No, sir.

2 THE COURT: Thank you. You can be seated, sir.

3 Anyone else?

4 (No response).

5 THE COURT: Now, as to the attorneys that are
6 involved in this case, has any member of the jury panel ever
7 been represented by either of the attorneys involved in this
8 case, or have they ever appeared on the other side of a
9 legal matter from you? If that's true, please stand.

10 (No response)

11 THE COURT: As to the attorneys involved in this
12 case, has any member of the jury panel ever been related by
13 marriage, or are you related by blood, or have you ever had
14 a close social or a personal relationship with either of the
15 attorneys involved? If that's true, please stand.

16 (No response).

17 THE COURT: Has any member of the jury panel or a
18 member of your immediate family ever been employed by any
19 law enforcement agency, jail, detention center, or
20 correctional facility? If that is true, please stand.

21 Name and number, ma'am?

22 JUROR NUMBER 108: Hope Smith, 108.

23 THE COURT: Yes, ma'am.

24 JUROR NUMBER 108: My husband worked for the
25 sheriff's department in Cherokee County. He is --

1 THE COURT: You say he did, so he no longer does?

2 JUROR NUMBER 108: He's deceased.

3 THE COURT: All right. Now, would that affect
4 your impartiality if you were on the jury?

5 JUROR NUMBER 108: No, sir.

6 THE COURT: Thank you, ma'am.

7 Anyone else?

8 (No response).

9 THE COURT: Has any member of the jury panel or a
10 member of your immediate family ever been employed by a fire
11 department, volunteer fire department, or any other agency
12 whose purpose is fire prevention, firefighting, or
13 fire-related endeavors? If that is true, please stand.

14 Your name and number, sir?

15 JUROR NUMBER 18: John Cash, number 18.

16 THE COURT: Yes, sir, your situation?

17 JUROR NUMBER 18: I was a fireman, volunteer.

18 THE COURT: Okay. So you no longer serve in that
19 capacity?

20 JUROR NUMBER 18: No, sir.

21 THE COURT: Would that fact affect your ability to
22 be fair and impartial to both sides in this case?

23 JUROR NUMBER 18: No, sir.

24 THE COURT: Thank you, sir. You can be seated.

25 Anyone else?

1 (No response).

2 THE COURT: Has any member of the jury panel or a
3 member of your immediate family ever been the victim of the
4 crime of arson? If that's true, please stand.

5 (No response).

6 THE COURT: Has any member of the jury panel
7 gathered any information concerning the incidents that may
8 be described in this case, such that it would have caused
9 you to either form or express an opinion about any issue
10 that might be involved in this trial? If that's true,
11 please stand.

12 (No response).

13 THE COURT: Is there any member of the jury panel
14 who is aware of any bias or prejudice that you might have,
15 either for or against either the State or the defense in the
16 case? If that's true, please stand.

17 (No response).

18 THE COURT: Is there any member of the jury panel
19 who may have been a member of the Grand Jury that issued the
20 indictment in this case, and that indictment was issued on
21 December 1st of 2011. If that's true, please stand.

22 (No response).

23 THE COURT: Is there any member of this jury panel
24 who is a member of or a contributor to any group which has
25 as its primary concern the promotion of law enforcement or

1 victims rights? Those groups would include, but not be
2 limited to, such groups as Mothers Against Drunk Driving,
3 Students Against Drunk Driving, Citizens Against Violent
4 Crime, the South Carolina Troopers Association, the South
5 Carolina Sheriff's Association, or other similarly oriented
6 organizations? If that's true, please stand.

7 (No response).

8 THE COURT: Does any member of the jury panel know
9 of any reason whatsoever why he or she should not serve as a
10 juror in this case, with particular emphasis being placed
11 upon your ability to be both fair and impartial to both the
12 State and the defense? If that's true, please stand.

13 (No response).

14 THE COURT: Are there additional questions from
15 the State?

16 MR. KENDALL: Nothing from the State, Your Honor.

17 THE COURT: From the defense?

18 MR. THOMPSON: No, sir.

19 THE COURT: All right, I'll declare then that the
20 remainder of the jury panel is qualified to serve as jurors
21 in this case.

22 Now, ladies and gentlemen, what I'm going to do
23 now is --

24 And it would be I believe five strikes and ten
25 strikes in the case. We will pick one alternate, the State

1 having one strike, the defense having two. I'll instruct
2 the clerk to go ahead and prepare a list of possible
3 witnesses -- I mean jurors in the case.

4 Now, ladies and gentlemen, what we are doing at
5 this point in time, we have a computer program. Your names
6 are all in the computer. It's a random selection program,
7 so they are going to pull your names in some order and put
8 them on a list that will have. And what we will do then is
9 begin to call your names in the order in which they appear
10 on that list.

11 When your name is called, I'm going to ask that
12 you come forward, come through the center here where Ms.
13 Bolen is. If you will come down and stand right in front of
14 Ms. McBee, the clerk, and then face the back door of the
15 courtroom, and then the attorneys will be in a position to
16 exercise their strikes.

17 Now, if you are selected to serve on the jury, you
18 will immediately have a seat in the jury box to my left. So
19 if you have a purse or other personal belongings you brought
20 to the courtroom, please bring that with you when your name
21 is called, because you will not be returning to your seat,
22 once we complete jury selection.

23 THE CLERK: Juror 60, Christie Hopper.

24 THE COURT: Come forward, please, ma'am.

25 THE CLERK: What says the State?

1 MR. KENDALL: Please seat the juror.

2 THE CLERK: What says the defense?

3 MR. THOMPSON: Excuse the juror from the trial of
4 this case, please.

5 THE CLERK: You have been excused.

6 Juror 71, Jimmy Knuckles.

7 What says the State?

8 MR. KENDALL: Please excuse the juror.

9 THE CLERK: You have been excused.

10 Juror 18, John Cash.

11 What says the State?

12 MR. KENDALL: Please seat the juror.

13 THE CLERK: What says the defense?

14 MR. THOMPSON: Excuse the juror from the trial of
15 this case, please.

16 THE CLERK: You have been excused.

17 Juror 35, John Franz.

18 What says the State?

19 MR. KENDALL: Please excuse the juror.

20 THE CLERK: You have been excused.

21 Juror 88, Jarrington Palmer.

22 What says the State?

23 MR. KENDALL: Madam Clerk, what was that number?

24 THE CLERK: 88.

25 MR. KENDALL: Please seat the juror.

1 THE CLERK: What says the defense?

2 MR. THOMPSON: Seat the juror, please.

3 THE CLERK: Please take a seat in the jury box.

4 Juror 36, Tiangela Gaffney.

5 What says the State?

6 MR. KENDALL: Please excuse the juror.

7 THE CLERK: You have been excused.

8 Juror 81, Brice Moss.

9 What says the State?

10 MR. KENDALL: Please seat the juror.

11 THE CLERK: What says the defense?

12 MR. THOMPSON: Excuse the juror from the trial of
13 this case.

14 THE CLERK: You have been excused.

15 Juror 98, Shanelle Proctor.

16 What says the State?

17 MR. KENDALL: Please seat the juror.

18 THE CLERK: What says the defense?

19 MR. THOMPSON: Seat the juror, please.

20 THE CLERK: Please take a seat in the jury box.

21 Juror 121, Barbara Turney.

22 What says the State?

23 MR. KENDALL: Please seat the juror.

24 THE CLERK: What says the defense?

25 MR. THOMPSON: Seat the juror, please.

1 THE CLERK: Please take a seat in the jury box.

2 Juror 108, Hope Smith.

3 What says the State?

4 MR. KENDALL: Please seat the juror.

5 THE CLERK: What says the defense?

6 MR. THOMPSON: Excuse the juror from the trial of
7 this case, please.

8 THE CLERK: You have been excused.

9 Juror 28, Robin Dover.

10 What says the State?

11 MR. KENDALL: Please seat the juror.

12 THE CLERK: What says the defense?

13 MR. THOMPSON: Seat the juror, please.

14 THE CLERK: Please take a seat in the jury box.

15 Juror 109, John Smith.

16 What says the State?

17 MR. KENDALL: Please seat the juror.

18 THE CLERK: What says the defense?

19 MR. THOMPSON: Seat the juror, please.

20 THE CLERK: Please take a seat in the jury box.

21 Juror 117, Elizabeth Tate.

22 What says the State?

23 MR. KENDALL: Please seat the juror.

24 THE COURT: What says the defense?

25 MR. THOMPSON: Seat the juror, please.

1 THE CLERK: Please take a seat in the jury box.

2 Juror 32, Bryan Falls.

3 What says the State?

4 MR. KENDALL: Please excuse the juror.

5 THE CLERK: You have been excused.

6 Juror 114, Audrey Tarbush.

7 What says the State?

8 MR. KENDALL: Please seat the juror.

9 THE CLERK: What says the defense?

10 MR. THOMPSON: Seat the juror, please.

11 THE CLERK: Please take a seat in the jury box.

12 Juror 115, Dorothy Tate.

13 THE COURT: Come on up here, Ms. Tate, to the bar.

14 THE CLERK: Turn around Ms. Tate.

15 THE COURT: Thank you, ma'am.

16 THE CLERK: What says the State?

17 MR. KENDALL: Please seat the juror.

18 THE CLERK: What says the defense?

19 MR. THOMPSON: Excuse the juror from the trial of
20 this case, please.

21 THE CLERK: You have been excused.

22 Juror 61, Kwame Hopper.

23 What says the State?

24 MR. KENDALL: Please seat the juror.

25 THE CLERK: What says the defense?

1 MR. THOMPSON: Seat the juror, please.

2 THE CLERK: Please take a seat in the jury box.

3 Juror 16, Cynthia Carter.

4 What says the State?

5 MR. KENDALL: Please seat the juror.

6 THE CLERK: What says the defense?

7 MR. THOMPSON: Seat the juror, please.

8 THE CLERK: Please take a seat in the jury box.

9 Juror 49, Jason Hall.

10 What says the State?

11 MR. KENDALL: Please seat the juror.

12 THE CLERK: What says the defense?

13 MR. THOMPSON: Seat the juror, please.

14 THE CLERK: Please take a seat in the jury box.

15 Juror 4, Billy Beattie.

16 What says the State?

17 MR. KENDALL: Please seat the juror.

18 THE CLERK: What says the defense?

19 MR. THOMPSON: Seat the juror, please.

20 THE CLERK: Please take a seat in the jury box.

21 Juror 102, Jonica Sarratt.

22 What says the State?

23 MR. KENDALL: Please seat the juror.

24 THE CLERK: What says the defense?

25 MR. THOMPSON: Seat the juror, please.

1 THE CLERK: Please take a seat in the jury box.

2 THE COURT: Now selecting the alternate.

3 THE COURT: Juror 52, Johnathan Henderson.

4 What says the State?

5 MR. KENDALL: Please seat the juror.

6 THE CLERK: What says the defense?

7 MR. THOMPSON: Excuse him from the trial in this
8 case, please.

9 THE CLERK: You have been excused.

10 Juror 127, Jeffrey Wells.

11 What says the State?

12 MR. KENDALL: Please excuse the juror.

13 THE CLERK: You have been excused.

14 Juror 5, Sarah Belue.

15 What says the State?

16 MR. KENDALL: Please seat the juror.

17 THE CLERK: What says the defense?

18 MR. THOMPSON: Seat the juror, please.

19 THE CLERK: Please take a seat in the jury box.

20 THE COURT: Any Objections to the jury selection
21 process, from the State?

22 MR. KENDALL: None from the State, Your Honor.

23 THE COURT: Any from the defense?

24 MR. THOMPSON: No, sir.

25 THE COURT: All right. Ladies and gentlemen,

1 those of you who were not selected to serve on the jury
2 panel, thank you very much for your cooperation with me this
3 morning. I'm going to release you for the remainder of the
4 day.

5 I will ask that after six o'clock this evening you
6 call the number that you have been provided. We will have
7 additional instruction for you at that point in time. Be
8 sure that you have that number before you leave the
9 courthouse so you are able to make that call.

10 Again, thank you for your cooperation. At this
11 time you are free to go.

12 (Whereupon, the jury venire panel left the
13 courtroom)

14 THE COURT: All right, ladies and gentlemen, you
15 have been selected as jurors in this case. I'm going to
16 have to take up just a couple of things with the attorneys
17 before we actually start the trial of the case. It
18 shouldn't take too long, but I'll do that outside of your
19 presence, so we are going to ask that you step back to the
20 jury room.

21 Once we are ready to begin, I'll be bringing you
22 back into the courtroom, but before you leave the courtroom
23 let me caution you about one thing. You are going to find
24 that every time that you leave this courtroom I'm going to
25 caution you about discussing anything about this case, even

1 among yourselves, until such time as you have heard all the
2 evidence, all the arguments, and I charge you concerning the
3 law to be applied in this case. That's going to be true
4 right now. I hope that you realize that even the most
5 innocent conversation that you might have with a fellow
6 juror about what the case is about, or the personalities
7 involved, or things of that nature, that might begin to
8 color your ultimate decision in this case. We have gone to
9 a lot of trouble to pick jurors who don't have any knowledge
10 about the case or don't have -- or have an open mind
11 concerning the issues to be tried. I want you to keep that
12 open mind about this case until I have asked you to begin
13 your deliberations, and only then should you begin to make
14 up your mind concerning the issues in this case. So it's
15 okay for you to talk about the weather. There is a lot of
16 people doing that today. It's okay to talk about sports,
17 politics and religion, if you dare go there, but talk about
18 anything other than this case while you have your breaks.
19 Don't begin any discussions about this until I ask you to do
20 so.

21 The bailiff will show you back to the jury room.
22 We should have you back in the courtroom shortly. Thank you
23 very much.

24 (The following takes place outside the presence of
25 the jury panel)

1 THE COURT: All right, before we swear the jury
2 there is a matter concerning the indictment we need to clear
3 up. I was informed by the solicitor on the indictment it
4 reads arson, second degree. However, the facts that are
5 stated in the indictment are arson in the third degree.

6 My understanding you are proceeding on arson in
7 the third degree, is that correct?

8 MR. KENDALL: That's correct, Your Honor.;

9 THE COURT: And at that time we discussed at the
10 bench, Mr. Thompson was present. I understand you are not
11 objecting to the indictment being amended --

12 MR. THOMPSON: No, sir.

13 THE COURT: -- to read arson second degree?

14 MR. THOMPSON: Arson third.

15 THE COURT: Excuse me, arson third degree, not
16 second.

17 MR. THOMPSON: That's correct.

18 THE COURT: Okay. Thank you, sir.

19 All right. Also there have been exhibits
20 presented by the State and they are numbers 1 through 42.
21 It's my understanding that the defense has reviewed those
22 exhibits and has no objection to their introduction into the
23 record, is that correct?

24 MR. THOMPSON: Well --

25 THE COURT: If you need a second to take a look at

1 them, please do.

2 MR. THOMPSON: I just want to make sure that the
3 curriculum vitae of the officers wasn't included.

4 MR. KENDALL: They were marked as exhibits. I'm
5 not going enter them into evidence.

6 MR. THOMPSON: My only concern would be entering
7 the curriculum vitae.

8 THE COURT: Are all those within the 42 numbers?

9 MR. KENDALL: Yes, sir.

10 THE COURT: Let's identify which ones that are not
11 going into evidence.

12 MR. KENDALL: Yes, sir.

13 State's Exhibit 40 and 41, Your Honor. They are
14 the curriculum vitae of Scott Coleman and Nathan Everett
15 Ellis.

16 THE COURT: Okay.

17 MR. KENDALL: We are not going to use those as
18 exhibits. I suspect there probably will be a motion. They
19 are going to be qualified as experts, or --

20 THE COURT: So you are not agreeing to those at
21 this time?

22 MR. THOMPSON: No, sir.

23 THE COURT: Okay. So those are not admitted.

24 As to the others?

25 MR. THOMPSON: As to the others I have no problem.

1 THE COURT: No objection. So they will be
2 admitted at this time by stipulation of counsel.

3 MR. KENDALL: Thank you, Your Honor.

4 THE COURT: Okay.

5 (Whereupon, State's Exhibit No. 1 was entered into
6 the record as evidence)

7 (Whereupon, State's Exhibit No. 2 was entered into
8 the record as evidence)

9 (Whereupon, State's Exhibit No. 3 was entered into
10 the record as evidence)

11 (Whereupon, State's Exhibit No. 4 was entered into
12 the record as evidence)

13 (Whereupon, State's Exhibit No. 5 was entered into
14 the record as evidence)

15 (Whereupon, State's Exhibit No. 6 was entered into
16 the record as evidence)

17 (Whereupon, State's Exhibit No. 7 was entered into
18 the record as evidence)

19 (Whereupon, State's Exhibit No. 8 was entered into
20 the record as evidence)

21 (Whereupon, State's Exhibit No. 9 was entered into
22 the record as evidence)

23 (Whereupon, State's Exhibit No. 10 was entered
24 into the record as evidence)

25 (Whereupon, State's Exhibit No. 11 was entered

1 into the record as evidence)

2 (Whereupon, State's Exhibit No. 12 was entered
3 into the record as evidence)

4 (Whereupon, State's Exhibit No. 13 was entered
5 into the record as evidence)

6 (Whereupon, State's Exhibit No. 14 was entered
7 into the record as evidence)

8 (Whereupon, State's Exhibit No. 15 was entered
9 into the record as evidence)

10 (Whereupon, State's Exhibit No. 16 was entered
11 into the record as evidence)

12 (Whereupon, State's Exhibit No. 17 was entered
13 into the record as evidence)

14 (Whereupon, State's Exhibit No. 18 was entered
15 into the record as evidence)

16 (Whereupon, State's Exhibit No. 19 was entered
17 into the record as evidence)

18 (Whereupon, State's Exhibit No. 20 was entered
19 into the record as evidence)

20 (Whereupon, State's Exhibit No. 21 was entered
21 into the record as evidence)

22 (Whereupon, State's Exhibit No. 22 was entered
23 into the record as evidence)

24 (Whereupon, State's Exhibit No. 23 was entered
25 into the record as evidence)

1 (Whereupon, State's Exhibit No. 24 was entered
2 into the record as evidence)

3 (Whereupon, State's Exhibit No. 25 was entered
4 into the record as evidence)

5 (Whereupon, State's Exhibit No. 26 was entered
6 into the record as evidence)

7 (Whereupon, State's Exhibit No. 27 was entered
8 into the record as evidence)

9 (Whereupon, State's Exhibit No. 28 was entered
10 into the record as evidence)

11 (Whereupon, State's Exhibit No. 29 was entered
12 into the record as evidence)

13 (Whereupon, State's Exhibit No. 30 was entered
14 into the record as evidence)

15 (Whereupon, State's Exhibit No. 31 was entered
16 into the record as evidence)

17 (Whereupon, State's Exhibit No. 32 was entered
18 into the record as evidence)

19 (Whereupon, State's Exhibit No. 33 was entered
20 into the record as evidence)

21 (Whereupon, State's Exhibit No. 34 was entered
22 into the record as evidence)

23 (Whereupon, State's Exhibit No. 35 was entered
24 into the record as evidence)

25 (Whereupon, State's Exhibit No. 36 was entered

1 into the record as evidence)

2 (Whereupon, State's Exhibit No. 37 was entered
3 into the record as evidence)

4 (Whereupon, State's Exhibit No. 38 was entered
5 into the record as evidence)

6 (Whereupon, State's Exhibit No. 39 was entered
7 into the record as evidence)

8 (Whereupon, State's Exhibit No. 42 was entered
9 into the record as evidence)

10 THE COURT: Okay.. Anything else we need to take
11 up from the State's perspective before we begin the trial?

12 MR. KENDALL: Nothing from the State, Your Honor.

13 THE COURT: Anything from the defense?

14 MR. THOMPSON: No, sir.

15 THE COURT: All right, let's bring the jury back
16 in.

17 (The following takes place in the presence of the
18 jury panel)

19 THE COURT: All right, the record will reflect
20 that the jury has returned to the courtroom.

21 At this point in time you are going to take an
22 oath. I know that you have been sworn two times already
23 today. This is your third time, but this oath is different.
24 This has to do with your duties and responsibilities in this
25 trial.

1 So, Madam Clerk, please swear the jury panel
2 concerning their duties.

3 THE CLERK: Ladies and gentlemen, please stand and
4 raise your right hand.

5 Do you solemnly swear that you will truly try the
6 issues joined in this case and true verdict render,
7 according to the law and evidence, so help you God?

8 JURY PANEL: (Collectively said I do).

9 THE CLERK: You may be seated.

10 THE COURT: All right, ladies and gentlemen,
11 before we begin the trial of this case there are some things
12 that I want to go over with you.

13 Probably for most of you this is your first
14 experience in actually serving as a juror in the trial of a
15 case in a court of law, and for those of you who have never
16 been in this position before, probably most of what you
17 might know about how juries operate or what goes on in
18 courtrooms you would have determined or gotten from such
19 sources as television shows you have watched, or movies that
20 you have seen, or books that you have read. They used to
21 have a channel on cable called Court TV and they showed some
22 trials and things of that nature, but I don't know if that's
23 on there or not any more, but -- it's not there, I don't
24 think, but for those of you for whom most of your knowledge
25 came from those sources, television shows and movies, things

1 of that nature, I hope that you realize that those sources
2 of information are always full of intense action, drama and
3 riveting circumstances. That's because those sources of
4 information are designed to keep your attention and
5 entertain you. You might notice that on television you can
6 have an event occur, the case be tried, and it will all be
7 wrapped up in an hour and they still have time to stop for
8 commercials about three or four times. And, of course, we
9 have been at this process all morning now, so you realize
10 pretty quickly that what you see on television is sometimes
11 not the whole story and sometimes it's bent or twisted to
12 fit the story line and to make the story flow and be
13 interesting. So those are intended to entertain you.

14 Now, what you are involved in in this courtroom is
15 intended for anything but your entertainment. I hope you
16 realize that what you are involved in is a fundamental part
17 of our government, a fundamental part of our democracy. If
18 you were to look around this world today at the various
19 countries that exists in the world, you would find that in
20 most of the countries in this world citizens are not allowed
21 to participate in the important decision-making process that
22 goes on in the courtrooms of those countries. Most
23 countries cases are tried by either just judges, or by
24 bureaucrats, or someone appointed by the government to do
25 that function.

1 Our system is in the minority. It's a little bit
2 different in the world. You see, our system is based on a
3 trial by a jury of one's peers. The right to a trial by a
4 jury was first embodied in a document that was signed in a
5 place called Running Meade, England. It was signed in the
6 year 1215. The document was the Magna Carta. Now, I hope
7 that you realize that in about one more year, next year,
8 that document will enjoy its eight hundredth birthday, so
9 it's a long tradition that we have in our system of justice.
10 It's based on the English system, and that is that every
11 citizen is entitled to a trial by a jury of one's peers.

12 What you are engaged in is a search for the truth
13 in this case. It's an effort to see that justice is done
14 between the parties that are before this court. And in this
15 case the parties that are before this court are the State of
16 South Carolina that has brought a criminal charge against
17 one of its citizens, the defendant in this case.

18 I hope you realize that a search for the truth is
19 going to be a slow process sometimes. Sometimes it's going
20 to be repetitive. It will be deliberate, I would hope. You
21 know, if I had asked you earlier today when you first came
22 into the courtroom what you would expect a search for the
23 truth to be like, I would expect you would have told me that
24 it ought to be slow, it ought to be deliberate. Maybe we
25 ought to go over the things two or three times to be sure

1 that we get it right. So you might expect it to be exactly
2 what it's going to be; that is, a slow, deliberate,
3 repetitive process, because, you see, this courtroom is a
4 place of honor. It's dedicated to the preservation of
5 citizen's rights through both the laws and the Constitution
6 of this state and of the United States.

7 I told you earlier if it weren't for good
8 citizens, such as yourselves, who were willing to come
9 forward and serve on juries, our system couldn't function as
10 it was designed by our forefathers in those documents, the
11 Constitutions that I have referred to and the laws that have
12 been passed by our government.

13 Now, the attorneys that are involved in this case
14 are here to represent their client's interests. But, first
15 and foremost, I want you to be aware that those attorneys
16 are also officers of this court. At some point in time they
17 have appeared before either this court, or some other court
18 in the state, and they took an oath that is prescribed by
19 the rules of the court and by law. Part of that oath is
20 that they have sworn to assist you in your search for the
21 truth in this case. And for that reason you can expect that
22 they will act in a reasonable and a professional and an
23 ethical manner in the presentation of their client's cases
24 before you today.

25 I'm going to point out to you that you, too, have

1 also come before this court and you have taken an oath.
2 That oath is to decide this case based upon the law and the
3 evidence presented during the trial. For that same reason
4 you are expected to act in a reasonable, professional, and
5 an ethical manner in the discharge of your duties as jurors
6 in this case.

7 Again, I want to thank you for your willingness to
8 accept the responsibility of determining the issues that
9 will be placed before you during this trial.

10 Now, what I'm telling you now is not intended to
11 serve as a charge concerning the law to be applied in this
12 case. Later on, once you have heard all the arguments by
13 the lawyers and all the evidence from the witnesses, at that
14 point in time I will charge you concerning the law to be
15 applied in this matter. What I'm telling you now is, again,
16 an effort to introduce you to your duties and
17 responsibilities in this case and perhaps give you some
18 information as to what you might expect as the trial goes
19 along.

20 I have already read the indictment to you. That's
21 the document that brings the case in front of the court.
22 That's the charge that's been lodged in this case. I'm not
23 going to read that indictment to you again. Later on I'll
24 go over it with you when I charge you concerning the law,
25 but the indictment charges the crime of arson, and I went

1 over it with you earlier, and it alleges that the defendant
2 did certain things in that indictment.

3 Now, the indictment is simply the charge that
4 brings the case before the court. It is not in any sense
5 evidence of the commission of any crime. It cannot be used
6 by a jury in any manner in determining the guilt or the
7 innocence of the defendant charged in the indictment. You
8 see, the defendant has pled not guilty to that indictment,
9 and that plea, under the law and the Constitution of this
10 state and of the United States, places the burden of proof
11 in this trial solely upon the State. The State has the
12 burden of proving the elements of the indictment, the things
13 that make up the crime alleged in the indictment by proof
14 beyond a reasonable doubt. It's your job and your duty at
15 the close of this trial to determine whether or not the
16 State has met its burden of proof in this case. Your
17 purpose as jurors, therefore, is to find and determine the
18 facts in this matter.

19 I'm going to tell you that under the law of this
20 state, every case tried by a jury in this court, the jury is
21 the sole judges of the facts in this case.

22 I will serve as the presiding officer. I will
23 serve as the sole judge of the law in this case.

24 You should not take from anything that I say in
25 the discharge of my duties as the presiding officer of this

1 case to somehow indicate to you one way or the other that I
2 might have an opinion as to how you determine the facts in
3 this case. You see, the law doesn't allow me an opinion on
4 that subject. I can assure you I have no opinion as to how
5 you determine the facts in this case. That is solely for
6 you, the jury, to decide, to determine those facts.

7 It's especially important that you, the jury,
8 perform your duties of determining the facts diligently and
9 conscientiously, because I'll tell you under our system of
10 justice ordinarily there are no means by which an erroneous
11 determination of facts made by a jury can ever be corrected,
12 so I want you to pay close attention to what goes on in the
13 courtroom. Be in a position to discuss the case later on
14 with your fellow jurors. Do your job diligently and
15 conscientiously during this trial, because it will be your
16 responsibility at the close of the trial, again, to
17 determine whether the State has met its burden of proof of
18 proving guilt beyond a reasonable doubt.

19 Now, the same law that makes you the sole judge of
20 the facts makes me the sole judge of the law. The law that
21 I give you at the close of the trial is the only law that
22 you can use in determining this case. If you came into the
23 courtroom with an opinion or a notion as to what the law is,
24 or you have a belief as to what the law ought to be, you
25 should leave those notions outside of the jury room, because

1 under the oath that you have taken it's your responsibility
2 to take the law exactly as I give it to you and apply that
3 law to the facts as you determine those facts to be. That
4 will put you in the position to carry out the
5 responsibilities that you have assumed under your oath as
6 jurors in this case.

7 Now, I told you already that until I advise you to
8 discuss this case during your deliberations, don't discuss
9 the case with anyone. Don't attempt to gather any
10 information during our breaks if you leave the courthouse
11 from any source outside of the courtroom. You might recall
12 your oath says that you will decide the case based upon the
13 law and the evidence.

14 The only place that you are going to hear evidence
15 in this case is in this courtroom. That evidence will be
16 presented from witnesses who have been sworn to tell the
17 truth. They will testify from this witness stand, and then
18 whatever documents come into the record of the case, or
19 other evidence comes into the case, either through the
20 testimony of those witnesses or by agreement of counsel.
21 And I will tell you already the attorneys have gone over a
22 number of exhibits and have agreed that those exhibits can
23 come into the record, so we will be going through exhibits
24 that have already been introduced by agreement of counsel as
25 the trial goes on, but that's the only evidence that you can

1 consider in reaching a verdict in this case. There is no
2 evidence outside of this courtroom.

3 Now, I'm not so old and I'm not so naive that I
4 don't know that you can't get on Google, or one of the
5 search engines, and you can get information from just about
6 anything in the world in a few moments, but I can assure you
7 those sources of information quite often contain information
8 that should not be considered by a jury in reaching a
9 verdict. That would violate the Rules of Evidence as they
10 exists in courtrooms, and it would be a violation of your
11 oath to try to gather any information from any source
12 outside of this courtroom, other than from the witness stand
13 and the attorneys as they present their cases to you during
14 the trial. For that reason you should not listen to, watch,
15 or read media reports. Again, you should not discuss the
16 case with anyone else and not try to gather any information
17 on your own.

18 It's important that you keep an open mind in this
19 case and don't decide any issue in this case until you have
20 heard all the arguments by the lawyers and all the evidence
21 that going to be presented and you have heard my instruction
22 concerning the law. Only at that time you have all of the
23 information or the tools that you need to begin
24 deliberations concerning the issues that are involved in
25 this case.

1 And, again, it's your solemn responsibility to
2 determine the guilt or the innocence of the defendant and
3 your verdict must be based solely on the evidence as
4 presented to you during the trial and the law as I instruct
5 you during the trial.

6 When we begin the trial I'm going to let the
7 lawyers make opening statement to you. Now, we allow
8 lawyers to directly address juries twice during a trial.
9 Once at the beginning of the trial they will make an opening
10 statement and tell you what they believe the case is about,
11 perhaps what they intend to prove. At the close of the
12 trial they will sum up the evidence or the testimony that
13 you have heard and the evidence that's been put into the
14 record from their client's perspective, and that's what we
15 call a closing statement or a closing argument. So those
16 are the two times they will be allowed to directly talk to
17 you during the trial. After they have completed those
18 arguments I will charge you concerning the law.

19 And I'm going to caution you about one thing. The
20 statements made by lawyers do not constitute evidence in the
21 case. They cannot be used by the jury directly in
22 determining the guilt or the innocence of the defendant,
23 because they don't constitute evidence. They do present
24 their client's position as to the issues that are before
25 you, and they provide you a framework at the beginning of

1 the trial as to what the case is about, but the statements
2 by lawyers are not evidence and can't be considered by you
3 as evidence in this case.

4 Now, from time to time during the trial there may
5 be issues that come up concerning whether evidence should
6 come into the record or questions concerning the
7 appropriateness of questions that are being asked. If it's
8 my belief that that discussion with the lawyers, that I will
9 have to have with them when those issues are raised, might
10 go into matters that would not be admissible under the rules
11 of evidence that govern the admission of evidence in the
12 record. So if I think we are going to talk about something
13 that might be not admissible, I'll ask you to leave the
14 courtroom while we have those discussions. Don't take from
15 the fact that I have asked you to step outside, again, that
16 I have an opinion as to how you should determine the facts.
17 I hope you realize it's me doing my job, and my job is to
18 see to it that you only consider properly admitted evidence
19 under the rules of evidence that govern the admission of
20 that information in reaching your verdict. So while I have
21 those discussions, you will be outside the courtroom. I'll
22 ask you to step back in when we finish them and we will
23 continue the trial after I have announced my ruling, but
24 don't take from the fact that I have asked you to step
25 outside that I have an opinion as to how you should

1 determine the facts in this case.

2 Now, I'm going to tell you that in determining
3 what the facts are in any case, a jury must decide whether
4 or not the testimony of witnesses is believable or credible.
5 In other words, it's your responsibility as the finder of
6 fact to determine credibility or believability of the
7 testimony that you hear. So as you listen to the testimony,
8 be listening to the testimony with that in mind.

9 Now, in deciding whether to believe a witness in
10 this case, I'm going to tell you use your good common sense.
11 That's one reason we have jurors, because you bring your
12 collective common sense from your various walks of life into
13 the jury room during those discussions. So use your good
14 common sense in deciding whether or not testimony is
15 believable or not believable.

16 As the sole judges of the facts you can believe
17 all of, part of, or none of what a witness might testify to.
18 You have the right to believe one against all the others, or
19 all the others against one. You are the sole judges of the
20 facts. That makes you the sole judges of the credibility
21 and believability of the testimony that you hear.

22 Use your good common sense and consider such
23 factors as whether or not a witness may have a stake in the
24 outcome of the case; whether or not a witness may exhibit a
25 bias or a prejudice one way or the other; whether or not the

1 witness actually had the ability to know what the witness is
2 testifying about.

3 And I have been in courtrooms now for almost forty
4 years and I'll tell you that the witness stand is always
5 right in front of the jury box. And the reason for that is
6 that gives you an opportunity to observe the witnesses as
7 they testify, how they speak. Use your common sense and
8 make a determination as to the credibility and believability
9 of what you hear.

10 I'll tell you that every single day of your life
11 you make common sensical decisions as to what you choose to
12 believe and what you choose not to believe. Today and
13 tomorrow is going to be no different than any other day.
14 Use your common sense and make a determination as to the
15 credibility and believability of what you hear from the
16 witness stand during this trial.

17 You have a right to the consider anything that is
18 in the record of this case that will help you evaluate the
19 testimony of the witnesses. That means it's your duty to
20 pay attention to the witnesses. Listen to what they say.
21 Watch how they say it. Be in a position to discuss
22 credibility or believability with your fellow jurors at the
23 close of the trial.

24 Now, I know on television they appoint the
25 foreperson at the beginning of the trial. I don't do that.

1 I appoint the foreperson during my charge on the law and
2 after the close of the trial. I do that to emphasize one
3 thing to you. At the close of the trial I'm going to tell
4 you that before you can reach a verdict, all of you have to
5 agree on it. It has to be unanimous before a jury reaches a
6 verdict. That means that each of you will have an equal say
7 in the outcome of the case. The jury can't reach a verdict
8 until all of you agree. For that reason the foreperson is
9 no more important than any other juror. I'm concerned that
10 if I appoint a foreperson, some jurors may say "well, that
11 must be the most important person on the jury, so I'll let
12 them listen to everything and pay attention." I want each
13 of you to think that you might be the foreperson. That
14 means you are the person that leads the discussions about
15 this case. So at the close of the trial I'll make the
16 appointment as to who ought to be the foreperson in this
17 case, but in the meantime I guess you all are forepersons.
18 Each of you has the duty. Pay attention. Listen to what's
19 going on and be in the position to discuss the case when I
20 ask you to do so. So don't think that I have forgotten that
21 appointment. I haven't forgotten it. I do it this way
22 every time I do it, and I'll do this way again this time.
23 I'll appoint the foreperson at the close of the trial.

24 I want to be sure that I haven't violated anyone's
25 rights in my opening comments to you.

1 Does the State have an objection to my opening
2 comments?

3 MR. KENDALL: Nothing from the State, Your Honor...

4 THE COURT: Does the defense have any objection?

5 MR. THOMPSON: No, sir.

6 THE COURT: All right. Now, ladies and gentlemen,
7 I told you just a few minutes ago that the defendant has
8 pled not guilty and the burden of proof is solely upon the
9 State. Now, for that reason the State has the burden of
10 proof. They get to go first with their arguments, followed
11 by the defense. Then the State gets to go first with their
12 presentation of evidence, followed by any evidence the
13 defense chooses to put up. Then at the close of the trial
14 we will have closing arguments by lawyers. And once that's
15 completed, I'll charge you on the law. Now, once I have
16 charged you on the law, I'll turn the case over to you for
17 you to begin your deliberations, so that's the steps that we
18 will go through. Opening arguments, presentation of
19 evidence, closing arguments, presentation of the law, and
20 then the case will be yours to decide in deliberation.

21 So at this point in time we will begin the opening
22 statements.

23 You may proceed, Mr. Kendall.

24 MR. KENDALL: Thank you, Your Honor.

25 THE COURT: Yes, sir.

1 MR. KENDALL: May it please the court?

2 THE COURT: Yes, sir.

3 MR. KENDALL: Counsel.

4 Good morning, ladies and gentlemen. Thank you for
5 coming here today.

6 We are all here today because on October 15th,
7 2011, here in Cherokee County, the defendant, Ms. Marsha
8 Selph, with malice intent burned the home belonging to Lida
9 Bradshaw.

10 The home in question was located at [REDACTED]
11 here in Cherokee County and lived in by Buddy Earls. Now,
12 Mr. Earls is Ms. Bradshaw's son, and during this time he was
13 dating the defendant, Ms. Marsha Selph.

14 On this particular day, Ms. Selph and Mr. Earls
15 had been hanging out, doing a little partying with friends,
16 but as the day wore on things got tense around the house and
17 a verbal argument broke out. Not wanting to get into it
18 with her, Mr. Earls decided he was going to go hunting.
19 When he left Marsha Selph, the defendant, was the only one
20 at the house.

21 A little later Ms. Selph then went and knocked on
22 the door of Carlee Cantrell, a neighbor, asked them to use
23 her lighter. Ms. Cantrell didn't give her a lighter at that
24 time, but did light her cigarette for her, not thinking much
25 of it.

1 Then approximately twenty to thirty minutes later
2 Marsha came back to Carlee's house very upset. She was
3 crying and going on about how she had just burned the house
4 down. She told Carlee to watch her house, because it was
5 about to go up in flames.

6 As this was going on, a police cruiser was going
7 by with Officer Gardner attempting to serve an unrelated
8 warrant that had nothing to do with this case. But seeing
9 the police car drive down the street, Ms. Selph got scared
10 and tried to go into Carlee's house. Carlee said no, she
11 wasn't going to have any part of this and Marsha ran around
12 the home and into the woods, where she briefly ran across
13 Preston Bell, Carlee's boyfriend.

14 The officers patrolling the area saw Carlee (sic)
15 race off into the woods and wanted to further investigate
16 what was going on. Nobody had discovered the fire at this
17 time and they were just attempting to serve a warrant, and
18 somebody had run away, and it seemed like a logical thing to
19 look into. So they asked Preston who they had just seen
20 running away and he informed them it was Ms. Marsha Selph.

21 Getting back to the business at hand, officers
22 went out to go back and try to serve the warrant. As they
23 got back near the trailer at [REDACTED] they noticed it
24 was on fire. Acting fast they called the fire department.
25 This all took place within just a few minutes of Ms. Selph

1 running away from the trailer area, and they were able to
2 extinguish the flames.

3 Also they called out to the scene the crime scene
4 detectives here from Cherokee County, as well as fire
5 investigators. They were able to go through the home at
6 this time very carefully. Over the course of the trial you
7 are going to have an opportunity to hear from them and they
8 were able to determine the cause and location of that fire,
9 the starting point of that fire and they were able to rule
10 out any possibility of accident or anything along those
11 lines. The actual source of the fire turned out to be a
12 child's desk located out from the wall in the living room of
13 the home.

14 What's more, as law enforcement is finishing up
15 going through this investigation, what you will find is very
16 meticulous, and I apologize in advance, Ms. Selph came
17 running up out of the woods and started screaming in Buddy
18 Earls face. In fact, she got right in his face and started
19 screaming at him. And one of the things she said was, and
20 you are going to have to excuse my language, "you're not
21 blaming this shit on me," which was sort of odd at this
22 point because nobody had actually accused anybody of arson.

23 Finally, she was placed under arrest because she
24 was so loud and angry and assaultive and ultimately charged
25 with arson in this case.

1 Now, at the end of this trial I'm going to ask you
2 to return a verdict of guilty, but for right now I'm going
3 to ask you to do three things.

4 The first and most important is that you listen to
5 all the instructions of the judge. As a representative of
6 the State my job is to -- one of my jobs is to ensure that
7 this trial is done in a fair and just manner. Listening to
8 the instructions the judge gives you will ensure that
9 happens.

10 Second, please listen to all the evidence
11 presented today very, very carefully.

12 And, finally, in this case please use a little
13 common sense. You will find it goes a long way.

14 Thank you very much.

15 THE COURT: Mr. Thompson for the defense?

16 MR. THOMPSON: Yes, sir.

17 MR. THOMPSON: If it please the court?

18 THE COURT: Yes, sir.

19 MR. THOMPSON: It's still morning. Good morning,
20 ladies and gentlemen.

21 First let me just apologize for my grungy
22 appearance here this morning. At four o'clock this morning
23 my son woke me up and said "daddy, it's cold in the house."
24 And I said "you know, it sure is." And I checked and the
25 heat pump was off. At six o'clock when I got up to take a

1 shower the pipes were frozen. That shows how cold it got in
2 our house, so I apologize for my appearance. Tomorrow
3 morning hopefully it would be better.

4 Ladies and gentlemen, I'm representing Ms. Selph.
5 She's charged with arson. And I know that the solicitor
6 just stood here and went through this nice little story and
7 that's what he's hoping to prove when the witnesses get up
8 on the stand. Understand that he has the burden of proving
9 that Ms. Selph intentionally set this mobile home on fire,
10 okay; she intentionally set it on fire, or cause it to be
11 set on fire; she intentionally burnt this mobile home.

12 Now, you are going to hear I think from a number
13 of firemen, people like that. I want you to listen
14 carefully to what they have to say. They are not going to
15 tell you how the fire started. They are not going to tell
16 you who started the fire, okay? They are here, they are in
17 their uniforms, they are ready to go, but I think the only
18 person that you are going to hear anything from that says
19 that Ms. Selph is the person that started the fire is Carlee
20 Cantrell, based on what the solicitor just told you that
21 went on between Ms. Cantrell and Ms. Selph.

22 Listen very carefully and see if there is any
23 other -- there is no question there was a fire there, okay?
24 Nobody is questioning there was a fire in that home, but I
25 don't think you are going to find any evidence, short of

1 what Ms. Cantrell says, that says the fire was intentionally
2 set by or that Ms. Selph did it. And I don't think, if you
3 are going to -- if you listen carefully to what Ms. Cantrell
4 says, I don't think you are going to hear her say that it
5 was intentionally set, okay? So that's what I'm asking you
6 to do right now.

7 It's going to be a long trial. It's not going to
8 end today, but I want you to listen, because when you get
9 back in that jury room and start deliberating you are going
10 to need to take something that you heard here in the next
11 few minutes and put with something that you hear sometime
12 tomorrow to make a decision on what really happened. Your
13 job is to get to the truth.

14 I'm going to tell you something. Sometimes you
15 just can't get to the truth. The State has the burden of
16 proving beyond a reasonable doubt. And if they don't do
17 that, Ms. Selph is innocent. She's not guilty. She's
18 sitting over there not guilty right now.

19 Listen carefully. Make sure that the State
20 fulfills their burden of proof. Thank you.

21 THE COURT: The State may call its first witness.

22 MR. KENDALL: The State would call Mr. Buddy
23 Earls, Your Honor.

24 THE COURT: Come forward, please.

25 BUDDY EARLS, JR., having been first duly sworn,

1 testified as follows:

2 THE COURT: Have a seat, sir.

3 THE WITNESS: Yes, sir.

4 THE COURT: Once you are seated, state your name
5 for me.

6 THE WITNESS: Sir?

7 THE COURT: State your name, please.

8 THE WITNESS: Buddy Earls.

9 THE COURT: Thank you.

10 Mr. Kendall, your witness.

11 MR. KENDALL: Thank you, Your Honor.

12 DIRECT EXAMINATION BY MR. KENDALL:

13 Q. Could you please state your full name for the record
14 again, please?

15 A. Yeah, Buddy Lewis Earls, Jr..

16 Q. Mr. Earls, where do you currently reside?

17 A. I currently reside right now at [REDACTED],
18 Blacksburg.

19 Q. Okay. And what is your current occupation?

20 A. I'm an insulator at Hoechst Celanese in Rutherfordton.

21 Q. Okay. And on October 15th, 2011, were you living at
22 [REDACTED]

23 A. Yes, sir, I was.

24 Q. And what county is that located in?

25 A. That's in Cherokee County.

1 Q. Okay. And what was the situation, as far as ownership
2 of this property? Who owned the property at that time?

3 A. My mother.

4 Q. And what is her name?

5 A. Lida Bradshaw.

6 Q. Okay. And were you -- how were you living there? Were
7 you renting the property?

8 A. Yes, I was.

9 Q. Okay.

10 A. Me and Marsha Selph.

11 Q. Okay. And what was your relationship to Ms. Selph?

12 A. Girlfriend.

13 Q. Okay. And do you see her in the courtroom today?

14 A. I do.

15 Q. Could you please point her out?

16 A. Right there.

17 Q. And what is your current relationship to her?

18 A. My current relationship now?

19 Q. Yes.

20 A. Girlfriend.

21 Q. So you all are still together at this point?

22 A. At this time, yes, sir.

23 Q. And to be clear, the home actually belongs to your
24 mother, is that correct?

25 A. That's correct.

1 Q. The belongings that were inside the home, who did they
2 belong to, though?

3 A. To me and Marsha Selph.

4 Q. Okay. I would like to talk for a few moments with
5 you --

6 Oh, let me ask you this. How long have y'all dated in
7 total?

8 A. I believe it was probably around six years, something
9 around there.

10 Q. Okay. Now, I would like to talk to you for a moment
11 about what happened on October 15th, 2011.

12 Do you recall what happened during the day that day?

13 A. During the day that day we just -- normally we got up
14 and she put some beans on the pot, on the stove, a meal for
15 the morning.

16 We went outside, fiddled around for awhile. And Jerry
17 Blankenship and Tina came over, which they were just
18 residing on the other side of the road at the time, and we
19 got to playing around with some paint balls --

20 Q. Okay.

21 A. -- a little bit, and then Marsha said her -- she got
22 shingles, that her shingles was hurting her real bad. And
23 then that led to going up to the road to get some liquor,
24 and they commenced to drinking liquor and all, and that's --
25 after that we left and went to Tina's uncle's house, I

1 believe it was.

2 Q. Okay.

3 A. And then we come back and then me and Marsha started
4 getting into an argument. I talked to her, I said "look --
5 I said -- well, Jerry and Tina left, and I said "I'm not
6 going to argue. I'm just going to turn around and go
7 hunting and be done with it," so that's what I did.

8 Q. Okay. So to be clear, kind of go back over some
9 testimony very quickly.

10 A. Uh-huh.

11 Q. That day is it fair to say that you had some friends
12 over?

13 A. Yes. Yes, that's right.

14 Q. That's when you got to -- you had messed around with
15 some paint balls for a little bit?

16 A. Yes, we did.

17 Q. And you had done been drinking.

18 A. Yes, sir.

19 Q. Did Ms. Selph do some drinking as well?

20 A. Yes, she did.

21 Q. Okay. And then you had left and gone hunting, is that
22 correct?

23 A. That's correct.

24 Q. And do you recall about what time that you went
25 hunting? Not a clock time. Just maybe a time of day,

1 generally.

2 A. Toward the evening. Toward the evening.

3 Q. Toward the evening time, okay.

4 A. Toward the evening time.

5 Q. Okay. And when you returned -- at the that you left
6 who else was in the house?

7 A. Just Marsha.

8 Q. Okay. And when you returned to the home -- when you
9 returned home, what did you find?

10 A. All them gentlemen right there and a bunch of fire,
11 policemen, and everything else, and smoke. And I got -- I
12 got -- basically I panicked, because I didn't know who, if
13 anybody, was in there or not, so I went around trying to get
14 in the house and they told me -- they instructed me not to.

15 Q. Okay. All right.

16 And when did you first realize that it was on fire?
17 When you pulled in at that point?

18 A. As soon as I pulled up right there.

19 Q. Okay. Did you attempt to call anyone to find out what
20 was going on?

21 A. No, sir, I didn't.

22 Q. Did you attempt to call Ms. Selph?

23 A. No, I didn't. I run -- I run around to the back of the
24 house. I tried to get in the front of the house and they
25 wouldn't let me, because I thought she was in there.

1 Q. What about -- what about after -- what about after
2 everything kind of calmed down a little bit? Did you
3 attempt to call Ms. Selph before she --

4 A. I did, afterwards. Everything calmed down I did
5 attempt to call her.

6 Q. Just once, or a fair number of times?

7 A. A couple of times, yes, sir..

8 Q. Okay. And did she ever respond?

9 A. Trying to find out where she was.

10 Q. Did she ever respond to any of your phone calls or
11 anything?

12 A. No, she didn't. The phone was dead. It went straight
13 to voicemail.

14 Q. Okay. Now, we want to be honest with the jury and
15 present them all the facts today.

16 A. Uh-huh.

17 Q. When you first got there, when you were first on the
18 scene, what were you are worried might have started the
19 fire?

20 A. Say that again.

21 Q. When you first got to the scene, when you first arrived
22 on the scene --

23 A. Uh-huh.

24 Q. -- when you first got there and the house was already
25 on fire, what were you concerned about when you talked to

1 the detectives what might have started the fire?

2 A. He asked me what might have started the fire and I said
3 "I really don't know." And they said just something caught
4 on fire, somebody done it.

5 Q. Do you recall letting them know that you might have
6 left the beans on?

7 A. I may have, yeah. I may have, yeah.

8 Q. Okay. When was the next time that you saw Ms. Selph?

9 A. When everyone saw her when she come up, probably a few
10 hours later, and she come up.

11 Q. She didn't -- she didn't come back again until a few
12 hours later? She didn't come back to the house?

13 A. After the fire? Yeah, after the fire started, yeah.

14 Q. Okay.

15 A. And I was there just a couple hours. I believe it was
16 an hour. I ain't really sure.

17 Q. Okay.

18 A. And she come running up to the house.

19 Q. Okay. And just to be clear, and I'm going a little out
20 of order here, that pot of beans that we talked about, that
21 was -- where was that located in the house?

22 A. It was located on the stove.

23 Q. And that is in the --

24 A. In the kitchen.

25 Q. Okay. Now, Mr. Earls, I'm going to show you what is

1 marked State's Exhibit 42. I'm going to hold it. It's got
2 a little stuff on it. Do you recognize this?

3 A. I do, sir.

4 Q. And what the is this?

5 A. That's a Buddy propane heater, like Mr. Heater, to --
6 for outside work, or whenever you can heat stuff.

7 Q. And do you recognize this particular one?

8 A. I do.

9 Q. Okay. And what did -- where did this come from?

10 A. I think it come from Wal-Mart.

11 Q. Okay. And what were you using it for during 2011?

12 A. Actually I was using it -- I bought it for a dual
13 purpose. The heater went out in the truck --

14 Q. Uh-huh.

15 A. -- and I bought that right there, put it in there
16 thinking that that would supply, I reckon, the heater
17 problem, but --

18 Q. Okay. And when you left the house to go hunting that
19 day --

20 A. Uh-huh.

21 Q. -- on October 15th, 2011, the early evening, where was
22 this located?

23 A. It would be in the living room area.

24 Q. Okay. And where in the living room?

25 A. (No response).

1 Q. If you don't remember, that's okay.

2 A. I don't remember. I just know it was in the living
3 room.

4 Q. Now, I would like to ask you about the condition this
5 was in when you left. I'm not sure you are able to take a
6 look at it. Was this heater in working condition when you
7 left?

8 A. Yes, it was.

9 Q. And, to your knowledge, did it have any burn marks --

10 A. No, sir.

11 Q. -- or did it have all the panels?

12 A. Yes, sir.

13 Q. I'm going to have you take a look at it right now.
14 Again, I'll handle it because it's a little sooty.

15 Does it appear to be missing or have broken panels now?

16 A. Yes, it does. Well, broken one there, and the fire
17 started up there.

18 Q. Okay. And I'm going to show you, if I can point out
19 just two spots here, what does that appear to be?

20 A. Burn marks.

21 Q. Okay. And right there?

22 A. Broken and a burn mark.

23 Q. Okay. And was it like that when you left the home that
24 day?

25 A. No, sir, it wasn't.

1 Q. Okay.

2 MR. KENDALL: Your Honor, I would request just
3 permission to kind of publish it to the jury. I'll just
4 hold it up closer to them.

5 THE COURT: I think they have seen it. You can
6 leave it on the table there.

7 BY MR. KENDALL:

8 Q. And just to be clear, this all took in place in
9 Cherokee County, South Carolina?

10 A. That's correct.

11 Q. Okay. I have got no further questions, Mr. Earls.
12 Please answer any questions that Mr. Thompson might have for
13 you, okay?

14 A. Yes, sir.

15 THE COURT: Mr. Thompson, your witness.

16 MR. THOMPSON: Thank you.

17 THE COURT: Yes, sir.

18 CROSS EXAMINATION BY MR. THOMPSON:

19 Q. Mr. Earls, is [REDACTED], [REDACTED] is that in
20 Gaffney or Blacksburg?

21 A. That's in Blacksburg, South Carolina.

22 Q. Okay. The kitchen in the mobile home, you said there
23 was a pot of beans that morning on the stove?

24 A. Yes, sir.

25 Q. Do you know where the fire started in the home at?

1 A. I was instructed that the fire started --

2 Q. I don't want to hearsay.

3 Did you go in and see where it started?

4 A. I walked in, yes.

5 Q. Okay. And did you see where there was a burn?

6 A. I saw where it was burning. The living room.

7 Q. Okay. And where in the living room?

8 A. In the kitchen area. It looked like there was a little
9 burn spot there.

10 Q. Okay. In the kitchen area?

11 A. In the kitchen area.

12 Q. Okay. Was the burn -- was there any furniture burnt?

13 A. Yes, there was.

14 Q. What?

15 A. A couch. A recliner, part of a recliner and that's
16 about it. I think there was a few -- small chairs gone. I
17 think they got burnt.

18 Q. Was the mobile home itself, the structure of the mobile
19 home, was it burnt?

20 A. No, sir.

21 Q. It wasn't burnt?

22 A. Uh-uh. The sheet rock part was burnt.

23 And where they took an axe through the top of the
24 ceiling, it was knocked down and wet.

25 Q. Okay. Was the mobile home a total loss?

1 A. No, sir.

2 Q. Did the mobile home have heat?

3 A. Yes, sir, it did.

4 Q. Was this little thing ever used to heat the inside of
5 the mobile home?

6 A. No, sir.

7 Q. Were you there when the fire started?

8 A. No, sir, I wasn't.

9 Q. Do you know -- do you have any personal knowledge of
10 how the fire started?

11 A. Just what I have been told.

12 Q. Okay. And you and Ms. Selph have been boyfriend
13 girlfriend for about six years now?

14 A. Yes, sir.

15 Q. Are you all still living together?

16 A. Yes, sir, we do.

17 Q. Okay.

18 MR. THOMPSON: Thank you.

19 THE COURT: Redirect?

20 MR. KENDALL: Very, very briefly, Your Honor.

21 THE COURT: Yes, sir.

22 REDIRECT EXAMINATION BY MR. KENDALL:

23 Q. I would like to talk very, very quickly about damage to
24 the house. There was substantial smoke damage throughout
25 the house, is that correct?

1 A. That's correct.

2 Q. And I would like to show you what is marked State's
3 Exhibits 5 and 6. Do you recognize that?

4 A. Yes, sir, I do.

5 Q. And is that a fair rendition of what the house looked
6 like when you got back into it?

7 A. Yes, sir, it is.

8 Q. Okay. And so -- you were talking about burning. Could
9 you look on this picture and see any incidents of smoke
10 damage?

11 A. That area right there, basically.

12 Q. Okay. And what about along the base there, any burning
13 damage up there as well?

14 A. Yes, sir.

15 Q. Okay. I would also like to show you what is marked
16 State's Exhibit --

17 Was there also -- was there any damage to the flooring
18 as well?

19 A. Just wet.

20 Q. Just wet, okay?

21 A. The fire scene.

22 Q. Okay. I'll ask Ms. Bradshaw about some of that.

23 MR. KENDALL: No further questions, Your Honor.

24 THE COURT: Mr. Thompson, any other questions of
25 the witness?

1 MR. THOMPSON: No, sir.

2 THE COURT: You may step down, sir.

3 Mr. Kendall and Mr. Thompson, can you approach
4 briefly?

5 (Whereupon, the lawyers approached the bench for
6 an off-the-record discussion)

7 THE COURT: Mr. Kendall, you may call your next
8 witness.

9 MR. KENDALL: The State would call Ms. Tina Wray.

10 THE COURT: Come forward, ma'am, to my left and be
11 sworn, please. Thank you.

12 TINA WRAY, having been first duly sworn, testified
13 as follows:

14 THE COURT: State your name, please.

15 THE WITNESS: Tina Leanne Wray.

16 THE COURT: Thank you.

17 Mr. Kendall, your witness.

18 DIRECT EXAMINATION BY MR. KENDALL:

19 Q. Ms. Wray, where do you currently reside?

20 A. In Blacksburg.

21 Q. Okay. Do you know Marsha Selph and Buddy Earls?

22 A. Yes.

23 Q. And were you hanging out with them on October 15th,
24 2011?

25 A. Yes.

1 Q. Could you please briefly describe what was going on and
2 what you guys were doing?

3 A. Just hanging out, drinking.

4 Q. Okay. And before you went home, did you have the
5 opportunity to go inside their home?

6 A. Yes.

7 Q. And did you have the opportunity to go into their
8 kitchen?

9 A. Yes.

10 Q. And before you went home what did you find?

11 A. She had put on a pot of beans, but we turned them off.

12 Q. Okay. So before you left the house that day you turned
13 off the pot of beans?

14 A. I think. I'm not positive, but I think so.

15 Q. Okay. And after this -- when this happened, you talked
16 to law enforcement, correct?

17 A. I think so.

18 Q. And that's what you told them as well?

19 A. Yeah.

20 Q. Okay. So basically you are over there on October 15th
21 hanging out drinking and before you left, you turned off the
22 beans, is that correct?

23 A. I'm not positive. I'm not positive. It's been so long
24 ago.

25 Q. Okay. That is what you remembered that day when you

1 talked to law enforcement?

2 A. Yeah.

3 Q. Okay.

4 MR. KENDALL: No further questions, Your Honor.

5 THE COURT: Mr. Thompson, your witness.

6 CROSS EXAMINATION BY MR. THOMPSON:

7 Q. What time of day did you leave?

8 A. It was in the evening.

9 Q. It was in the evening?

10 A. It was still daylight.

11 Q. Okay. Who was there when you left?

12 A. Buddy was there and -- well, Buddy was leaving and
13 Marsha was there.

14 Q. So there was you, Buddy, and Marsha there?

15 A. And -- yes, and Jerry. My boyfriend Jerry was there.

16 Q. Okay. And there hadn't been a fire at that point in
17 time, had there?

18 A. No.

19 Q. And you turned off the pot of beans, you think, but you
20 are not sure?

21 A. I ain't sure.

22 Q. Okay. Who left with you?

23 A. Jerry.

24 Q. So you left, and Buddy and Marsha still in the mobile
25 home?

1 A. Yes. They was there. I'm not sure if they were
2 inside, outside, I don't really remember.

3 Q. Okay. Do you have any personal knowledge of how the
4 fire started?

5 A. No.

6 Q. Thank you.

7 MR. THOMPSON: Thank you.

8 THE COURT: Mr. Kendall?

9 MR. KENDALL: No redirect, Your Honor.

10 THE COURT: All right, you may step down, ma'am.

11 Call your next witness, Mr. Kendall.

12 MR. KENDALL: The State would call Ms. Carlee
13 Cantrell.

14 THE COURT: Come forward, ma'am, and be sworn.

15 CARLEE CANTRELL, having been first duly sworn,
16 testified as follows:

17 THE COURT: Have a seat, please, and state your
18 name.

19 THE WITNESS: Carlee Cantrell.

20 THE COURT: Thank you.

21 Your witness, Mr. Kendall.

22 DIRECT EXAMINATION BY MR. KENDALL:

23 Q. All right. Yes, ma'am, Ms. Cantrell, where do you
24 currently reside?

25 A. In Blacksburg.

1 Q. Okay. And were you living on [REDACTED] on October
2 15th, 2011?

3 A. [REDACTED], yes, sir.

4 Q. And what is -- where is that in relation to Mr. Buddy
5 Earls home?

6 A. Right across the street.

7 Q. Okay. And is that right across the street from [REDACTED]
8 [REDACTED]

9 A. It's -- [REDACTED] is here, and it's diagonal. Just straight
10 across.

11 Q. Okay. And while you were living there, did you know
12 Ms. Selph?

13 A. I did.

14 Q. Do you see her in the courtroom today?

15 A. I do.

16 Q. Could you point her out, please?

17 A. Right there.

18 MR. KENDALL: Please let the record reflect that
19 she pointed to the defendant.

20 THE COURT: It would so reflect.

21 BY MR. KENDALL:

22 Q. And did you -- and how long have you known Ms. Selph?

23 A. A year, two years.

24 Q. Okay. And did you see Ms. Selph on October 15th, 2011?

25 A. I did.

1 Q. And during that time did she ever come over to your
2 house on October 15th, 2011?

3 A. She did.

4 Q. Okay. About how many times?

5 A. Three.

6 Q. Three.

7 Could you please describe just one after the other for
8 us?

9 A. Well, it was early in the evening and they was hanging
10 out and drinking and everything, and Preston had had a
11 friend over, and she come over and was talking and needed a
12 ride to the store. And I joked, you know. She had pulled
13 down my basketball shorts that I was wearing in front of
14 Preston and his friend, and, you know, we laughed about it,
15 joked, you know, went on about our business.

16 And later on that evening I guess they had got into it,
17 because I wasn't over there when they were drinking or
18 anything.

19 Q. Well, just testify as to the stuff that you saw, okay?

20 A. Okay. And Buddy had left and gone hunting and she had
21 come over.

22 And at this time we had two little dogs and one had run
23 outside and Preston was outside looking for it at the time.
24 And Marsha had come over and asked if I had a lighter she
25 could borrow and I told her I didn't have one she could

1 borrow, but she could use it, you know. And she lit her
2 cigarette and she left, and about twenty, thirty minutes
3 later she come back.

4 Q. Okay.

5 A. I was standing in the doorway. She was standing on the
6 porch and we was just talking and she was really upset and I
7 was asking her what was wrong. And, you know, and she just
8 said that she couldn't don't it any more. You know, her and
9 Buddy was fighting, and that if I just looked, did I see her
10 house glow, go up in smoke. And I'm like "Marsha, what are
11 you talking about?" She said "I can't do it any more."

12 And then about this time an officer who was looking for
13 somebody else come driving down the road and she attempted
14 to come inside, and, you know, I told her I had my son
15 inside, you know, I couldn't do that, and so she took off
16 and run around the house.

17 Q. Okay. Now, let's go through this kind of one by one.

18 A. Uh-huh.

19 Q. During the first time when she came over and everybody
20 was joking around and she pulled down your basketball
21 shorts, could you describe her kind of emotional state then?

22 A. She was happy.

23 Q. She was happy?

24 A. She was in a good mood.

25 Q. Okay. Could you tell if she was under the influence or

1 had been drinking at all?

2 A. She had been drinking.

3 Q. Okay. What about the second time she came back? What
4 was her state then?

5 A. She was upset.

6 Q. She was upset?

7 A. She was upset.

8 Q. That's when she asked to borrow the lighter, is that
9 correct?

10 A. Yes.

11 Q. What about the third time?

12 A. She was upset too.

13 Q. Okay. And, again, what was her -- what was her state,
14 as far as -- as far as, you know, alcohol? Did she appear
15 to be drinking then as well?

16 A. She wasn't drinking at the time that she was over
17 there. She was intoxicated, but she -- you know, she was
18 walking and everything, but --

19 Q. When you say she was upset, was she crying?

20 A. She was crying.

21 Q. And did she make reference to the house in any way?

22 A. Just that it was going to go up in smoke.

23 Q. Okay. And a short time later were you able to see if
24 it did go up in smoke?

25 A. It did. I was there.

1 Q. And about how long after she said that were you
2 actually able to see it from across the way?

3 A. Thirty minutes, forty minutes. I'm not really sure.

4 Q. Not really sure?

5 A. Not -- not as a time frame. You know, it all happened
6 so fast.

7 Q. Okay. So it was a fairly short time after --

8 A. Right.

9 Q. -- she came over, you know, to smoke and then went back
10 after the smoke?

11 A. Yeah. I mean, from the time that she told me to the
12 time that the police officers and, you know, the fire
13 department come, it wasn't but like an hour or so. It
14 wasn't long at all.

15 Q. Okay. And what did she do when she saw the police
16 officers coming?

17 A. She attempted to come inside.

18 Q. Okay. When you say attempted to come inside, did she
19 ask nicely to come inside?

20 A. No, she was just going to come in. She just tried to
21 walk in. You know, I just held my hand up and told her I
22 have my son inside and, you know, I couldn't do that.

23 Q. Okay. Why did she appear to want to come inside, to
24 you?

25 A. In my opinion was because the officer was driving down

1 the road.

2 Q. So she was attempting -- she was worried about the
3 officer being there --

4 A. Yeah.

5 Q. -- is that correct?

6 A. Yes.

7 Q. When you told her she couldn't come in, what did she
8 do?

9 A. She run around the house.

10 Q. She ran around the house.

11 So she didn't run towards the law enforcement officer?

12 A. Uh-uh.

13 Q. Okay. So is it fair to say she ran away?

14 A. Yeah.

15 Q. And it appeared to you that that was because she was
16 afraid or didn't want to be seen by law enforcement?

17 A. I thought -- you know, when I seen the officer, you
18 know, she told me that, you know, her house was about to
19 catch on flames, I thought, you know, the officers was
20 looking for her. I didn't know that they were looking for,
21 you know, a different party.

22 Q. Okay.

23 A. But my opinion was that they were looking for her, and,
24 you know, and she was trying to get out.

25 Q. Okay. Please answer any questions that Mr. Thompson

1 might have for you.

2 A. Okay.

3 THE COURT: Mr. Thompson, your witness.

4 CROSS EXAMINATION BY MR. THOMPSON:

5 Q. You currently rent from Mr. Earls, is that right?

6 A. Not currently, but at the time I did, yes, sir.

7 Q. Well, at the time you rented from Mr. Earls. Okay.

8 Now, you say that the first time that she came over she
9 wanted to borrow a lighter?

10 A. After --

11 Q. The second time?

12 A. Yes, after.

13 Q. Okay. She wanted to borrow a lighter from you?

14 A. Uh-huh.

15 Q. And you let her have it to light her cigarette?

16 A. Yeah, she lit her cigarette. I didn't give it to her,
17 though.

18 Q. So she didn't leave your house with the lighter?

19 A. She didn't..

20 Q. Okay. And how long was it before she came back?

21 A. Twenty, thirty minutes.

22 Q. Okay. And from the time she came back until the fire
23 department and all were there, you said it was about an
24 hour?

25 A. I could not give you a time frame. I'm just saying

1 from the time that all of the asking of the lighter to the
2 police officers to the fire department, I would just range
3 an hour.

4 Q. Okay. And what's your boyfriend's name?

5 A. Preston Bell.

6 Q. Okay. Have you discussed this with other people in the
7 neighborhood?

8 A. Discussed it? You mean talked about it?

9 Q. Yeah.

10 A. Yeah.

11 Q. Okay. Have you told any of them that you were forced
12 to make this statement because the police were going to
13 arrest your boyfriend if you didn't do that?

14 A. No, sir.

15 Q. You have not told anybody that?

16 A. No, sir.

17 Q. Okay.

18 A. He asked if I would write a statement and I told him
19 yeah, I didn't have no reason to lie.

20 Q. Who is he?

21 A. The officer that asked me to.

22 Q. Todd Parker?

23 A. I believe so.

24 Q. Okay. But you have denied that you have told anybody
25 that you had to write a statement?

1 A. I have never said that. He never threatened anything.

2 Q. Okay.

3 A. I wrote it voluntarily.

4 Q. Did you see the fire start?

5 A. I seen the house on fire, yeah. I didn't see the first
6 part or anything.

7 Q. Okay. So you don't know how the fire started?

8 A. I didn't see it.

9 Q. Okay. Thank you.

10 THE COURT: Redirect?

11 MR. KENDALL: Just very briefly on a couple of
12 points, Your Honor.

13 THE COURT: Yes, sir.

14 REDIRECT EXAMINATION BY MR. KENDALL:

15 Q. I'd just like to talk to you very quickly about the
16 voluntariness of your statement, because Mr. Thompson --
17 what's he's referring to is you gave a written statement at
18 one point, is that correct?

19 A. (Shaking head yes).

20 Q. But you are here today, is that correct? Has there
21 been any pressure, or influence, or anything at all put on
22 you?

23 A. No, sir.

24 Q. The statement that you have given is freely in your
25 own?

1 A. (Shaking head yes).

2 Q. Okay. I would like to also nail down the time, or at
3 least acknowledge we can't nail it down. It's very, very
4 important. I know Mr. Thompson touched on this, that we
5 have -- we know what you know and know what you don't know.

6 How long would you say it was -- if you don't know,
7 that's okay, too, from the time she came over -- back over
8 the third time to when you saw smoke or fire coming from the
9 house?

10 A. I would guess forty minutes. I don't know.

11 Q. Don't guess.

12 A. Okay, then I don't know.

13 Q. Okay. Was it a long period of time? Was it a
14 relatively short period of time?

15 A. It didn't seem like it was a long length of time.

16 Q. Okay. So it seemed like a relatively short period of
17 time?

18 A. Yes.

19 Q. Okay.

20 MR. KENDALL: I have got no further questions,
21 Your Honor.

22 THE COURT: Mr. Thompson, anything further?

23 MR. THOMPSON: No, sir.

24 THE COURT: All right, ma'am, you may step down.

25 Ladies and gentlemen of the jury, at this point in

1 time we are going to break for lunch. You will be leaving
2 the courthouse. And as you leave I'll be again reminding
3 you you should not discuss the case with anyone. Don't
4 allow anyone to discuss it with you. Don't attempt to
5 gather information on your own. Don't listen to, watch, or
6 read media reports concerning the case.

7 One other thing I want to mention to you. Should
8 someone try to contact you concerning your service on this
9 jury, please report that upon your return. I have explained
10 to you that I take jury tampering or trying to influence the
11 jury very seriously and I will see that the appropriate
12 action is taken, should someone attempt to do that.

13 I will ask you to be back in the jury room in
14 about an hour and fifteen minutes. So we will say about
15 1:30. The bailiff will show you where to report back. Go
16 straight there and we should be able to start shortly
17 thereafter.

18 I hope you have a good lunch. You are free to go
19 at this time.

20 (The following takes place outside the presence of
21 the jury panel)

22 THE COURT: All right, Ms. Selph, you have been on
23 bond up until this point in time in the case.

24 THE DEFENDANT: Yes, sir.

25 THE COURT: I'm not going to require that you be

1 incarcerated during the trial, so I'll allow you to move
2 about.

3 I will caution you at 1:30 we will resume the
4 trial of your case. If you fail to appear at that time we
5 will continue the trial without you. And after not being
6 present I will issue a bench warrant for your arrest at that
7 time. Do you understand that, ma'am?

8 THE DEFENDANT: I'm right here.

9 THE COURT: You are going to step out. I want to
10 be sure that you come back at 1:30.

11 All right, court is in recess until then. Thank
12 you very much.

13 MR. KENDALL: The witnesses that testified, can
14 they go home, subject to recall?

15 THE COURT: Any objection to them leaving?

16 MR. THOMPSON: No objection.

17 THE COURT: Anyone that has already testified is
18 free to go. Thank you.

19 (Whereupon, proceedings were recessed)

20 (Whereupon, proceedings were reconvened)

21 THE COURT: Is the State ready to proceed?

22 MR. KENDALL: I believe so. If I could just do a
23 quick inventory of my --

24 THE COURT: Are you ready?

25 MR. THOMPSON: We are ready.

1 THE COURT: Okay.

2 MR. KENDALL: The State is ready, Your Honor.

3 THE COURT: All right, let's bring the jury in.

4 (The following takes place in the presence of the
5 jury panel)

6 THE COURT: All right, the record will reflect
7 that the jury has returned to the courtroom.

8 I hope everyone had a good lunch and we are ready
9 to proceed.

10 If anyone had any difficulty in complying with my
11 instructions concerning your behavior while away from the
12 courthouse, please stand.

13 (No response)

14 THE COURT: It appears that all jurors have been
15 able to comply with the court's instructions thus far.

16 As you come and go I notice everyone was trying to
17 get back in their seat. There aren't any assigned seats in
18 the jury box, so just fill in, except for yours. Yours is
19 the assigned, so you will need to come in first, and then
20 other than that, you just fill in. You don't have to sit in
21 the same seat every time.

22 All right. When we took our break the State was
23 in the process of calling its witnesses.

24 You may call your next witness.

25 MR. KENDALL: Thank you, Your Honor.

1 The State would call Mr. Preston Bell.

2 THE COURT: Come forward, Mr. Bell.

3 Come around over here and be sworn, please, sir.

4 Thank you.

5 PRESTON BELL, having been first duly sworn,
6 testified as follows:

7 THE COURT: State your name, please.

8 THE WITNESS: Preston Bell.

9 THE COURT: Thank you.

10 Your witness, counselor.

11 DIRECT EXAMINATION BY MR. KENDALL:

12 Q. Mr. Bell, what is your current occupation.

13 A. 387 -- what's that?

14 Q. What's your current occupation? What do you do for a
15 living?

16 A. Insulate.

17 Q. Okay. And where do you currently live?

18 A. [REDACTED].

19 Q. And who do you live with?

20 A. My mom and stepdad.

21 Q. Okay. And what is your relation to Carlee Cantrell?

22 A. Girlfriend.

23 Q. Girlfriend. All right.

24 And were you guys boyfriend and girlfriend on October
25 15th, 2011?

1 A. Yes, sir.

2 Q. Okay. And were you living together at that time?

3 A. Yes, sir.

4 Q. And where were y'all living at that point?

5 A. I forget the address, but --

6 Q. On what road was it on?

7 A. [REDACTED].

8 Q. Okay. And do you know prior -- did you know Marsha
9 Selph around that time?

10 A. Yes, sir.

11 Q. Do you see her in the courtroom today?

12 A. Yes, sir.

13 Q. Could you please point her out?

14 A. (Witness pointing).

15 MR. KENDALL: Let the record reflect, Your Honor,
16 that he did also identify Ms. Selph.

17 THE COURT: The record shall so reflect.

18 You may proceed.

19 BY MR. KENDALL:

20 Q. Did you see Ms. Selph at any point on the night of
21 October 15th, 2011?

22 A. At night?

23 Q. Or that evening.

24 A. Oh, yes, sir.

25 Q. And where did you see her?

1 A. Around. We lived right beside each other.

2 Q. Okay. Around dusk at that time, around the seven,
3 eight o'clock time, did you see her any time at that point?

4 A. Yes, sir.

5 Q. Where did you see her then?

6 A. On the power line.

7 Q. On the power line.

8 And where was the power line in relation to your and
9 her house?

10 A. On the side of my house, kind of like -- right here is
11 my house, their house, and the power line was right here.

12 Q. And what was she doing when you saw her on the power
13 line?

14 A. Running.

15 Q. How did she appear to you?

16 A. She just kind of like run past me.

17 Q. Okay. Did she seem like she was in a hurry?

18 A. She was like in a little jog.

19 Q. Oak. Is there anything over in that area that somebody
20 would be running to? Are there any stores on the power
21 line, or are there any --

22 A. No, sir.

23 Q. At some point that evening did somebody ask you who had
24 run by you?

25 A. Yes, sir, the cops.

1 Q. And did you tell them who, in fact, had run by you?

2 A. Yes, sir.

3 Q. And who did you tell them had run past you?

4 A. Marsha.

5 Q. Okay. Just please answer any questions Mr. Thompson
6 has.

7 THE COURT: Mr. Thompson, your witness.

8 CROSS EXAMINATION BY MR. THOMPSON:

9 Q. Daylight or dark?

10 A. Right at dark.

11 Q. Right at dark.

12 What were you doing out on the power line?

13 A. Getting my dog.

14 Q. Were you out hunting?

15 A. No, sir.

16 Q. Does Ms. Selph have a dog?

17 A. Several.

18 Q. Several?

19 A. Yes.

20 Q. Does she have a dog that goes every place she goes?

21 A. Yes, sir.

22 Q. Was there a dog with her when you saw her running on
23 the power line?

24 A. I don't recall.

25 Q. Okay. Thank you.

1 THE COURT: Redirect?

2 MR. KENDALL: Nothing further, Your Honor.

3 THE COURT: You may step down.

4 Do you wish to excuse the witness?

5 MR. KENDALL: I do, Your Honor.

6 THE COURT: Any objection?

7 MR. THOMPSON: No, sir.

8 THE COURT: You are free to leave, if you would
9 like, sir. You are also free to stay, if you would like.
10 Thank you.

11 THE WITNESS: Thank you.

12 THE COURT: You may call your next witness.

13 MR. KENDALL: The State would call Officer Brandon
14 Gardner.

15 OFFICER BRANDON GARDNER, having been first duly
16 sworn, testified as follows:

17 THE COURT: Have a seat, sir.

18 State your name, please.

19 THE WITNESS: Brandon Gardner.

20 THE COURT: Thank you.

21 Your witness, counselor.

22 DIRECT EXAMINATION BY MR. KENDALL:

23 Q. Could you please state your full name, including your
24 rank, please?

25 A. Sergeant Brandon Gardner with the Cherokee County

1 sheriff's office.

2 Q. Okay. And how long have you been with the sheriff's
3 office?

4 A. For five years.

5 Q. And how long have you been in law enforcement?

6 A. Close to six.

7 Q. Okay. Close to six?

8 A. Yes.

9 Q. And were you working with the sheriff's office on
10 October 15th, 2011?

11 A. Yes, sir.

12 Q. And what were your responsibilities, generally, at that
13 time with the sheriff's office?

14 A. To patrol, answer any questions that are dispatched
15 out.

16 Q. So you were a patrol officer at that point?

17 A. That's correct.

18 Q. And what generally are all the duties involved for a
19 patrol officer? What all do y'all do?

20 A. Answer calls, traffic stops, serve warrants that have
21 been -- active warrants.

22 Q. Okay. And on October 15th, 2011, at around 1800,
23 around dusk, what were you doing at that point?

24 A. Early in the evening during our briefing period my
25 lieutenant had given me a warrant for an individual who he

1 thought lived on [REDACTED].

2 Q. And to be fair, and I'm sorry to interrupt, but I don't
3 want it sound like we are treating anybody unfairly, but it
4 was not the defendant, correct?

5 A. No, sir, it was not.

6 Q. Okay. Please continue.

7 A. My lieutenant had told me just to call him when I
8 headed in that general direction. I normally am not -- was
9 not zoned out in Blacksburg. I'm not familiar with that
10 part of Blacksburg.

11 I went to [REDACTED], called my lieutenant, which is
12 Lieutenant Greer, and advised him that I couldn't find the
13 address that he had given to me. I don't recall which
14 address it was. He advised me to that individual that we
15 had warrants on him lived in a camper somewhere in the
16 woods, that he could tell me where it was at.

17 Q. Okay.

18 A. So during that time I had pulled up on [REDACTED] and I
19 was just sitting -- I believe it was a church above [REDACTED]
20 Road, that I was kind of sitting on the side of the road.
21 Lieutenant Greer arrived.

22 And near that time I saw a female running towards the
23 power line. She run across a yard to my left. About --
24 when we saw her running, of course, we were curious of what
25 she was doing. And we saw -- we could tell it was a female,

1 a white female. We also noticed the white gentleman that
2 just testified.

3 Q. Okay.

4 A. I asked him his name, what he was doing. He stated to
5 me he was looking for a dog, and I asked him who the female
6 was, and he --

7 MR. THOMPSON: Objection. Calling for hearsay.

8 THE COURT: I'll sustain the objection what
9 somebody else may have said, unless you think it's for some
10 other purpose other than for the matter asserted.

11 MR. KENDALL: No, that's fine, Your Honor.

12 THE COURT: All right. You may proceed.

13 BY MR. KENDALL:

14 Q. But you did see a female running away from the area
15 where trailers and houses were, is that correct?

16 A. Yes, sir.

17 Q. What did you do after you had talked to Mr. Bell? Did
18 you -- when you saw him on the power line, I'm sorry.

19 A. Notified our detention center to see if she could have
20 possibly had active warrants on her. Maybe that's the
21 reason she fled was because she saw a patrol car.

22 Q. And once you cleared all that up, what did you go back
23 to doing?

24 A. Lieutenant Greer led the way and we went to a camper
25 where the individual who had a warrant on him had been known

1 to hang out, or live at.

2 Q. Okay.

3 A. As we were approaching the camper, next door we noticed
4 that a trailer was on fire -- or there was smoke coming from
5 a trailer.

6 Q. Okay. Now, I have got a couple of questions about this
7 and I would like to kind of take this step by step.

8 Approximately how long after talking to the gentleman at the
9 power lines did you notice smoke coming from the trailer?

10 A. A short amount of time. I would say five minutes,
11 approximately. Maybe five or ten minutes, approximately --

12 Q. Okay.

13 A. -- if that long.

14 Q. And how close were you to the trailer when you actually
15 realized there was smoke coming from it?

16 A. A hundred yards -- seventy-five yards.

17 Q. Okay. At that point in time were you able to see if
18 there was any -- or just --

19 Could you please describe what was going on at the
20 trailer -- excuse me, going on at the home that you saw
21 smoke coming from, just generally what the scene was?

22 A. Just smoke coming from the trailer. Our concern was if
23 anyone was in the trailer.

24 Q. Okay.

25 A. My lieutenant advised me to call for the fire

1 department to be dispatched, and me and him both made
2 attempts to try to break a window of some sort to be able
3 to -- or make contact with anybody that was inside.

4 Q. Did you see anything, like great flames or anything, or
5 was the whole thing like up and burning to the ground, or
6 was it just a lot of smoke?

7 A. I remember the smoke more than flames.

8 Q. Okay. So it wasn't a situation where you had a big
9 giant bright bonfire, is that fair to say?

10 A. That's fair to say, yes, sir.

11 Q. But mostly you saw smoke.

12 What did you do once you saw the smoke?

13 A. Contacted our dispatcher to dispatch the fire
14 department.

15 Q. Okay. And was that basically your involvement in it?

16 A. Yes, sir.

17 Q. Okay. And did you see Ms. Selph at any point in that
18 night?

19 A. Later on toward -- on the scene. The fire
20 department -- the fire was out. It was maybe a couple hours
21 after all of it started, maybe.

22 Q. Okay. And how was she behaving at that time?

23 A. Belligerent.

24 Q. Okay. When you say belligerent, could you please go
25 into just a little bit of detail?

1 A. Disorderly. She was irate and appeared to be
2 intoxicated.

3 Q. Okay. Please answer any questions that Mr. Thompson
4 might have.

5 A. Yes, sir.

6 THE COURT: Your witness, Mr. Thompson.

7 CROSS EXAMINATION BY MR. THOMPSON:

8 Q. When you went to the mobile home and saw the smoke
9 coming out, was there anybody at the home that you know of?

10 A. No, sir.

11 Q. Y'all tried to see if there was anybody in there, is
12 that correct?

13 A. Yes, sir.

14 Q. And there was nobody there at the time?

15 A. No, sir.

16 Q. Did you see anybody leave the home?

17 A. No, sir, I didn't.

18 Q. Did you see the start of the fire?

19 A. I did not.

20 Q. Okay. Did you go in the home prior to the firefighters
21 getting there?

22 A. No, sir.

23 Q. All right. So you didn't move anything inside, or
24 anything like that?

25 A. No, sir, I did not.

1 Q. Thank you.

2 THE COURT: Your witness.

3 MR. KENDALL: Just to clarify just one thing.

4 REDIRECT EXAMINATION BY MR. KENDALL:

5 Q. When you saw the female running, was she running
6 towards or away the smoking building?

7 A. Running away.

8 Q. Okay.

9 MR. KENDALL: That's all, Your Honor.

10 THE COURT: Any other questions?

11 MR. THOMPSON: No, sir.

12 THE COURT: You may step down, sir.

13 Mr. Kendall, you may call your next witness.

14 MR. KENDALL: The State would call Jimmy Henson,
15 Your Honor.

16 THE COURT: Come forward, sir, and be sworn.

17 INVESTIGATOR JIMMY HENSON, having been first duly
18 sworn, testified as follows:

19 THE COURT: State your name, please.

20 THE WITNESS: Jimmy Henson.

21 THE COURT: Thank you.

22 Your witness, counselor.

23 DIRECT EXAMINATION BY MR. KENDALL:

24 Q. Mr. Henson, could you please state your full name and
25 rank and employer, please?

1 A. Jimmy Dale Henson. I'm a lieutenant/detective with the
2 Cherokee County sheriff's office.

3 Q. And lieutenant/detective, what do you specialize in?

4 A. Crime scene investigation.

5 Q. And could you very, very briefly describe to the jury
6 what all that entails?

7 A. Crime scene investigations, we go out to the scene. We
8 will photograph the scene as it was when we arrived. Then
9 we will look for evidence. Anything that we think might be
10 evidence, we mark it. We go back and take photographs of
11 all the marked evidence. We collect evidence. We sketch
12 the scene out, do diagrams of it. That's pretty much it.

13 Q. Okay. And in this case, on October 11th -- excuse me,
14 October 15th, 2011, did you respond to [REDACTED]

15 A. Yes, sir, I did.

16 Q. And what did you do at that point when you arrived on
17 the scene?

18 A. When we arrived on the scene the fire department had
19 just got the fire out. We went in and waited a little while
20 for the smoke to clear and we then took pictures. The first
21 thing we did was took pictures of the scene.

22 Q. Okay. So is it fair to say that y'all were kind of
23 the documenting agency at that point?

24 A. Yes, sir.

25 Q. And to be clear to the jury, your expertise is not in

1 fire investigation, correct?

2 A. No, it's not.

3 Q. But y'all did take a lot of pictures at the direction
4 of the fire investigators?

5 A. Yes, sir, we assisted the arson investigators, the fire
6 investigators.

7 Q. We are going to kind of do this the fast way. I'm
8 going to show you State's Exhibits 1 through 39. Would you
9 mind just taking a look at these, please, and just very,
10 very quickly going through them and just -- you can kind of
11 answer at the end, or kind of altogether, were those
12 basically the pictures that you took when you were out there
13 that night, and are those a fair and accurate representation
14 of what pictures that you took?

15 A. Yes, sir, it is.

16 Q. Okay.

17 A. Yes, sir, it is.

18 Q. Now, also while you were out there did you take any
19 other pieces -- or any other objects into evidence?

20 A. Yes, sir, we did.

21 Q. And what items did you take into evidence?

22 A. That heater there.

23 Q. Okay. I'm going to bring this up and show this to you.
24 Is this in substantially the same condition it is when you
25 found it?

1 A. Yes, sir, all but the handle broke off. I picked it up
2 this morning to bring it to court the handle come off.

3 Q. That's all I wanted to let the jury know, but the
4 siding on the back here was missing, is that correct?

5 A. Yes, sir.

6 Q. The burning was there?

7 A. Yes, sir.

8 Q. Just the handle came off this morning?

9 A. Yes, sir.

10 MR. KENDALL: Your Honor, I believe this has
11 already been entered into evidence.

12 THE COURT: I think it has, yes, sir.

13 BY MR. KENDALL:

14 Q. Now, once all this was taken care of, you had taken all
15 the pictures and everything like that, could you please
16 describe, just explain to the jury what happened as y'all
17 were packing up, or kind of closing down the -- closing down
18 the event?

19 A. After we had finished inside the house, we went out
20 into the front yard and we were explaining to Buddy Earls
21 what we had taken on the search warrant that was served --
22 that was served on the house. And as we were talking to
23 him, Ms. Selph came running up cursing and swearing and just
24 raising cane right in his face.

25 Q. Did she say anything that seemed particularly odd to

1 you?

2 A. Yeah, the first thing she screamed out was "you are not
3 going to blame this shit on me."

4 Q. Up until that point in the evening did you see Ms.
5 Selph ever on the scene?

6 A. No.

7 Q. Had anybody, to your knowledge, informed anybody that
8 there was -- other than maybe Mr. Earls, that there was an
9 arson, a suspected arson, going on?

10 A. Say that again.

11 Q. Other than Mr. Earls, had anyone been informed that
12 this was going to be treated as an arson?

13 A. No, sir.

14 Q. Okay. So at that point when she came up and said "you
15 are not going to blame this shit on me," is it fair to say
16 that, to the best of your knowledge, that you had not
17 certainly informed her that there was even going to be an
18 arson investigation?

19 A. No, I had not.

20 Q. Okay. And how would you describe her -- you described
21 her behavior as very belligerent, is that correct?

22 A. Yes, sir.

23 Q. Did she appear to be under the influence of any drugs
24 or alcohol, or any alcohol?

25 A. She was under the influence of something.

1 Q. And what led you to that conclusion?

2 A. Sir?

3 Q. What led you to that conclusion?

4 A. The way she was acting. Very boisterous and cursing.

5 It took us a while to get her settled down. Detective

6 Anthony stepped between her and Mr. Earls, and I got her by

7 arm and she was still cursing us, and we had to talk to her

8 for awhile to get her calmed down.

9 Q. Okay. I'm going to show you -- I'm going to be done
10 here in a second -- what is marked --

11 Actually before I do that, could I just get you to very
12 briefly describe what the interior of the house looked like?

13 A. The interior of the house, when you went in the front
14 door, straight across the room in the corner was the burned
15 area inside the house. It had a lot of burn damage in the
16 living room. The ceiling was burned. The rest of the house
17 had a lot of smoke damage in it.

18 Q. Okay. I'm going to show you what is marked State's
19 Exhibits 18, 37, 36 -- excuse me, no, just 18 and 36. Could
20 you please take a look at these, please?

21 A. Okay.

22 Q. And was that consistent with how things looked when you
23 walked into the house?

24 A. Yes, this was the kitchen area, the kitchen and dining
25 room area.

1 Q. And how did it look to you -- or what was the state of
2 cleanliness in that home at that time?

3 A. Oh, it was -- it was -- it had stuff thrown all over
4 the floors. Pinto beans were thrown all over the floor.
5 The pot was on the floor. Chairs was throwed from the
6 dining room was thrown. There was one in the kitchen, one
7 in the living room.

8 Q. Okay.

9 MR. KENDALL: Your Honor, we would request
10 permission to publish this to the jury.

11 THE COURT: It's been introduced and agreed to.
12 You may publish.

13 By publish, we mean they are allowed to show you
14 the exhibits.

15 BY MR. KENDALL:

16 Q. And where would this have been?

17 What was that a picture of?

18 A. This was the -- that would be the kitchen floor.

19 Q. Okay. And what about this one?

20 A. This was the dining room area and the hall area right
21 off the kitchen. The kitchen was one side of the mobile
22 home and the dining room was right on the other side.

23 Q. Okay.

24 MR. KENDALL: I have got no further questions for
25 this witness at this time.

1 Please answer any questions that Mr. Thompson
2 might have.

3 THE COURT: Mr. Thompson, your witness.

4 CROSS EXAMINATION BY MR. THOMPSON:

5 Q. Mr. Henson, were you there when the fire started?

6 A. No, sir.

7 Q. Does anything in these pictures or that piece of
8 evidence over there tell you how the fire started or who
9 started it?

10 A. No, sir.

11 Q. Okay.

12 MR. THOMPSON: Thank you.

13 THE COURT: Mr. Kendall, any other questions?

14 MR. KENDALL: Nothing further, Your Honor.

15 THE COURT: You may step down, sir.

16 MR. KENDALL: Actually just one.

17 THE COURT: Yes, sir.

18 REDIRECT EXAMINATION BY MR. KENDALL:

19 Q. A moment ago Mr. Thompson asked you if anything in the
20 fire told you who started it. When you conduct
21 investigations in this, what are you looking for?

22 A. We are looking for point of origin where the fire
23 started.

24 Q. Okay. More broadly, what are you looking for?

25 A. (No response).

1 Q. Let me ask you it this way. Were you able to assess
2 the evidence to make a determination of who you believed
3 started the fire?

4 A. Yes, sir.

5 Q. And who is -- yourself? Is that what you said? I'm
6 sorry, I couldn't hear you.

7 A. Yes, sir.

8 Q. And who was that?

9 A. Well, from the investigation, the last person in the
10 house was Ms. Selph.

11 Q. Okay. And was her behavior, when you saw her, come up
12 to you when you were conducting your investigation
13 consistent with someone who had just committed an arson?

14 A. It could be, yes, sir. She was very --

15 Q. Okay.

16 A. -- irate.

17 Q. And so, though, you didn't see somebody actually
18 physically set a fire inside the house, you all did conduct
19 an investigation to determine who it was, correct?

20 A. Yes, sir, the point of origin of the fire.

21 Q. And the people that did that were the police, the fire
22 investigators, correct?

23 A. Fire investigators, yes, sir.

24 MR. KENDALL: No further questions, Your Honor.

25 THE COURT: Mr. Thompson?

1 RE CROSS EXAMINATION BY MR. THOMPSON:

2 Q. You just said that Ms. Selph was the last person in the
3 house. Were you there or did you see her as the last person
4 in the house?

5 A. No, sir, but through investigation and --

6 Q. That's what somebody told you?

7 A. Yeah.

8 Q. Okay.

9 MR. THOMPSON: Thank you.

10 THE COURT: You may step down, sir.

11 The State may call its next witness.

12 MR. KENDALL: The State will call Lida Bradshaw.

13 THE COURT: Come forward, ma'am, and be sworn.

14 LIDA BRADSHAW, having been first duly sworn,
15 testified as follows:

16 THE COURT: State your name, please.

17 THE WITNESS: Lida Bradshaw.

18 THE COURT: Thank you, ma'am.

19 Your witness.

20 DIRECT EXAMINATION BY MR. KENDALL:

21 Q. Ms. Bradshaw, where do you currently reside?

22 A. [REDACTED] in Gaffney.

23 Q. Okay. And how long have you lived in the Upstate area?

24 A. Since I was eleven. It's been a long -- about fifty
25 years.

1 Q. Okay? And do you -- did you, on October 15th, 2011,
2 own a home at [REDACTED] here in Cherokee County?

3 A. Yes, sir.

4 Q. That's your only property at [REDACTED] is that
5 correct?

6 A. Yes, sir.

7 Q. Okay. And on October 15th, 2011, who was living there?

8 A. My son Buddy Earls.

9 Q. And what about Marsha Selph? Was she living there at
10 that time?

11 A. As far as I know.

12 Q. Okay. And what were they -- how were they living
13 there? Were they renting the property from you? Were you
14 just letting them live there?

15 A. They were just renting it.

16 Q. Okay. How long had they lived there, do you know?

17 A. Sir?

18 Q. How long had they lived there?

19 A. Probably close to two years.

20 Q. Okay. And once this fire was done -- you weren't there
21 when this fire happened, is that correct?

22 A. No, sir.

23 Q. Once this fire was put out and everything was done, did
24 you have a chance to evaluate what had happened to the home?

25 A. Yes, sir.

1 Q. Could you very briefly describe to the jury what damage
2 was done to the house?

3 A. My personal, or --

4 Q. Just damage to the home.

5 A. Well, I had a man that does construction and all come
6 out and --

7 Q. Let me ask you a different way, because I don't want to
8 get into something we can't get into.

9 A. Okay.

10 Q. Did you have a chance to look inside the living room of
11 the home?

12 A. Oh, I'm sorry. Yes, sir, I did.

13 Q. And what building structure had to be replaced on the
14 inside, in the living room?

15 A. The living room floor was --

16 Q. Okay. And why did that have to be replaced?

17 A. It was all burnt. It was -- well, it appeared to be
18 burnt. It was all black and charcoal looking and damage
19 down in it.

20 Q. And what about the walls of the living room?

21 A. The ceiling was burnt. The walls, the kitchen ceiling.

22 Q. Okay. Now, when you say burned in the living room, are
23 you talking about it just had smoke damage, or are you
24 talking about the living room walls were actually burnt?

25 A. Actually burnt.

1 Q. Okay. And what about the ceiling?

2 A. Yes, sir, it was actually burnt.

3 Q. Okay. And what about the kitchen? What kind of damage
4 were you looking at in there?

5 A. Over the stove was all up in the ceiling was burnt. It
6 was sagging all down. It had been burnt.

7 Q. Okay. And what other damage was done to the home?

8 Just was there any smoke damage or anything throughout the
9 house?

10 A. Yes, sir, there was smoke and water damage throughout
11 the house.

12 Q. Okay. And just to be clear, as the owner of the house
13 you had to fix that, correct?

14 A. Sir?

15 Q. As the owner of the house -- who fixed that? Let me
16 ask you that.

17 A. Me and my husband.

18 Q. Okay.

19 MR. KENDALL: I have got no further questions,
20 Your Honor.

21 THE COURT: Mr. Thompson, your witness.

22 CROSS EXAMINATION BY MR. THOMPSON:

23 Q. Ms. Bradshaw, you weren't there when the fire started?

24 A. Sir?

25 Q. You weren't there when the fire started --

1 A. No, sir, I was not.

2 Q. -- while it burnt?

3 When did you become aware of the fire?

4 A. I was at my friend's house where her husband had just
5 passed away and my son and wife had called me and told me
6 that my house was on fire.

7 Q. Okay. Now, the report from the Blacksburg Volunteer
8 Fire Department says that it was a total loss. Was it a
9 total loss?

10 A. As far as being burned and damaged, that the house was
11 water and smoke.

12 Q. So you had to do away with the whole mobile home and
13 start over?

14 A. Most likely, just about.

15 Q. Most likely, just about?

16 A. Well, it may as well been considered that, yes, sir.

17 Q. So you tore the structure down and started over?

18 A. No, sir, I did not.

19 Q. Okay. So it wasn't a total loss then, right?

20 A. A total loss meant the inside walls had to be replaced.
21 There was smoke damage all through the house. Water damage
22 all through the house. All in the duct system. The kitchen
23 area over the stove was sagging down from water damage. The
24 floor in the living floor was burnt.

25 Q. You said the ceiling over the stove was burnt?

1 A. Sagging down from where the water had been I guess got
2 in the top of it being sprayed from the fire department.
3 Also it was damaged from the smoke and fire from the living
4 room.

5 Q. Thank you.

6 THE COURT: Anything further, Mr. Kendall?

7 MR. KENDALL: Nothing further, Your Honor.

8 THE COURT: You may step down, ma'am.

9 THE WITNESS: Thank you.

10 THE COURT: You may call your next witness.

11 MR. KENDALL: If I have could have just one
12 second, Your Honor.

13 THE COURT: Yes, sir.

14 (Off the record)

15 (Back on the record)

16 MR. KENDALL: Your Honor, may we approach just
17 briefly?

18 THE COURT: Yes, sir.

19 (Whereupon, the lawyers approached the bench for
20 an off-the-record discussion)

21 THE COURT: You may call your next witness.

22 MR. KENDALL: The State would call Scott Coleman.

23 THE COURT: Come forward and be sworn, please.

24 MR. KENDALL: Let me go the other way. We will
25 call Nathan Ellis first, I'm sorry.

1 NATHAN ELLIS, having been first duly sworn,
2 testified as follows:

3 THE COURT: Sir, once you are seated, state your
4 name, please.

5 THE WITNESS: Nathan Edward Ellis.

6 THE COURT: Thank you.

7 Your witness, Mr. Kendall.

8 DIRECT EXAMINATION BY MR. KENDALL:

9 Q. Mr. Ellis, what is your current occupation?

10 A. My current occupation is a fire and building code
11 consultant with a private company.

12 I also serve as a volunteer firefighter with the Grassy
13 Pond Fire Department, and a training officer position with
14 the state fire marshall's office.

15 Q. Okay. To be clear, you actually work for the State
16 fire marshall's office, as well other things?

17 A. Yes.

18 Q. How long had you been in firefighting?

19 A. My -- I began my fire service career when I was sixteen
20 as a volunteer at the Grassy Pond Fire Department, where I
21 continue to serve today. So over twenty -- almost
22 twenty-two years of time in the fire service.

23 I -- as starting out as a volunteer firefighter I
24 learned all the fundamental firefighting practices,
25 everything that you would need to know to do fire

1 suppression. I worked in fire suppression for a number of
2 years as a volunteer; even held an officer position at
3 Grassy Pond.

4 After attending Clemson University, receiving a degree
5 in public health, I worked for the state fire marshall's
6 office. I worked for state fire marshall's office for five
7 years. I received a lot of training there as it related to
8 fire and building codes.

9 Q. And while you were working at the state fire marshall's
10 office, what was your actual job title?

11 A. Deputy state fire marshall.

12 Q. Okay. And after that when was your next firefighting
13 career or next firefighting job, sorry?

14 A. Right. With the City of Gaffney as the City of Gaffney
15 fire marshall.

16 Q. You were the fire marshall for the City of Gaffney?

17 A. That's correct.

18 Q. And how long -- what years were those? What years did
19 those take place?

20 A. Let me refer to my CV to make sure that I'm correct.

21 Q. Okay.

22 A. From October of 2003, until June of 2007.

23 Q. Okay. And why did you stop in June of 2007 being the
24 fire marshall?

25 A. I was promoted to fire chief.

1 Q. Okay. So to be clear for the jury, from -- and how
2 long were you fire chief?

3 A. I was the fire chief until the end of 2011.

4 Q. So from June of 2007, until November of 2011, you
5 worked as the fire chief for the City of Gaffney?

6 A. That is correct.

7 Q. Okay. And then, if you could, just very briefly -- and
8 I know you have already done this, but I'd like to do it
9 chronological to make sure the jury understands it, but what
10 has been your firefighting experience since then, since
11 November of 2011?

12 A. Since November of 2011, I continue to serve as a
13 volunteer, like I have since I was sixteen, with the Grassy
14 Pond Fire Department. I responded to fires, involved in
15 fire suppression activities.

16 While I was fire chief at the City of Gaffney, in 2010
17 we started a county fire investigation team for the purpose
18 of assisting our local law enforcement, as well as state
19 agencies and the ATF, investigating fires in Cherokee
20 County. That is a volunteer organization comprised of
21 firefighters from different fire departments throughout our
22 county, and I continue to serve in that -- on that task
23 force as a lead investigator.

24 Q. All right. And have you conducted prior to this any
25 fire investigations?

1 A. I have conducted over two hundred fire investigations.

2 Q. And were those all residential, or all commercial, or a
3 mixture?

4 A. It's very much a mixture of residential -- mostly
5 residential, but includes a lot of commercial as well.

6 Q. And on any of these, on any of these investigations,
7 were you the lead or sole investigator on the
8 investigations?

9 A. I would say that I was the lead investigator on the
10 majority of them.

11 Q. Have you ever been part of a multi-jurisdictional fire
12 investigation?

13 A. Yes, I have.

14 Q. Just once, or how many times?

15 A. Numerous times. Oh, probably twenty or thirty times.

16 Q. Okay. And have you ever testified in court before?

17 A. Yes, I have.

18 Q. And how many times have you done that?

19 A. One time for the purpose of cause and origin.

20 Q. Okay. Now, I would like to talk briefly about your
21 education, if I could.

22 Did you receive any advanced education at all?

23 A. As in post-high school?

24 Q. Yes.

25 A. College degree? I have a Bachelors of Science Degree

1 in Public Health from Clemson University.

2 Q. Okay. And what about fireman training? What sort of
3 fireman training? I would like to ask it very broadly, just
4 general, as a fireman training that you have received.

5 A. Everything from fire suppression training, where we
6 learn how to suppress fires, put fires out, all the way
7 through incident command and responding to other types of
8 emergencies; extrication, hazardous materials, positive
9 pressure ventilation. Just a lot of training that relates
10 to the suppression of fires.

11 Q. Okay. What about the investigation of fires?

12 A. With investigation of fires, I received over three
13 hundred hours of training specific to fire origin and cause
14 investigation since 2004, when I began as the fire marshall
15 for the City of Gaffney.

16 Q. Over three hundred hours --

17 A. Three hundred hours.

18 Q. -- in fire investigation?

19 A. That's correct.

20 Q. All right. Over the course of those three hundred
21 hours, could you please describe to the jury the methodology
22 that you have learned and how you have gone about -- how you
23 go about investigating fires at this point?

24 A. Yes. I guess the best way to describe that is kind of
25 describe what fire is..

1 Fire is a chemical reaction, a rapid oxidation that
2 produces heat and light and other byproducts in various
3 intensities, but by describing it as a chemical reaction, I
4 can let you know that it's very scientific. Fire is
5 predictable. It's not a living breathing object. It is a
6 chemical reaction. It's a part of science that is easily
7 understood when you understand the components that go into
8 the fire occurring, what causes things to burn.

9 And my methodology, the training that I have received,
10 teaches me to use the scientific process, the systematic
11 approach that is recognized by the fire service through the
12 National Fire Protection Association, through their
13 standards of NFPA 921, which is the guide to fire and
14 explosion investigation, and those methods are what I have
15 been trained to use.

16 Q. And how much training have you received in the -- what
17 did you say, NFPA 9 --

18 A. 921.

19 Q. -- 921.

20 Actually, let's back up for a second.

21 Could you please basically describe what that is for
22 the jury?

23 A. Yes.

24 Q. What is the National Fire -- the NFPA, what does that
25 mean?

1 A. NFPA is the National Fire Protection Association. They
2 write a lot of our standards for the fire service;
3 everything from the way the fire trucks are designed, the
4 protective clothing that firefighters wear, the training
5 that's required for different levels of fire service, the
6 training that's required in this case for a fire
7 investigator. And they also outline the -- it's a guideline
8 for the standard operating procedures, basically, that a
9 fire department will use in different -- in everything that
10 it does, but 921 is the standard specific to fire and
11 explosion investigation.

12 Q. And have you received training specifically on these --
13 so is it fair -- actually, let me back up.

14 Is it fair to say that the NFPA is an accepted
15 organization for the procedures for investigating fires?

16 A. It is. It's the industry standard. NFPA 921 is the
17 industry standard for investigating fires.

18 Q. And have you received any training specifically in the
19 NFPA?

20 A. I have. Pretty much all of those three hundred hours
21 of fire investigation training deal with the standards and
22 job performance requirements of NFPA 921 and their standard
23 for fire investigator altercations.

24 In addition to that, I am certified by the
25 International Association of Arson Investigators as a fire

1 investigation technician.

2 Q. Okay. Now, is that a -- is that a separate -- is that
3 a separate organization?

4 A. That's separate from NFPA. They -- that involves a
5 certain level of training and experience and then passing an
6 exam.

7 Q. Well, let me ask you this. Does South Carolina have
8 its own arson investigation course?

9 A. The Criminal Justice Academy does have an arson
10 investigation course, which I have attended; forty hours.

11 Q. You have attended this course?

12 A. I have, a forty hour course, that's correct.

13 Q. I assume you passed it?

14 A. Yes. Yes, sir.

15 Q. Okay. Now, once you take these classes, these NFPA
16 classes, are you just done, or does it require updating?

17 A. The IAAI certification that I spoke of does require
18 continuing education and renewal of your certification by
19 displaying that you attend -- that you have obtained those
20 training hours.

21 Q. Okay. So this is something that you have spent a good
22 bit of time working on, is that correct?

23 A. That's correct.

24 Q. Okay. Could you please very briefly -- and I know -- I
25 don't want to weigh everybody down with hours and hours of

1 your testimony here, but could you basically very briefly go
2 over what those NFPA and what those arson investigator
3 standards require you to do in a fire?

4 A. Yes. Again, kind of thinking about fire in terms of
5 science, we want to use a systematic approach where we
6 approach every fire the same way. We follow the same steps,
7 the same protocol every single time, and it's basically a
8 process of elimination.

9 By understanding fire as a science, we know that fire
10 is predictable; that the results of anything that has been
11 set on fire, if you set it on fire again, you are going to
12 get the exact same results again, because it's a chemical
13 reaction. It just occurs the same way every single time.
14 That makes fire predictable it. It makes it something that
15 we are able to study and apply the scientific method to.
16 And through the process of elimination, eliminate certain
17 possible ignition sources, because what we observe in the
18 fire scene can only happen in a certain way, a certain
19 order, a certain sequence of events. And so we are able to
20 observe the fire scene and apply those principles, the
21 scientific method, a systematic approach, and eliminate
22 possible ignition sources from being the cause of the fire.

23 Q. When you say -- when you say eliminate possible
24 ignition sources, what do you mean by that?

25 A. Well, we identify all the possible ignition sources, in

1 this case in a mobile home, in this home. We can identify
2 all the possible ignition sources and then we can start to
3 eliminate them.

4 For example, one way we do that is ignition sources
5 that we might find in a bedroom, the bedroom didn't burn.
6 The only damage we observed in the bedroom might be smoke
7 damage high up on the ceiling, meaning that the smoke
8 entered the room from another place. There was nothing
9 burned in that room, so we can eliminate any and all
10 ignition sources that we could find in that bedroom.

11 So it's that process of eliminating going through the
12 structure, working from the area that's least burned to the
13 area that's most burned, identifying all the possible
14 ignition sources in the area that's most burned, and one by
15 one eliminating them out until you have something left that
16 you cannot eliminate.

17 Q. Okay. And has your experience --

18 What year did you start in firefighting again?

19 A. Let's think. I started as a volunteer with Grassy Pond
20 in 1992.

21 Q. 1992. So we are looking at going on --

22 A. Twenty-two years in March I will have been a
23 firefighter.

24 Q. In your experience as a firefighter, have you -- and
25 you said -- you testified a little while ago you had

1 participated in investigations in the past, is that correct?

2 A. Yes, I have.

3 Q. All right. And in your participation in
4 investigations, how has that helped you, if at all, in your
5 ability to investigate fires?

6 A. Right. Well, just my experience as a firefighter, if
7 you go back to just the time I spent in suppression, which I
8 still -- I'm still able to do that now with my volunteer
9 position. I probably have been in on well over a thousand
10 structure fires where I took part in suppression. And every
11 single time you have the opportunity to observe how the fire
12 burns; how the fire ventilates out of the structure; where
13 it gets its supply of oxygen from from the air around us;
14 the way that it decomposes certain materials that it comes
15 in contact with; the way the heat affects things; the way
16 the smoke affects things. So I have observed that thousands
17 of times.

18 And then just with fire investigation, specifically,
19 going in to document that, to reconstruct the scene and work
20 our way back to a point of origin, again over two hundred
21 times --

22 Q. Okay.

23 A. -- I have done that.

24 Q. Have you had the opportunity to see how different
25 compounds burn?

1 A. Definitely, yes, sir.

2 Q. What about different causes of fire? What are the
3 different causes of fire? Could you please describe --
4 first of all, what the cause of fire may be and what you
5 have worked on?

6 A. Typical causes of fire are cooking accidents. Home
7 fires are most often caused by an accident; something left
8 on the stove, something -- someone just made a mistake in
9 the kitchen and left something on or caused something to
10 spill over and cause home fires.

11 We have a lot of smoking fires. They have determined,
12 that to be the cause in a number of fires.

13 Electrical causes. We can't live in this world without
14 electricity. It's everywhere, but electricity can be cause
15 of a fire sometimes in homes.

16 There is other accidental sources; curling irons,
17 clothes irons, clothes dryers. All those things could be
18 considered accidental sources.

19 Candles left unattended and definitely been able to
20 determine that in a number of fires.

21 Q. Have you ever had the opportunity to work with like
22 different substances catching on fire, like gas, or
23 kerosene, or anything like that?

24 A. Yes, I definitely have received a lot of training in
25 regards to flammable liquids and the types of fires that

1 are -- the types of evidence that you would discover when
2 flammable liquids were involved in a fire.

3 Flammable liquids burn much faster than the ordinary
4 solids and other combustible materials that we have in our
5 environment around us that -- the furnitures and everything
6 else, the flammable liquids are going to burn much different
7 than that, and I have studied that and observed that.

8 Q. Okay. And how much training, again, not to go over the
9 subject, overall have you received between the actual NFPA
10 procedures, as well as things from your experience and
11 classes that you have taken on differing burn patterns as
12 they relate to the origin of fire and the cause of fire?

13 A. Well, if I could read you a few topics of my training?

14 Q. Sure.

15 A. Would that be okay?

16 Q. Yeah.

17 A. We've mentioned already the forty hour basic arson
18 investigation class from the Criminal Justice Academy.

19 Certainly that deals with burn patterns and things of that
20 nature.

21 Electrical safety issues. A two hour class back in
22 2007.

23 Scientific methods of fire investigation, a three hour
24 class in 2007.

25 Motive, means, and opportunity, a four hour class in

1 2010.

2 Fundamentals of residential construction. That is
3 going to show you how a residential building is going to
4 burn and collapse due to fire. A three hour class back in
5 2010.

6 Comprehensive fire and arson investigation, a
7 thirty-two hour class in 2011.

8 Review of 921, Chapter 17. Chapter 17 of 921 I believe
9 deals with cause and origin determining the actual area of
10 origin. A two hour class, both in September and October of
11 2011.

12 Post-flashover fires deals with the -- once a room goes
13 to full fire involvement, that's considered a flashover.
14 When a fire in a room becomes a room on fire, what we call
15 in the fire service a flashover has occurred and how
16 everything in that room has burned, that leads to certain
17 patterns that you are only going to see post-flashover,
18 certain characteristics of burning that you are only going
19 to see there. That was 2011.

20 Should I continue?

21 Q. Yeah, I guess, if we could.

22 A. Okay. Electrical fire causes, again in 2012.

23 Documenting fire scenes in 2012.

24 Fire dynamics and modeling in 2012.

25 Ventilation focused approach on fire investigation,

1 four hours in 2012.

2 Evidence examination in 2012.

3 Fire dynamics calculations in 2012.

4 Fire protection systems, a three hour class in 2012.

5 Investigating fatal fires in 2012. International
6 Association of Arson Investigators.

7 Physical evidence at the fire scene, four hours, from
8 the International Association of Arson Investigators in
9 2012.

10 Fire patterns associated with ignitable liquids in
11 February of 2012.

12 Fire cause determination, April of 2012.

13 Stove top fires in 2012 as well.

14 Electrical fire causes, again in 2012.

15 Q. So just to be clear, you have actually taken a class
16 that specifically identifies stove top fires?

17 A. That's correct.

18 Q. Okay. All right. Go ahead, I'm sorry.

19 A. Building construction for the fire investigator in
20 March of 2013.

21 Processing the fire scene, again in 2013.

22 And I am being very random. I know I have skipped over
23 a lot there. I was trying to pull out some that dealt
24 specifically with fire scene patterns, as you asked.

25 Q. Let me ask you this. Have you ever given any

1 presentations?

2 A. - I do a lot of speaking. As the lead investigator for
3 the fire investigation team, I plan our monthly training.
4 So every month I'm involved in planning training. That
5 training is always assigned around NFPA 921, the job
6 performance requirements of 1033, which is the qualification
7 for investigators. We plan our training. We do exercises.
8 Presentations. I do lot of those presentations.

9 I have also presented for an organization called the
10 Carolina Fire Investigators Association on several times.

11 And with my job at the State fire marshall's office, I
12 teach quarterly training of fire marshalls around our state
13 thirty-two times a year.

14 Q. All right. And how many of those are in fire
15 investigations?

16 A. The majority of the training we do at the fire
17 marshall's office, and then building construction and fire
18 codes, fire protection systems. That does impact how a fire
19 happens in a building, although it's not specifically
20 targeted at looking at it from an investigative approach.
21 We are looking at how we build and design buildings and how
22 we use fire code enforcement in those buildings is what my
23 work with the fire marshall's office is primarily about.

24 Q. Okay. And based on your experience, education you have
25 taken, and the classes that you have taught, the other

1 investigations that you have been involved in, what types of
2 procedures did you use specifically in this case to make a
3 determination? We don't know what the determination is yet.
4 To make a determination, what specific things did you look
5 for and look at in this case, the fire at [REDACTED] on
6 October 15th, 2011?

7 A. Okay. Well, we do a systematic approach, as I
8 mentioned several times. Observing the building, the
9 structure, the home in this case from the outside, all four
10 sides. You know, taking note of where smoke exited the
11 building. We can notice that from smoke staining on the
12 building. Taking notice of the glazing on the windows that
13 the smoke -- that soot collected on the windows in different
14 rooms, just from the outside before we even go inside. You
15 are already starting to get a picture of where the fire was
16 centered, where the majority of the fire was in the
17 building.

18 Then you take the same approach when you go inside.
19 You observe each and every room, all the different surfaces,
20 ceilings, floors, walls, the furniture that we are -- that
21 is present in each room, and you are looking for indication
22 of fire, indications that something burned in that room. In
23 most cases you are only going to find that in one area of
24 the structure, but throughout the structure you are going to
25 find smoke and heat damage in different intensities,

1 depending on how close it is to the origin of the fire. So
2 we observed the different rooms of the home. We had obvious
3 burning in one particular area.

4 Do you want me to go on into that now?

5 Q. Just hold off on that right now.

6 A. Okay.

7 MR. KENDALL: Your Honor, at this time we would
8 offer Nathan Ellis as an expert in the field of origin of
9 fires and cause of fires.

10 THE COURT: Do you wish to cross-examine him on
11 his qualifications?

12 MR. THOMPSON: I do to a certain degree, judge.

13 THE COURT: All right. I'll allow you to do so.

14 VOIR DIRE EXAMINATION BY MR. THOMPSON:

15 Q. Is this -- Mr. Ellis, this is probably going to be kind
16 of strange. I'm not really questioning your expertise at
17 this time, okay, but when did you do this investigation on
18 this mobile home in question?

19 A. This was October 15th, 2011.

20 Q. October of 2011?

21 THE COURT: I'm going to allow you to examine him
22 concerning his qualifications. I'll let you do your general
23 cross-examination later --

24 MR. THOMPSON: Yes, sir.

25 THE COURT: -- concerning this incident.

1 He hasn't testified about this incident yet.

2 MR. THOMPSON: Well, what I'm --

3 THE COURT: He's offering his qualifications.

4 He's been offered as an expert. My position is whether or
5 not I qualify him of some sort. So you certainly have the
6 right to cross-examine him on his qualifications and
7 challenge his ability to offer opinions before the court as
8 an expert. That's what I'll let you cross-examine him about
9 at this time. Later on, if he offers testimony about this
10 case, I'll allow you to cross-examine him on those issues,
11 once he's offered the testimony, but you asked him when he
12 did this investigation. I don't know if that has anything
13 to do with his qualifications.

14 MR. THOMPSON: Well, what I'm trying to get to,
15 Your Honor, is whether he had these qualifications at the
16 time of that investigation.

17 THE COURT: Ask that question.

18 MR. THOMPSON: Pardon?

19 THE COURT: Ask that question.

20 MR. THOMPSON: That's what I'm trying to get to,
21 yes, sir.

22 THE COURT: Ask that question.

23 MR. THOMPSON: Yes, sir.

24 BY MR. THOMPSON:

25 Q. Most you -- got an impressive curriculum vitae. You

1 have got a lot of stuff listed on here. Most of the stuff
2 that you have got listed, though, comes from 2013 and 2012,
3 is that correct?

4 A. A large majority of it does.

5 Q. It does?

6 A. That's correct.

7 Q. So my question is, you mentioned specifically the stove
8 top fires in July of 2012?

9 A. Correct.

10 Q. How did that training in 2012 help you with the
11 investigation in 2011?

12 A. That's a very valid question. And that particular
13 class that I would have attended would not have contributed
14 to my knowledge that I had in 2011.

15 However, in 2011 I did have over a hundred and thirty
16 hours of training specific to fire investigation at the time
17 that I was a part of this fire investigation, including the
18 forty hour fire investigation -- basic arson class from the
19 Criminal Justice Academy, and a thirty-two hour
20 comprehensive fire and arson investigation class by Fire
21 Funds Enterprises, which is an independent insurance
22 investigation company.

23 Q. So your testimony of over three hundred hours is valid
24 today, but in 2011 you only had a hundred and thirty. So
25 you was a hundred and seventy hours short in 2011, is that

1 right?

2 A. That's one way to look at it, yes.

3 Q. And all this training that you have had -- and you have
4 had a good bit of training in the last two years dealing
5 with investigations and arson and all, but all that training
6 would not have been applicable in 2011, would it?

7 A. It would not, but my eighteen to twenty years of
8 experience as a firefighter and all the training I had in
9 suppression and tactics, all of that helps me understand
10 fires and helps me to apply the training that I had in those
11 areas of fire investigation as well, so my complete training
12 would be way over one thirty. It's just specific to fire
13 investigations was actually one hundred and thirty-two hours
14 at the time of the fire, that's correct.

15 Q. And the solicitor asked you about presentations, and
16 most of your presentations have been in 2012 and 2013 too?

17 A. They do occur -- they occur presently because of my
18 position with the fire marshall's office now. I did not
19 have that position at the time of the fire, that's correct.

20 Q. Okay. Thank you.

21 MR. KENDALL: Just very briefly on redirect, Your
22 Honor?

23 THE COURT: Yes, sir.

24 MR. KENDALL: Just on this very specific topic.

25

1 CONT'D DIRECT EXAMINATION BY MR. KENDALL:

2 Q. When you are conducting these investigations, what sort
3 of documentation do you make or do you do? By that I mean
4 what sort of things are kept, photographed, video recorded,
5 or anything else?

6 A. Right. It depends on my role in the investigation.

7 In this particular time we were doing this as a team
8 approach, and so the law enforcement did the interviewing,
9 but typically in a fire investigation you have witness
10 statements, interviews, recorded either audio recorded or on
11 paper statements. You have photographs. You have sketches.
12 And from time to time you actually collect evidence from the
13 scene that's going to be processed at a lab, or collected
14 for different --

15 Q. In this case did you take photographs?

16 A. I did not take photographs, because the Cherokee County
17 Sheriff's Department crime scene detectives were there to do
18 the photographing.

19 Q. But, to your knowledge, were photographs taken?

20 A. I am familiar -- I was there when the photographs were
21 taken, yes.

22 Q. And did you have the opportunity since 2011 to review
23 those photographs?

24 A. Yes, I have.

25 Q. And based on the photographs that you have seen, is

1 there sufficient documentary evidence -- you saw it then,
2 but also seeing it now, for you to assess whether or not
3 your opinion is still valid or invalid?

4 A. I would say most definitely --

5 Q. Without giving me that opinion.

6 A. Most definitely I have had the opportunity to review
7 the photos, and nothing that -- none of my training that I
8 have received since 2011 would change my opinion of the
9 cause and origin and nature of this fire.

10 Q. Okay.

11 MR. KENDALL: No further questions, Your Honor.

12 MR. THOMPSON: Nothing further, Your Honor.

13 THE COURT: All right. Do you object to his being
14 qualified as an expert in -- the areas that you offering him
15 in is fire origin and --

16 MR. KENDALL: -- cause, Your Honor. Cause and
17 origin of fire.

18 MR. THOMPSON: I think he had some testimony that
19 dealt with that, so --

20 THE COURT: All right.

21 Ladies and gentlemen, let me explain the process
22 that we are going through here so you will understand what
23 this exercise has been about.

24 This particular witness is being offered as an
25 expert witness within a field or science, training,

1 profession, and let me explain to you what that means.

2 Generally under the Rules of Evidence a lay witness is not
3 allowed to give opinions concerning matters. An exception
4 to that general rule exists for witnesses who are qualified
5 as an expert within some field or profession. For those
6 witnesses they are allowed to state opinions within their
7 area of their expertise and they are also allowed to state
8 the reasons why they hold those opinions.

9 I'm going to qualify the witness, this witness, as
10 an expert within the areas that he's been offered. And he
11 will, therefore, be allowed to state his opinions within
12 those areas and will also be allowed to state the reasons
13 why he has those opinions.

14 Later on during my charge I will give you some
15 additional information concerning how you can consider or
16 treat opinions given by experts, but at this point in time
17 the witness is qualified as an expert within the areas of
18 which he's been offered as such, and you may proceed Mr.
19 Kendall.

20 MR. KENDALL: All right, Your Honor, at this time
21 I would like to ask permission to allow the witness to leave
22 the witness stand.

23 THE COURT: He may step down while he testifies.

24 (Witness off the witness stand)

25 BY MR. KENDALL:

1 Q. If you will just have a -- stand right there.

2 MR. KENDALL: Just one second to get my pictures
3 together.

4 THE COURT: Yes, sir.

5 (Off the record)

6 (Back on the record).

7 MR. KENDALL: If you could get the light, please.

8 Your Honor, they have been entered as evidence.

9 I'm just going to publish some of the evidence, the
10 photographs that have been admitted.

11 THE COURT: Any documents that are already in
12 evidence you have the right to publish. Just identify them
13 by number before you publish them.

14 MR. KENDALL: Yes, sir.

15 BY MR. KENDALL:

16 Q. A few minutes ago you testified that there was a
17 process and procedure that you all went through when you
18 were investigating fires, so could you please describe to
19 the jury in this case as you approached this house, what was
20 the first thing that you looked at?

21 A. Okay. As we approached the home, we are -- just from
22 the street, from the driveway, we are taking a look at the
23 home, really just kind of getting in our minds what type of
24 damage, what type of fire, what type of event may have
25 happened there, so we are observing from the outside any

1 smoke staining that we see on the outside of the home, any
2 burning that we see on the outside of the home.

3 In this case fire had not burned the exterior of the
4 home at all. The roof was still intact, but there -- as you
5 approached closer to the home, you could look at the windows
6 and find smoke stain on the windows.

7 One set of windows had been broken out, most likely by
8 the fire department, I assumed, although we heard previous
9 testimony that the police department may have broke those
10 windows trying to see if anybody was inside. So the windows
11 were broken. Sometime during the fire event you could see
12 smoke stain above those windows. I think you may have some
13 pictures.

14 Q. I'm going to show you what is marked State's Exhibit 1.
15 Could you please identify that?

16 A. Yes, that's going to be the entrance to the home from
17 the street side. And here is the entrance -- where the door
18 was closed at the time of the fire. We do not see any smoke
19 staining, no sooting, no melting of the vinyl siding on the
20 outside of the building there, so we know the door was
21 closed, but we see the smoke level. We see how the smoke,
22 fire and heat. Smoke is the heated gas, so it's going to
23 collect at the top and build down. And so we can see that
24 we had heavy sooting down, you know, two to three feet there
25 down that wall onto that door.

1 Q. Okay. I'm going to show you what is marked State's
2 Exhibit 2.

3 A. All right. Some similar pictures. Again, we don't see
4 any flames. No flames, no fire penetrated out those
5 windows. These windows are still intact. We don't see any
6 smoke stain on the outside.

7 It's too difficult to tell in the picture that you
8 would be able to tell if there were smoke stained on those
9 windows. That is in a -- if you are facing the home, that's
10 the left end. There was no fire damage there, only smoke
11 damage on that end of the structure.

12 But just from observing from the outside, we haven't
13 been in yet and we are just observing that and starting to
14 make some conclusions about what areas may have burned.

15 Q. I just want to show you State's Exhibit 3. Okay.

16 A. Again, now we are on the back side of the house. There
17 is no windows in this picture. We find a gas grill there,
18 but no damage on the exterior of the structure here at all.

19 Typically we would look up near the soffits to see if
20 smoke was pushing out. Sometime you have some smoke
21 staining up there. Very little, if any, in that picture
22 that we can identify from the photograph.

23 Q. Now, what about this gas grill here? Gas grills catch
24 on fire.

25 A. Yes.

1 Q. Did you all make a determination as to whether or not
2 that gas grill caught on fire causing this accident?

3 A. Exactly. We could use this photograph. Obviously as
4 we are walking around the house in our minds we are already
5 eliminating this as a source of the fire, because obviously
6 there is, I guess, a garbage can there. It's close to the
7 home and there is no melting. There is no burning. That
8 gas grill was not involved in the fire at all.

9 Q. If you expected -- if it would have been, what would
10 you have expected to see there?

11 A. If the grill had been involved in the fire -- fire
12 always burns up and out until it reaches some physical
13 barrier, like a ceiling in a room that's going to prevent it
14 from going up and out and causes it to change directions.
15 So this being outdoors, if that had been on fire, and it's
16 against the structure as it appears to be, there would be
17 what we call a V-pattern, where the fire burns up and out
18 away from its origin. Fire doesn't typically just burn
19 down. It's not going to burn along the ground, or whatnot,
20 until something causes it to go that direction. The trash
21 can would have been involved in melting. You would find
22 some burn patterns on it as well.

23 Q. Okay. And this is State's Exhibit 4.

24 A. Correct. And this -- this is the window that I was
25 referring to I believe that the fire department possibly,

1 and possibly law enforcement, may have broke this window
2 during the fire.

3 There is smoke staining on the inside of the glass
4 that's remaining up there. There is a little bit of smoke
5 staining. It's difficult to see in these pictures, just
6 because of the lighting, or whatnot, of the projector, but
7 there are smoke staining around the edges of this window.
8 So smoke and heated gasses did exit that window, but no
9 flames penetrated that window, or we would have melting and
10 we would have burning along the vinyl shutters and edges of
11 the windows.

12 Q. So based on these photographs, your experience and
13 everything else, were you able to form an opinion as to
14 whether this fire started outside of the home?

15 A. There is absolutely no indication it's outside the home
16 of any burning to indicate that the fire started outside.

17 Q. What about an external source, like lightening?

18 A. Lightening? Had there been thunderstorms, lightening
19 is always a possibility. Sometimes up to twenty-four hours
20 from the time of a thunderstorm lightening could have caused
21 an electrical surge, or a direct hit on the structure, or a
22 tree, or something close by that led to a structure fire.

23 In this particular case we didn't have to rule
24 lightening out because of the area of origin that we
25 determined the fire to have started. There would nowhere

1 that lightening could have caused the fire.

2 Had the fire started in electrical appliances,
3 somewhere in the electrical system, you think about possible
4 electric surge.

5 Had the fire started in the attic, or the roof, or
6 where a water line or something enters the house, you think
7 about lightening running in that way. But in the area of
8 this origin, lightening was not even a possibility.

9 Q. Okay.

10 A. And I'm pretty sure there were no thunderstorms that
11 day.

12 Q. Okay. Now, I'm going to go a little bit out of order
13 here. I'm going to jump around a little bit.

14 Once you walk through the front door of the house, do
15 you recall what you saw at that time?

16 A. As we entered the front door of the home we did notice
17 a lot of burning. You could see some obvious charring of
18 materials. Things had been burned, directly impacted by
19 flame, flame impingement, fire, they had called a fire. A
20 chemical reaction had happened. There was lot of smoke
21 staining.

22 Q. What room is that in?

23 A. That's in the living room. As soon as you walk in the
24 front door you are looking straight at one of the -- pretty
25 much the most intense area of fire in the building.

1 Q. Okay. Now I'm going to show you what is marked State's
2 Exhibit 6. Is that a fair and accurate --

3 A. Yes. This is from the kitchen looking back towards
4 that area of the living room.

5 And the lighting is not good at all, is it?

6 You see the burning. This is actual char. All the
7 sheet rock has calcified and basically it dehydrated. There
8 is a certain amount of moisture in sheet rock. It's
9 dehydrated. It started to collapse and fall off the walls.
10 So you have charring there.

11 The furniture, these desks, they are charred.

12 The tops of this sofa, chair, the fabric has melted,
13 or, you know, the heat has caused it to bust and to peel
14 off, and so it's gone, exposing the foam of the chair.

15 This is a living room chair -- I mean a dining room
16 chair that's falling back towards the area of the fire. And
17 from looking at the damage on that chair, this leg -- it's
18 difficult to see in these pictures, and I apologize, but
19 this leg of that chair has some burn on it. The other --
20 the rest of the chair did not, so I theorized that the chair
21 was standing and probably got knocked over during fire
22 suppression by the firefighters. That's why it's laying
23 over now, but you see a little bit of black right there.
24 That would be if the chair were standing up. Then this leg
25 of the chair and that little piece of the underside is where

1 the smoke and the heat was kind of building on the chair.

2 But this -- I'll point out -- I'll use this picture to
3 point out what we consider to be a V-pattern in this room.
4 We did determine that an area of origin to be right here in
5 the center of this floor in this corner. So this was a
6 corner desk, possibly for computers or something like that
7 that you had, you know, the little corner desk there with
8 some cabinets above, and you can see all the burn in there,
9 but this would make up a V-pattern, where fire burns up and
10 out. You can kind of see the travel of the fire. It burned
11 up, it hits the ceiling and it starts rolling in each
12 direction away, and you will see that better in some other
13 pictures, I believe.

14 Q. And let's come back.

15 So as you came in, you had a pretty good -- a pretty
16 good suspect of where this thing started?

17 A. Correct. As we come in -- now, we don't know if that's
18 where it started. We don't know if something -- the fire
19 could have traveled there, so we want to be able to explain
20 those patterns. So you got to see the patterns kind of as
21 we see them. That's the first thing we see.

22 We got to observe the whole structure and see if there
23 is patterns in other places as well, and then we got to try
24 to figure out how they all tie together, because fire is
25 predictable and it is reproducible, and if we wanted to put

1 all these furnishings back in this home and set it on fire
2 again, we could cause the exact same patterns just like that
3 again, do a science experiment all over again. And so we
4 want to be able to explain all that, and so we have to
5 observe the whole structure. We can't just focus on that
6 one area.

7 MR. THOMPSON: Your Honor, I'm sorry, but there is
8 no question before the witness at this point in time.

9 MR. KENDALL: I'm sorry.

10 THE COURT: I'll ask the witness to respond to the
11 questions.

12 A. Yes, sir.

13 THE COURT: Thank you.

14 BY MR. KENDALL:

15 Q. So once you went through the living room, did you have
16 the opportunity to observe the kitchen?

17 A. Yes, sir, we did.

18 Q. And typically -- not specifically related to this cause
19 of action, what are some things in the kitchen as a fire
20 inspector give you some concern?

21 A. There are a lot of possible ignition sources in
22 kitchens that we want to rule out. Obviously the stove top,
23 microwave ovens, toaster ovens, coffee pots. Sometimes you
24 find candles and other things like that, but those typical
25 appliances that you find in the kitchen, we want to observe

1 those and see if they have any burning, if there is any
2 patterns associated with the location of those appliances,
3 and that's what we typically do for a kitchen.

4 Q. Okay. And were you able to do this in this case?

5 A. Yes, we were.

6 Q. Okay. I'm going to show you what is marked State's
7 Exhibit 16.

8 A. Okay. So just like we did in the living room, we are
9 looking for patterns in this room as well. You can see the
10 kitchen stove top there. We were able to observe all the
11 controls across the back, which you cannot see very well in
12 that picture. They were all in the off position. There has
13 been no burning on that stove top at all. There is no
14 patterns associated with a fire. We would see a V-pattern,
15 had a fire started there on top of the stove top.

16 The coffee pot I don't believe was even plugged in.

17 There is no other small appliances.

18 The microwave --

19 If you notice this whole area, we have sooting on the
20 ceiling. There is soot collected there, because this -- the
21 smoke traveled through this area. It's collected along
22 these surfaces of the cabinets.

23 And remember the entranceway, we saw how far down the
24 smoke had banked and collected from the ceiling in that
25 room. Well, that smoke also includes hot gasses. And that

1 hot air caused the top of the microwave, this small plastic
2 light weight plastic vent of the microwave to melt out, but
3 there has been no burning inside the microwave, and there is
4 no fire -- you know, none of those cabinets around microwave
5 burned. That damage that you see on the microwave is just
6 from the high heat that occurred so close to the ceiling
7 because of the fire in the adjacent area, but really no fire
8 damage here. We have heat damage. We have smoke damage
9 throughout.

10 This little bit of ceiling falling down here is where
11 the fire department punctured the ceiling to ensure there
12 was no fire in the attic above.

13 Q. I'm going to show you what is marked State's Exhibit
14 17. This is kind of what you were just talking about. This
15 might be easier if you just physically looked at it. We
16 will put it up there. What were you able to determine that
17 to be?

18 A. What you see in this picture is just heat and smoke
19 damage. You see the smoke -- or what we call smoke damage
20 is also sooting. The soot is deposited on the cabinets and
21 on the ceiling.

22 As the soot travels with the smoke and the hot gasses,
23 it comes in contact with other objects that are typically
24 cooler than the hot gasses coming from the fire, and so that
25 cooling effect is condensation the soot collects. So it's

1 going to collect on the cabinets and on the ceiling, on the
2 refrigerator.

3 Q. Okay.

4 A. Do you want to show that?

5 Q. What's that?

6 A. It's just sooting. Just soot on the cabinets, soot on
7 the ceiling, soot on the refrigerator and the papers there,
8 but nothing burned. There is nothing consumed by fire
9 there.

10 Q. Okay. The next one I'm going to show you what is
11 marked State's Exhibit 18.

12 A. This is the kitchen floor. Again, there has been no
13 fire in this floor at all. Nothing is burned. We have got
14 a wooden chair and it's still completely intact. Really no
15 soot. You don't even see sooting down low here that you saw
16 on the roof in the cabinets up top. You know, when -- it's
17 just -- it's a cluttered mess and we had to draw some
18 conclusions about that.

19 Q. There was some testimony earlier about beans. Were you
20 able to see any beans right here?

21 A. Well, you can. This is some of the beans that were
22 throwed upon the floor. And I'm pretty sure this photo was
23 taken before anything has been moved in that kitchen. Pots
24 and pans everywhere. That's the way we found it when we
25 first went in.

1 Q. So the beans weren't engulfed by flames or anything?

2 A. That's correct.

3 Q. Okay.

4 A. You know, there were no -- there was no burning in the
5 kitchen itself.

6 Q. Okay. Now, if I could, I would like to show you what
7 is marked State's Exhibit 19.

8 A. Okay. This picture shows some little medicine bottles,
9 or whatnot, and there is a little bit of melting on those
10 plastic bottles there." That is inconsistent with the fire
11 in the center of the living room, so we had to try to
12 determine what would have caused that melting. This was
13 actually like a tea pitcher, or something, and it has
14 started to melt and crumple over from the melting as well.

15 Q. Do you recall where those were located in the kitchen?

16 A. I do. Those were just to the left of the refrigerator.
17 So if you guys remember, the refrigerator is going to be
18 over here. That was like a little bread box, or something,
19 and these canisters were on top of that bread box on top of
20 the kitchen counter.

21 Q. I know we are going a little bit out of order. I'm
22 going to show you what is marked State's Exhibit 21.

23 A. Okay. There you go.

24 So here is our refrigerator. This is the bread box,
25 countertop. And those little plastic bottles were there.

1 And you see this plastic container here that's melted down,
2 and so we had to determine what caused that.

3 We find our heater, this heater that you guys have
4 taken a look at earlier today. It was laying on that
5 counter, and there is parts of that heater that is melted
6 away as well. So the question that we as investigators have
7 to answer for ourselves is could the fire across the room in
8 the living room have caused the damage to the heater, the
9 damage to these pieces of plastic from over there? Does
10 that connect? Does this damage, is it caused by that fire
11 over there? And as --

12 Q. Were you able to form an opinion with respect to that?

13 A. We were. As a fire investigator, I can tell you that
14 there were many other objects between that fire and this
15 little countertop that would have been subject to the heat
16 that would have caused that to melt, had it come from the
17 fire on the other side of the room, but what we determined
18 was that this -- the melting on this heater and this -- and
19 the melting on these bottles were an instance of heat all by
20 themselves. They are not associated, not connected to the
21 fire in the living room. There is a lot of distance and a
22 lot of other materials that were not affected by the fire in
23 the living room --

24 Q. I'm going to show you --

25 A. -- for that to have been the case.

1 Q. -- what is marked State's Exhibit 22. That's a closer
2 view of that.

3 Going back to what we testified to a moment ago, are
4 you suggesting -- I just want to make sure I understand
5 that, is either -- is the source of heat that is causing the
6 melting to take place?

7 A. When we observed this heater, the control knob is gone,
8 I believe just as it is today. There is -- there is no on
9 and off button. The knob itself is gone. This would be the
10 orientation that you see it in, and the knob itself would be
11 right here, and -- which would be right there. The knob is
12 gone, so we can't determine if the heater is on or not, but
13 there is melting of the case of the heater. We can see
14 melting of that case, of that plastic case. That is
15 inconsistent with the fire in the other part of the house
16 causing that melting over here on the counter. And that
17 melting is consistent with there being -- that heater being
18 the source -- not an accidental -- not as if the heater was
19 left on here, but the heater was burning. The heater was
20 hot when it was placed on that counter and it caused those
21 nearby plastic materials to melt.

22 Q. So is that consistent with somebody moving it from the
23 fire to the counter?

24 A. That would be a -- that would be a possible conclusion.

25 Q. Okay. And I'm just going to again show you, and you

1 have kind of touched on this already, State's Exhibit 23.
2 Was that in kind of basically substantially the same
3 condition that you found the space heater in?

4 A. That's correct. So now we just turned it so we could
5 take a photo of the other side, and you can see that this is
6 both broken and melted. And you can observe that better if
7 I hold it up and show you. This part here was broken. That
8 happened before it was subject to heat, because that's a
9 clean break. Maybe it was dropped. Maybe it was -- you
10 know, I don't know why it broke, but it's broken, okay, but
11 this is actual melting. You can see the difference in what
12 it did to the plastic, and that was caused by this heater
13 being placed in close proximity to another heat source and
14 then re-located to that countertop, because the fire in the
15 living room could not have caused that damage to the heater.
16 The heater had to have been moved from that other location.
17 Q. Okay. And finally I would like to go to the kitchen.
18 I would like to show you what is marked as State's Exhibit
19 20.

20 This is -- could you identify what this is?

21 A. Once again, the kitchen stove. The picture doesn't do
22 us justice. The knobs are all off. There is no pot --
23 nothing on the stove that would have caused the fire. There
24 is like a glass bottle there, but there is obviously no
25 burning. We have got a kitchen towel that's not involved at

1 all in burning. Just -- there is -- there is no evidence of
2 burning at all.

3 The only thing we see is heat damage, high heat. High
4 heat in that corner, collected in that corner of the room as
5 it traveled across the ceiling from the area of the fire.

6 Q. And so, again, just jumbling the pictures here, were
7 you able to form an opinion as to whether or not the fire
8 originated in the kitchen?

9 A. The fire did not originate in the kitchen.

10 The fire in the kitchen, which we see no real evidence
11 of burning in the kitchen at all, but the amount of damage
12 we have in the living room could not have originated from
13 the kitchen.

14 Q. Let's talk about the beans there.

15 A. Okay.

16 Q. Let's say they left the beans on the stove, what is
17 consistent or inconsistent with that?

18 A. If the beans were left on the stove, the pot that had
19 the beans before a fire could have -- before the heat that
20 is being transferred from the stove top to the pot, before
21 that heat is going to be transferred to the nearby
22 combustible materials, where it's the countertop, the
23 cabinets above, it has to first cook all the beans gone. If
24 anybody has ever left a pot of water boiling too long, you
25 know that it's going to boil until all the water is gone and

1 then you start smelling it and then you start finding the
2 smoke.

3 There would be no beans left. They would be cooked and
4 burnt out into the bottom of the pot somewhere. Beans were
5 on the floor and there is just no evidence that there was
6 any type of burning on the top of the stove. So there was
7 no stove top -- it wasn't caused by beans on top of the
8 stove.

9 Q. Okay. Now, let's move on to the dining room.

10 I'm going to show you what is marked State's Exhibit
11 36. Are you able to identify this?

12 A. That's the dining room, just -- this is a rear door.
13 Our kitchen is to the left. There is the chair we have
14 already talked about. No burning whatsoever on the chair.
15 The beans and pots and pans were on the floor over here. I
16 think that's going to be the bottom of your refrigerator
17 right there.

18 Q. All right. And, again, just another view from a
19 different angle, State's Exhibit 37?

20 A. Exactly. No burning. Nothing is burned there. We
21 just got the soot, smoke, what we call smoke damage. The
22 soot deposits on all the surfaces there.

23 Q. So would that -- would, based on the these two
24 photographs, be consistent for the fire to have started in
25 the dining room?

1 A. No, if the fire had started in the dining room, we
2 would have consumed these walls. We would have charring.
3 You know, these -- you know, that's a paper towel holder it
4 looks like there. It would have been consumed by the fire,
5 most likely. There would be other effects there.

6 Q. Okay. Let's go down the hallway.

7 Next I'm going to show you what is marked State's
8 Exhibit 38. Do you recall --

9 Actually let me do 39 first. Do you recall this room
10 right here?

11 A. It looks like a restroom. No fire whatsoever there. A
12 little bit of smoke damage. That was down the hallway past
13 the kitchen, if I remember correctly.

14 Q. Okay. I'm going to show you State's Exhibit 38. The
15 last one was 39.

16 A. That's the floor I believe of the same room.

17 Q. Okay.

18 A. The restroom.

19 Q. Was there any evidence in there that the fire could
20 have started there?

21 A. No evidence there.

22 Just one thing as an investigator, you notice how
23 cluttered it is and why would it be cluttered like that, but
24 I can answer that. It has nothing to do with the fire.

25 Q. Okay. And, again -- I'm just trying to get this all

1 together. Was this the process that y'all went through as
2 you were trying to determine the origin of the fire?

3 A. That's correct. We observed the whole house in total,
4 outside and inside, and we started eliminating those rooms
5 that had no burning. We can eliminate those as possible
6 areas of ignition. There is no burning. There is only
7 smoke and heat damage maybe in those rooms. And then we
8 started working in the areas where we do observe the
9 melting, the charring, the burning, and we work our way down
10 to an area of origin in that room.

11 Q. Next I'm going to show you State's Exhibit 29. I'm
12 going to just go over it a little faster, because I think --

13 A. Just a bedroom. No smoke -- very little smoke damage,
14 very little sooting, and no fire damage at all.

15 Q. Okay. I'm going to -- again, this is the same room as
16 State's Exhibit 30?

17 A. It's the ceiling of the same room. Very little soot
18 even on the ceiling there.

19 Q. Okay. And State's Exhibit 31?

20 A. It's another picture of the bedroom. No -- no fire
21 damage there.

22 Q. So were you able to form an opinion as to whether or
23 not the fire originated in this room?

24 A. We could definitely rule that room out. The fire did
25 not originate there.

1 Q. Okay. Now I'm going to show you -- some of this is --
2 if you want to probably step over this way, I'll have you
3 look at the pictures. It's kind of hard to see on this.

4 I'm going to show you what is marked State's Exhibit

5 24. Are you able to determine what that was?

6 A. That's going to be the bedroom opposite of the kitchen.

7 Q. Okay. And were you able to determine what, if any,
8 damage was done in this room?

9 A. The bedroom opposite the kitchen, so now we are
10 traveling the other direction from the area where we first
11 entered the building and saw the majority of the damage.

12 We got a little bit more smoke staining up high here.
13 In the corner some smoke collected and left soot on the
14 surface, but no fire occurred in that room. All smoke
15 damage.

16 Q. Okay. And also again I'm going to show you what is
17 marked State's Exhibit 25.

18 A. That's the little hallway leading to that same bedroom.

19 Q. Were you able -- and finally State's Exhibit 26.

20 A. That would be back towards the doorway. So, again, you
21 see where the smoke entered the building -- or entered the
22 room from the hallway and it started collecting on the --
23 the soot collected on the walls and the ceilings, but no
24 fire.

25 Q. Okay. So you were able to form an opinion as to

1 whether or not the fire originated in that room?

2 A. Correct. We ruled that room out as a possible area of
3 origin.

4 Q. Okay. This is State's Exhibit 32. Are you able to
5 recognize this?

6 A. I am. This is the bedroom we just observed here. This
7 is the hallway that leads to that bedroom. And, again, we
8 are coming back towards the living room and we are starting
9 to see more smoke layering on the walls down lower. More
10 sooting and more damage from heat.

11 Q. Were you able to determine if the fire started down
12 this hallway?

13 A. It did not start in the hallway. As we see it there,
14 no, it did not start there.

15 Q. Okay.

16 MR. KENDALL: I would ask for the court's
17 indulgence for one second, Your Honor. I just want to make
18 sure we got all we need.

19 (Off the record)

20 (Back on the record)

21 BY MR. KENDALL:

22 Q. Sir, this is State's Exhibit 35.

23 A. It's a hallway bathroom. No signs of anything burning
24 there.

25 Q. All right.

1 A. No evidence of fire.

2 Q. This is State's Exhibit 27.

3 A. It's the -- I believe we are going back the other
4 direction now. This is back past the kitchen again, I
5 believe, where the laundry room was or the washer dryer in
6 that hallway. And, again, we just have smoke -- smoke
7 staining on the walls. A little bit of melting. The heat
8 collected in that corner and caused that hanger to kind
9 of -- this plastic hanger and it just melted in whatever was
10 on it fell, but no evidence of anything burning there. The
11 fire didn't occur there.

12 Q. So you can say for sure that the fire didn't occur
13 there at all?

14 A. The fire did not occur there. It didn't involve the
15 appliances that you see there, or anything like that.

16 Q. So you can rule out any dryer fire at this point, is
17 that fair to say?

18 A. The damage that we saw in other parts of the home would
19 not be consistent, nor would there be the damage that we
20 expect to see, had there been a dryer fire in that area.

21 Q. Okay. And so in your expert opinion a dryer fire is
22 off the table?

23 A. That's correct.

24 Q. All right.

25 Once again, sorry, anything indicating that there was a

1 fire originating here?

2 A. Nothing indicated. That's just a picture of the
3 ceiling in that same area.

4 Q. Okay. All right. And now I'm going to show you
5 State's Exhibit 34.

6 A. I think that's the other bedroom. And, again, smoke
7 staining along the ceilings, a little bit on the walls,
8 especially near the door where it enters the room, but no --
9 no evidence of anything burning in that room.

10 Q. I see like a tubular thing kind of sticking out right
11 there. I don't know if you want to look at it on here.

12 It's right there? Is that what that is?

13 A. Wrapping paper.

14 Q. And so had there been a fire originating in this room,
15 what would you expect to happen with that wrapping paper?

16 A. This is a roll of wrapping paper. I mean, obviously
17 wrapping paper is made of paper and it's going to burn
18 pretty quickly. It could easily be ignited by a fire in
19 that room.

20 The damage we see, again, in another part of the
21 structure is not consistent at all with the fire beginning
22 in this room, when we have little damage in this room at
23 all. No -- really no fire damage at all.

24 Q. Okay. And, finally, towards the living room.

25 A. It's looking back towards the living room.

1 So from the hallway, looking back towards the living
2 room, here is our washing machine and dryer. So we are
3 standing looking back and you see the amount of damage that
4 was back in that living room.

5 This would be your dining area. It had a little wall
6 that jutted out that separating the table and chairs from
7 the living room there. The kitchen is on the right.

8 As we go through this little opening to your right
9 would be your refrigerator.

10 So here is our living room where we first entered the
11 structure and you have that corner -- that corner area that
12 was so heavily charred. And, again, no fire on this end of
13 the building, the home, that would cause the charring that
14 we see on the other end.

15 Q. Okay. All right.

16 I'm sorry, that was State's Exhibit 33. The other
17 one was 34. I'm sorry.

18 Now, if we could, you already kind of testified to
19 this briefly a little while ago. Could we talk about what
20 you see here?

21 A. Okay. Again, we are -- this is from the area of the
22 kitchen back across the room towards the area where we had
23 the most charring and we can kind of see our V-pattern. We
24 have got charring, actual charring up here. You can tell
25 that he was a hunter. We have got the little evidence of

1 the hunter there, and it was actually consumed by the fire.
2 We have got charring there that we didn't have -- we didn't
3 have charring at that height in other areas of the house.

4 Q. I think we actually -- that was State's Exhibit 5.

5 I'd like to show you State's Exhibit 2 right now.

6 A. Again, just a little bit closer-in shot. You know, the
7 cabinets here, the desk and the cabinets are consumed by the
8 fire. We have got the charring on the sheet rock walls
9 there and other objects.

10 Q. When you say -- a couple points of this right now.
11 Earlier you talked about the V-shaped pattern. Please
12 describe how that relates to a fire.

13 A. Okay. So, again, a fire is going to burn up and out.
14 Heat rises. Fire produces heat, so it's going to burn up
15 and out in a V-shape pattern from its area of origin. And
16 it's going to do that until it meets something that's going
17 to change its direction, until it meets resistance, such as
18 the ceiling, and then it's going to level out and start
19 banking back down.

20 In this case someone saw the smoke early. There is a
21 lot of reasons why we didn't have fire consuming this whole
22 building. It never got to that point. The fire department
23 was able to get there and extinguish it and contain it in
24 this one area. So we have a very defined V-pattern pointing
25 us back to this area of the building, of the room. And,

1 again, you can kind of see that with the charred material,
2 the heavy charring on the walls and on the furniture coming
3 back down to that -- to this -- to an area there in the
4 corner of the room.

5 Q. Okay. Next I'm going to show you what is marked as
6 State's Exhibit 7. Do you recognize this?

7 A. Yes, this is, again, a closer in. We are getting a
8 little -- we are narrowing our focus now down to the actual
9 area of origin. We want to try to identify all the
10 appliances, all the possible ignition sources that could
11 exists there, and --

12 Q. Were you able to do that?

13 A. We were able to do that. We were able to sift through
14 and remove the debris layer by layer so that we could try to
15 identify as many of the elements that were there as
16 possible --

17 Q. Okay.

18 A. -- and determine what was there and where the fire
19 started.

20 Q. This is State's Exhibit 8. I think we just touched on
21 the testimony?

22 A. Exactly. We are trying to break that apart. Some
23 things that I'll point out to you is a plastic child's desk.
24 It was purple and gray, and there were some other materials
25 piled on top of it. That's made completely of plastic and

1 when the fire happened, it kind of melted into a big glob,
2 which made identifying some things difficult. It made --
3 you know, it just made a big glob out of all those materials
4 together.

5 This is parts of a vacuum cleaner. We were able to
6 determine the vacuum cleaner was not plugged in.

7 Q. How does that affect whether or not it could have
8 started the fire?

9 A. If it's not plugged in, it wouldn't be the cause of the
10 fire. It has no electricity to it.

11 Q. Did you find any other appliances kind in that mass of
12 stuff that were plugged in?

13 A. Not that were plugged in there. There is a TV nearby,
14 a computer nearby that were not in the center of the area of
15 the fire.

16 Q. And how were you able to determine where the center of
17 the fire was?

18 A. Again, by using the V-pattern puts us in the right
19 area. And then we start layering through there to determine
20 what's burned most, because the fire again is going to burn
21 up and out. And I believe you will maybe have some other
22 pictures there that will help.

23 Looking at the furniture, looking at the faces of the
24 cabinets, getting us in the right area, and we were able to
25 determine that all of that melting, all of that stuff that's

1 disintegrated together there could only have been caused by
2 a fire right there, not a fire on the countertop or desk
3 top. Not on fire on the sofa nearby. That would not be the
4 damage that we would expect to see. The fire had to
5 originate from that area.

6 Q. This is State's Exhibit 10.

7 A. Again, just -- this is just damage up high. The
8 ceiling in this area either collapsed from the fire or
9 possibly from the fire department's involvement trying to
10 extinguish it. It fell down and you can see it. That's the
11 actual ceiling joists or roof trusses there holding up the
12 roof. The ceiling is gone.

13 But high heat, we actually had charring. This was
14 charred. Maybe that's a picture of something on the wall
15 that's charred and gone.

16 Q. Okay. And finally State's Exhibit 11.

17 A. Yeah, again, the same area. Just a picture up high.
18 It's kind of out of order, I guess, because we have kind of
19 already eliminated the fire. We have already determined the
20 fire started in the room. That's just to show you the
21 damage that happened up high.

22 Q. When you say happened up high, if the fire -- let's say
23 the fire had started at some kind of electrical outlet
24 circuit in the ceiling, would this be consistent with that?

25 A. Had the fire started in the ceiling with a light

1 fixture in the ceiling, fire burns up and out, it would have
2 consumed the attic structure.

3 When this ceiling fell down, the fire was pretty much
4 out. Nothing burned. There is not even any soot hardly on
5 these trusses that are holding up the roof. So, you know,
6 from an investigative standpoint, that fell way late in the
7 stage of the fire, because the fire never consumed, it never
8 burned any of that roof structure, or most likely the fire
9 department caused it to fall after they -- in their
10 extinguishing process after the fire is pretty much out.

11 Q. Okay. Now I would like to show you what is marked
12 State's Exhibit 14. Could you please describe to the jury
13 what this is?

14 A. I sure would. If you would lighten it up for me a
15 little bit, if possible?

16 Q. I'm sorry.

17 A. There you go.

18 Here is that desk, the child's desk that -- again, we
19 kind of got ahead of us awhile ago, because at this point
20 when this picture was made we had not moved anything or
21 really started digging into that pile yet. But you see this
22 pattern here is part of our V-pattern. It's pointing back
23 to the center of this room. So we know the fire didn't
24 start on this chair or whatever furniture we have there.
25 This end of the box is burned a little bit. This end is not

1 burned. So all that is pointing us back to the area where
2 the fire did originate, where the most burning did occur.
3 And once we determined -- we had to determine why did the
4 fire start there. What was there to cause the fire, but we
5 know the fire didn't start to the left of that area. It's
6 to the right.

7 Q. Okay. And here is State's Exhibit 15.

8 A. I should have pointed out this -- I think that's like
9 an old mill churn, or something. I should have pointed out
10 in an earlier picture, but that was in the corner supporting
11 that corner desk. That's holding up that corner, so we are
12 now on the floor looking up on the underneath of the desk.
13 And what's interesting here is that these blocks of wood
14 that were used to support that desk is charred back towards
15 the center of the room. In other words, that's two
16 identical pieces of wood, but this one towards the center of
17 the room is obviously burned and charred more than that one
18 just a few inches away. It was exposed to the fire for a
19 longer duration, greater intensity to allow it to -- or to
20 cause it to be charred in that manner.

21 So, again, it's just pointing us back to the center of
22 the room. The fire didn't happen underneath that cabinet
23 somewhere.

24 Q. Let me ask you this. What's the significance of the
25 underside of the desk being burnt?

1 A. The underside of the desk shows that the fire started
2 lower than the surface of that desk. If the fire had
3 started above there, it would burn up and out from its
4 origin.

5 The fire could have burned down low, but there would
6 have had to have been enough burning that fire started, you,
7 know, the roof, the ceiling, the lights, whatever, could
8 have fallen back to the floor and ignited the floor, the
9 contents of the floor to burn.

10 In this particular case we didn't have full room
11 involvement, so the fire is only going to go from its area
12 of origin up and out. The whole room never lights off, so
13 the top surfaces of that desk actually were less charred
14 than the bottom surfaces, meaning that the fire was below
15 the surface of that desk.

16 Q. So let me ask you this. Mr. Earls here in the
17 courtroom testified earlier that the last time he saw that
18 heater, it was sitting on top of the desk. Is that correct?
19 Do you recall that?

20 A. I do recall that. That's true.

21 Q. Could a heater that was sitting on top of that desk
22 cause that damage --

23 A. A heater --

24 Q. -- based on the facts we know?

25 A. A heater on top of this wooden desk, no. No., Did he

1 state wooden desk or child's desk, I'm not sure.

2 Q. Okay.

3 A. But the heater on top of that -- a heater on top of
4 there would not have caused the damage that we see on the
5 floor and underneath.

6 Q. Okay. And then --

7 A. Okay. Again, this is one the edges of that corner desk
8 and our V-pattern brings us right back out to the center of
9 the floor. You can't see that one, but it would travel on
10 up that direction, but we didn't have burning back here.
11 The bottom there is not burned at all, but out here towards
12 the center of the floor is where the fire occurred and the
13 V-pattern points us back to that area.

14 Q. Okay. And finally State's Exhibit 13?

15 A. Yes, another picture underneath. There is our little
16 pieces of wood that was supporting the desk. And, again, we
17 have got some heavy charring there on the underside of the
18 desk that we didn't have on the surface of the top of the
19 desk. We did on the cabinets above, because the fire burns
20 up and out, but not the surface itself.

21 Q. Okay. And, finally, I would like to show you what is
22 marked State's Exhibit 12. Describe this.

23 A. Yes, this -- here is our plastic child's desk. This --
24 these are the floor tiles.

25 If you would like -- you can maybe see the distinction

1 of the floor tiles.

2 So what happened is as we were trying to sort through
3 and sift through that debris, all of it had melted together
4 to the floor, and we actually -- the edges of the floor are
5 burned away here. We have got a little hole burned through
6 there, but the majority of that pile of debris, it all
7 melted together and involved -- it involved melted to the
8 floor. That helped us to confirm that the fire started low,
9 that there was a lot of heat down low in this particular
10 area, not consistent with a fire starting on the desk top or
11 on furniture, on the tops of the furniture, cushions or
12 anything like that. This fire started lower than all that.
13 It started very low to the floor.

14 Q. And this also -- I'm sorry, just to touch on something
15 else, if I could. Was there any damage to the floor? Any
16 damage to the tiles of the floor?

17 A. The floor tiles were definitely damaged in the area of
18 the origin.

19 Q. And how were they damaged?

20 A. They were burned, and obviously, you know, melted
21 together there.

22 Q. Okay. If you just want to have a seat back up there,
23 please.

24 (Witness back on the witness stand)

25 BY MR. KENDALL:

1 Q. So, based on your observations and your investigation,
2 is how we did that basically how you conducted the
3 investigation?

4 A. That's very close. We -- we had some of the pictures
5 out of order. So we would work from the areas least burned,
6 ruling those out, get down to the area of origin and start
7 layering it down piece by piece to identify what's there and
8 to eliminate possible sources.

9 Q. And what possible sources were you able to eliminate in
10 this case?

11 A. Well, there were really no electrical appliances in
12 that area of origin that were plugged up. We mentioned the
13 vacuum cleaner. It's not plugged in. So you have to think
14 about other possible sources of ignition. Could there have
15 been a candle in the area? Could the heater have been left
16 on in that area, maybe on that pile or on that plastic
17 child's desk or in that area? Could that have caused the
18 fire? Could it -- could smoking materials have caused the
19 fire, because we know that at least one of the tenants of
20 the home smokes? So could smoking materials have caused
21 that fire? And --

22 Q. What -- were you able to -- I'm sorry, let's back up
23 and treat those one by one.

24 A. Okay.

25 Q. Going in reverse order, what led you to believe that

1 that heater didn't start -- excuse me, that that heater
2 being left on the child's desk didn't start the fire?

3 A. Okay. Had the heater been left on the child's desk and
4 that started the fire, the heater wouldn't have been on the
5 countertop.

6 Q. Okay.

7 A. We found the heater in a different area than the
8 child's desk.

9 Q. Okay. And what about candles? Were you able to
10 eliminate candles as a source?

11 A. Candles and smoking and other sources of accidental
12 ignitions that might have been dropped there
13 unintentionally, accidentally, I'll kind of rule those out
14 together.

15 Q. Okay.

16 A. Had those -- had the fire started by smoking materials,
17 or by a candle, or some other ignition source that was
18 accidentally left in that area to cause a fire, for a fire
19 to happen, we have to have a heat source come in contact
20 with something that's combustible and there has to be oxygen
21 present, which is in the air around us. So had a heat
22 source come in contact with a material that would burn in
23 that area, then the melting that we see on that heater would
24 not have occurred, if that heater were on the countertop.

25 We find the heater on the countertop and that really

1 allowed us to say the damage that we found on this heater
2 and those nearby plastics, those medicine bottles on the
3 countertop, cannot be associated with that fire in the
4 center of the room, unless it was moved after the fire
5 started, but while it was still hot enough to melt the
6 plastic close by.

7 Q. Okay. And let's talk about what the point of origin of
8 the fire, if I could. Were you able to formulate an opinion
9 as to where the fire had started?

10 A. We are able to rule the area of origin to be the area
11 of the child's desk, just away -- just outside the corner
12 desk of that room, the corner of the living room there.
13 That's the area of origin.

14 One thing in fire investigations, that if we are going
15 to determine -- if we are going to contribute the cause to
16 cooking, or electrical, or something -- or some specific
17 cause, then we have to identify the ignition sequence; what
18 was the source of heat that came in contact with what
19 combustible material that caused the fire? What was the
20 ignition sequence, the sequence of events that led to the
21 ignition? And in this particular case we cannot identify
22 the ignition sequence which leads -- and we cannot identify
23 why the melting on the heater occurred in a location, other
24 than where the center of the fire appears to be. So that
25 leads us to the opinion that human involvement, human

1 interaction, had to cause this fire to occur.

2 An accidental source, purely an accident, discarding
3 smoking material or a candle left burning in that one area
4 could not have caused the damage that we found in two
5 separate areas of the home.

6 Q. So, to summarize, because this heater had burns on it,
7 based on where those burns occurred, basically where the
8 center of that fire occurred, it was your opinion that that
9 heater caused the fire and was separately moved, or --

10 A. I cannot tell you that that heater caused the fire. I
11 do not know what caused the fire. I don't know if it was a
12 match, a lighter, a candle.

13 I can tell you that that heater -- where the lighter
14 was observed --

15 Q. Uh-huh.

16 A. -- on the kitchen counter and the damage that was near
17 the heater, the melted plastic medicine bottles and the
18 Tupperware container, those -- that damage would not have
19 occurred from a fire in that living room.

20 Q. That was accidentally set?

21 A. That was accidentally -- that wasn't an accident,
22 that's correct.

23 Q. Okay.

24 A. Without a human moving that heater.

25 Q. And just to be clear on this, just -- you are able to

1 also rule out any sort of non-human accidental source, is
2 that fair to say? For example, a dryer goes bad,
3 electricity flickers, squirrel gets in the box, anything
4 like that?

5 A. We -- we could rule out all other types of ignition
6 sources that naturally occurred in the home.

7 Q. Okay. Let me ask you about this as well, and if you
8 can't answer this, it's okay.

9 Could you basically just describe this fire? Was it an
10 all engulfing fire? Did it light the roof on fire? Was it
11 a burn it to the ground big bonfire that you could see for
12 miles away? Was it more smoke? What was -- what was --
13 what was the nature of this fire?

14 A. Yeah. This --

15 Q. Were you able to make any determinations as to that?

16 A. This fire was mostly -- the damage -- the majority of
17 the damage that you see throughout the house was caused by
18 the smoke and the heat.

19 The fire itself was small in nature. It consumed a
20 small amount of materials in the center of that room and it
21 caused charring on the nearby furniture. It caused decay on
22 some of the nearby upholstered furniture, and soot and heat
23 throughout the rest of the structure, but the fire did not
24 burn the structure. It didn't consume the whole building.
25 We never reached what we call flashover. I described that

1 earlier.

2 Q. Okay. So the ability to see that from a long distance,
3 or -- actually let me back up.

4 How many -- how -- was there a lot of windows in this
5 house?

6 A. It was a typical -- a typical home. Not -- I don't
7 know, three or four windows down each side, maybe.

8 Q. So would you have necessarily been able to see this
9 from a long distance away?

10 A. Probably would not. Homes are -- even mobile homes are
11 pretty energy efficient, they are pretty tight and so it's
12 going to take a good amount of smoke to build up on the
13 inside before it starts spilling on the outside.

14 Q. Okay.

15 MR. KENDALL: Your Honor, I have got no further
16 questions at this time.

17 Please answer any questions that Mr. Thompson
18 might have for you.

19 THE COURT: All right, ladies and gentlemen, we
20 are going to take a short break, let you stretch your legs,
21 move about, so you are going to be allowed to step back to
22 the jury room.

23 As always, when you leave the courtroom I'll ask
24 you not to begin any discussions about this matter until
25 such time as I have asked you to begin your deliberations.

1 You can retire to the jury room at this time.

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

4 THE COURT: We are going to take a short recess.

5 I'll caution the witness not to discuss his
6 testimony with anyone during the break.

7 Court would be in recess for a short period of
8 time.

9 (Whereupon, proceedings were recessed)

10 (Whereupon, proceedings were reconvened)

11 THE COURT: All right, let's come do order.

12 MR. KENDALL: Yes, Your Honor, I don't know if you
13 have any problem with Officer Gardner being excused?

14 THE COURT: Any objection, Mr. Thompson?

15 MR. THOMPSON: I'm sorry?

16 THE COURT: Officer Gardner would like to be
17 excused.

18 MR. THOMPSON: No, sir, I have no problem with
19 that.

20 THE COURT: You are free to go. Thank you for
21 coming, sir.

22 All right, are you ready, Mr. Kendall?

23 MR. KENDALL: Yes, sir, Your Honor.

24 THE COURT: Are you ready, Mr. Thompson?

25 MR. THOMPSON: Yes.

1 THE COURT: Bring the jury in.

2 (The following takes place in the presence of the
3 jury panel)

4 THE COURT: The record will reflect the jury has
5 returned to the courtroom.

6 When we took our break the State had completed its
7 direct examination of this witness.

8 The defense may now cross-examine him.

9 Mr. Thompson.

10 MR. THOMPSON: Thank you, Your Honor.

11 THE COURT: Yes, sir.

12 CROSS EXAMINATION BY MR. THOMPSON:

13 Q. I'm not going to go back through all those pictures.
14 We have all seen enough of those, but I want to ask you a
15 few questions.

16 A. Yes, sir.

17 Q. You say the fire started under that corner desk?

18 A. No, I said --

19 Q. On the floor under it, or some wheres?

20 A. The fire started below that level horizontal plane in
21 the room. It started out in the -- our origin would put it
22 more towards the center of the room from there --

23 Q. Okay.

24 A. -- but not elevated.

25 Q. But it wasn't right up under the desk? It was out in

1 the room?

2 A. Correct.

3 Q. And you don't know whether it was actually on that
4 little play desk or not?

5 A. The play desk was involved in the origin. Whether it
6 was underneath, on top, there was so much damage there, it
7 puts the origin there, but the actual first ignited material
8 I cannot identify.

9 Q. Okay. That was going to be my next question. Could
10 you tell me what other material was there that burnt?

11 A. There was the plastics involved in the play desk.
12 There was the vacuum cleaner. There was a suitcase, and
13 there were other associated -- there were papers, clothing
14 materials and other things that just couldn't be identified
15 because of the burning.

16 Q. Okay. So there were combustible items there?

17 A. Yes, sir.

18 Q. All right. This heater, it was on a counter in the
19 kitchen and obviously the fire did not occur in the kitchen,
20 is that correct?

21 A. That's correct.

22 Q. But some bottles sitting next to the heater were
23 melted, is that correct?

24 A. Correct. A small amount of melting, that's correct.

25 Q. So was there any burning or scorching on the counter

1 where that heater was sitting?

2 A. There was none.

3 Q. Okay. So the heater then -- I guess my question is
4 then that heater would not have been on the fire when it was
5 set there, is that correct?

6 A. I would tend to believe it was just very hot, not -- it
7 wasn't physically burning when it was set there.

8 Q. Okay. Can you say that when that heater was set on
9 that counter in the kitchen, it being physically hot, and
10 those bottles melted, can you say that occurred at the same
11 time as the fire that occurred in the living room?

12 A. What I -- what I know is that there was no damage to
13 the heater at one point in the day. A fire has occurred in
14 the living room. There is a heater with fire damage to it
15 in another location that did not have damage previous to the
16 fire and its location now does not have fire damage, so it
17 was transferred there after having some burning.

18 So to answer your question, I think, yes, the fire
19 occurred and then the heater was transferred.

20 Q. Okay. But yet there is nothing on -- there is no
21 scorching on the counter or anything, so the heater was not
22 on fire?

23 A. The heater did not ignite anything on that countertop.
24 It didn't scorch the countertop, that's correct.

25 Q. When it was transferred, it was not on fire?

1 A. But it had already burned, because the burning that we
2 find on it would not have happened after it was laid on the
3 counter, with the fire in the center of the room.

4 Q. Okay. Does it have a propane bottle or anything in it?

5 A. It does.

6 Q. It's got one in it right now, hasn't it?

7 A. Yes, sir.

8 Q. And if that thing -- if that heater had been in a fire
9 with a propane bottle and had burnt, wouldn't that propane
10 bottle have exploded?

11 A. Not necessarily at all. The propane bottle itself may
12 never have been subjected to heat, that -- the little
13 plastic casing. And the plastic casing is going to melt at
14 fairly low temperature, as compared to what it would take to
15 explode the propane bottle.

16 Q. But then it's moved, not on fire, you are saying, to a
17 counter in the kitchen to where it's hot enough to melt the
18 other bottles on the counter?

19 A. There are metal components there of that heater that
20 actually will -- the heating element, the heating element
21 there that provides the heat could have still been very,
22 very hot and -- you know, I don't know that I can define the
23 specific events that occurred, the sequence, necessarily,
24 but I know that the damage to the heater is inconsistent
25 with the fire being -- with it being placed on that

1 countertop prior to the fire in the center of the room. The
2 fire in the center of the room could not have caused the
3 damage that's on the heater after it was placed on the
4 countertop.

5 Q. Okay. But that doesn't mean that it couldn't have had
6 that damage at some other time and been sitting on that
7 countertop for days or weeks?

8 A. Well, the -- we had information at the time of the
9 investigation, and I'm confident that it came out earlier,
10 that the heater did not have damage to it. It was an intact
11 useful heater. No damage prior to this event.

12 Q. Okay. Other than the fact that the arm, the handle is
13 broke off of it now, it could still be used as a heater,
14 right?

15 A. Well, there is no control knob any more, and obviously
16 the housing, the plastic housing that it would sit on, is
17 missing, so I don't know if it would stand up appropriately
18 or not.

19 Q. Okay. You cannot identify the ignition sequence, so
20 what you are saying is there was a fire in that room and you
21 can't say what started it, right?

22 A. That is correct.

23 Q. Okay. Can you say who started it, based on your
24 investigation of the fire itself?

25 A. Of the fire itself, I cannot say who started it.

1 Q. Okay.

2 MR. THOMPSON: Thank you.

3 THE COURT: Redirect?

4 MR. KENDALL: Just very, very briefly.

5 THE COURT: Yes, sir.

6 REDIRECT EXAMINATION BY MR. KENDALL:

7 Q. Can you say if this fire started by accident?

8 A. The fire, in my opinion as investigating hundreds of
9 fires, a couple hundred fires, this fire does not appear to
10 be accidental, because we have elements of burning. We have
11 elements that showed decay caused by burning in two separate
12 locations apart from one another that cannot be connected.

13 Q. Okay. And in your role as a fire investigator, did you
14 take any steps to determine who did this, or did you just --
15 is your job to find out where it was?

16 A. I was involved on the scene with forming some
17 hypothesis of how this could have occurred, and so I was
18 involved in some of the discussions on the scene about the
19 last people --

20 Q. You don't interview witnesses and stuff like that?

21 A. I did not interview witnesses on this particular fire,
22 because law enforcement was already involved.

23 Q. All right.

24 MR. KENDALL: No further questions, Your Honor.

25 MR. THOMPSON: Nothing.

1 THE COURT: Recross?

2 MR. THOMPSON: No, sir.

3 THE COURT: All right, sir, you may step.

4 Do you wish to excuse the witness?

5 MR. KENDALL: Yes, sir, Your Honor.

6 THE COURT: Any objection to his leaving?

7 MR. THOMPSON: No, sir.

8 THE COURT: You are free to leave. You are free
9 to stay as well, however you would like to do it.

10 You may call your next witness.

11 MR. KENDALL: The State would call Scott Coleman.

12 THE COURT: Come forward, sir, and be sworn.

13 SCOTT COLEMAN, having been first duly sworn,
14 testified as follows:

15 THE COURT: Have a seat, please.

16 State your name.

17 THE WITNESS: Scott Coleman.

18 THE COURT: Thank you.

19 Your witness, Mr. Kendall.

20 DIRECT EXAMINATION BY MR. KENDALL:

21 Q. Officer Coleman, could you please state your full name,
22 rank, and profession please?

23 A. Scott Chase Coleman. I'm an administrative captain
24 with the City of Gaffney fire department, which entails
25 being the fire marshall, fire training officer, and fire

1 prevention officer.

2 Q. Okay. And how long have you worked as a firefighter?

3 A. I have been in the fire service for a little over
4 twenty-five years.

5 Q. And what year -- what year did you -- what year did you
6 start with that, with working on the fire department?

7 A. 1988.

8 Q. And where was your first job as a firefighter?

9 A. The Town of Bedford, Massachusetts.

10 Q. Okay. And what are some other jobs that you have done
11 in the fire -- as a firefighter?

12 A. I worked for the Bedford Fire Department as an on-call
13 firefighter.

14 And then I obtained a part-time position with the Mass
15 Fire Academy, in which I first started their support and was
16 able to switch over as an instructor for them full time.

17 Q. So you were actually an instructor for the fire
18 academy?

19 A. For the Massachusetts Fire Academy, I was an instructor
20 up there, yes.

21 Q. Okay. And what about -- what about recently? What is
22 really your job now?

23 A. Five years ago I came down to South Carolina and took a
24 position with the City of Gaffney Fire Department.

25 Q. And as a Massachusetts firefighter, what state

1 certifications did you hold?

2 A. I have to refer --

3 Q. And if you need, was there a -- did you prepare a
4 curriculum vitae in preparation for this?

5 A. Yes.

6 Q. And do you think looking at that would help you kind of
7 remember about some of the stuff?

8 A. It sure would, if I may.

9 MR. KENDALL: I think, unless defense counsel has
10 some objection.

11 MR. THOMPSON: No objection.

12 BY MR. THOMPSON:

13 Q. You can go and take a look at it. It's marked -- it's
14 actually marked State's Exhibit 40. I think you have a copy
15 right there.

16 A. Yes, sir.

17 Q. Okay.

18 A. I'm certified in three states.

19 In Massachusetts, Firefighter I, Firefighter II, Fire
20 Instructor I, Fire Inspector I, Fire Inspector II, Fire
21 Officer I, and Fire Officer II.

22 Q. And what about in South Carolina?

23 A. In South Carolina I'm certified as a Firefighter I,
24 Firefighter II, a Fire Instructor I, a Fire Inspector I, a
25 Fire Officer I, and Fire Marshall.

1 Q. Okay. And what about Florida?

2 A. Florida, I'm certified as a Firefighter I and II.

3 Q. Okay. And what type of education did you receive for
4 firefighting? First of all, if I could just talk kind of
5 like formal higher education.

6 A. I went to a community college and received an
7 Associates Degree in Fire Science and Technology. And then
8 I used that to go on to an upper college for a Bachelors
9 Degree in Fire Science and Technology.

10 Q. And what year did you graduate from that?

11 A. I don't know, sir.

12 Q. Okay.

13 A. I'm sorry.

14 Q. Was it before 2011?

15 A. Yes.

16 Q. Okay. Well before 2011?

17 A. It would have been -- I came to South Carolina in
18 December 2008, so it would have been by 2007.

19 Q. Okay.

20 A. I had that.

21 Q. Terrific.

22 What sort of training have you undergone since you have
23 been a firefighter as it relates to fire investigation?
24 Approximately how much training have you received as it
25 relates to fire investigation, particularly -- yes, as it

1 relates to fire investigations?

2 A. Everything from the technology of fire, the basic fire
3 of science as what causes a fire, how fires develop. And
4 that all leads up to for the suppression techniques. And
5 then taking that further into building construction and how
6 the construction of a building and the different dynamics
7 that are involved relate to the fire science.

8 Q. Okay. And let me ask you this. I should have done
9 this a second ago. Does a degree in science, in fire
10 science and technology, what does all that encompass? What
11 sort of things do you do there? Does it deal with
12 investigations there as well?

13 A. Fire science and technology degree encompass the
14 science of fire, what causes fires, all the way up through
15 how to determine how a fire started, cause and origin, and
16 to the technology of how to prevent fires in the future.

17 Q. Okay. And if I could, I would like you to go through
18 your C.V. real fast and just hit off basically the training
19 that you have received. Then we will go through the
20 experiences that you have had as well.

21 So looking at your curriculum vitae, what cases -- or
22 what have you -- what classes have you taken and
23 approximately how much training have you received? We can
24 just go through it, if that's okay, with respect to either
25 arson or fire cause, origin investigation, any of those

1 things.

2 A. In Massachusetts I went through from arson awareness,
3 through arson determination, into some of the classes with
4 the automatic sprinklers and how they relate to fire
5 suppression and how that would change the dynamics of a
6 building. The burning process, building construction,
7 explosive incidents, explosive recognition, flammable gas
8 and the properties of that. Flammable liquids and their
9 properties. High rise and large area fires. Structural
10 hazards, and how to present in court.

11 Q. Okay. And were all those classes taken prior to 2011?

12 A. Yes, sir.

13 Q. Okay. And what other cases have you taken in regards
14 to fire investigation?

15 A. I took a college class in fire investigation and arson.
16 It was a forty hour class. I took that in Massachusetts.

17 I have been to the National Fire Academy in Emmitsburg,
18 Maryland for an eighty hour class for fire cause
19 determination.

20 I have taken classes in North Carolina, in Greenville,
21 South Carolina through a private concern.

22 And the South Carolina and North Carolina combination
23 has done a class at Myrtle Beach that I have partaken in in
24 Mitchell Community College in North Carolina.

25 Q. Okay. And, overall, how much training would you say,

1 to include the college classes that were relevant and the
2 other training that you have done, would you say that you
3 have done in fire investigation? How much have you
4 received?

5 A. It's easily eighty more hours per year my career --

6 Q. Okay.

7 A. -- that I have had.

8 Q. So literally hundreds, is it fair to say?

9 A. Yes, sir.

10 Q. And you have been a firefighter for a long time. How
11 many fires would you say that you have investigated during
12 that time?

13 A. The only fires that I can count as investigating are
14 ones that I was actually in the role as an investigator.

15 Q. Okay.

16 A. So I have investigated over a hundred fires as an
17 investigator. I have been exposed to a lot more in my
18 career, but I wasn't in the role of investigator, so I don't
19 have those listed.

20 Q. Okay. And were some of those as the lead investigator?

21 A. Yes, sir, sometimes by myself.

22 Q. Were some of them having solo, doing it by yourself?

23 A. Yes, sir.

24 Q. And we have seen some testimony today, I know that you
25 were in the courtroom for it. Were the procedures that you

1 heard consistent with what the testimony was earlier today?

2 A. Yes, sir.

3 Q. And has that been what your experience and training has
4 been focused on?

5 A. Yeah, the scientific approach.

6 Q. Okay.

7 A. The methodology.

8 Q. Okay.

9 MR. KENDALL: At this time, Your Honor, we would
10 offer Scott Coleman as an expert in fire causation and
11 origin.

12 THE COURT: Any objection?

13 MR. THOMPSON: No, sir.

14 THE COURT: He will be qualified as such, and I
15 have explained to you what that designation means.

16 You may proceed, Mr. Kendall.

17 MR. KENDALL: Let's go through these pictures.

18 BY MR. KENDALL:

19 Q. I'm going to be kind of brief, and I don't mean to take
20 anything away from the part of your testimony, just for the
21 sake of time.

22 You were in the courtroom today when Officer Ellis
23 testified. Were you able -- and you saw the pictures, I
24 believe. Were you able to form a conclusion as to whether
25 the fire originated outside the home?

1 A. Correct, I was able to form an opinion.

2 Q. Did you determine it started outside the home?

3 A. There is absolutely no evidence or indication that the
4 fire could have started outside the home.

5 Q. And did you have any -- based on your experience and
6 observations and the photos taken, did you determine -- were
7 you able to make a determination as to whether the fire
8 started in any room other than the living room?

9 A. The fire that was extinguished by the fire department
10 started in the living room, not in any other room.

11 Q. So all of the rooms can be eliminated at that time --
12 at this time?

13 A. Correct, sir.

14 Q. Okay. The majority of testimony I would like to put
15 forth is on cause of this fire. And if I could, I would
16 like to go through, in your expert opinion, eliminate
17 potential causes of fire that could have happened.

18 Was there any evidence that you saw that this could
19 have been an electrical fire?

20 A. No.

21 Q. And what was inconsistent about this fire that would
22 have led you to believe it was not electrical, caused by an
23 electrical fire?

24 A. Going to the origin of the fire and in that area there
25 was no appliances or devices or wiring of an electrical

1 nature that would have been energized to have been able to
2 provide the heat.

3 Q. There has been a lot of testimony that was given
4 earlier about the purple children's desk. I think you heard
5 that. Would you agree that's the point of origin of the
6 fire?

7 A. Yes, sir, the top of the desk.

8 Q. Just in that area?

9 A. Yes, sir.

10 Q. Did you come across anything on that desk, as you did
11 your reconstruction, that could have been -- that could have
12 caused the fire without an external source? In other words,
13 did you find any plugged-in electrical appliances, candle
14 wax, anything like that?

15 A. There was nothing that was energized and nothing that
16 could have provided sufficient heat was found in that area
17 of origin.

18 Q. And as for a heat source, where would that have come
19 from?

20 A. The only conclusion I could come up with was that it
21 had to have been introduced by an outside source.

22 Q. Okay. Now, when you say introduced by an outside
23 source, could you kind of put that in laymen's terms?

24 A. Not being there at the time of the fire, I can't say
25 whether it was a match, or a lighter, or what was used, but

1 basically it was nothing in the area of origin that would
2 have caused the heat that would have started the fire, so
3 the heat had to have been brought from a different place.
4 And since there was no trail or way to bring the heat in,
5 somebody had to have introduced it.

6 Q. So when you say somebody, you are referring to a human
7 being having introduced the heat source, is that fair to
8 say?

9 A. Correct.

10 Q. Okay. And when you say a trail, what were you
11 referring to there?

12 A. You could have -- usually it ends up being someone
13 trying to make a fire spread quicker. But when I say a
14 trail, it develops with somebody laying out stuff or
15 something being spread or spilled in a way that you can
16 ignite it at one end and it will follow that trail to go to
17 different places.

18 Q. Okay. And was there any evidence of that in this case?

19 A. There was no evidence of that.

20 Q. Okay. Are you familiar with this heater as well?

21 A. Yes, sir.

22 Q. Are you familiar with this heater as well?

23 A. I am, sir.

24 Q. And was it -- with the exception of the handle being a
25 little bit broken at the top here, was it in fundamentally

1 the same condition?

2 A. Yes, sir.

3 Q. And so -- I'm looking at this. Can you kind of give
4 your comments in regards to the casing of it?

5 A. The casing has evidence of being exposed to heat due
6 to the melting of the plastic, but it also has evidence of
7 being broken in a way that had nothing to do with heat.

8 Q. Okay. Now, where, as you were conducting your fire
9 investigation, was this ultimately located?

10 A. On the counter in the kitchen.

11 Q. On the counter in the kitchen.

12 Was there anything in the kitchen that could have
13 caused the melting to this heater?

14 A. We didn't find anything in there that would have caused
15 the heat to have caused it.

16 Q. So what conclusion were you able to draw, excuse me,
17 about the heater and how it affects this case -- or, excuse
18 me, about the heater and how it got there, or what you can
19 say -- sorry, let me back up a second.

20 What conclusion were you able to draw about this
21 heater?

22 A. I had to treat that as a separate thing. We had the
23 origin of the fire, which was what the fire department
24 responded to and extinguished. And then we also had the
25 heater in the kitchen as a separate incident.

1 Q. Could you tell if the heater was ever exposed to the
2 fire?

3 A. From the melting of the plastic, I would say yes, it
4 had to have had heat, high heat, in order to have been able
5 to do that.

6 Q. Okay. So were you able to determine if it was moved?

7 A. There was no evidence or indication that the damage to
8 that happened where it was, so it's kind of by default, by
9 saying that there was no indication that it could have
10 happened there, that it must have been somewhere else before
11 it got there.

12 Q. Okay. And just to be clear, one of the things defense
13 counsel asked about in our last testimony was when some
14 certifications happened. The majority of your
15 certifications in instruction and college courses,
16 apparently that happened prior to this taking place, is that
17 correct?

18 A. Yes, sir.

19 Q. Okay.

20 MR. KENDALL: No further questions, Your Honor.

21 THE COURT: Mr. Thompson, your witness.

22 MR. THOMPSON: Thank you.

23 CROSS EXAMINATION BY MR. THOMPSON:

24 Q. Something about that puzzles me, Mr. Coleman. It got
25 hot enough to melt the plastic, right?

1 A. Yes, sir.

2 Q. And it was hot enough, that once it was moved to the
3 counter in the kitchen, it melted plastic items near it on
4 the counter?

5 A. Correct.

6 Q. Is that correct?

7 A. Yes.

8 Q. So it was still carrying a good bit of heat at that
9 point in time, is that correct?

10 A. Yes, sir, it would have emanating heat, radiating heat.

11 Q. It didn't scorch the counter it was sitting on, though,
12 right?

13 A. Correct.

14 Q. If it were that hot, wouldn't it burn somebody's hands
15 to carry it to that counter?

16 A. It would depend on where you were holding it from and
17 where the -- you know, if you -- heat radiates out. Heat
18 can get transferred through conduction, and it would depend
19 on where you were holding that in reference to where the
20 heat was and if you had the part that was hot pointed away
21 from you as you moved it.

22 Q. You can't honestly say that that heater was sitting on
23 the floor or on that plastic desk in that living room, can
24 you?

25 A. No.

1 Q. Yeah.

2 It's all just suppositions, and we -- we ruled this
3 out, we ruled that out, so it's got to be this type deal,
4 right?

5 A. When you do the technology of it, what you do is you
6 come up with hypothesis and what you do is you purposely try
7 to rule them out on that.

8 Q. Okay.

9 A. And I could not prove that that was on the desk, but I
10 could not rule it out.

11 Q. Okay. And you weren't there when the fire started?

12 A. Correct.

13 Q. Okay. And nothing from the scene of the fire indicated
14 how the fire started, or if it was started by an individual,
15 and who started it, right?

16 I mean, you can't say it started by a match, or a
17 lighter, or a cigarette, or -- you honestly don't know how
18 it started, right?

19 A. It -- I understand what you are saying, but the
20 question of can I give you the actual ignition device? No.

21 Q. Okay.

22 A. But as far as whether it was accidental, or outside
23 source, or electrical, that's what we are able to come up
24 with is introduction of the outside source.

25 Q. And you can't tell me if it were a person that did it,

1 who that person is, based on what you observed inside this
2 mobile home?

3 A. From observation, no, sir.

4 Q. Okay. Thank you.

5 THE COURT: Redirect?

6 MR. KENDALL: Yes, sir, Your Honor.

7 REDIRECT EXAMINATION BY MR. KENDALL:

8 Q. I'm going to show you what is marked State's Exhibit
9 22. Can you take a look at that?

10 A. Yes.

11 Q. Is that how the -- is that how it was oriented when you
12 got there, basically?

13 A. Yes, it was.

14 Q. Basically oriented much like it is now?

15 A. Yes.

16 Q. And an object laying like that, where would the heat be
17 radiating off of?

18 A. Laying the way it is now, it would be radiating towards
19 the jury members.

20 Q. Okay. So that would be a --

21 And looking at this again in State's Exhibit 22, is
22 that consistent with the melting?

23 A. Yes, it's oriented towards that plastic pitcher.

24 Q. Okay. And just to be clear in your testimony, though
25 you can't determine what actually started it, as far as a

1 match, or a lighter, or a piece of paper caught on fire, or
2 something stuck in that thing, you can -- you are able to
3 say or form an opinion as to whether or not it was outside
4 source? And by outside I mean something intentionally done,
5 not accidentally happening?

6 A. Correct.

7 Q. And what was your opinion on that?

8 A. On that? That there was no cause of ignition, either
9 natural or accidental, at the origin of the fire. The only
10 way that the fire could have reached the temperature is if
11 someone introduced sufficient heat from another direction.

12 Q. Okay.

13 MR. KENDALL: The State has got no further
14 questions, Your Honor.

15 THE COURT: Anything further?

16 MR. THOMPSON: No.

17 THE COURT: You may step down.

18 The State may call its next witness.

19 MR. KENDALL: If you can just give me one second,
20 Your Honor?

21 THE COURT: Yes, sir.

22 (Off the record)

23 (Back on the record)

24 MR. KENDALL: The State rests at this time, Your
25 Honor.

1 THE COURT: All right, ladies and gentlemen of the
2 jury, there are some matters I have to take up with the
3 attorneys at this point in time. I will ask you to step
4 back to the jury room. And, again, I'll ask you not to
5 discuss the case among yourselves until I ask you to do so.
6 You may retire to the jury room.

7 (The following takes place outside the presence of
8 the jury panel)

9 THE COURT: Motions?

10 MR. THOMPSON: Your Honor, at this point in time I
11 would move for a directed verdict. The evidence presented
12 does not support a conviction.

13 I would also note that the indictment says that
14 this occurred in Gaffney, not in Blacksburg. The testimony
15 has been Blacksburg.

16 MR. KENDALL: First, Your Honor, with respect to
17 the directed verdict, I believe we have established this
18 occurred within Cherokee County through the testimony of Mr.
19 Buddy Earls. Actually from three or four people. The
20 officers as well.

21 We have established that the fire was set, based
22 on -- that it was intentionally set. I believe this could
23 be inferred both from the testimony of Ms. -- of Mr. --
24 excuse me, Mr. Bell, as well as Ms. Cantrell. Mr. Bell saw
25 her running from the trailer area at the sight of law

1 enforcement, as well as Ms. Cantrell, when she actually told
2 the house was about to get on fire. Ms. Cantrell also
3 testified she ran very rapidly away from the scene.

4 In addition, Your Honor, we have certainly
5 established that the property was burned. The actual
6 burning damage was done. I believe the statute actually
7 defines what was necessary to be done to include smoke
8 damage, which I think obviously we were able to prove
9 through exhaustive pictures, as well as damage was done to
10 the floor took place, and the fire investigator also
11 testified that charring had occurred to the walls and the
12 ceiling.

13 With respect to the indictment, Your Honor, I
14 believe Mr. Earls did say Blacksburg. The indictment itself
15 I believe as it's written says the dwelling located at [REDACTED]
16 [REDACTED], Gaffney, belonged to Lida Bradshaw. Mrs.
17 Bradshaw testified she only owns one home at [REDACTED]
18 The defendant at this time was renting the home from her.

19 In State v. Jones, the court found that all that
20 was required the State to do in an indictment is simply
21 establish jurisdiction. We feel that it's been done at this
22 time. Outside of that it's merely a notice document. I
23 don't believe there is any reasonable confusion in this case
24 as to where that fire occurred or what was going on with
25 that. The defendant did have sufficient notice as to what

1 was going on at that time, Your Honor.

2 THE COURT: All right. Well, as to the question
3 of location, the indictment just states that it occurred in
4 Cherokee County. It does state that the dwelling was
5 located at [REDACTED] in Gaffney, South Carolina.
6 That's not an element of the crime that's been alleged as to
7 the location. And, of course, the [REDACTED] I would
8 assume, is a specific street address located in Cherokee
9 County. I don't think that that would create any issue or
10 warrant dismissal of the indictment, so I'm going to deny
11 the motion in connection with the indictment.

12 There is sufficient circumstantial evidence from
13 the record to establish that the defendant was present at
14 the scene. There is circumstantial evidence that would
15 indicate she was the only person located at the dwelling at
16 the time others -- the last time others were present. The
17 behavior that was described from the testimony that was
18 received would certainly raise circumstantial evidence as to
19 her participation in the event. Running from the scene
20 where an incident occurred could be taken as circumstantial
21 evidence. Her statement to the police concerning that the
22 police were not going to pin this on her would indicate
23 knowledge of an event, which according to the testimony was
24 not -- had not been conveyed to the defendant at that time,
25 other than personal knowledge she may have had. So I find

1 that there was sufficient circumstantial evidence to raise
2 more than a mere suspicion, and, therefore, I would allow it
3 to go to the jury at this point in time, so I will deny the
4 motion.

5 MR. THOMPSON: Yes, sir.

6 THE COURT: Now, is your client -- I would like to
7 inquire of your client concerning her right to testify in
8 this matter. Mr. Thompson?

9 MR. THOMPSON: She's told me she wishes to, judge.
10 I would like to discuss that with her for just a moment, if
11 I may.

12 THE COURT: All right. Well, we are at about 4:30
13 this afternoon. How long do you think that discussion is
14 going to take?

15 MR. THOMPSON: Two or three minutes.

16 THE COURT: Okay. Well, why don't I advise her of
17 her right before you have that discussion and we will see
18 where we are going to go from there.

19 Please swear the defendant for me.

20 MARSHA SELPH, having been first duly sworn,
21 testified as follows:

22 THE COURT: You can be seated, ma'am.

23 Ms. Selph, we have reached the stage of this trial
24 where you now have the right to present your defense.

25 In presenting your defense I would like to discuss

1 with you your right to testify in this case and also your
2 right to remain silent. I'm going to make you aware of
3 certain Constitutional Rights that you have. And when I
4 finish, should you have any question concerning this right,
5 I will give you an opportunity to ask questions. I want to
6 be sure that you understand it.

7 As I have stated, we have reached the point in the
8 trial where you have the right to present your defense. And
9 as part of that defense you certainly do have the right to
10 testify in this matter. However, I do want to make you
11 aware of language that's contained in the U.S. Constitution,
12 specifically the Fifth Amendment to that Constitution, which
13 states that no person can be compelled in any criminal case
14 to be a witness against themselves. So while that means you
15 have the right to testify, you also have the right not to
16 testify. No one can make or force you to testify in this
17 case.

18 I will advise you that if you decide to testify,
19 your testimony would be governed by the same rules that
20 govern the testimony of any other witness. That means that
21 you would be examined by your lawyer. The State's attorney
22 will also have the right to cross-examine you.

23 During that cross-examination, should you have any
24 convictions on your record that involve dishonesty or
25 convictions which occurred within the last ten years and

1 this court makes a determination that the probative value
2 concerning your credibility of those convictions outweighs
3 their prejudicial effect to you, then in that circumstance
4 the State may be able to use those convictions to attack
5 your credibility.

6 Now, I would also make you aware that should you
7 decide not to testify, that I will instruct the jury that
8 they are to give the fact that you did not testify no
9 consideration in reaching a verdict. In other words, your
10 failure to testify would not serve as any prejudice to your
11 case. In fact, I will instruct the jury that they could not
12 even discuss the fact that you did not testify at all during
13 their deliberations.

14 Now, the decision as to whether or not to testify
15 in the case is left entirely up to you. You have the right
16 to consult with family, friends, your attorney, or anyone
17 else you would like to discuss the decision with, but the
18 final decision is yours, and yours alone.

19 Now, ma'am, do you understand the right that I
20 have explained to you?

21 THE DEFENDANT: Yes, I do.

22 THE COURT: Do you have any questions of me
23 concerning that right?

24 THE DEFENDANT: No, sir.

25 THE COURT: Your attorney has indicated that he

1 would like to discuss this decision with you further, so I'm
2 going to take a short recess and give you an opportunity to
3 do that. When I return I will be inquiring of you as to
4 whether or not you wish to testify. Do you understand what
5 we are going to do, ma'am?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: All right. We will take a short
8 recess. Thank you very much.

9 (Whereupon, proceedings were recessed)

10 (Whereupon, proceedings were reconvened)

11 THE COURT: Have had you an opportunity to discuss
12 this with your client, Mr. Thompson?

13 MR. THOMPSON: I have, Your Honor, and she
14 indicates to me she wishes to testify.

15 THE COURT: All right. Ms. Selph, let me ask you
16 specifically, have you had an opportunity to discuss this
17 thoroughly with your attorney?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Do you need to discuss it with anyone
20 else?

21 THE DEFENDANT: No, sir, I don't.

22 THE COURT: Do you intend to testify in the case?

23 THE DEFENDANT: Yes, sir, I do.

24 THE COURT: All right. Are we ready to proceed,
25 Mr. Thompson?

1 MR. THOMPSON: Yes, sir.

2 THE COURT: How long do you expect her testimony
3 to take?

4 MR. THOMPSON: I think it will take a little after
5 five.

6 THE COURT: All right. Then why don't we just
7 break for the evening and we will start back in the morning?

8 MR. KENDALL: We might have one issue, Your Honor,
9 as to what --

10 THE COURT: What is that?

11 MR. KENDALL: We might even look into that as her
12 past convictions to use against her.

13 She does have a couple of convictions. Within the
14 last ten years she's got improper exhibition of a weapon or
15 dangerous weapon in Florida, and a grand larceny from
16 Florida as well. I believe both of those were from 2004, so
17 they still would be usable here. The document says she was
18 sentenced in both cases, but there is -- on the sentencing
19 sheet it simply says disposition withheld, I think.
20 Adjudication withheld, but she was sentenced, due to the
21 fact there is a probation violation based on it. I don't
22 know if you need to call down there and find out if it was,
23 in fact, an actual --

24 THE COURT: Well, the main question is whether or
25 not either of those convictions are crimes of dishonesty or

1 whether or not there are circumstances which go towards
2 dishonesty.

3 MR. THOMPSON: One is grand larceny.

4 MR. KENDALL: And I'm -- I'm coming as close to
5 just saying I can't use -- pulling out the weapon as I can
6 get without actually saying it, but I understand the
7 reluctance of the court if we use that.

8 THE COURT: Yes, sir. I don't intent to let you
9 use the displaying of a weapon, unless there is some
10 evidence that dishonesty was involved in that. So, no, sir,
11 I wouldn't let you use that one.

12 MR. KENDALL: The grand theft, though, I do think
13 is a crime of dishonesty that I think could go to --

14 THE COURT: Mr. Thompson, your position concerning
15 the question of the grand larceny?

16 MR. THOMPSON: I think our Supreme Court is clear
17 that larceny is.

18 THE COURT: Yes, sir, I think so. I didn't know
19 if you had some -- the question about this conviction and
20 whether it was sentenced or not, I don't know if that's an
21 issue.

22 MR. THOMPSON: I think we were both looking at it,
23 whether or not it carries more than a year and all, but --

24 THE COURT: Okay.

25 MR. THOMPSON: I don't think there is any question

1 that it's --

2 THE COURT: All right. Very well. Very good. So
3 she is aware of that?

4 MR. THOMPSON: Yes, sir.

5 THE COURT: Okay. I just want to be sure that
6 factored into her decision.

7 MR. THOMPSON: Yes.

8 THE COURT: All right. Now, you think this will
9 take longer than five o'clock?

10 MR. THOMPSON: I believe it will, judge.

11 THE COURT: All right. I'm going to bring the
12 jury in and dismiss them and we will start back at nine
13 o'clock in the morning with the defense's case.

14 MR. KENDALL: Thank you, Your Honor.

15 THE COURT: Bring the jury in.

16 (The following takes place in the presence of the
17 jury panel)

18 THE COURT: All right, ladies and gentlemen of the
19 jury, I have gone over some matters with the attorneys and
20 we have reached the point in the trial where the defense has
21 the right to put up their case. However, in discussing it
22 with the attorneys, I think before we reach our next point
23 to break the case we would be well past five o'clock and I
24 told you I didn't want to keep you much past five o'clock,
25 so I'm going to go ahead and release you for the remainder

1 of the day.

2 I will ask you for you to be back in the jury room
3 at nine o'clock in the morning. We should start shortly
4 thereafter, so please be prompt and be there on time.

5 During your absence from the courthouse, again,
6 the same instructions would apply as I gave you earlier.
7 Again, you should not listen to, watch, or read any media
8 reports about the case. You should not discuss the case
9 with anyone or allow anyone to discuss it with you. And
10 should someone contact you about your service on this jury,
11 please report that.

12 Now, when you get home and whoever is at home asks
13 you about the case, or asks what's going on, it's okay for
14 you to say that you have been selected to serve on a case,
15 you will be going again tomorrow and that's where that
16 conversation should end. Talk about something else. Again,
17 don't talk about this case, because I want you to keep an
18 open mind until you have heard all the factors involved and
19 I have instructed you on the law, so don't discuss it with
20 anyone during our break.

21 Again, be back in the jury room at nine o'clock in
22 the morning. We will look forward to an early, probably
23 chilly start, but we will get going as quickly as we can, so
24 you are free to go at this time. I hope you have a good
25 evening.

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

3 THE COURT: All right, Ms. Selph, as before I'm
4 not going to take you into custody at this time, but I will
5 instruct you that the case will resume at nine o'clock in
6 the morning. Should you fail to appear at that time, I
7 would issue a bench warrant for your arrest. The trial
8 would continue in your absence. Do you understand that?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: All right. We are in recess until
11 nine o'clock. Thank you very much.

12 (Whereupon, proceedings were adjourned to January
13 8, 2014)

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1 STATE OF SOUTH CAROLINA)
2 COUNTY OF CHEROKEE) IN THE COURT OF GENERAL SESSIONS
3
4 THE STATE)
5 -vs-) TRANSCRIPT OF RECORD
6 MARSHA JANET SELPH,) 2011-GS-11-00938
7 DEFENDANT.) JANUARY 8, 2014
GAFFNEY, SOUTH CAROLINA

8
9 (VOLUME II)

10 B E F O R E:

11 THE HONORABLE ROGER L. COUCH, JUDGE. ; And a Jury.
12

13
14 A P P E A R A N C E S:

15 MATT KENDALL, ASSISTANT SOLICITOR
16 ATTORNEY FOR THE STATE

17 DON THOMPSON, PUBLIC DEFENDER
18 ATTORNEY FOR THE DEFENDANT

19
20 MICHAEL R. WATTS
CIRCUIT COURT REPORTER
21
22
23
24
25

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1 (PROCEEDINGS, JANUARY 8, 2014)

2 THE COURT: Is the State ready to proceed at this
3 time?

4 MR. KENDALL: Yes, sir.

5 THE COURT: Defense ready?

6 MR. THOMPSON: Yes, sir.

7 THE COURT: Let's bring the jury in.

8 (The following takes place in the presence of the
9 jury panel)

10 THE COURT: The court record will reflect the jury
11 has returned to the courtroom.

12 I hope everyone had a good evening. If any of you
13 had any difficulty in complying with my instructions
14 concerning your behavior during your absence from the
15 courthouse, please stand.

16 (No response)

17 THE COURT: It appears that all jurors have been
18 able to comply with the court's instructions thus far.

19 Now, when we took our break yesterday afternoon
20 the State had completed its presentation of its evidence.
21 At this time the defense has the right to call its
22 witnesses.

23 Defense may proceed.

24 MR. THOMPSON: Yes, sir.

25 We call Ms. Marsha Selph.

1 THE COURT: Come forward, ma'am, to my left and be
2 sworn.

3 MARSHA SELPH, having been first duly sworn,
4 testified as follows:

5 THE COURT: All right, ma'am, if you would, please
6 state your name.

7 THE WITNESS: Marsha Janet Selph.

8 THE COURT: Thank you.

9 Mr. Thompson, your witness.

10 MR. THOMPSON: Thank you, Your Honor.

11 THE COURT: Yes, sir.

12 DIRECT EXAMINATION BY MR. THOMPSON:

13 Q. Ms. Selph, I want to go back to October 15th of 2011.

14 Do you remember that day?

15 A. Pretty much, yes, sir.

16 Q. Okay. Where did you live at that time?

17 A. [REDACTED] Blacksburg, South Carolina.

18 Q. Okay. Who did you live with?

19 A. Buddy Earls.

20 Q. Is that Mr. Earls sitting back there in the red shirt?

21 A. Yes, sir.

22 Q. The same Buddy Earls that testified yesterday?

23 A. Yes, sir.

24 Q. Okay. And you lived -- did you live in a mobile home?

25 A. Yes, sir.

1 Q. And whose mobile home was that?

2 A. Well, it's -- it was Lida Bradshaw's. Under the
3 agreement -- well, to my knowledge, when we moved into the
4 mobile home we were purchasing the mobile home from Lida
5 Bradshaw. I did not know of anything of a rental until
6 after this fire.

7 Q. Okay. What was the relationship between you and Mr.
8 Earls?

9 A. We had been living together since the night we met.
10 Approximately eight years.

11 Q. Okay. Now, earlier that day --

12 Let's go back to before the fire earlier that day.

13 What was going on at that time?

14 A. Well, the day before I had gone to the hospital and was
15 diagnosed with shingles.

16 That morning Tina Wray was over. Jerry Blankenship was
17 over. Jerry Blankenship and Buddy Earls were out working on
18 the truck. Tina Wray and I -- well, just before that I was
19 asleep in the bedroom.

20 Buddy had that little heater turned on that has been
21 here on display. I went out and told him how do I turn it
22 off. I can't find the --

23 Q. Let's back up a second. Where was that heater at?

24 A. It was in the bedroom that we slept in.

25 Q. Okay. And it was on?

1 A. Yes, sir.

2 Q. Now, you say Tina was there and Jerry Blankenship was
3 there?

4 A. Yes.

5 Q. Okay. And you went out now and asked Buddy what?

6 A. How did I turn it off. I couldn't find the plug to
7 unplug it.

8 Q. Did you carry it out to him?

9 A. Yes, he told me there was no plug. "It was gas. Go
10 get it and bring it here." So I went in and I got it and
11 carried it out there to him. He shut it off and I carried
12 it back in the house.

13 Q. Where did you put it when you carried it back in the
14 house?

15 A. Right inside the front door in front of -- there was
16 two little chairs and the safe, and I sit it right there in
17 front of the safe and the two chairs right in front of the
18 front door.

19 Q. Was that near those desks?

20 A. Yes, sir, it was like the chair, the safe, the chair,
21 then the long desk, and then the child's desk that was in
22 front of the big desk, and then there were boxes and totes
23 that we had been going through from what our fathers left us
24 from passing away.

25 Q. While all four of y'all were there, were you drinking

1 or --

2 A. At first, no. Tina Wray and I were -- we cleaned up
3 the kitchen, cleaned up the living room. We were doing
4 house stuff, and -- I was in so much pain I couldn't take
5 any more. I said "I know one way to kill this pain," is --
6 I don't drink. Very seldom ever do I drink. I said "if I
7 could get a bottle of liquor, I can drink it and pass out
8 and then I can sleep and I won't hurt."

9 Q. Are you talking about pain from the shingles?

10 A. Pain from the shingles.

11 Q. So did you get a bottle of liquor and drink it?

12 A. Yes, Tina Wray and I cut through the woods and went up
13 to the store and got a bottle about that big.

14 Q. Okay. Now, do you remember Tina leaving your house?

15 A. No.

16 Q. You don't?

17 A. No.

18 Q. Okay. Do you know -- do you remember anything about a
19 pot of beans on the stove?

20 A. We had put a pot of pot of beans on that morning when
21 we were cleaning the kitchen that we were going to have for
22 dinner that night.

23 Q. Okay. Do you remember whether or not that pot of beans
24 was left on the stove or whether somebody took it off?

25 A. I do not.

1 Q. Okay. Now, at any point in time did you and Buddy get
2 into an argument, that you remember?

3 A. Not really that I remember, but kind of vaguely.
4 That's why I don't drink. We drink, we argue, so no.

5 Q. But you and he --

6 A. Yeah.

7 Q. -- at some point had words?

8 A. Huh?

9 Q. You have a vague memory of words with him?

10 A. Not really.

11 Q. Okay. Do you remember going to Carlee Cantrell's
12 house?

13 A. Vaguely.

14 Q. Do you remember why you went there?

15 A. To light a cigarette. I didn't have a lighter. I
16 didn't have anything to light a cigarette with.

17 Q. And did you light a cigarette there?

18 A. Yes, her and Preston were standing on the porch and she
19 handed me the lighter. I asked her if I could have this
20 lighter, if she had another one, and she said no, that was
21 the only one she had.

22 Q. Okay. Do you know what you did after you left her
23 house?

24 A. Went back over to the other house. Went back over to
25 our house.

1 Q. Y'all's house, okay.

2 Do you know how long you were there?

3 A. No, sir. I -- it couldn't have been very long. It was
4 getting towards dark.

5 Q. Okay. Did you go back to Carlee Cantrell's again?

6 A. They say I did, but I don't really recall going there.
7 All that is kind of not really clear.

8 Q. Okay. Do you recall going up the power line?

9 A. Kind of vaguely, but that's something that I do.

10 Q. Why is that something that you do?

11 A. Because there is a tower up there, a hunting tower that
12 me -- I take the kids and we go sit in the tower and watch
13 for the deer.

14 If Buddy and I argue, I will go sit in the tower, cool
15 off, get away from each other when we argue.

16 Q. Now, you have heard testimony about you coming back to
17 the house after the fire --

18 A. Yes.

19 Q. -- and saying something to the effect of "you are not
20 blaming this shit on me," is that right?

21 A. Those were my exact words.

22 Q. Those were your -- you remember saying that?

23 A. Yes, sir.

24 Q. Well, why did you come back to the house and say that?

25 A. Because I was in the camper over in the woods passed

1 out, asleep, whatever you want to call it. Jerry
2 Blankenship, whom the law was out there looking for, had
3 come in that camper, and I woke up to him pulling on my
4 clothes. And he was saying "baby, baby." I started
5 screaming at him bad words "I'm not your baby."

6 He said "what are you doing in here? Buddy Earls
7 catches me in here with you, he will kill me. What are you
8 doing? The law is out there looking for you. They said you
9 set the trailer on fire. They are hunting you with dogs."
10 I told him he was a liar. He grabbed the blanket and took
11 off running out the door.

12 I went out the door and went straight to the house.
13 Buddy was standing there. It was the first thing I seen
14 kind of -- it was -- everything going on. Buddy was the
15 first thing I picked out and I told him "you are not blaming
16 this on me."

17 And then my granddaughter was standing there crying. I
18 screamed at my daughter "why is this baby out here" like
19 this. I got my granddaughter by her arms and I told her
20 "look at me, Dakota. Look at me." She's crying. She
21 thought I was dead. I told her "it's okay. It's okay. I
22 am not hurt. I was not in the house, Dakota. I'm okay."

23 She said "Nannie, I thought you was dead. We couldn't
24 get you on the phone. You wouldn't answer your phone." I
25 didn't have my phone. I didn't know where my phone was. My

1 phone -- I didn't take my phone with me. It was in the
2 house.

3 Q. Let's back up just a minute.

4 So the reason -- when you got back to that mobile
5 home --

6 A. Uh-huh.

7 Q. -- you had already been told they were trying to blame
8 the fire on you?

9 A. Yes, they said it -- I was told they were hunting me
10 with dogs.

11 Q. That's what Jerry Blankenship told you?

12 A. Yes.

13 Q. So that's the reason you said what you said --

14 A. Yes.

15 Q. -- correct?

16 A. Yes.

17 Q. Okay. Did you set that fire?

18 A. No, sir. That was all my stuff, my stuff my dad left
19 me, stuff that Buddy's dad left him. Things that my oldest
20 son, thirty-three years old, his papers from kindergarten.
21 I was separating things in the boxes to give to each one of
22 the kids.

23 Q. Okay. Do you know anything about how the fire was
24 started?

25 A. No, sir.

1 Q. Okay. Do you know anything about how that heater got
2 from the floor inside the door to the counter in the
3 kitchen?

4 A. No, sir.

5 Q. Did you tell Carlee Cantrell that the house -- the
6 mobile home was about to go up in flames?

7 A. No, sir.

8 Q. Now, let's cover in full disclosure. You have got a
9 criminal record in Florida, is that right?

10 A. Yes, sir, I do.

11 Q. And that's for a larceny, is that right?

12 A. Yeah.

13 Q. For a theft?

14 A. Yeah.

15 Q. Okay. Again, did you set the fire?

16 A. No, sir, I did not.

17 Q. Do you have any knowledge of how the fire was started?

18 A. No, sir.

19 Q. Okay. Thank you. Answer any question that the State
20 may have.

21 THE COURT: Mr. Kendall, your witness.

22 CROSS EXAMINATION BY MR. KENDALL:

23 Q. Good morning, Ms. Cantrell -- or excuse me. Good
24 morning, Ms. Selph.

25 So Ms. Selph, just to be clear, you admit that you were

1 living at [REDACTED] back on October 15th, 2011,
2 correct?

3 A. Yes, sir.

4 Q. And you were living at that address with Buddy Earls at
5 that time, isn't that correct?

6 A. Yeah.

7 Q. That's you all had, or were romantically involved, is
8 that correct?

9 A. Yes, sir.

10 Q. And still are, is that correct?

11 A. Uh-huh, we still are.

12 Q. It was your testimony a moment ago that you had gone to
13 the hospital for shingles the day before, is that correct?

14 A. Yes.

15 Q. You were diagnosed with that?

16 A. Yes.

17 Q. Were you given any medicine --

18 A. Yes.

19 Q. -- to relieve the pain?

20 A. Yes.

21 Q. Had you been taking that medicine?

22 A. Through the night, yes.

23 Q. Okay. I believe you felt the need to self-medicate
24 with alcohol as well?

25 A. I didn't have any more medication.

1 Q. So the doctor, when you went to the hospital, only gave
2 you a one-day supply for shingles?

3 A. Yes.

4 Q. Okay. And it was done by the next afternoon?

5 A. It was done by that morning.

6 Q. Okay. And so you decided at that point to use alcohol
7 as a substitute?

8 A. Yes, this is like -- not in the morning. This was like
9 twelve, one o'clock in the afternoon when --

10 Q. So basically a doctor gave -- what time did you go to
11 the doctor the day before?

12 A. I don't know. Maybe ten, eleven o'clock in the
13 morning.

14 Q. Okay. So he literally only gave you a twenty-four hour
15 supply of shingles medication?

16 A. He gave me ten 7.5 Lortabs and an antibiotic. They
17 gave me a bunch of shots. They gave me four different
18 shots.

19 Q. I'm sorry, back it up. So you went through ten Lortabs
20 between the day before and ten a.m. the following day?

21 A. He said take them every two to four hours.

22 Q. Okay. And so following taking those Lortabs, you
23 switched over to alcohol, is that correct?

24 A. Yes.

25 Q. And what kind of alcohol were you drinking?

1 A. It was a brown liquor.

2 Q. It was a brown liquor. You mean like --

3 A. Buddy would know the name of it. It wasn't Crown.

4 It's like a substitute for Crown, a cheaper version of
5 Crown.

6 Q. Okay. So it's probably a Scotch whiskey or a blended
7 whiskey of some sort?

8 A. Yes.

9 Q. But an actual liquor, right? We are not talking about
10 a wine, or a malt liquor --

11 A. No.

12 Q. -- or a beer, or anything like that?

13 A. No, liquor.

14 Q. It was actually liquor.

15 A. Uh-huh.

16 Q. What size bottle did you purchase with that? Was it a
17 fifth, a 750 milliliter bottle?

18 A. No, it was like this.

19 Q. So a pint?

20 A. It was an \$11 bottle. It was an \$11 bottle. It was
21 like that.

22 Q. Okay. And you split that you said with Tina Wray, is
23 that correct?

24 A. With Tina Wray, Jerry Blankenship. And Buddy Earls
25 also had some out of the bottle.

1 Q. Okay. And at some point over the course of the day,
2 you testified earlier, that you had a -- you turned the
3 heater off, or you were dealing with that heater, is that
4 correct?

5 A. I did not turn the heater off. I had to take it out to
6 Buddy to turn it off.

7 Q. Okay. But when you brought it back, you set it next to
8 the door, is that correct?

9 A. When you walk in the front door, I just sit it down
10 right inside the front door.

11 Q. But it's not your testimony that you put it on the
12 child's desk, is it?

13 A. No, I didn't put it on the child's desk.

14 Q. It's not your testimony that you put it in the kitchen,
15 is that correct?

16 A. No, I didn't put it in the kitchen.

17 Q. Okay. And over the course of this evening you are
18 arguing -- you were involved in an argument with Buddy
19 Earls, isn't that correct?

20 A. Yes.

21 Q. To a point where he felt it necessary to leave the
22 home, isn't that correct?

23 A. That's always what we do.

24 Q. Okay.

25 A. Always.

1 Q. And so he was gone, and you would agree that he left
2 the house that evening, correct?

3 A. Yes.

4 Q. At the time that he left the home, you were the only
5 person left in that house, is that correct?

6 A. To my knowledge, yes.

7 Q. To your knowledge.

8 Did you see anybody else there?

9 A. No.

10 Q. Did you have anything to believe somebody else was
11 there?

12 A. Well, my little dog was there.

13 Q. Fair enough.

14 And at some point in the evening you then walked over
15 to Carlee Cantrell's house, correct?

16 A. Yes, sir.

17 Q. Had you been over there earlier that day?

18 A. I don't think so.

19 Q. Do you recall being over there and being drunk and
20 pulling her shorts down is when --

21 A. No, I don't. That kind of floored me yesterday when
22 she said that. No, I don't remember that at all.

23 Q. No recollection of that?

24 A. No, sir.

25 Q. You do recall going over there and asking her for a

1 light, isn't that correct?

2 A. Vaguely, yes.

3 Q. Okay. When you say vaguely --

4 Well, at that point you went back to your trailer,
5 correct?

6 A. Yes.

7 Q. And is it fair to say that at the time that you left
8 your house that you did not have a match or a lighter at [REDACTED]

9 [REDACTED] correct?

10 A. No, I didn't even have a cigarette.

11 Q. There was nothing on fire at that point, correct?

12 A. No.

13 Q. So we can say the fire definitely did not start when
14 you walked over the first time -- or, excuse me, when you
15 walked over to get a light for the cigarette, correct? It
16 had not started yet, is that correct?

17 A. Correct.

18 Q. When you went back over to the house, was anybody back
19 over to the house at that time?

20 A. I don't know.

21 Q. Did you see anybody at the house?

22 A. I did not see anybody at the house.

23 Q. Did you see --

24 A. Rudy, the little dog, stayed with me.

25 Q. Did you see any fire at the house?

1 A. No.

2 Q. And you walked over to Carlee Cantrell's house that
3 second time?

4 A. I guess so. They said -- they said I did. Most of
5 everything I know is what I have been told.

6 Q. Are you suggesting you don't remember walking over to
7 her house the second time?

8 A. I don't remember what she said. Trying to push my way
9 into her house, I don't remember that at all. I didn't try
10 to push --

11 Q. Do you recall going over to her house a second time?

12 A. I recall going over and going down the power line.

13 Q. But your testimony today is you don't recall talking to
14 Carlee Cantrell before doing that?

15 A. No.

16 Q. So what suddenly caused you to go down the power line?

17 A. The thought of Buddy coming back and us arguing again.
18 It's a -- it's a mind clearing thing. You go somewhere, you
19 stay by yourself and get your head straight and you go back
20 and you talk things out.

21 Q. When you were going down the power line, were you
22 walking or running?

23 A. I was probably stumbling.

24 Q. Stumbling.

25 Is it your testimony today -- you heard testimony from

1 an officer and another witness, that's two other witnesses,
2 that you were running down the power line.

3 A. Well, if I was as drunk as they say I was, I don't see
4 how I was running, or even standing on my feet.

5 Q. But you don't recall running down the power lines at
6 all?

7 A. I do not.

8 Q. Where did you go once you went down the power lines?
9 You testified a moment ago you were going to hunting stand,
10 is that correct?

11 A. Yes.

12 Q. Now, the power lines and the hunting stand are a good
13 ways away from your home, isn't that correct?

14 A. Not really a good ways. It's from here out to the
15 parking lot, maybe.

16 Q. Let me rephrase that.

17 The hunting stand is away from the home, correct?

18 A. Yes.

19 Q. And when you went down there, you said that you went to
20 the hunting stand? That's correct? That's your testimony,
21 is that correct?

22 A. Yes.

23 Q. When you returned, did you go back to your house? You
24 didn't go back to your house, did you?

25 A. No.

1 Q. In fact, you went to another trailer, correct, the
2 trailer of Jerry Blackwell (sic), correct?

3 A. No, the trailer of Blankenship and Tina Wray.

4 Q. I'm sorry, yes, Mr. Blankenship, I'm sorry.

5 You went to Mr. Blankenship's trailer, correct?

6 A. Yes.

7 Q. And that trailer is located very close to where [REDACTED]

8 [REDACTED] is correct?

9 A. Yes.

10 Q. In fact, it's next door, I believe, right?

11 A. It's through the woods, yeah.

12 Q. Okay.

13 A. You can't see it. It's sit down in the hole. You
14 can't see it from --

15 Q. But it's a very short distance, correct?

16 A. About maybe five hundred yards, eight hundred yards,
17 something like that.

18 Q. And when you went back there -- keep in mind, eight
19 hundred yards is a half a mile.

20 A. Look, I don't know. I don't know distance, okay? I go
21 by what Buddy tells me when he tells me I could have shot a
22 deer out here at a hundred yards or two hundred yards.

23 Q. Is it fair to say it's a short walking distance, within
24 a couple minutes walking?

25 A. Yes.

1 Q. Okay. And at that time when you went back to that
2 trailer, when you first got back there, who was there?

3 A. Nobody.

4 Q. Nobody was in that trailer at that time?

5 A. No.

6 Q. So nobody had to let you in?

7 A. No.

8 Q. Jerry wasn't there, or -- not Jerry. Mr. Blankenship
9 wasn't there?

10 A. No.

11 Q. Ms. Wray wasn't there?

12 A. No.

13 Q. So you just kind of walked in their house, correct?

14 A. Yeah.

15 Q. And laid down and went to sleep?

16 A. Yup.

17 Q. Like old times?

18 A. If that's what you want to call it.

19 Q. Now, you didn't go back to your house, correct?

20 A. No.

21 Q. At that time whether -- did you see any fire?

22 A. No, I really didn't see a whole lot of nothing but
23 trees. It's dark still.

24 Q. But your decision was or where you went back to take a
25 nap was not to go back to your home, correct --

1 A. Yes.

2 Q. -- but to go to Ms. Wray and Mr. Blankenship's house,
3 correct?

4 A. Yup.

5 Q. When Mr. Blankenship woke you up, you were still fairly
6 intoxicated, correct?

7 A. Not really. The drunk had already slept off. I don't
8 know how long I was sleeping there.

9 Q. Well, when you went back to the home, you were
10 extremely angry and agitated, correct?

11 A. Yes, because I was getting blamed for a fire that I
12 didn't do.

13 Q. Well, had anybody actually formally blamed you yet, or
14 you just heard that from Mr. Blankenship?

15 A. I heard that from Mr. Blankenship.

16 Q. Whose house you were sleeping in, correct?

17 A. (Shaking head yes).

18 Q. Okay. When you went back, you went straight to Buddy
19 Earls, correct?

20 A. Yes.

21 Q. And began yelling at him?

22 A. Yes.

23 Q. You didn't make any other stops or talk to any other
24 individuals as you were going back there, correct?

25 A. Uh-huh.

1 Q. The first response you met when you saw Buddy Earls and
2 law enforcement on the scene was to go straight to Buddy
3 Earls and begin yelling at him, correct?

4 A. Look, I didn't see law enforcement. I didn't see
5 firemen. What I seen was Buddy. I don't -- however you
6 want to explain it.

7 Q. Okay.

8 MR. KENDALL: Your Honor, I have got no further
9 questions at this time.

10 THE COURT: Redirect?

11 MR. THOMPSON: No redirect.

12 THE COURT: You may step down, ma'am.

13 The defendant may call its next witness.

14 MR. THOMPSON: The defense rests, Your Honor.

15 THE COURT: Does the State wish to call any
16 witnesses in reply?

17 MR. KENDALL: No, sir, Your Honor.

18 THE COURT: All right, ladies and gentlemen of the
19 jury, that completes the presentation of evidence in the
20 matter.

21 Again, there is some things that I'll need to take
22 up with the attorneys before we enter the next phase of the
23 trial, and it shouldn't take very long, but, at any rate,
24 I'll do that while you are back in the jury room.

25 As always, I'll ask you not to discuss the case

1 until I have asked you to begin your deliberations, and at
2 this time you may retire to the jury room.

3 (The following takes place outside the presence of
4 the jury panel)

5 THE COURT: Mr. Thompson, do you wish to renew
6 your motions?

7 MR. THOMPSON: Yes, sir, I simply renew them for
8 the record.

9 THE COURT: Any other matters you think the court
10 should consider at this time concerning --

11 MR. THOMPSON: Are you talking jury charge, or --

12 THE COURT: No, we will talk about charges in just
13 a minute. I'm just saying specifically on the motions, is
14 there anything else you would like to say?

15 MR. THOMPSON: No, sir.

16 THE COURT: Okay. I'll make the same ruling
17 concerning the motions in question.

18 Now, as to the jury charge, does the State have
19 any specific requests for charge?

20 MR. KENDALL: Just that they be charged, Your
21 Honor, on the charge of arson in the third degree, as
22 opposed to arson in the second degree. I acknowledge we
23 have not alleged any bodily injury occurred for a second
24 degree, so we would request a third degree.

25 THE COURT: Okay. And specific requests on behalf

1 of the defense?

2 MR. THOMPSON: I'm assuming you are going to --

3 MR. KENDALL: Oh, I did have one. Voluntary
4 intoxication is not a defense.

5 THE COURT: I have included that in the charge
6 prepared already.

7 MR. THOMPSON: And I'm assuming you are going to
8 charge circumstantial?

9 THE COURT: I will charge circumstantial evidence,
10 and I have considered and will probably charge mere
11 presence.

12 MR. THOMPSON: Okay.

13 THE COURT: I think that's her defense is that she
14 was present, or thereabouts, at the time that it occurred
15 and did not participate.

16 MR. THOMPSON: Okay. I hadn't really thought
17 about that one, but I won't object to it.

18 The reasonable doubt charge you use, judge, is
19 which one?

20 THE COURT: Let me go over it with you. What are
21 you looking for?

22 MR. THOMPSON: Is it the old hesitate to act, or
23 is it the new -- my mind just blanked out on me.

24 THE COURT: Just a second and I will just tell you
25 what it says.

1 MR. THOMPSON: The new firmly convinced.

2 THE COURT: As far as the jury is concerned?

3 MR. THOMPSON: Yes, sir.

4 THE COURT: I use firmly convinced.

5 I say proof beyond a reasonable doubt is proof
6 that leaves you firmly convinced of the defendant's guilt.

7 I do go into the fact that very few things that
8 can be proven beyond any doubt.

9 MR. THOMPSON: All right, sir.

10 THE COURT: All right. The defense has presented
11 evidence. I assume -- are you waiving the State going
12 first?

13 MR. THOMPSON: Yes.

14 THE COURT: Very good.

15 Do you need a moment before we begin?

16 MR. THOMPSON: No, sir.

17 THE COURT: Is the State ready?

18 MR. KENDALL: Yes, sir, Your Honor.

19 THE COURT: All right, let's bring the jury in.

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

22 THE COURT: All right. The record will reflect
23 the jury has returned to the courtroom.

24 I told you earlier that when we had reached the
25 point where all the evidence had been presented, the

1 attorneys will be given their second chance to address you
2 directly, so at this time we will begin the closing
3 statements or arguments, and the defense will be going
4 first.

5 Mr. Thompson.

6 MR. THOMPSON: Thank you, Your Honor.

7 THE COURT: Yes, sir.

8 MR. THOMPSON: If it please the court?

9 THE COURT: Yes, sir.

10 MR. THOMPSON: Mr. Kendall.

11 Good morning, ladies and gentlemen. We all made
12 it through the arctic blast. My day is doing a little bit
13 better than it was yesterday.

14 We have sat here and you had heard yesterday a lot
15 of testimony. You saw a lot of pictures. I think you saw a
16 lot of pictures.

17 I'm not going to talk to you a lot about the law.
18 The judge is going to tell you what the law in this case is
19 and you need to listen to him, okay? You don't need to
20 listen to me about the law. He's the expert on that, but
21 here is what we do know, that I don't think anybody is
22 contesting; that is, that on October 15th of 2011, on [REDACTED]
23 Road, my client, Ms. Selph, and her boyfriend, Mr. Earls,
24 lived in a mobile home that was owned by his mother, and
25 that mobile home burnt that day, or had had a fire that day.

1 It didn't burn. It had a fire in it. Nobody is contesting
2 any of that. So those are issues that I think you can say
3 okay, we will take that as a given. And I'm telling you
4 that because the State has the burden of proof in this case.
5 They have got to prove beyond a reasonable doubt that Ms.
6 Selph intentionally set this fire, okay?

7 Reasonable doubt, I think the judge is going to
8 tell you, is a doubt that you are firmly convinced, the word
9 firmly convinced, of the guilt of Mrs. Selph, or of whatever
10 the issue is that you are looking at.

11 Well, you can be firmly convinced that she and Mr.
12 Earls lived together on October the 11th on [REDACTED],
13 because nobody has contested that.

14 You can be firmly convinced that a fire occurred
15 there on October the 11th. Nobody contested that.

16 The issue is how did the fire start and who
17 started it. Has the State proven that to you? Have they
18 firmly convinced to you that Ms. Selph started that fire
19 that caused damage to that mobile home?

20 What they have said and what they have told you,
21 and unfortunately it's going to be really easy to say, and
22 I'm sure Mr. Kendall is going to say it's not in these quick
23 a words, he's going to be a little more articulate, that
24 she's drunk, she don't know what's going on, they had a
25 fight and she set the place on fire. I mean, that's what

1 it's going to boil down to. The allegations are going to be
2 that she was drunk and mad at Buddy and set the place on
3 fire. There's no proof of that. No proof of that
4 whatsoever. You didn't hear anybody else talk about her and
5 Buddy arguing or having a fuss or a fight.

6 You heard one person, Carlee Cantrell, say that
7 she came over to her house three times. The first time she
8 pulled her pants down. I don't know what that's got to do
9 with it, but, anyway, that's what Carlee says.

10 The second time she comes to borrow a lighter to
11 light a cigarette. Now, did Carlee give her a cigarette and
12 let her wander back over to her -- or give her a lighter and
13 let her wander back over to her trailer? No. She let her
14 light her cigarette and took the lighter back, so that's not
15 a source of the fire. She didn't give her a flame to take
16 over there, okay? I mean, it would be real easy if she said
17 "oh, yeah, she came over to borrow a lighter, I gave her a
18 lighter, and she left with it and in a little while she came
19 back and said the trailer is on fire." She didn't give her
20 a lighter to take. She let her light her cigarette and that
21 was it.

22 Then she says -- and the time periods got a little
23 bit fuzzy here. At one point she said that she came back a
24 half hour later. At one point she said an hour later. And
25 then she said "I guess it was maybe forty minutes later,"

1 because I remember Mr. Kendall saying "now, we don't want
2 you guessing." But she came back and said something to the
3 effect that it was going up in flames, "you are going to see
4 it go up in flames." Okay. Mrs. Selph denies saying that.

5 Unfortunately Mrs. Selph doesn't have a good
6 memory of a lot of this stuff because she was intoxicated.
7 And being -- the judge is going to tell you being
8 intoxicated or voluntary intoxication is not a defense to
9 anything in this state, okay? If you go out and get drunk
10 and commit a crime, you are just as guilty as if you were
11 sober and committed a crime, but it does affect her memory.

12 Why did she go up the power line? You know, that
13 sounds suspicious to start with. She's up -- she starts
14 going up the power line. Well, she told you herself there
15 is a hunting stand up there, that when she and Buddy argue,
16 she goes to sort of re-collect herself, re-collect her
17 thoughts. She went up the power line to get to the hunting
18 stand. She left it. She went back to Mr. Blankenship's
19 house, camper. She went in to sleep it off.

20 Now, you know, they are going to make a lot of the
21 fact, well, she shows back up at the home with the police
22 there and Buddy there and the firefighters there and the
23 first thing she said is "you are not going to blame this
24 shit on me." And nobody has blamed anything on her at that
25 point in time there at the house, and that sounds mighty

1 suspicious, until you hear why she did it. Jerry
2 Blankenship come and got her, woke her up from her drunken
3 sleep and told her "they are out looking for you. They are
4 saying that you burned the mobile home, that you burnt your
5 house." Well, she goes straight to the mobile home, and
6 maybe it's not the best way to handle it. Maybe it wasn't
7 handled -- if it was one of us was to go up there and say
8 "what's going on here," but all the people don't do things
9 the same. Okay. Her position was that she had been told
10 she was being blamed for burning this mobile home and she
11 went in there armed for bear ready to deny it. Okay.
12 That's -- that's the situation there.

13 The firemen that went in and did the
14 investigation, they can't tell you what caused the fire,
15 okay? They can tell you there was no electrical appliance
16 or anything like that right there that appeared to
17 malfunction that caused the fire, but they can't tell you
18 what caused it, and they can't tell you who caused it, okay?
19 They don't have a clue who caused it. The State is relying
20 on other people to say that.

21 What they are saying is we can't find a cause of
22 the fire; therefore, it must have been set. That's what the
23 fire investigators are saying, if you boil it all down into
24 a nutshell. There is no electrical appliance there that
25 malfunctioned. There is no fireplace there. There is

1 nothing like that where the fire would say was caused, so,
2 therefore, somebody had to set it. Okay. That's what their
3 testimony is. It boils down into that nutshell.

4 There was talk of a heater, and Ms. Selph told you
5 the heater was in the bedroom they was using to heat the
6 bedroom. She didn't know how to turn it off. She thought
7 it was electric. She couldn't find where to unplug it. She
8 went out and Buddy told her to bring it out to him and he
9 turned it off. She sat it back inside the door in front of
10 the desk.

11 Now, where did the fire investigators say the fire
12 started? In front of the desk, below the level of the desk.
13 Not on top of the desk, but below the level of the desk.
14 And she is saying -- and I don't have answers to this, okay,
15 but I don't have to answer anything. The State is the one
16 that's got to firmly convince you about what they are
17 claiming.

18 That heater, it just keeps coming back to bother
19 me with what's going on with the heater. She says Buddy
20 turned it off. She brought it back in, sat it on the floor
21 in front of the desk. Okay, that would be below the level
22 of the desk, and you have seen the heater. They say the
23 fire started below the level of the desk, because the burn
24 patterns is under the desk here, on the floor, and this that
25 and the other, and it went up the wall, but the heater

1 wasn't there on the floor. The heater was on the counter in
2 the kitchen, but the heater wasn't burning on the counter in
3 the kitchen, because there was no scorch marks or nothing on
4 the counter of the kitchen. There was, however, plastic
5 bottles melted next to the heater from the heat of the
6 heater, and not from just the heater being on, but
7 apparently it got so hot and was radiating heat that it
8 melted the plastic bottle sitting next to it on the counter.
9 It was that hot.

10 And their theory, and it's all speculation, and
11 this isn't what we are after. We are not here to speculate.
12 Their theory is that somebody moved it from the fire in the
13 living room where part of it was melted to that counter and
14 it was so hot that it melted those plastic bottles.
15 Wouldn't that heater be mighty hot that you would burn
16 yourself if you picked it up? Wouldn't it have been too hot
17 for you to carry if it was that hot? I mean, you could look
18 at it again. The plastic on it was melted. Heavy plastic
19 on it was melted, not just soft spongy plastic, but good
20 hard heavy plastic was melted. Could that plastic be so hot
21 that the plastic melted the other plastic radiating the
22 heat, or did the metal get that hot? If we knew the answer
23 to that heater, I think we would know the answer to what
24 went on, okay? We don't have an answer to that heater.

25 We don't have an answer to what caused the fire.

1 We have an answer to what did not cause a fire, but we don't
2 have an answer to what caused it. We don't have an answer
3 to who caused it, from the fire investigators. It's all
4 speculation. It's circumstantial evidence.

5 Now, there are two types of evidence the judge is
6 going to talk to you about. There is direct evidence and
7 there is circumstantial evidence.

8 Direct evidence is you can go home tonight and say
9 that defense attorney was in the courtroom today. How do
10 you know that? You saw me. I'm standing here. That's
11 direct evidence.

12 You can go home and you can say he was probably in
13 his office at some point during the day because his office
14 is a block from the courthouse and he was in the courthouse.
15 That's not direct evidence, and it's not really good
16 circumstantial evidence, but it is circumstantial evidence.

17 You can probably say he drove to the courthouse
18 because he was at the courthouse. That's circumstantial
19 evidence, and that's what we have got in this case. We have
20 got a whole lot of circumstance evidence.

21 And what you have got to do for circumstantial
22 evidence to work -- and circumstantial evidence is just as
23 good as direct evidence. The judge will tell you that, but
24 for it to work, all the circumstances have to line up to say
25 this is what happened, okay? I submit to you that in this

1 case all the circumstances don't line up.

2 The State has to prove their case and firmly
3 convince you that Ms. Selph is guilty of arson, arson in the
4 third degree, and the judge will tell you what arson in the
5 third degree is, in order for you to find her guilty. She's
6 sitting there right now deemed to be not guilty, and she's
7 not guilty until such time as you decide otherwise.

8 I submit to you, ladies and gentlemen, that there
9 is not sufficient evidence to firmly convince you that she
10 is the one that started the fire, or that the fire was
11 intentionally set. And it has to be that she started it and
12 she intentionally did it, and I submit to you that they
13 failed on both ways, so you have to return a verdict of not
14 guilty. Thank you.

15 THE COURT: Mr. Kendall?

16 MR. KENDALL: May it please the court?

17 THE COURT: Yes, sir.

18 MR. KENDALL: Counsel.

19 Ladies and gentlemen of the jury, at the beginning
20 of this trial I asked you to do three things.

21 The first was to listen to all the instructions
22 the judge gives you. In a moment the judge is going to give
23 you his final instruction. They are going to be
24 instructions on the law you are supposed to apply in this
25 case, instructions on how and what to look at evidence, what

1 you can and can't do. And as I told you before, that is one
2 of the most important parts of the trial. Please, please
3 listen very carefully to those instructions that have been
4 given. I know that you all have up until now.

5 The second thing I asked you to do is to listen
6 carefully to all the evidence. And sitting over here today
7 I have been able to -- yesterday and today I have been able
8 to see you, and I do appreciate the fact that you all
9 clearly have been paying attention to what's been going on
10 and the evidence that has been presented to you. I know
11 sometimes it's been a little bit tedious. There were a lot
12 of pictures. That was important to make sure that we could
13 establish what happened at [REDACTED] on October 15th,
14 2011.

15 I would like to take a couple moments to talk to
16 you and kind of summarize and go back over the evidence that
17 was presented to you yesterday and today.

18 The first witness that you heard from was Mr.
19 Buddy Earls. Buddy was Marsha Selph, the defendant's,
20 live-in boyfriend. He testified that day Ms. Selph had been
21 drinking. He testified they had a fight earlier in the day
22 and that she was so mad, that he felt it necessary to leave
23 the home, to get away, so he left her alone at that house.
24 There was nobody else in the home, a fact that I don't think
25 is really argued against, and then he left. The next time

1 he returned back to the house it was on fire. He made
2 numerous attempts to call her, which were unsuccessful. She
3 never did respond. The only time she did respond is when
4 she showed up later in a rage, as was confirmed by law
5 enforcement.

6 The next testimony that you heard from Ms. Tina
7 Wray, and Ms. Wray, if you remember, was very, very short.
8 We put her up for one reason, and one reason only, to show
9 the beans got turned off. I believe she was able to show
10 that to you. I think that was consistent with what the fire
11 investigators ultimately said, which was the fire didn't
12 originate in the kitchen.

13 The next one you heard from was one of our most
14 important witnesses, Ms. Carlee Cantrell. Ms. Cantrell was
15 a neighbor to Ms. Selph. She was obviously on friendly
16 enough terms with her that Ms. Selph felt she could go over
17 to borrow a light, borrow a smoke. She testified she saw
18 Ms. Selph three times that day. All three times she was
19 intoxicated. And if you listened to the evidence, she would
20 act aggressively downhill every time she came over. The
21 first time she came by she was happy about it, goofing
22 around, pulling people's pants off, the regular kind of
23 drunken shenanigans.

24 The second time she came by also intoxicated
25 looking for a lighter. This shows you something very, very

1 important in this case. This is not very long before the
2 fire began, and at that point we know absolutely that there
3 was not something burning back at that house. She came over
4 looking for a fire.

5 After being given a light she went back to her
6 home, and a very short time later she came back, back to the
7 home of Ms. Carlee Cantrell, extremely emotional; crying,
8 making references that she couldn't take it any more, making
9 references the house being on fire. Ladies and gentlemen,
10 this shows that she, first of all, was the last person to go
11 over to the house, but came back knowing it to be on fire.

12 And when law enforcement came in the area, she did
13 something strange. She tried to first off get in the home
14 of Ms. Cantrell. When Ms. Cantrell wouldn't allow it, she
15 took off running. You heard testimony from Ms. Cantrell
16 that she ran around her house down towards the power line.
17 Running.

18 Now, ladies and gentlemen, in this case, in this
19 trial, you are allowed to consider her flight as evidence of
20 conscious guilt, evidence that she knew what was going on.
21 She had a reason she had to run away. The houses aren't
22 right next. She wasn't running away from the fire because
23 she was worried about getting burnt. She was running away
24 from the fire, she was worried the police were going to
25 catch her for burning the house down.

1 Now, Mr. Thompson made some references in this
2 case to some of the time frames. I would like to take a
3 second and discuss this with you, because Ms. Cantrell
4 wasn't really sure, and she wasn't legitimately. You heard
5 testimony yesterday as to how long after when Ms. Selph came
6 over she realized the house was on fire, but you also heard
7 from fire experts and from the law enforcement officer who
8 was the first responder as to the nature of this fire. This
9 was not a full house blaze. This was primarily contained
10 inside the walls of the structure. You have been able to
11 see the pictures of the house. This isn't a glass house or
12 anything like that. So the fact that she couldn't see it --
13 the officer didn't see it until he got up to the trailer
14 next to it. The fact that couldn't see this a long way away
15 isn't a particular surprise. It doesn't -- it doesn't -- it
16 still demonstrates that Ms. Cantrell came over there, you
17 know, tried to get in the house, and indicated she knew the
18 house was on fire and attempted to run away when the police
19 got there.

20 The next witness you heard from was Mr. Preston
21 Bell. Now, Mr. Bell's testimony was also very short and he
22 was up there for one reason only. He was the person that
23 identified Ms. Selph on the power line as the woman running
24 away from the scene. Not walking, not casually strolling,
25 not getting her thoughts together because of a tough

1 relationship problem she's having with her boyfriend.
2 Running. Not towards the trailer, but away from the trailer
3 as law enforcement came by.

4 You also heard from Officer Gardner, who testified
5 that he was in the area on something totally unrelated and
6 saw this woman running down the power line. He was
7 concerned about it enough that he actually went and
8 investigated that.

9 Now, I know what she says is she thinks she was
10 probably walking, that she doesn't know how she could be
11 running, or anything else, but aside from the testimony of
12 Ms. Cantrell and Mr. Bell, Officer Gardner's testimony bears
13 weight. A woman walking down a power line is something out
14 of the ordinary. It's not something shocking. It's not
15 something that you would seem to investigate. Somebody
16 running away from you kind of is. Then he testified that a
17 very short time later, within five minutes, he realized the
18 house was on fire. He saw smoke coming from the building at

19 [REDACTED]

20 The next witness you heard from was Ms. Lida
21 Bradshaw, who testified that it was her home on [REDACTED]
22 [REDACTED] and to some of the damage. Now, as the judge is
23 going to instruct you, one of the things that we have to
24 prove is that damage was done to the home. And what Ms.
25 Bradshaw testified to, and I hope you all remember, is that

1 the damage was done. The charring to the walls and to the
2 ceiling and the melting of the floor, and that a
3 considerable amount of things that had to be replaced
4 because of this fire.

5 Next you heard from Officer Jimmy Henson, a
6 detective here of Cherokee County, an officer who went
7 through and took the pictures, helped document the crime
8 scene investigation, the fire investigation. But more
9 importantly he was the one that also found the heater, the
10 heater which she claimed was left next to the door in the
11 living room, which was now found broken, melted in the
12 kitchen. He was also there when Ms. Selph returned to the
13 scene; angry, drunk, getting straight into Buddy Earls face.
14 We have heard no testimony from anybody in this trial, to
15 include Ms. Selph, that she was ever asking about her
16 belongings, or her dog, or anything else. The first thing
17 she does is come straight back and starts yelling at him;
18 "don't pin this, don't blame this shit on me."

19 Finally you heard from the fire investigation
20 team. Now, I'm not going to rehash this entire process. I
21 know that it's a very, very long and arduous thing, but I
22 would like to go over what happened in a very, very brief
23 way. I think we would all agree that after watching their
24 presentation yesterday, the procedure that he used was
25 certainly scientific. It was certainly methodical. It

1 would be a little boring sometimes, I know, but they are
2 very careful about it. They start from the outside of the
3 building. They went in. As they went in, they testified
4 they had a pretty good idea where the fire started, based on
5 the V-shape pattern and the burned up children's desk right
6 in the middle of the floor. I think common sense would sort
7 of dictate that's where it started, but they did continue on
8 with their investigation. They investigated the other rooms
9 of their house looking for smoke trails, eliminating
10 alternative sources of flame and fire. So they were
11 ultimately able to reach two conclusions.

12 Conclusion number one, the fire started on the
13 children's desk, which was out from the larger desk in the
14 living room.

15 And two, this fire was started from an external
16 nonaccidental source.

17 Now, Mr. Thompson has really weighed into the fact
18 that you can't say what started the fire. Let's talk about
19 that a little bit. It's just a little bit misleading. When
20 they testified yesterday they couldn't say what started the
21 fire. There was relation to one thing. There was relation
22 to what they needed. They needed oxygen. They needed
23 something to burn, and they needed something to burn it
24 with. Obviously oxygen is something that we all knew was
25 there. You know, we live in a world of air around us.

1 Something to burn was very clear. It was the children's
2 desk and the rummage that was around it. You saw pictures
3 yesterday of that big mass of stuff that was all melted
4 together. That's what was burned. The only question was
5 what someone used to burn it with. Ladies and gentlemen, I
6 would submit to you that that's not super important.
7 Whether she used a lighter, or a match, or a cigarette, or a
8 blow torch, or, you know, an incendiary granade, the issue
9 is whether or not she did that, intentionally lit that on
10 fire. It appears to me she used that space heater and got
11 it hot and just burned the thing down, but that's not what's
12 important. That's not what we have to prove is what they
13 think she used to do it. We have to prove that she was the
14 one that started that fire and did so intentionally.

15 Now, she came today and testified, and I would
16 like to discuss some of the things that she brought up in
17 her testimony, because I think they are important and I
18 think they are inconsistent.

19 Before I get into the actual specifics of it, I
20 would like to point to this trend while she was talking, and
21 it was the trend of selective memory, the ability to
22 remember things that help your case and not remember the
23 things that probably hurt you.

24 "Were you and Buddy Earls having a fight," when
25 Mr. Thompson asked her.

1 "I don't know. Vaguely remember. Not really."

2 When she realized she had the excuse of why she
3 was running down power lines and I asked her, it was? Yes,
4 yes, I remember. We started to have that fight.

5 "Do you remember going back to Ms. Cantrell's to
6 borrow the cigarette?

7 "I do remember asking her to borrow the cigarette.

8 "Did you go back over there again?

9 "I don't really remember that.

10 "Did you go down the power lines?

11 "Yeah, I went down the power lines to get to this
12 hunting stand.

13 "Were you running down the power lines?

14 "I don't remember. Probably not."

15 What we have is an ongoing consistent theme of
16 remembering things that we like to remember and not
17 remembering things we don't want to remember.

18 But I would also like to point out some kind of
19 things that very much struck me.

20 First, she was under the influence of a lot of
21 intoxicating substances. She had been taking Loritabs, ten
22 7.5 Lortabs within a twenty-four hour period. She went to
23 the doctor the morning before and by the next day those
24 Lortabs were gone. She was also drinking a bottle of brown
25 whiskey. Not beer, not wine, not something just take a

1 little bit of the edge off. The actual hard liquor. She
2 had been doing so that day and during the day.

3 But more importantly I thought a bit odd from
4 where she ended up that night. The testimony before you was
5 that she was alone at the house. Nobody else there. She
6 then decides to go for a walk for some reason and goes down
7 the power lines, maybe running, maybe not. She doesn't
8 really recall. Others do, but she doesn't, to the hunting
9 stand. She then leaves the hunting stand at some point and
10 goes not back to her house where she's alone, but to the
11 house of a neighbor, a trailer, where apparently nobody is.
12 And I don't know. Without anybody being there, she just
13 sort of goes in somebody's trailer and takes a nap. She
14 gets up a few hours later. Well, kind of alleging this
15 other individual came by, goes back to her house and starts
16 screaming as well.

17 Ladies and gentlemen, she didn't go back to her
18 house to take a nap because she knew she lit it on fire.
19 She knew that was going to be a problem for her, if she
20 showed back up to the house. It's the same reason she was
21 running away. Why she didn't go to her house, that's the
22 reason she went to somebody else's house.

23 When she came back she didn't stop. She didn't go
24 through and approach and go "oh, my god, what's wrong?" She
25 went straight to Buddy Earls and started yelling at him,

1 violently yelling at him, to the point where she had been to
2 be restrained. Law enforcement had to restrain her. "You
3 are not blaming this shit on me."

4 There was also some testimony over the course of
5 this trial. I think it was a little bit misleading as to
6 what she did with the heater. She said she had seen the
7 heater in the past and came back and put it on a table right
8 inside the door when she came in. She did not put it on the
9 children's desk. I specifically asked her that, "did you
10 put it on the children's desk?"

11 "Didn't put it on the children's desk."

12 Ladies and gentlemen, this is in evidence. You
13 will have the opportunity to look at all these pictures as
14 they are into evidence. There is nothing, no door around
15 where that fire started. The fire started right in this
16 area on the children's desk. There is no door around there.
17 All right. Somehow this heater made it into it kitchen.

18 Additionally, the idea that this somehow is an
19 accidental fire caused by the heater is equally ridiculous.
20 It just happened accidentally. That somehow after being
21 there all morning, all day, it happened to start a fire on
22 the children's desk at exactly the same time she just
23 happens to leave the house, go to her neighbor's house,
24 running around the fire line, going to the thing and hiding
25 in somebody else's house is a pretty big coincidence. It

1 also doesn't explain how and why it got moved to the
2 kitchen. Somebody moved that heater to the kitchen. It was
3 exposed to flames at one point and then got moved, and it
4 was moved. Ladies and gentlemen, the only person that could
5 have done that that was in that home was the defendant, Ms.
6 Marsha Selph.

7 Now, ladies and gentlemen, the last thing that I
8 asked you in my opening statement was that you use a little
9 bit of common sense. As you go back in that jury room, I
10 hope that is what you will do, because the evidence as we
11 have presented it shows this. Ms. Selph was mad at Mr.
12 Earls. Very mad. Ms. Selph, who admits to being convicted
13 of a crime of dishonesty, was mad at Mr. Earls. She had
14 been drinking all day.

15 Mr. Thompson mentioned in his closing that I was
16 going to say the theory of this case where she got mad and
17 drunk and burned the house down I think is exactly what
18 happened. It walks like a duck, it quacks like a duck,
19 ladies and gentlemen, on this one it's a duck. She was mad
20 at him. She was upset with him. So much, in fact, that he
21 felt it necessary to leave the house.

22 She stayed there and brewed some more. Drinking.
23 She went over to Carlee Cantrell's. She testified at that
24 point she was still drunk. Got a light, went back to the
25 house. At some point in that time lit that fire on that

1 children's desk. That children's desk, which doesn't have
2 any electrical appliances near it, it wasn't a lightening
3 strike, it didn't come from someplace else. At some point
4 in time she went back to that desk and she lit it on fire.

5 She went back to Carlee Cantrell's house. Ms.
6 Cantrell testified she recognized that she knew that fire
7 had started. She started that fire. She recognized she
8 couldn't take any more, making more statements she was mad
9 at Mr. Earls.

10 Then when the police came, not even to investigate
11 this, she tried to get in the house. When she couldn't get
12 in the house, she took off running down the power lines,
13 fleeing the scene. Shows up later, apparently after
14 sleeping in somebody else's trailer who wasn't there, hours
15 later, gets right up in Mr. Earls face and continues to yell
16 at him.

17 Ladies and gentlemen, I think common sense in this
18 case would dictate what happened, part because she actually
19 told somebody what happened.

20 We would ask you to return a verdict of guilty of
21 arson in the third degree. Thank you.

22 (Whereupon, at 10:17 a.m., the jury panel was
23 charge by the Court)

24 THE COURT: Ladies and gentlemen of the jury, that
25 completes the closing statements or arguments made by

1 counsel, and I told you that when we reached this stage of
2 the proceedings, it would be my responsibility to charge you
3 concerning the law to be applied in this case. And as I go
4 through the charge, you will see that I will go over some
5 general matters with you and then I'll narrow it down
6 specifically to the charge that we are involved in, as far
7 as this case is concerned. But before I go through those
8 things, I do want to go over with you again the indictment
9 in this case.

10 I told you at the beginning of the trial the
11 indictment is the charge that brings the case before the
12 court. It informs the court, that is myself, and you, and
13 the other participants, of the charge to be tried. It
14 informs the defendant of the charge that's been lodged
15 against her.

16 You will have the indictment with you back in the
17 jury room so that you can review the charge and understand
18 exactly what is contained in the indictment, but I will go
19 over it with you again before we begin my charge on the law.

20 Again, the indictment is in case number
21 2011-GS-11-938. The indictment is for the charge of arson
22 in the third degree.

23 The indictment states that on or about October 15
24 of 2011, the defendant Marsha Janet Selph, did, in Cherokee
25 County, willfully and maliciously cause an explosion, set

1 fire to, burn, or cause to be burned, or aided, counseled,
2 or procured the burning of a building or structure that was
3 one, or more, of the following: A dwelling house, a church
4 or a place of worship, a public or private school facility,
5 a manufacturing plant or warehouse, a building where a
6 business is conducted, an institutional facility, or any
7 structure designed for human occupancy to include local or
8 municipal buildings, to-wit: A dwelling located at [REDACTED]
9 [REDACTED], Gaffney, South Carolina, belonging to Lida
10 Bradshaw, all in violation of Section 16-110 (b) of the Code
11 of Laws of South Carolina, 1976, as amended, against the
12 peace and dignity of the state and contrary to the statute
13 in such case made and provided.

14 Now, that's the indictment in this case.

15 The indictment doesn't constitute evidence and it
16 cannot be used by you or considered by you as evidence of
17 guilt in this case, nor does the fact that an indictment has
18 been issued create any presumption or inference of guilt.
19 The document, again, is the formal written instrument. It's
20 the charge that's been made against the defendant and it's
21 the formal document that brings the case into this court.

22 Now, to the indictment the defendant has pled not
23 guilty. And that plea under the laws and the Constitution
24 of this state and of the United States places the burden of
25 proof in this case upon the State. That burden is to prove

1 the defendant guilty by proof beyond a reasonable doubt.

2 Now, a person charged with the commission of a
3 crime in South Carolina is never required to prove himself
4 or herself innocent of that crime. And I charge you that
5 it's an important rule of law that a defendant in a criminal
6 case, regardless of the seriousness of the crime alleged,
7 will always be presumed to be innocent of the crime for
8 which the indictment has been issued, until, and unless,
9 guilt has been proven to you, the jury, by evidence that
10 satisfies you of that guilt beyond a reasonable doubt. The
11 presumption of innocence doesn't end when you begin your
12 deliberations.

13 The presumption of innocence has been described
14 sometimes like a robe that a judge wears into the courtroom;
15 that is, the presumption of innocence is about the
16 defendant's shoulders at the beginning of the trial. It
17 continues and remains about the defendant's shoulders
18 throughout the trial. It accompanies the defendant into
19 your deliberations. It remains about the defendant's
20 shoulders until such time as it has been stripped from the
21 defendant by proof that satisfies you of the defendant's
22 guilt beyond a reasonable doubt.

23 Now, the presumption of innocence is not a mere
24 legal theory. It's not just a legal phrase. The
25 presumption of innocence is a substantial right that every

1 defendant is entitled to, until, and unless you, the jury,
2 are satisfied from the evidence of the defendant's guilt
3 beyond a reasonable doubt.

4 You have heard me refer to proof beyond a
5 reasonable doubt a couple of times already. You are
6 probably asking yourself, or reasonably asking yourselves,
7 what is meant by a reasonable doubt. What is under the law
8 a reasonable doubt? A reasonable doubt has been defined as
9 that kind of doubt that would cause a reasonable person to
10 hesitate to act.

11 The State has the burden of proving the defendant
12 guilty beyond a reasonable doubt.

13 Now, if any of you have ever been involved in a
14 civil case -- and let me explain to you what a civil case
15 is. A civil case is where someone is seeking monetary
16 damages. Now, that could be because someone was injured.
17 It could be because someone breached a contract. It could
18 be because someone failed to pay a debt. Civil cases
19 involve money, or the payment of money. And in those cases
20 the standard of proof is by the greater weight or the
21 preponderance of the evidence. That means the scales
22 tilting ever so slightly in favor of either the plaintiff or
23 the defendant would entitle that side to a verdict. That's
24 a civil case. That doesn't apply in this case.

25 The case that we are involved in, the standard of

1 proof is more powerful than that. It's proof beyond a
2 reasonable doubt.

3 I will tell that you proof beyond a reasonable
4 doubt is that kind of proof that convinces you of the
5 defendant's guilt.

6 Now, there are very few things that go on in human
7 life that could be proven beyond any doubt whatsoever.
8 That's not the standard of proof to which the State is
9 placed in this case. They do not have to present proof that
10 overcomes every possible doubt.

11 What I will tell you, if after considering all of
12 the evidence in this case, if you are firmly convinced of
13 the defendant's guilt beyond a reasonable doubt, you must
14 find the defendant guilty.

15 On the other hand, if you find that there is a
16 real possibility that the defendant is not guilty, then you
17 must give the defendant the benefit of the doubt and find
18 the defendant not guilty.

19 Now, I'll remind you, at the beginning of the
20 trial I tried to explain to you that you and I have
21 different duties and functions in this courtroom. As the
22 trial judge it's been my responsibility to preside over the
23 trial of the case. There haven't been many controversies
24 that came up, as far as that required my ruling, but I'm
25 going to caution you again. Don't take from anything that I

1 say or do in the discharge of my duties as the presiding
2 officer, either during the trial, or even during this charge
3 on the law, to somehow indicate to you that I have an
4 opinion one way or the other as to how you determine the
5 facts in this case. I have explained to you, you are the
6 sole judges of the facts in the case. The law doesn't allow
7 me an opinion concerning the facts. I have no opinion as to
8 how you determine the facts in this case.

9 Now, if there was anything that was ruled out of
10 order in the case or something that I did not allow into
11 evidence, those matters should not be considered at all in
12 reaching your verdict.

13 I also, in fact, indicated I have the additional
14 duty on charging you the law in this case. And I told you
15 earlier under the rules that govern the procedure in this
16 court you are the sole judges of the facts. I am the sole
17 judge of the law in this case. Again, you must take the law
18 as I now give it to you and apply that law to the facts as
19 you determine those facts to be. That should put you in a
20 position to discharge your duties as jurors in this case.

21 Again, don't take from anything that I say or do
22 to indicate that I have an opinion concerning the facts,
23 because you are the sole judges of those.

24 Now, it's your duty as jurors in your deliberation
25 to determine the effect, the value, the weight and the truth

1 of the evidence that's been presented during the trial. And
2 in doing so you have the right to consider two types of
3 evidence.

4 Now, you may say well, do you mean by two types of
5 evidence, and I'll try to explain that to you. The legal
6 community divides evidence into either direct evidence or
7 circumstantial evidence, and you have the right, as you will
8 hear later on, to consider both types of evidence in
9 reaching a verdict.

10 Now, direct evidence is testimony by a witness who
11 claims to have direct knowledge of the facts about which the
12 witness is testifying; that is, somebody who was an
13 eyewitness to what happened, who actually experienced what
14 went on and testifies directly on the fact they are seeking
15 to prove. That's what we mean by direct evidence.

16 The other type of evidence that you, the jury,
17 have the right to consider is what we call circumstantial
18 evidence.

19 Now, circumstantial evidence is proof of a chain
20 of facts or circumstances that would allow you to reasonably
21 infer the existence of some other fact. It's been referred
22 to as proof of collateral facts from which a main fact can
23 be reasonably inferred.

24 Now, that's a lot of lawyer talk, in my opinion.
25 That doesn't necessarily make a lot of sense. I like to use

1 a very simple example to show you what we mean my proof of a
2 fact by circumstantial evidence. Let's say last night
3 before you went to bed if had walked to the window and
4 looked outside and stars were shining and it's a beautiful
5 night. You went to bed. You slept all night, didn't see or
6 hear a thing. You woke up the next morning and walked to
7 the same window. Now, when you walked to the window the sun
8 is up outside, but then you look a little closer and you
9 noticed, well, there is water dripping from all the trees.
10 The grass in front of your house is wet. There is puddles
11 in the driveway and the road in front of the house is
12 soaking wet. Now, during the night you didn't see it rain
13 and you didn't hear it rain, so you can't tell directly
14 whether it did or it didn't, but from the facts and
15 circumstances that you know to be true, you could reasonably
16 infer the fact that sometime during the night it rained. So
17 that's what we mean by proof of collateral fact from which a
18 main fact could be reasonably inferred. So circumstantial
19 evidence is based on inference and not upon personal
20 knowledge or observation.

21 Now, the law doesn't make any distinction between
22 the weight or value that you, the jury, can give to either
23 direct evidence or circumstantial evidence. You give it the
24 weight you think that it deserves. There is not a greater
25 degree of certainty required of circumstantial evidence than

1 of that of direct evidence.

2 I will tell you as a juror you should weigh all of
3 the evidence in the case, both direct and circumstantial in
4 this case. And I'll tell you that if after weighing all of
5 the evidence, if you are firmly convinced of the defendant's
6 guilt beyond a reasonable doubt, you must find the defendant
7 guilty.

8 By the same token, if you think there is a real
9 possibility that the defendant is not guilty, you must give
10 the defendant the benefit of the doubt and find the
11 defendant not guilty.

12 Now, in doing your job you are going to have to
13 decide the credibility of the testimony that you have heard,
14 and that's what credibility means believability. It's your
15 duty as jurors to analyze and evaluate the evidence that you
16 have heard and determine which evidence convinces you of its
17 truth. I told you at the beginning of the trial to use your
18 own good common sense in making that determination.

19 You have the right to believe one witness against
20 all the others. You have a right to believe all the others
21 against one.

22 As the sole judges of the facts, you can believe
23 all of, part of, or none of what a witness has told you in
24 this case.

25 You have the right to consider whether a witness

1 exhibited to you some interest, bias, prejudice, or other
2 motive in testifying.

3 You may also consider the appearance, the manner
4 in which the witness delivered their testimony.

5 Use your good common sense again. Weigh whatever
6 factors you normally do in determining questions of
7 credibility and make a determination as to the credibility
8 and believability of the testimony you have heard during the
9 trial.

10 Now, during the trial we had a couple of witnesses
11 who were qualified as experts. I told you I would talk to
12 you more about that when I charged you concerning the law in
13 this case. I explained to you when we had the first person
14 qualified that the Rules of Evidence ordinarily do not
15 permit witnesses to give opinions or conclusions in
16 testifying. An exception to that ruling is for a witness
17 who is declared to be an expert within some field, or
18 profession, or art, or science, or calling. Those witnesses
19 who are qualified as such are allowed to state an opinion
20 within their area of expertise. They are also allowed to
21 state the reasons why they hold the opinions they have.

22 I'll tell you to consider the testimony of all the
23 witnesses, including expert opinions received in evidence,
24 like any other evidence. You give it the weight you think
25 it deserves.

1 If you decide that an opinion of an expert is not
2 based on sufficient education or experience, or if you
3 decide the reasons the expert gave in support of his opinion
4 are not sufficient or sound, or if you believe the opinions
5 are outweighed by other evidence, you have the right as the
6 sole judges of the facts to disregard an expert's opinion in
7 its entirety, if you choose to. For that reason, an expert
8 witness' testimony should be given no greater weight simply
9 because the witness was declared to be an expert. In other
10 words, you should weigh and evaluate all the testimony in
11 the case, including an expert's testimony, and you are not
12 required to accept an expert's opinion, even though that
13 opinion may not be contradicted by other evidence.

14 Also during the trial you heard evidence that the
15 defendant in this case has been previously convicted of a
16 crime, other than the one which the defendant is now on
17 trial. This evidence can be considered by you, if you
18 conclude that it's true, only in deciding whether the
19 defendant's testimony is believable and for no other
20 purpose. You must not consider a defendant's prior record
21 as evidence of the defendant's guilt of this charge; in
22 other words, the charge that we are trying today.

23 Now, in just a moment I'm going to go over the
24 specific crime which has been charged in this case, but as
25 we do that, I'm going to ask you as we go on that, you will

1 be hearing what we refer to as elements; in other words, the
2 things the State has to prove in order to establish that the
3 crime was committed.

4 One of the elements in all crimes is what we call
5 intent. Let me talk to you just a minute about what we mean
6 by criminal intent.

7 In order to establish criminal liability, criminal
8 intent is usually required. For example, it's the mental
9 state that's required to be proven by the State for a
10 particular crime, and that might be purpose, intent,
11 knowledge. It could be even recklessness, criminal
12 negligence, depending on the crime involved, and I'll go
13 over this crime again in just a few minutes.

14 Criminal intent must be proven by the State beyond
15 a reasonable doubt. Criminal intent is always a matter that
16 has to be determined by a jury from circumstantial evidence
17 or the circumstances surrounding the situation. The reason
18 for that is there is no way that we can look inside
19 somebody's head at the moment they are committing an act and
20 tell exactly what they intended to do, or prove it by
21 science or mathematics, so there is no way we can prove what
22 someone intended to do at any given time by any kind of
23 mathematical calculations, or medical science, or anything
24 of that nature, so the law says that criminal intent may be
25 inferred from the circumstances that were shown to have

1 existed at the time that an act was committed. This is how
2 you make a determination as to whether or not the element of
3 a crime that requires intent was present or not. It's not
4 necessary to establish intent, therefore, by direct or
5 positive evidence, but intent can be established by
6 inference, the same way as any other fact, taking into
7 consideration the facts as they existed at the time of the
8 act, the acts of the parties, and all the circumstances of
9 the case.

10 I will tell you, however, criminal intent is a
11 mental state. It's a conscious wrongdoing.

12 It's up to you to determine what the defendant
13 intended to do at the time the event occurred, based on the
14 circumstances that were shown to have existed.

15 I will also charge you that under the law mere
16 presence of a person at the scene of where a crime is
17 committed is not sufficient to prove a person is guilty of a
18 crime. A defendant's presence where a crime is being
19 committed or mere association with a person who commits the
20 crime does not make the defendant an accomplice or an aider
21 or abettor guilty of any crime.

22 The burden is on the State to prove every element
23 of the crime charged. And if after reviewing all the
24 evidence that the State has proven that the defendant was
25 only present at the scene of a crime, they have not proven

1 beyond a reasonable doubt -- and have not proven beyond a
2 reasonable doubt any other participation, then you must find
3 the defendant not guilty.

4 Also I will tell you that insanity or someone not
5 thinking correctly caused by the use of drugs or alcohol may
6 be a defense in this state only if the insanity is permanent
7 and it destroys the person's ability to know right from
8 wrong. However, when voluntary intoxication has not
9 produced permanent insanity, it is not a defense to a crime.
10 A person who voluntarily becomes intoxicated is just as
11 responsible for the acts committed while intoxicated as a
12 person who is not intoxicated under the law.

13 Now, the crime in this case is arson in the third
14 degree, or third degree arson.

15 In order to prove third degree arson, the State
16 must prove beyond a reasonable doubt that the defendant
17 willfully and maliciously caused either an explosion, set a
18 fire to, burned, or caused to be burned, aided, counseled,
19 or procured the burning of certain properties.

20 Now, under the statute willfully means that it was
21 not done by accident, but that it was done knowingly and
22 intentionally. It must be shown that the burning was by the
23 willful act of someone and not the result of a natural or
24 accidental cause.

25 Maliciously means that the act has to be done with

1 hatred, or ill will, or hostility toward another person.

2 A person who intentionally does a wrongful act
3 without legal justification or excuse does the act
4 maliciously.

5 A malicious burning is an act done with a
6 condition of mind that shows a heart bent on mischief,
7 showing a design to do an intentional wrong act toward
8 another or toward the public without any legal justification
9 or excuse.

10 This malice need not be expressed malice. It can
11 also be inferred from the facts and circumstances that are
12 shown to have existed at the time that it occurred.

13 Now, burning under the law means actual combustion
14 of some portion of a piece of property.

15 It's not necessary that the property be totally
16 consumed or totally destroyed. Charring of the material of
17 which the property is constructed or a change in the fiber
18 or composition of the structure is required for a burning.
19 So simply singeing, smoking, blistering, scorching, or
20 discoloring by heat are not enough to constitute a burning.
21 Again, there must be a charring of the material or a change
22 in the fiber or the composition of the structure.

23 Next, the State must prove beyond a reasonable
24 doubt that the property which was burned was either a
25 dwelling house, a building, a structure, or any other

1 property.

2 A dwelling house is a building in which a person
3 ordinarily sleeps.

4 Finally, the State must prove beyond a reasonable
5 doubt that the explosion and/or burning directly or
6 indirectly resulted in damage to the property itself.

7 Now, ladies and gentlemen of the jury, I told you
8 at the beginning of the trial that the verdict of you must
9 be unanimous. Each and every one of you must agree on the
10 verdict in this case. And there will be one question on the
11 verdict form, and that is as to this indictment, the charge
12 for arson in the third degree, whether or not the defendant
13 is either not guilty, or guilty of that charge.

14 Ms. Proctor, I'm going to appoint you as the
15 foreperson of the jury. That means that you will be the
16 person who is responsible to conduct the discussions of the
17 jury. Also it will be your responsibility during those
18 discussions, should the jury have any question concerning
19 this matter, you will write that question on a piece of
20 paper, knock on the door, hand it to the bailiff, and the
21 bailiff then will present the question to me.

22 I'm going to tell the jury I can't answer every
23 question that you might have during your deliberations. I
24 can't get into your decisions concerning the facts. I can
25 respond to questions about the law I have charged or the

1 procedure that we follow, limited questions about the
2 evidence that's been placed in, but I'm not asking you,
3 ma'am, to edit any question. Submit whatever question the
4 jury has and I'll be glad to answer it, if I can, or I'll
5 tell you that I can't.

6 Now, also it will be your job to complete the
7 verdict form. I'll go over that with you in just a minute
8 to be sure that you understand that.

9 You will be given all of the evidence to take back
10 into the jury room, along with the indictment that I will
11 ask you to consider those matters and issues during your
12 deliberations.

13 Now, I'm going to ask you all -- I have gone over
14 a lot of things with you and I want to be sure I haven't
15 misspoken during my charge on the law, so I'll go over that
16 with the attorneys. Also we are going to gather the
17 exhibits together and be sure only the properly admitted
18 exhibits come back to you for your consideration, that
19 something else is not included in that, so we have got a few
20 housekeeping matters we need to take care of.

21 I'm going to ask you to go back to the jury room
22 one more time. Madam Forelady, do not allow the jury to
23 discuss anything about the case until I bring you back for
24 final discussions.

25 You may retire to the jury room.

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

3 THE COURT: Any objections to the charge, from the
4 State?

5 MR. KENDALL: Just one, Your Honor.

6 THE COURT: Yes, sir.

7 MR. KENDALL: In the section about damages
8 necessary for the property, I'm looking at 16-11-110 of the
9 statute, and it says "for the purpose of this section damage
10 means an application of fire, explosion resulting in
11 burning, charring, blistering, scorching, smoking, singeing,
12 discoloring or changing of the fiber composition of a
13 building, structure specified in this section.

14 I think, Your Honor, the Omnibus Act of 2010 added
15 that section in there, if I'm not mistaken, to actually
16 specifically include smoking. I don't know if that's a
17 particularly big deal.

18 THE COURT: What are you talking about?

19 MR. KENDALL: I think that one of the instructions
20 given was that smoking is -- that smoking was not a -- that
21 smoking would not constitute --

22 THE COURT: I said singeing, smoking, blistering,
23 scorching, or discoloring by heat is not enough to
24 constitute a burning. The citation for that is In the
25 Interests of Christopher P. It's a Court of Appeals case.

1 MR. KENDALL: Uh-huh.

2 THE COURT: I'll be glad to look at that case and
3 see what it says.

4 MR. KENDALL: Do you have the year on that, by
5 chance, Your Honor?

6 THE COURT: Yeah, the cite is 328 S.C. 545.

7 MR. KENDALL: Okay.

8 THE COURT: 492 S.E. 2d 820.

9 MR. KENDALL: Is there a year on that, by any
10 chance?

11 THE COURT: I burden of proof?

12 MR. KENDALL: Is there a year on that?

13 THE COURT: It says 1997.

14 MR. KENDALL: Okay.

15 THE COURT: So, I mean, I just --

16 MR. KENDALL: Yes, sir.

17 THE COURT: That's the citation that I was given
18 and that's the case that they referred to.

19 MR. KENDALL: I think that's been the historical
20 instruction.

21 THE COURT: Uh-huh.

22 MR. KENDALL: I guess my point being I think they
23 changed the statute to now include smoking.

24 THE COURT: I will be glad to take a look at it,
25 but I don't think you are alleging here that a charring

1 and --

2 MR. KENDALL: Yes, sir. And I'm not sure it
3 matters, but --

4 THE COURT: I'm not sure --

5 MR. KENDALL: I'm not sure I even want to make an
6 objection, because I don't want to get in any more trouble.

7 (Off the record)

8 (Back on the record)

9 MR. KENDALL: I think I would just have that
10 objection, Your Honor. If you could look at 16-11-110(b).

11 THE COURT: I'll take the time to look it up.

12 MR. KENDALL: I'm sorry.

13 THE COURT: All right. Any objection from the
14 defense?

15 MR. THOMPSON: None from the defense, Your Honor.

16 THE COURT: All right. If you would -- while we
17 are doing that, if you would please gather the exhibits and
18 we will see if we can reach an agreement as to the exhibits.

19 I have the verdict form here. Step up and take a
20 look at that, please.

21 (Off the record)

22 (Back on the record)

23 THE COURT: It became effective June 2nd.

24 MR. KENDALL: I believe this was October 15th,
25 2011.

1 THE COURT: Uh-huh. I'll read that section to
2 them.

3 MR. KENDALL: Do you mind, Your Honor? I'm sorry,
4 I should have said something about this beforehand.

5 THE COURT: You should have.

6 MR. KENDALL: I apologize.

7 THE COURT: If you wanted that specific charge.

8 MR. KENDALL: Yes, sir.

9 THE COURT: We will get it.

10 Anything else?

11 MR. KENDALL: Nothing further from the State, Your
12 Honor.

13 THE COURT: All right.

14 Bring the jury in.

15 (The following takes place in the presence of the
16 jury panel)

17 THE COURT: All right, ladies and gentlemen of the
18 jury, there is one other thing I want to go over with you or
19 correct.

20 Concerning the charge of third degree arson, the
21 statute refers to the fire to do damage to the building.
22 The definition of damage under the statute is, and I'm just
23 going read it right out of the statute to you, "for purposes
24 of this section, damage means an application of the fire or
25 explosive that results in burning, charring, blistering,

1 scorching, smoking, singeing, discoloring, or changing the
2 fiber or composition of a building, structure, or any
3 property specified in this section."

4 All right. So I'll make that correction in the
5 charge to you.

6 Now, let me pass --

7 Any objection to the verdict form?

8 MR. KENDALL: None from the State, Your Honor.

9 MR. THOMPSON: No, sir.

10 THE COURT: I'll pass this over to the forelady.

11 Ma'am, this is the form that we are going to fill
12 out. At the top you will see that it has the State and
13 County in it. Below that it has the title, the State versus
14 the defendant Ms. Selph.

15 There is only one question presented to you, and
16 that is as to this indictment for arson in the third degree,
17 the jury unanimously finds either not guilty, or guilty.

18 Now, there is two choices there and there's a
19 blank line right in front of the choice. Once the jury
20 reaches a unanimous verdict on that question, you will
21 either put an X or a check on the blank line adjacent to the
22 correct verdict and then sign the form.

23 Do you understand how that form would work?

24 JURY FOREPERSON: Yes, sir.

25 THE COURT: All right. Now, I want to caution the

1 jury, don't take from the fact that I have put the choices,
2 the verdict, in any order on that form to indicate I have a
3 preference as to how you determine that. I will tell you
4 that I have been preparing those forms for about ten years.
5 Every one I have done in the ten years has been the same
6 order; not guilty as first, guilty as second. So that
7 doesn't express a preference on my part. That's just the
8 order in which I always do it, so that's the way it's on
9 your form.

10 Now, at this time I am going to ask you to retire.
11 I am going to ask you at this time to begin your
12 deliberations. Once the verdict has been reached, the
13 forelady will check the appropriate line and notify the
14 bailiff that a verdict has been reached.

15 Now, ma'am, you are the alternate. I'm going to
16 ask that you remain seated. This time I'll ask the jury
17 itself to retire and begin your deliberations. The bailiff
18 will deliver the exhibits to you shortly. Thank you very
19 much.

20 (Whereupon, at 10:52 a.m., the jury panel went to
21 the jury room to await instructions to begin deliberations)

22 THE COURT: Any objection to my final instruction,
23 from the State?

24 MR. KENDALL: No, sir, Your Honor.

25 THE COURT: Any from the defense?

1 MR. THOMPSON: No, sir.

2 THE COURT: All right. Any objection to the
3 exhibits? Have we reached a consensus as to what's to go
4 back?

5 MR. KENDALL: I believe so. 1 through 39. 40 and
6 41 are sitting out. They are not going back.

7 THE COURT: Any objection to it as they have been
8 bundled?

9 MR. THOMPSON: No, sir.

10 THE COURT: All right. Mr. Bailiff, you may
11 deliver the exhibits to the jury, please.

12 And we will remain in recess in this case until
13 such time as a verdict has been reached, with the exception
14 I have got to deal with my alternate.

15 (Whereupon, at 10:54 a.m., the jury panel was
16 instructed to begin deliberations)

17 (Off the record)

18 (Back on the record)

19 THE COURT: You have been the alternate in this
20 case and I want to thank you for your assistance. Your job
21 was to be available in the case that if someone had a
22 problem and couldn't go into deliberations, you would have
23 taken their place and we could have continued with the case,
24 but they all went back. They have begun deliberations and
25 the law says that you are now to be released in this case.

1 It doesn't mean all your work is done this week, so we are
2 going to be taking some nonjury matters up in criminal court
3 this afternoon. We may start another trial in the morning,
4 so I'm going to ask you to call the number that you have
5 been given after six o'clock. You will receive instructions
6 as to what to do.

7 Thank you very much for your help in this case.
8 The bailiff will show you out. You are free to go.

9 Now, you are free to talk about this now, if you
10 would like to. You are not required to do that. Okay,
11 ma'am?

12 JURY ALTERNATE: Thank you.

13 THE COURT: Thank you.

14 (Whereupon, at 10:55 a.m., the jury alternate was
15 discharged)

16 (Whereupon, at 10:55 a.m., proceedings were
17 adjourned, pending the verdict of the jury panel)

18 (Whereupon, at 11:09 a.m., proceedings were
19 reconvened)

20 THE COURT: I have been informed by the bailiff
21 that a verdict had been reached.

22 Is the State ready to receive the verdict?

23 MR. KENDALL: Yes, sir, Your Honor.

24 THE COURT: Defense ready?

25 MR. THOMPSON: Yes, sir.

1 THE COURT: Bring the jury in.

2 (Whereupon, at 11:10 a.m., the jury panel returned
3 to open court to report its verdict)

4 THE COURT: The record will reflect the jury has
5 return to the courtroom.

6 I'm informed by the bailiff that a verdict has
7 been reached.

8 Is that true, ma'am?

9 JURY FORELADY: Yes, sir.

10 THE COURT: Pass the form to the bailiff, please.
11 The clerk may publish the verdict.

12 THE CLERK: Indictment 2011-GS-11-938, State of
13 South Carolina versus Marsha Janet Selph, we, the jury,
14 unanimously find the defendant Marsha Janet Selph concerning
15 the offense of arson, third degree, guilty.

16 Signed by forelady Shanelle Proctor.

17 Ladies and gentlemen of the jury, if this is the
18 verdict of you all, please indicate by raising your right
19 hand.

20 (Whereupon, all jurors raised their right hand)

21 THE CLERK: Thank you.

22 THE COURT: Anything further from the State before
23 I release this jury?

24 MR. KENDALL: Nothing from the State, Your Honor.

25 THE COURT: Anything from the defense?

1 MR. THOMPSON: No, sir.

2 THE COURT: All right. Ladies and gentlemen of
3 the jury, this completes your service in this case. I'm
4 going to release from any further service in this case, but
5 the week is not over yet, so we may be starting another
6 trial in the morning, so I'm going to ask you to be sure
7 that you have your call-in number. At six o'clock this
8 evening if you will call in and check with us, then we will
9 let you know whether we need you further the rest of the
10 week. We will be taking up some nonjury matters in criminal
11 court this afternoon.

12 Now, throughout the trial I told you not to
13 discuss the case with anyone. I will advise you you now
14 have the right to do so. You also have the right not to do
15 so. I will tell you that a citizen owes no one an
16 explanation for their service on the jury panel. You are
17 not required to discuss this matter, unless you choose to do
18 that. Should anyone harass you or bother you concerning
19 your service on this jury, please report it to the clerk's
20 office and we will take the appropriate action, should that
21 occur.

22 So I'm going to ask you, if you would, please,
23 call in after six o'clock. We will give you further
24 instructions at that time. Thank you for your service in
25 this case.

1 Ms. Proctor, you will need to see the clerk before
2 you leave the courtroom. Other than that, the remainder of
3 the jury is free to go. Thank you very much.

4 If you wish to see sentence in this case, the
5 bailiff will tell you how to do that. You are not required
6 to be present for sentencing.

7 (Whereupon, at 11:12 a.m. the jury panel was
8 discharged)

9 (Off the record)

10 (Back on the record)

11 THE COURT: All right. Ms. Selph, having been
12 found guilty by a jury of your peers, I'm now going to
13 consider sentencing in your case.

14 You have been found guilty of the offense of third
15 degree arson. This carries a possible sentence of not more
16 than fifteen years in prison.

17 At this time I'm going to hear from your attorney.
18 And when he completes discussing this with me, I will be
19 hearing from you.

20 Yes, sir.

21 MR. THOMPSON: Thank you, judge.

22 First of all, I think she spent twenty-four days
23 in jail before making bond.

24 THE COURT: Thank you.

25 MR. THOMPSON: She's fifty years old, judge.

1 She was involved in -- I mean, at one time she was
2 a foster parent. She's involved in horse rescue, things
3 like that.

4 I think the biggest problem we have had throughout
5 this case -- and you heard the testimony. She was
6 intoxicated that day. I think the biggest problem we have
7 had is that she really doesn't have a memory of what went
8 on, but there is talk in the community of so and so did
9 this, and so -- we are getting a lot of -- I won't call it
10 secondhand hearsay, but it's thirdhand hearsay; "so and so
11 said this." Well, she believes that, but then when we go
12 talk to so and so, so and so is like "well, I didn't say
13 that."

14 She is upset now because out in the parking lot
15 just then, while she was smoking a cigarette, she says that
16 somebody said "oh, I guess I left the heater on. That's
17 what caused the fire." You see, that's the first I have
18 ever heard of that. And I honestly think that the friends
19 and boyfriend and boyfriend's families are just playing mind
20 games with her on this stuff, telling her this is what
21 happened. And then when you go check it out, no, they
22 didn't say that. And that's really been a problem
23 throughout the representation of this matter. She really
24 doesn't know what happened and she's trying to go on the
25 hearsay she's hearing in the community and that hearsay is

1 false. It's not intentionally false. It's at least false.

2 I would ask you, Your Honor -- you are aware of
3 her record. She has the grand larceny in Florida. She was
4 sentenced, but it was held in abeyance -- or I forget what
5 the exact wording was.

6 THE DEFENDANT: Adjudication withheld.

7 MR. THOMPSON: Yeah, adjudication withheld.

8 She also has a gun charge in Florida back sometime
9 ago. May have been about the same time, 2004.

10 THE COURT: That was an illegal possession of a
11 gun?

12 MR. THOMPSON: It appears to be that. It's called
13 something different, but it appears to be an illegal
14 possession.

15 THE DEFENDANT: Unlawful use of a firearm in the
16 city limits.

17 THE COURT: Thank you, ma'am.

18 MR. THOMPSON: And, judge, she is -- she has four
19 children. They are all adults. She has an 8th grade
20 education. Basically unemployed, other than what I have
21 told you she's worked with foster -- she got licensed as a
22 foster parent. She -- of course, was working on getting
23 licensed as a foster parent and her work with horses.

24 I'm going to ask you to consider -- I mean, we
25 have talked about that restitution. We looked at the figure

1 on there. It's \$21,500. I don't -- I don't know if that's
2 high or not. We have talked about it and it may seem --

3 THE COURT: There has been no agreement on
4 restitution?

5 MR. THOMPSON: Well, she signed it. She signed
6 it.

7 THE COURT: Oh.
8 I'll let you talk in just a minute, ma'am.

9 MR. THOMPSON: And I told her she was entitled to
10 a restitution hearing, but she signed it.

11 THE COURT: Okay.

12 MR. THOMPSON: I would ask you to consider as
13 lenient a sentence as you could give, judge. I would ask
14 you to consider probation. There is no way she is going to
15 pay that amount of money, though. It's just not a
16 possibility. I mean, it's not reality.

17 THE COURT: I understand.

18 All right, Ms. Selph, I'll be happy to hear from
19 you. Anything you would like to tell me concerning
20 sentencing or you think that would be relevant to my
21 decision at this time?

22 THE DEFENDANT: Right now I'm -- I don't even know
23 what to say right now, because just going down in the
24 parking lot and Buddy tells me that I didn't do it. He just
25 figured out that I didn't do it, that he did it. I don't

1 know what to say. I have no idea.

2 MR. THOMPSON: And we have chased those rabbits
3 for a long time, judge.

4 THE COURT: Oh, I understand.

5 THE DEFENDANT: I'll accept whatever it is.

6 THE COURT: Ma'am, there is -- I have received a
7 restitution order. Did you agree to the restitution?

8 THE DEFENDANT: Yes, because he told me if I
9 didn't --

10 THE COURT: Ma'am, you are going to have to talk
11 to me so I can understand you.

12 THE DEFENDANT: I told him I didn't want to pay
13 her that much restitution because there is no way -- there
14 is no way \$20,000. If she can come up with a receipt or
15 whatever, okay, but 20,000 isn't -- I may get prison. I can
16 get up to fifteen years in prison just on restitution, so I
17 signed it.

18 MR. THOMPSON: What I told her, judge, was taking
19 responsibility for restitution might influence the sentence
20 in some form or fashion. Simply saying "I'm not going to
21 pay any restitution," the solution to that might be whether
22 we just make it real easy and do fifteen years.

23 MR. KENDALL: I actually have an estimate, Your
24 Honor.

25 THE COURT: Yes, sir.

1 MR. KENDALL: 20,000 -- the total for the estimate
2 was \$20,390. I know she's done some of that kind of
3 piecemeal at times, but I think that's the anticipated.
4 That's how we came up with that number of \$20,000.

5 THE COURT: That's a contractor's estimate?

6 MR. KENDALL: Yes, sir, this is Owens
7 Construction.

8 THE COURT: I'm not going to conduct a restitution
9 order today.

10 I'm going to ask the defendant one more time. I
11 have received a restitution order that indicates that you
12 have agreed to pay to Buddy Earls, Jr. \$1,500 and to Lida
13 Blackwell (sic) \$20,000. Now, it appears that you signed
14 that. If you are telling me that you do not agree to that,
15 then I will not order it. I will mark the sentencing sheet
16 that that issue has been deferred, which means that there
17 would be a later hearing on that issue, if the victim
18 requests it, and then I won't issue any order on restitution
19 today.

20 So do you agree to the restitution or do you not
21 agree to the restitution?

22 THE DEFENDANT: I guess I have to agree.

23 THE COURT: No, ma'am, you don't have to it.

24 THE DEFENDANT: I don't really know what to do.

25 THE COURT: I'm not requiring that you do

1 anything. I do need to know whether you, in fact -- your
2 statement indicates that you do not consent to the
3 restitution. You do not agree to it, and so that's the
4 reason I brought it up, because you contest it.

5 If you wish to contest it, I will give you every
6 right to do that.

7 THE DEFENDANT: I would just like her to show
8 proof of \$20,000.

9 THE COURT: Then I'm not going to sign the
10 restitution order. I'll sign this as deferred.

11 Anything else you would like to discuss with me,
12 Ms. Selph?

13 THE DEFENDANT: No, sir.

14 THE COURT: All right. I'll hear from the State.

15 MR. KENDALL: I don't believe the victims wish to
16 testify in this case, Your Honor.

17 I believe you have heard the record.

18 The only other thing we would sort of point out,
19 they're not really the victim in this case, but one concern
20 we always have with arson, as the court knows, malicious
21 injury, is that if you set something on fire, somebody has
22 to come and put it out. That is always a concern that we
23 have in cases like this. I know they are not here to
24 testify, but I know that's something that the fire
25 department does look at.

1 THE COURT: Oh, I understand.

2 Does the victim wish to have a no contact
3 provision placed on her probationary -- part of the sentence
4 will be probationary during the time.

5 Discuss that with her and ask her whether she
6 would like that, please.

7 (Off the record)

8 (Back on the record)

9 MR. KENDALL: She would like a no contact
10 provision, yes, sir, Your Honor.

11 THE COURT: Thank you.

12 Ms. Selph, it is the sentence of this court that
13 you be confined to the State Department of Corrections for a
14 period of six years. I have suspended that to the service
15 of two years, with probation for a period of five years.

16 I have ordered credit for twenty-one days of
17 service.

18 I have left open the question of restitution.

19 I have provided that should restitution later be
20 ordered, I will allow a PTUP provision on your probation,
21 which means that you could terminate your probation, should
22 the restitution be paid.

23 I have ordered a substance abuse counseling and
24 random alcohol and drug testing during the period of your
25 probation.

1 I have ordered no contact, direct or indirect,
2 with the victim.

3 Now, ma'am, indirect contact would include such
4 things as e-mails, text messages, sending a message or a
5 letter to the victim. Any of those types of indirect
6 contact would violate my order.

7 Direct contact is pretty simple. You are going to
8 have no contact whatsoever with the victim during the period
9 of your probation.

10 If you were to come in front of this judge and
11 violate that portion of my order, Mr. Thompson will inform
12 you that I would revoke your probation and have you serve
13 every day of your sentence.

14 Do you understand that, ma'am?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: All right. I have ordered payment of
17 your public defender's fees during the period of your
18 probation as well.

19 Ms. Selph, good luck to you. Thank you very much.

20 MR. KENDALL: Thank you, Your Honor.

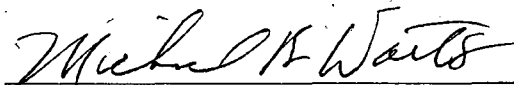
21 (END OF REQUESTED TRANSCRIPT OF RECORD)
22
23
24
25

CERTIFICATE

I, the undersigned, Michael R. Watts, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and the evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for CHEROKEE County, South Carolina, on the 7TH AND 8TH DAYS of JANUARY, 2014.

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

JUNE 22, 2014



Michael R. Watts
Circuit Court Reporter

WITNESSES

Cherokee County Sheriff's Office

T. Pinker

ARREST WARRANT NUMBER

M125487

ACTION OF GRAND JURY

TRUE BILL

Shamelle Pearson

Foreperson of Grand Jury

Date: 12-1-11

VERDICT

Guilty

Shamelle Pearson

Foreperson of Petit Jury

Date: 1-8-12

DOCKET # 11-GS-11-938

The State of South Carolina

County of Cherokee

Barry Barnette, Solicitor

COURT OF GENERAL SESSIONS

DEC 1-2011

TERM

THE STATE

vs.

Marsha Janet Selph

Indictment for
3rd Rxe 1/7/14
ARSON - 2ND DEGREE

SC Code: 16-11-110(B)
CDR Code: 2551
Class FEL-B

FILED IN OFFICE OF
CLERK OF COURT
CHEROKEE COUNTY, S.C.
2011 DEC 1 PM 10 16
BRANDY W. MCBEE

STATE OF SOUTH CAROLINA)
COUNTY OF CHEROKEE)

INDICTMENT

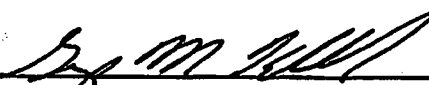
At a Court of General Sessions, convened on DEC 21 2011 the

Grand Jurors of Cherokee County present upon their oath:

Third Ave
ARSON - SECOND DEGREE

On or about October 15, 2011, the Defendant, Marsha Janet Selph, did in Cherokee County, 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 or structure that was one or more of the following: a dwelling house, church or place of worship, a public or private school facility, a manufacturing plant or warehouse, a building where business is conducted, an institutional facility, or any structure designed for human occupancy to include local and municipal buildings, to wit: a dwelling located at [REDACTED], Gaffney, South Carolina, belonging to Lida Bradshaw, all in violation of §16-11-110 (B), CODE OF LAWS OF SOUTH CAROLINA, (1976 as amended).

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


ASSISTANT SOLICITOR

CERTIFICATE OF COUNSEL FOR APPELLANT

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

August 21, 2014



Robert M. Pachak
Appellate Defender

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

ATTORNEY FOR APPELLANT

RECEIVED

AUG 21 2014

SC Court of Appeals

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