

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GEORGETOWN COUNTY
Court of General Sessions

Larry B. Hyman, Jr., Circuit Court Judge

Appellate Case No. 2018-002056
Lower Case Nos. 2014-GS-22-00803 | 2014-GS-22-00804

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SC Court of Appeals

The State Respondent,

v.

Randy Collins.....Appellant.

RECORD ON APPEAL
VOLUME I OF II

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STATE OF SOUTH CAROLINA
COUNTY OF GEORGETOWN

STATE OF SOUTH CAROLINA,

v.

RANDY COLLINS,

Defendant

IN THE COURT OF GENERAL SESSIONS

CASE NO.: 2014-GS-2200803, 804, 805

ORDER FOR COMPETENCY TO STAND
TRIAL EVALUATION PURSUANT TO
STATE V. BLAIR

EVALUATION BY:
(Select Only One)

☒ Department of Mental Health (Mental Illness)

OR

☒ Department of Disabilities and Special Needs
(Intellectual Disability or Related Disability)

ALMA V. WHITE
CLERK OF COURT

2018 AUG 13 PM 2:12

FILED
GEORGETOWN COUNTY, S.C.

This matter is before me for an order requiring defendant Randy Collins, charged with Murder, First Degree Arson, and Criminal Conspiracy to submit to an evaluation for competency to stand trial pursuant to State v. Blair, 275 S.C. 529, 273 S.E.2d 536 (1981) and S.C. Code Ann. § 44-23-410 (1976).

BASIS FOR ORDER. I have considered the showing made in support of the motion requesting this evaluation and have reason to believe defendant may lack the competency to understand the criminal proceedings or to assist with the defense as a result of a lack of mental competence.

This order is issued for the following reasons: unable to assist attorney with defense due to possible intellectual disability; review of discovery material and Defendant's report of a stroke in the past.

THEREFORE, IT IS ORDERED: Defendant shall be examined and observed at an appropriate facility by two examiners of the Department of Mental Health if suspected of having a mental illness or by two examiners designated by the Department of Disabilities and Special Needs if suspected of having an intellectual disability or a related disability, to render an opinion whether defendant is competent to stand trial.

COMPLIANCE DEADLINE/TRANSPORT FOR EVALUATION. The examining facility shall schedule the ordered examination no later than thirty (30) days from the examining

agency's receipt of this order. If defendant is currently free on bond or personal recognizance, defendant is responsible for making transportation arrangements to attend the examination. In the event defendant does not appear at the scheduled examination, upon written notice of such failure by the examining agency to the Sheriff of the county in which this case arose, defendant shall be taken into custody by the Sheriff and held until an examination can be scheduled and completed, and thereafter shall be released. Defendant's bond or bail is hereby revoked to the extent necessary to carry out the provisions of this order, and upon completion of the examination and release of defendant, any previous bail or bond issued by the Court shall remain in effect. If defendant is in custody at the time of the scheduled examination, the Sheriff is hereby authorized and required to transport defendant to and from the examination, arriving at the examining facility at the time established by confirmed appointment with the staff of the examining facility. In the event defendant is in custody of a law enforcement agency other than a Sheriff's department, nothing herein prevents such agency from carrying out the provisions of this order.

TRANSFER TO ALTERNATE AGENCY. If the initial examination is performed by the Department of Mental Health, and examiners find indications of an intellectual disability or a related disability but not mental illness, the Department of Mental Health shall not render an opinion on mental competency, but shall inform the Court, prosecutor, and defense counsel that defendant is "not mentally ill" and shall provide a copy of such notification and a copy of this order to the Department of Disabilities and Special Needs. Likewise, if the initial examination is performed by the Department of Disabilities and Special Needs, and examiners find indications of mental illness but not an intellectual disability or a related disability, the Department of Disabilities and Special Needs shall not render an opinion on mental competency, but shall inform the Court, prosecutor, and defense counsel that defendant does "not have an intellectual disability or a related disability" and shall provide a copy of such notification and this order to the Department of Mental Health.

In either case, the examining agency shall make copies of any records gathered or created in connection with its examination available to examiners designated by the alternate agency, and the alternate agency shall thereafter designate examiners to evaluate defendant as to competency to stand trial within thirty (30) days of receipt of the notification from the initial examining agency.

FINDING OF DUAL DIAGNOSIS. If examiners of either the Department of Mental Health or the Department of Disabilities and Special Needs find an indication of a dual diagnosis

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of mental illness and an intellectual disability or a related disability, no opinion on defendant's mental competency shall be rendered, and the dual diagnosis must be reported to the Court, prosecutor, and defense counsel. The examining agency shall also provide notification of the finding and a copy of this order to the other agency. Thereafter, the Department of Mental Health and the Department of Disabilities and Special Needs shall arrange for an examiner from each agency to further evaluate defendant to render a final report on defendant's mental competency. Both agencies are authorized and required to make copies of all relevant records within their possession or control available to examiners for purposes of completing the dual evaluation.

AUTHORIZATION FOR INPATIENT EVALUATION. In the event examiners from either agency determine defendant requires an inpatient examination, upon written notice to this Court from the director of the examining agency or his designee, defendant shall be committed to an appropriate facility of the requesting agency for no more than fifteen (15) days for examination and observation related to defendant's mental competency to stand trial.

REQUEST FOR EXTENSION. Before the expiration of the examination period or the examination and observation period, the Department of Mental Health or the Department of Disabilities and Special Needs, as appropriate, may apply to a judge designated by the Chief Justice of the South Carolina Supreme Court for an extension of time up to fifteen (15) days to complete the examination or the examination and observation.

DETENTION BEYOND EVALUATION PERIOD. If, in the judgment of the designated examiners, defendant is in need of immediate hospitalization or inpatient treatment, upon written request to this Court from the director of the examining facility or his designee, defendant may be detained by the requesting agency in a suitable facility for so long as deemed clinically necessary or until a hearing required and provided by S.C. Code Ann. § 44-23-430 (1976) may be conducted by this Court. An additional Court order shall be necessary for ongoing pre-trial inpatient detention of defendant as discussed in this paragraph.

ISSUANCE AND ADMISSIBILITY OF WRITTEN REPORT. Within ten (10) days of all examinations or the conclusion of the observation period, a written report shall be made to the Court pursuant to S.C. Code Ann. § 44-23-420 (1976). A copy of the report shall also be forwarded to the prosecutor and defense counsel. This evaluation report shall be admissible as evidence in subsequent hearings pursuant to S.C. Code Ann. § 44-23-420(c) (1976); thus, the report is a statutory exception to the rule against hearsay and shall be admissible without need for

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foundational testimony. However, the report shall be inadmissible in any other proceedings except as expressly permitted by South Carolina law.

OWNERSHIP AND DISCOVERABILITY OF EXAMINING AGENCY FILES. The examining agency is an independent entity, conducting this evaluation pursuant to Court order, and is not aligned with any party before the Court. To promote full disclosure and to assure the cooperation of defendant during the evaluation process, ownership of the examining agency's files shall be vested with the examining agency, including clinician's notes, staff reports, evaluation documents, memoranda, test results, etc. Neither these files nor any of their contents shall be provided to any party except upon presentation of a Court order authorizing such or a release authorization signed by defendant. In the event the examining agency's evaluation opinion is contested, an examiner may be appropriately and fully questioned as to the basis for the examiner's opinion at any hearing pursuant to S.C. Code Ann. § 44-23-430 (1976). However, examiners and agency staff may not be compelled to testify regarding statements made during the competency examination for any purpose other than to establish competency. Also, statements made during the examination may not be used to impeach defendant at trial. Hudgins v. Moore, 337 S.C. 333, 524 S.E.2d 105 (1999).

MEDICAL PROVIDERS/SCHOOLS MUST RELEASE NECESSARY RECORDS. State agency examiners conducting the evaluation may need clinical and school records concerning defendant to assist in forming an opinion. It is therefore ordered, upon presentation by the examining agency of this order with a written request for specific records attached thereto, that any physician or clinician, licensed health care facility, licensed health care provider, or any school district is hereby authorized and required to furnish copies of all records concerning defendant to the Department of Mental Health or the Department of Disabilities and Special Needs, or both.

COUNSEL REQUIRED TO FURNISH NECESSARY RECORDS. Upon written request from the examining agency, counsel for the prosecution and defense shall furnish to the agency such records and information in counsel's possession as the agency requests, including but not limited to copies of law enforcement reports, investigations, witness statements, statements by defendant (both written and electronic), defendant's medical records, and prior psychiatric or psychological evaluations of defendant. Nothing herein shall be construed to require counsel to divulge any information, documents, notes, or memoranda that are protected by attorney-client privilege or work-product doctrine.

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DUTIES OF DEFENSE COUNSEL. Unless the prosecution is the party moving for this evaluation, defense counsel has the responsibility to file, serve, and transmit this order as outlined in the final paragraph below. Defense counsel does not have the right to attend any clinical interview scheduled pursuant to this Order, nor does defendant have a constitutional right to compel counsel's attendance. State v. Hardy, 283 S.C. 590, 325 S.E.2d 320 (1985). The Court recognizes, however, that circumstances may arise through which the examining agency may request counsel's attendance to facilitate the examination. In the event that such a determination is made, the examining agency may request counsel's attendance in writing, and counsel's level of participation shall be prescribed by the examining agency's written evaluation protocol. In this event, because of the substantial number of individuals awaiting examination, such interviews cannot be rescheduled, postponed, or canceled to accommodate counsel except upon presentation to the examining agency of a written statement from a circuit court judge that counsel's attendance is required in Court at the time the examination is scheduled. Whether or not defense counsel is requested to attend the clinical interview, defense counsel must meet with defendant prior to the interview to discuss this Court order, the evaluation process, the clinical interview, defendant's rights with regard to the clinical interview, and penalties associated with non-appearance and non-cooperation. Failure to comply with these requirements may result in sanctions for defense counsel. Defendant's refusal to participate at the interview because of the absence of counsel will be deemed non-cooperation. Failure of defendant to cooperate or participate in the interview may result in cancellation of the interview, examiners being unable to offer an opinion on competency to stand trial, and the case being called for trial without completion of the evaluation.

FILING, SERVICE, AND TRANSMITTAL OF ORDER. It is the responsibility of counsel for the party requesting the evaluation to file and serve this order as outlined herein. In the event the evaluation has been requested by consent, or the moving party cannot be determined, defense counsel shall be responsible. After being signed by the Court, the original order without attachments shall be immediately filed with the Clerk of Court and a certified copy served upon the opposing party. Further, within five (5) business days, a certified copy of this order, together with the attachments listed at the end of this order, must be served upon the examining agency at the address listed below. To expedite commencement of the evaluation process and scheduling of the clinical interview, counsel is instructed to immediately contact the examining agency to advise of the issuance of this order and forthcoming service upon the agency:

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Evaluation Order Service Information

Department of Mental Health

Forensic Evaluation Service Paralegal
S. C. Department of Mental Health
CBHS Forensic Center
7901 Farrow Road
Columbia, S.C. 29203-3220
(803) 935-5540 (Phone)
(803) 935-5544 (Fax)
Email: FES-PARALEGAL@SCDMH.ORG

Department of Disabilities and Special Needs

Office of Clinical Services
Department of Disabilities and Special Needs
Post Office Box 4706
Columbia, S.C. 29240
(803) 898-9694 (Phone)
(803) 898-9660 (Fax)
Email: OBSForensics@ddsn.sc.gov

AND IT IS SO ORDERED.



The Honorable Benjamin H. Culbertson
Chief Administrative Judge
Fifteenth Judicial Circuit – General Sessions

Georgetown, South Carolina

Dated: August 8, 2018

Prosecutor- Alicia Richardson

PO Box 1688

Address

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City, State, Zip

843-545-3169

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Defense Counsel- Ralph Wilson Jr.

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BHC

RECORD 000006

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GEORGETOWN COUNTY
Court of General Sessions

Larry B. Hyman, Jr., Circuit Court Judge

Case Nos. 2014GS2200804, 2014GS2200803



The State,

Respondent,

v.

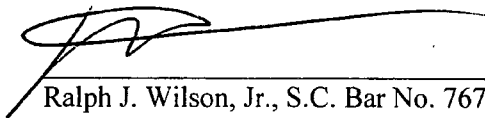
Randy Collins,

Appellant.

NOTICE OF APPEAL

Randy Collins appeals his convictions and sentences in this case. The convictions were entered and sentences imposed by the Honorable Larry B. Hyman, Jr., on November 9, 2018. A copy of all applicable sentencing sheets are attached hereto.

November 16, 2018



Ralph J. Wilson, Jr., S.C. Bar No. 76716
P.O. Box 860
Conway, SC 29528
(843) 488-1013
Court Appointed Trial Counsel for Appellant

Other Counsel of Record:

Alicia Richardson, Deputy Solicitor
Fifteenth Circuit Solicitor's Office
P.O. Box 1688
Georgetown, South Carolina 29440
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Trial Counsel for Respondent

THE STATE OF SOUTH CAROLINA
In The Court of Appeals
APPEAL FROM GEORGETOWN COUNTY
Court of General Sessions

Larry B. Hyman, Jr., Circuit Court Judge

Case Nos. 2014GS2200804, 2014GS2200803

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SC Court of Appeals

The State,

Respondent,

v.

Randy Collins,

Appellant.

PROOF OF SERVICE

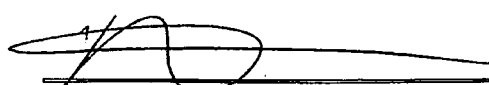
I certify that I have served the Notice of Appeal upon the following by depositing a copy of same in the United States Mail, postage prepaid, on today's date addressed as follows:

Alicia Richardson, Deputy Solicitor, Fifteenth Circuit Solicitor's Office, Post Office Box 1688, Georgetown, SC 29440;

Alan Wilson, Attorney General, Post Office Box 11549, Columbia, SC 29211;

The Honorable Alma Y. While, Georgetown County Clerk of Court

November 16, 2018


Ralph J. Wilson, Jr., S.C. Bar No. 76716
P.O. Box 860
Conway, SC 29528
(843) 488-1013
Trial Counsel for Appellant

RECORD 000008

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS

COUNTY OF GEORGETOWN) 2014-GS-22-803, 804, 805

The State,	)	
	)	
Plaintiff,	)	Transcript of Record
	)	
vs.	)	November 5-9, 2018
	)	
Randy Collins,	)	
	)	
Defendant.	)	

B E F O R E:

Honorable Larry B. Hyman, Jr.
Georgetown County Courthouse
Georgetown, South Carolina

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

Alicia A. Richardson, Esquire
Randerson I. Stephens, Jr., Esquire
Attorneys for Plaintiff

Ralph J. Wilson, Jr., Esquire
Attorney for Defendant

Grace L. Hurley, CVR-CM-M
Circuit Court Reporter

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23	Direct by Ms. Richardson.	418
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13	Direct by Ms. Richardson.	657
14	Cross by Mr. Wilson, Jr..	668
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1 (On the record, November 5, 2018.)

2 THE COURT: Now, I understand, Ms. Richardson, we're
3 about to, we're about to engage in a, a Blair hearing in this
4 case, and as I understand the procedure, Mr. Wilson, you are
5 claiming incompetency.

6 MR. WILSON, JR.: That's correct, Your Honor.

7 THE COURT: And the, and the burden then would be on you
8 by a preponderance of the evidence, not clear and convincing.

9 MR. WILSON, JR.: That's correct, Your Honor.

10 THE COURT: Okay. All right. Then you would proceed --

11 MR. WILSON, JR.: Your --

12 THE COURT: -- you would go first. Ms. Richardson, is
13 that your understanding as well?

14 MS. RICHARDSON: Yes, Your Honor.

15 THE COURT: Okay.

16 MS. RICHARDSON: But I do have the --

17 THE COURT: Ms. Richardson, why don't, why don't you call
18 it for the record. Okay.

19 MS. RICHARDSON: Yes, Your Honor. Your Honor, this is
20 the State of South Carolina versus Randy Collins. It's 2014-
21 GS-22-803, a true-billed indictment for criminal conspiracy;
22 2014-GS-22-804, a true-billed indictment for arson in the
23 first degree; and 2014-GS-22-805, a true-billed indictment for
24 murder.

25 Your Honor, he is on the trial roster for this week.

1 He's the number one case. The State is proceeding with trial
2 on the charges of criminal conspiracy and arson in the first
3 degree. He's represented by Mr. Ralph Wilson, Jr.

4 Your Honor, we appeared before Judge Culbertson on August
5 8th of this year on a request by Mr. Wilson to have his client
6 evaluated for competency by the Department of Mental Health.
7 The basis for that order was information that he was unable to
8 assist his attorney with his defense due to a possible
9 intellectual disability, review of discovery material and
10 Defendant's report of a stroke in the past. An order was
11 issued by Judge Culbertson, and the Defendant was evaluated at
12 the Medical University of South Carolina.

13 THE COURT: That report has been made available by you
14 and Mr. Wilson, I believe, in preparation for this so that I
15 would have a chance to review it, and I have reviewed the, the
16 order. I am familiar with it.

17 MS. RICHARDSON: And Your Honor, we'd just ask that you
18 --

19 THE COURT: Or the, or the report. I said order, but I
20 meant the report.

21 MS. RICHARDSON: I would ask that the report be marked as
22 a Court's Exhibit.

23 THE COURT: Certainly. Mr. Wilson?

24 MR. WILSON, JR.: Without objection, Your Honor.

25 THE COURT: Okay.

1 (Court's Exhibit Number One [Evaluation] appropriately
2 marked.)

3 MR. WILSON, JR.: Your Honor, may I approach briefly?

4 THE COURT: Yes, sir.

5 (Whereupon, a bench conference is held.)

6 MR. WILSON, JR.: May it please the Court, Your Honor?

7 THE COURT: Yes, it would. Thank you.

8 MR. WILSON, JR.: Your Honor, the Defense at this time,
9 Judge, would call Dr. Abby L. Mulay or Mulay -- is that
10 correct -- to the stand, Your Honor.

11 THE COURT: And I believe, Mr. Wilson, we don't have a
12 jury here. So we -- I think we can dispense with some of the
13 formalities, but Ms. Mulay is -- was one of the examiners, I
14 believe. Is there a question as to her qualifications in that
15 regard?

16 MR. WILSON, JR.: Judge, Judge, just briefly --

17 THE COURT: Okay. All right.

18 MR. WILSON, JR.: -- I, I have some questions.

19 THE COURT: All right. Go ahead and swear her, please.

20 WHEREUPON, Abby Mulay is called to the stand, duly sworn
21 by the clerk and testified as follows:

22 THE CLERK: Would you please state again your full name
23 and spell it for the Court?

24 MS. MULAY: Sure. My full name is Dr. Abby Mulay, A-B-B-
25 Y, M-U-L-A-Y.

1 THE CLERK: Thank you very much.

2 MS. MULAY: Yeah. Thank you.

3 THE CLERK: Please have a seat and we're going to get you
4 to move this to you.

5 MS. MULAY: Sure. Okay.

6 EXAMINATION

7 BY MR. WILSON, JR.:

8 Q Good afternoon, Ms. -- Dr. Mulay. I apologize.

9 A Hello.

10 Q How you doing, ma'am?

11 A I'm well. Thank you.

12 Q I just have a few questions about your background first.
13 Tell me about your medical training and I think now you're
14 doing your -- is it internship?

15 A So I'll tell you about my training. I'm trained as a
16 clinical psychologist. I got my master's degree in psychology
17 from Long Island University in Brooklyn. I then received my
18 PhD in clinical psychology from Long Island University,
19 Brooklyn. I then completed an internship in clinical forensic
20 psychology at the University of North Carolina School of
21 Medicine and that program was also in conjunction with a
22 federal correctional complex in Butner, North Carolina, and
23 currently I am completing a postdoctoral fellowship in
24 forensic psychology at the Medical University of South
25 Carolina, which means that I'm receiving specialized training

1 in forensic psychology as well as accruing hours for
2 licensure.

3 Q Very good. How many times have you testified in a
4 competency hearing, ma'am?

5 A This would be my first time.

6 Q Okay. So this would be the first time you're testifying?

7 A Correct.

8 Q Okay. Let me ask you a couple of questions. Have you
9 had a chance to look at the medical records for the Defendant
10 in this matter?

11 A I have.

12 Q Okay. And can you tell the Court what your understanding
13 of his medical history is?

14 A Sure. From my understanding he sustained a stroke in
15 April of 2013. I believe that he was hospitalized from the
16 23rd to the 25th, and from my understanding the stroke occurred
17 in the frontal lobe of his brain, which after the fact he
18 experienced expressive aphasia which is also known as partial
19 loss of language, the ability to express language, if you
20 will.

21 Q Okay. Very good. In the medical records, also, and you
22 have to excuse me, I'm just an old country boy from Conway.
23 So am I pronouncing this correctly, encephalopathy; is that
24 correct?

25 A I -- I'm not a medical doctor by training. So I, I'm

1 going to -- I am not sure if that's the correct pronunciation
2 of that.

3 Q Okay. Have you ever heard of that?

4 A I don't believe I have.

5 Q Okay. Have you received a copy of the medical records?

6 A I have.

7 Q Do you have a copy with you?

8 A I don't have them on my person. My supervisor has them
9 though.

10 Q Okay.

11 MR. WILSON, JR.: Your Honor, may I approach and have
12 this marked as Defendant's Exhibit One?

13 THE COURT: Yes. Yes. You may.

14 (Defense Exhibit Number One [Medical Records] marked for
15 identification.)

16 BY MR. WILSON, JR.:

17 Q Ms. --

18 THE COURT: Mr. Wilson.

19 MR. WILSON, JR.: Yes, Your Honor.

20 THE COURT: I know it's unusual, but I had a concern, and
21 I just wondered if I could clear that up before we get into
22 the doctor's --

23 MR. WILSON, JR.: Yes, sir.

24 THE COURT: -- evaluation.

25 EXAMINATION

1 BY THE COURT:

2 Q Doctor, I have had an opportunity to read your report,
3 and it would appear that you consulted or someone in your
4 department consulted with Dr. Hall at the Department of
5 Disabilities and Special Needs, and in the identifying data, I
6 guess --

7 A Yes.

8 Q -- section, it said that there was some concern that the
9 case should be referred to -- but before by -- evaluation by
10 the DDSN.

11 A Uh-huh.

12 Q And it was determined, reading from the report, that
13 since Mr. Collins' issues appear to be related to his stroke
14 in 2013 evaluation falls under the purview of the Department
15 of Mental Health.

16 A Yes.

17 Q And I understand that. Typically, unless there has been
18 evidence of early on intellectual dysfunction or impairment it
19 usually doesn't become a DDSN case; is that right?

20 A That is correct.

21 Q But I was concerned that -- I think Mr. Collins self-
22 reported that he was in special classes in school --

23 A Uh-huh.

24 Q -- from an early age, remained in special classes, that
25 he left school at seventh or eighth grade --

1 A Correct.

2 Q -- okay -- because of difficulties in school and that he
3 reports an incident with his father where he was pushed down,
4 knocked down, thrown down, something happened and struck his
5 head and he reports early seizures at six or eight. Now, was
6 that information part of the information that was given to Dr.
7 Hall? Did Dr. Hall have that information when she determined
8 that his, his, his intellectual incapacity was due primarily
9 to these -- this stroke --

10 A Uh-huh.

11 Q -- at -- in 2013?

12 A I would have to double-check in our -- in the chart that
13 we keep. I did come onto this case a little bit later. So
14 it's very possible that that was, but I, I would have to
15 confirm with the medical chart.

16 Q I just wonder since there -- throughout this report I see
17 reference to childhood problems.

18 A Uh-huh.

19 Q Intellectual issues, seizures, things of that nature
20 which if we are to believe them, and I don't know what proof
21 there was or wasn't -- that there was any record of these
22 things occurring, it would just appear to me that it should
23 have been a DDSN case. Would you agree with that?

24 A So we, we unfortunately don't have records that speak to
25 that early period or the developmental period. Since it --

1 since when we did consult with Dr. Hall that it was just
2 seemed to be the issue of the stroke. That is how it ended up
3 with us.

4 Q Did she ever examine him or anything or have any records?

5 A Not to my knowledge.

6 Q Okay. All right. Thank you.

7 THE COURT: I'm sorry, Mr. Wilson. I didn't mean to
8 interrupt you.

9 MR. WILSON, JR.: No, Your Honor. No. I -- no, no,
10 Judge. I appreciate the questions, Your Honor.

11 EXAMINATION

12 BY MR. WILSON, JR.:

13 Q Encephalopathy, you never heard of that or do you know
14 what it is?

15 A Again, I'm, I'm trained as a clinical psychologist, not
16 as a medical doctor. So that's outside of the purview of my
17 expertise.

18 Q Okay. But you -- as a part of your actual evaluation,
19 you would review his medical records; correct?

20 A That is correct.

21 Q Okay. Did you note that particular diagnoses at all? If
22 you saw it in medical records would you then note it and then
23 look at it and see what it is?

24 A In my report I noted the stroke that occurred in 2013.

25 Q Okay.

1 MR. WILSON, JR.: Your Honor, may I approach?

2 THE COURT: Certainly.

3 MR. WILSON, JR.: Thank you, Judge.

4 BY MR. WILSON, JR.:

5 Q I would draw your attention to -- this is the history and
6 physical examination, impression --

7 A Sure.

8 Q -- and plan from the neurologist who treated him back in
9 2013 when he had the stroke. Can you read that to the Court
10 about what it says?

11 A Yes. [As read], "His appearance is more consistent with
12 encephalopathy." I hope I pronounced that correct.

13 Q I hope I did, too. Yes, ma'am. So the neurologist at
14 the time was saying that when he presented that they felt that
15 he had encephalopathy at the time; correct?

16 A From, from my understanding.

17 Q Okay. All right. And do you know if encephalopathy is a
18 long-term brain disease or is it a short-term brain disease?

19 A I, I, I don't know.

20 Q Okay. Would you be surprised if I told you --

21 MS. RICHARDSON: Your Honor, she's already said that she
22 doesn't know the answer to that. Now, he -- if he wants an
23 expert in that regard he could have called one.

24 MR. WILSON, JR.: Judge, this is --

25 THE COURT: I'll let him ask the question. We don't have

1 a jury here. I'll take it for what it's worth.

2 MR. WILSON, JR.: Thank you, Your Honor.

3 BY MR. WILSON, JR.:

4 Q Would you be surprised, Doctor, if I told you that that
5 is a long-term brain disease characterized by some of the same
6 findings that you found for Mr. Collins?

7 A I would not be surprised.

8 Q Okay. All right. Now, also in your report you talk
9 about Mr. Collins having global impairment; correct?

10 A Correct. Correct.

11 Q Okay. Can you explain to the Court what -- well, first
12 let me ask you this. What sort of impairments did you
13 identify with Mr. Collins?

14 MS. RICHARDSON: And Your Honor, if we can just, I guess,
15 just as a matter of -- well, I don't think we've covered this,
16 just have her qualified as an expert, just to cover -- just
17 because we haven't done that yet.

18 THE COURT: All right. You want to offer her?

19 MR. WILSON, JR.: Yes, Judge. I'll go ahead and offer
20 her as an expert.

21 THE COURT: You offer her as an expert. Do you want to
22 examine her?

23 MS. RICHARDSON: No, Your Honor. Just I was just trying
24 --

25 THE COURT: Okay. All right.

1 MS. RICHARDSON: -- since she was giving opinion --

2 THE COURT: Well, we've got it.

3 MS. RICHARDSON: -- go ahead and do that part.

4 THE COURT: And I will -- the Court finds that she is so
5 qualified.

6 MR. WILSON, JR.: Thank you, Your Honor.

7 THE COURT: She may give an opinion.

8 MR. WILSON, JR.: Thank you, Judge.

9 THE COURT: In the field of forensic psychology.

10 MR. WILSON, JR.: Thank you, Your Honor.

11 THE COURT: Okay.

12 BY MR. WILSON, JR.:

13 Q Now, in your report you talk about several factors that
14 you found, I guess things that you found that were wrong with
15 Mr. Collins. Global impairments is what you call them;
16 correct?

17 A We administered a brief screening measure that's designed
18 to assess cognitive impairments.

19 Q Okay. All right. And can you tell the Court what
20 cognitive impairments you found with Mr. Collins?

21 A Yes. So we -- as I said, we administered the MOCA, which
22 is the Montreal Cognitive Assessment, and it's designed as a
23 brief measure. So it basically says there's potentially
24 evidence of cognitive impairment versus not.

25 EXAMINATION

1 BY THE COURT:

2 Q Well, what does a, a brief --

3 A So it's a --

4 Q -- measure? I mean, what does that mean in your field?

5 What -- in laymen's terms what should it mean to me when you
6 say that?

7 A Sure. So it's -- it, it takes about 10 minutes to
8 administer.

9 Q Oh, it's just a short test. Okay.

10 A Very short, and it's --

11 Q Means exactly what it would mean to a layperson, a short
12 test.

13 A Yes.

14 Q Okay. All right.

15 A And it also means that if you're looking for more
16 information about the nature of cognitive deficits you would
17 want to potentially consult a neuropsychologist for a more in-
18 depth battery. So this is really just meant as like a --

19 Q A brief screen?

20 A -- yes or a no.

21 Q A brief screen?

22 A Correct.

23 Q Okay. All right.

24 EXAMINATION

25 BY MR. WILSON, JR.:

1 Q Okay. What factors did you find? What were the global
2 impairments that you found?

3 A So we found impairments on visuoconstructional abilities,
4 language, attention, abstraction and delayed recall. Again,
5 but these are just very, very brief questions that suggest
6 that one could perhaps look further for a more in-depth
7 analysis of what might be going on with a person who is
8 administered the assessment.

9 Q Very good. So let's talk about visuoconstruction. Tell
10 me what that is. What is that?

11 A So, the, the person who's being examined is asked to copy
12 a figure, as well as copy a clock.

13 Q Okay. All right. And then you found that he was
14 impaired rather briefly or in that area?

15 A Very briefly. Yes.

16 Q Okay. Very good. All right. What about language? Tell
17 the Court what you mean when you say global impairment of
18 language.

19 A So we ask, in this assessment measure, we ask people to
20 say a certain amount of words in a set amount of time, and he
21 was unable to meet that threshold of how many words, and just
22 for the sake of test security I don't want to say like how
23 many words or the minute or any more about that just for the
24 sake of the security of the test, but he was unable to produce
25 X amount of words in an X amount of time.

1 Q Okay. All right. All right. And also delayed recall.

2 Can you explain what that is to the Court?

3 A Yes. So we ask the evaluatee to -- we read them words, and
4 then after a brief delay, usually just a couple of minutes,
5 because, again, it's a very brief measure, we ask them to
6 recall the words and we ask them to both freely recall, and if
7 they are unable to recall, we give them cues to see if they
8 can recall with cues.

9 Q Okay. All right. Now, question, with undue -- excuse
10 me, with delayed recall that can occur over minutes as well as
11 days clinically; can't it?

12 A Can you repeat that question for me?

13 Q I'll rephrase the question.

14 A Sure.

15 Q When you have delayed recall, when a person is diagnosed
16 with that impairment --

17 A Uh-huh.

18 Q -- that impairment can be for minutes up to days; is that
19 correct?

20 A Well, for the sake of this assessment instrument we're
21 really only looking at that few minute delay. It doesn't
22 speak to whether or not it sticks long-term, if you will.

23 Q That small amount of time. So basically what you're
24 saying to the Court is that someone could be asked a question,
25 give an example, and you tell me if I'm wrong --

1 A Sure.

2 Q -- you could ask me, say, "Well, Ralph, apple. Say apple
3 for me."

4 A Uh-huh.

5 Q And then five minutes later you might say, "What was that
6 word I told you earlier," and I could say apple to you;
7 correct?

8 A Correct.

9 Q All right. And that will be a delayed recall?

10 A Yes.

11 Q All right. In a nutshell?

12 A Yeah.

13 Q Okay. All right. But it doesn't test whether or not a
14 day from now that I could recall whether or not you said to
15 me, "Ralph, that word was apple"; correct?

16 A That's correct.

17 Q Okay. Very good. Now, with the language issues -- thank
18 you, thank you -- with the language issues what sort of issues
19 or problems would that present for someone with understanding
20 words if they're trying to have a conversation with someone?
21 If someone is globally impaired with language issues what sort
22 of problems could that present about understanding words?

23 A That's pretty broad. It can present in a number of ways.
24 Somebody could experience difficulty understanding words or
25 difficulty generating words. So it's pretty much dependent

1 on, I guess, the etiology of what's going on for the person.

2 Q Okay. But you found that Mr. Collins was impaired via
3 language. So would he present to a clinical psychologist? I
4 mean, when he presented to you did you find that he had
5 trouble generating words?

6 A Not especially, and we did have the opportunity to speak
7 to Mr. Collins right before this hearing, and he was able to
8 generate words and answer our questions without issue.

9 Q But you yet found him impaired globally for language?

10 A Yeah. You, you can come up impaired on measures and
11 sometimes these impairments don't necessarily generalize to
12 day-to-day conversation or there's different factors that
13 might go into the testing situation that might explain
14 different outcomes.

15 Q Well, I guess my question is this then, if you diagnosed
16 him as a psychologist with having that impairment, are you
17 testifying today that he does not have that impairment?

18 A We did not diagnose him with that impairment. We said
19 that this screening measure was suggestive of cognitive
20 impairments, but we did not diagnose him with any
21 neurocognitive disorder or formally any cognitive impairments.
22 In order for somebody to be diagnosed with these, with these
23 impairments they would have to undergo a pretty extensive
24 testing with a trained neuropsychologist.

25 Q Do you have your report with you?

- 1 A Yes.
- 2 Q Okay. Would you turn to page five for me?
- 3 A Yes.
- 4 Q Do you see the paragraph psychological testing?
- 5 A Yes.
- 6 Q Okay. And you tell me if I am wrong. Results of the
- 7 MOCA indicated that Mr. Collins had global impairments in the
- 8 domain of visuoconstructional skills, language, attention,
- 9 abstraction and delayed recall.
- 10 A Uh-huh, yes.
- 11 Q So --
- 12 A I'm -- sorry.
- 13 Q I apologize. Go ahead.
- 14 A No. I'm saying that the screening measure is suggestive
- 15 of these impairments. I'm not suggesting a diagnosis.
- 16 Q Well, let me ask you this, abstraction, tell the Court
- 17 what abstraction is.
- 18 A Abstraction is the ability to think through concepts of a
- 19 higher order.
- 20 Q Okay. Give me an example, if you will.
- 21 A Okay. So when we, when we assess somebody's functioning,
- 22 we ask them hypothetical situations, "What would you do in
- 23 this situation? What would you do if you saw a child standing
- 24 over a lake and there was nobody around? What would you do?
- 25 How would you approach that situation?" So we're seeing if

1 somebody can think through at this higher level to reach an
2 outcome, if you will.

3 Q Without any physical manifestations of whatever it is
4 you're talking about? I mean, that's what abstraction is;
5 right?

6 A Yeah.

7 Q When you're thinking outside the box hypothetically;
8 correct?

9 A Sure.

10 Q Okay. And he also tested impaired in that area; correct?

11 A Based on this very brief screening measure. Yes.

12 Q Well, let's talk about that. What is MOCA?

13 A It's the Montreal Cognitive Assessment.

14 Q Okay. And what does -- tell me what -- tell the Court
15 what MOCA is used for. What does it test? I mean, who do
16 they -- who uses it and why?

17 A Sure. So a lot of times the MOCA can be used in
18 emergency situations if somebody say gets in a car accident
19 and then they go to the emergency room it can be used as a
20 brief way of assessing for cognitive deficits in that domain.
21 I personally have also used it in an inpatient setting if I
22 want to get a very quick general idea of how a person's
23 functioning, but again, it's not meant as an in-depth measure.
24 It's really meant as like a yes there's evidence for this
25 assessment if that makes sense.

1 Q Okay. So evidence of something that's going on with a
2 person?

3 A Yes.

4 Q Okay. All right. MOCA, is it also used to test
5 Alzheimer's patients?

6 A It can -- it's -- it is used in that context. Yes.

7 Q Is it also used to test people with Parkinson's Disease?

8 A Yes. To my knowledge.

9 Q All right. And tell me, what is the average score that
10 you know of for a person who tests positive for Alzheimer's
11 Disease on the MOCA standard?

12 A So in their original study, the study -- the validation
13 study, if you will, from 2005, that -- Alzheimer's patients
14 were scoring on average a 16.

15 Q Okay. Would 16.2 be more accurate?

16 A Yes.

17 Q Okay. Very good. All right. And on this particular
18 test which you gave Mr. Collins; correct?

19 A Yes.

20 Q What did Mr. Collins score out of a 30?

21 A 18.

22 Q Which is 1.8 points from the 16.2 point average for
23 Alzheimer's; is that correct?

24 A Yes.

25 Q Okay. Well, let me ask you this, when I talked to you on

- 1 Friday, when -- you and I talked on the phone Friday; correct?
- 2 A Thursday or Friday, yes.
- 3 Q Thursday or Friday.
- 4 A Yes.
- 5 Q You said to me that you were surprised by Mr. Collins'
- 6 performance on this test; correct?
- 7 A I believe Dr. Gottfried said that, yes.
- 8 Q All right. Well, let me ask you this, you guys consulted
- 9 together. Were you surprised?
- 10 A Yes. I was.
- 11 Q Okay. Tell the Court why you were surprised about this
- 12 score on this test that you gave Mr. Collins.
- 13 A So we administer the MOCA at the conclusion of our
- 14 interview. So in a typical interview we'll go through mental
- 15 health history, you know, school, that sort of thing, medical
- 16 history. Then we move into a mental status exam. Then we
- 17 move into a competency interview. So up until that point Mr.
- 18 Collins had been performing pretty well. We do a kind of our
- 19 own version of a MOCA which we call our mental status exam,
- 20 which is in our report on page five, and it's very similar,
- 21 and at that point we weren't seeing evidence of significant
- 22 impairments, and then when we asked the competency related
- 23 questions we saw no evidence of impairments in these domains,
- 24 but then we decided to administer this MOCA at the conclusion
- 25 of the interview after which we had been speaking for, I don't

- 1 know, over, over an hour and a half, maybe two hours.
- 2 Q All right. I noticed you said earlier that you gave him
3 your own test. Now, is your test widely accepted, the test
4 that you guys give personally in the actual field of clinical
5 psychology or is that just something you guys do?
- 6 A All -- generally most psychologists when writing a report
7 of this nature include a mental status exam.
- 8 Q Why is it that psychologists even though they administer
9 their own exams follow up with a standard, a standard
10 generally accepted test? Why is that?
- 11 A Because you want to see if the data converges.
- 12 Q And at this time did the data coverage? Could you find
13 any congruence between your findings and what MOCA found?
- 14 A I'm sorry. Repeat that one more time for me.
- 15 Q The findings from your own talk with Mr. Collins --
- 16 A Yes.
- 17 Q -- was it congruent with your findings in MOCA? Could
18 you reconcile both of them and say, "Hey, they're equal"?
- 19 A No.
- 20 Q Okay. All right. So would it be your opinion, and you
21 know exactly what MOCA is; correct?
- 22 A Yes.
- 23 Q Okay. Would it be your opinion that that is an extremely
24 low score to be given on MOCA; is that correct?
- 25 A I would say it's a low score.

1 Q 26 on MOCA is beginning to be below average; correct, on
2 impairment? Is that right?

3 A Yes. That's, that's the cutoff.

4 Q That's the cutoff.

5 A Yeah.

6 Q Okay. And he scored eight points below that and 1.8
7 points above Alzheimer's --

8 A Uh-huh.

9 Q -- clinical suggestion that the person might have
10 Alzheimer's?

11 A Yes.

12 Q Is it your testimony today that the MOCA score that he
13 received, if obviously you had done MOCA first, that you would
14 find him to be completely competent on the 18 of MOCA? If any
15 other psychologist read that report would they find that he
16 was clinically competent under a score of 18 for MOCA?

17 A Are you asking about competency to stand trial or
18 clinically competent in, in what way?

19 Q I am asking about competency to stand trial.

20 A Okay.

21 Q Whether he is competent to stand trial.

22 A So there are several potential explanations for a low
23 score. It could be a low score, right, just a, just a garden
24 variety low score.

25 Q Right.

1 A It could be fatigue --

2 Q Okay.

3 A -- that occurred at the end of the interview, after, you
4 know, two hours of speaking. We've also found recent research
5 that suggests that individuals who were opined competent do
6 sometimes score below and significantly below that score of
7 26. So, again, there's, there's many, many factors. I think
8 what's most notable is that when we were interviewing Mr.
9 Collins he didn't present in this way, and he could, in fact,
10 answer our questions in a logical, coherent and reality-based
11 fashion.

12 Q I notice you said something inside of your, your test
13 that you gave. You said that he could pay his own bills and
14 that he could have a conversation with you all. You noted
15 that in your report; correct?

16 A Correct.

17 Q That he self-reported that to you; correct?

18 A Correct.

19 Q Would you be surprised if I told you he does not pay his
20 own bills?

21 A I wouldn't be surprised.

22 Q Okay. All right. But that's something you noted as
23 being normal behavior.

24 A Yes.

25 Q For a person who goes out every day, lives, lives by

- 1 themselves, takes care of themselves, that kind of thing;
2 right?
- 3 A Yes.
- 4 Q Did he report to you that money is taken out of his check
5 every week?
- 6 A Not, not that I recall.
- 7 Q Did he report to you that people were paying him less
8 than what they should have been paying him for jobs?
- 9 A No. He did report that he was currently working.
- 10 Q Okay. All right. Did he report to you that he lived in
11 a trailer without electricity?
- 12 A He reported that he lived in a trailer.
- 13 Q Okay. Did he report to you that he lived without
14 electricity?
- 15 A Not to my, not to my recollection. No.
- 16 Q Okay. All right. So is it fair to say, Doctor, that his
17 performance on the MOCA was impaired?
- 18 A Yes.
- 19 Q Okay. And you actually note that in your report;
20 correct?
- 21 A Correct.
- 22 Q Now, you also say, and if you could follow me on page six
23 --
- 24 A Sure.
- 25 Q -- just tell me if I'm wrong, but let me ask you, let me

1 ask you this question, did you say in your report that he
2 indicated some degree of impairment in general intellectual
3 functioning?

4 A He reported to us that he was slow in school, struggled a
5 bit in school.

6 THE COURT: Mr. Wilson, before you go any further, let me
7 make sure I'm understanding the terminology; okay?

8 MR. WILSON, JR.: Yes, Your Honor.

9 EXAMINATION

10 BY THE COURT:

11 Q Now, Doctor, you did an assessment aimed at determining
12 intellectual disability --

13 A We did --

14 Q -- to determine whether he had an intellectual
15 disability? Well --

16 A We, we, we did not. We did not do intelligence testing.

17 Q But your report says additionally consideration was given
18 --

19 A Oh.

20 Q -- to whether Mr. Collins has an intellectual disability.
21 So you considered it.

22 A We considered it.

23 Q Okay. All right. And my understanding is as we
24 mentioned earlier is that there's a two-part process involving
25 a determination of adaptive functioning and also intellectual

- 1 deficit?
- 2 A That's correct.
- 3 Q Okay. And as our courts have determined I think they
- 4 used the term mental retardation, which is very -- is it
- 5 synonymous with intellectual disability pretty much?
- 6 A It's a -- yeah.
- 7 Q They, they use the same tests?
- 8 A Yes. Yes.
- 9 Q Functional adaptability and intellectual deficit. Okay.
- 10 A Yes.
- 11 Q And do -- have -- to be considered intellectually or to
- 12 have an intellectual disability both components need to be
- 13 present. Okay.
- 14 A That is correct.
- 15 Q And your, your examination indicated that he had no
- 16 problems functioning adaptably. He, again, paid his bills and
- 17 things of that nature. Okay.
- 18 A Correct.
- 19 Q All right. And but you did note in your report some
- 20 intellectual deficit, and I believe you base that on, among
- 21 other things, your observations during the interview.
- 22 A Yes.
- 23 Q Okay. All right. Could you tell me what you observed
- 24 that would lead you to believe that he had an intellectual
- 25 deficit, how you reached that conclusion?

1 A Well, again, I just want to highlight the fact that we
2 did not do formal intelligence testing in order for me to get
3 a real sense of his --

4 Q And I think you termed it as intellectual impairment.

5 A Yeah.

6 Q Okay. He had some intellectual impairment that you
7 determined based upon his interview.

8 A Yes.

9 Q And can you tell me what you observed about him or what
10 led you to that conclusion?

11 A Sure. So he experienced some difficulty reading. We
12 present all Defendants with a consent form, and we ask them to
13 read it aloud so we can get a sense of their reading ability.
14 He at first said he couldn't read. We encouraged him to read
15 and he did, but it was slow and it seemed as if he wasn't
16 aware of all the words. You know, there's a lot of big
17 language in our consent forms. He was a, a little slower to
18 answer some of our questions, and, and those are -- those are
19 the two things that stood out for me.

20 Q Okay. From the standpoint, not legally as we would apply
21 it to, to this setting, but would intellectual impairment -- I
22 just want to know if you believe as a professional that his
23 intellectual impairment, regardless of whether he was able to
24 function, let's --

25 A Okay.

1 Q -- don't even think about that, but would his
2 intellectual problems have justified, perhaps, a combined
3 evaluation by the Department of Disabilities and Special
4 Needs, did they need to, to step in and look at this in
5 conjunction with your department as well? Would we have a
6 clearer picture? Was there evidence to support the fact that
7 they may be able to add to this picture?

8 A That's most certainly a possibility that they could add
9 to the picture given that that is what the -- their department
10 specializes in.

11 Q So adaptive functioning really doesn't -- is, is -- while
12 it may be the concern it doesn't disqualify someone from their
13 review if, if the person does have a disability like a -- or
14 impairment, like an intellectual impairment.

15 A Uh-huh.

16 Q Okay.

17 THE COURT: Mr. Wilson.

18 MR. WILSON, JR.: Your Honor, may it please the Court,
19 Judge?

20 EXAMINATION

21 BY MR. WILSON, JR.:

22 Q On your report, you say several times that he actually
23 had to be educated.

24 A Yes.

25 Q Okay. Can you tell us what you had to educate him on?

1 A Sure. When we were asking him some questions in the
2 factual domain he couldn't remember how many people were on a
3 jury. He, he got some of the roles confused and then we -- as
4 we do with any Defendant we always clarify, but what was of
5 note Mr. Collins did need some education but that's not like
6 the most I've ever seen before, if that makes sense. We, we,
7 we educate Defendants all the time. Sometimes people aren't
8 exposed to criminal justice matters. Sometimes people didn't
9 learn it in school. So to educate a Defendant is not
10 uncommon.

11 Q Okay. Well, let's talk about Mr. Collins though because
12 that's why we're here. So I, I want to ask you this, when you
13 educated Mr. Collins and you asked him later on in the
14 evaluation to tell you what you said he repeated you; correct?

15 A You're, you're meaning like did he repeat what I said
16 verbatim?

17 Q Verbatim or repeated in a general concept of what you
18 said, what you gave him.

19 A He, he did, in fact, successfully repeat back the
20 information that we had provided to him.

21 Q Very good. All right. You have the hospital records?

22 A Yes.

23 Q Can you turn to page 28 and 29?

24 A 28 and 29. Sorry.

25 MR. WILSON, JR.: Your Honor, may I approach the witness

1 just to help her?

2 THE COURT: Certainly.

3 A Yeah. You probably have an idea of where it is.

4 Q I know it's a lot.

5 A Thank you. I appreciate that.

6 MR. WILSON, JR.: The Court's indulgence, Your Honor.

7 THE COURT: All right.

8 BY MR. WILSON, JR.:

9 Q Let me first get you on this page and then we'll find the

10 other page in a second.

11 A Okay. Thank you.

12 Q Yes, ma'am.

13 THE COURT: These are hospital records from when, Mr.

14 Wilson?

15 MR. WILSON, JR.: I apologize, Your Honor, from -- the

16 2013 stroke incident --

17 THE COURT: Okay.

18 MR. WILSON, JR.: -- where he presented to Waccamaw.

19 THE COURT: Okay.

20 MR. WILSON, JR.: I believe it was.

21 BY MR. WILSON, JR.:

22 Q You see that highlighted area?

23 A Yes.

24 Q Can you tell me what that says?

25 A [As read], "Pleasant to examination but difficulty in

1 understanding questions and responding."

2 Q Okay. So he presented with a difficulty of understanding
3 questions and responding; correct?

4 A Yes, based on this.

5 Q Okay. Sorry, Doctor.

6 MR. WILSON, JR.: Judge, may I take this to my table
7 briefly?

8 THE COURT: Certainly, sir.

9 MR. WILSON, JR.: Because this is an important point.
10 The Court's indulgence, Your Honor.

11 BY MR. WILSON, JR.:

12 Q Okay. And my apologies, Doctor. I apologize. She's
13 much better at this than I am, trust me.

14 A Okay. Thank you.

15 Q The underlined portion of that, will you read it out to
16 the Court and tell me what it says?

17 A Yes. [As read], "He is primarily responding with yes and
18 no answers. He sometimes just repeats what is asked of him."

19 Q Okay. All right. So and that's in his neurological
20 records; right?

21 A Correct.

22 Q All right. All right. And I asked you earlier -- I
23 apologize about this, get this. I asked you earlier about
24 encephalopathy when you -- I know you said you didn't know
25 what it was.

- 1 A Correct.
- 2 Q But let me ask you this, if that diagnosis of brain
3 disease prior to -- the incident of even the stroke have been
4 presented to you would it possibly change your clinical
5 opinion about his intelligence?
- 6 A If this encephalopathy?
- 7 Q Yes.
- 8 A Which I'm probably not pronouncing correctly, would that
9 have changed my opinion?
- 10 Q Could it have possibly changed your opinion?
- 11 A Possibly.
- 12 Q Okay. All right. Fair enough. Fair enough.
- 13 MR. WILSON, JR.: Just lastly, Judge, just a couple of
14 more questions, and I'm not going to introduce this into
15 evidence, but I will show it to the State. Just a -- I just
16 want to ask about frontal lobe. Thank you.
- 17 BY MR. WILSON, JR.:
- 18 Q All right. The frontal lobe is this portion of the brain
19 right here; correct? Is that right? I'm pointing to this
20 portion over here?
- 21 A Yes.
- 22 Q Okay. All right. And the MOCA is used to test various
23 things, cognitive skills -- it's basically a cognitive
24 assessment evaluation; correct?
- 25 A It's a brief screening measure. I wouldn't call it a

1 cognitive assessment. I would call it a brief screening
2 measure.

3 Q The name of the test itself is the Montreal Cognitive
4 Assessment Test; right?

5 A Yes. I just want to highlight the fact that it's a brief
6 measure. It's not meant as a, as a large neuropsychological
7 battery of tests.

8 Q I understand. Cognitive is what? What's cognitive?
9 What does that mean in psychological terms?

10 A Thinking.

11 Q Thinking. The ability to think.

12 A Yes.

13 Q Okay. And the front, frontal infarct that was inside of
14 the actual medical records that was also damage that the
15 neurologist said was from the stroke; correct?

16 A Correct.

17 Q And if someone has, hypothetically, already brain disease
18 denoted by the neurologist as encephalopathy and then they
19 have a stroke after that and then have damage which is --
20 that's dead tissue, correct, to the front of the brain?

21 A I, again, I'm, I'm not a medical doctor.

22 Q I apologize.

23 A So.

24 Q So but if somebody has damage to that part of the brain,
25 that's going to affect their ability to think; correct?

- 1 A It could. It could, but what, what I, what I remember
2 reading in the medical records was that he had difficulty
3 expressing language.
- 4 Q Yes.
- 5 A And I --
- 6 Q Among other things; correct?
- 7 A From what I remember reading it was expressing himself
8 verbally.
- 9 Q Also answering questions?
- 10 A Right. Express, express, I'm sorry I meant answering
11 those questions.
- 12 Q Okay. Now, you say that he defined the role of the Judge
13 he wants to hear the truth, Mr. Collins was provided with
14 education and correctly identified the Judge as what?
- 15 A Mr. Wilson, could you just orient me to what page you're
16 on?
- 17 Q I apologize, ma'am. It's in your report on page seven.
- 18 A Yes. Seven. Okay.
- 19 Q Yes, ma'am. My apologies.
- 20 A I just want to get on the same page.
- 21 Q Yes, ma'am.
- 22 A And we are talking about he defined the role of the Judge
23 as he wants to hear the truth?
- 24 Q Right.
- 25 A That, that's the passage?

- 1 Q Right.
- 2 A Okay.
- 3 Q Right. And then you said you gave him education to
- 4 correctly identify that the Judge is a neutral party?
- 5 A Yes.
- 6 Q Why did you give him that instruction?
- 7 A So we elaborated upon the role of the Judge because the
- 8 Judge does more than just wants to hear the truth.
- 9 Q Right.
- 10 A So we elaborated on what the, what the Judge does.
- 11 Q Okay. All right.
- 12 A And then he acknowledged that the Judge is meant to be a
- 13 neutral body in the courtroom.
- 14 Q Okay. If someone had told him before he came to see you
- 15 that that's what the Judge wants to do, the Judge wants to
- 16 hear the truth and he repeats it to you does that mean he
- 17 understands? Just means he knows how to repeat; correct?
- 18 A It could mean either. It could mean that he understands
- 19 or it, it could mean that he's just simply repeating.
- 20 Q Okay. You also educated him on a verdict.
- 21 A Yes.
- 22 Q He didn't know what a verdict was.
- 23 A Correct.
- 24 Q You also gave him education on correct terminology as he
- 25 appeared confused by the term prosecute?

- 1 A Yes.
- 2 Q You also had to educate him on -- well, let me spell this
- 3 out. He was unaware of the name of a charge that the
- 4 Defendant can incur for speaking out of turn in court.
- 5 A Correct.
- 6 Q All right. Which we all know to be contempt; right?
- 7 A Yes.
- 8 Q Right. But he was not aware of that?
- 9 A He was unaware of the name of that charge.
- 10 Q Okay. And you educated him on that as well?
- 11 A Yes.
- 12 Q Okay. Now, just the last question, the last couple of
- 13 questions, in your clinical impression on the last page, page
- 14 nine --
- 15 A Yes.
- 16 Q -- you say despite this impaired performance on the
- 17 screening measure during the present evaluation Mr. Collins
- 18 demonstrated a factual understanding of the proceedings
- 19 against him.
- 20 A He did.
- 21 Q Okay. Okay.
- 22 MR. WILSON, JR.: No further questions, Your Honor.
- 23 THE COURT: Ms. Richardson.
- 24 MS. RICHARDSON: Yes, Your Honor.
- 25 EXAMINATION BY MS. RICHARDSON:

1 Q Doctor Mulay, basically explain to me the process of, of
2 doing this evaluation.

3 A Sure. So we receive the court order. The case is
4 assigned to evaluators. Since it's competency it's assigned
5 to two evaluators. We then request pertinent records, and
6 then we call the Defendant in and do a comprehensive
7 psychological evaluation. We ask about, you know, background
8 information, education, medical history. As I said, we did
9 the -- we do a mental status exam and then we ask questions
10 relevant to the psycho-legal question, in this case
11 competency, and then in some cases we do administer a measure,
12 in -- as in this case we administered the MOCA.

13 Q Okay. And as far -- and there's been much made about
14 this MOCA, and again, you said it's a brief -- just a
15 screening tool?

16 A It's a brief screener, yes.

17 Q So if you score 16 that doesn't mean you've got
18 Alzheimer's?

19 A Correct.

20 Q And if you score a 16 that doesn't necessarily mean you
21 have any sort of diagnosis?

22 A It could.

23 Q Okay. And so you don't just rely on that in making your
24 decision or your opinion in the case?

25 A Correct. If, if one wanted to find out more about

1 cognitive functioning, again, you would need to do a much more
2 comprehensive battery of neuropsychological tests by a trained
3 neuropsychologist.

4 Q Okay. So when you get these results and it gives you
5 some sort of concern that he has some impairment, do you try
6 to delve into that a little more in your interview?

7 A So as I said for -- in this particular case, we
8 administered it at the, pretty much at the conclusion of, of
9 the interview, and we didn't see these impairments, so to
10 speak, that came up on the MOCA during the course of the
11 evaluation, but we chose to administer it given the basis of
12 the Court order.

13 Q Okay. But you didn't find any evidence of a
14 neurocognitive disorder?

15 A We did not.

16 Q Okay. And tell me how you go about deciding that,
17 whether there's a neurocognitive disorder.

18 A Sure. Well, again, we ask lots and lots of questions
19 about history, functioning, and we base it upon our clinical
20 assessment as we're sitting with the individual and then we
21 consult the DSM to examine the criteria that would have to be
22 met in order to be diagnosed with a neurocognitive disorder.

23 Q Okay. And if you had concerns regarding that, what would
24 you have done?

25 A Regarding if he --

1 Q If you had concerns that he had some neurocognitive
2 disorder.

3 A Well, based upon the competency interview, again, we
4 weren't seeing these issues come up. He was able to answer
5 our questions. He was able to answer and demonstrate a
6 factual and rational knowledge in his ability to consult with
7 his counsel. So if he had these deficits, he might, he might
8 have these impairments. However, he was able to demonstrate
9 to us these abilities, if that makes sense.

10 Q Okay. And can you give us some examples of how he was
11 able to demonstrate that?

12 A Sure. Regarding, pardon me, factually he was able to
13 tell us his charges. He was able to -- he knew the definition
14 of probation. He didn't -- he was unaware whether his charges
15 were felonies or misdemeanors, but he was able to reason
16 through that.

17 Q But he knew there was a difference between a felony and
18 misdemeanor?

19 A Yes. He, he knew that -- yes. He knew that a felony was
20 more serious than a misdemeanor, and based on those
21 conclusions he was able to reason that he must be charged with
22 a felony, and again, there was some things that he didn't know
23 the answers to, and as I said, we did provide him some
24 education, and he was able to retain that at the conclusion of
25 the interview. So he was able to retain this information.

1 Q So the things that you educated him on he was able to
2 retain?

3 A He was able to retain them. Correct.

4 Q Okay. Now, Mr. Wilson asked you if he was able to repeat
5 that to you.

6 A Right.

7 Q And he was able to repeat that to you?

8 A He, he repeated the, the pertinent information back to us
9 at the conclusion of the interview.

10 Q Okay. And when he repeated that was it like a parrot or
11 did you delve into it to make sure that he actually understood
12 it?

13 A Well, I'm trying -- I'm, I'm thinking back because this
14 was a, a little bit ago, but I, I didn't at that time get the
15 sense that he was parroting back to us in any way. I, I got
16 the sense that he was understanding. Could he have been
17 parroting it back? It's a possibility, but we got the sense
18 that he was understanding the information that was provided to
19 him.

20 Q And did you have -- did you during the exam have him say
21 things in his own words?

22 A Yes.

23 Q Okay. And do you recall some examples of that?

24 A Are you talking at the, at the beginning when we first
25 asked or after the retention period?

1 Q After the retention.

2 A I, I would have to look back at my notes for that, but
3 whatever is in quotation marks in the report are -- were his
4 words.

5 Q Okay. And did he ever have any confusion about the role
6 of his attorney?

7 A He did not. He did not. He expressed faith in his
8 attorney and his attorney's abilities to help, to help him in
9 this case.

10 Q Okay. And do you recall how he described his
11 relationship with his attorney?

12 A Yes. I'm, I'm also looking at it. He, he described his
13 attorney as real. He said that the attorney is able to judge
14 what's right and that he feels that way in his heart.

15 Q Okay. And when you talk about adaptive functioning how
16 did you determine that he had adequate adaptive functioning?

17 A We asked him questions about his day-to-day routines and
18 his daily life and how he pretty much gets through the day.

19 Q And how did he arrive to the appointment?

20 A He, to my knowledge, he drove himself from Columbia to
21 Charleston, South Carolina.

22 Q Okay. And did he arrive on time for the appointment?

23 A He arrived on time for the appointment, well-groomed,
24 polite, calm, ready for the evaluation.

25 Q Okay. And did you have any trouble communicating with

- 1 him?
- 2 A I did not.
- 3 Q And did you have any trouble getting him to answer your
- 4 questions?
- 5 A I did not.
- 6 Q And did he appear to understand what you were asking?
- 7 A He did appear to understand the questions that we asked
- 8 of him.
- 9 Q And did he respond appropriately?
- 10 A He did. Every -- everything that he said was logical,
- 11 coherent, rational. Yes.
- 12 Q And in your opinion does he have a rational understanding
- 13 of the charges against him?
- 14 A In my opinion, yes.
- 15 Q Okay. And does he have an understanding of the roles of
- 16 the different personnel in the court system?
- 17 A Yes.
- 18 Q And does he have an understanding of how he is to behave
- 19 in a courtroom?
- 20 A Yes.
- 21 Q And did you ask him about that information again today?
- 22 A I did.
- 23 Q And was he able to -- had he retained the information on
- 24 the things he had been educated about prior?
- 25 A He, he had. We asked him to recall his charges, and in

1 contrast to when we interviewed him on the date of evaluation
2 he used the correct terminology today. He, he was aware. He
3 was able to explain what he's accused of. He was able to
4 recount the jobs of the Solicitor, of his attorney. So yes.
5 He was -- yes.

6 Q Okay. All right. And that was from over, over a month
7 ago --

8 A Correct.

9 Q -- when you educated him on that. So you didn't have to
10 re-educate him on anything today?

11 A No.

12 Q Okay. And no trouble communicating with him today?

13 A No trouble. He was calm, appropriate, polite, rational.

14 Q And in your process do you typically just give him yes,
15 no type questions?

16 A We do not. We ask Defendants open-ended questions so we
17 could elicit as much information as possible in their
18 responses.

19 Q Okay.

20 A Because yes or no wouldn't really tell us much.

21 Q And did you have any indication that he just completely
22 acquiesced with whatever you said, like answered yes to
23 everything?

24 A We -- no. We did not.

25 Q Answered no to everything?

1 A No. Again, his, his responses were logical, coherent,
2 rational. Pardon me.

3 Q Okay. And as far as his actual behavior and language,
4 was, was there any odd behavior that would have indicated a
5 mental illness?

6 A There was no odd behavior that was indicative of, of a
7 mental illness that we saw.

8 Q And did his thoughts appear to be organized and coherent?

9 A Yes.

10 Q And did he appear to have the capacity for independent
11 thinking or responding to your questions?

12 A Yes.

13 Q And was he able to correct you if there were any -- was
14 any sort of mistake in the information?

15 A I can't recall an example of when he had to correct us,
16 but again, the way in which we ask questions they're very
17 open-ended, and we encourage Defendants to answer in an
18 extended way rather than a yes, no.

19 Q And the concerns that you had regarding based on the MOCA
20 any sort of impairment, were those concerns allayed by your
21 clinical interview of him?

22 A That is correct. Again, when we interviewed him we
23 really didn't see evidence of significant impairments. So,
24 again, we did the MOCA at the end and that is when he
25 demonstrated impairments.

- 1 Q So basically he tested on this very brief test one way.
- 2 A Yes.
- 3 Q But your lengthy interview of him showed another thing?
- 4 A That's correct.
- 5 Q Okay. And so did you see any evidence of mental illness?
- 6 A No.
- 7 Q And it's your opinion he doesn't have a neurocognitive
- 8 disorder?
- 9 A That is correct.
- 10 Q And it's your opinion that he does not have an
- 11 intellectual disability?
- 12 A That is correct.
- 13 Q And what is your opinion regarding a psychological degree
- 14 of certainty as to his competency to stand trial?
- 15 A It is my opinion that he is competent to stand trial.
- 16 Q Okay. And that was your opinion when you evaluated on
- 17 September 24th?
- 18 A Correct.
- 19 Q And is that your opinion after evaluating him today?
- 20 A Yes.
- 21 Q And Mr. Wilson pointed to these medical records.
- 22 A Yes.
- 23 Q Now, he was initially brought to the hospital based on
- 24 some sort of exposure to vapors?
- 25 A I believe a spray locker.

1 Q Okay. And there was also some indication that he may
2 have had some binge drinking, some information given by a
3 relative?

4 A According to, I believe, his sister's self report.

5 Q Okay. And was there also evidence in the medical records
6 that his ability to speak improved while he was -- during his
7 hospital stay?

8 A Yes. It, in fact, notes that in the hospital records
9 that he did demonstrate an improvement upon discharge in his
10 ability to generate language.

11 Q Okay. And is it your opinion that he is competent to
12 stand trial without the need for any additional testing at
13 this point?

14 A Yes.

15 Q Okay.

16 MS. RICHARDSON: No further questions, Your Honor.

17 MR. WILSON, JR.: Briefly, Your Honor.

18 EXAMINATION

19 BY MR. WILSON, JR.:

20 Q The medical records also suggested that there should be a
21 further neurological evaluation of Mr. Collins; didn't it?

22 A I don't recall that, but I, I believe you.

23 Q You don't recall that.

24 A Yes.

25 Q Just now counsel asked you several things about the

1 medical records that were presented to you and you recall
2 those.

3 A Yes.

4 Q But you don't recall this?

5 A That I don't.

6 Q Okay. Let me ask you this then, you stated earlier when
7 I asked you the question she asked you, she said and the
8 attorney -- let me rephrase. I withdraw that question. You
9 said the attorney he said judges what's right.

10 A Yes.

11 Q All right. Is that an accurate depiction of what his
12 attorney would do?

13 A I could see how it could be construed as a non, non-
14 accurate. Correct.

15 Q Accurate or non-accurate?

16 A I could see it. I -- I'm sorry, Mr. Wilson.

17 Q Are you saying that's an accurate --

18 A Can you repeat your question?

19 Q That's okay. I apologize.

20 THE COURT: It depends on who the lawyer is, Mr. Wilson.

21 MR. WILSON, JR.: That's a good question, Judge. That's
22 a good point, Judge.

23 BY MR. WILSON, JR.:

24 Q Now, somebody saying the lawyer judges what's right, is
25 that an accurate depiction based on your normalcy, your normal

1 mind, my normal mind, the Judge's normal mind of what a person
2 would describe a lawyer as?

3 A I can imagine a person describing their attorney that way
4 if, if they are, if they are thinking that the attorney has
5 their best interests at heart, like I can imagine somebody
6 saying that.

7 Q Okay. All right. Well, let me ask you this then. When
8 you told counsel earlier that, you know, your opinion right
9 now is that he is competent to stand trial; correct?

10 A Yes.

11 Q But I asked you earlier whether or not, on the same
12 issue, of whether or not he is competent based on the MOCA are
13 you saying based on MOCA he's competent to stand trial?

14 A I, I wouldn't base my opinion solely on the MOCA. I look
15 at all the totality of the data.

16 Q But the reason for standardized tests, which are what we
17 talked about earlier and I think counsel brought up MOCA, is
18 so that you can avoid flaws that are inside of normal
19 interviews; correct?

20 A Correct, but those -- unfortunately tests can also be
21 flawed and --

22 EXAMINATION

23 BY THE COURT:

24 Q Doctor.

25 A Yes.

1 Q Would you undertake any course of treatment based solely
2 on MOCA?

3 A No. No.

4 EXAMINATION

5 BY MR. WILSON, JR.:

6 Q If MOCA, which is a generally accepted test --

7 A Yes.

8 Q -- can miss a diagnoses, can a clinical psychologist miss
9 a diagnoses from an interview?

10 A Yes.

11 Q And MOCA could be right?

12 A Absolutely.

13 MR. WILSON, JR.: No further questions.

14 THE COURT: Ms. Richardson, anything further?

15 MS. RICHARDSON: No, Your Honor.

16 EXAMINATION

17 BY THE COURT:

18 Q Doctor, before you leave the stand, let me -- I want to
19 make sure I understand your testimony. You found what --
20 while you did find indications of some intellectual deficit,
21 you found no indication of mental retardation as that term is
22 used in your field and in the legal field?

23 A Correct.

24 Q And you found no indication of -- no criteria, definitive
25 criteria for any type of mental illness?

1 A Correct.

2 Q Is that correct? And it's your opinion to a reasonable
3 degree of psychological certainty that he is competent to
4 assist in his defense?

5 A Correct.

6 Q Okay. All right.

7 THE COURT: Any follow-up on that Mr. Wilson or Ms.
8 Richardson?

9 MR. WILSON, JR.: Just, just briefly, Judge. If Ms.
10 Richardson wants to go first I'll go second.

11 MS. RICHARDSON: I'm good, Your Honor.

12 THE COURT: She's good.

13 EXAMINATION

14 BY MR. WILSON, JR.:

15 Q Ma'am, and, and I hate to be a stickler here, but I, I
16 have to ask you this question. The Judge asked you whether or
17 not you believe today based on your analysis that he is
18 competent. My question to you is on the MOCA, which is the
19 generally accepted cognitive test, they call it the Montreal
20 Cognitive Test, is an 18 a score of a competent person to
21 stand trial? Could that person stand trial, understand
22 Miranda, understand the 14th Amendment Rights, could that
23 person do that if your interview is wrong?

24 A A MOCA is not an assessment measure designed to assess
25 those abilities. So, no.

1 MR. WILSON, JR.: Judge.

2 BY MR. WILSON, JR.:

3 Q How long has it been giving the MOCA test?

4 A Since May of 2018.

5 Q Since this year?

6 A Yes. This year.

7 Q Okay. All right. So you haven't had a lot of experience

8 with MOCA?

9 A I, I have or have not?

10 Q Have not.

11 A Have not. Correct.

12 Q All right. Then let me ask you this, would you be

13 surprised that in every medical treatise that I've looked at

14 say that -- let's just say that under verywell.comhealth that

15 MOCA is described as an assessment cognitive test to determine

16 whether or not someone has cognitive impairments in the areas

17 of orientation, sexual behavior problems, memory issues,

18 delayed recall issues, speech issues, understanding cognitive

19 thinking, abstraction, high level thinking, would that

20 surprise you?

21 A Would that surprise me that the MOCA's designed to assess

22 those domains?

23 Q Yes.

24 A Everything except for I think you said sexual something

25 in there.

1 Q Behavior.

2 A Yeah. It's not designed -- there's no question of sexual
3 behavior in there, but yes. It is designed as a screening
4 measure to assess those domains.

5 Q Why would they give this test to somebody who was -- had
6 Parkinson's Disease? Why would they do that?

7 A Because it's, it's a brief screening tool to see if
8 potentially there are -- there is evidence of cognitive
9 deficits.

10 Q And this is a standardized test; correct?

11 A Yes.

12 MR. WILSON, JR.: I just want to enter this into evidence
13 so we're not confusing, like to have this marked as -- let me
14 ask her can she identify it first, Judge. Is that okay?

15 THE COURT: Okay.

16 MS. RICHARDSON: Let me see it.

17 THE COURT: Mr. Wilson, from what I gather from the
18 Doctor's testimony it's like, "I went to see my doctor because
19 my foot was hurting. He did a blood pressure and temperature
20 first thing." Well, it's kind of, you know, standard, just
21 see if it points anywhere test. Isn't that what we're talking
22 about?

23 A That's correct.

24 MR. WILSON, JR.: I don't -- Judge, we can talk about it.

25 THE COURT: Okay.

1 MR. WILSON, JR.: I don't want to -- may I approach, Your
2 Honor, briefly?

3 THE COURT: Certainly. Certainly.

4 BY MR. WILSON, JR.:

5 Q This is an accurate depiction of the test that one would
6 be given to test under the cognitive ability for MOCA;
7 correct?

8 A That is correct. This is --

9 Q Okay.

10 A -- the MOCA.

11 Q All right.

12 MR. WILSON, JR.: I'd like to have this marked, Judge.

13 (Defense Exhibit Number Two [MOCA Test] marked for
14 identification.)

15 BY MR. WILSON, JR.:

16 Q And the reason I don't have the raw data is because your
17 office refused to turn over the raw data; is that correct?

18 A Yes.

19 Q Okay. And why won't you turn over the raw data which
20 tells us which questions that he missed, what he got wrong and
21 how it looked?

22 A It's a best practices in forensic psychology. We don't
23 release raw data.

24 Q Okay. Okay. All right. Well, this test has on here
25 naming animals? Correct?

1 A Yes.

2 Q Okay. It has on here read a list of the digits, that

3 kind of stuff.

4 A Yeah.

5 Q This is not hard stuff? It's not difficult stuff; is it?

6 A It could be potentially difficult for some people.

7 Q Well, let me --

8 A But face value it's not difficult.

9 Q Okay. Well, let me ask you this, one of the questions on

10 here it says draw the cube, copy this cube.

11 A Yes.

12 Q All right. That's part of the test; right?

13 A Correct.

14 Q Okay. Draw a clock, and it says draw the clock the past

15 11 -- excuse me, 10 past 11.

16 A Correct.

17 Q Okay. All right. And on here it says read the list of

18 words. The subject must repeat them. Do two trials.

19 A Right.

20 Q All right. So this is a standardized simple test that

21 you would give someone to determine their cognitive ability

22 over a brief period of time; correct?

23 A Not overall cognitive ability. It would -- it's

24 suggestive of potential deficits, but I wouldn't base

25 somebody's cognitive abilities off of a MOCA. It's just too

1 brief. It's not comprehensive. If you want that sort of
2 information it -- you -- one would have to undergo a complete
3 neuropsychological exam, which are quite lengthy. They --
4 they're -- they can be a day long.

5 Q Okay.

6 A They're very lengthy.

7 Q Well, let me ask you this then. The interview that you
8 gave to Randy Collins then was it as comprehensive as this
9 test, as this test is, which is standardized?

10 A They're two different things.

11 Q Two different ones.

12 A One is, one is open-ended questions. One is a
13 standardized test.

14 Q Okay. Well, my question is this, your interview of him
15 was also a brief synopsis in his life of, if you will,
16 proverbially of what he -- what you could ask him that
17 particular day; correct?

18 A Yeah.

19 Q And what he may have recalled.

20 A Yes.

21 Q All right. Counsel asked you earlier that he could
22 recall today about the lawyer and the Judge and the
23 Prosecutor; right?

24 A Correct.

25 Q Do you know, did you ask him whether or not he spent the

1 last 16 hours with me preparing for trial?

2 A I did not.

3 Q Okay. So that would change your -- his understanding if

4 I told him literally just an hour and a half or two hours ago

5 when he was here earlier, if I said to him, "Look. Don't

6 forget the Judge is up there up front." If I said, "I'm the

7 lawyer. The young lady's who's sitting here is the

8 Prosecutor. You sit next to me," if I explained all that to

9 him again and again and again over the last two or three days

10 --

11 A Uh-huh.

12 Q -- would that change your opinion about whether or not

13 he's repeating stuff that he knows or repeating what I know?

14 A I --

15 Q You don't know; do you?

16 A No. That -- that's, that's not what I was going to say.

17 I, I would have to -- I mean, we, we spoke to him for a brief

18 amount of time. I, I didn't gather that information in the

19 brief amount of time.

20 Q Okay.

21 MR. WILSON, JR.: No further questions, Your Honor.

22 THE COURT: Ms. Richardson.

23 MS. RICHARDSON: Just real briefly on this.

24 EXAMINATION

25 BY MS. RICHARDSON:

1 Q And this, this MOCA has been marked as Defendant's
2 Exhibit Two, and the accuracy of this measure would also
3 depend on his effort?

4 A That's correct.

5 Q And basically, again, the results on this did not match
6 the results of what you experienced in interviewing him?

7 A That is correct.

8 Q Okay. So he may have had trouble copying a cube?

9 A Uh-huh.

10 Q But he has a driver's license?

11 A Right.

12 Q He has trouble copying a clock, but he drove from
13 Columbia to downtown Charleston?

14 A Not quite downtown, but on 17.

15 Q Okay.

16 THE COURT: Found your office?

17 A I'm sorry?

18 THE COURT: Found your office?

19 A He found our office. Yes.

20 Q And he had a cell phone on him as well?

21 A He did have a cell phone.

22 Q And he knew enough to -- he turned his cell phone off and
23 was able to operate the cell phone with no problem?

24 A Yes. We, we -- it actually rang in the middle of the
25 interview. So we asked him to please turn it off.

1 Q But no problem operating his cell phone?

2 A No. Not that I saw.

3 Q Okay. And again, does his results on this one measure
4 change the opinion regarding his competency to stand trial on
5 asking him open-ended questions back on September 24th and
6 today?

7 A Does not change the opinion.

8 Q Okay.

9 MS. RICHARDSON: No further questions.

10 MR. WILSON, JR.: Your Honor, just on that?

11 THE COURT: Mr. Wilson, one more time.

12 MR. WILSON, JR.: This the last time, Judge.

13 THE COURT: Okay.

14 EXAMINATION

15 BY MR. WILSON, JR.:

16 Q Was he malingering? Did you put that in your medical
17 records at all?

18 A We did not asses for malingering.

19 A Did you find that he was malingering on the test? You
20 said earlier, you testified when counsel asked you whether or
21 not he was actually cooperative and listened to you and talked
22 to you. He did that; right? He was engaging?

23 A Yes. Absolutely.

24 Q Okay. All right. Was he malingering inside of this
25 interview?

1 A Not to my knowledge, but malingering would suggest that
2 there's some sort of secondary gain. So but to, to our
3 knowledge or opinion there was no evidence of feigning any
4 kind of deficits or --

5 Q So he didn't try to feign on this test; did he? Did he
6 try to feign, you know, that he was not cognitively efficient?

7 A So there's no, there's no -- sometimes there are built-in
8 measures for that. There's no built-in measures on the MOCA
9 to assess for feigning. So it's not like I could look at a
10 scale and say, "Oh, that he's high on feigning," if that makes
11 sense. There's no, there's no formulized measure of that.

12 Q Did you as a clinical psychologist find that he was
13 feigning in your expert opinion?

14 A I did not think he was feigning. I think that he could
15 have potentially been tired.

16 Q Okay. Tired. Last question, people with Alzheimer's who
17 take this test as well, this test is given all over the
18 country?

19 A Yes.

20 Q They can drive; can't they?

21 A I, I'm not an Alzheimer's expert. I'm -- I, I can't
22 testify to that.

23 Q Well, let me ask you this, can people with mental illness
24 get in a car and drive?

25 A Absolutely.

1 Q Okay. Can they go places?
2 A Absolutely.
3 Q Can they do things?
4 A Yes.
5 Q Can they have a driver's license?
6 A Yes.
7 MR. WILSON, JR.: No further questions.
8 THE COURT: Please step down.
9 A Thank you.
10 THE COURT: You want to take a few minutes before the
11 next witness?
12 MR. WILSON, JR.: Yes, Your Honor.
13 THE COURT: Ms. --
14 MS. RICHARDSON: Yes, Your Honor.
15 THE COURT: Okay. Well, let's just -- let's keep it
16 brief, about ten minutes. Okay?
17 MS. RICHARDSON: Thank you.
18 MR. WILSON, JR.: Thank you, Your Honor.
19 OFF THE RECORD
20 (On the record.)
21 THE COURT: Are we ready?
22 MR. WILSON, JR.: Ready, Your Honor.
23 THE COURT: Okay. Ms. Richardson, we ready to go?
24 MS. RICHARDSON: Yes, Your Honor.
25 THE COURT: Yes, ma'am. All right. Mr. Wilson?

1 MR. WILSON, JR.: I call Dr. Gottfried to the stand.

2 Did I get that correct, Doctor? Is that correct?

3 MS. GOTTFRIED: Yes. You got it.

4 MR. WILSON, JR.: All right.

5 THE COURT: Come around, Dr. Gottfried. Good morning or
6 afternoon.

7 MS. GOTTFRIED: Good afternoon.

8 THE COURT: Gottfried.

9 MS. GOTTFRIED: Gottfried, that's correct.

10 THE COURT: Gottfried. Okay.

11 WHEREUPON, Emily Gottfried is called to the stand, duly
12 sworn by the clerk and testified as follows:

13 THE CLERK: Would you please state your full name and
14 spell it for the record?

15 MS. GOTTFRIED: Yes. Dr. Emily Gottfried, E-M-I-L-Y, G-
16 O-T-T-F-R-I-E-D.

17 MR. WILSON, JR.: May it please the Court, Your Honor?

18 THE COURT: Certainly.

19 EXAMINATION

20 BY MR. WILSON, JR.:

21 Q Dr. Gottfried, could you give a little bit of background
22 about your education, training, all that good stuff?

23 A Certainly. I am a clinical psychologist. I have an
24 undergraduate degree, two master's degree and a doctorate
25 degree in clinical psychology. I did my internship at Patton

1 State Hospital, which is a large forensic state hospital where
2 I specialized in forensic psychology. That was a 2000 hour,
3 full-year internship experience that's required before you can
4 get a PhD in psychology, clinical psychology. I then did my
5 postdoctoral fellowship in forensic psychology at the Medical
6 College of Georgia in conjunction with a state forensic
7 hospital in Georgia. I joined the faculty at the Medical
8 University of South Carolina in August of 2015. I'm currently
9 an assistant professor where I supervise fellows and trainees.
10 I teach medical students, but the largest part of my practice
11 there is to do forensic evaluations. I'm licensed in the
12 States of Georgia and South Carolina, and I'm a national
13 registered health psychologist.

14 Q And can you tell me how, how many times you've testified
15 at trial?

16 A 18.

17 Q Thank you so much.

18 MR. WILSON, JR.: Judge, at this time if there are no
19 objections I'd offer Dr. Gottfried as an expert in this area
20 of clinical --

21 THE COURT: Ms. Richardson, would you like to examine
22 her?

23 MS. RICHARDSON: No objections, Your Honor.

24 THE COURT: All right. Then she's admitted as a clinical
25 forensic psychologist.

- 1 MR. WILSON, JR.: Thank you so much.
- 2 BY MR. WILSON, JR.:
- 3 Q Briefly, do you know what encephalopathy is?
- 4 A I mean, I actually looked it up while you were asking my
5 fellow about it. I've heard of it before, but I wasn't clear
6 on the actual definition.
- 7 Q Okay.
- 8 A So I am now.
- 9 Q Can you explain to the Court what that is, please, ma'am?
- 10 A I mean it looks like it's a very general term that just
11 describes any disease that affects the function or the
12 structure of the brain.
- 13 Q Okay. All right. And let me ask you this. There was
14 talk of earlier -- you were in the courtroom earlier, correct,
15 during testimony?
- 16 A Yes.
- 17 Q There was talk earlier of Mr. Collins presenting to
18 Waccamaw or Grand -- Waccamaw Hospital, I'm sorry, for the
19 purposes of some medical issues; correct?
- 20 A I'm not sure that we have any Waccamaw records. The
21 records that we were provided with to review were from
22 Georgetown Memorial.
- 23 Q I apologize, the Georgetown Memorial.
- 24 A Okay. Those are the records that I reviewed.
- 25 Q Okay. All right.

1 THE COURT: Just change the name.

2 MR. WILSON, JR.: Yes, sir.

3 BY MR. WILSON, JR.:

4 Q My apologies. Will, will you tell me if you reviewed
5 those records?

6 A Yes. I did.

7 Q Okay. All right. Can you tell me whether or not --
8 earlier I think counsel asked you whether or not he presented
9 with his sister giving information regarding binge drinking,
10 that he was a binge drinker.

11 A I think that was noted in those medical records.

12 Q Okay. All right. And that he had been drinking for a
13 long time; correct?

14 A I don't recall other than that it said that he was a
15 binge drinker.

16 Q Okay. All right. Well, let me ask you this, from what
17 you know about briefly encephalopathy --

18 A Yes.

19 Q I apologize -- can it be caused by a buildup of toxins in
20 the body from drinking?

21 A Well, there are certain kinds of brain dysfunction that
22 can be caused by -- from drinking, but because it's such a
23 general term I don't think that you can say that that is
24 caused by anything. That's more like something present in the
25 brain. It's not discussing etiology whatsoever. It's really

1 just talking about some kind of whether they -- something
2 that's affecting the function and the structure of the brain.

3 Q Okay. And if anything is affecting the function or the
4 structure of the brain would that lead one to believe that
5 there could be some brain disease? I mean, that's what it is.
6 It's brain disease; correct?

7 A I think that's possible. Yes.

8 Q All right. Okay. All right. Let me ask you this --

9 THE COURT: Would it necessarily be chronic?

10 A Well, based on my brief review of the definition of that
11 term it doesn't have to be chronic. It can be something
12 that's short, something that can be actually repaired. It
13 really just refers to anything that's affecting the function
14 of the brain right now.

15 Q Let me ask you this, when you -- you've done a lot of
16 these interviews; correct?

17 A That is correct.

18 Q Okay. All right. And when you're asking someone
19 questions, and, and I know at my office I do this with my
20 clients if I'm doing a will or something like that, you know,
21 you ask them basic questions like, "Who's the president of the
22 United States right now"; correct?

23 A That's part of my mini-mental status examination that I
24 do. I ask everybody questions about the current president.

25 Q Okay. And if a person says that -- well, let me ask you

1 this question. Do you recall in your interview if you asked
2 that question of Randy Collins?

3 A Yes.

4 Q Okay. Do you recall what he said?

5 A Let me refer to my report.

6 Q Page five. It's on the second paragraph.

7 A It says, [As read], "He did not identify the name of the
8 current United States' president, though he recalled the most
9 recent predecessor, as well as past presidents."

10 Q Okay. And then he also during that time identified who
11 as being the first president of the United States?

12 A He identified quote, Kennedy.

13 Q As being the president of the United States or the first
14 president.

15 A The first ever.

16 Q Okay. All right. And let me ask you this question, why
17 is that clinical psychologists would ask these real cursory
18 questions about current events? Why do you ask those
19 questions?

20 A Well, there's two different reasons. So current events
21 we're looking at both fund of knowledge. We're also looking
22 at current orientation. So to have a Defendant say that
23 Kennedy is the first president of the United States doesn't
24 tell us very much. So we know that he left high school. We
25 know that fund of knowledge can be culturally balanced, and if

1 he left school before he was educated on the different
2 presidents of the United States that really could be
3 reflective of that.

4 Q What about orientation? What about him saying that he
5 didn't who the president, and everybody in this courtroom
6 knows who's president right now.

7 A Right.

8 Q I can go out on the street and find a ten year old they
9 might tell me who the president is. What about orientation?
10 What does that say about his orientation?

11 A I mean, it looks at fund of knowledge. He was oriented
12 to person, place, time and situation. Most people do know who
13 the president is, but I don't really know what to make of
14 that. It could be fund of knowledge. It could be he doesn't
15 read very much. So maybe he doesn't read the newspaper or
16 watch television. I think you can make a couple of different
17 interpretations from that.

18 Q So there's an argument for everything that might indicate
19 that he has mental illness, but there's no argument for the
20 fact that he probably has mental illness; is that right?

21 A I don't know of any mental illness that would make you
22 not know who the president is.

23 Q Alzheimer's?

24 A I don't think there's any indication that he has
25 Alzheimer's.

1 Q I'm not saying he does.

2 A No.

3 Q But would that not be a medical condition that would
4 cause you not to know who that is?

5 A That could be one thing. I don't think just that one
6 thing would lead me or anyone to think that somebody had
7 Alzheimer's.

8 Q Let me ask you this, the MOCA test is designed to test
9 dementia; correct?

10 A No, not dementia.

11 Q And you just tell me if I'm wrong when I read this.
12 Okay?

13 A Please.

14 Q [As read], "The MOCA is a relatively simple, brief test
15 that helps health professional determine quickly whether a
16 person has abnormal cognitive function and may need more
17 thorough diagnostic workup for Alzheimer's disease, and may
18 also predict dementia in people with mild cognitive
19 impairment."

20 A But it's not designed to predict dementia. So it's
21 screening for any possible reason that somebody could have a
22 cognitive impairment, to include dementia, but it's not
23 designed only for dementia.

24 MR. WILSON, JR.: May I approach, Your Honor, briefly?

25 THE COURT: Certainly.

1 MR. WILSON, JR.: Your Honor, I'm going to go ahead and
2 just enter this into evidence.

3 BY MR. WILSON, JR.:

4 Q This is a current article from -- I apologize.

5 MS. RICHARDSON: Your Honor, I don't see how a current
6 article, unless she's relied on it in forming her opinion, is
7 relevant evidence.

8 THE COURT: It could be learned treatise.

9 MS. RICHARDSON: It's just something he pulled off the
10 internet.

11 THE COURT: Ask her if she's familiar with the document.

12 MR. WILSON, JR.: It's a learned treatise, yes.

13 THE COURT: Ask her if she's familiar with it. You --
14 she would have to establish that.

15 MR. WILSON, JR.: May I approach, Judge?

16 THE COURT: Certainly.

17 BY MR. WILSON, JR.:

18 Q Let me ask you if you recognize this particular document
19 as being a document that speaks about MOCA as well as goes
20 into when it was founded and it was developed, all that good
21 stuff?

22 A No. So this is from a website. It's not a peer reviewed
23 journal article. I mean, anybody could google this. I have
24 not googled this.

25 Q You have not googled that?

1 A I mean, I read peer reviewed journal articles that are
2 based on empirical studies when I look at things to or to
3 evaluate the validity of the MOCA.

4 Q Let me ask you this, Verywell Health is an organization
5 on line which discusses a lot of medical issues regarding
6 tests as well as diagnoses, etcetera, and you're saying that
7 you have never heard of that, never relied on that, never used
8 that, never researched it?

9 A That's correct.

10 Q Okay.

11 THE COURT: There you go.

12 Q All right. Let me ask you this question. If I told you
13 that the MOCA was designed for the purposes of actually --

14 MR. WILSON, JR.: May I approach, Your Honor?

15 THE COURT: Uh-huh.

16 BY MR. WILSON, JR.:

17 Q Thank you, ma'am.

18 A Sure.

19 Q -- actually determining dementia, would you say that is
20 incorrect?

21 A Yes. I don't think the MOCA can determine dementia.

22 Q Even if they have mild cognitive impairment it's not an
23 indicator for dementia?

24 A I mean, there's a difference between diagnosing dementia
25 and there's some indicators of cognitive impairment. The MOCA

- 1 can identify potential cognitive impairments, but no
2 neuropsychologists, clinical psychologists, psychiatrists
3 would diagnose somebody with dementia based on a MOCA.
- 4 Q Okay. Well, let me ask you if this is correct, and this
5 is from the same document that I was reading earlier. On this
6 particular attached MOCA; correct? You are testing
7 visuospatial and executive functioning; correct?
- 8 A Per one question each.
- 9 Q Fair enough.
- 10 A Yes.
- 11 Q But you're testing it; correct?
- 12 A You're looking at, yes.
- 13 Q Okay. All right. You're testing animal naming; correct?
- 14 A Yes.
- 15 Q Okay. Attention?
- 16 A Yes.
- 17 Q Language?
- 18 A Uh-huh, yes.
- 19 Q Abstraction?
- 20 A Yes.
- 21 Q Delayed recall?
- 22 A Yes.
- 23 Q Orientation?
- 24 A Yes.
- 25 Q Education level?

1 A No.

2 Q You're not?

3 A You award an extra point if they don't have a high school
4 education, but you're not assessing education level. It's
5 just used in the scoring of the MOCA.

6 Q So you would add a point to the actual test --

7 A Correct.

8 Q -- if they don't have the high school education; right?

9 A Correct.

10 Q Okay. All right. So your testimony today is that this
11 is not useful in determining dementia; correct?

12 A I didn't say it wasn't useful. I said nobody would
13 diagnose dementia based on a screening measure.

14 Q All right. Let me ask you, is it useful? Is it useful,
15 Doctor?

16 A Yes. It could be useful.

17 Q Okay. All right. Now, in -- you were in examination;
18 right? You were actually sat in on this examination?

19 A Yes. As the second examiner and the supervisor.

20 Q Okay. And you actually asked questions to Randy Collins;
21 correct?

22 A We both asked questions.

23 Q Okay. And during that time when you were asking him
24 questions were you aware at the time that he possibly had
25 brain disease that hadn't been diagnosed?

- 1 A No.
- 2 Q Okay. All right. But you were aware of the stroke;
- 3 correct?
- 4 A Correct.
- 5 Q The frontal lobe infarct?
- 6 A That's correct.
- 7 Q Okay. All right. Now, what are some of the things that
- 8 the frontal lobe infarct, what sort of symptomologies might be
- 9 presented if he was to go to a hospital or to you and he had a
- 10 frontal lobe infarct? What sort of symptomologies would he,
- 11 would he present with?
- 12 A Well, the left frontal lobe is language, and so as noted
- 13 in the medical records he had expressive aphasia, which means
- 14 he had a limited ability to express speech. Typically that
- 15 term has nothing to do with comprehension. It only is the
- 16 ability to produce language, which resolved when he was in the
- 17 hospital and was not evident to us when we assessed him.
- 18 Q And you say you assessed him. You assessed him over a
- 19 two hour and seven minute period; correct?
- 20 A That sounds correct to me.
- 21 Q Okay. All right.
- 22 A Yes.
- 23 Q And during that time, I apologize, were you on -- I
- 24 apologize.
- 25 A No. I was just double-checking that that was the amount

1 of time.

2 Q Yeah. I think that's correct. Let me ask you this,
3 during that time, during the two hours and seven minutes, you
4 all asked him a number of questions. You engaged him in
5 conversation; right?

6 A That is correct.

7 Q Okay. Tell me your impression of his cognitive ability
8 based on not the MOCA --

9 A Okay.

10 Q -- just on your interview.

11 A Yes.

12 Q All right.

13 A So I noted that Mr. Collins easily provided historical
14 information about himself. He knew where he was born and
15 raised. He knew how long -- how far he had gotten in school,
16 knew information about suspensions, knew that, I believe, he
17 had never been expelled. He remembered things about his
18 history. During the mental status examination, as I
19 mentioned, he was oriented. He knew who he was, where he was,
20 the date and the reason for the evaluation. He was -- made
21 abstractions. So we asked him similarities, like what is the
22 difference between, for example, an orange and a banana or a
23 nickel and a dime, and he understood the similarities between
24 those things which is looking at abstract thinking. He
25 demonstrated good judgment. He demonstrated fair memory. He

1 initially didn't recall all of the three words that we had
2 provided him with, but with a hint he did recall all of them.
3 I also noted that during my competency to stand trial
4 evaluation portion of the evaluation where I asked him the
5 questions about competency he spoke to me in a logical,
6 rational manner. He didn't exhibit problems with his
7 language. For information that he was previously unaware of,
8 he was able to engage in a rational discussion about those
9 terms and then he recalled them later. When we met with him
10 today it seemed that he recalled some of that information that
11 he had been educated with previously although the attorney is
12 indicating that you had a long conversation with him, which
13 may have been from that, but my impression of him was that I
14 did not see any cognitive impairment when I worked with Mr.
15 Collins.

16 Q Okay. Let's go back to everything you just said. I want
17 to go over it because --

18 A Yes.

19 Q -- I want to talk about some of the things. You said
20 that he remembered what grade he was in. That's not correct;
21 is it? That's, that's not correct?

22 A What grade he was retained in?

23 Q When he left school.

24 A Let's see. You are, you are correct. He did not recall
25 what age he left school. It was sometime in the junior high.

- 1 Q As a matter of a fact he gave several different options
2 for when he may have left school?
- 3 A Yes.
- 4 Q Because he didn't remember; did he?
- 5 A Junior high, yes, grades in the junior high.
- 6 Q He says sixth, seventh, eighth.
- 7 A Seventh, eighth, ninth.
- 8 Q All right.
- 9 A Yes.
- 10 Q Would you be surprised if it was earlier than that when
11 he left school?
- 12 A No. I had no collateral documents suggesting his level
13 of education.
- 14 Q Fair enough. Okay. Well, let me ask you about something
15 else that you just said. At some point in time you asked him
16 during the interview about the difference between apples and
17 oranges; right, or was it apples or bananas or something like
18 that?
- 19 A It's usually orange and banana. It just kind of depends.
- 20 Q Okay.
- 21 A Fruit, usually fruit.
- 22 Q And I apologize. Tell, tell the Court what he said. Do
23 you recall what he said verbatim?
- 24 A Fruit. He described an orange and a banana as similar
25 because they are quote, fruit.

1 Q He said they were both fruit.

2 A Yes.

3 Q Okay. He didn't tell you in detail, did he, you know,
4 that an apple was red or that it was, you know, tasty to him,
5 that kind of thing; did he?

6 A No. And that would not be a correct answer to that
7 question.

8 Q I'm not saying it was. He didn't extrapolate beyond the
9 fact that they were fruit; did he?

10 A Well, he wasn't asked to do that. He simply was asked in
11 what way are these two objects similar or the same?

12 Q Okay. And you're saying that he said fruit and that was
13 sufficient?

14 A Correct. And then he likely was asked several more.
15 There was just one example provided in the report, but we
16 usually ask two to three.

17 Q Well, let me ask you about this then. You also said --
18 you asked him that with encouragement and let me actual --
19 I'll withdraw that question. Let me ask you this. You said
20 earlier you had to hint at something to him.

21 A Yes.

22 Q What did you have to hint at? What, what did you have to
23 hint at?

24 A So to assess delayed memory and working memory we give
25 them three words. It's typically rose, piano and wisdom.

1 Q Yes.

2 A Most people easily remember rose and piano and Mr.
3 Collins did, and most Defendants don't remember the word
4 wisdom and so we usually give them a hint. It's a quality a
5 person could have. Many Defendants still don't get it and
6 then we give them a multiple choice, did I say honesty,
7 caring, wisdom, and he selected the correct word that time.
8 So that's what we call a hint. It's like a categorical clue.

9 Q Okay. And then what about the proverb. You say in your
10 report that he had to be given encouragement with a proverb.

11 A Yes.

12 Q All right. Tell me what proverb you're trying to get
13 them to say or any proverb and then tell me how that happened.

14 A There are a couple that we use. I don't recall offhand
15 which one Mr. Collins was given. He probably was given
16 several, "the grass is always greener on the other side" or
17 what does "two heads are better than one mean" or "don't cry
18 over spilt milk", one of those proverbs, and to my memory I
19 think he said, "I don't know," and so it was like, "Well, what
20 do you think it means", that kind of encouragement, encouraged
21 him to provide an answer and then he did provide an accurate
22 definition.

23 Q Okay. So but his first answer to you was, "I don't
24 know."

25 A Something like that, that he would require encouragement

1 to provide an answer.

2 Q Okay. All right. All right. Now, a lot has been said
3 about the education, and I know you heard when I went through
4 it with, with the other doctor, and I'm not going to go
5 through and belabor it, but what's the purpose of providing
6 education to a Defendant who is not being responsive or let me
7 rephrase it, not giving the right answers?

8 A Yeah. I mean, so every single Defendant typically unless
9 they're coming out of restoration requires some kind of
10 education. I recently reviewed Mr. Collins' responses, and he
11 did not need very much education at all for the factual
12 understanding, and so we ask them really complex questions.
13 So we ask them how many people are in a jury, how many have to
14 -- not a lot of people would know that information, and so the
15 point of it is not what does he know but what can he
16 accurately and rationally discuss with me and then what can he
17 retain later.

18 Q Well, let me ask you, I, I notice you and the other
19 doctor keep saying all the other Defendants.

20 A Uh-huh. Yes.

21 Q Okay. And, and I said earlier we're here to talk about
22 Collins because he is a unique individual.

23 A Yes.

24 Q His situation is a little bit different; wouldn't you
25 say, than other Defendants?

1 A Perhaps.

2 Q Okay. Well, let me ask you this. How many Defendants do
3 you give the MOCA test to?

4 A Multiple of them, not every Defendant, but he is
5 definitely not the only one.

6 Q Okay. I, I believe that a hundred percent. How many of
7 them based on your knowledge, and if you don't know it's okay,
8 have scored an 18 or below?

9 A I have had some cases actually recently where they scored
10 lower than I expected them to score, but they were still
11 competent.

12 Q That's not what I'm asking you. I'm asking you how many
13 Defendants, and you brought them up. So I'm asking you about
14 them. How many Defendants that you've actually tested have
15 scored lower than an 18?

16 A I could not give you a number, but I have seen Defendants
17 who I ultimately opined they were competent to stand trial who
18 scored lower than a 26, perhaps in the 18 range, but I don't
19 know their scores offhand.

20 Q Oh, question, let's talk about MOCA. MOCA is a
21 standardized test, and you are very familiar with this test.
22 I know you are. Correct?

23 A Yes. Yes. I am.

24 Q Okay. All right. What is the clinical reason for
25 providing a standardized test versus only relying on the

1 clinical interview?

2 A The reason that Mr. Collins was administered a MOCA is
3 because of the basis of the court order. So I had noted that
4 he had a stroke. I didn't notice any impairments during my
5 interview with him, but in an abundance of caution I gave him
6 a MOCA to see what was going on with him, and, and like I
7 indicated to you in our phone call on Friday I was surprised
8 that he had that low score because I tested the same things in
9 a standardized way during my mental status examination and he
10 did great on that, and so I'm not sure what the difference was
11 because some of the questions are pretty similar or, or the
12 same.

13 Q Well, let's, let's be honest here now.

14 THE COURT: Let me ask her something, Mr. Wilson. I hate
15 to interrupt you.

16 EXAMINATION

17 BY THE COURT:

18 Q Clinically speaking is there a -- ma'am, would use the
19 terminology here is, is there a difference between a screen
20 and a test?

21 A Yes.

22 Q If you screen something, then do you test, is, is there
23 -- the terminology I want to make sure I understand it. What,
24 what does it mean?

25 A Yeah. So a screening instrument they're usually very

1 brief. They're administered in a quick amount of time to
2 identify people who might be in need of a more comprehensive
3 assessment.

4 Q Possibilities is what you're --

5 A Yes. And so the reason that the cut score for these
6 kinds of measures are as they are is we want to identify the
7 most amount of people who might need more comprehensive and
8 not miss people who do. So that might not be a reflection of
9 his true score.

10 Q So that's a screen.

11 A Uh-huh.

12 Q Okay. And what's a test?

13 A A test is something that takes longer. It's usually a
14 battery where you're aggregating a lot of data, takes a lot
15 longer. I think I just said that. Sorry. It has -- yeah. I
16 mean, usually there are multiple tests. They are aggregating
17 the data and the findings on.

18 Q So you screen and then you test?

19 A That's correct.

20 Q Okay.

21 A We do that for malingering testing. We do it. It's
22 pretty common practice.

23 Q Okay.

24 A Personality screenings.

25 Q Okay.

1 THE COURT: Mr. Wilson. I'm sorry.

2 MR. WILSON, JR.: That's okay, Your Honor.

3 EXAMINATION

4 BY MR. WILSON, JR.:

5 Q And I'm going to go back to the malingering in a minute,
6 but I want to ask you this, you said that you gave him a
7 standardized interview; right? You used that word, did you
8 use that word or --

9 A My mental status, yes. It is standardized.

10 Q Yes. Okay. And during the interview -- well, let me ask
11 you this, during the MOCA there's no encouragement given
12 during that test. It's a standardized test to determine, you
13 know, what your cognitive assessment might be or what the
14 indicators might show or that kind of thing; right? So nobody
15 gives you help on that test; correct?

16 A Well, there's a difference between help and
17 encouragement. There is some encouragement on the MOCA such
18 that you're allowed to repeat certain directions, explain
19 things if somebody doesn't understand it. So there are places
20 where you can give encouragement, but neither do you give help
21 on.

22 Q Well, let me ask -- in your report did you report that
23 you gave him any encouragement on the MOCA?

24 A No. I mean, the write-up of the MOCA is really just kind
25 of standardized. We don't really give a lot of like this is

1 what he said on this and this is what I said. It just is this
2 is what score they had.

3 Q Well, let me ask you this, Doctor, if you give a clinical
4 interview to a person namely in this case, Randy Collins,
5 where he is provided encouragement, hints, education,
6 assistance from the actual evaluators --

7 A Yes.

8 Q -- obviously at some point in time even if you're at an
9 18 you're going to be able to answer some questions if you're
10 getting help; right?

11 A Well, encouraging somebody to provide an answer when they
12 say "I don't know" is not help. It's encouragement. So we
13 requested that he try to answer. So I wouldn't say that
14 that's help.

15 Q Well, well, let me ask you.

16 A And it's standard practice.

17 Q Fair enough. What's education then? Is that help?

18 A I wouldn't call that help either. So, like I said, to
19 have a factual understanding you don't have to know all the
20 definitions perfectly. You have to demonstrate the ability to
21 learn the information and have a rational discussion about it.

22 Q Now --

23 A So it's standard if somebody says that they don't know
24 one of the definitions to provide the definition to them, but
25 I don't know that I would term that as help.

1 Q Now, you've been to school for a long time, and you're a
2 doctor.

3 A Yes.

4 Q Yes. I'm a lawyer. All right.

5 A Yes.

6 Q I got a juris doctor. This young lady sitting right here
7 has a juris doctor. You have a PhD. The Judge has a juris
8 doctor. When I went to school my teachers helped me by giving
9 me information. So I'm asking you are you saying that when
10 you educated him on the role of the judge that's not providing
11 help for him to answer the questions, to come into, if you
12 will, a sane response which sounds something familiar to
13 acceptable norms.

14 A I don't know that I would call that help. I mean, it's
15 standard best practices of what -- how you do these
16 evaluations.

17 Q Okay. Fair enough.

18 A Providing a definition.

19 Q I apologize.

20 A Teaching.

21 Q Fair enough. Let me ask you this then. On the MOCA did
22 he get this education, this help, this providing of
23 encouragement or whatever you want to call it, did he receive
24 that on the MOCA?

25 A He may have had the directions re-read to him a couple of

1 times. That's pretty standard on the MOCA, but he definitely
2 didn't get any hints or education on the MOCA.

3 Q Exactly. So my question to you is clinically and as a
4 scientist because that's kind of what you are; right?

5 A I am.

6 Q Based on that, would that not make the actual interview
7 itself more unreliable than the standardized MOCA test where
8 he's not receiving any help whatsoever?

9 A I'm just not sure that you can draw them. So the MOCA is
10 not assessing competency, and the interview that I give is
11 standardized because I've given it to thousands of people and
12 I know how they perform on it. So I would argue that the way
13 I interview is standardized as well.

14 Q Okay. All right. Let me ask you this then. If Randy
15 Collins hadn't received any help, encouragement, hints or
16 whatever during the actual interview, and you came back to the
17 Judge today and you said, "Your Honor, he said that the Judge
18 -- role of the Judge is X, Y and Z and that's wrong," that
19 would be out of context with what is acceptable for finding
20 him to be competent; right?

21 A I'm, I'm sorry. I'm not sure I'm following.

22 THE COURT: Say that again.

23 Q Let me rephrase the question.

24 A Please.

25 Q If right now all things being equal, he had not been

1 given help, education -- he was given help -- excuse me,
2 education five times during the interview on five different
3 subjects. So if he had not been given that help --

4 A Yes.

5 Q -- would the context of our conversation be now that to
6 the Judge and to the Court that, "Look, his responses were X,
7 Y and Z, not this, which is what we had to educate him to,"
8 how does that show competency rather than showing anything
9 else and how is that standardized?

10 A Well, I think that if I had come in and said that that
11 that would be unethical for me. So that's not how you assess
12 competency to stand trial. As I indicated that prong is
13 assessing their factual understanding. You, first of all,
14 don't need a perfect knowledge. Secondly, a lot of people
15 don't know this information. So it is best practices to
16 educate them and then see what they do with that information.
17 He also demonstrated the ability to rationally apply the
18 factual information he had to his own case which also tells us
19 more things about his competency to stand trial. So I would
20 never come in here and testify the information he didn't know
21 if I didn't educate him.

22 Q Okay. All right. And so the MOCA test though none of
23 that was received; correct?

24 A I'm sorry?

25 Q None, none of the education was received, right, on MOCA?

- 1 A Right.
- 2 Q That's just him and you said you had to read the
- 3 directions to him several times?
- 4 A That's possible. That would be the only kind of quote
- 5 help that you would get on the MOCA.
- 6 Q Do you know if he can read and write?
- 7 A He can read -- he has some impairments in reading but he
- 8 can read. He read most of the notification form.
- 9 Q Okay. So you're saying that Mr. Collins can read on a --
- 10 what level?
- 11 A That I don't know.
- 12 Q You testified earlier that you had to read the directions
- 13 to him. I'm, I'm curious about why that was.
- 14 A Oh, the directions are not there for him to read.
- 15 They're always read to the examinee.
- 16 Q Okay. Did you have to read anything else to him?
- 17 A He was assisted with reading our notification form, but
- 18 there was nothing else for him to read during the evaluation.
- 19 Q Okay. Just a couple of other questions. Regarding the
- 20 issue regarding his global impairment domains that you guys
- 21 found --
- 22 A On the MOCA?
- 23 Q -- on the MOCA.
- 24 A Yes.
- 25 Q Okay. Now, you yourself during the interview didn't find

1 anything; right? You said that he was not impaired.

2 A He did not appear to be impaired. I had no question
3 about his impairment during the interview.

4 Q As a seasoned clinical psychologist and an expert, tell
5 me and tell the Court what could explain the serious
6 divergence between the two tests, one where you say you gave
7 him an interview --

8 A Yes.

9 Q -- and then the second which comes out of a standardized
10 test that's widely accepted by the community to test for a
11 number of things? We can disagree about what.

12 A Yes.

13 Q But you know, tell me how that occurs.

14 A Well, I think Dr. Mulay did a good job of talking about
15 fatigue. So we met with Mr. Collins for two hours. He got
16 the MOCA in the last five or ten minutes of the evaluation.
17 As I indicated his -- he did score lower than I would have
18 thought, but we did talk about all of those domains during the
19 mental status exam which took place an hour earlier, and he
20 did not demonstrate the same level of impairment. So I think
21 that it was fatigue. He may have been getting tired with the
22 evaluation. I don't think that he was malingering, but he may
23 not have been putting forth his very best effort.

24 Q So was the 18 on the MOCA based on your clinical expert
25 opinion is because Mr. Collins got tired?

1 A That's possible.

2 Q And so he -- well, I mean, I'm, I'm asking for your
3 expert opinion. I need to know because it's important. He
4 scored 1.8 points above the average score for an Alzheimer's
5 patient. Okay. So what I'm trying to ask you is are you
6 telling the Court that he was tired and that's the reason he
7 scored 18?

8 A I think that's possible. I don't think you can say the
9 reason. I think that that's a plausible explanation for why
10 he had that low score.

11 Q Are there any other in your expert opinion plausible
12 explanations for how it is that he scored such a low score on
13 the MOCA, he's not malingering.

14 A I don't think that he's malingering.

15 Q So how could he have scored such a low score? Any other
16 plausible possibilities out there?

17 A Yeah. I mean, I think there's multiple possibilities.
18 One could be that it's the true score and somehow he faked
19 better than he actually is able to do on the mental status
20 exam, and the other being fatigue, which I think is more
21 likely because he answered the same questions that we asked
22 him during the mental status exam correctly.

23 Q Is it plausible that there were simply just things that
24 were made -- there were mistakes that were made in the
25 clinical interview? Is that possible that humans make

1 mistakes?

2 A Definitely humans makes mistakes, but I'm not sure what
3 kind of mistake, like that we misheard him or --

4 Q No. What I, what I was talking about earlier about the
5 fact that you're giving him the clinical interview, a clinical
6 interview asking him questions and then giving him the answers
7 or educating him on the answers.

8 A Well, that was during the competency to stand trial
9 assessments.

10 Q Right.

11 A But we're talking about the mental status. So that is
12 standardized. It comes out of books. It's widely accepted in
13 the field, and he did fine on that, and it's similar -- it
14 assesses all the similar domains.

15 Q Okay. All right.

16 MR. WILSON, JR.: The Court's indulgence, Your Honor.
17 Judge, no further questions, Your Honor.

18 THE COURT: Ms. Richardson.

19 EXAMINATION

20 BY MS. RICHARDSON:

21 Q Just real quickly, he was able to do the serial 100 test?

22 A Yes. He did. I believe that we asked him to count
23 backwards by the number three.

24 Q So basically doing math in his head, subtraction in his
25 head.

- 1 A Yes. It, it assesses both working memory and
2 concentration. So you start with the number 100 and you count
3 backwards by the number three until I tell you to stop. He
4 provided five correct subtractions, no incorrect subtractions.
5 That's about average and then we can tell him, "Okay. You can
6 go ahead and stop."
- 7 Q Okay. And he was able to spell the word world forwards
8 and backwards?
- 9 A That is correct.
- 10 Q And there is a difference between level of education and
11 competency; is that right?
- 12 A Absolutely. Yes.
- 13 Q And it's common to see people who, who can't make a
14 perfect score on basically what's a civic lesson on the court
15 procedure?
- 16 A That's right. Most Defendants don't know all of the
17 answers to all of the questions that we ask. So the ways to
18 -- that we assess the factual understanding, what's standard
19 in the field is to find out what they do know, provide
20 education for those terms they were previously unaware of and
21 then check back to see if they retained them and are able to
22 have a rational conversation about them.
- 23 Q So just like we might not know what encephalopathy or
24 whatever means --
- 25 A Right.

1 Q -- somebody not in the legal field may not know some of
2 the other answers that are --

3 A That's correct.

4 Q Okay. All right. Is it your opinion that he has a
5 sufficient present ability to work with his lawyer and consult
6 with his lawyer and aid in his defense?

7 A Yes.

8 Q Is it your opinion that he has a rational and factual
9 understanding of the charges against him?

10 A Yes.

11 Q Does he have a rational and factual understanding of the
12 court process?

13 A Yes.

14 Q Does he have a rational and factual understanding of the
15 roles of the different court personnel?

16 A Yes.

17 Q And is it -- and is that your opinion based on evaluating
18 him back on September 24th?

19 A Then and our check-in today. Yes.

20 Q Okay. And again today?

21 A Correct.

22 Q And is that your opinion to a reasonable degree of
23 physiological certainty?

24 A Yes. It is.

25 MS. RICHARDSON: No further questions.

1 THE COURT: Mr. Wilson.

2 MR. WILSON, JR.: Nothing further, Judge. I don't have
3 any other questions.

4 THE COURT: Thank you very much.

5 A Thank you.

6 THE COURT: Mr. Wilson.

7 MR. WILSON, JR.: Your Honor, if it please the Court,
8 Judge, Your Honor, I am asking for the Court to, to go against
9 what both doctors have asked the Court to adopt. They're
10 asking the Court to adopt a position that Mr. Collins is
11 competent, and I do have an alternative suggestion. Let me
12 talk about the first part of this first.

13 My concerns here are that there was a clinical interview
14 that was given to him, which I've made much of in, in
15 examination where he was actually prompted to say the right
16 thing, to come into normalcy, which has been my experience
17 with Mr. Collins as well in my conversations with him. He can
18 regurgitate, but it noted in his actual medical records and,
19 and you can say whatever you want to about it, but whatever
20 caused it, the neurologist suggested that he needed a further
21 neurological evaluation. No one is saying that Mr. Collins is
22 a perfect --

23 THE COURT: And you're talking about his, his 2013 --

24 MR. WILSON, JR.: Yes, sir.

25 THE COURT: -- event. Okay.

1 MR. WILSON, JR.: Yes, sir. And on top of that, the
2 brain disease that was suggested by the neurologist, they also
3 suggested that he had had a stroke, which caused the frontal
4 infarcts, which no one is contesting. Fast forward to now,
5 you have an individual who is now presented to MUSC
6 psychologists who I believe was trying to do the right thing.
7 The problem here is this, I believe that suggesting the
8 answers to him, which is what you can do with him, and he'll
9 repeat you. He'll say what you say. The MOCA exam, which
10 they gave him, is extremely low, which is my real concern,
11 which I think is the anomaly here that should be paid
12 attention to by the Court. Do I think that the, the
13 psychologists are trying to make him, you know, sane when he's
14 not or competent when he's not, do I think they're going above
15 and beyond? No. I don't believe that. I think that what
16 happened here was that when you talk to him he can sit down
17 and have a conversation with Your Honor, with me about the
18 time of day, about eating McDonald's, about his family lines,
19 but if you say to him on any occasion, you know, "Can you tell
20 me about, you know, what level of government that you're in
21 right now," which would be the judicial branch, he can't tell
22 you that. He doesn't understand that either. He also doesn't
23 have a firm understanding of certain things that will become
24 an issue later on in this case regarding --

25 THE COURT: Isn't the issue whether he's, whether he's

1 capable of understanding.

2 MR. WILSON, JR.: And, and that is a question, I think,
3 for a neuropsychiatrists, but I'll be honest with you, based
4 on my conversations with him which --

5 THE COURT: But how old is this case now, Mr. Wilson?

6 MR. WILSON, JR.: This case is, I don't know, it's old,
7 Judge. It's an old case. There's no doubt about that. No
8 doubt about that, no doubt about that, you know, but again, I
9 put in this request and this was an issue. We put in a
10 request some years ago for an evaluation. There was no
11 hearing that was had, and we had a status conference on this
12 issue, and then when it came to light that the hearing wasn't
13 had we had it as soon as we could, and --

14 THE COURT: But, but this neurological exam, I mean, it's
15 years old and have you had one done? I mean, I didn't hear
16 anything.

17 MR. WILSON, JR.: No. No. We were waiting for the
18 response --

19 THE COURT: So we're talking about pure speculation that
20 it might show something.

21 MR. WILSON, JR.: And I don't know, but I think that it
22 would definitely be violative of his rights to a 14th
23 Amendment fair trial if he's tried and he is, in fact,
24 impaired, you know, and not competent, which is my main
25 concern, and I know, obviously, we are concerned about

1 jurisprudence as well as it being economical with the Court's
2 time, and I do understand that. I -- this is the first time
3 I've ever stood up in a murder trial, and I've done a lot of
4 them, any trial, and said that I believe that my client has
5 severe mental issues when it comes to understanding what's
6 going on. I will also say to you this, that after I did some
7 research --

8 THE COURT: But I haven't heard a single person, a single
9 word of testimony to indicate that he does not understand.

10 MR. WILSON, JR.: No. And I'm not saying that the
11 doctors have. They came up with a conclusion and they stuck
12 with that, and I applaud them for that. What I'm saying is
13 based on the test, the test itself, you know, no one --

14 THE COURT: It's just, it's just a screen. I mean --

15 MR. WILSON, JR.: It's not. Judge --

16 THE COURT: -- I, I was -- I, I tried to make that very
17 clear with these doctors. You know, and like the example I
18 gave, you go into the hospital and regardless of what you've
19 got they're going to take your blood pressure and temperature.
20 It, it, it -- it's the starting point, and I think what these
21 doctors did is out of an abundance of caution said, "Let's
22 give this test. Let's see if there's anything to suggest that
23 we need to, to seek some further testing. Let's screen. Then
24 we test."

25 MR. WILSON, JR.: Well, Judge, they testified, I think

1 Judge -- excuse me, Judge. The doctor -- what's the first
2 doctor's name. I apologize. The first doctor who --

3 THE COURT: Mulay.

4 MR. WILSON, JR.: -- the first doctor who testified
5 testified that if you provided a more comprehensive test,
6 which is what they told me on the phone on Thursday or Friday,
7 whenever we talked, that you could determine possibly whether
8 or not he really understands. The interview itself is a brief
9 measure --

10 THE COURT: But, but even if he has mental illness, these
11 doctors testified that based on their examination of him,
12 their, their questioning of him he understood the functions of
13 the court. He understood his charges. He understood the
14 penalties. He understood what the, the, the players in a
15 trial did. He understood those things.

16 MR. WILSON, JR.: After education and prompting the
17 answers on several occasions, and I might add, that when he
18 was not prompted on the actual MOCA exam that he could not
19 pass that exam with any flying colors. If he had tested at 27
20 or 28 we wouldn't be talking about this now. He did not. He
21 tested at an 18. The doctors also testified that he was not
22 malingering. So --

23 THE COURT: But we don't know what he, what he had
24 difficulty with.

25 MR. WILSON, JR.: He couldn't tell us who the president

1 of the United States is. That is a test I give everybody who
2 comes in my office for a will. That's testamentary capacity,
3 Judge. That is simple capacity. If you can't tell me who the
4 president of the United States is there's something awry, and
5 that's the first thing that I do in those cases.

6 With this gentleman, not only could he not tell them
7 that, he had to be prompted and educated, as they say, on
8 several different simple issues that anybody who has an IQ of
9 75 should be able to answer, and the test that they gave him
10 it's so elementary, if Your Honor has had a chance to look at
11 it, he should be able to pass that test if he is competent to
12 know what's going on around him or what's happening or who the
13 law clerk is or who the officers are or what their capacity is
14 to ask him questions. Those are issues that are, that are
15 going to come up in this case and they are profound. I think
16 that trying to invade his 14th Amendment Right so we can go
17 ahead and get on with the business of prosecuting him is a
18 fatal flaw in this case.

19 THE COURT: But Mr. Wilson, you ask me to ignore the, the
20 opinions of two doctors who have been qualified as experts
21 based on nothing. Not one witness has been called. This case
22 is three or four years old, Ms. Richardson? How old is it,
23 four years old?

24 MS. RICHARDSON: Four year old, four years old, Your '
25 Honor.

1 THE COURT: Four year old case and in that time you've
2 not been able to find anyone who could contradict their
3 findings.

4 MR. WILSON, JR.: Judge, this is a 608 case, Your Honor.
5 You know, this is not a case where this man has money. I was
6 appointed. Now, I have a private firm, but I've been
7 appointed to represent him. This is a --

8 THE COURT: But you could have moved then.

9 MR. WILSON, JR.: We moved for an evaluation which is the
10 first step, Judge, and when the evaluation was -- and I asked
11 for this evaluation years ago. This was not like, you know,
12 two months ago, three months ago. We filed this motion a long
13 time ago. It was simply just heard based on whatever the
14 circumstances that the Court might want to assume, but my job
15 is not to set hearings. My job is to file the motions that --
16 and we knew. When I first talked with --

17 THE COURT: But you, you got your evaluation.

18 MR. WILSON, JR.: Yes. I did.

19 THE COURT: And, and, and two examiners have found him to
20 be competent.

21 MR. WILSON, JR.: Yes, sir.

22 THE COURT: And there's nothing to contradict that.

23 MR. WILSON, JR.: But there is, the MOCA exam. The MOCA
24 test which we talk --

25 THE COURT: That doesn't -- from what I've heard it tells

1 me nothing.

2 MR. WILSON, JR.: It -- that -- Judge, they both
3 testified that is a test for assessing whether or not -- and
4 they -- I asked them whether or not this is testing
5 Alzheimer's, whether or not it tests dementia. Now, they
6 disagree with the dementia, but it tests cognitive ability.
7 The thing is called the Montréal Cognitive Assessment Test.
8 That's what it's called, and this, this is used --

9 THE COURT: And, and they both said that, that, that he
10 has some intellectual deficit. I mean, did -- I don't think
11 there's any question of that, but that does not make a person
12 incompetent.

13 MR. WILSON, JR.: It makes a person, I think, and again
14 here when you have a doctor who gets on the stand who says,
15 "Look, you know, I declare this person to be competent based
16 on a two-hour evaluation," and yet they give an exam out of an
17 abundance of caution, which they didn't have to do. Okay.
18 They gave the exam anyway, this particular exam and then he
19 scores an 18 on that exam, which does not, you know --

20 THE COURT: Tell me this, other than it's a low score, a
21 low score compared to what, other than that, what does an 18
22 tell me? Does it tell me he has Alzheimer's? Does it tell me
23 he suffers from dementia? Did he tell -- does it tell me he's
24 schizophrenic? What, what does it tell me?

25 MR. WILSON, JR.: It, it tells -- Judge, it tells -- it's

1 an indicator test.

2 THE COURT: Does it tell me anything other than he didn't
3 do well on this test --

4 MR. WILSON, JR.: It's an indicator.

5 THE COURT: -- or this screen?

6 MR. WILSON, JR.: It's an -- it's a mild cognitive
7 indicator test, Judge.

8 THE COURT: That something's wrong?

9 MR. WILSON, JR.: That something is wrong. That's
10 correct.

11 THE COURT: What?

12 MR. WILSON, JR.: And that's, that's --

13 THE COURT: And does that affect his, his ability to --

14 MR. WILSON, JR.: And, and that is the question.

15 THE COURT: -- to, to assist you?

16 MR. WILSON, JR.: And that is the question. That is the
17 question, and again, I'm stating in front of the Court that he
18 can't assist. I have tried multiple times in my office, and
19 I'm also stating to the Court that based on the MOCA, the MOCA
20 is in line with what I have experienced with this particular
21 Defendant, not the testimony of the doctors, and that's kind
22 of where I am. I mean, this -- there's no doubt to me he is
23 impaired. I think that if they -- if we try this case and
24 he's convicted, it comes back on appeal because it is a --
25 the, the MOCA test is a standardized test. I've done my

1 homework on this. I know that the psychologists disagree
2 about what they use it for. It is used, several different
3 treatises that we looked at for dementia, for cognitive
4 elements and indicators of other diseases, other issues. It
5 is an indicator test, and 18, literally, is at bottom of the
6 barrel when it comes down to this test. If you get a 26 on
7 this test, that's beginning to be impaired. You know, he
8 didn't, and there's no malingering, and what I find to be most
9 compelling is not the fact that they're saying that he's
10 competent --

11 THE COURT: But that's what you tell me, Mr. Wilson, but
12 I've heard no testimony indicating that.

13 MR. WILSON, JR.: Judge, they --

14 THE COURT: I mean, that there's any, any baseline that
15 the test -- perhaps it's broken down into sections. I don't
16 know. I know -- all I heard was you get a point if you didn't
17 finish high school. You know, what does that mean?

18 MR. WILSON, JR.: I think that it --

19 THE COURT: But I, I mean, which points indicate what?
20 Does it indicate anything? I don't know.

21 MR. WILSON, JR.: I think --

22 THE COURT: I haven't heard it.

23 MR. WILSON, JR.: If the --

24 THE COURT: And the, and the burden is on the Defendant
25 who claims incompetency to prove his incompetence by a

1 preponderance of the evidence.

2 MR. WILSON, JR.: Preponderance of the evidence, not the
3 overwhelming or clear and convincing or beyond --

4 THE COURT: Not clear and convincing. I agree.

5 MR. WILSON, JR.: The doctors testified --

6 THE COURT: But it's preponderance.

7 MR. WILSON, JR.: I agree, Judge. The doctors testified
8 on the stand, I asked her very -- Dr. Gottfried, I asked her
9 very clearly about the difference between educating him during
10 the actual exam and then giving the standardized test. That
11 in itself is more than enough to be concerned about the
12 diagnoses. Giving someone education, hints, help, whatever
13 you call it --

14 THE COURT: Mr. Wilson, that's been the standard for 40
15 years.

16 MR. WILSON, JR.: And Judge --

17 THE COURT: I been doing this longer than your dad has.

18 MR. WILSON, JR.: And I'm not saying you haven't, Your
19 Honor, but standards always do change, which is why clinical
20 psychologists give standardized tests. That's the reason, and
21 I put the test in the record. The test score is an 18. It
22 is, I've said this before, 1.8 points from Alzheimer's, the
23 determination for Alzheimer's, and that Alzheimer's is an
24 average. That doesn't mean that you got to have a 16 to get
25 it. It's an average for Alzheimer's. He is within that

1 range. That is a significant problem, regardless, and they
2 both agreed that they did not expect, they were surprised by
3 the turnout, by the actual results of that test.

4 THE COURT: Well, Mr. Wilson, let me ask you one other
5 time.

6 MR. WILSON, JR.: Yes, sir.

7 THE COURT: Suppose an 18 is his absolute number, what
8 does it mean specifically? What does it mean he suffers from?

9 MR. WILSON, JR.: Means that he has an indicator for --

10 THE COURT: For, here we are. For?

11 MR. WILSON, JR.: I'm, I'm going to tell you.

12 THE COURT: For?

13 MR. WILSON, JR.: I'm going to tell you. I'm going to
14 tell you. For a severe indication of mental illness,
15 cognitive disability, as well as you know that the -- the
16 doctor said it on the stand. The 16, she said 16, and I said,
17 "You mean 16.2, is that more accurate?" She said yes. So
18 that number is close to Alzheimer's. This, this test is used
19 for the purposes of determining Alzheimer's. Now, if he's
20 that close to Alzheimer's, I think that any Court would have a
21 concern about that level of cognitive ability because it is
22 the cognitive assessment test. They can skirt around it all
23 they want to. They can't get around the fact that the name of
24 the test is what it is. It's no more brief than the interview
25 they gave him. It's the same thing.

1 THE COURT: I know very little about the test.

2 MR. WILSON, JR.: I know, sir, Judge.

3 THE COURT: Ms., Ms. Richardson.

4 MS. RICHARDSON: Your Honor, basically, you know, again,
5 the burden is on him, and just to kind of cover, the motion
6 for competency was filed sometime back. We have had multiple
7 status conferences and opportunities for this to be heard, and
8 this was not brought to the Court's attention until it was on
9 the trial roster initially in August, but Your Honor,
10 basically, we have had two doctors who he had qualified as
11 experts who have much more training and experience in this
12 area than any of us who do not put the weight on this test
13 that he is putting on it and are saying it's not even a test.
14 It's a screening mechanism. It can be used for head injuries.
15 It can be used for psychiatric patients, but it does not
16 diagnose anything, and there's been no indication that just
17 because he's got an 18 he's got Alzheimer's. On the contrary,
18 they said it doesn't diagnose anything, and so that's the only
19 thing that's been pulled out and based on internet research
20 and us, I guess, being lawyers and think we know more than
21 people who've gone to school for it, we're putting -- he's
22 trying to put more emphasis on it than the people he asked to
23 be qualified as experts in this case. He's not carried the
24 burden to show that there's any deficit, and besides that
25 little one page screening tool, the doctors went over the

1 information and the answers that he provided and were able to
2 come to an opinion, and there's been absolutely no other proof
3 that, that there is any -- that he's incompetent. Everything
4 shows that he is competent, and even if you pulled out some of
5 the minor things that he could do, the subtractions, five
6 different subtractions just in his head, I mean, those sort of
7 things just sort of common sense, but he's just trying to pull
8 out one little screening measure and say, "Well, that means
9 everything," and these two doctors' experience in interviewing
10 multiple people over and over is marked out by one test or one
11 screening tool.

12 THE COURT: Well, the order calling for an evaluation
13 gave as its reason that there was some questions to his
14 ability to assist his attorney due to possible intellectual
15 disability. Well, the examiners have, I think, thoroughly
16 addressed that issue. While he may suffer from some
17 intellectual ability and that is evidenced by the fact that,
18 it's anecdotal, but it appears that he did not do well in
19 school for whatever reason. The record is really somewhat
20 unclear as to that. The doctors, nevertheless, find that
21 there is -- there are some intellectual disabilities or
22 impairments. Let's call them impairments. However, Mr.
23 Collins functions quite well. Mr. Collins drives. He's able
24 to drive unassisted from Columbia to his, his appointments in
25 Charleston. Apparently, Mr. Collins is out on bond and he's

1 able to come see his attorney when he's required. I haven't
2 heard Mr. Wilson complain about that. Mr. Collins, from what
3 I glean from this report, lives alone. He functions in that,
4 that capacity. Mr. Wilson has suggested, although, haven't
5 heard it in testimony, but Mr. Wilson suggests, suggests that
6 he has someone who assists him with his finances and that's
7 fine. The question here is whether or not he has the capacity
8 to assist in his defense. The question is not whether at the
9 time of his examination he may have been familiar with the
10 terminology, the duties, the standards of the court. The
11 question is whether or not he's capable of understanding
12 those, those things. The doctors have testified that in many
13 instances he was familiar with that, he understood his charge
14 and things of that nature, and the things that he was not sure
15 on, upon explanation, he certainly was able to discuss them,
16 and the ability to discuss them suggests to me that he
17 understands those, those matters. I have read the report, and
18 thank you both for allowing me to have it prior to trial so I
19 would be able to review it, read it and become familiar with
20 it. I was somewhat concerned with whether or not the matter
21 should have been referred to the Department of Disabilities
22 and Special Needs for a joint report, and I think that was
23 done because perhaps the doctors were under the impression
24 that or reached the conclusion, let me put it that way, that
25 any deficiencies he might have are related to a stroke he had

1 in 2013, but I wanted to be certain that that wasn't
2 necessary. Both doctors have testified very clearly that they
3 do not find indications of mental retardation as that term is
4 used both in the statute and clinically. So I believe that or
5 I so find that he is competent to stand trial, that I have
6 applied the standard of, I want to make sure I state it
7 properly, preponderance. The Defense has not shown by a
8 preponderance of the evidence that he lacks capacity, and I
9 adopt the competency report of the physicians and that has
10 been made a part of this record. Okay. Thank you.

11 MS. RICHARDSON: Your Honor, and I'll provide an order to
12 that effect.

13 THE COURT: Thank you, very much. All right. We now
14 have a Jackson v. Denno hearing, I believe. Is that right?

15 MR. WILSON, JR.: That's correct, Your Honor.

16 MS. RICHARDSON: Yes, Your Honor.

17 THE COURT: Okay. Was this recorded or --

18 MS. RICHARDSON: It is, Your Honor.

19 THE COURT: Do you need some time to get it all set up,
20 just a moment? Tell me you do.

21 MS. RICHARDSON: I'll take a few minutes, Your Honor.

22 THE COURT: All right. Thank you. Then we'll be at
23 ease. Do you have further need for Dr. Gottfried and Dr.
24 Mulay?

25 MS. RICHARDSON: I do not.

1 THE COURT: Ms. Wilson -- Mr. Wilson?

2 MR. WILSON, JR.: Nothing at this point, Judge.

3 THE COURT: Well, are you, are you releasing them for
4 their subpoena from today?

5 MR. WILSON, JR.: From today, yes, Your Honor.

6 THE COURT: For today you're released. Thank you.

7 MS. RICHARDSON: And I think it's the State's subpoena.

8 THE COURT: All right. You have a --

9 MR. WILSON, JR.: There'll be -- there's going to be one
10 coming from our office, Judge.

11 THE COURT: Okay. Well, you better get them served then
12 --

13 MR. WILSON, JR.: Yes.

14 THE COURT: -- because Ms. Richardson just released them.

15 MR. WILSON, JR.: Yes, sir.

16 OFF THE RECORD

17 (On the record.)

18 THE COURT: Okay. All right. Ms. Richardson.

19 MS. RICHARDSON: Your Honor, first of all, I just, just
20 to figure out scheduling and time, the recorded interviews are
21 close to three hours.

22 THE COURT: Holy moly. My goodness.

23 MS. RICHARDSON: So how do you want to -- we could -- I
24 could put -- begin with the officers up to testify and lay
25 the, the framework, but I think Your Honor is going to need to

1 see --

2 THE COURT: Okay.

3 MS. RICHARDSON: -- the interviews because as Mr. Wilson
4 alluded to in chambers, there is a question regarding the
5 entirety of the interview.

6 THE COURT: Whether he was in custody or not, right?

7 MS. RICHARDSON: According to Mr. -- yes, Your Honor.

8 That's an issue that Mr. Wilson has raised and also there is

9 --

10 THE COURT: Then I would suspect that there is probably a
11 Miranda issue; is that right?

12 MS. RICHARDSON: Not from the State's point of view, Your
13 Honor.

14 THE COURT: Okay.

15 MS. RICHARDSON: I guess from the Defense point of view.

16 THE COURT: I mean, let me rephrase that. Was a Miranda
17 given?

18 MS. RICHARDSON: For this statement that's in question,
19 yes, Your Honor.

20 THE COURT: Okay. Are there other statements that you do
21 not intend to use?

22 MS. RICHARDSON: There is another written statement where
23 Miranda was not given.

24 THE COURT: Okay. All right. And is that the one where
25 there's an issue of whether or not he was in custody?

1 MS. RICHARDSON: No. Not -- no, Your Honor.

2 THE COURT: Okay.

3 MR. WILSON, JR.: Judge.

4 THE COURT: Yes, sir.

5 MR. WILSON, JR.: -- there, there is an issue regarding
6 Miranda in the beginning, in the middle and at the end. So
7 Miranda is an issue throughout the entire statement for the
8 Defense.

9 THE COURT: Okay.

10 MR. WILSON, JR.: As well as the duration of the video
11 when the video is cut off and whether or not he was actually
12 free to leave at some point in time during this particular
13 interrogation, Judge.

14 THE COURT: Okay. All right. Well, how do you want to
15 do it?

16 MS. RICHARDSON: Your Honor, I was going to have -- we
17 have two officers who participated. First of all, we have
18 three separate statements. There's one written statement that
19 was taken by Officer Garrett on April 9th. It's basically an
20 alibi type statement, and then on June 4th the Defendant was
21 interviewed by both Officer Garrett and Agent Hardee. There
22 are recordings of that interview and then it was reduced to
23 writing. So what I would propose is that we have -- I was
24 going to start with Officer Garrett, have him testify
25 concerning the circumstances surrounding all of the

1 statements, and then if Your Honor wants us to begin playing
2 it in court or however you want to proceed, but it is going to
3 take a while.

4 THE COURT: Okay. Well, let's just get started then.

5 MS. RICHARDSON: The State calls Melvyn Garrett.

6 THE COURT: I note that it is 4:30 now; right?

7 MS. RICHARDSON: Yes, Your Honor.

8 THE COURT: Okay.

9 MS. RICHARDSON: And Your Honor, I don't know if you
10 would want to take the, take the interviews and view them
11 separately.

12 MR. WILSON, JR.: View them separately?

13 MS. RICHARDSON: The tapes and review them in chambers?

14 THE COURT: My, my issue is this, how, how long do you
15 anticipate it will take to try this case once we're beyond the
16 --

17 MS. RICHARDSON: Through Thursday.

18 THE COURT: Well, depending on when we start.

19 MS. RICHARDSON: Right.

20 THE COURT: How many days? Huh?

21 MS. RICHARDSON: If we started tomorrow, I anticipate the
22 State's case taking through Thursday.

23 THE COURT: Mr. Wilson.

24 MR. WILSON, JR.: Probably a day or two, Judge, is what
25 we're going to need.

1 THE COURT: All right. So we're talking about going into
2 next week?

3 MR. WILSON, JR.: Potentially, Your Honor.

4 THE COURT: How about that. Okay. Well, let's see what
5 we got. Okay? Go ahead, Ms. Richardson.

6 MS. RICHARDSON: Melvyn Garrett, Your Honor.

7 WHEREUPON, Melvyn Garrett is called to the stand, duly
8 sworn by the clerk and testified as follows:

9 THE CLERK: Please state your full name for the Court and
10 spell it for us.

11 MR. GARRETT: Melvyn Garrett, M-E-L-V-Y-N, G-A-R-R-E-T-T.

12 THE CLERK: Thank you very much.

13 MR. GARRETT: You're welcome.

14 EXAMINATION

15 BY MS. RICHARDSON:

16 Q Could you tell us where you're employed?

17 A Georgetown County Sheriff's Office.

18 Q And what's your position there?

19 A Criminal investigator.

20 Q All right. And how long have you been with the Sheriff's
21 Office?

22 A Off and on since 2002.

23 Q And is that the entirety of your law enforcement career?

24 A No. It's not.

25 Q Okay. Where were you prior to 2002?

- 1 A Well, yeah. That's it. Yeah. I'm sorry. That's it.
- 2 Q Okay. But in some time -- at some point you left the
- 3 Sheriff's Office?
- 4 A I did.
- 5 Q And you went to the Town of Andrews?
- 6 A Yes.
- 7 Q And how long were you, you with Andrews?
- 8 A Four years or just --
- 9 Q And what were your positions there?
- 10 A Lieutenant, Captain and Chief.
- 11 Q And when did you leave Andrews and go back to Georgetown?
- 12 A June 2017.
- 13 Q Okay. But in March of 2013, you were an investigator
- 14 with the Georgetown County Sheriff's Office?
- 15 A Correct.
- 16 Q And did you respond to a fire 10 James Avenue in the
- 17 -- or near the Town of Andrews?
- 18 A I did.
- 19 Q Okay. And that was for a fire?
- 20 A Yes.
- 21 Q Okay. And a deceased child was found in that house?
- 22 A That is correct.
- 23 Q And you began an investigation of that?
- 24 A Yes. I did.
- 25 Q Okay. And in the -- you were assisted in that

- 1 investigation by the SLED arson unit; is that right?
- 2 A Yes, ma'am.
- 3 Q Okay. And did you all sort of work hand in hand on that?
- 4 A We did.
- 5 Q Okay. And what did you -- what was the status of the
- 6 investigation initially? So what did you do the first night?
- 7 A The first night, well, pretty much working the crime
- 8 scene. So we're getting search warrants together and taking
- 9 pictures and doing all the things to, to actually investigate
- 10 this crime scene itself.
- 11 Q Okay. And did you subsequently receive a tip?
- 12 A I did.
- 13 Q And tell me about that.
- 14 A I received a tip that the deceased boy's mother bought
- 15 kerosene and perhaps was involved with actually setting up
- 16 the, the arson, and that Randy Collins, the Defendant here,
- 17 was also involved.
- 18 Q Okay. And the mother's name is?
- 19 A Marissa Cohen.
- 20 Q Okay. And the deceased child that --
- 21 A His last name is Coombs, Dave -- is it Dave Syience
- 22 Coombs.
- 23 Q Okay. Nickname was Syience?
- 24 A Syience.
- 25 Q He went by Syience?

1 A Yes.

2 Q Okay. And once you received that tip regarding Mr. --
3 the mother being involved, what did you do?

4 A Well, I started to follow up on the tip. So I went to
5 the store where they said she bought the kerosene to see if I
6 could get video. It wasn't working, but I did get the
7 receipt, and then I started to follow any leads that I had,
8 any, any names that were given.

9 THE COURT: Did, did you say receipt?

10 A A receipt, yes, Judge.

11 THE COURT: You got a receipt?

12 A From the -- yes.

13 THE COURT: Okay. All right. I, I, I just didn't catch
14 it, what you said.

15 Q Okay.

16 A From the purchase of the kerosene.

17 Q And were you able to get anybody who could identify that
18 she made that purchase?

19 A Yes. Yes. In fact, there was a clerk that was working
20 the night that she bought it.

21 Q Okay. All right. And so once you corroborated that
22 there was a kerosene purchase on the date of the fire, what
23 else did you do?

24 A The other tip was that the Defendant was involved. So I
25 went to find him and see what he had to say.

- 1 Q Okay. Okay. And did you do that?
- 2 A I did.
- 3 Q And where did you locate him?
- 4 A It was at the intersection near his home. I, I think I
- 5 met him in the roadway.
- 6 Q Okay. And when you located him what did you do at that
- 7 point?
- 8 A I just kind of asked him, "Hey, this is what I heard.
- 9 Tell me about it."
- 10 Q Okay. And was he willing to talk with you?
- 11 A Sure. He said that he didn't know what I was talking
- 12 about and he was at a club that night. So it wasn't him.
- 13 Q Okay. And did you take him into custody at that point?
- 14 A Absolutely not.
- 15 Q And what was his condition -- he was on the street?
- 16 A Yes. Uh-huh.
- 17 Q Okay. Did you put him in your car or handcuff him or
- 18 anything like that?
- 19 A No.
- 20 Q And did he appear to be under the influence of alcohol or
- 21 drugs?
- 22 A Not that I recall.
- 23 Q All right. Did you threaten or promise him in any way to
- 24 get him to talk with you?
- 25 A Absolutely not.

1 Q Okay. Now, let me show you -- let me mark this State's
2 One for purposes of this hearing.

3 (State's Exhibit Number One [Handwritten State of
4 Defendant dated 4-9-14] marked for identification.

5 Q Do you recognize that?

6 A I do. This is a handwritten statement written by me
7 signed by the Defendant from the first encounter I had with
8 him.

9 Q Okay. And that was on what date?

10 A March 9th, 2014.

11 Q Is that March or April?

12 A April. I'm sorry.

13 Q April 9th?

14 A April 9th.

15 Q 2014?

16 A Uh-huh.

17 Q All right. Did you read -- you didn't take him into
18 custody at that point?

19 A No.

20 Q So you didn't do a Miranda statement or anything like
21 that?

22 A Right. Correct.

23 Q Okay. Did he talk with you freely and voluntarily?

24 A He did.

25 Q And basically was providing an alibi for himself --

1 A Yes.

2 Q -- on that night? Okay.

3 MS. RICHARDSON: Your Honor, and I want to introduce

4 State's One just for purposes of this hearing.

5 THE COURT: All right. Thank you. Mr. Wilson.

6 MR. WILSON, JR.: Your Honor, no objection, Judge.

7 THE COURT: Okay.

8 MS. RICHARDSON: Okay.

9 BY MS. RICHARDSON:

10 Q And why did you write his statement?

11 A I think he said he'd felt more comfortable if I wrote it

12 for him.

13 Q Okay. But then he signed it?

14 A Yes.

15 Q Okay.

16 A Uh-huh.

17 Q And thereafter, and let's just -- in that statement he

18 gave an alibi that he was at a club that night?

19 A Yes.

20 Q And that was from 9 p.m. to 3 a.m.?

21 A Correct.

22 Q And do you recall what time the fire was?

23 A Somewhere in the 1:00 o'clock hour.

24 Q Okay. And with this alibi what else did, did you do

25 regarding that?

- 1 A Well I started to -- I asked him, you know, who'd he see
2 while he was at the club, and I went and talked with them, and
3 if I'm not mistaken the majority said that they did not see
4 him that night.
- 5 Q Okay. And you got some written statements from those
6 individuals?
- 7 A Correct.
- 8 Q Okay. And again, you were working in conjunction with
9 SLED?
- 10 A Yes.
- 11 Q And did you all begin getting some phone records at that
12 point?
- 13 A Yes.
- 14 Q Okay. And was a search warrant issued by Agent Hardee
15 for some additional cell phones from Mr. Collins?
- 16 A Yes. It was.
- 17 Q Okay. And what, what agency assisted you in executing
18 that search warrant?
- 19 A South Carolina Law Enforcement Division.
- 20 Q Okay. And did you have any help from Andrews Police
21 Department?
- 22 A Yes.
- 23 Q Okay. And tell me about that.
- 24 A Well, Officer Nesmith, he's been an officer in that town
25 for a very long time. So he knows where most of the people

1 are, who they are, and so I asked him to kind of take me
2 around to the different people I needed to see.

3 Q Okay. And did you talk with Mr. Collins at another time
4 regarding the possibility of taking a polygraph?

5 A Yes.

6 Q Okay. And did he appear for that?

7 A He did not.

8 Q Okay. And thereafter, was a search warrant executed for
9 the phones?

10 A Yes.

11 Q And Officer Nesmith had the phones?

12 A It seems like he did.

13 Q Okay. And was that a Cellebrite dump, a Cellebrite dump
14 from those phones?

15 A Yes.

16 Q Okay. And at some point were those phones to be returned
17 to him?

18 A Yes.

19 Q Okay. And tell me how you went about getting those
20 phones back to him.

21 A Well, I think he felt more comfortable meeting with
22 Officer Nesmith at the Andrews Police Department. He was
23 familiar with him, I guess, just by being in the town, and he
24 said he was related to him, could be, and so when he went to
25 return the phones we also -- I also met him there along with

1 Agent Hardee.

2 Q Okay. And that was at the Andrews Police Department?

3 A At the town hall.

4 Q At town hall.

5 A Uh-huh.

6 Q Which is connected, I guess, to the police department by

7 --

8 A Correct. It's the same building. It's just partitioned.

9 Q Okay. And tell me what -- how did Mr. Collins arrive at

10 the police department in Andrews or the town hall.

11 A I think he got a ride.

12 THE COURT: Let me, Officer Nesmith got several phones

13 from Mr. Collins at some time?

14 A Well, it was either -- Judge, I'm really -- I don't

15 remember. I, I'm -- I don't know if I set it up where --

16 THE COURT: But they were to be returned and Mr. Collins

17 was to meet Officer Nesmith --

18 A To be in his presence. Right.

19 THE COURT: -- at the, at, at the --

20 A Because he trusted Officer --

21 THE COURT: -- at the City Hall?

22 A Correct.

23 THE COURT: And you went along with Officer Hardee?

24 A Correct.

25 THE COURT: Or went there, also?

- 1 A Yes.
- 2 THE COURT: Okay. All right.
- 3 Q Okay. And so do you recall how Mr. Collins arrived?
- 4 A I think he got a ride.
- 5 Q Okay. And so when he got there what happened then?
- 6 A We asked to speak with him about the incident again, and
- 7 town officials allowed us to use a room that was in town hall
- 8 not being occupied.
- 9 Q Okay. And do you recall what kind of room it was?
- 10 A It was their old courtroom. It's just a regular
- 11 conference room at that point.
- 12 Q All right. Was Mr. Collins taken into custody?
- 13 A No, ma'am.
- 14 Q Was he handcuffed?
- 15 A No.
- 16 Q And did he agree to come speak with you?
- 17 A Yes. He did.
- 18 Q Did he appear to be under the influence of any alcohol or
- 19 drugs?
- 20 A No.
- 21 Q And did he know what you were talking with him about?
- 22 A Yes. He did.
- 23 Q Because you had already talked with him about it one
- 24 time?
- 25 A Correct.

- 1 Q Right?
- 2 A Uh-huh.
- 3 Q And you had set up an appointment to talk with him
- 4 another time?
- 5 A That's right.
- 6 Q Okay. And so he went with the two of you into the
- 7 courtroom in town hall, not in the police department section
- 8 of the building --
- 9 A Correct.
- 10 Q -- is that right?
- 11 A That's correct.
- 12 THE COURT: Was it a courtroom or a conference room?
- 13 A It's a conference room.
- 14 THE COURT: Okay.
- 15 Q Okay.
- 16 MS. RICHARDSON: Okay. If I could mark this as State's
- 17 Two for purposes of this hearing.
- 18 (State's Exhibit Number Two [SLED Miranda Form 6-24-14]
- 19 marked for identification.)
- 20 BY MS. RICHARDSON:
- 21 Q All right. And can you tell me what this is?
- 22 A This is a SLED Miranda form.
- 23 Q Okay. And what -- when is it dated?
- 24 A June 4th, 2014.
- 25 Q At what time?

1 A 10:20 a.m.

2 Q Okay. And who signed that?

3 A Well, it's my signature, Agent Hardee and also the

4 Defendant, Mr. Collins.

5 Q Okay. And who went over these, these Miranda Rights with

6 Mr. Collins?

7 A Agent Hardee did.

8 Q Okay. And were you present when he did that?

9 A I was.

10 Q Okay. And did he -- he signed this form in both of your

11 presence?

12 A Yes.

13 Q And you witnessed it?

14 A That's correct.

15 Q And he initialed each section?

16 A Yes.

17 Q Okay. And were these rights read to him?

18 A Absolutely.

19 Q Okay.

20 MS. RICHARDSON: Your Honor, I'd offer this as State's

21 Two for purposes of this hearing.

22 THE COURT: Mr. Wilson?

23 MR. WILSON, JR.: Without objection for the purpose of

24 this hearing, Judge.

25 THE COURT: All right.

- 1 MS. RICHARDSON: Okay.
- 2 BY MS. RICHARDSON:
- 3 Q And so at that point you went into the conference room?
- 4 A Yes.
- 5 Q All right. Now, was that room wired or to be used as an
- 6 interrogation room or anything like that? Did it have video
- 7 cameras that you could utilize for that purpose?
- 8 A No. It didn't.
- 9 Q Okay. And was any portion of this recorded?
- 10 A Yes. It was.
- 11 Q Okay. Tell me about that.
- 12 A Agent Hardee had a video camera that he used specifically
- 13 for this interview that he had with him.
- 14 Q Okay. And did you have any part in setting that up?
- 15 A No. I didn't.
- 16 Q Okay. And did Mr. Collins agree to talk with you?
- 17 A He did.
- 18 Q And do you recall approximately how long you were there?
- 19 A Approximately three hours.
- 20 Q Okay. And did he express any hunger or thirst during
- 21 that interview?
- 22 A Well, he, you know, he had a soda with him. There were a
- 23 few times he wanted to get up to use the bathroom or smoke
- 24 cigarettes and, and so he did.
- 25 Q Okay. And was he escorted to the restroom?

- 1 A No.
- 2 Q Did you go in the bathroom with him?
- 3 A No.
- 4 Q And was he at any time put in any handcuffs or
- 5 restraints?
- 6 A No.
- 7 Q And was at any time told that he couldn't leave?
- 8 A No.
- 9 Q And did you make any threats to him to get him to talk
- 10 with you?
- 11 A I did not.
- 12 Q And did you -- you took adequate breaks, you said, when
- 13 he requested breaks?
- 14 A Yes.
- 15 Q Okay. And was there a time when he requested a break
- 16 that he didn't take one?
- 17 A Could have been.
- 18 Q Okay. And but was he denied access to use -- he had a
- 19 telephone on him?
- 20 A Yes.
- 21 Q Okay. Was he able to use his telephone?
- 22 A He cut it off voluntarily, but yeah, he could have.
- 23 Q Okay. All right. But he actually answered a call before
- 24 he did that?
- 25 A Yes.

- 1 Q All right. He was able to go to the bathroom?
- 2 A Absolutely.
- 3 Q And had something to drink?
- 4 A Absolutely.
- 5 Q Were there any promises made to get him to talk to you?
- 6 A You know, for the purposes of the interview I told him
- 7 that no matter what he told me he could -- he was going to go
- 8 home that particular day.
- 9 Q Either way?
- 10 A Either way.
- 11 Q Whether he talked to you or not?
- 12 A Correct.
- 13 Q Okay. And what about any hopes of assistance in the
- 14 prosecution of the case?
- 15 A Well, certainly, you know, if he gave any information
- 16 that led to the case being solved, then we would certainly ask
- 17 for leniency of any type if we could.
- 18 Q Okay. Were any promises of leniency made?
- 19 A No.
- 20 Q Okay. And did it -- at any time he request to leave?
- 21 A Not that I recall.
- 22 Q Okay. And in fact, he actually said he was going to try
- 23 to help you solve your crime?
- 24 A That's correct.
- 25 Q Is that right? And throughout he expressed a willingness

1 to continue to talk with you?

2 A Yes.

3 Q Now, there is some portion of the interview that is not

4 on tape, and you -- you've reviewed that; is that right?

5 A I have.

6 Q Okay. And was that done out of any sort of purposeful

7 intent on your part?

8 A No, ma'am.

9 Q Okay. And do you know what happened in that regard?

10 A I don't know.

11 Q Okay. And during the period of time when the tape was on

12 --

13 A Uh-huh.

14 Q -- were any threats made to Mr. Collins?

15 A No.

16 Q Was his ability to leave restricted?

17 A No.

18 Q Was he promised anything else?

19 A No, ma'am.

20 Q And I'm going to show you -- this is actually three CDs

21 in one case.

22 MS. RICHARDSON: Do you want to mark them separately or

23 just as three, so just all three.

24 (State's Exhibit Number Three [DVDs, Statement of

25 Defendant] marked for identification.)

1 MS. RICHARDSON: And the cover's labeled attachment 30,
2 just for the record, and then it contains three DVDs.

3 BY MS. RICHARDSON:

4 Q Do you recognize these?

5 A I do.

6 Q Okay. And how do you, how do you recognize them?

7 A Well, you know, my signature's here which means I
8 reviewed them and those are three videos or three CDs that
9 contain the three-hour video that we had --

10 Q Okay.

11 A -- with the Defendant.

12 Q And that's an accurate reflection of what was recorded
13 during the interview?

14 A That is.

15 Q It hasn't been altered or amended in any way?

16 A No. It hasn't.

17 MS. RICHARDSON: And Your Honor, I'd offer these into
18 evidence for purposes of this hearing.

19 MR. WILSON, JR.: Without objection for this hearing,
20 Judge.

21 THE COURT: All right.

22 MS. RICHARDSON: And Your Honor, we're at the point now
23 that we would publish them, and I don't know if you want us to
24 go ahead and then publish them at this hour.

25 THE COURT: No. Why, why don't we try to get the

1 officer's testimony in place and perhaps I can go look at
2 those, if Mr. Wilson has no objection, over the evening hour.

3 MR. WILSON, JR.: Judge, my --

4 THE COURT: And I understand if you, if you want me to
5 review them here, I mean, so that you can comment on them or
6 whatever. That's perfectly all right.

7 MR. WILSON, JR.: Yeah. My big concern would be having
8 them played in, in front of the entire tribunal so that
9 there's no ambiguity about what I --

10 THE COURT: That's not your concern, that's what you
11 would like.

12 MR. WILSON, JR.: That's right.

13 THE COURT: Okay. All right.

14 MR. WILSON, JR.: That's what I'd like. Yeah.

15 THE COURT: Well, we, we can do that, but could we go
16 ahead and get the officer's testimony out the way or do you
17 need to play them before you get the officer -- you cross
18 examine this officer?

19 MR. WILSON, JR.: I would need to play it before I cross
20 examine him, Judge. So --

21 THE COURT: Okay. Well, I, I certainly don't want to
22 stay here until, you know, 9:00 o'clock tonight.

23 MS. RICHARDSON: True.

24 THE COURT: So, you know, we're going have to do what
25 we're going to have to do. This is -- do we have a problem

1 with this? The case is going forward regardless of my rulings
2 on these evidentiary matters. So when I bring that jury in in
3 the morning what I would suggest that we do is go ahead and
4 select the jury. I would anticipate -- they're coming in at
5 9:30. It could be easily 10:30, 11:00 o'clock before we get a
6 jury selected, right? Okay. You got three hours on this one,
7 and but you said there's some other statements?

8 MS. RICHARDSON: Your Honor, that, that was the paper
9 statement, the written statements.

10 THE COURT: Is this the only video I'm going to have to
11 watch?

12 MS. RICHARDSON: Yes, Your Honor. This is the only
13 videos in --

14 THE COURT: Is that right?

15 MR. WILSON, JR.: Yes, sir.

16 MS. RICHARDSON: Yes, sir.

17 MR. WILSON, JR.: And the statement, the third statement
18 is actually at the end of the video.

19 THE COURT: Okay.

20 MR. WILSON, JR.: Yeah.

21 THE COURT: So --

22 MS. RICHARDSON: It's just where it's reduced to writing.

23 THE COURT: All right. So is that the only Denno hearing
24 I'm going to have? Is this the only Denno hearing I'm going
25 to have?

1 MS. RICHARDSON: Yes, sir.

2 MR. WILSON, JR.: Yes, sir.

3 THE COURT: And I got to hear from Officer Hardee?

4 A Yes.

5 MS. RICHARDSON: Yes, Your Honor.

6 THE COURT: Officer Hardee as well? So I'm, I'm just
7 considering when I need to bring the jury back. I, I hate to
8 have them come in at 9:00 o'clock and sit till 3:00 o'clock or
9 4:00 o'clock in the afternoon. I'd --

10 MS. RICHARDSON: Is there any way that we could get in
11 touch with them and have them come in the afternoon instead of
12 in the morning?

13 THE COURT: We've got 45 jurors.

14 THE CLERK: I need to get on that right now though before
15 they leave. They got the phone numbers downstairs.

16 THE COURT: I, I just don't -- I'm telling you, at 5:00
17 o'clock it ain't going to work. Trying to get a hold of 45
18 jurors in the evening hours just doesn't work. So why can't
19 we pick the jury in the morning? It sounds to me like these
20 hearings may take the balance of the day. If it's 11:00
21 o'clock when we get done, we got cross examination of this
22 officer. We got another officer that's got to testify, be
23 cross examined, following three hours of tape. Really? I
24 mean, we're going to be 4:00 o'clock tomorrow afternoon any
25 way you cut it. So I mean, I'm open to suggestions, but we

1 can tell the jury in the morning, "False alarm, you didn't
2 need to be here, want you to come back at 3:00 o'clock in the
3 afternoon and maybe we'll be done and maybe we can pick a
4 jury," or we pick them in the morning, we send them home and
5 we complete these hearing. You know, I'll do it any way you
6 want to do it.

7 MR. WILSON: Judge, I'll stay tonight if, if the Court
8 wants to hear this tonight. I don't have an issue listening
9 to this. I think if we publish it we'll save a lot --

10 THE COURT: The Court don't want to hear it tonight.

11 MS. RICHARDSON: Yes, sir.

12 THE COURT: I don't think anybody else does either. I
13 mean, I'm just not prepared to -- wasn't anticipated. Let's
14 do it that way. We got the jury coming in, and you know, it
15 would be great if we could contact 45 jurors at this late
16 hour, but you're not going to do it. You're just not going to
17 be able to get in touch with them.

18 (Clerk and Court confer.)

19 MS. RICHARDSON: Well, and Ms. -- I, I don't know if she
20 would prefer that because of the per diem or not.

21 THE COURT: Well, let's, let's just do it that way.
22 We'll have the jury in here at 9:00 or 9:30 in the morning.
23 We will -- we're going to pick a jury. Maybe we can -- is
24 there going to be much argument over vore dire in this matter?

25 MR. WILSON, JR.: The only I --

1 MS. RICHARDSON: Not from --

2 MR. WILSON, JR.: Go ahead. I'm sorry.

3 MS. RICHARDSON: Not from the State I don't think. I
4 haven't seen a proposed vore dire.

5 MR. WILSON, JR.: We have a proposal just for two
6 questions, Judge. There are two simple questions regarding
7 and one could be a moot issue. We didn't realize that the
8 State wasn't going to go forward with the murder. So one
9 question could be a moot issue, just could be one question
10 about arson, victims, that kind of thing.

11 THE COURT: Well, let's get a jury picked in the morning,
12 and if we have to tell them to come back at 3:00 o'clock to do
13 openings and, and initial instruction, fine. We'll just do it
14 that way. Okay. Tell them we're going to give them a long
15 break. I don't know any other reasonable way to do it.
16 That's just how we got to do it. Okay. So, Alicia, you want
17 to put up your Officer Hardee?

18 MS. RICHARDSON: I don't know that that would work with
19 the cross examination.

20 THE COURT: Okay. You want to cross examine him before
21 you do Hardee?

22 MR. WILSON, JR.: Yes.

23 THE COURT: Okay. You're being difficult, Ralph.

24 MR. WILSON, JR.: Judge, I'm just doing my job. I
25 promise you that's it.

1 THE COURT: I'm just picking at you, Ralph.

2 MR. WILSON, JR.: I promise you that.

3 THE COURT: I hope you understand that.

4 MS. RICHARDSON: Yes, sir. I do. I do, Judge.

5 THE COURT: Okay.

6 MS. RICHARDSON: Your Honor, I'm sorry. I just didn't
7 realize the competency evaluation hearings would take as long
8 as they did.

9 THE COURT: Well, they are what they are.

10 MS. RICHARDSON: They are.

11 THE COURT: And you know --

12 MS. RICHARDSON: And they're kind of unusual for us to
13 have actually contested ones so.

14 THE COURT: They are what they are, and we just got to
15 deal with it. Okay. If we go into next week we go into next
16 week. I mean, that's as simple as that. Okay. We've got to
17 do what -- it's 5:00 o'clock now. We'll do what we have to
18 do. Okay.

19 MR. WILSON, JR.: Yes, sir.

20 THE COURT: Okay. All right. We'll see you back in the
21 morning at 9:30. I'm usually here by about 9:00 o'clock if
22 you got any issues you want to talk about. Okay?

23 MR. WILSON, JR.: Yes, sir.

24 THE COURT: All right.

25 (Adjourned for the day.)

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1 (On the record, November 6, 2018. The following takes
2 place outside the presence of the jury venire.)

3 THE COURT: All right. Good morning. Thank you. Thank
4 you. Please just be seated.

5 All right. I think this morning we were going to get our
6 jury seated. Then we were going to go right into the Jackson
7 v. Denno hearing or continue the Jackson v. Denno hearing. Is
8 that right? Anything changed since then?

9 MS. RICHARDSON: No, Your Honor.

10 MR. WILSON, JR.: Nothing, Your Honor.

11 THE COURT: All right. Where's our jury panel? Are they
12 outside the door there?

13 BAILIFF: Yes, sir.

14 MS. RICHARDSON: Yes, sir.

15 THE COURT: Okay. Mr. -- before I bring them in, Mr.
16 Wilson, you had a -- an additional question other than my
17 usual voir dire for the jury?

18 MR. WILSON, JR.: Yes, Your Honor. May I approach,
19 Judge?

20 THE COURT: Certainly. Could I have the, the
21 indictments, please? Thank you.

22 MR. WILSON, JR.: Thank you, Judge.

23 THE COURT: Have you seen this?

24 MS. RICHARDSON: No, Your Honor.

25 THE COURT: Two questions, I believe you said you -- we

1 weren't even going to talk about the first one which was
2 anyone lost a family member due to a death in a fire?

3 MR. WILSON, JR.: Well, Judge, because it's, because it's
4 arson first degree, Judge --

5 THE COURT: Okay.

6 MR. WILSON, JR.: -- I think the, the question is still
7 pertinent.

8 THE COURT: Okay. You see those two questions there, Ms.
9 Richardson? Anyone -- any member of the jury panel lost a
10 family member due to death in a fire, any member of the jury
11 panel, jury or close family members the victim of arson?

12 MS. RICHARDSON: Your Honor, I'd just ask that number two
13 also ask if member of the jury or close family been the victim
14 of an arson or been charged in an arson.

15 THE COURT: Mr. Wilson?

16 MR. WILSON, JR.: No objection, Judge.

17 THE COURT: All right. Now, as I, as I understand it,
18 we're going forward on arson in the first degree and
19 conspiracy.

20 MS. RICHARDSON: Yes, Your Honor.

21 THE COURT: Right. Okay. So --

22 MS. RICHARDSON: And Your Honor, I do have the State's
23 witness list --

24 THE COURT: Uh-huh.

25 MS. RICHARDSON: -- and I think the Defense also has one.

1 I'd ask that we have these marked as Court's Exhibits both the
2 State's and the Defense.

3 THE COURT: All right. I'm going to give the clerk back
4 that one. Okay? So we're going to --

5 MS. RICHARDSON: I do have a proposed order regarding the
6 competency hearing yesterday.

7 THE COURT: Okay.

8 MS. RICHARDSON: It's the statutory form. Mr. Wilson has
9 reviewed it.

10 THE COURT: All right. May I see it? Thank you. All
11 right. Today is the 6th; right?

12 MS. RICHARDSON: Yes, Your Honor.

13 THE COURT: Okay.

14 (Court reporter and Court confer.)

15 THE COURT: Okay. So we're going forward on indictments
16 number ending -- indictments ending in 803 and 543; correct?

17 MS. RICHARDSON: Indictment ending in 804 and 803.

18 THE COURT: Okay. Let me see. 804 and 803, that's
19 right. Okay. Anything else before -- do you have a witness
20 list there, Ms. Richardson? How about it, Mr. Wilson?

21 MR. WILSON, JR.: Your Honor, we did hand it to the
22 clerk, Judge.

23 THE COURT: You, you, you have one?

24 MR. WILSON, JR.: Yes, Your Honor.

25 THE COURT: The clerk has a witness list?

1 (Clerk and Court confer.)

2 MS. RICHARDSON: No, I mean --

3 (Reporter and Court confer.)

4 MR. WILSON, JR.: We have an extra, Judge.

5 THE COURT: Have you got an extra one, Ralph?

6 MR. WILSON, JR.: Yes, yes, Your Honor.

7 (Reporter and Court confer.)

8 THE COURT: Okay. Thank you.

9 MR. WILSON, JR.: Thank you. Your Honor, just one, one
10 thing, I will at the appropriate time, if the Court's willing,
11 I do have a motion. Once a Judge, I think the Judge has
12 signed the, the order regarding the competency hearing, I will
13 have a motion for reconsideration.

14 THE COURT: I, I have already signed it. You want to
15 make your motion to reconsider?

16 MR. WILSON, JR.: Very brief, Judge.

17 THE COURT: Okay.

18 MR. WILSON, JR.: I am asking for the Court to reconsider
19 its order regarding the competency, finding my client to be
20 competent, Judge, in light of obviously the MOCA test, which
21 we think is very compelling in this matter, obviously, in
22 light of also the youthful and tender experience of the
23 primary evaluator in this matter, considering the magnitude of
24 these charges that were layed against my client as well, and
25 we are asking for the Court in the alternative to order an

1 independent evaluation, independent of the actual evaluators
2 who made this assessment because of the low score on the MOCA
3 exam. I just want to have that as part of the record, Judge.
4 That would be all, Judge.

5 THE COURT: All right. What do you say about that, Ms.
6 Richardson?

7 MS. RICHARDSON: Your Honor, I believe you considered all
8 of these issues yesterday, and I'd ask that the order remain
9 as, as, as you ordered it.

10 THE COURT: All right. Mr. Wilson, I would respectfully
11 deny your request for reconsideration or further examination.
12 As I indicated yesterday, I had an opportunity to review in
13 detail this order -- this report prior to actually hearing
14 from the assessors. As you may have noticed, I myself engaged
15 in, in questioning, which is rather unusual, but something
16 that I did to make sure that I understood exactly what they
17 were saying and what their positions were. Giving every
18 benefit I could to the Defendant, I believe that he, and I
19 still believe that he is certainly competent to stand trial in
20 this matter and provide significant assistance to you in his
21 defense, and I am going to deny your motion, as well as your
22 motion for further examination. There was no indication -- I
23 asked specifically if there was any indication of mental
24 retardation or anything like that because I wanted to make
25 sure that we didn't need to do a joint DDSN and Department of

1 Mental Health evaluation. I don't think that there's any need
2 for any further evaluation in this matter. I am certain and
3 confident that he is competent.

4 Do I have that witness list yet or not? I keep saying
5 somebody's going to hand it to me, but I don't have it.

6 MR. WILSON, JR.: Yes. Yes, ma'am. I thought the clerk
7 -- thank you, Your Honor.

8 THE COURT: Okay. All right. Thank you. I just wanted
9 to be able to compare it and see who may be on this list and
10 who may not. Okay. Looking at your list, Mr. Wilson, you
11 have Randy Collins, who's the Defendant. Okay. Was Stephen
12 Brown on your list, Ms. Richardson?

13 MS. RICHARDSON: No, Your Honor.

14 THE COURT: Okay. So let me add him. I like to do it as
15 one list. How about Melvyn Garrett?

16 MS. RICHARDSON: Yes, Your Honor.

17 THE COURT: He's on your list?

18 MS. RICHARDSON: He is.

19 THE COURT: Scott Hardee?

20 MS. RICHARDSON: He's on my list.

21 THE COURT: Brenda Lambert?

22 MS. RICHARDSON: On my list.

23 THE COURT: Abby Mulay?

24 MS. RICHARDSON: No, Your Honor.

25 THE COURT: That was the assessor?

1 MS. RICHARDSON: Yes, Your Honor, and during the break
2 with -- and I discussed this with Mr. Wilson, I did retrieve
3 the exhibit and have it, which is State's Number Three, and
4 have got the first disk ready to begin.

5 THE COURT: Okay. This officer need to sit up here? You
6 need -- you want to sit up here?

7 A Well, you're a pretty good looking fellow, Judge. I
8 don't mind.

9 THE COURT: Go ahead. Well, if you want --

10 MS. RICHARDSON: Well, I don't know if that, you know,
11 wants to sit in here.

12 THE COURT: Well, what -- I mean, you, you don't really
13 -- he's not going to question you.

14 A Yes, sir.

15 THE COURT: He's not going to -- you're still under oath
16 and Mr. -- we'll bring you back up here. Mr. Wilson, you
17 don't have any -- he's not going to have to sit up here; is
18 he?

19 MR. WILSON, JR.: No, Your Honor. Judge, no.

20 THE COURT: You know, we don't have a jury.

21 A Thank you.

22 THE COURT: And let's, let's just try to do it that way.
23 Okay?

24 A Excellent.

25 MS. RICHARDSON: Okay.

1 THE COURT: I think you'd be more comfortable back there.
2 All right.

3 MS. RICHARDSON: All right. And Judge, just let me know
4 if there's any problem with the audio level.

5 (State's Exhibit Number Three played in open court.)

6 THE COURT: Who's speaking?

7 MS. RICHARDSON: Do you want to answer this?

8 THE COURT: Just for the record, who's speaking now?

9 MS. RICHARDSON: Your Honor, it's Agent Scott Hardee with
10 SLED and Melvyn Garrett, who was with the Georgetown County
11 Sheriff's Office and then the Defendant, Randy Collins.

12 THE COURT: Okay. All right. I, I just wanted to make
13 -- get that clear in my mind. All right. Go ahead.

14 (State's Exhibit Number Three played in open court.)

15 MS. RICHARDSON: That's the end of the first disk.

16 THE COURT: How much more is there to this particular
17 interview?

18 MS. RICHARDSON: I'd say we're about halfway.

19 THE COURT: Okay. Well, let's break for lunch then.
20 It's about 1:15.

21 MS. RICHARDSON: Okay.

22 THE COURT: Let's come back about -- it's, it's 12:15 or
23 approximately. Let's come back about 1:30. Okay?

24 MS. RICHARDSON: Okay.

25 THE COURT: Take an hour and 15 minutes and let's come

1 back and we'll conclude that, and then, then there's another
2 tape?

3 MS. RICHARDSON: There's another disk, but this is all
4 part of the same interview.

5 THE COURT: Okay.

6 MS. RICHARDSON: It's just this one interview.

7 THE COURT: Are we talking about one interview or two
8 separate interviews?

9 MS. RICHARDSON: This is one interview that -- it's just
10 that they had to put it on three disks.

11 THE COURT: Okay.

12 MS. RICHARDSON: It's one interview and then it was
13 reduced to writing.

14 THE COURT: Okay. All right. Okay. All right. Let's
15 take a little bit of time for lunch and then we'll come right
16 back and complete it.

17 OFF THE RECORD

18 (On the record. The following takes place outside the
19 presence of the jury.)

20 THE COURT: All right. Alicia, you ready?

21 MS. RICHARDSON: Yes, Your Honor.

22 THE COURT: Fire it off.

23 MS. RICHARDSON: And the second part of the interview,
24 the second disk is labeled DVD 3. He got -- it's just --

25 THE COURT: All right.

1 MS. RICHARDSON: It was mistakenly labeled like that.

2 THE COURT: Let, let me, before we start, let me ask you
3 something, at the -- yesterday you introduced a Miranda form,
4 I believe?

5 MS. RICHARDSON: Yes, Your Honor.

6 THE COURT: Okay. Was that for the second part or the
7 later part of this or was it to do with the first part of the
8 interview and it just wasn't on the tape?

9 MS. RICHARDSON: The first part of the interview and
10 wasn't on the tape.

11 THE COURT: Okay. So it was done prior to what I just
12 watched?

13 MS. RICHARDSON: Yes, Your Honor. I believe, and if
14 you'll notice on the form it is -- has a date and time of
15 10:20 a.m.

16 THE COURT: Okay.

17 MS. RICHARDSON: And it's 10:24 a.m. is the time they
18 give for when the interview starts.

19 THE COURT: Okay. All right. I, I just wanted it to be
20 clear.

21 (State's Exhibit Number Three played in open court.)

22 MS. RICHARDSON: Your Honor, is that making a humming
23 noise? Can you all hear that?

24 THE COURT: It doesn't bother me. I can --

25 MS. RICHARDSON: Okay. I --

1 THE COURT: Hear a little bit of a hum, but --
2 MS. RICHARDSON: Here it goes. Here it goes.
3 THE COURT: I think it's gone.
4 (State's Exhibit Number Three played in open court.)
5 MS. RICHARDSON: I'm going to pause this. There appears
6 to be a glitch with the computer itself.
7 THE COURT: It seems, it seems to be out of sync.
8 MS. RICHARDSON: It does. It's -- it -- the CD seems to
9 be dragging in the holder. Let me -- it may just need to be
10 cleaned off.
11 (State's Exhibit Number Three played in open court.)
12 MS. RICHARDSON: Your Honor, that's the end of the second
13 disk, which was labeled DVD 3, and now I'll play the last
14 disk, which is labeled DVD 2.
15 (State's Exhibit Number Three played in open court.)
16 THE COURT: Is that the conclusion?
17 MS. RICHARDSON: One more, Your Honor.
18 THE COURT: Okay.
19 MS. RICHARDSON: On -- oh, it is on the same disk.
20 It just was broken into two parts.
21 (State's Exhibit Number Three played in open court.)
22 MS. RICHARDSON: It's still running, Your Honor.
23 THE COURT: Okay. All right.
24 MS. RICHARDSON: It's almost over.
25 (State's Exhibit Number Three played in open court.)

1 MS. RICHARDSON: Do you want to take a break or keep
2 going, Your Honor?

3 THE COURT: Let's just go on with it. Okay.

4 MS. RICHARDSON: Okay. If I could have Mr. Garrett back
5 on the stand.

6 THE COURT: I tell you what, let's, let's, let's take
7 about 10 minutes here, just a, just a quick one. All right?
8 Because I know that Mr. Wilson's cross examination will
9 probably be lengthy. Okay?

10 OFF THE RECORD

11 (On the record. The following takes place outside the
12 presence of the jury.)

13 THE COURT: Thank you. Okay. Call your witness.

14 MS. RICHARDSON: Your Honor, before we begin back,
15 there's a situation that occurred in the hallway that we need
16 to address and we also need to address the issue of whether
17 the Defendant will continue out on bond considering that a
18 jury has already been sworn.

19 THE COURT: Okay. Well, what problem comes up now?

20 MS. RICHARDSON: The, the minor victim's father and the
21 Defendant encountered each other on the way to the bathroom
22 into the elevators. There was some sort of exchange that the
23 Defendant has taken as a threat. Of course, the Defendant's
24 father -- the victim's father says he was approached first.
25 Deputies intervened. There was nothing that got physical.

1 THE COURT: Well, let me hear from Mr. Wilson. He seems
2 to be the one that's the offended party. Is that right, Mr.
3 Wilson?

4 MR. WILSON, JR.: Judge, all I know is this, I wasn't
5 there when this all happened. I did -- my client came in the
6 bathroom after I went in the bathroom and said that he had
7 been threatened. He says that someone, and I don't know who
8 it was, I would assume that the Solicitor has identified the
9 person, that the person said to him, "You're going to get
10 yours," or "You're going to get yours," or "You're going to
11 get yours" -- somehow -- something to that effect. That's
12 what he told me. Now, I've discussed it with deputies. I've
13 discussed it rather briefly with the Prosecutor. I am
14 obviously concerned if there is some form of threat to him,
15 but again, I agree with the deputies. I think you can take
16 that any way, any number of ways, but again, it's something
17 that happened. My client said it to me, and I'm telling the
18 Court.

19 THE COURT: Well, did he offer any violence to him or
20 anything like that?

21 MR. WILSON, JR.: Judge, again, it's for the
22 interpretation of -- his interpretation. I, I don't know if
23 he offered violence. I wasn't there. I can't tell you that.
24 I just know all he said to me in the bathroom was, "I got
25 threatened." He went on about it for some time as to while I

1 was in the bathroom, actually until I left the bathroom.

2 MS. RICHARDSON: And I heard the comment.

3 THE COURT: Well, what do you want me to do, Mr. Wilson?

4 MR. WILSON, JR.: Judge, I, I -- Judge, I think at this
5 point in time, you know, just an admonishment to everyone, you
6 know, just stay clear of each other. I think that's
7 appropriate. The, the, the law enforcement agents have been,
8 you know, obviously aware of it. They know what's going on.
9 They'll watch out for it.

10 THE COURT: All right. Let, let -- Ms. Richardson, who
11 is the victim's father?

12 MR. COOMBS: Sir, may I stand up?

13 MS. RICHARDSON: Michael Coombs.

14 THE COURT: Well, let me make something real clear, sir,
15 I won't tolerate it. I will not tolerate it. If you think
16 for one moment because you're the victim's father I will not
17 put you in jail, you are mistaken. I don't know who initiated
18 this. I don't care. It seems to have been a minor
19 altercation, but I will deal with it if it reoccurs. There is
20 no question about it. I want everybody to be aware of that.

21 MR. COOMBS: I am, sir.

22 THE COURT: All right, sir. Thank you.

23 MR. COOMBS: May I say something, please?

24 THE COURT: Yes, sir.

25 MR. COOMBS: I was going to the elevator, he -- oh, I'm

1 sorry. I was going to the elevator, and he turned around to
2 me and said, "I'm sorry." I just said, "Sorry?" I said,
3 "You're going to get yours." That was the end of it.

4 THE COURT: Well, I don't want you -- do not speak.

5 MR. COOMBS: I meant the judicial system is going to take
6 care of him. I didn't mean any threats now.

7 THE COURT: I don't want any, any contact.

8 MR. COOMBS: It won't happen again. I can promise you
9 that.

10 THE COURT: All right. Thank you, sir.

11 MR. COOMBS: Thank you.

12 MS. RICHARDSON: And Your Honor, before the end of the
13 day I would ask that we address, you know, since the jury's
14 been sworn the issue of bond on Mr. Collins.

15 THE COURT: Well, the jury has been sworn. The case has
16 started and he's under arrest, Mr. Wilson. Thank you. Okay.

17 MR. WILSON, JR.: Your Honor, you are going to revoke his
18 bond?

19 THE COURT: No, sir. His bond is revoked upon the
20 beginning of a trial.

21 MR. WILSON, JR.: But his bond can be reinstated, Judge,
22 by the Court during that time, that it can keep him out on
23 bond to assist me as much as he possibly can with his trial,
24 Judge.

25 THE COURT: Now, in, in -- where do you get that? Unless

1 his bondsman agrees to it, when he is delivered to the court
2 the bondsman is relieved of any further obligation.

3 MR. WILSON, JR.: Yes, Your Honor. He --

4 THE COURT: This not federal court where the bondsman is
5 on the hook until the jury returns a verdict. In state court
6 the bondman's relieved of his duty upon the swearing of the
7 jury.

8 MR. WILSON, JR.: Judge, he actually posted his own bond
9 with property, Judge.

10 THE COURT: What property has been posted and what kind
11 of bond is he on?

12 MR. WILSON, JR.: He's on a \$35,000 surety bond, Judge.

13 THE COURT: And he has that kind of property?

14 MR. WILSON, JR.: Yes, sir. He has -- his brother, I
15 apologize, posted the property, but he does own property in, I
16 believe, Andrews, Your Honor.

17 THE COURT: Well, well, his brother posted it?

18 MR. WILSON, JR.: Yes, sir.

19 THE COURT: All right. Well, if his brother would appear
20 I would hear you on that matter, but until that time he is, of
21 course, his, his -- he no is -- no longer on bond. Okay.
22 Thank you.

23 MR. WILSON, JR.: Thank you, Your Honor. Thank you,
24 Judge.

25 THE COURT: All right.

1 MS. RICHARDSON: Your Honor, I do have a copy of that.

2 It is a \$65,000 and it's Alexander and Renee Collins.

3 MR. WILSON, JR.: That's his brother, Judge.

4 THE COURT: All right. Let's, let's proceed.

5 MS. RICHARDSON: If I could have this marked.

6 BY MS. RICHARDSON:

7 Q And if I can show you what's been marked as State's
8 Exhibit Number Eight for purposes of this hearing. Do you
9 recognize that?

10 A I do. This is a statement that I wrote for Mr. Collins.

11 Q And that's the one we just watched --

12 A That's correct.

13 Q -- being done at the end of the tape?

14 A That is correct.

15 Q All right. And that's an accurate representation, no
16 changes or alterations?

17 A That is my handwriting, no changes.

18 Q Okay.

19 MS. RICHARDSON: And Your Honor, I'd offer this as
20 State's Eight.

21 THE COURT: Mr. Wilson, as for purposes of this hearing?

22 MR. WILSON, JR.: For this hearing no objection, Judge.

23 THE COURT: It's admitted. Thank you.

24 (State's Exhibit Number Eight [Written Statement of
25 Collins] admitted for purposes of Jackson v. Denno hearing.)

1 MS. RICHARDSON: And Your Honor, I'm going to hand that
2 up in case you want to review it.
3 BY MS. RICHARDSON:
4 Q All right. So, Investigator Garrett, apparently -- now,
5 did you, did you run the audiovisual equipment?
6 A I did not.
7 Q Okay. Who did that?
8 A Agent Hardee did.
9 Q Okay. And do you know what type of equipment that it
10 was?
11 A I don't recall. It was a camcorder sort of a device.
12 Q Okay. And so obviously there was at least one break
13 right in the middle of the interrogation; is that right?
14 A That's right.
15 Q Okay. And then there was another break for a bathroom
16 break; is that right?
17 A That's correct.
18 Q Okay. And was the -- and obviously you all agreed to
19 pause it for the bathroom break?
20 A Yes.
21 Q But the other pause in the video can you -- do you know
22 anything about that?
23 A I do not, and I can't tell you what happened.
24 Q Okay. Was that done intentionally on your part?
25 A No, ma'am.

1 Q Okay. And were any threats, coercions or promises made
2 while you were off video?

3 A Absolutely not.

4 Q Okay. And was it done intentionally?

5 A No. It wasn't.

6 Q Okay. And you do discuss in the video talking with the
7 Solicitor?

8 A Yes.

9 Q You kept your end of that bargain?

10 A I did.

11 Q Okay. Did at any time Mr. Collins ask for any food or to
12 end the interview?

13 A No. He didn't.

14 Q Okay. And was there anything that occurred that made you
15 think that he was not doing that freely and voluntarily?

16 A No.

17 Q Let me also show you --

18 MS. RICHARDSON: And Your Honor, we have stipulated to
19 this exhibit, State's Exhibit Number Four. Right?

20 MR. WILSON, JR.: Without objection for this purpose,
21 Judge.

22 THE COURT: All right.

23 (State's Exhibit Number Four [Aerial Map] admitted for
24 purposes of Jackson v. Denno hearing.)

25 BY MS. RICHARDSON:

- 1 Q And this is a map, an aerial map, GIS map of the Town of
2 Andrews?
- 3 A Yes.
- 4 Q Okay. And could I -- on this can you show us where the
5 crime scene is, the fire?
- 6 A It's here, Number 10 James Drive.
- 7 Q Okay. And we heard Mr. Collins talking about parking on
8 the back street. Can you show me where James Street Drive is,
9 the --
- 10 A James Drive is here.
- 11 Q Okay.
- 12 A And the back street is behind it, Laurie.
- 13 Q Okay. And so the description was them being parked on
14 which street?
- 15 A On Laurie Street.
- 16 Q And going where?
- 17 A Through the wooded area here to the trailer.
- 18 Q Okay. And there was some talk about a house back there?
- 19 A I believe he was referring to the brick house which is on
20 this side of the bushes.
- 21 Q Okay.
- 22 THE COURT: That would have been Laurie Street side?
- 23 A Yes, sir.
- 24 THE COURT: Thank you.
- 25 Q All right. I want to show you also what has been marked

1 as State's Exhibit Number Five for identification.

2 MR. WILSON, JR.: Identification purposes only, Judge.

3 THE COURT: All right.

4 Q And do you recognize this?

5 A Yes. This is 10 James Drive.

6 Q Okay. And is this an accurate depiction of the way the

7 property appeared --

8 A Yes. Yes. It is.

9 Q -- on March 29th of 2014?

10 A Yes. It is.

11 Q Okay.

12 MS. RICHARDSON: Your Honor, at this time I'd offer this

13 exhibit into evidence for purposes of this hearing.

14 THE COURT: I think he just --

15 MR. WILSON, JR.: Without objection, Your Honor.

16 MS. RICHARDSON: Okay.

17 THE COURT: Okay.

18 BY MS. RICHARDSON:

19 Q All right. So we heard some description about them

20 coming around.

21 A Uh-huh.

22 Q Can you just kind of demonstrate to the Judge because

23 there was a piece of paper that was being used in the --

24 A Certainly. Certainly.

25 Q Okay. So show me what you were talking about.

1 A This is the front of the trailer. James Drive would be
2 on this side of the trailer. Laurie Street is behind the
3 trailer along with the wooded area. So he walked through a
4 path from Laurie to the back of this trailer and around the
5 front here.

6 Q Okay. And the window that was being discussed?

7 A I'm assuming it's here or was here.

8 Q Okay. And did you know that before then?

9 A Not at the time I didn't.

10 THE COURT: You're indicating the burned out area?

11 A Yes, Judge.

12 Q Okay. And obviously there's a front door?

13 A Yes.

14 Q Okay. Let me show you what's been marked as State's
15 Exhibit Number Six for identification. Do you recognize that?

16 A Yes. This is the rear of the trailer.

17 Q Okay. And is that the condition it was in, an accurate
18 depiction of it on March 29th, 2014?

19 A Yes. It is.

20 Q And obviously it shows the damage from the fire?

21 A Yes.

22 MS. RICHARDSON: Your Honor, again, I'd offer State's Six
23 for purposes of this hearing.

24 MR. WILSON, JR.: Without objection, Your Honor.

25 MS. RICHARDSON: All right.

1 (State's Exhibit Number Six [Photograph] admitted for
2 purposes of Jackson v. Denno hearing.)
3 BY MS. RICHARDSON:
4 Q All right. And so what are we looking at here?
5 A Now, this is the back of the trailer and this would be
6 the rear door.
7 Q Okay. So James Street would be in which direction?
8 A It would be toward your hand.
9 Q Okay. And that's the front of the photograph?
10 A That's correct.
11 Q And then so Laurie Street would be --
12 A Behind it.
13 Q Okay. And I heard you talking about the swimming pool --
14 A Uh-huh.
15 Q -- and the electric pole and that's --
16 A Right.
17 Q Okay. And so is this the corner that Mr. Collins was --
18 A Described?
19 Q -- talking about?
20 A It is.
21 Q Okay. All right. And again, you received an anonymous
22 tip on, I believe, it was April 7th?
23 A Yes, ma'am.
24 Q Okay. And that tip indicated that Mr. Collins was
25 involved?

- 1 A Absolutely.
- 2 Q And Ms. Cohen had purchased kerosene --
- 3 A Uh-huh.
- 4 Q -- at Super Chick and that another individual, Benjamin
- 5 Brown or Mano was also involved?
- 6 A That's correct.
- 7 Q James Miller was not mentioned in that tip?
- 8 A He was not.
- 9 Q Okay. To corroborate and follow up on that tip, you went
- 10 to Super Chick?
- 11 A Absolutely. I spoke with the clerk who actually sold the
- 12 kerosene to Marissa Cohen. I spoke with Benjamin Brown who,
- 13 of course, claimed he wasn't involved, and then I spoke with
- 14 Mr. Collins as well.
- 15 Q Okay. And that's when you got that first statement from
- 16 Mr. Collins, which is State's Exhibit One.
- 17 THE COURT: And as I recall that was the statement that
- 18 was just taken out in the street?
- 19 A Yes, Judge.
- 20 THE COURT: All right.
- 21 A It was taken in the intersection near where he lives.
- 22 Yes. This is the statement.
- 23 Q Okay. And that's the one where he basically says he was
- 24 at the club from 9 p.m. to 3 a.m. and puts himself with James
- 25 Miller the whole night?

- 1 A Yes.
- 2 Q And is that the first indication you had of Mr. Miller?
- 3 A If I'm not mistaken, it is.
- 4 Q Okay. Subsequent to your interview that we just listened
- 5 to with Mr. Collins, arrest warrants were issued for all three
- 6 participants?
- 7 A Yes.
- 8 Q Marissa Cohen?
- 9 A Yes, ma'am.
- 10 Q Randy Collins, obviously?
- 11 A Yes.
- 12 Q And James Miller?
- 13 A That is correct.
- 14 Q And Randy Collins turned himself in?
- 15 A Yes. He did.
- 16 Q Okay. And tell me what -- are you aware of what happened
- 17 to James Miller?
- 18 A He was taken into custody by the State Law Enforcement
- 19 Division.
- 20 Q Okay. And had you interviewed him prior to his arrest?
- 21 A I attempted to.
- 22 Q Okay. And did you get a statement from him after you got
- 23 a statement from Randy Collins the first time, State's Exhibit
- 24 One?
- 25 A I, I did not.

- 1 Q Okay. Did he ever give you that same alibi?
- 2 A No. He refused to talk to me.
- 3 Q Okay. After his arrest?
- 4 A Right.
- 5 Q But prior to his arrest did you talk with him?
- 6 A Absolutely.
- 7 Q Okay. And at that time what did he tell you?
- 8 A Well, he said, yeah, he was with his uncle.
- 9 Q Gave the same story?
- 10 A That same story.
- 11 Q Okay. And is Mr. Miller still with us?
- 12 A He is not.
- 13 Q Okay. And when you were working with Andrews Police
- 14 Department did you have a chance to investigate the case
- 15 involving him?
- 16 A I did.
- 17 Q And what happened to him?
- 18 A He was, he was deceased. He was found deceased on Jones
- 19 Avenue.
- 20 Q Okay. And subsequently Ms. Cohen's son was or plead
- 21 guilty to his death?
- 22 A Absolutely.
- 23 MR. WILSON, JR.: Your Honor, just for the purposes of
- 24 the record, I'm going to object to this line of questioning.
- 25 Mr. Miller's testimony, obviously, is not admissible.

1 Obviously, there's no jury here.

2 THE COURT: Well, well, really it has no relevance to
3 this hearing at all anyway; does it?

4 MR. WILSON, JR.: It does not, Your Honor.

5 THE COURT: Ms., Ms. Richardson, we're, we're talking
6 about the voluntariness of Mr. Collins' statement; right?

7 MS. RICHARDSON: Yes, Your Honor. As far as his
8 intervening statement, though, it would have been part of the
9 investigation that led to this interview for purposes of this
10 hearing, Your Honor.

11 THE COURT: Okay.

12 MS. RICHARDSON: Just to sort of set the stage of the
13 investigation and the posture they were in when Mr. Collins
14 was interviewed.

15 THE COURT: All right.

16 MS. RICHARDSON: Okay.

17 THE COURT: Was Mr. Miller found deceased before this
18 last interview that I just watched?

19 MS. RICHARDSON: No, Your Honor?

20 A No, Judge.

21 THE COURT: Okay. All right.

22 MS. RICHARDSON: That was in 2015.

23 THE COURT: All right.

24 BY MS. RICHARDSON:

25 Q I have no further questions. Answer any questions that

1 Mr. Wilson has for you.

2 THE COURT: All right. Mr. Wilson.

3 MR. WILSON, JR.: Your Honor, if it please the Court.

4 EXAMINATION

5 BY MR. WILSON, JR.:

6 Q Investigator, how are you doing, sir?

7 A Good, sir, and yourself?

8 Q Doing well. Doing well. I want to start from the first
9 conversation you had with Mr. Collins. Mr. Collins
10 voluntarily talked to you on the street. You didn't put him
11 in your car, and then he gave you a statement; correct?

12 A Yes. He did.

13 Q Okay. All right. And then you subsequently wrote that
14 statement down; correct?

15 A I did.

16 Q Okay. Did you read him Miranda Rights at that point in
17 time?

18 A No. I didn't.

19 Q Okay. All right. So the first statement he gave you,
20 which has been marked as State's One, the first statement he
21 gave you he says that he was basically at the club with his
22 nephew; right?

23 A That's correct.

24 Q All right. He doesn't inculcate himself? He doesn't say
25 that he is guilty of a crime in that statement; does he?

1 A No. He doesn't.

2 Q Okay. All right. And then you actually then reengage
3 him at some later point in time. Now, I want to talk about
4 that because counsel asked you about that. You said you got
5 an anonymous tip?

6 A Uh-huh.

7 Q Okay. The anonymous tip, did that appear, did the name
8 of the anonymous tip person appear anywhere in any of the
9 affidavits you issued for the search warrants for --

10 A No.

11 Q Okay. All right. All right. Well, let me ask you this
12 then, at some point in time you contacted Mr. Collins again?

13 A Yes.

14 Q Okay. Tell me about that initial contact with him and
15 how that occurred. This -- is this with the cell phones?

16 A Well, I don't know if you're asking but could I see a
17 copy of that report?

18 Q Yes, sir. Which, which one do you want to see?

19 A Mine.

20 Q You want to see a copy of the statement?

21 A No. My report.

22 Q I don't have a copy of your report.

23 A Okay. All right.

24 THE COURT: Ms. Richardson, do you have a copy of his
25 report?

1 MS. RICHARDSON: I do, Your Honor.

2 THE COURT: May he look at it, please?

3 A Thank you, ma'am.

4 THE COURT: Would that help you refresh your memory as to
5 the questions by counsel?

6 A It would, Judge.

7 THE COURT: Thank you. Mr. Wilson.

8 MR. WILSON, JR.: Yes, Your Honor.

9 BY MR. WILSON, JR.:

10 Q So when would have been the second time that you made
11 contact with Mr. Collins?

12 A It would have been on the 8th. Let's see here, May 8th
13 at 2:00 o'clock. I met with him and asked him if he'd be
14 willing to take a polygraph examination.

15 Q Okay.

16 A And he agreed.

17 Q Okay. All right. And during that meeting did you ask
18 him about his cell phones at that time?

19 A It doesn't indicate in the report.

20 Q Okay. Did you have his cell phone at that time?

21 A I don't know.

22 Q Okay. When did you get his cell phones?

23 A It would have been prior to the second interview that we
24 had. So exactly the date that we did I don't know.

25 Q Okay. All right. But you had his cell phones? At some

1 point in time you got them?

2 A Yes. We did.

3 Q Okay. All right. After you got the anonymous tip --

4 A Uh-huh.

5 Q -- for Mr. Collins' -- for the affidavits for the cell

6 phones, after that point in time did you have any other

7 contact with Mr. Collins at all before the second statement

8 that you say that he gave?

9 A Well, other than -- I don't believe so not other than

10 asking him if he'd take a polygraph examination.

11 Q Okay. And did you all set that up?

12 A We did.

13 Q Okay. Tell me what happened.

14 A He didn't show up.

15 Q Okay. And when did you set that up for?

16 A That was set up for May 12th at 9:30 a.m.

17 Q Okay. All right. And did you contact him about that?

18 A I attempted to.

19 Q All right. Did you get in touch with him?

20 A I did not.

21 Q Okay. All right. And so based on your testimony, when

22 was then the next time you saw Randy Collins, sat down with

23 him and how did that engagement kind of progress?

24 A It was two days later or it looks like it's -- okay, in

25 June, June 4th at 10:24 we met with him at the Andrews Town

- 1 Hall.
- 2 Q Okay. All right. Now, let me ask you this, how did you
- 3 all get Randy Collins to agree to meet you at the town hall?
- 4 A I believe we were getting ready to return his cell
- 5 phones.
- 6 Q Okay. All right. But now he wouldn't agree to meet
- 7 with you or with the agent from SLED; would he?
- 8 A I don't recall.
- 9 Q Well, you got Nesmith, under direct examination when
- 10 counsel asked you --
- 11 A Uh-huh.
- 12 Q -- Nesmith actually was the facilitator for this; right?
- 13 A Okay. Yeah.
- 14 Q Okay.
- 15 A That's right.
- 16 Q All right. So Nesmith actually is either related by
- 17 blood or marriage or somehow knows or is family with Randy
- 18 Collins; correct?
- 19 A Right. I think that's what he said.
- 20 Q Based on what he's saying?
- 21 A Right.
- 22 Q So he felt more comfortable going into this jurisdiction
- 23 with Nesmith?
- 24 A I don't know. You'd have to ask him.
- 25 Q Under examination earlier when you testified yesterday --

- 1 A Uh-huh.
- 2 Q -- you testified that he felt comfortable, that he was
- 3 okay with meeting with Nesmith, that's how Nesmith came up in
- 4 the conversation.
- 5 Q Okay.
- 6 A You even testified under oath that it was the family
- 7 situation or possibly the family situation that made him feel
- 8 okay to come and meet with Nesmith.
- 9 A Sure.
- 10 Q Okay. So how did you all figure out that Nesmith could
- 11 be a facilitator?
- 12 A I don't know. Nesmith has been an Andrews' police
- 13 officer for some time and Mr. Collins lives just outside of
- 14 Andrews' jurisdiction so.
- 15 Q Okay. So then the idea was to get him there through
- 16 Nesmith, say, "Come meet with us"?
- 17 A Well, he wanted his cell phones back.
- 18 Q Wanted his cell phones.
- 19 A So we decided to meet him there.
- 20 Q Okay. All right. When he showed up, did he show up to
- 21 talk to you or did he show up simply to get the cell phones
- 22 back?
- 23 A He showed up to get his cell phones.
- 24 Q Okay. All right. And then you all engaged him and said,
- 25 "Look, we want to talk to you while you're here"?

- 1 A Uh-huh.
- 2 Q Okay. Was he coming there expecting that?
- 3 A I don't know. I don't know whether if expected it or
- 4 not.
- 5 Q Well, let me ask you -- I'll withdraw the question. Let
- 6 me rephrase the question. Did you all tell him that you all
- 7 were going to sit down and interrogate him for three hours at
- 8 this time at city hall?
- 9 A Oh, we didn't know that. We didn't know we were going to
- 10 be in there for three hours at that time.
- 11 Q Okay. Well, let me ask you another question then. Can
- 12 you tell me when you got there what your intent was?
- 13 A Oh, to speak with him again.
- 14 Q Okay. All right. Did you tell him that, that was your
- 15 intent?
- 16 A I -- well, once we met with him we did.
- 17 Q Before that?
- 18 A No.
- 19 Q Okay. All right. So how did he know to meet there at
- 20 the actual city hall? Who told him to meet there? Was it
- 21 you? Was it SLED, Nesmith?
- 22 A It was probably Nesmith.
- 23 Q Okay. All right. So he gets there and then you all are
- 24 there?
- 25 A Uh-huh.

- 1 Q Did he know you were going to be there?
- 2 A Well, he knew that we had -- I guess we had to release
- 3 the cell phones. So he knew that so.
- 4 Q But Nesmith had possession of the cell phones; didn't he?
- 5 A I guess he did, but we still had to release them, and as
- 6 you -- if you look in the video we did release the cell phone.
- 7 Q I, I understand that, but Nesmith had possession of those
- 8 cell phones. SLED didn't have possession; did they?
- 9 A No. I guess he didn't.
- 10 Q Okay. All right. So you get there and you tell him,
- 11 "Look, we want to talk to you again"; right?
- 12 A Uh-huh.
- 13 Q And then at 10:20, which is when you guys say you start
- 14 the interview, all right, what time does he actually get
- 15 there?
- 16 A I don't know what time he got there.
- 17 Q Well, what time was he supposed to pick up the cell
- 18 phones?
- 19 A Somewheres around 10, 10:30, about the time we got there.
- 20 Q Okay. Well, the interview started at 10:20.
- 21 A Okay.
- 22 Q So would it surprise you to know that he was supposed to
- 23 be there at 10:00 o'clock?
- 24 A Nah. That wouldn't surprise me at all.
- 25 Q Okay. So 20 minutes basically could have gone by where

- 1 nobody has any recollection of what he's doing there, what's
2 happening with him, what's going on at all; correct?
- 3 A Well, I'm sure he knows.
- 4 Q But there's no record of it is what I'm saying?
- 5 A Okay.
- 6 Q Is that fair?
- 7 A That's fair.
- 8 Q All right. So at 10:20 then you all turn on -- excuse
9 me, you don't turn on anything. You actually then get him --
- 10 MR. WILSON, JR.: Indulgence, Your Honor.
- 11 BY MR. WILSON, JR.:
- 12 Q This is State's Two. Now, this is not on camera but --
- 13 MR. WILSON, JR.: May I approach the witness briefly,
14 Judge?
- 15 THE COURT: Certainly.
- 16 MR. WILSON, JR.: Thank you, Your Honor.
- 17 BY MR. WILSON, JR.:
- 18 Q This is a document where Miranda warnings are --
19 allegedly were read to him or he read it himself and then you
20 all had him initial on there, then sign at the end, SLED
21 witnessed it and you signed it also; is that correct?
- 22 A That is correct.
- 23 Q Okay. All right. And that was at 10:20?
- 24 A Yes.
- 25 Q All right. But that was not recorded either; was it?

1 A No. It's not.

2 Q Okay. All right. Who read this to Randy Collins?

3 A Agent Hardee did.

4 Q Okay. And agent -- you were present when he did?

5 A I was.

6 Q Okay. And, and Randy Collins acknowledged that he

7 understood all of his rights?

8 A Yeah. And in fact, he made him sign or asked him to sign

9 beside each one as he explained it.

10 Q All right. So you all sat down and explained all his

11 rights to him?

12 A Absolutely.

13 Q Okay. So then at -- what happened in the next four

14 minutes from the time he signed this document till the time

15 that you actually start the camera at 10:24?

16 A Well, I didn't start the camera. Agent Hardee did, and

17 again, the recorded interview was not planned so.

18 Q But you did record it?

19 A We did record it.

20 Q Okay. For the purposes of obtaining evidence.

21 A Well, we wanted to talk with him to obtain evidence.

22 Agent Hardee remembered, I suppose, that he had his camera

23 with him. So he decided to record the interview.

24 Q Okay. All right. So you get him in the room and now

25 this room and I saw a little bit of it on the video. I've

1 watched it many, many times. This room is not very big that
2 you're in; correct?

3 A Well, it's not very big. No.

4 Q Okay. Well, tell me this, where was Randy Collins
5 sitting in this room and where were you sitting and then where
6 was Agent Hardee sitting?

7 A I think we're all sitting around one of the tables that
8 was in the room there.

9 Q All right. Who was closest to the door?

10 A Judging by the -- it looks like I was.

11 Q Okay. You're actually sitting where the door was behind
12 you; correct?

13 A Yes.

14 Q Okay. All right. And then Agent Hardee was sitting to
15 your right; correct?

16 A If I'm not mistaken.

17 Q Okay. All right. And then Randy Collins would have been
18 sitting against the wall like this; correct?

19 A Yes.

20 Q All right. Now, at any point in time did you see a door
21 behind Randy Collins?

22 A No.

23 Q Window?

24 A No.

25 Q Okay. All right. So he was sitting in there with you

1 all like that for a good bit of time. Did you ever change
2 seats with him? Did he ever say, "I want to sit next to the
3 door"?

4 A No. He never asked to sit next to a door.

5 Q Did you ever ask if he wanted to sit to a door?

6 A No.

7 Q Okay. All right. So while you're in this room and you
8 begin to ask him questions now you're starting to talk to him
9 about what's going on with him, that kind of stuff, just kind
10 of disarm him; right?

11 A Yes.

12 Q Okay. All right. Disarming is a technique that police
13 use; isn't it?

14 A Well, I suppose it is.

15 Q Okay. Well, when you engage a Defendant or a potential
16 perpetrator --

17 A Uh-huh.

18 Q -- in interrogation there are tactics that they teach at
19 the academy and that you guys hone fairly well; correct?

20 A Uh-huh.

21 Q All right. And one of those tactics is to disarm a
22 person; correct?

23 A Well, make him feel comfortable, if that's what you mean.

24 Q Okay. Make him feel comfortable. All right. Question,
25 did you know at the time when you met with Randy Collins, now,

1 this is the second or third time you've talked to him or had
2 contact with him, that he'd had a stroke?

3 A Yes.

4 Q Okay. So you had that information available?

5 A Yes.

6 Q Okay. All right. And you talked with him for a good bit
7 of time that day?

8 A Yes.

9 Q And I'm kind of just kind of going to do this quickly.

10 A Okay.

11 Q So I don't want to waste the Court's time. He's not the
12 brightest star in the sky; is he?

13 A Well, it depends on who's judging.

14 Q Well, I'm asking you, from your experience dealing with
15 Defendants?

16 A He, he seemed okay to me, I mean.

17 Q He seemed okay to you?

18 A Sure.

19 Q Okay. All right. Fair enough. All right. Did you ask
20 him if he understood what Miranda Rights were or did Agent
21 Hardee ask him?

22 A He asked him if he understood each right individually.

23 Q Okay. And he said, yeah, he understood?

24 A Yes.

25 Q Okay. So when you're talking to him and you guys begin

- 1 to ask him questions he says, "I didn't do it," about how many
2 times during this interview, just roughly?
- 3 A Quite a few times throughout the interview.
- 4 Q Okay. Would you say for the first two hours of the
5 interview he said consistently "I did not do it"?
- 6 A Yeah. I think he -- yeah. He said that.
- 7 Q Fair enough. Okay. Now, one of you in the beginning,
8 and it was either you or -- and or Hardee said that, "Look,
9 we've got a boy that's dead." Do you recall saying that?
- 10 A Yes.
- 11 Q Okay. All right. And you were telling Randy Collins
12 that a boy had died in this incident and that's why this was
13 so important that he tell them -- you -- he tell you
14 something; right?
- 15 A Sure.
- 16 Q Okay. Now, also, the concept regarding the trailer being
17 old, and I know this sounds like it's nitpicky, but it's not.
18 The trailer being old, who said that? Was it you or Randy
19 Collins? Who said that first that the trailer was old or was
20 it Agent Hardee?
- 21 A I don't recall.
- 22 Q Okay. Would it surprise you if I said that Agent Hardee
23 said that it was an old trailer?
- 24 A No. That wouldn't surprise me.
- 25 Q Okay. Now, you also went through great length, you and

- 1 Agent Hardee over and over again telling him that this was an
2 accident, nobody intended for this boy to die. Do you recall
3 saying that over and over again to him?
- 4 A I do.
- 5 Q Okay. How many times do you think you said that to Randy
6 Collins during this interview?
- 7 A I don't know.
- 8 Q Okay. Did Randy Collins ever come to you and directly
9 say, "Look, I want to tell you all on my own volition that
10 this was an accident," or did you have to tell him that it was
11 an accident and then he picked up on it?
- 12 A I don't think that's how it went. I think he -- I don't
13 think, I don't think that they intended for the victim to die.
14 I don't think anybody knew he was there --
- 15 Q I, I know --
- 16 A -- and I wanted Mr. Collins to understand that.
- 17 Q I apologize.
- 18 A Okay.
- 19 Q I apologize. I'm sorry. I apologize.
- 20 A I'm sorry. That's okay. I'm sorry.
- 21 Q Yeah. I understand what you think. What I'm asking you
22 though is whether or not at the time of this interview did he
23 offer that piece of fact first or did you guys tell him that
24 fact first that this was probably an accident?
- 25 A Oh, we said that.

1 Q Okay. Now, you also told him that this is not going
2 anywhere in the future, that there are no sound devices in
3 here. Was that true?

4 A Agent Hardee mentioned that or I mentioned it but we were
5 talking about the room itself, it wasn't equipped with video
6 or audio, but we told him about the actual video camera.

7 Q Did you all tell him that this wasn't going any further
8 than just for you all's review and your notes?

9 A I don't recall that.

10 Q You didn't recall saying that?

11 A No.

12 Q Do you recall Agent Hardee saying that?

13 A No. That it's not going any farther?

14 Q Yeah. That this is not going to go any further than
15 simply just us talking to you and we're going to put it in the
16 file somewhere, nobody else is going to see this. Do you all
17 recall saying that?

18 A If that was said that's not -- it's out of context.

19 Q Well --

20 A As to where it's going.

21 Q -- let me ask you this, if you did say it, let's say
22 hypothetically you did say it --

23 A Uh-huh.

24 Q -- what would that mean? Would that mean that you just
25 intentionally lied to him? Would it mean simply that you were

1 still trying to disarm him? What was that for? What was the
2 purpose of telling him that?

3 A I mean, it could mean any of those. I mean, obviously we
4 could lie, and it would -- could have been a disarming
5 technique, but I don't exactly recall --

6 Q Okay.

7 A -- when it happened or when it was said or who said it.

8 Q Okay. Now, you also continuously ask him, "Randy, tell
9 us what happened. Tell us what happened," for the first two
10 hours before we had that break in the video, which we'll talk
11 about in a few minutes, but you ask him multiple times to tell
12 you what happened and he says, "Look, I don't know"; right?
13 Okay. And at some point in time you then offer what you
14 believe may have happened in this case; do you recall doing
15 that?

16 A Sure.

17 Q Okay. Can you tell the Court based on -- obviously, we
18 just watched the video -- based on your own recollection of
19 what you guys said to him that you thought happened in this
20 particular matter?

21 A Well, we thought that, that the, the death of Syience was
22 accidental.

23 Q Okay. What else did you tell him?

24 A In terms of what? What do you mean what else did we tell
25 him?

1 Q What else, I mean, you, you --

2 THE COURT: The mother buying kerosene?

3 A Oh, okay, yeah. Well, we told him part, part -- what we
4 learned during the investigation.

5 Q Okay.

6 A Yeah.

7 Q Well, tell me what you told him. You told him about the
8 kerosene.

9 A Okay. So yeah. We told him about the kerosene. We, we
10 let him know that we were aware that he had been in contact
11 with the mother --

12 Q Yes.

13 A -- after he said he wasn't.

14 Q Okay.

15 A We, we let him know that we had those phone records and,
16 and I believe that's it.

17 Q Okay. And then you all go through great length with him
18 talking about him and that if this was an accident people
19 deserve a second chance, they deserve, you know, to, to live
20 again, basically, and, and to be reborn, if you will, and you
21 go through great length discussing that with him trying to get
22 him then to say. I believe it was Detective Hardee or, excuse
23 me, I apologize, Agent Hardee who says, you know, "Think of
24 this as a drunk driver analogy." All right.

25 A Uh-huh.

1 Q And you try -- what was the purpose of trying to get him
2 to say that this was something where a person possibly
3 deserved a second chance?

4 A Just wanted to hear what he had to say.

5 Q Why? I mean, curiosity, you were making fun of him?
6 What was it?

7 A No. No. Just, just curiosity. I mean, that's a
8 question that we ask from time to time.

9 Q But is it supposed to elicit a certain response?

10 A Well, we take whatever response is given. I don't know
11 if it was supposed to elicit a specific.

12 Q I'm glad you said that because he didn't have an answer?

13 A Right.

14 Q He couldn't formulate an answer for you guys fast enough
15 which is why Agent Hardee then goes on because he pauses --

16 A Uh-huh.

17 Q -- because he doesn't necessarily see what's going on
18 here. What I'm asking you is, what I'm asking you is that did
19 you ever get a firm response from him for that question?

20 A Yeah. He said that he believed that they -- people
21 deserve a second chance but they should also be punished.

22 Q After the drunk driver scenario; correct?

23 A Yes.

24 Q Okay. Now, during a critical portion of this first part
25 of the interview he says, "I really don't feel like answering

1 questions today. I don't feel like doing this today." Tell
2 me what your interpretation of that was coming from a man with
3 his educational background, the fact that he's had a stroke,
4 what do you think he was saying to you at that point in time?

5 A Well, he said, I think he said exactly what he wanted to
6 say. We were -- it was in reference to the scenarios we were
7 giving him about second chances.

8 Q Okay.

9 A Said, "I didn't know that I came here to answer these
10 questions, that I really didn't feel like that but I want to
11 help you," and so we, we moved on from that portion.

12 Q And I'm glad you said that. He said that he wanted to
13 help you; right?

14 A Uh-huh.

15 Q Okay. And he said that several times during the
16 interview?

17 A Okay.

18 Q Right? That he wanted to help. What was your
19 interpretation of what he was saying, that he wanted to help
20 you put him in jail?

21 A No. I just -- I didn't, I didn't feel one way or another
22 about that.

23 Q Well, it's important. So I want to know what it is that
24 when you were sitting there, because this is subjective --

25 A Uh-huh.

- 1 Q -- I mean, it's about what you believe as well?
- 2 A Sure.
- 3 Q Did you think that he was saying to you at that point in
- 4 time, "Look, I don't want to be here"?
- 5 A I think it was deflection. I think he just wanted to put
- 6 himself away from the crime scene.
- 7 Q Well let me ask you, do Defendants do that sometimes?
- 8 A All the time.
- 9 Q Deflect?
- 10 A All the time.
- 11 Q Want to stop conversations?
- 12 A Well, they normally say it if they do.
- 13 Q Okay. You told him several times that you can help him,
- 14 that you all could talk to the Prosecutor, that you all would
- 15 talk to the Solicitor, but if that he didn't tell you all
- 16 something that everything ends today. Do you recall saying
- 17 that, it all ends today?
- 18 A I think that's out of order but, yeah, we said all of
- 19 those things.
- 20 Q At some point in time you said it all ends today?
- 21 A Uh-huh.
- 22 Q Okay. One way or another, and, "You tell us something,
- 23 otherwise, you know, you can go away for 34 years." Do you
- 24 recall telling him that?
- 25 A That's also out of context, but yes, both of those things

- 1 were said.
- 2 Q Well, place it in context for me.
- 3 A Okay.
- 4 Q You know, did you ever tell him that he'd go to a jail
- 5 for 34 years?
- 6 A It was -- we told him that the crime could carry that
- 7 amount of time.
- 8 Q Let me ask you this, did you ever tell him that he might
- 9 not come back?
- 10 A Oh, yeah. Yeah.
- 11 Q Okay.
- 12 A If he went to prison, uh-huh.
- 13 Q Okay. Now, there's been a lot made about the time that
- 14 he had told you originally that he was going to the club that
- 15 night, and you all asked him in the interview about that
- 16 several times?
- 17 A Yes.
- 18 Q And he had a hard time telling you what time it was. Do
- 19 you recall that?
- 20 A Well, at first he said nine and then he said 11. I don't
- 21 know if he had a hard time with it.
- 22 Q Okay.
- 23 A He just changed it.
- 24 Q He changed what the time was --
- 25 A The time.

- 1 Q -- during the actual interview?
- 2 A Uh-huh. Yes.
- 3 Q Okay. And you guys ask him multiple times also about
- 4 what else he did that day?
- 5 A Uh-huh.
- 6 Q Okay. And he kind of went through what he thought he did
- 7 that day?
- 8 A Okay.
- 9 Q Okay. Well, let me ask you this, did he tell you what he
- 10 thought he went through that day or what he did that day?
- 11 A I think he told us some of what he did that day.
- 12 Q Okay. He also told you about phone calls that he made;
- 13 right?
- 14 A Yes.
- 15 Q Okay. And you all asked him ad nauseam about who he
- 16 talked to either on the phone or in person?
- 17 A Uh-huh.
- 18 Q And he was telling you a list of people that he talked
- 19 to; do you recall that?
- 20 A Yes. I do.
- 21 Q And then at some point in time in the middle of nothing
- 22 that had to do with what you were talking about he then said
- 23 something to the effect of, "That's most of who I talk to,
- 24 that's most of who I talk to." Do you recall him saying that?
- 25 A Yes.

1 Q Okay. Now, was he telling you, you believe, that he
2 actually talked to those people that day or was he telling you
3 that those are a list of people that he talks to?

4 A I believe he was telling me that that's who he talked to
5 that day.

6 Q That particular day?

7 A Uh-huh.

8 Q Okay. Now, you say that he asked for a bathroom break at
9 some point in time?

10 A I think he asked for one on the video.

11 Q Okay. All right. Did he go to the bathroom more than
12 once?

13 A I believe he did.

14 Q Okay. Now, each time, and I'm going to ask you where
15 were you and Agent Hardee when he was actually going to the
16 bathroom?

17 A Outside.

18 Q So nobody went inside the bathroom with him?

19 A I don't recall going in the bathroom with him.

20 Q So each time that he went to the bathroom he was by
21 himself inside the stall?

22 A Unless one of us used the bathroom as well. I mean,
23 there was nobody guarding him.

24 Q Okay. Did you ever say to Randy Collins, you know, "We
25 think" -- I know that you originally asked him whether he was

- 1 dating Marissa Cohen; right?
- 2 A Uh-huh.
- 3 Q All right. And this actual timeframe --
- 4 MR. WILSON, JR.: The Court's indulgence, Your Honor.
- 5 BY MR. WILSON, JR.:
- 6 Q This actual timeframe for this meeting that you guys had
- 7 at city hall was over three hours; correct?
- 8 A Yes.
- 9 Q It was from 10:20 till about 1:51?
- 10 A Correct.
- 11 Q Okay. Now, the tape is only about -- well, let me just
- 12 say this. The tape is about 57 minutes, give or take short?
- 13 A Okay.
- 14 Q Okay. All right. So during that time did you ever while
- 15 the tape wasn't running say to Randy Collins "You were fucking
- 16 Marissa Cohen"; weren't you?
- 17 A I don't recall anything like that.
- 18 Q That never happened?
- 19 A No. I don't believe so.
- 20 Q Did you ever raise your voice at Randy Collins?
- 21 A Not that I recall.
- 22 Q Did you ever call him a liar off-camera?
- 23 A I don't know. I don't think so.
- 24 Q Well, did Agent Hardee ever yell at him or call him a
- 25 liar off-camera?

1 A I think our tone was pretty consistent throughout the,
2 the interview.

3 Q Your tone was pretty consistent?

4 A Uh-huh.

5 Q At the very end of the second tape you stop him several
6 times, not Agent Hardee?

7 A Okay.

8 Q You stop it, I mean, up on him. Your hands are actually
9 in the scene in his bubble.

10 A Okay.

11 Q Telling him to stop talking and listen to you and what
12 you're saying. Do you recall that?

13 A Uh-huh. I do.

14 Q Okay. Now, it's not the friendliest tone, I mean, of, of
15 -- for an investigator to be in the face of a Defendant or a
16 potential perpetrator and then telling him, "Look, stop, and
17 listen to me and, and do what I say," because that's -- that
18 was the tone; wasn't it?

19 A I don't think I was ever in his face.

20 Q Were you being nice to him at that point in time right
21 before the second tape ended?

22 A I don't, I don't think I was being mean.

23 Q Okay. All right. Fair enough. Then let me ask you this
24 question then, at the very end of that second tape Agent
25 Hardee and you are, let's just say, asking him questions back

1 and forth, and you were telling him, "Look, stop, listen to
2 me, don't talk right now. I want you to hear what I'm
3 saying," and you're telling him about the scene and telling
4 him, "Really, look, this couldn't have happened this way." Do
5 you recall that?

6 A Something similar to that.

7 Q Okay. Well, let me ask you this, you made some deal
8 about the paper; right?

9 A Uh-huh.

10 Q Why did you make a big deal about the paper?

11 A Well, it didn't seem plausible what he was saying, a
12 match, it was raining, humid.

13 Q It didn't seem plausible; right?

14 A Right.

15 Q I mean, that's your words?

16 A Uh-huh.

17 Q That a match or a piece of paper from the ground could be
18 picked up and then lit?

19 A Right. Probably not. Probably not.

20 Q That makes no sense.

21 A So we asked. Yeah.

22 Q Yeah. All right. All right. So while this tape is
23 about to end I believe it was Agent Hardee who says, "Let, let
24 me tell you what we think is going on here, what we think
25 happened. Me and Melvyn have been working on this thing

1 together"?

2 A Uh-huh.

3 Q And then the tape cuts off; right?

4 A Uh-huh.

5 Q All right. Now, in your testimony how long was it from
6 the time that second tape cuts off and that is the last thing
7 that you hear and then the time that the tape comes back on
8 and Randy Collins not only has a piece of paper in his hand,
9 but is drawing a diagram and telling you where he was, which
10 is completely inconsistent with what he said before and what
11 he was doing with James? How many minutes transpired between
12 that time?

13 A I don't know.

14 Q Could it have been 15?

15 A I don't know.

16 Q So there's no record, you don't know and there's nothing
17 really that you could point to to show the Court what happened
18 during that time span when the second tape cut off and the
19 time that he begins to confess in the State's words?

20 A Right. Well, again, I can't -- I don't have anything to
21 show you.

22 Q Okay. Now, when he's drawing this diagram for you guys
23 he actually gets confused about certain things that you all
24 have to correct him on; doesn't he?

25 A I think we were all confused at some point.

- 1 Q I agree with that a hundred percent, but what I'm talking
2 about is when you point out to him, you actually point to him
3 and say, "Look, that's not possible. It can't be there. It's
4 over here."
- 5 A Uh-huh.
- 6 Q Do you recall doing that? He got confused about where
7 stuff was, what was happening in the diagram, and you drew the
8 first diagram; correct?
- 9 A Yes.
- 10 Q Not Mr. Collins. All right. So after you drew the
11 diagram, which we don't know when that started because you
12 don't see the tape, when you drew the diagram the tape comes
13 on and he's been looking at that; correct?
- 14 A Yes.
- 15 Q And then you all are telling him, look, what's possible,
16 what's not possible, what is plausible, what's not plausible;
17 is that correct?
- 18 A I think it was an orientation problem then.
- 19 Q Orientation problem?
- 20 A Right. Let me ask you this, did you all not tell him
21 that there was a pool somewhere?
- 22 A Yes.
- 23 Q Who first said about the pool, was it him?
- 24 A No.
- 25 Q No. He didn't say anything about a pool; did he?

- 1 A No. He didn't.
- 2 Q He didn't say anything about it raining first?
- 3 A No. He didn't.
- 4 Q Who suggested that to him?
- 5 A Agent Hardee.
- 6 Q Okay. Well, let me ask you this, who suggested to him
- 7 about the light pole?
- 8 A I did.
- 9 Q So then you all throw away the diagram you did; correct?
- 10 A Yes.
- 11 Q You balled it up. I saw you on camera.
- 12 A Yes.
- 13 Q Then you slide him a piece of paper and you tell him,
- 14 "Draw what happened"?
- 15 A Yes.
- 16 Q Is that fair?
- 17 A That's fair.
- 18 Q So he begins to draw what he just saw on paper basically?
- 19 A Well, I disagree with that, but I think he was drawing
- 20 what he remembers.
- 21 Q Well, at the time when you actually told him about the
- 22 pool he hadn't said anything about the pool?
- 23 A Right.
- 24 Q But when drew the diagram he then mentioned the pool;
- 25 didn't he?

1 A Uh-huh.

2 Q Okay. Let me ask you a question, and I'm not going to go
3 through all the episodes. I'll do that with the Judge later
4 on, but do you know how many times that you and Agent Hardee
5 actually led Mr. Collins with information that he didn't
6 have?

7 A I don't think we led him with any information that he
8 didn't have other than what we had learned during the
9 investigation.

10 Q Did he know about the pool?

11 A Well, I'm sure he did. He didn't mention it but --

12 Q Did he know about the pole?

13 A Well, that's, yeah. He may not have known about a
14 service pole. I mean, that's maybe something you don't --

15 Q Who brought up, who brought up the kerosene first? Did
16 he bring up the kerosene and say, "Oh, yeah, Marissa Cohen
17 went to the store and got some kerosene, and I know about it?
18 That was part of the plan." Did he say that?

19 A Right, no.

20 Q Now, during the first part of this interview he actually
21 is able to tell you about his family line, people that he
22 knows. He can tell you about what he has for dinner; right,
23 that kind of stuff?

24 A Yes.

25 Q And he told you at some point in time about the fact that

- 1 he didn't have any electricity; right?
- 2 A Yes.
- 3 Q Okay. And that he was basically eating out of a cooler
- 4 and had candles at some point in time?
- 5 A I think he was describing a different property, but yes.
- 6 Q Okay. All right. But he told you that?
- 7 A Yes.
- 8 Q So you knew how he lived also and you all got that
- 9 information about him?
- 10 A At some point. Again, he -- we were talking about a
- 11 prior residence at that point.
- 12 Q I agree. But talk about prior residences, when you were
- 13 asking him about the Arizona insurance on the actual tape,
- 14 right, about the insurance issue, the Nationwide --
- 15 A Uh-huh.
- 16 Q -- which happened in when, 2009; correct?
- 17 A Well, it was -- yeah, could have been.
- 18 Q All right. And you all basically got some information
- 19 about his insurance issue then him having all of these, you
- 20 know, claims against the insurance companies; right?
- 21 A Yes.
- 22 Q Isn't it true and during your investigating you found out
- 23 actually he wasn't even living at that property, he was
- 24 renting it out?
- 25 A Well, it depends on which fire you're talking about.

- 1 Q 2009.
- 2 A I, I believe so.
- 3 Q Nationwide Insurance claim that you say there was an
4 arson? You --
- 5 A Okay. So that was the second one. Okay.
- 6 Q Right. So I'm asking you, did you not eventually find
7 out about that what --
- 8 A I believe so.
- 9 Q All right. And there was a person named Junie -- Julie,
10 something like it was a little strange name of a tenant who
11 was living there; right?
- 12 A Yes.
- 13 Q Not Mr. Collins, but did he try to defend himself when
14 you said that?
- 15 A I don't recall. He was going back and forth within --
- 16 Q Do you recall him saying to you at all, I -- "What fire
17 you talking about?"
- 18 A Right.
- 19 Q "I don't know what you're talking about"?
- 20 A Yes.
- 21 Q He didn't tell you, "Look, hey, there was a tenant living
22 in that house. It wasn't me that was there and I don't even
23 know anything about the claim." He didn't say that; did he?
- 24 A No.
- 25 Q He didn't defend himself at all. He also told you about

1 the nephew coming back to his house that night at around 3:00
2 o'clock with the mother; correct?

3 A Yes.

4 Q All right. And originally what he told you was that the
5 nephew took him home.

6 A Yes.

7 Q All right. And then that the nephew then came back to
8 the house at 3:00 o'clock?

9 A Yes.

10 Q All right. And at some point in time during the
11 interview obviously he's then telling you another story saying
12 that he was there with the nephew, and you and him go back and
13 forth about where he was actually; right --

14 A Okay.

15 Q -- the way he was located at the scene?

16 A Right. Uh-huh.

17 Q He says at one point in time, "I was here next to the
18 car," and then you say to him, "That's not possible, no, no,
19 no, come again." Then he changes his story. You remember?

20 A Well, he told me he saw him do it. So if he's standing
21 by the car it wasn't possible for him to see him do it.

22 Q I agree with you a hundred percent.

23 A Okay.

24 Q So he's standing by the car that's not possible because
25 there is a -- there are bushes right there; right?

- 1 A Yes.
- 2 Q All right. So but if he goes around the path, which is
3 what he, he did, he says he did after you ask him about it and
4 he goes behind him he can see what he's doing?
- 5 A Yes.
- 6 Q All right. And you told him I don't know how many times
7 that you actually needed that information. You said to him,
8 "I need to know that you saw him throw something." Did you
9 tell him that?
- 10 A Almost, in those -- not quite those words but yes.
- 11 Q Okay. Not verbatim?
- 12 A Right.
- 13 Q Okay. Now, any time during this entire event are you on
14 video camera reading him or explaining to him any of his
15 rights?
- 16 A No.
- 17 Q Okay. Did you all ever stop and say, "Look" -- well, you
18 did ask him how he felt about being there that day; right?
- 19 A I suppose we did.
- 20 Q Okay. All right. But you never stopped and said, "Look,
21 he went to the bathroom. We stopped for a break. I need to
22 go back and maybe reread him his rights before we go to the
23 next phase of this," or perhaps the camera stopped or the
24 battery ran out, never reread him his rights; right?
- 25 A It's not required.

1 Q I'm not asking you about requirements.

2 A No. We didn't do it.

3 Q All right. Okay. Then you sit down with him and Agent
4 Hardee says, "Well, look, it's SLED's policy to get a written
5 statement."

6 MR. WILSON, JR.: Your Honor, may I borrow that briefly,
7 Judge. Thank you, Your Honor.

8 BY MR. WILSON, JR.:

9 Q After all this you sit down and you have a, a -- and you
10 ask him if he will do a written statement; correct?

11 A Yes.

12 Q At this time when you reengage him, do you ask him or
13 tell him about his Miranda Rights?

14 A No.

15 Q All right. And then he actually during the video, in the
16 video he's clear, you say "Give me your statement"; right?

17 A Okay.

18 Q All right. Well, let me back up a little bit. He at
19 first says to you, "I can't write really well. Can my son do
20 it"; right? And is that correct?

21 A I don't remember hearing him say if his son could do it,
22 but --

23 Q Well, would it surprise you if I said his son -- he asked
24 for his son?

25 A I don't guess it would surprise me.

1 Q Okay. But then Agent Hardee says, "No, no, no, let's
2 have Melvyn do it"; do you recall that?

3 A I think I, I think I offered that as well. I think I
4 offered it and then he said, "Okay. Let's let."

5 Q All right. So you sit down then and he said -- you said,
6 "Go ahead," and you look at him and he says, "I didn't do it";
7 right?

8 A Right.

9 Q And then he stops. Who prompts him to continue to give
10 you a story to write down on that sheet of paper?

11 A Well, I wanted him to finish telling me whatever he
12 wanted to go in the statement.

13 Q You wanted him to finish telling you what you all just
14 talked about?

15 A Right.

16 Q Right. Okay.

17 MR. WILSON, JR.: No further questions, Your Honor.

18 THE COURT: Thank you. Ms. Richardson.

19 EXAMINATION

20 BY MS. RICHARDSON:

21 Q Right from the start you told him why he was there?

22 A Yes.

23 Q And he knew it was about the fire?

24 A Yes.

25 Q And you had already talked to him one time and he knew he

- 1 had been named in it?
- 2 A Yes.
- 3 Q Or had been accused of it?
- 4 A Yes.
- 5 Q And you had already told him back that when you got the
- 6 first statement from him on the street?
- 7 A We did. I did.
- 8 Q And he even said all his family had been saying it so
- 9 much he couldn't go to the funeral?
- 10 A That's right.
- 11 Q Okay. Now, you don't have any information as to exactly
- 12 what time he showed up?
- 13 A No. I don't remember.
- 14 Q Okay. And actually didn't somebody drop him off there?
- 15 A Yes.
- 16 Q Okay. And he also said on the tape that he -- that all
- 17 the people that were at his house when he came to the --
- 18 before he came to meet with you --
- 19 A Yes.
- 20 Q -- and that he didn't tell them where he was going?
- 21 A That's correct.
- 22 Q And when you all were doing the part where you were
- 23 asking about the second chance and the penalties he, he's the
- 24 one who came up with the 20 years?
- 25 A Yes.

1 Q And so he knew it was a pretty heavy-duty situation
2 there?

3 A Yes.

4 Q And as far as it being no one knowing the child was
5 there, you had determined that from your investigation; right?

6 A Yes.

7 Q You had talked to the child that was with him when they
8 left the party?

9 A Yes.

10 Q And it was clearly a last minute decision that the child
11 made to go to the house on James?

12 A Absolutely.

13 Q Okay. So that was actually just a fact of the case?

14 A Sure.

15 Q Okay. And is it a common technique to let people tell
16 you their side first?

17 A Absolutely.

18 Q Okay. And then once they've sort of locked themselves in
19 what do you do at that point?

20 A Well, then we'll go back and we'll address any, any
21 information that we have and compare it to what he said in the
22 beginning.

23 Q Okay. And so that's just a common thing?

24 A Absolutely.

25 Q You know, basically you're telling them, "Okay. You just

1 lied to me"?

2 A Yes.

3 Q "I just caught you in a lie."

4 A Yes.

5 Q Pretty much, not using those words, but "What you've told

6 me this one didn't tell me or the phone records don't

7 corroborate"?

8 A Correct.

9 Q Okay. And again, did you do anything when the tape was

10 off to threaten him or coerce him?

11 A No.

12 Q Okay. And would it be fair to say that even the whole

13 time he tried to minimize his role in the --

14 A That would be fair.

15 Q And he was trying, you know, and everything that he said

16 was more on James?

17 A Yes.

18 Q And didn't you all tell him multiple times that you just

19 wanted the truth?

20 A Absolutely.

21 Q And sometimes you did have to clarify things with him and

22 say, "Well, did you see it or not"?

23 A Yes.

24 Q "Just tell" -- and even one time you said, "Tell me what

25 Randy Collins saw with his own eyes"?

1 A Yes.

2 Q All right. Okay. And as far as the fire claims there
3 appeared to be multiple claims?

4 A Yes.

5 Q Okay. And he had some difficulty discerning which ones
6 you were talking about?

7 A It would appear that way.

8 Q Okay.

9 MS. RICHARDSON: No further questions.

10 THE COURT: You may --

11 MR. WILSON, JR.: Nothing further, Your Honor.

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

13 A Thank you, Judge.

14 THE COURT: Ms. Richardson.

15 MS. RICHARDSON: The State calls agent Scott Hardee.

16 WHEREUPON, Scott Hardee is called to the stand, duly
17 sworn by the clerk and testified as follows:

18 THE CLERK: Will you please state and spell your name for
19 the Court?

20 MR. HARDEE: I sure will. My full name is Lelon Scott
21 Hardee, L-E-L-O-N, middle name Scott, which is what I go by,
22 S-C-O-T-T, and my last name is H-A-R-D-E-E.

23 THE CLERK: Thank you, Mr. Hardee.

24 EXAMINATION

25 BY MS. RICHARDSON:

- 1 Q And where were you employed in 2013?
- 2 A I was employed with the South Carolina Law Enforcement
3 Division, also --
- 4 Q And what was your position there?
- 5 A I was a fire investigator.
- 6 Q And how long had you been there when you began
7 investigating this case?
- 8 A In the arson unit or at SLED?
- 9 Q All together.
- 10 A I started SLED in 2008, and I went to the arson unit in
11 2013.
- 12 Q And obviously that was you -- you've been in court and
13 watched the video --
- 14 A Yes, ma'am.
- 15 Q -- of the interview of Mr. Collins? All right. And tell
16 me about -- let me show you what's been marked as State's
17 Exhibit Number Two. Is that SLED's form?
- 18 A Yes, ma'am. This is the, the SLED Miranda Rights form
19 that all agents use when questioning a witness.
- 20 Q And that's your signature on there with Mr. Collins and
21 Mr. Garrett?
- 22 A Yes, ma'am.
- 23 Q Okay. And tell me how you went about getting Mr. Collins
24 to sign that form.
- 25 A We got up -- well, hold on one second.

1 Q Do you need to use your notes to refresh your
2 recollection?

3 A Yes. Well, for dates and stuff.

4 Q Okay.

5 A Then -- okay. On May 16th I got a copy or I got two cell
6 phones that had been seized pursuant to a search warrant from
7 the evidence custodian, Brenda Lambert, who worked for the
8 Andrews Police Department. Those cells phones, the
9 information on them were dumped by Georgetown County's task
10 force, but then on June 4th of 2014 I still had possession of
11 those cell phones, and I was going to return them to Randy
12 Collins because all the evidence had been collected off of
13 them.

14 Q Okay. And that's when you arranged to meet with him at
15 the police or at the Andrews Town Hall Police Department?

16 A Yes, ma'am.

17 Q Okay. And tell me what -- how -- did you see how he got
18 there?

19 A Yeah. He rode a -- someone brought him. He got out of
20 the passenger seat, front passenger seat. Myself and Melvyn
21 Garrett were already outside, I believe, if I'm not mistaken.
22 Melvyn was smoking a cigarette and that's why we were outside.

23 Q Okay. And when he approached what did you do?

24 A Introduced myself, talked to him. We talked for a little
25 bit outside and then asked him if he'd come inside and have

1 some -- answer some questions for us.

2 Q Okay. And he agreed to do so?

3 A Yes, ma'am.

4 Q Okay. And then what did you do?

5 A Well, first, he -- if I remember correctly he went to the

6 bathroom, and Melvyn and I went to go see if we could use the

7 town hall conference chambers. There's a large table in

8 there, and it was a larger room than anything we could get at

9 the Andrews Police Department, which was attached to the town

10 hall, and then we got permission to be able to use that room.

11 Q Okay. And then all of you went into the room?

12 A Yes, ma'am.

13 Q And then as far as the Miranda form, tell me about that.

14 A As a general rule for most of the time I like to let

15 everybody know what their rights are before I question them,

16 whether it's a custodial interrogation or interview, and so I

17 go ahead and advise them of their rights and especially back

18 then because back then I had just started doing arson

19 investigation, and so I was always getting people to sign

20 their rights, their waiver, know what their rights were.

21 Q Okay. And do you read those to them? How did, how did

22 you go over the rights with Mr. Collins?

23 A I read them, make sure they understand them and then at

24 the bottom you'll have the question, "Do you understand these

25 rights," and I had -- always get someone to put yes or no,

1 they understand them, and "Do you wish to talk to us at this
2 time," and they put yes, and then I'll have -- I'll read the
3 waiver of rights form, which is directly under those two
4 questions, and then I'll have them sign and then I'll witness,
5 and if there's someone else with me then they'll witness as
6 well.

7 Q Okay. And did you have any -- did it appear to you that
8 he understood those rights?

9 A Oh, yes, ma'am.

10 Q Okay. And he signed the form?

11 A Yes, ma'am.

12 Q And did you threaten or coerce him in any way to get him
13 to sign the form?

14 A No, ma'am. Did not.

15 Q And was he, was he actually in custody? Did you handcuff
16 him?

17 A No, ma'am.

18 Q Okay. Did you ever tell him he could not leave?

19 A No, ma'am.

20 Q Okay. And was he, in fact, free to go?

21 A He was.

22 Q Okay. And so the reading of the Miranda -- so he, he
23 wasn't in custody, but you still decided to read him Miranda?

24 A Yes, ma'am.

25 Q Okay. And why is that?

1 A Usually whenever you have a case like this you have a
2 fatality I don't want there to come into question what if they
3 knew their rights before they started talking to law
4 enforcement, and this was a fatal fire, and so I just wanted
5 to make sure that he knew what his rights were before he
6 talked to us.

7 Q So just being extra cautious in that regard?

8 A Yes, ma'am.

9 Q Okay. Now, tell me about the videotape.

10 A Okay. SLED had a policy back in that time about we
11 normally didn't record -- video or audio record statements
12 with witnesses. The -- but we could record if a prosecutorial
13 authority wanted us to or if the -- or if we were with an
14 agency that as general practice they recorded all their
15 statements or recorded all their witness statements and stuff
16 or interviews, excuse me. The Andrews Police Department and
17 the town hall didn't have any kind of audio, video. I
18 happened to have a -- it was a Kodak Playsport. It was a
19 camera -- little waterproof camera that I got from Best Buy
20 and --

21 Q Was it personal use camera?

22 A Personal use, yeah, because SLED didn't issue us any type
23 of recording material or media. So it was something I had
24 gotten to take to the beach with my kids. It was in my truck,
25 and again, because of the severity of this case and knowing

1 that Andrews Town Hall didn't have recording, I went ahead and
2 did it, and it wasn't the best quality, obviously.

3 Q Okay. And how is that powered? Is it battery or plug-
4 in?

5 A It's battery-powered. It has like these little, you
6 know, those little point-and-shoot cameras. That's what
7 basically this was is a point-and-shoot camera, and it used
8 like a little, little square battery pack, and I had like two
9 of them and that was it.

10 Q Okay. So not like Energizer or Duracell but just some
11 sort of battery pack that's made for the camera?

12 A Yes, ma'am. And it was miniature.

13 Q And when you recharge those you have like a charging kit
14 that comes with the camera?

15 A You have to actually charge it in camera, and usually you
16 have to charge it on like a computer or something like that
17 because it has the USB plug and that's how you would charge
18 it.

19 Q Okay. So that's what you were using to record?

20 A Yes, ma'am.

21 Q And where was the camera placed?

22 A It was placed -- okay. If you want to say -- use this as
23 like the conference table for the town hall, I was right here.
24 The camera would have been directly in front of me, and Mr.
25 Collins was then in front of the camera.

- 1 Q Okay. Was the camera visible to him?
- 2 A Yes, ma'am. It was on the table.
- 3 Q All right. And it was clear what it was?
- 4 A Oh, yes, ma'am.
- 5 Q Okay. So the interviews are broken up into three disks,
- 6 but into four parts. Okay. And as far as the first two
- 7 disks, does it appear that they are -- they do flow all
- 8 together but it was just too large to fit on one disk, there's
- 9 no break?
- 10 A Yes, ma'am.
- 11 Q Okay. And so do you know about how long the video went
- 12 before the -- before there was an actual break in the video?
- 13 A No, ma'am. It doesn't show, and well, it -- I didn't see
- 14 it on the playback or anything like that that it had stopped,
- 15 and so it just went on till I noticed it.
- 16 Q Okay. And but it did appear to be a pretty lengthy
- 17 period of time, like it was after the whole first disk and the
- 18 second one?
- 19 A Yes, ma'am.
- 20 Q Okay. And did you realize or tell me, tell me why it cut
- 21 off.
- 22 A I can only assume that the battery died or it -- the
- 23 camera malfunctioned. I don't know. It started back though,
- 24 but it just stopped working. I --
- 25 Q Did you have to change a battery?

- 1 A I'm trying to think back. I believe I did. I had to --
2 I did because if I remember correctly you had to push a button
3 to make the battery come back on, and as soon as I pushed the
4 button Kodak will display on the playback screen, but then it
5 went back dead, and so I had to change out the battery.
- 6 Q Okay. And did you purposely turn the video off when it
7 --
- 8 A No, ma'am.
- 9 Q -- during the segment we're missing?
- 10 A No, ma'am.
- 11 Q Okay. And then during the restroom break though you did
12 pause the video?
- 13 A Yes, ma'am.
- 14 Q Okay. And as Mr. Wilson I'm sure you heard him was
15 questioning that at the point that the video first breaks or
16 that we appear to be missing footage you're saying, "Let me
17 tell you what I think happened," or something to that effect.
18 Okay. And shortly after the camera's back on, Mr. Collins
19 asks for another cigarette break; is that right?
- 20 A Yes, ma'am.
- 21 Q Okay. So had he taken -- do you know how many cigarette
22 breaks he took?
- 23 A At least two, but no more than three I'm sure, and I
24 think after everything, after everything was over with, after
25 we had finished everything and we cut the camera off, we went

1 back outside with him and he smoked another cigarette, and
2 Investigator Garrett was smoking one, too, and I don't smoke.
3 So I was just enjoying the scent.

4 Q Okay. And when you were initially asking him some
5 questions, you all were inquiring who had a key to get into
6 the house that night?

7 A Yes, ma'am.

8 Q And is that what you all initially thought that there was
9 some sort of key that was left for them to get in?

10 A Yeah. During the course of the investigation, we know
11 that you had Dave in the house. The firefighters had to force
12 entry inside the house after they did an exterior attack,
13 which means they didn't go inside at first. They were just
14 spraying water on the -- from the outside, and they had to
15 force entry, and that's where they found the victim. So based
16 on that, we figured someone had to have a key or they would
17 have locked it after they left and that doesn't make much
18 sense.

19 Q When was the first time that you heard anything about a
20 window being the, the place where the fire was started?

21 A I can't remember exactly when I heard there was a window
22 involved.

23 Q But in this interview who mentioned the window first?

24 A Oh, that was Mr. Collins.

25 Q Okay. Because at that time you all were still thinking

- 1 it was a key?
- 2 A Yes, ma'am.
- 3 Q Okay. All right. Did Mr. Collins ever ask you to stop
- 4 the interview?
- 5 A No, ma'am.
- 6 Q Okay. Did he ever ask to leave?
- 7 A No, ma'am.
- 8 Q Okay. Was he -- did he ever ask for food?
- 9 A No, ma'am.
- 10 Q Okay. Was he -- and he was -- we actually saw he was
- 11 provided a soft drink?
- 12 A Yes, ma'am. He was provided a soft drink, cigarette
- 13 breaks and bathroom breaks.
- 14 Q Okay. Now, there was one cigarette break where there was
- 15 a question about that; is that right? Did you -- where he had
- 16 asked for a cigarette break and you all wanted him to keep
- 17 going?
- 18 A I don't remember that, but --
- 19 Q Okay.
- 20 A -- I'm sure if it's on video it's obviously accurate.
- 21 Q Okay. But you did tell him you wanted him to be
- 22 comfortable?
- 23 A Yes.
- 24 Q And gave him the opportunity for that. Okay. And there
- 25 -- was there anything that made you think that he did not

1 understand what was going on?

2 A No, ma'am.

3 Q Okay. And was there any indication or anything that,
4 that you all did to make him or to threaten him or coerce him
5 into giving this statement?

6 A No, ma'am.

7 Q Okay. I have no further questions. Answer any questions
8 Mr. Wilson may have for you.

9 MR. WILSON, JR.: May it please the Court, Your Honor?

10 THE COURT: Yes, sir.

11 MR. WILSON, JR.: Thank you, Judge.

12 EXAMINATION

13 BY MR. WILSON, JR.:

14 Q Agent Hardee, I'm not going to go back over everything,
15 but I do want to ask you about who said first about the key?
16 Who suggested that there might be a key? Was it Randy Collins
17 or did you or Detective -- excuse me, Investigator Melvyn?

18 A I watched the tape. I can't -- but -- and I know it was
19 brought up but I can't remember if it was me or Melvyn that
20 first or Investigator Garrett that first mentioned the key.

21 Q Okay. All right. Did Randy Collins first mention
22 anything about a key?

23 A No, sir.

24 Q Okay. All right. Do you recall who mentioned a window
25 or something about a window, possibly going into a window?

- 1 A That would have been Randy Collins.
- 2 Q Randy Collins suggested that he went into a window?
- 3 A No. No. Not went into a window but he -- that there was
- 4 a window involved.
- 5 Q Okay. Let me ask you this, at any point in time did
- 6 either you or investigator -- is it Garrett, correct, his last
- 7 name?
- 8 A Garrett. Yes.
- 9 Q Garrett, Investigator Garrett, Melvyn, I know him by his
- 10 first name. Did at any point in time did you all tell him or
- 11 ask him if he was going through a window, if he had gone
- 12 through a window?
- 13 A From watching it this morning I do remember that there
- 14 was some laughter about him going through a window, which he's
- 15 kind of big like me, not nowhere near as big as me but going
- 16 through a window would be kind of funny.
- 17 Q Right. And he laughed when you said that; correct?
- 18 A Right. Okay. Yeah.
- 19 Q Okay. Very good. All right. And at some point in time
- 20 you all also were telling him that, you know, somebody had to
- 21 throw something in somewhere. He never said that first; did
- 22 he?
- 23 A I don't remember specifically that.
- 24 Q Do you recall ever telling him "Somehow this thing got
- 25 lit, how did you all light it"?

- 1 A Okay. Yeah. Yes, sir.
- 2 Q Okay. And was it Randy Collins or was it you or
- 3 Investigator Garrett who suggested that somebody may have
- 4 thrown something into the actual residence?
- 5 A I don't remember which one it was, which one of us.
- 6 Q Very good. All right. Well, let me ask you this then,
- 7 you say that the camera went dead right when you said, "Let me
- 8 tell you what we think happened." Okay. And you were in here
- 9 when I questioned Investigator Garrett?
- 10 A Yes, sir.
- 11 Q How long of time elapsed between that time where that
- 12 tape ended and the time you realized it and realized, "Okay,
- 13 look, it's not recording," and then you plugged it back in?
- 14 A Or changed out the battery because --
- 15 Q Changed out the battery, I'm sorry. I apologize.
- 16 A No. No problem. I cannot give you an exact time. I
- 17 would -- because we were talking I didn't even notice it. The
- 18 -- if I was to guesstimate I would say probably no more
- 19 between 10 and 15 minutes.
- 20 Q Okay. All right. Would you agree that obviously it's
- 21 not a, a complete version of the events that occurred that
- 22 day?
- 23 A No. The recording -- well, with that missing part then,
- 24 no, it's not a complete of everything that happened that day.
- 25 Q Okay. All right. Well, I asked earlier, and let me ask

1 you the same thing, the actual timestamp that was put on the
2 actual Miranda warnings that you read to Randy Collins was
3 10:20; correct?

4 A Yes, sir, 10:20 a.m.

5 Q And then the actual video starts at 10:24?

6 A Yes, sir.

7 Q Okay. All right. And then you're missing that timeframe
8 from the actual bathroom breaks, that was not videotaped;
9 correct?

10 A Correct.

11 Q Okay. All right. And then you're obviously missing that
12 portion where he is saying he didn't do it and then you come
13 in saying basically, "Let me tell you what we think happened,"
14 and then he reappears then at some point in time with a sheet
15 of paper with a diagram that was drawn by Investigator
16 Garrett?

17 A Yes, sir.

18 Q Okay. Do you have any other recording or any other
19 knowledge that the Defense could look at to determine what
20 happened during that time other than your testimony, other
21 than Investigator Garrett's testimony, anything else that we
22 can look at and offer to the Court or to the jury that would
23 suggest what the accuracy -- oh, excuse me, that -- see, I
24 apologize -- the accurate events that occurred during that
25 time span?

- 1 A No, sir. There was no other recording in that room.
- 2 Q Okay. Now, counsel asked you about the smoke break
- 3 during the actual beginning of the third tape or the third
- 4 portion where he's on there beginning to write a confession
- 5 basically?
- 6 A Yes, sir.
- 7 Q He asked to go smoke a cigarette.
- 8 A Yes, sir.
- 9 Q He didn't say, "I'm going to do it." He was asking you;
- 10 right?
- 11 A Yes, sir.
- 12 Q He asked every single time he wanted to do something;
- 13 didn't he?
- 14 A Yes, sir.
- 15 Q Okay. All right. Even when he -- his phone rang he
- 16 asked you could he answer the phone; right?
- 17 A Yes, sir.
- 18 Q And this time when he is about to give you, and I say
- 19 this in quotation marks, a confession, you all tell him no?
- 20 A Yes, sir.
- 21 Q He was not free to go anywhere; was he?
- 22 A No. He was still free to go. In fact, he left after
- 23 everything was over with.
- 24 Q I understand that he left afterwards; right?
- 25 A Right.

- 1 Q All right. But police officers have a constitutional
2 right to lie to Defendants; right?
- 3 A Yes, sir.
- 4 Q Okay. All right. So you didn't have to keep your word;
5 did you?
- 6 A No, sir.
- 7 Q No. No. But during that time right then when he asked
8 that question, he wanted to leave and go smoke a cigarette?
- 9 A Yes, sir.
- 10 Q And maybe even walk away; right?
- 11 A Yes, sir.
- 12 Q But you all said no; didn't you?
- 13 A Yes, sir.
- 14 Q All right. And tell the Court why it is you all said no.
- 15 A It was a very important part of that whole interview.
- 16 Q An important part of the interview to get his words in
17 the actual tape that you made so that you could have it to
18 present to the Prosecutor; right?
- 19 A Yes, sir.
- 20 Q You all told him at some point in time that you are not
21 going to -- this tape wasn't going any further. You recall
22 saying that?
- 23 A Yes, sir.
- 24 Q That wasn't true; was it?
- 25 A No, sir.

1 Q And you knew that wasn't true?

2 A No -- yes, sir. I did.

3 Q Okay. All right. Fair enough. Fair enough. During the
4 interview timestamp 1558 at some point in time and I've got a
5 lot more but I'm not going to go through all of them, just
6 want to go through this one.

7 A Okay.

8 Q You all actually said to him, "Have you told your family
9 that you're a suspect." Do you recall saying that?

10 A No, sir, but again, if it's on video then it's accurate.

11 Q Okay.

12 MR. WILSON, JR.: The Court's indulgence.

13 BY MR. WILSON, JR.:

14 Q How long was Randy Collins there with you that you think,
15 just based on your knowledge of what happened that day?

16 A Well, he got there at 10:20 and he left around 1:50, I
17 believe, so around three hours.

18 Q Very good. All right. And the last question, what was
19 the purpose of bringing him there, and I asked Investigator
20 Garrett the same question, what was the purpose of bringing
21 him there and engaging him in conversation about whatever?
22 What, what was the purpose?

23 A For an interview on -- about the occurrence or the fatal
24 fire and his involvement, which we had already learned that
25 there was some involvement based on communications between him

1 and Marissa Cohen.

2 Q Okay. You say communication between him and Marissa
3 Cohen, but you're talking about phone records, not
4 communications that you actually have verbal or written?

5 A No. Just times on the phone.

6 Q Times that they talk.

7 A Yes, sir.

8 Q Okay. Question, during your investigation, though,
9 didn't you find that Randy Collins didn't talk to her past
10 9:00 o'clock that night?

11 A I do not recall. I'd have to look back at those phone
12 records.

13 Q Would it surprise you to know that Randy Collins didn't
14 talk to her after 9:07 and that in your investigation, in your
15 notes, that there were multiple calls made to her from other
16 phone numbers around the time of the fire?

17 A And I could understand that and believe that.

18 Q Okay. All right. But still you all issue a warrant for
19 Mr. Collins' arrest; correct?

20 A Yes, sir.

21 Q Okay. Last question.

22 MR. WILSON, JR.: I apologize, Your Honor. This is the
23 last little bit right here.

24 BY MR. WILSON, JR.:

25 Q Do you have it up there? Yeah.

1 A Yeah. Right here.

2 Q Marked State's Exhibit Two, now, you say that you
3 actually went through each one of those rights with Randy
4 Collins; right?

5 A Yes, sir.

6 Q All right. Now, he signed that and that he actually
7 acknowledged that he understood all that stuff?

8 A Yes, sir.

9 Q Okay. All right. And that was done at 10:20?

10 A Yes, sir.

11 MR. WILSON, JR.: Nothing further, Judge.

12 THE COURT: Ms. Richardson.

13 EXAMINATION

14 BY MS. RICHARDSON:

15 Q Do you have your report with you?

16 A Yes, ma'am. I do.

17 Q Okay. Would the -- your summary, would it refresh your
18 recollection to, to refer to your report regarding the times
19 of the phone calls?

20 A Let's see.

21 THE COURT: Which, which phone call, Ms. Richardson?

22 Q Between Randy Collins and Marissa Cohen.

23 THE COURT: Okay.

24 A I have a paragraph right here that goes with attachment
25 18, which is a cellular phone report that I received from AT&T

1 it looks like.

2 Q Okay. And what was the amount of contact on the night of
3 the fire --

4 A Okay.

5 Q -- or the day of the fire?

6 A Let's see. Okay. The contact was made on the -- do you
7 want me to go back to the 28th?

8 Q That's fine.

9 A Okay. It was made on March 28th at 12:11 p.m., 3:27 p.m.,
10 and 9:07 p.m. Contact was initiated again on March 29, 2014,
11 at 2:50 a.m., 3:01 a.m. and 3:24 a.m. The final contact was
12 on March 31st, 2014 at 10:59 a.m.

13 Q And at the beginning of the interview he said he hadn't
14 talked to her at all?

15 A Correct.

16 Q Okay. And as far as I wanted to clarify about the
17 cigarette break. Isn't it true that you all never told him,
18 no, that he couldn't go out, but you tried to encourage him to
19 stay in?

20 A Yes.

21 Q Okay. And you actually said, "I didn't mean to step over
22 Melvyn but I want you to be comfortable"?

23 A I -- yeah. I did say that.

24 Q Okay.

25 MS. RICHARDSON: No further questions.

1 MR. WILSON, JR.: Judge, just briefly.

2 EXAMINATION

3 BY MR. WILSON, JR.:

4 Q You testified under oath not more than 10 minutes ago
5 that you told him no because I asked you specifically did you
6 all tell him no and you said yes, he could not go?

7 A Under oath, yes, but I mean, I'd have to look back at the
8 video to be specifically correct. I'm going based on my
9 memory.

10 THE COURT: The video speaks for itself, Mr. Richardson
11 [sic], I mean, Mr. Wilson. I, I, I remember the conversation
12 very clearly.

13 MR. WILSON, JR.: Thank you, Your Honor. Thank you,
14 Judge.

15 THE COURT: Thank you, Mr. Hardee.

16 A Thank you, sir.

17 THE COURT: Ms. Richardson.

18 MS. RICHARDSON: Nothing further from the State, Your
19 Honor.

20 THE COURT: All right. Mr. Wilson.

21 MR. WILSON, JR.: Your Honor, I would call Randy Collins
22 to the stand, Judge.

23 THE COURT: All right. Mr. Collins, come around.
24 Mr. Wilson, have you advised Mr. Collins of his rights in
25 regard to testifying in this matter?

1 MR. WILSON, JR.: I have, Your Honor.

2 WHEREUPON, Randy Collins is called to the stand, duly
3 sworn by the clerk and testified as follows:

4 THE CLERK: Thank you. Please have a seat and just let's
5 move that mike up closer to you.

6 THE COURT: Mr. Collins.

7 THE CLERK: You notice he doesn't have a middle name.

8 THE COURT: Do you understand that I just asked your
9 attorney if he's advised you of your rights relevant to
10 testifying in this matter, and although we don't have a jury
11 here it still is a situation where you'll be testifying under
12 oath. You have a Fifth Amendment Right to remain silent. I
13 think that has been explained to you, but I want to make sure
14 you understand it clearly. The Fifth Amendment provides that
15 no one can compel you to testify. You have the right to
16 remain silent. However, if you choose to testify, please
17 understand that anything you say can and may be used against
18 you in the actual trial of this case, and that Ms. Richardson
19 would have an opportunity to cross examine you as to any
20 testimony relevant to this matter. Do you understand that?

21 A Yes, sir.

22 THE COURT: And do you wish to waive your rights to
23 remain silent and testify in this hearing?

24 A Yes.

25 THE COURT: All right. Thank you.

1 EXAMINATION

2 BY MR. WILSON, JR.:

3 Q Mr. Collins, you and I discussed somewhat regarding your
4 rights; correct, at length?

5 A Yes.

6 Q And I went over those rights with you; correct?

7 A Right.

8 Q Okay. And you understand that when you're giving
9 testimony today under oath that you have to tell the truth.
10 You understand that?

11 A Right.

12 Q Okay.

13 A Uh-huh.

14 Q Okay. And you also understand and I explained to you
15 that obviously -- thank you, sir -- that obviously if you
16 don't tell the truth that you're subject to perjury charges;
17 correct?

18 A Right.

19 Q Okay. And I've explained to you several times about what
20 that really means; correct?

21 A Right.

22 Q All right. Let me ask you this, okay, now, at some point
23 in time you have a meeting with Agent Hardee and Investigator
24 Garrett; correct?

25 A Right.

1 Q Okay. And today refreshed your memory about that
2 meeting?

3 A Yes.

4 Q Okay. All right. And let me ask you this, do you recall
5 and what's been marked as State's Exhibit Two, this is a
6 document regarding Miranda Rights. Let me ask you this first,
7 do you know what Miranda is?

8 A No. I don't.

9 Q Okay. Do you understand what Miranda is about?

10 A No, sir.

11 Q Okay. So if I --

12 MS. RICHARDSON: Your Honor, if I may interject then we
13 may have a situation. That's what he's --

14 THE COURT: Well, Mr. Wilson, I just asked him if he
15 understood his right to remain silent and that's what
16 Miranda's about.

17 MR. WILSON, JR.: I understand, Judge.

18 THE COURT: So would you ask him the question in terms
19 not citing a legal case or, or precedent but rather address
20 the rights specifically.

21 MR. WILSON, JR.: Very good.

22 BY MR. WILSON, JR.:

23 Q Let me ask you this, Mr. Collins, and I want to read this
24 straight from here. Did anybody on this particular day when
25 you had this meeting, when you met up there with Investigator

1 Garrett and you met with Investigator or, excuse me, Agent
2 Hardee, did they read this document to you?

3 THE COURT: Show him the document.

4 MR. WILSON, JR.: I apologize, Your Honor. I forgot I
5 had two copies.

6 BY MR. WILSON, JR.:

7 Q Do you recall them reading that to you?

8 A No. I don't recall.

9 Q And, and let me ask you this, is this is a document that
10 you can read yourself? How is your reading ability?

11 A It's not too good.

12 Q Let me ask you this then, when you actually were younger,
13 all right, you had some issues, correct, in school?

14 A Right.

15 Q And, and one of those issues that you had in school was
16 is that you were in special resource classes; correct?

17 A Right.

18 Q Okay. All right. And what grade did you finish? Do you
19 recall what grade you finished?

20 A I think about the 7th grade if I ain't mistaken, seventh
21 or eighth.

22 Q Seventh or eighth grade?

23 A Yes.

24 Q Okay. And, and you finished not in regular classes but
25 in special ed classes?

- 1 A Yes. Some of it, yes.
- 2 Q Did you ever get a GED?
- 3 A No.
- 4 Q Okay. All right. And when I sit down -- when you sit
5 down and someone asks you or to sign some documents -- well,
6 let me ask you this, did they simply ask you to sign these
7 documents, this document?
- 8 A No.
- 9 Q Tell me how it is that your signature ended up on this
10 document.
- 11 A Let me see. Well, I'm going to tell you -- could I tell
12 you the truth about this?
- 13 Q Yes, sir. Yes, sir. That's why we're here.
- 14 A See I been having issue with, with my problems. I had a
15 stroke, and, and sometime I don't remember. I forget.
- 16 Q Okay.
- 17 A You know. So that sometime I don't remember.
- 18 Q Okay. All right.
- 19 A I'm going to, I'm going to tell you the truth.
- 20 Q So that's what I'm asking you. So you don't recall
21 signing this document; correct?
- 22 A No.
- 23 Q Okay. All right. Do you understand, and at the time did
24 you understand that when Investigator Hardee and Investigator
25 Garrett got with you that you had a right to a lawyer at the

- 1 time? Did you know that? At the time did you know that?
- 2 A Not right off. Huh-uh.
- 3 Q Okay. Did you know that you didn't have to talk to them
- 4 that day? Did you know that?
- 5 A No. Huh-uh.
- 6 Q Did you feel you had to stay there, yes or no?
- 7 A Yeah. I felt that way.
- 8 Q Okay. At some point in time they said they gave you a
- 9 bathroom break. Do you remember that?
- 10 A Yes.
- 11 Q Okay. Did any of these officers or agents go inside the
- 12 bathroom with you?
- 13 A Went to the bathroom theirself, one of them. I think one
- 14 of them went to the bathroom hisself.
- 15 Q All right. And were they in there each time with you?
- 16 A No. They stand on the outside.
- 17 Q They stand on the outside?
- 18 A Yes.
- 19 Q Of the door?
- 20 A Right.
- 21 Q Okay. All right. Now, did you understand at the time
- 22 that what you were saying could be used against you in trial
- 23 in front of a jury? Did you even know what that was at the
- 24 time?
- 25 A Not right off.

1 MS. RICHARDSON: Your Honor, which he's asked -- well,
2 he's leading, first of all, but it's two separate responses.

3 THE COURT: Terribly. Okay. Please try not to lead,
4 counsel.

5 MR. WILSON, JR.: Yes, Your Honor.

6 BY MR. WILSON, JR.:

7 Q Did you understand any of these rights that are on this
8 document?

9 A No. I didn't.

10 Q Okay. All right. Did you know at the time that this was
11 going to be used against you or could be used against you in a
12 court of law, the statement that you gave?

13 A Not, not right then. No. I didn't.

14 Q All right. Now, during this interview that you had can
15 you tell me about your feelings about what happened during the
16 entire interview, how you felt about the whole thing?

17 A I been feel kind of bad, you know, because I, I, I told
18 them that -- some of the, the stuff that supposed to be on the
19 -- that tape it cut off.

20 Q Well, tell the Court about some of the things. Tell the
21 Court about some of the things that were supposed to be on the
22 tape that are not on the tape.

23 A Some of them that on the tape it has something to do with
24 what they asked me a question about is I -- if -- is I f'ing
25 what is the -- the -- though I can't pronounce it,

1 Carissa.

2 Q Okay. They asked you if you were f'ing Carissa.

3 A Carissa.

4 Q Clarissa.

5 A "Don't lie to me."

6 Q Okay.

7 A You know, and that, that kind of hurt me.

8 Q Okay. And how many times were they yelling or were they
9 yelling at you?

10 A A little -- a couple of times, yes.

11 Q Okay. All right.

12 A But that cut off that tape, that CD.

13 Q At some point in time during the interview they were
14 telling you certain things, okay. What certain things were
15 they telling you that you picked up on and you began to repeat
16 to them?

17 A Certain things like when they just tell me about, "What
18 time you, you been at the place and what, what -- where you
19 been at," you know, like that.

20 Q Okay. All right. All right. Mr. Collins, during the
21 interview did you feel you could leave? Did you feel you had
22 the freedom to move the way you wanted to move?

23 MS. RICHARDSON: Your Honor, again, it's leading and it's
24 multipart.

25 MR. WILSON, JR.: Judge, that's -- I don't know how

1 that's leading.

2 THE COURT: I'll, I'll let him answer the question.

3 A No. I didn't feel like that, like I could have just
4 left.

5 Q Okay. All right.

6 A Not like that.

7 Q All right.

8 MR. WILSON, JR.: The Court's indulgence, Your Honor.

9 BY MR. WILSON, JR.:

10 Q While you were there -- well, let me ask you this, where
11 did you think you were at the time when you were doing this,
12 this, this interrogation and the interview?

13 A Talk when they interview me when I was at the, the place?

14 Q Yes.

15 A I thought I was just going to pick up my phone. I didn't
16 thought about trying to, you know, do no interview.

17 Q I understand. But when you were there where did you
18 believe that you were? Did you know where you were?

19 A Yes. I, I know, but I --

20 Q Where were you? Tell me where you were.

21 A -- I was at the jailhouse.

22 Q You were at the jailhouse?

23 A Yes.

24 Q Okay.

25 A In Andrews.

1 Q In Andrews. All right.

2 MR. WILSON, JR.: No further questions, Your Honor.

3 THE COURT: All right.

4 BY MR. WILSON, JR.:

5 Q Answer any questions counsel may have.

6 EXAMINATION

7 BY MS. RICHARDSON:

8 Q And you've lived in Andrews most of your life?

9 A Yes, ma'am.

10 Q Okay. And that's the -- that building's the town hall
11 and the police department?

12 A Right. Yes.

13 Q Okay. And there's some other county offices in there or
14 city -- Town of Andrews offices?

15 A I, I -- yes. Yes, ma'am.

16 Q Okay. You pay your water bill in there?

17 A Yes, ma'am.

18 Q You do?

19 A Uh-huh.

20 Q Okay. And EMS and fire department and all that's right
21 there together, too?

22 A Yeah. Yes. It is.

23 Q Okay. And how did you get there?

24 A How did I get there to the, to the place?

25 Q Yeah.

- 1 A Drive.
- 2 Q Okay. You drive?
- 3 A Yes. I drive. Yeah. Yeah. If I be drive I drive, yes.
- 4 Q Okay. You got a driver's license?
- 5 A Yes, ma'am.
- 6 Q How long you had a driver's license?
- 7 A Probably about 30 something years.
- 8 Q Okay. And you take the test for that?
- 9 A Yes.
- 10 Q And back then was it on paper or on computer?
- 11 A It was on paper.
- 12 Q Okay. You pass it the first time?
- 13 A No, sir.
- 14 Q Had to take it again?
- 15 A It take -- it took me about at least about four or five
- 16 times to get it.
- 17 Q Okay. But you passed and you've had a driver's license
- 18 ever since?
- 19 A Yes. Yes.
- 20 Q Got insurance on your car?
- 21 A On my vehicle, yes. I used to have insurance on my
- 22 vehicle, too, yes.
- 23 Q Okay. And you've had insurance several times on houses
- 24 you've lived in; is that right?
- 25 A Yes. I had -- yes.

- 1 Q Okay. And you've had some fires?
- 2 A Huh?
- 3 Q And you've had some fires?
- 4 A Yeah. I had a couple.
- 5 Q Okay.
- 6 A But they was accidental.
- 7 Q Okay. But you knew how to apply for insurance?
- 8 A Yes.
- 9 Q You knew how to go get insurance?
- 10 A Right.
- 11 Q Okay. And you knew how to take care of it if something
- 12 happens and you need to make a claim? You know how to make a
- 13 claim?
- 14 A Yes, ma'am.
- 15 Q And you knew -- all right. Let me show you what's marked
- 16 as State's Exhibits One, which is a voluntary statement, and
- 17 Two, which is a Miranda form.
- 18 A All right. Yeah.
- 19 Q All right. Do you recognize the signatures on, on
- 20 State's One? You sign that? You signed that statement saying
- 21 you were at Carnell's?
- 22 A Yeah. It look -- yes. It look it. Yes. Yes. I think
- 23 I did.
- 24 Q Okay.
- 25 A Yeah.

1 Q Do you remember giving that statement to Melvyn Garrett
2 saying you were at Carnell's all night with James Miller?

3 A Yeah. I, I don't -- I don't remember this paper, you
4 know, signing a paper, but I remembered I'd -- I've talked to
5 somebody.

6 Q Okay. And told them you were at Carnell's that night?

7 A Yes.

8 Q Okay. And that you were with James?

9 A Right.

10 Q And do you remember -- and do you remember telling them
11 that you were at Carnell's the whole night?

12 A Right. Right.

13 Q The night of the fire?

14 A Right.

15 Q Okay. And do you remember telling them then that maybe
16 those times weren't exactly right?

17 A No. I don't remember that. I don't recall that.

18 Q Okay. And you just -- but you did just watch that on the
19 video?

20 A Yes.

21 Q Okay. Okay. Do you remember telling them you didn't do
22 it?

23 A Right. I remember that.

24 Q Okay. Do you remember telling them that you did have
25 something to do with it?

1 A No. I ain't got nothing to do with that.

2 Q Okay. So you remember telling them you weren't -- that
3 you were at Carnell's all night?

4 A Yep. I remember that.

5 Q But you don't remember saying that you were there when
6 the fire started? You don't remember that?

7 A The only thing I remember is I, I, I ride with James.
8 That was it.

9 Q Okay.

10 A I ride with him.

11 Q That night?

12 A Right.

13 Q So you did ride with James that night?

14 A I rode with him. We ride.

15 Q And you were at that trailer, Marissa's trailer?

16 A No. I -- no, huh-uh. I was in, in the, in the truck,
17 near the truck. That's where I been at.

18 MR. WILSON, JR.: Objection, Judge. This is becoming
19 argumentative and this is simply about voluntary.

20 THE COURT: No, sir. Ask the question, Ms. Richardson.

21 Q And do you remember telling them you all parked on the
22 back road?

23 A Yes. I remember that. Yes.

24 Q Okay. And do you remember telling them that James threw
25 a paper through the window?

- 1 A Yes. I remember that.
- 2 Q And after Syience died people in Andrews were talking;
3 weren't they?
- 4 A Yes. They did.
- 5 Q And they were taking about you?
- 6 A Yes. People was talking about me.
- 7 Q And your name was in it?
- 8 A Yes. Had me all in it.
- 9 Q And people were saying you had something to do with it?
- 10 A Yes. They did.
- 11 Q And when the police talked to you the first time they
12 told you that; didn't they?
- 13 A Not right off.
- 14 Q Okay.
- 15 A They didn't tell me.
- 16 Q But they asked -- you knew that they were looking at you
17 for that fire?
- 18 A No. Not right then I didn't thought that.
- 19 Q Okay.
- 20 A But --
- 21 Q But when they asked you to tell them where that you were
22 that night and you told them where James -- that you were with
23 James the whole time, you knew they were asking because they
24 thought you had something to do with that fire?
- 25 A No. I, I didn't thought that at first.

1 Q Okay. But you were giving them --
2 A I --
3 Q -- you know what an alibi is?
4 A Huh? An alibi, yes.
5 Q You know what that is?
6 A Yes.
7 Q Okay. So you were giving James as an alibi?
8 A No. It, it, it, it was true we was uptown to, to
9 Carnell. I didn't lie.
10 Q Okay. You watch TV?
11 A Not too much. I, I work most of the time at where I
12 works.
13 Q Okay.
14 A On the job, but I'm missing money now from work.
15 Q Okay.
16 A But this more important.
17 Q When the police arrest you what do they say?
18 A They didn't arrest me.
19 Q No. I mean in general. When they arrest people what do
20 they say?
21 A You're under arrest. You have the right to remain
22 silence.
23 Q Okay. And then they say a few more things.
24 A Any, any chance you talk will and could be used against
25 you in a court of law. You have the --

1 Q And you've heard that over and over.

2 A -- right for an eternity [sic].

3 Q And you've heard that a bunch in your life?

4 A I, I, I heard that before, yes.

5 THE COURT: So you knew that?

6 A On that behalf, yes, yes, sir.

7 MS. RICHARDSON: No further questions.

8 THE COURT: Well, Mr. Wilson.

9 MR. WILSON, JR.: May it please the Court, Judge.

10 EXAMINATION

11 BY MR. WILSON, JR.:

12 Q Mr. Collins, at the time when you were read these
13 documents, did you know that? Who -- let me ask you this,
14 where have you received education regarding what all those
15 things mean --

16 A I --

17 Q -- and it's okay to tell the Court because the Court
18 needs to know this?

19 A Well, I --

20 Q Who's gone over this stuff with you?

21 A My lawyer.

22 Q Thank you. At the time that this happened did you know
23 what all that stuff meant?

24 A No. I, I didn't know. Huh-uh.

25 Q As a matter of a fact, I had to sit down and go through

1 this with you for hours; did I not?

2 A Yes.

3 Q And explain to you what it is that you actually have a
4 right to; correct?

5 A Right. Right.

6 Q Let me ask you this, counsel asked you about Agent Hardee
7 and Garrett and about what you said about the diagram, what
8 you said about the window, what you said about all those
9 things. Where did you get that story from? Who gave you that
10 story?

11 A I got that story when, when they asked me questions about
12 the situation.

13 Q When who asked you questions about the situation?

14 A What, what their name is? The guy right, right there.

15 Q It's okay to point him out. That's okay.

16 A Yeah. The one right there, yes.

17 Q The one right there right in the yellow tie?

18 A The bow -- yeah. Two -- both of them.

19 Q Okay.

20 A There's two of them that been up here.

21 Q And the other gentleman can you point him out in the
22 courtroom?

23 A Yes. The one got the suit on just left from up here, the
24 one just left from up here.

25 MR. WILSON, JR.: No further questions, Judge.

1 THE COURT: Ms. Richardson.

2 MS. RICHARDSON: No further questions.

3 EXAMINATION

4 BY THE COURT:

5 Q Mr. Collins.

6 A Yes, sir.

7 Q Which one of these officers if either of them threatened
8 you with anything?

9 A They ain't really threatened me but I, I feel like I, I
10 couldn't, you know.

11 Q Did they promise you anything?

12 A Yeah. They promise me they were going to do something
13 for me.

14 Q Did they promise you that they'd talk with the Solicitor
15 if you'd be forthcoming?

16 A Yes. Yes. They promised me that.

17 Q When you heard the one officer who was writing down your
18 statement, you were saying things and he was writing it down.
19 Okay?

20 A Yes.

21 Q Ms. Richardson just asked you about that statement. You
22 heard, heard it a moment ago on the video; right?

23 A Yes, sir.

24 Q What part of that statement was not true?

25 A It's, it's just a piece been cut off from, from what was

1 said.

2 Q But I mean, the final statement, the one you signed, what
3 part of that was not true?

4 MR. WILSON, JR.: Your Honor, Judge, he doesn't
5 understand what it is you're talking about, and I would ask
6 the --

7 THE COURT: Well, let, let, let me ask him because if
8 he's saying he was coerced I want to know how he was coerced.
9 There, there was -- do we have the statement, Ms. --

10 MS. RICHARDSON: The last one.

11 THE COURT: Here it is.

12 BY THE COURT:

13 Q I think Officer Garrett on the tape read it to you and
14 you signed it; okay?

15 A Yes, sir.

16 Q Okay. You remember that. We, we heard it on the tape?

17 A Yeah. I remember on the tape. Yes.

18 Q Okay. Well, what part of that was not true? Tell, tell
19 me what --

20 A Yeah. That, that true to the paper.

21 Q -- you've been made to say that wasn't true.

22 A The paper true right there.

23 Q This is true?

24 A Yeah. I think that true there.

25 Q Okay. All right. Thank you.

- 1 A Can I have a seat?
- 2 MR. WILSON, JR.: You Honor, briefly, Judge.
- 3 THE COURT: Yes.
- 4 MR. WILSON, JR.: Briefly.
- 5 EXAMINATION
- 6 BY MR. WILSON, JR.:
- 7 Q Mr. Collins, have a -- sit down.
- 8 A Okay.
- 9 Q Sit down briefly.
- 10 A Right here?
- 11 Q It's okay. Yeah. Sit down.
- 12 A Okay.
- 13 Q Sit down. When the officers first asked you to do this
- 14 written statement on the video what was the first thing that
- 15 came out of your mouth? Do you recall?
- 16 A "Could you do it for me."
- 17 Q Is this your statement?
- 18 A Yeah.
- 19 Q This the statement that you told them to write down?
- 20 A Right. Right. Right.
- 21 Q Okay. What's the first thing that you told them about
- 22 this statement? What, what, what were the first words that
- 23 came out of your mouth?
- 24 A On that statement right, where you got that paper there?
- 25 Q Yes, sir.

1 A I, I don't remember, not, not with what the -- that the
2 paper.

3 THE COURT: Was it, "I didn't do it?"

4 A I didn't do it.

5 THE COURT: Is that where you're going, Mr. Wilson? Let
6 me help you.

7 MR. WILSON, JR.: Yes, sir.

8 A Yes, sir. I didn't do it. Yes, sir.

9 Q Okay. All right. Is it true that you actually went out
10 to the scene of this particular place, to this trailer; is
11 that true?

12 A I didn't know. No. It ain't true on our behalf.

13 Q Why did you tell the -- that's okay. Why did you tell
14 the officers? Why did you tell the officers that story? Tell
15 the Court why you told the officers that story.

16 A The reason, the reason why I said that so I could have
17 hurry up and leave.

18 Q Who did you get the story from about going to there, the
19 kerosene, about all that stuff? Where did you get that story
20 from? Who told you the story?

21 A Well, the, the kerosene, I, I don't -- I ain't remember
22 or recall on that kerosene.

23 Q I understand. I understand that. That's not what I'm
24 asking you. Who told you in this interview, when you met with
25 Garrett and you met with Hardee, who told you all this stuff?

1 A Hardee. Hardee. Hardee and them tell me about the
2 kerosene.

3 Q Thank you so much. Thank you.

4 THE COURT: Ms. Richardson.

5 MR. WILSON, JR.: I apologize, Judge. I apologize.

6 EXAMINATION

7 BY MS. RICHARDSON:

8 Q You just told me you rode with James that night; right?

9 A Yes.

10 Q You were with him? You were with James that night?

11 A Yes, sir. Yes, ma'am.

12 Q And Marissa asked you to do a job for her? Did Marissa
13 ask you to do a job for her?

14 A Yes. She, she asked me but I, I didn't do it.

15 Q Okay.

16 A I didn't do it.

17 Q But you were with James?

18 A Yes.

19 Q Okay.

20 THE COURT: All right.

21 MS. RICHARDSON: No further questions.

22 THE COURT: You may step down. Thank you. Mr. Wilson,
23 witness.

24 MR. WILSON, JR.: Your Honor, we would rest at this time
25 on this particular issue, Judge.

1 THE COURT: All right. Very well. You may step down,
2 Mr. Collins. Thank you. All right. I'll hear from you both
3 as soon as Mr. Collins returns to Defense counsel's table.

4 MR. WILSON, JR.: May it please the Court or who wants to
5 go first?

6 THE COURT: Well, I think actually the burden is on the
7 --

8 MS. RICHARDSON: The State.

9 THE COURT: -- on the State in this matter.

10 MS. RICHARDSON: Your Honor, as the Court has stated, the
11 burden is on the State by a preponderance of the evidence.

12 THE COURT: That is correct.

13 MS. RICHARDSON: And that this is a bifurcated process
14 and that if the State can show by a preponderance of the
15 evidence that based on the totality of the circumstances the
16 statements are voluntary, then it's to be submitted to the
17 jury and then the standard there would be beyond a reasonable
18 doubt.

19 THE COURT: Correct.

20 MS. RICHARDSON: And the Court takes into consideration
21 all of the circumstances involved. I don't really see that
22 there's any dispute with the alibi statement, but obviously
23 there's no indication that he was in --

24 THE COURT: How many statements are we talking about
25 here?

1 MS. RICHARDSON: There are two written statements and one
2 videotaped statement.

3 THE COURT: Okay.

4 MS. RICHARDSON: So but the video statement -- the second
5 written statement is basically just reducing to writing --

6 THE COURT: Is a summary of the video.

7 MS. RICHARDSON: Right. It's a summary of the video.

8 THE COURT: And the first written one is the one, the
9 street statement; right?

10 MS. RICHARDSON: Right.

11 MR. WILSON, JR.: Yes, Your Honor.

12 THE COURT: Okay.

13 MS. RICHARDSON: The alibi pretty much.

14 THE COURT: All right.

15 MS. RICHARDSON: And you know, there's been no indication
16 that that was involuntary at all and no indication that there
17 was any sort of coercion or trickery in using that, and I
18 think that kind of is because it's a self-serving or gives his
19 alibi for the night, but Your Honor, in State v. Parker the
20 Court of Appeals gives a very detailed opinion that talks
21 about the different things that the Court can consider in
22 looking at the totality of the circumstances.

23 THE COURT: Uh-huh.

24 MS. RICHARDSON: Let me -- the Court's indulgence. Let
25 me get these -- I think I've moved too many papers around

1 here, and I'll get you copies of these.

2 THE COURT: I'm actually familiar with the case.

3 MS. RICHARDSON: Okay.

4 THE COURT: Uh-huh.

5 MS. RICHARDSON: Oh, here they go. Never mind. I found
6 them.

7 THE COURT: All right.

8 MS. RICHARDSON: And in State -- State v. Parker, 671
9 SC2d 619, the Court talks about those, and basically --

10 THE COURT: 2008 case.

11 MS. RICHARDSON: I'm sorry, Your Honor?

12 THE COURT: 2008 case involving a juvenile.

13 MS. RICHARDSON: Right, which is even --

14 THE COURT: Okay.

15 MS. RICHARDSON: -- requires even more scrutiny than an
16 adult, but again, it's the totality of the circumstances and
17 gives several things for the Court to take into consideration.

18 Your Honor, in this case, the Defendant was not in
19 custody. He was free to leave, and in fact, did leave. He
20 did leave, and but nevertheless, Miranda was given out of an
21 abundance of caution. In the Parker case, the Court talks
22 about the different types of techniques that police use and
23 that are recognized and have, have been found to be voluntary.
24 The Court says, [as read], "Few criminals feel impelled to
25 confess to the police purely of their own accord without any

1 questions at all, thus it can almost always be said that the
2 interrogation caused the confession. It is generally
3 recognized that the police may use some psychological tactics
4 in eliciting a statement."

5 THE COURT: He can even lie to him. The question is
6 whether or not there's coercion.

7 MS. RICHARDSON: Correct.

8 THE COURT: That's the question.

9 MS. RICHARDSON: And the, and the question is whether it
10 such that his, his will --

11 THE COURT: Is overridden.

12 MS. RICHARDSON: -- is overborne, and Your Honor, I think
13 one of the most telling things in the whole statement and even
14 in the process today is clearly when it's something that's
15 getting him in trouble, he don't remember, and when it's
16 something that helps him he does, but in State v. Pendergrass,
17 239 SC2d 750, and this was more in the context of the request
18 for an attorney, the court said that you can look at the --
19 and this is on -- near the end of the opinion. It says, [as
20 read], "The voluntariness of the waiver can be discerned from
21 the fact that the statement which followed it was self-serving
22 and was an attempt on Appellant's part to cast the blame on
23 the Codefendant," and that is exactly what we have right here.
24 His will wasn't so overborne that he was following whatever
25 they said or anything like that. He was self protecting and

1 minimizing his role, which shows that it was voluntary, his
2 will wasn't overborne and he knew what to say and what not to
3 say to minimize his role.

4 THE COURT: Okay.

5 MS. RICHARDSON: And this was after he had been caught
6 and confronted with the lies he had told. Also, Your Honor,
7 there are several examples. If you go through the video, and
8 I know it was lengthy, where he didn't just agree with what
9 they said. You can see the surprise on their face when he
10 talks about the window. That was the first that he had heard,
11 and he corrects them in several aspects of the statement. So
12 clearly his will was not overborne and that is shown by the
13 fact that he could discern, minimize and self protect, try to
14 blame the Codefendant more the entire time, and I have a copy
15 of this case if you need this one, Your Honor.

16 THE COURT: That was what case?

17 MS. RICHARDSON: Pendergrass.

18 THE COURT: Okay. When was Pendergrass?

19 MS. RICHARDSON: 1977.

20 THE COURT: Okay. All right. Mr. Wilson, let me hear
21 from you.

22 MR. WILSON, JR.: Your Honor, if it please the Court,
23 Judge. I think it's clear from the testimony, Judge, they
24 have not met that burden, and let me explain why.

25 THE COURT: Go ahead. Explain why.

1 MR. WILSON, JR.: Please, Judge. Thank you. The
2 officers admitted on the stand that they were offering him
3 statements which you can see clearly on the video which is why
4 I wanted it produced in front of the entire tribunal where he
5 was actually going back and repeating what they were saying
6 giving a story that he thought was comporting with what they
7 were saying, and I would also join in the case that counsel
8 has, but also offer --

9 THE COURT: I, I, I, I don't think that argument holds
10 water, Mr. Wilson, because again today he says that's really
11 what happened. He may view himself as having nothing to do
12 with it by virtue of the fact that he was present aiding and
13 abetting, but even today he says, "What I said was true.
14 James did it. James went and threw the lighted thing in the
15 window. James started the fire."

16 MR. WILSON, JR.: What he was saying actually, Judge, and
17 again, it's because he does not have good language skills,
18 which is why I wanted to go back and question him again.

19 THE COURT: I want to question that. I watched him on
20 three hours of tape. He seemed to have excellent language
21 skills, pretty good manipulative skills, which are consistent
22 with what two forensic psychologists had to say about his, his
23 evaluation.

24 MR. WILSON, JR.: Judge --

25 THE COURT: And he always seems to, I agree with Ms.

1 Richardson, that he, he only forgets those things that may be
2 harmful to him. You know, he seems to have great recall,
3 three hours of, of interrogation, and he was able to carry on
4 conversation as clearly as you and I could.

5 MR. WILSON, JR.: Judge, if I may, for the record, Judge.
6 It clearly, to me, based on my conversations with these
7 officers today, they were giving him information which he was
8 then regurgitating, and then to make matters worse, which I'll
9 get into this in a minute, there's a portion of the video that
10 is missing.

11 THE COURT: Will you agree that the question here is
12 whether or not there was coercion.

13 MR. WILSON, JR.: It's not the only --

14 THE COURT: And I asked him if there was coercion.

15 MR. WILSON, JR.: It's, it's not the only question, but
16 the reason I put him up, Your Honor, was because I knew what
17 he'd already told me about his experience there with the
18 officers. It was important that the Court knows that
19 obviously he felt as if he was overwhelmed with this
20 information.

21 THE COURT: I asked him if he was threatened or anything.
22 He said no.

23 MR. WILSON, JR.: No, I, I understand. I understand you
24 asking him questions. He looks at you as the Judge. He's
25 looking at me as a lawyer, which is why I got back up then to

1 correct what you were giving him because, again, he doesn't
2 know what you're talking about.

3 THE COURT: I wasn't giving him anything. I was asking
4 him if anyone threatened him, coerced him, promised him
5 anything.

6 MR. WILSON, JR.: No. Your Honor asked him about the
7 statement, and Your Honor didn't provide the statement to him
8 and he gets confused very easily about different things. I
9 would submit that.

10 THE COURT: I'm not so sure, Mr. Wilson.

11 MR. WILSON, JR.: Well, let me finish putting this on the
12 record, Judge. When you look at State versus Evans, Your
13 Honor, State versus Evans talks about the totality of the
14 circumstances, the coercive police activity that is going on.
15 In this particular case you had police officers, again,
16 offering information, statements to him which --

17 THE COURT: I did not hear it that way.

18 MR. WILSON, JR.: I understand that, Your Honor. I
19 understand, Judge, but I'm just saying this for my argument.
20 They were offering him statements on the actual video telling
21 him certain things that he then picked up on and then began to
22 regurgitate. That is the first issue. The second issue is is
23 that what else I find to be coercive about this, if I may say
24 this, be so bold to say it, that the police actually during
25 this time, you know, they were coaxing him and trying to get

1 him to go ahead and disarm him, and if it'd been somebody --

2 THE COURT: Isn't that what they're supposed to do?

3 MR. WILSON, JR.: Judge, let me finish. Let me finish,
4 Judge. If it had been someone who honestly had a GED or even
5 had a high school education, he does not have that, and that's
6 one of the factors that the court in Evans said that the court
7 has to consider when they talk about whether or not someone is
8 susceptible. I am not as susceptible to being coerced by
9 Agent Hardee or Agent -- excuse me, Investigator Garrett,
10 neither is the Prosecutor, nor is this young lady right here
11 or Your Honor, but this young man is, and Your Honor talked
12 earlier about the actual evaluators. Well, the evaluators
13 never said that he had the capability to be a manipulator.
14 That was never said in the report, wasn't solicited or
15 elicited on the stand from their testimony. What they said
16 was that he has -- showed some indicators on the MOCA test,
17 which I've said before, of having cognitive issues, and they
18 brought out those cognitive problems that the MOCA divulged,
19 Judge.

20 I would also talk about his maturity, Your Honor,
21 obviously his education, his physical condition, which he said
22 to them, and the officer said on the stand that he knew that
23 he'd had a stroke before they even began questioning him. I
24 asked both of them, and they both knew that he had a stroke
25 and that he had some impairment. Obviously, his mental health

1 --

2 THE COURT: No. You didn't ask them that. They said
3 they knew he'd had a stroke.

4 MR. WILSON, JR.: Right. Had a stroke.

5 THE COURT: And how were they to know he has any
6 impairment or if he has any impairment. You've not put up
7 anyone to suggest in this court that he has an impairment as a
8 result, and of course --

9 MR. WILSON, JR.: But Your Honor --

10 THE COURT: -- you got the Hughes case and the Davis case
11 which clearly say --

12 MR. WILSON, JR.: But --

13 THE COURT: -- that low intelligence, lack of education
14 alone is not sufficient.

15 MR. WILSON, JR.: Alone, I agree with that, Judge, but
16 we're not talking about factors that are alone. I think that
17 we put in ample or got, you know, elicited ample testimony
18 regarding other factors, and I would also suggest to the
19 Court, because the Court made it an issue about the
20 evaluators, that still you have that condition inside of the
21 actual report regarding his cognitive, what they said, I
22 didn't say this, what they said in their report were global
23 impairments in these areas which they elicited from the actual
24 MOCA test. So I would suggest to the Court, obviously, based
25 on his testimony which --

1 THE COURT: Have you produced any evidence that say that
2 they would impair his ability to understand the rights that
3 were given to him?

4 MR. WILSON, JR.: I put him on the stand, Judge, and he
5 put that in the record as -- and, and the Court can weigh it
6 however it wants to, but he says at the time he did not
7 understand whether he was free to leave. He didn't understand
8 that he had a right to have a lawyer there. He didn't
9 understand he didn't have to talk to them or he could move
10 freely as he wanted to, and I also elicited from the stand
11 that he felt like he couldn't leave. He said that they were
12 standing outside the bathroom door. All those things were
13 gotten, but most impressively is this about this issue, and
14 Rule 106, which is a part of my -- I'm going to make it part
15 of my motion, Judge, Rule 106 and the traditional common law
16 rule of completeness, as well as in combination with 403 and
17 the 14th Amendment guarantee that he has a fair trial and fair
18 ability to confront any evidence that is competent, that the
19 Court finds competent against him. What the issue here is is
20 that when you look at Rule 106 and take it in combination with
21 403, you have an issue because what Rule 106 says is, look, if
22 the State puts up evidence, then the Defendant, which is why I
23 asked him whether they had anything else, you know, on the,
24 the, the, the horizon for us to use, the Defendant has an
25 absolute right to then put up evidence that might be in

1 fairness to him. So when they did the recording, even though
2 I don't think that Agent Hardee is an ill will person. Let me
3 just --

4 THE COURT: But you have the entire, the complete, the
5 whole recording, all that exists, all that exists.

6 MR. WILSON, JR.: No. I don't. I, I asked on the
7 record, I asked Agent Hardee on the record this is the
8 complete, you know, depiction or occurrence of what happened.
9 He said no. It's not complete.

10 THE COURT: I know what the -- what he said.

11 MR. WILSON, JR.: I know, Judge.

12 THE COURT: He said this is all that was recorded.
13 That's the entire document.

14 MR. WILSON, JR.: Judge, he said on the stand, Your
15 Honor, he said it was not complete. I asked him and --

16 THE COURT: No, Mr. Wilson. No, Mr. Wilson. We're not
17 going there. It's very clear from these officers' testimony
18 that there was a malfunction with the camera. That was -- you
19 want me to call them back?

20 MR. WILSON, JR.: Judge, if we could read back the
21 testimony, I remember --

22 THE COURT: No. No. Let's call -- come, come forward.
23 Mr. Hardee, Mr. Hardee, come, come forward. We're going to
24 lay this issue down. If you want -- don't agree to it we'll
25 just lay it down right -- come around, Mr. Hardee.

1 MR. HARDEE: Yes, sir.

2 THE COURT: You're still under oath.

3 EXAMINATION

4 BY THE COURT:

5 Q And let the Court ask you this, is the CD which has been
6 provided to counsel the complete CD as recorded?

7 A Yes, sir.

8 Q You haven't chopped it up or cut it up. There was a
9 camera malfunction, but that's all of it?

10 A Yes, sir.

11 MR. WILSON, JR.: May I ask a follow up?

12 THE COURT: You want to cross examine him?

13 MR. WILSON, JR.: May I?

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

15 A Wait.

16 THE COURT: Oh, yeah. Okay. Go ahead. I thought you
17 said no.

18 EXAMINATION

19 BY MR. WILSON, JR.:

20 Q I asked you earlier, and I don't know if you recall, I
21 asked you whether or not the actual depiction of what's on the
22 CD is a complete depiction of what happened during that day
23 which is a separate question.

24 THE COURT: Mr. Wilson, that's not the question, and you
25 know that's not the question.

1 MR. WILSON, JR.: Judge --

2 THE COURT: The question I put to him is that all of it?

3 MR. WILSON, JR.: Judge --

4 THE COURT: We acknowledge that there was a malfunction.

5 You know, you're playing with words. I know that it didn't
6 record all of it. It was very clear, but what you have is all
7 of that document.

8 MR. WILSON, JR.: Judge, I understand that, but the Court
9 is actually asking -- eliciting testimony for the purposes of
10 trying to clean the record up, and my, my concern here is this
11 --

12 THE COURT: And I am -- cleaned it up. That's what we
13 have these hearings for.

14 MR. WILSON, JR.: But he has already testified, Your
15 Honor, that the Court -- that -- excuse me, that the recording
16 was incomplete, that it didn't show an accurate depiction.

17 THE COURT: Well, I don't think he testified to that.
18 That's not how I heard it. That's why I called him back.

19 MR. WILSON, JR.: Your Honor, he -- it's on the record.

20 THE COURT: Well, it's on the record I think otherwise.
21 So I just called him back to tell me whether or not that was
22 correct. You may step down. Thank you.

23 A Thank you, sir.

24 THE COURT: All right. Mr. Wilson, you may continue.

25 MR. WILSON, JR.: Your Honor, to continue, Rule 106 says

1 if a party introduces all or part of a writing or a recorded
2 statement an adverse party may require the introduction at the
3 time of any other part or any other writing or recorded
4 statement that in fairness ought to be considered. Rule 403
5 is a very, very, obviously, you know, I know the Court will
6 take judicial notice of it, I'm not going to read it, but it
7 talks about fairness, reliability, as well as the Defense's
8 right to actually have the entire statement and be able to
9 then --

10 THE COURT: That's not what 403 is.

11 MR. WILSON, JR.: No, no, no. I'm not saying 403. I'm
12 talking about 106 in combination with 403, but fairness and
13 due process would afford then the Defense to say, "Look, okay,
14 well, jury, this is how he got to this point. This is how the
15 officers got him to this point," because this is not a, a, a
16 portion that's missing that is not important, Your Honor.
17 This is the critical time when he says, which is in case law,
18 they say, "Let me tell you how -- what we think happened."
19 That is the beginning statement of coercion. You can't see it
20 any other way because they're beginning to tell him then at
21 that point in time --

22 THE COURT: Yes. I can.

23 MR. WILSON, JR.: Well, Judge, I'm just saying for my
24 purposes you can't, in my opinion, you cannot see it any other
25 legal way because the officers, again, these are not officers

1 of the court. Their job is to go out, and they -- you're
2 right, they can constitutionally lie, which is why there's so
3 many safeguards in the 14th Amendment against this kind of
4 thing, the unfairness. What's missing here is that portion
5 that's so critical so that I can tell the jury, "Look, here's
6 how they got here," and we have an absolute right to argue --

7 THE COURT: And you could do that.

8 MR. WILSON, JR.: We have an absolute right to present
9 evidence, if it's there, for coercion. The issue I have here
10 in this case is it is not there because when he's on the
11 second tape he's not said anything incriminating. He doesn't
12 incriminate himself until the tape goes off and they say at
13 the end, "Let me tell you what we think."

14 THE COURT: Let me tell you when he incriminates himself,
15 and you have seen it, Mr. Wilson, a thousand times. It's a
16 common police tactic and there's nothing in my view wrong with
17 it. "You tell us your story," and once you've told us the
18 story, "Well, let me tell you what we actually have and what
19 we actually know," and that's usually when it turns around.

20 MR. WILSON, JR.: And, and, and, I, I agree with the
21 Court. That's a tactic that's widely accepted. The problem
22 here is the State seeks to introduce partial of what happened
23 at this interview. It is not a complete depiction or accurate
24 depiction of all the events that occurred to get him to the
25 point of trying to do a --

1 THE COURT: Well, we're on a Jackson versus Denno now,
2 not a, a --

3 MR. WILSON, JR.: I understand, but, but, but Jackson v.
4 Denno is about voluntariness and it's about whether or not he
5 was overcome. In my opinion when you talk about this
6 statement and you're talking about the totality of the
7 circumstances and these cases are very clear about the 14th
8 Amendment being a very important part of due process rights,
9 which the cases speak to -- every case I've ever read speaks
10 to the 14th Amendment, and so this is a 14th Amendment issue,
11 Judge. I am asking the Court because, again, we don't have --
12 I can't go to the jury say, "Look, this is what happened," and
13 it would also -- it affects my client's ability to remain
14 silent at trial because he still has an absolute right to
15 remain silent. He would be forced to get on the stand and
16 have to testify to say what happened during this time. That
17 is the other right that it affects, his ability to remain
18 silent in this trial, and again, that evidence is gone.
19 Coercion is something that we have a right to argue in front
20 of the jury. We have a right to say it, but I can't argue it
21 if I don't have the evidence obviously to prove it, and that's
22 the issue I have here. So how is that fair to a Defendant who
23 is on trial basically for the freedom for his life. That is
24 unfair.

25 THE COURT: Well, Mr. Wilson, I, I find that as to the

1 statements made by the Defendant, all the statements, first,
2 the statement out on the street was noncustodial. It did not
3 require any Miranda warnings. There's been absolutely nothing
4 to suggest that there was any sort of coercion or anything of
5 that sort. That statement certainly comes in.

6 As to the recorded statement, the seminal issue is
7 whether or not he was mirandized. I find that he was
8 mirandized. I find that he made a knowing, voluntary and
9 intelligent waiver of those rights. He's made it clear from
10 the video that I have seen and from his testimony here by
11 reciting what the rights are that he understands his, his
12 rights. I also have the benefit of his evaluation that was
13 court ordered. The State at this level must show by a
14 preponderance of the evidence that he waived those rights
15 after being advised under Miranda. I think that that showing
16 has certainly been made.

17 The Court then moves to the issue of whether or not
18 there was a voluntary statement made. Voluntariness hinges
19 upon whether or not there is any coercion by police. I have
20 considered all the characteristics of the accused, including
21 his age and his lack of education. He says that he only went
22 through like the seventh grade, but consider this, he tells me
23 on oath, under oath or he has stated in his statement that I
24 just spent three hours watching that he has bought, repaired
25 and traded mobile homes. He works at several jobs. He's an

1 auto mechanic. He's a carpenter. He drives. He was able to
2 drive his automobile from Columbia to Charleston, South
3 Carolina, and locate the offices of his evaluators. Both of
4 his evaluators said that they found no evidence of mental
5 retardation or mental illness. It is clear that low
6 intelligence, and he may or may not have low intelligence, I
7 have had the benefit of watching him on a three hour interview
8 and in court today and it seems like we might have different
9 persons. I'm not sure, but I think that he certainly has the
10 requisite intelligence to knowingly and intelligently waive
11 his right to remain silent as well as his right to an attorney
12 at the time these statements were made. I've also considered
13 the details of his interrogation. I find that even though he
14 was given his Miranda rights, that is not a significant issue
15 here. Of course it's always significant, but it was not
16 necessary because I do not believe that he was in custody at
17 the time he gave this statement. The detention was about
18 three hours long, but he was free to leave at any time. He
19 was given bathroom breaks. He was given -- offered something
20 to drink. He was given cigarette breaks. He was able to use
21 his phone when he wanted to. I saw absolutely no evidence of
22 coercion or threats made to him at any time during the
23 investigative interrogation, and I asked him specifically if
24 he was threatened or abused in any way or words to that, that
25 -- of that nature. I find that the testimony of these two

1 officers is far more credible than that of the Defendant when
2 he says that he did not understand. I believe that he did and
3 the State has established that by a preponderance of the
4 evidence. I will, therefore, admit both statements. I don't
5 know whether they're considered two or three, but there's two
6 written ones and a lengthy recorded one. I will admit them.
7 I will charge the jury, of course, that the ultimate decision
8 of whether to accept those statements is certainly something
9 that they could -- should consider and it would be up to them
10 to make the final decision. Very well. Thank you.

11 MR. WILSON, JR.: Judge --

12 THE COURT: Yeah.

13 MR. WILSON, JR.: -- may I get a ruling, Your Honor, on
14 my 106 issue, Judge, as well as the 403 and 14th Amendment due
15 process matter, Judge, regarding fairness. I'd like a ruling.

16 THE COURT: 4-0 -- you keep saying 403.

17 MR. WILSON, JR.: Yes, sir.

18 THE COURT: 403 is an evidentiary matter. It is a rule
19 that determines whether or not something's probative value
20 significantly outweighs the prejudice.

21 MR. WILSON, JR.: That's correct, Judge.

22 THE COURT: Okay.

23 MR. WILSON, JR.: And I was talking about -- the Court
24 was talking at the time, Your Honor, and I was going through
25 106 and 403. I never got a chance to finish, but obviously, I

1 know that and I said this earlier, I know the Court's aware of
2 403. My concern here, obviously, again, is that it's highly
3 prejudicial. I mean, I know Your Honor has already ruled and
4 this may be just for a commentary, but again, it's highly
5 prejudicial to do this to this Defendant to actually put him
6 in a situation where he's compelled to get on the stand. I
7 think it's a violation of the 14th Amendment right to having a
8 fair trial. They have a -- they have a right to do
9 recordings, and they have a right to lie, and they -- then the
10 Court gives them great deference with that. They have a right
11 to do all that stuff. I agree, tactics and all that good
12 stuff. What they can't do is bring in partial evidence, leave
13 out the crucial portion and then present it to the jury. I
14 think --

15 THE COURT: There you go --

16 MR. WILSON, JR.: I, I'm --

17 THE COURT: -- you're, you're mischaracterizing it, Mr.
18 Wilson. There is absolutely nothing in this record to suggest
19 that they excluded crucial parts. The entire record is there,
20 everything that was recorded is available, and you can play
21 the whole three hours to the jury if you choose.

22 MR. WILSON, JR.: Judge, if -- Judge, honestly, for the
23 record, if I could play it I wouldn't have this 403 or 106
24 issue, but I can't play the whole thing because the battery,
25 according to testimony, went dead during the crucial part.

1 THE COURT: No. No. Again, when I say the whole thing I
2 mean the complete document, the complete CD, everything that
3 is there I will allow you to put in.

4 MR. WILSON, JR.: Can I get a ruling, Judge, honestly, on
5 the just -- I am -- I'm --

6 THE COURT: You just got it. I'm going to allow it.

7 MR. WILSON, JR.: No. I am citing on the rule that --
8 I'm saying this should be excluded because of 403, 106.

9 THE COURT: And I say on those grounds I will not, I will
10 not exclude it on 106. As to whether or not I will redact or
11 exclude any parts under 403 will determine on how -- be
12 determined by how it's offered, what the probative value is
13 and what the prejudice is and that can only be determined as
14 we go through trial. Quite frankly, maybe all of it'll come
15 in. Maybe parts of it will be excluded. I heard stuff about
16 or suggestions about fraudulent insurance claims.

17 MR. WILSON, JR.: Yes, Your Honor.

18 THE COURT: Unless those can be verified I'm not going to
19 let them in. Quite frankly, if you object to them I won't.
20 I'll put it that way.

21 MR. WILSON, JR.: We have an objection out there, Judge.
22 We have also other motions in limine that are still up for
23 grabs, but if Your Honor wants to wait until those trial
24 issues come up. My concern is that some of these trial issues
25 are going to cause problems if --

1 THE COURT: Well, how can I rule on a 403 as to whether
2 or not a piece of evidence probative value outweighs its
3 prejudice or prejudice outweighs its probative value, how can
4 I rule on that until I know how it's offered, when it's
5 offered and what purpose it's offered for. I can't tell now.
6 There's no way I can do it. I can't.

7 MR. WILSON, JR.: Thank you, Judge.

8 THE COURT: Because I don't know how important that piece
9 of evidence will be.

10 MR. WILSON, JR.: Thank you, Your Honor.

11 THE COURT: All right. Okay. Anything further? We will
12 begin the trial in the morning at 9:30. If you have a motion
13 make it now.

14 MR. WILSON, JR.: Yes, Judge, we have several motions.

15 THE COURT: Well, let's hit them.

16 MR. WILSON, JR.: Yeah. There is a motion to suppress
17 phone records in this case, Your Honor, that were received by,
18 I believe it was Agent Hardee who did an affidavit for Mr.
19 Collins' phone records, and I think we can knock this out
20 fairly quickly. The search warrant -- would the Court care
21 for me to publish --

22 THE COURT: Certainly.

23 MR. WILSON, JR.: The affidavit reads as follows, Judge,
24 [as read], "On March 29th, 2014, Senior Special Agent L. Scott
25 Hardee from the South Carolina Law Enforcement Division's

1 You give that evidence such weight as you think it deserves,
2 and I'm sure that you can reach a just verdict in this matter.
3 Anything further, Ms. Richardson?

4 MS. RICHARDSON: No, Your Honor.

5 THE COURT: Anything further, Mr. Wilson?

6 MR. WILSON, JR.: Nothing, Your Honor.

7 THE COURT: Ms. Richardson, you may address the jury.

8 MS. RICHARDSON: Your Honor, Mr. Stephens is going to do
9 the opening for the State.

10 THE COURT: Mr. Stephens will address the jury.

11 MR. STEPHENS: Thank you, Your Honor.

12 A 12-year-old child is dead because of greed and money.
13 Dave Coombs or Syience, as he was known to his friends and
14 family, was killed as part of an insurance scheme to collect
15 money for the burning down of a trailer in Andrews. His
16 mother, Marissa Cohen, who rented the trailer, took out a
17 \$25,000 insurance policy and offered the Defendant, Randy
18 Collins, \$5000 of that money to burn the trailer down for her.
19 Randy then went to James Miller and enlisted his help, and
20 they carried out the plan.

21 As I said, Marissa took out the insurance policy
22 about a month before the fire happened. In the meantime,
23 closer time to the fire, a few days before, she moved out some
24 of the contents and bought kerosene. She then contacted Randy
25 Collins, told him how to get in the house, where the kerosene

1 would be located. Randy, as I said, recruited James Miller,
2 and the two of them went to the trailer in the middle of the
3 night and burn it down.

4 Meanwhile, Syience, 12-year-old kid, liked by the
5 community, was out doing 12-year-old things, playing video
6 games, playing with his friends, running around the
7 neighborhood, by all accounts being a good kid. The night of
8 the fire he had gone to a birthday party, something 12-year-
9 olds do, at the rec center there in Andrews. He went, hung
10 out with his friends, had a good time by all accounts, left
11 the party with a buddy of his that lived right up the road
12 from him. They walked home. They got to the buddy's house,
13 turned around. He said, "I'm going to go, you know, I'll see
14 you all later," and he ends up -- somehow he ends up at this
15 trailer that had been abandoned, had been moved out of.

16 He's there when the fire starts, and Andrews or, or 911
17 is called. The fire department is called out. They are under
18 the understanding that the trailer's empty. It's supposed to
19 be empty. They get there. They start doing what they do,
20 spraying the trailer down. They finally get the fire under
21 control enough that they can make entry into the building and
22 that's when they discovered Syience on the floor alone dead
23 inside the trailer.

24 When they notify Marissa Cohen outside the trailer that
25 he's -- that Syience has been killed, something's a little

1 off, kind of piques the interest of the investigators and --
2 or the officers on scene they notify the investigators what's
3 going on. It draws the suspicions of the investigators. They
4 start looking into it a little more. They discover all the
5 things I've told you. There's a \$25,000 insurance policy
6 taken out a month before and then they receive information
7 from, from someone that Cohen took out this insurance policy,
8 that she offered money to Randy Collins and that she had
9 bought kerosene the day before and moved some of her
10 belongings out of the house. So that leads investigators to
11 Randy Collins.

12 When they question Randy Collins, first time, "Wasn't
13 there, don't know anything about it." As they proceed through
14 the investigation, get more and more information, they
15 approach him again, and eventually he confesses, says, "Yeah,
16 Marissa approached me, offered me \$5000. I went to James
17 Miller, rode with James Miller that night. We went to the
18 house and burned the trailer down."

19 As the Judge told you, you are going to decide what are
20 the facts of this case. That is your job as the jury. I
21 implore you to listen to the testimony that's given and do
22 just that, decide what the facts are, and at the end of the
23 case after all the evidence has been presented from the
24 witness stand we ask that you go back and deliberate and come
25 back and deliver a guilty verdict. Thank you.

1 THE COURT: Mr. Wilson.

2 MR. WILSON, JR.: Your Honor, if it please the Court,
3 Judge.

4 Good morning, ladies and gentlemen. I know right now in
5 your heads you're thinking, "Mr. Wilson, what kind of lawyer
6 are you? You have a confession here. There's a confession.
7 Your client admits to going there with another man," whom I
8 might add is now deceased, "and committing this heinous
9 crime." Let me first tell you this, each one of you were
10 selected by myself and the State, and while you are called the
11 jury panel, each individual brings experience, knowledge,
12 lifetime of seeing normal things, experiencing normal things,
13 knowing what's reasonable, what's rational, and that's what I
14 want because this case requires it.

15 We're here today because this issue couldn't be settled
16 between myself and the State. Trials are meant for situations
17 where we can't resolve things on our own, and that's why we're
18 here today. That's exactly why we're here today.

19 Let me tell you our position on what happened and what I
20 believe the evidence will show you. Mr. Collins was
21 approached by law enforcement after they say they received an
22 anonymous tip, and I might add don't forget that the standard
23 of review in a criminal case is beyond a reasonable doubt. To
24 get a warrant for an arrest you have to have probable cause,
25 which is a lower standard of proof. They approach Mr.

1 Collins, on the street I might add, and ask him, "What do you
2 know about this fire?" "I don't know anything. I don't know
3 anything." "What'd you do that day?" "I was at a club."
4 "Okay. Fine." They get a written statement. They leave.

5 They then trick him into coming down to get his -- some
6 items back from they say the city hall, but it's right there
7 with the jailhouse. They say, "Come get your cell phones.
8 You know this guy Nesmith. He's been here a long time. He's
9 in the community. Come get your cell phones from down here,"
10 and they show up to question him. So when he comes, they're
11 outside waiting on him.

12 They then bring him into a room for three hours, give or
13 take, depending on who you believe. They then began to ask
14 him questions. "Well, Randy, tell us what happened." "I
15 didn't do it." "Tell us again what happened." "I didn't do
16 it." "Tell us what happened." "I didn't do it." "We know --
17 were you sleeping with Marissa Cohen, the mother of the child
18 who was killed who took out the insurance policy?" "I didn't
19 do it."

20 Then they start suggesting things to him, suggesting X, Y
21 and Z facts, which you'll hear on the stand. They admit to
22 this. They admit to telling him a story. Then during the
23 tape the tape goes out. The last words you hear on the second
24 tape, "Let me tell you what we think happened." The tape goes
25 dead.

1 When you come back, on that same tape that they're
2 talking about, this confession, everything else is missing.
3 They admit to that as well, and what you see then is an
4 officer who drew a diagram and now is telling Randy Collins
5 what they believe happened. He then on the tape balls it up,
6 throws away his diagram and says, "Well, you draw what I just
7 drew," and they want you to believe that this evidence is
8 reliable and that this evidence somehow corroborates the
9 forensic evidence. Might I add, there's not one witness
10 who'll get on the stand and say that they saw Randy Collins do
11 anything.

12 You will hear evidence that Randy Collins not only had a
13 stroke, that he has global impairments, mentally as well, and
14 has a sixth or seventh grade education.

15 They will say on the tape, on the confession, they say on
16 the tape when they say he confesses, they say on the tape, "We
17 want Marissa Cohen, and if we can't get her, you're going down
18 for this." They say, "You won't come out of prison ever."
19 They say, "Do what you got to do to save yourself, Randy," and
20 with an education of sixth or seventh grade he was no match
21 for a SLED agent who admits on the tape that he has a degree
22 in psychology and a seasoned veteran investigator in South
23 Carolina and in Georgetown.

24 They tell him, "We're going to let you go home. You can
25 go home and eat your cheeseburgers," a man who lived in a

1 trailer with no electricity who did odd jobs to make ends
2 meet, who doesn't have the education that most of us have or
3 even honestly the sense that most of, most of us have. They
4 sat in the room until he gave them what they wanted, evidence
5 that they wanted to use against Marissa Cohen, evidence they
6 wanted to take back to the State and say, "Look, we've got
7 her. We got Marissa Cohen."

8 Not one other, and I want you to listen, I want you to
9 watch the tape when it comes out, not one shred of evidence to
10 corroborate anything that he ever burned anything, that he
11 bought any kerosene, that he ever took out any sort of
12 insurance policy or encouraged anybody to take out an
13 insurance policy, not one evidence -- one shred of evidence
14 that he did anything to act upon an arson or act upon a
15 conspiracy, nothing, nothing.

16 It is so important, and the Judge told you I think the
17 other day that this is a complex case. It is. This is a
18 complex case. I need all of you to pay very close attention
19 to the witnesses, to the evidence, and most importantly, to
20 the instructions of the Judge. My client is presumed
21 innocent. Oftentimes what we say is there's a robe of
22 righteousness over the Defendant, almost like a wall of
23 righteousness over the Defendant. Right now he is innocent,
24 and you're going to see evidence, you're going to see bad
25 evidence, evidence of a child who did perish, and it's tragic.

1 The question here today, though, is whether or not my client
2 did that, whether or not the State has the evidence to prove
3 that he did that. He is saying to you today, "I am innocent."
4 That's why we're here. He has a robe of righteousness over
5 him.

6 I am asking you to pay very close attention. I'm asking
7 all of you to listen to the evidence, listen to the witnesses,
8 decide whether what you see with your own eyes is what they're
9 alleging really happened because I promise you when you really
10 take a close look at this evidence it doesn't make sense at
11 all. Thank you so much.

12 THE COURT: Ladies and gentlemen, we're about to begin
13 the taking of evidence, and I can't stress upon you how
14 important it is that you be able to see and hear what is being
15 presented to you whether he -- whether by the Defense or, or
16 the State. We attorneys have this disease where we get sort
17 of caught up in our case, and we all do it. I did it forever,
18 and every attorney I've seen has. You -- we put up sometimes
19 displays or exhibits, then we walk right in front of the jury
20 and the jury can't see it. We don't mean to do it. If that
21 occurs or you can't hear what the attorney's saying or the
22 witness is saying please raise your hand. I promise you Mr.
23 Stephens, Ms. Richardson, Mr. Wilson will not be upset with
24 you for interrupting them. They want you to see what they are
25 trying to present to you. So please, if you can't see, you

1 can't hear, the attorney has inadvertently walked in front of
2 you, your view is blocked, raise your hand. Let me know so we
3 can address that. Everything presented is certainly
4 important.

5 Also, if you become uncomfortable, you need to refresh
6 yourselves, do not hesitate to raise your hand. We do not
7 want you distracted or uncomfortable. We want you to be able
8 to pay attention. With that said, Ms. Richardson, Mr.
9 Stephens.

10 MR. STEPHENS: The State calls Ricky Nelson.

11 WHEREUPON, Ricky Nelson is called to the stand, duly
12 sworn by the clerk and testified as follows:

13 THE CLERK: All right. Mr. Nelson, I'm going to ask you to
14 have a seat and I'm going to pull this mike up close to you.

15 DIRECT EXAMINATION

16 BY MR. STEPHENS:

17 Q Mr. Nelson, how you doing this morning?

18 A Doing good. How are you?

19 Q Doing well. Thank you. Mr. Nelson, how old are you?

20 A 16.

21 Q How old were you back on March 28th and March 29th of
22 2014?

23 A 12.

24 Q That would be the, the night of the fire. Were you
25 friends with Dave Coombs?

- 1 A Yes, sir.
- 2 Q Did you have a nickname for him?
- 3 A Syience.
- 4 Q Is that what he was known as around the neighborhood?
- 5 A Yes, sir.
- 6 Q As I mentioned, we're here to talk about the events of
- 7 March 28th, 2014. What did you do that night?
- 8 A Around 8:30 we went to the party at the recreation
- 9 center, as you know. The party ended about 12, 12:30 that
- 10 night. We, on the way home, we got on Hemlock. He asked to
- 11 stay with me that night, but I couldn't get in touch with my
- 12 mother. So he was -- he say he was going home to check on his
- 13 mom and get some clothes, but he never came back when we got
- 14 to the house.
- 15 Q And when he said home to check on his mother, where did
- 16 you think he was going?
- 17 A Well, I knew he was going to the trailer, but, but like a
- 18 week -- during that week they was moving out. So I know he
- 19 was going to the trailer, but at the same time I thought maybe
- 20 he was going to the new house they had.
- 21 Q I got you. What was the weather like that night?
- 22 A To be honest I can't remember.
- 23 Q You said you were at the rec at a party?
- 24 A Yes, sir.
- 25 Q What kind of party was this?

1 A It was a teen party for a birthday. One of our friends
2 was having a birthday party at the rec.

3 Q I got you. What -- after you went to -- went home that
4 night what did you do?

5 A Stayed up and played a game. I thought he was going to
6 come back, but eventually I fell asleep.

7 Q How did you, how did you wake up?

8 A My mom woke me up telling me there was a fire in the
9 woods, but we didn't think it was the house.

10 Q When did you discover that it was the house?

11 A Earlier that morning.

12 Q And what else did you learn about the fire at that point?

13 A I mean, when I -- I mean, they, when they told me the
14 house was burnt down I know Dave was in there. I didn't -- I
15 wasn't sure if he made it out or not but --

16 Q When did you find out that he did not make it out?

17 A The next day.

18 MR. STEPHENS: The Court's indulgence, Your Honor.

19 BY MR. STEPHENS:

20 Q You mentioned earlier that they were -- they had moved
21 out or that they were moving?

22 A Moving. Yeah.

23 Q Did you know where the mother was living at the time of
24 the fire?

25 A They had a room at Nanu [spelled phonetically] that

1 night.

2 Q I'm sorry. Can you repeat that?

3 A They had a room at the hotel called Nanu [spelled
4 phonetically] that night.

5 Q Okay. So but you knew that she wasn't in the -- at the
6 trailer?

7 A I didn't know if she was there or not, I mean, we just
8 came from a party and he was like, "I'm going home to get some
9 clothes up and stuff."

10 MR. STEPHENS: No further questions. Please answer any
11 questions Mr. Wilson has for you.

12 MR. WILSON, JR.: May it please the Court, Your Honor.

13 CROSS EXAMINATION

14 BY MR. WILSON, JR.:

15 Q Just briefly, your weren't at this house when it burned;
16 correct?

17 A No, sir.

18 Q All right. You have no information about that?

19 A No, sir.

20 MR. WILSON, JR.: No further questions, Your Honor.

21 THE COURT: That was a no? You shook your head, but no

22 --

23 A No.

24 THE COURT: -- what you meant. Okay. Thank you.

25 MR. STEPHENS: Nothing further, Your Honor.

1 MS. RICHARDSON: Your Honor, we'd ask that he be excused
2 from his subpoena.

3 MR. WILSON, JR.: Without objection, Your Honor.

4 THE COURT: Mr. Nelson, you're excused. Thank you, sir.

5 MS. RICHARDSON: The State calls Jeron Langley.

6 WHEREUPON, Jeron Langley is called to the stand, duly
7 sworn by the clerk and testified as follows:

8 THE CLERK: We would like for you to please spell your
9 name and state your name, again, for the Court.

10 MR. LANGLEY: J-E-R-O-N, last name L-A-N-G-L-E-Y, Jeron
11 Langley.

12 THE CLERK: Thank you, Mr. Langley. Please have a seat.

13 DIRECT EXAMINATION

14 BY MS. RICHARDSON:

15 Q Mr. Langley how, how old are you?

16 A I'm 38 years old.

17 Q And where are you from?

18 A Andrews, South Carolina.

19 Q Okay. Born, born and raised?

20 A Born and raised. Yes, ma'am.

21 Q Okay. And back in March 2013 where did you live in
22 Andrews?

23 A 170 James Drive.

24 Q And do you work?

25 A Yes, ma'am. I do.

1 Q What do you do?

2 A I am a supervisor and pipe welder at Envirosep in
3 Maryville.

4 Q Let me show you --

5 MS. RICHARDSON: Your Honor, this has previously been
6 marked as State's Exhibit Four. We have stipulated to the
7 admissibility, and the State would move for it to be admitted
8 into evidence at this time.

9 THE COURT: Is that correct, Mr. Wilson?

10 MR. WILSON, JR.: That's correct, Your Honor. Without
11 objection, Judge.

12 THE COURT: All right. Very well.

13 MS. RICHARDSON: Okay.

14 (State's Exhibit Number Four [Aerial Map] admitted into
15 evidence and appropriately marked.)

16 THE COURT: Do, do, do we have an easel or something you
17 could put that on, Madam Clerk? Do we have -- wouldn't that
18 help you, Ms. Richardson?

19 MS. RICHARDSON: It would.

20 THE COURT: Let's see if we have it and maybe the jury
21 could follow it again, and again, ladies and gentlemen of the
22 jury, if you can't see what, what's being referred to, just,
23 just let us know because everything is important whether
24 presented by the State or the Defense.

25 THE CLERK: No, sir. We have a chalkboard.

1 MS. RICHARDSON: I, I can get one.

2 THE COURT: Okay. All right. Deputies, could -- maybe
3 in another courtroom? Is there something we could use to --

4 THE CLERK: I'll call down and get one.

5 THE COURT: Okay.

6 MS. RICHARDSON: We've got one. We'll -- I'll send them
7 down to get ours.

8 THE COURT: Very well. I think we -- someone jumped up
9 in the back and headed that way. So perhaps that's what
10 they're doing. Okay.

11 MS. RICHARDSON: I think we can handle --

12 THE COURT: Okay. All right.

13 MS. RICHARDSON: -- this. Okay.

14 BY MS. RICHARDSON:

15 Q I'm going to show you what's been marked as State's
16 Exhibit Four and admitted into evidence. This is an aerial
17 map of the Town of Andrews. Okay. And I'm going to show you
18 and not block the Judge, this is James Drive?

19 A That's correct. Yes, ma'am.

20 Q Okay. And there's a big curve on James Drive?

21 A That's correct. Yes, ma'am.

22 Q Okay. And that's the road that you lived on?

23 A Yes, ma'am.

24 Q Okay. And are you familiar with where the fire was and
25 where Marissa Cohen lived?

- 1 A Yes, ma'am. I am.
- 2 Q And you see where that's marked?
- 3 A Yes, ma'am.
- 4 Q Okay. Now, where is your house or your residence at that
- 5 time in reference to her house?
- 6 A It's about maybe three-tenths of a mile sitting right
- 7 here. It's not very far at all.
- 8 Q Okay.
- 9 MS. RICHARDSON: And Your Honor, I'd asked that he step
- 10 down and just show the jury a little closer.
- 11 THE COURT: All right.
- 12 A I lived right here.
- 13 Q Can you see that? Okay. Thank you. You can have a
- 14 seat. And did you know Ms. Cohen?
- 15 A I didn't know her personally, just as a neighbor, but I
- 16 had more of a relationship with Syience.
- 17 Q Okay. And that's obviously the little boy --
- 18 A Yes.
- 19 Q -- who, who died? Okay. And on the night of the fire
- 20 did you, did you see the fire?
- 21 A I didn't see the fire, but my nephew he was coming home
- 22 and he told me that the mobile home was ablaze when he came
- 23 by, and he came and told me to call 911 because the, the
- 24 mobile home was on fire.
- 25 Q Okay. And did you do that?

1 A Yes, ma'am. I did.

2 Q Okay.

3 MS. RICHARDSON: If I could have this marked for
4 identification, and it'll be State's Nine.

5 MR. WILSON, JR.: Your Honor, without objection.

6 THE COURT: Without objection it's admitted then.

7 (State's Exhibit Number Nine [CD-911] admitted into
8 evidence and appropriately marked.)

9 BY MS. RICHARDSON:

10 Q And you recognize this?

11 A Yes, ma'am. That's my initial.

12 Q Okay. And you have reviewed this?

13 A Yes, ma'am. I have.

14 Q Is that an accurate reflection of the call that you made
15 to 911?

16 A Yes, ma'am. It's accurate.

17 MS. RICHARDSON: Your Honor, I believe that's been
18 admitted into evidence and we'd offer to publish it to the
19 jury at this time.

20 MR. WILSON, JR.: Without objection, Your Honor.

21 THE COURT: Without objection.

22 (Whereupon, State's Exhibit Number Nine played in open
23 court.)

24 BY MS. RICHARDSON:

25 Q And Mr. Langley, tell us why you thought no one was in

1 the home.

2 A Because earlier that week my nephew was helping her move.

3 So it was my understanding that they were moving, so that's

4 why I thought no one was in the house.

5 Q All right. I have no further questions. Answer any

6 questions that Mr. Wilson may have.

7 THE COURT: Mr. Wilson.

8 MR. WILSON, JR.: Your Honor, just briefly.

9 CROSS EXAMINATION

10 BY MR. WILSON, JR.:

11 Q Mr. Langley, good morning.

12 A Good morning.

13 Q You weren't at the house when it burned; right? Were you
14 there that night?

15 A No, sir. I was not at the house that night.

16 Q Okay. And you have no further knowledge about this
17 matter?

18 A I have no further knowledge.

19 MR. WILSON, JR.: No further questions, Your Honor.

20 MS. RICHARDSON: Your Honor, if that's all we'd ask that
21 he be excused from his subpoena.

22 MR. WILSON, JR.: Without objection, Your Honor.

23 THE COURT: You are excused and released from your
24 subpoena. Thank you, sir.

25 MS. RICHARDSON: The State calls Robert Stamper.

1 WHEREUPON, Robert Stamper is called to the stand, duly
2 sworn by the clerk and testified as follows:

3 THE CLERK: Would you please spell your name for the
4 Court?

5 MR. STAMPER: Robert Stamper, R-O-B-E-R-T, S-T-A-M-P-E-R.

6 THE CLERK: Thank you. Please have a seat.

7 DIRECT EXAMINATION

8 BY MS. RICHARDSON:

9 Q Mr. Stamper, what community, in what community do you
10 live?

11 A I live in Andrews, inside the town of Andrews.

12 Q Okay. And how long have you lived there?

13 A My whole life, 62 years.

14 Q Okay. And what sort of work do you do?

15 A I work for 3V Chemical. I do consulting work for them
16 after retiring in March of this year. I'm also the fire chief
17 of the Andrews Fire Department.

18 Q Okay. And how long have you been with the fire
19 department?

20 A Since 1972.

21 Q And did you receive a call on the early morning hours of
22 March 29th of 2014?

23 A Yes.

24 Q Okay. And tell me about that.

25 A We received the call about one, I think at about 1:15 --

1 I'm not sure about the time -- in the morning. We are a
2 volunteer fire department. We're, we're all volunteers to
3 where we carry pagers. When the alarm goes in like this we
4 have to go to the fire station, get the fire truck and head to
5 the scene. I responded to it. I actually took one of our
6 engines to the scene, pulled up and found a mobile home on
7 fire.

8 Q Okay. And let me show you --

9 MS. RICHARDSON: I need to mark this.

10 MR. WILSON, JR.: Without objection, Your Honor.

11 THE COURT: All right. Without objection. It's?

12 MS. RICHARDSON: State's 10.

13 THE COURT: We need to identify it first.

14 MS. RICHARDSON: Okay.

15 THE COURT: Mr. Wilson has said he has no objection but
16 it's not on the record as to the identification of the
17 document.

18 MS. RICHARDSON: Yes, Your Honor.

19 BY MS. RICHARDSON:

20 Q Can you tell me what that is?

21 A This is one of our incident reports for a fire.

22 Q Okay. And is that your signature on the bottom?

23 A No. It's not.

24 Q Or your name on the bottom?

25 A Mine -- it is my name on the bottom.

1 Q And that's a report that's kept in the normal course of
2 business with the fire department?

3 A Yes. It is.

4 Q Okay.

5 MS. RICHARDSON: Your Honor, at this time --

6 BY MS. RICHARDSON:

7 Q And that's the report for the fire that we're talking
8 about on March 29, 2014?

9 A That's correct.

10 Q Okay.

11 THE COURT: All right. It's admitted without objection
12 as State's Exhibit Number -- what would it be, Ms. Grace?

13 REPORTER: 10.

14 MS. RICHARDSON: 10.

15 THE COURT: 10.

16 A 10.

17 THE COURT: Okay.

18 MS. RICHARDSON: Okay.

19 (State's Exhibit Number 10 [Fire Incident Report]

20 admitted into evidence and appropriately marked.)

21 BY MS. RICHARDSON:

22 Q And so, when you responded what other -- were you the
23 only one engine that responded?

24 A No, ma'am. We had one other engine respond, too. We

25 first respond we found a mobile home that was on fire. It was

1 on what we call the A B end of the mobile home, and the way
2 you identify that is is the, the front facing the road is the
3 A side and it goes in a clockwise motion. The next side would
4 be the B side. The backside would be the C and the far other
5 side would be the D side. So we found the fire actually on
6 the A B side. We immediately, because of manpower not getting
7 in there yet, we immediately pulled a hose line and
8 extinguished that fire. When we got enough personnel on scene
9 to make entry into the house is when we actually found the
10 body inside.

11 Q Okay. And when the call came in was the call that the
12 home was vacant?

13 A Yes.

14 Q Okay. So you had no reason to believe there was somebody
15 inside?

16 A Did not.

17 Q And how about the flames? How did the, how did the
18 exterior appear when you arrived?

19 A As far as the exterior of the house is where most of the
20 fire was. The interior had some damage to it, but not as much
21 on the exterior.

22 Q Okay. And could you see flames and smoke and was there
23 already damage?

24 A Yes.

25 Q Okay. And if you want to refer to your report, what was

1 the situation with the roof when you arrived?

2 A The flames were actually coming through the roof on that
3 A B side. As far as anywhere else, you know, there was very
4 little fire damage throughout the rest of the house.

5 Q Let me show you what's previously been marked for
6 identification purposes as State's Exhibit Number Five. Do
7 you recognize that residence?

8 A I do.

9 Q Is that the residence that you responded to that night?

10 A It is.

11 Q And is that an accurate reflection of the damage --

12 A It is.

13 Q -- that you observed?

14 MS. RICHARDSON: Your Honor, at this time I'd offer
15 State's Number Five into evidence.

16 MR. WILSON, JR.: Your Honor, without objection.

17 THE COURT: Without objection it's admitted.

18 (State's Exhibit Number Five [Poster - Photograph of
19 Trailer] admitted into evidence and appropriately marked.)

20 MS. RICHARDSON: And, Your Honor, if I could have the
21 witness step down.

22 THE COURT: If you would, Chief, please step down.

23 MS. RICHARDSON: Face you? This good?

24 THE COURT: Can, can everyone see that? You all -- very
25 good.

- 1 MS. RICHARDSON: Okay.
- 2 THE COURT: There you go.
- 3 BY MS. RICHARDSON:
- 4 Q Now, so, the road would be in front of the photo; is that
- 5 right as you're facing the road?
- 6 A That's correct.
- 7 Q Okay.
- 8 A That's right.
- 9 Q And so what you were saying is this would be --
- 10 A The front of the house, the front of the house would
- 11 actually be the A side of the house is what we do facing the
- 12 road. The side -- backside over here where you see damages in
- 13 here would be the B, then the back of the house would be the
- 14 C, and this end of the house would be the D side.
- 15 Q Okay.
- 16 A It works in a clockwise.
- 17 Q Okay. And obviously, when you arrived, this A B side was
- 18 where the fire was?
- 19 A That's correct.
- 20 Q Okay. Now, was the door open like this?
- 21 A It was not.
- 22 Q Okay. And tell me how you found the doors, what
- 23 condition they were in?
- 24 Q The doors were locked.
- 25 A Okay. And so how did you make entry?

- 1 A We made forcible entry into it.
- 2 Q Okay. And, and you went in?
- 3 A Yes.
- 4 Q Okay. And tell me what you found when you went in.
- 5 A Well, when I first went in, when we first made forcible
- 6 entry into the door, one of my firemen said, "I see somebody
- 7 inside." So I went in. I called EMS personnel to come in
- 8 also because I could see a body there, and we walked in the
- 9 front door. We found the child.
- 10 Q Okay. And he was on this end of the trailer?
- 11 A That's correct.
- 12 Q Okay. You may have a seat.
- 13 (Complies with request.)
- 14 Q And at that point it was too late?
- 15 A That is correct.
- 16 Q And were you surprised to, to find that someone was in
- 17 the residence?
- 18 A I was because of when we got the actually call to go to
- 19 the fire we were toned out to an abandoned house.
- 20 Q Right.
- 21 A There was no vehicles in the yard when we arrived.
- 22 Q And if you had known that it was not -- that someone was
- 23 inside would your approach have been different?
- 24 A Yes.
- 25 Q Okay. And you would have obviously made entry sooner or

1 attempted to make entry sooner?

2 A Depending on how much fire personnel I have on scene, we
3 have a protocol that we have to have at least four
4 firefighters on scene before we can make entry. We have to
5 have two firefighters go inside. We have to have what we call
6 a rescue intervention team, a RIT team standing outside in
7 case they get in trouble so.

8 Q And did you have any part in identifying the body?

9 A I did not.

10 Q Okay. Did you talk with any of the relatives of the
11 deceased child?

12 A No.

13 Q Okay. I have no further questions. Answer any questions
14 that Mr. Wilson may have for you.

15 CROSS EXAMINATION

16 BY MR. WILSON, JR.:

17 Q Mr. Stamper, just very briefly, you say this is the front
18 of the house; correct?

19 A That's correct.

20 Q Okay. And on here when you were trying to make entry
21 you went into this door; is that correct?

22 A That's correct.

23 Q Okay. And these are windows that were on the side? This
24 is an accurate depiction of the actual front of the house on
25 that particular day; correct?

1 A That is a picture of the actual front of the house;
2 correct.

3 Q Okay. All right. You have no further knowledge
4 regarding this matter; correct?

5 A No.

6 Q Okay. And you guys don't decide or don't make any sort
7 of opinion about who did this particular fire?

8 A No. We do not.

9 Q Thank you, sir. No further questions, Your Honor.

10 MS. RICHARDSON: No further questions, Your Honor, and
11 we'd ask that he be excused.

12 THE COURT: Mr. Wilson.

13 MR. WILSON, JR.: Oh, no objection, Judge.

14 THE COURT: You're excused. Thank you.

15 MS. RICHARDSON: The State calls William Stockton.

16 WHEREUPON, William Stockton is called to the stand, duly
17 sworn by the clerk and testified as follows:

18 THE CLERK: Okay. I need you to please spell your name
19 and state your name again for the Court.

20 MR. STOCKTON: Everybody calls me Clint. That's my
21 middle name. My first name is William, W-I-L-L-I-A-M. Last
22 name is Stockton, S-T-O-C-K-T-O-N. Just don't call me Bill
23 Clinton and we'll get along fine.

24 THE CLERK: Thank you, Mr. Clinton. If you'll please
25 have a seat.

1 DIRECT EXAMINATION

2 BY MS. RICHARDSON:

3 Q Mr. Stockton, where do you live?

4 A Andrews.

5 Q Okay. And how long have you lived in Andrews?

6 A Since April of 2007.

7 Q And tell me what you do.

8 A I'm a minister.

9 Q Okay. And how long have you been a minister?

10 A I was ordained originally in 1978.

11 Q And do you have any association with the fire department?

12 A Yes. I do. I'm their chaplain, volunteer firefighter

13 and the town's fire marshal.

14 Q And how long have you been doing that?

15 A Since January of 2008.

16 Q And can you tell me what the fire marshal position

17 entails?

18 A Safety inspections of commercial properties, not

19 residential.

20 Q Okay. And as the chaplain, that's a volunteer position?

21 A Yes. It is.

22 Q And as a chaplain what do you do with the fire

23 department?

24 A Well, as a volunteer firefighter I usually man the pump

25 deck, which would be the first engine on the scene that we

1 pull the attack lines off of. I communicate with the guys on
2 the hoses. They tell me if they want more pressure, less
3 pressure and I make sure the truck stays full, and I'm also
4 responsible for watching the fireground, just constantly
5 looking around to see that there's no danger to anybody on the
6 fireground.

7 Q Okay. And as the chaplain do you provide additional
8 services to families or individuals?

9 A Yes, not just the fire department. I'm also a volunteer
10 chaplain at the hospital, and you have everything from little
11 minor cuts where people are concerned all the way through
12 being with people as they die and their family members as they
13 die.

14 Q Okay. And did you respond to the fire that we're talking
15 about on the early morning of March 29, 2014?

16 A Yes. Your last exhibit that Mr. Stamper referred to my
17 name's on that. I'm the one that filled out the report. It
18 was 1:29 in the morning when central initiated the CAD and we
19 got immediately toned. I distinctively remember us being sent
20 to 10 James and that there was a structure fire, that it was
21 abandoned, that Andrews PD was on the scene, and they saw
22 flames coming through the roof.

23 Q Okay. And, and did -- did some point you find out that
24 the house had not been abandoned?

25 A Yes. Of course being on the same radiofrequency with

1 everybody on the scene, I heard the communication to central
2 asking for law enforcement, that they had discovered a child.
3 So yes, I was aware there was a child inside and deceased.

4 Q Okay. And, and the child was deceased, and did you have
5 an opportunity to provide chaplain services to the mother?

6 A No. The mother -- I was notified to keep my eye for
7 anything peculiar going on, that the mother had arrived on the
8 scene and somebody pointed her out to me, came up to the pump
9 deck and said, "That's her over there," and she was talking
10 casually with another gentleman who I don't know who he was on
11 the, on the road, and she was talking on her cell phone, and
12 dealing with much -- as much death and dying as I have in my
13 years of ministry, I was shocked that she didn't seem to be
14 concerned. She just didn't seem to care. I've been with
15 people that are in denial, and they shut up and they go sit
16 somewhere and they won't talk to anybody. I've been with
17 people who just totally lose it, faint, fall out, cry, want to
18 hit the wall, hug somebody, but it was too bizarre. She was
19 too casual just walking back and forth on the street a little
20 bit talking to this guy, and I just found it peculiar. As a
21 matter of a fact, that discussion came up, not sure if it was
22 the following day or the day after when we had our debrief
23 and, and talked with the guys on the department because some
24 of them took it hard.

25 Q And unfortunately, in your line of work, your volunteer

1 services and being a pastor, you've had the opportunity to
2 witness a lot of death?

3 A Yes. And I've had a lot of training. I'm endorsed by
4 the Presbyterian Church in America through a joint
5 commissioning agency called the Presbyterian and Reformed
6 Chaplains Commission, which endorses military and civilian
7 chaplains. I'm a member of the Federal Fire Chaplains
8 Association and also the South Carolina Public Safety
9 Chaplains Association. I've had courses in death and dying,
10 critical death, family and death and then through seminary and
11 Bible college I've had a lot of training and a lot of
12 experience. I've done more funerals than I want to think
13 about.

14 Q And with the fire department and the EMS you've also been
15 on scene when families have been notified?

16 A I was there the whole time. I don't know who notified
17 the mother, but she showed up on the scene, and but I -- my
18 job was on the pump deck right then. I wasn't relieved to go
19 do anything else.

20 Q Okay. And were your services offered to her?

21 A Huh?

22 Q Were your services as chaplain offered to her?

23 A I never inquired if it was or wasn't. That would have
24 been Mr. Stamper's call.

25 Q Okay. All right. Thank you. I have no further

1 questions. Answer any questions that Mr. Wilson may have for
2 you.

3 A Will do.

4 CROSS EXAMINATION

5 BY MR. WILSON, JR.:

6 Q Good morning, Mr. Stockton. How you doing, sir?

7 A Good, sir.

8 Q All right. And I know you obviously as a firefighter
9 you've seen a lot in your time; correct?

10 A Actually more than I, I'd like to admit. It's just like
11 Robert and I were talking yesterday, he said if it ever gets
12 to where it doesn't bother him he knows it's time to quit.

13 Q Very well. That night you said you saw a man talking to
14 Marissa Cohen; correct?

15 A Yes.

16 Q Okay. And she's the mother of the victim in this case;
17 correct?

18 A That's what I was told. Yes.

19 Q Okay. Let me ask you this, can you see over to this
20 table?

21 A Yes.

22 Q Was this the gentleman she was talking to at all?

23 A I can't tell you that.

24 Q Okay.

25 A It's raining. It's -- by the time she came, probably 45

1 minutes after we first got on scene. I'm not sure of the
2 time. It was going on -- I couldn't even tell you what she
3 looked like. I could tell there was a woman there and a man,
4 but at night out on the street, no streetlights.

5 Q Well, let me ask you this way then, let me rephrase the
6 question. Do you have any evidence or any information about
7 who burned that house down?

8 A No.

9 Q Okay. And you're not identifying Randy Collins as being
10 a man out there talking to Ms. Cohen; correct?

11 A I have no idea who she was talking to.

12 Q Thank you, sir. No further questions.

13 MS. RICHARDSON: Your Honor, no further questions. We'd
14 ask that he be released from his subpoena.

15 MR. WILSON, JR.: Without objection, Your Honor.

16 THE COURT: Very well. You're released from your
17 subpoena. Thank you, sir.

18 A Thank you, sir.

19 MR. STEPHENS: The State calls Steve Richards.

20 WHEREUPON, Steve Richards is called to the stand, duly
21 sworn by the clerk and testified as follows:

22 THE CLERK: Thank you. Please have a seat.

23 DIRECT EXAMINATION

24 BY MR. STEPHENS:

25 Q Mr. Richards, where do you work?

- 1 A I work for Georgetown County Fire EMS.
- 2 Q How long have you worked there?
- 3 A 13 years.
- 4 Q What is your position?
- 5 A Lieutenant, paramedic, firefighter.
- 6 Q Okay. Can you tell me a little bit about that?
- 7 A I am -- Georgetown County is combined firefighting and
- 8 EMS services. I do most of my time on an, on an ambulance.
- 9 Other lieutenants do their job on firefighting. We're both
- 10 cross manned to do firefighting and EMS services at the same
- 11 time on scenes.
- 12 Q Okay. On the night of March 28th, 2014, were you working?
- 13 A Yes. I was.
- 14 Q Did you have occasion to be called to Andrews for a
- 15 structure fire?
- 16 A Yes, sir.
- 17 Q Do you recall the address of that?
- 18 A Not on me, no. I don't recall the address.
- 19 MR. STEPHENS: The Court's indulgence, Your Honor.
- 20 MR. WILSON, JR.: Without objection, Your Honor.
- 21 MR. STEPHENS: If I may approach, Your Honor...
- 22 THE COURT: Have him identify it, please.
- 23 MR. STEPHENS: Yes, sir. Yes, Your Honor.
- 24 BY MR. STEPHENS:
- 25 Q Do you recognize this document?

1 A Yes. That is an EMS chart that we do. Every call that
2 we go to we do a computerized EMS chart.

3 Q And, and these are kept in the normal course of business?

4 A Yes. It's all computerized. Yes.

5 Q If you look at this chart will it refresh your memory of
6 the events of that night?

7 A Yes, sir.

8 MR. STEPHENS: Can I mark this as State's Exhibit 11?
9 State's Exhibit 11, Your Honor, at this time I would ask that
10 it be moved into evidence.

11 MR. WILSON, JR.: Without objection, Judge.

12 THE COURT: Without objection it's admitted.

13 (State's Exhibit Number 11 [EMS Report] admitted into
14 evidence and appropriately marked.)

15 BY MR. STEPHENS:

16 Q Hand it to you --

17 A Thank you.

18 Q -- Mr. Richards. How was it that you became to be called
19 out to the scene on March 29th?

20 A We got toned out for a structure fire. Our dispatch
21 dispatches us along with the City of Andrews Fire at Station
22 15. We don't have a fire engine at that station. It's just
23 strictly an ambulance. So we get toned out to assist Andrews
24 Fire.

25 Q And is it, is it typical for them to ask for medical

1 assistance on every call?

2 A It's standardized protocol that when a fire tone goes out
3 in Andrews we get toned along, alongside with them.

4 Q Okay. Do you recall what time you arrived on scene?

5 A Let me see here. Yes. We were dispatched at 1:29 in the
6 morning, would have arrived at 1:30 and we were at the -- on
7 the scene by 1:35 so.

8 Q Okay. Do you recall what time or, pardon me for saying,
9 and do you recall the address of the structure?

10 A 10 James Drive.

11 Q Is that in the County of Georgetown, Georgetown County?

12 A No. That's Andrews.

13 Q The county, is that in Georgetown County?

14 A Oh, Georgetown County. Yes, sir. Sorry.

15 Q When you arrived -- describe the scene when you arrived.

16 A Well, let's see, I put down that I was -- we were not
17 the, we, we were not the first on scene but the second on
18 scene, but from my notes it says that there was a fire --
19 flames throwing through the roof and on sides A B, B and B C,
20 which is the front, left side and back of the house.

21 Q Okay. Were you there when firefighters gained entry into
22 the house?

23 A Yes. I was.

24 Q Do you recall what, what happened after that?

25 A After the firefighters gained entry to the house one of

- 1 the firefighters inside notified of a -- that there was a body
2 inside the home.
- 3 Q Do you know what time that was?
- 4 A Around 2:00 o'clock.
- 5 Q And then what did you do at that point?
- 6 A I went inside to the building and inside once, once the
7 smoke had cleared out some with my assistant EMT and looked to
8 the body and placed the cardiac monitor on the body to see if
9 there was any signs of life, and there was none.
- 10 Q All right.
- 11 A And then --
- 12 Q And so what did, what did you do at that point?
- 13 A At that point I got on my radio and called for the
14 coroner. I dispatched a call for the coroner.
- 15 Q Okay. So who actually pronounced Mr. Coombs deceased?
- 16 A I did.
- 17 Q And do you remember what time that was?
- 18 A It would probably be within the, you know, between 2:00
19 and 2:03.
- 20 Q All right. Do you recall anything else after that?
- 21 A As in?
- 22 Q Any of the events after that while you were at the fire
23 itself or at the scene itself?
- 24 A Well, once I called the, you know, the body, you know,
25 you know, deceased, and called for C1 it was declared a crime

- 1 scene at that, at that time. It's, you know, usual protocol.
- 2 Q Did you have occasion to talk to the victim's mother?
- 3 A Yes, I did.
- 4 Q Did you deliver death notification?
- 5 A Yes, I did. Yes.
- 6 Q Can you tell me a little bit about her demeanor?
- 7 A I was surprised. I asked her who her son was and she
- 8 told me it was, you know, David Coombs, and I said, "Do you
- 9 know where he is," and she told me it was -- that he was
- 10 supposed -- that he was at a, at a birthday party, and I said,
- 11 "Well, your son, I'm sorry to tell you this, but your son died
- 12 inside the, the home this evening," and she looked at me and
- 13 shrugged her eyes -- shrugged her shoulders, looked at me and
- 14 walked off.
- 15 Q Have you ever delivered a death notice before that time?
- 16 A Yes. I have.
- 17 Q And how about after that?
- 18 A After?
- 19 Q Have -- how, how -- have you ever delivered death notice
- 20 after that?
- 21 A Yes.
- 22 Q And did her behavior seem strange to you?
- 23 A Yes. It was.
- 24 Q How so?
- 25 A Well, I myself have a child. I've given death notices to

1 parents who also have children and loved ones and even death
2 notices of, of animals inside of a burning home that it did
3 not survive and got worse reactions and, you know, as if
4 somebody, you know, a, a loved one dying is a very emotional
5 thing. You know, I would -- just not knowing where my son
6 was, so it would be, would be -- I would be frantic. This
7 woman did not seem as if to care, did not show any emotion at
8 all.

9 MR. STEPHENS: The Court's indulgence, Your Honor.

10 BY MR. STEPHENS:

11 Q No further questions. Please answer any questions
12 Defense counsel has for you.

13 THE COURT: Mr. Wilson.

14 MR. WILSON, JR.: May it please the Court, Your Honor.

15 CROSS EXAMINATION

16 BY MR. WILSON:

17 Q Mr. Richards.

18 A Yes, sir.

19 Q I know they were asking you questions but they're talking
20 about Marissa Cohen; aren't they?

21 A Yes, sir. Yes, sir.

22 Q Okay. They're talking about your interaction and your
23 impression of her?

24 A Yes, sir.

25 Q You haven't had any interaction with Mr. Collins; have

- 1 you?
- 2 A I can't see his face.
- 3 Q I'm -- can he --
- 4 MR. WILSON, JR.: Your Honor, can I stand him up?
- 5 THE COURT: Certainly.
- 6 A I do not know this gentleman.
- 7 Q All right. And you were actually on the scene that
- 8 night; correct?
- 9 A Yes.
- 10 Q Did you see Mr. Collins on that scene that night?
- 11 A I -- it was dark. I couldn't -- I -- he might have been
- 12 there. He might not have. I don't know.
- 13 Q Let me ask you this then, that night when you were on the
- 14 scene, you actually had a chance to see Marissa Collins;
- 15 correct, to see Marissa Cohen; correct?
- 16 A Yes.
- 17 Q Okay. All right. And there were a number of people out
- 18 on the scene; correct?
- 19 A Yes.
- 20 Q Okay. How many people from the family showed up?
- 21 A I -- the only person I talked to was I think she was an
- 22 aunt of the, the child, and I had some interaction with her,
- 23 and she was very, very visibly upset.
- 24 Q Okay. All right.
- 25 A Yes.

1 Q And, and there were also a number of EMS people out
2 there, firemen, that kind of thing?

3 A Yes.

4 Q Correct?

5 A Uh-huh.

6 Q All right. But you don't recall seeing Mr. Collins?

7 A I don't recognize him at all. No. As of this time.

8 MR. WILSON, JR.: No further questions, Judge.

9 THE COURT: Ms. Richardson or Mr. Stephens.

10 MR. STEPHENS: No further questions, Your Honor. We
11 would ask that he be released from his subpoena.

12 MR. WILSON, JR.: Without objection, Your Honor.

13 THE COURT: You're released. Thank you, sir.

14 A Thank you. Would you like --

15 THE COURT: Please give it to the court reporter. Thank
16 you very much. Ms. Richardson.

17 MS. RICHARDSON: Yes, Your Honor.

18 THE COURT: Or Mr. Stephens.

19 MR. STEPHENS: Yes, sir. The State calls Allen Flagler.

20 WHEREUPON, Allen Flagler is called to the stand, duly
21 sworn by the clerk and testifies as follows:

22 THE CLERK: Would you please spell your name for the
23 Court?

24 MR. FLAGLER: Yes. A-L-L-E-N, last name Flagler, F-L-A-
25 G-L-E-R.

1 THE CLERK: Thank you very much. If you'll please have a
2 seat.

3 DIRECT EXAMINATION

4 BY MR. STEPHENS:

5 Q Mr. Flagler, I think it's apparent from your uniform, but
6 where do you work?

7 A South Carolina Highway Patrol.

8 Q How long have you been in law enforcement?

9 A Six years in January.

10 Q On the night of, of March 28th and early morning hours of
11 March 29th, 2014, where did you work?

12 A Georgetown County Sheriff's Office as a deputy.

13 Q Were you called out to the scene at 10 James Drive?

14 A Yes, sir.

15 Q I have -- hold on one second, if I may.

16 MR. STEPHENS: The Court's indulgence, Your Honor.

17 MR. WILSON, JR.: Without objection, Your Honor.

18 THE COURT: All right.

19 MR. STEPHENS: Mark this for identification.

20 THE COURT: Please have the trooper identify it, please.

21 MR. STEPHENS: Yes, Your Honor.

22 BY MR. STEPHENS:

23 Q Do you recognize this document?

24 A It's my report I took that night.

25 Q Okay. Is that something you keep in the normal course of

- 1 business?
- 2 A Yes, sir.
- 3 Q If I show you that would it help you recall the events of
- 4 that night?
- 5 A Yes, sir.
- 6 Q Why were you dispatched to, to that scene that night?
- 7 A We were dispatched because it was a suspicious fire with
- 8 a body found inside.
- 9 Q Okay. And what did you find upon arriving at that scene?
- 10 A Arriving at the scene it was, it was raining. It was
- 11 wet. There were several people throughout walking the road,
- 12 fire trucks. It was two other deputies that responded as
- 13 well, and there were just a lot of people just in and out.
- 14 Q At the time that you were called -- well, pardon me. I
- 15 withdraw that question. When you got there what did you do?
- 16 A I got there I went to the fire official. Can't recall
- 17 the name or which one I went to. They told me what they had,
- 18 started asking questions about, you know, the possible mother
- 19 coming to the scene before she arrived. They started doing a
- 20 crime log.
- 21 Q And when the mother, and I suppose you're talking about
- 22 Marissa Cohen --
- 23 A Yes, sir.
- 24 Q -- when she arrived what you did, what did you do then?
- 25 A When she arrived I asked her -- let me make sure I get my

1 -- I asked her did she know that -- was that her son that was
2 in the fire, that he had passed away and then where was her
3 location that night. That's what I initially asked her.

4 Q Okay. Did you take any other information from her?

5 A I didn't get any statements from her then. That's -- our
6 investigator got statements from her.

7 Q Okay. On your report here --

8 MR. STEPHENS: The Court's indulgence, Your Honor.

9 BY MR. STEPHENS:

10 Q There's some information on this front page.

11 A Uh-huh.

12 Q How did you come about that information?

13 A Oh, well, when I asked her her initial location of where
14 she was and where her son was supposed to be that night she
15 told me he was supposed to be at the recreational center in
16 Andrews for a party.

17 Q Right. I'm speaking about this -- I, I apologize. You
18 have this in front of you --

19 A Uh-huh.

20 Q -- this page here?

21 A Okay. That's the, that's the first page or the second
22 page?

23 Q Well, mine is the first page. You may have --

24 A I got, I got two of them.

25 Q This, this --

- 1 A This one?
- 2 Q -- that page. Yes, sir. There's some information on it,
3 some personal information about Ms. Cohen --
- 4 A Okay.
- 5 Q -- including her phone number?
- 6 A Uh-huh. Yes, sir.
- 7 Q What is that phone number?
- 8 A The phone number that I have right here is 843-461-5398.
- 9 Q Okay. Did you notice anything strange about Ms. Cohen's
10 demeanor?
- 11 A When I mentioned that that was her son that was killed in
12 the fire she had almost no reaction that I would expect to be
13 normal. It's -- she basically put her hand on her face and
14 just walked away, and even like I walked away because I had
15 chills just telling her that, and when I went back to talk to
16 her probably less than 10 to 15 minutes, she was inside of a
17 vehicle with from, from friends and family members. They were
18 laughing and that still bothers me.
- 19 Q Had you given death notification before this time?
- 20 A Yes, sir.
- 21 Q Have you given any death notification since then?
- 22 A Yes sir.
- 23 Q And in light of those experiences this experience stands
24 out in your mind?
- 25 A It does.

1 Q No further questions for Mr. Flagler. If you would
2 please answer any questions that the Defense counsel has.

3 A Yes, sir.

4 CROSS EXAMINATION

5 BY MR. WILSON, JR.:

6 Q Trooper Flagler, how you doing this morning?

7 A Fine, sir. And yourself?

8 Q Doing well, sir. Let me ask you this, one of the things
9 that responding officers do is that they go around and try to
10 find witnesses; correct?

11 A Yes, sir.

12 Q And so one of the things you all are trained in very well
13 is going around and trying to locate who's there, who saw
14 what, what happened, try to surmise what went down because
15 someone died; correct?

16 A Yes, sir.

17 Q Okay. During that time, and if you could I don't know if
18 you can stand up quickly, did you see Mr. Collins out there at
19 all? Did you talk to him that night?

20 A No, sir.

21 Q Okay. You can sit down, Trooper. Now, again, the
22 interactions you had that night on the scene at the fire was
23 with Marissa Cohen; correct?

24 A Yes, sir.

25 Q Okay. And no one else?

- 1 A No, sir.
- 2 Q And you don't have any information which ties Mr. Collins
- 3 to this particular fire yourself?
- 4 A No, sir.
- 5 Q Thank you, sir.
- 6 MR. WILSON, JR.: No further questions, Your Honor.
- 7 MR. STEPHENS: Your Honor, we would ask that Trooper
- 8 Flagler be released from his subpoena.
- 9 MR. WILSON, JR.: No objection, Judge.
- 10 THE COURT: You're released Trooper Langley [sic].
- 11 A Thank you. Thank you.
- 12 THE COURT: Thank you for your testimony.
- 13 MR. STEPHENS: The State calls Chase Ridgeway.
- 14 WHEREUPON, Chase Ridgeway is called to the stand, duly
- 15 sworn by the clerk and testified as follows:
- 16 THE CLERK: Would you please spell your name for the
- 17 Court?
- 18 MR. RIDGEWAY: Chase, C-H-A-S-E, Ridgeway, R-I-D-G-E-W-A-
- 19 Y.
- 20 THE CLERK: Thank you very much. Please have a seat.
- 21 DIRECT EXAMINATION
- 22 BY MR. STEPHENS:
- 23 Q Mr. Ridgeway, how are you doing today?
- 24 A Good. How are you?
- 25 Q I'm doing well. Thank you, sir. Mr. Ridgeway, what do

1 you do for a living?

2 A Well, I'm a deputy coroner with the Georgetown County
3 Coroner's Office, and I also own a funeral home here in
4 Georgetown.

5 Q All right. If you recall, did you have occasion on March
6 29th, the early morning hours of March 29th, 2014, to respond
7 to a scene on 10 James Drive in Andrews, South Carolina?

8 A Yes.

9 MR. STEPHENS: Beg the Court's indulgence, Your Honor.

10 MR. WILSON, JR.: Without objection, Your Honor.

11 THE COURT: All right. Let's have him identify it.

12 MR. STEPHENS: I will.

13 BY MR. STEPHENS:

14 Q Do you recognize this?

15 A Yes. This is a coroner's report.

16 Q Okay.

17 MR. STEPHENS: If I may have this marked for
18 identification as State's 13.

19 BY MR. STEPHENS:

20 Q I'll let you look at that. Is that something you keep in
21 the normal course of business?

22 A Yes. It is.

23 Q And if you look at it will it help you recall the events
24 of that night?

25 A Yes.

1 Q Do you remember how you were dispatched to that scene?

2 A Yes. I was notified by central to, to respond.

3 Q Okay. And generally do they call the coroner for every
4 death?

5 A Yes.

6 Q Okay. Do you remember what you saw when you got there?

7 A The house -- the, the trailer fire had been extinguished
8 when I, when I arrived on scene. I was taken in by the fire
9 department and found a child laying on his stomach deceased on
10 the living room middle area floor.

11 Q Okay. And is it your job to pronounce the deceased dead?

12 A Usually when the coroner's called he's already been,
13 already been pronounced.

14 Q And how did you confirm the ID of the deceased?

15 A The ID was given to me by EMS.

16 Q Okay. And what else does the, the coroner do when
17 responding to a scene like this?

18 A We investigate the, the details surrounding the death as
19 far as location of decedent, what the decedent looks like,
20 anything that's going on with the body, and we relay that
21 information over to the forensic pathologist.

22 Q And what did you determine?

23 A You know, there really wasn't much as far as -- the
24 coroner's office, our job is to determine cause and manner of
25 death. You know, this, in this case there was no -- of

1 course, it was dark. It was raining. In the house, you know,
2 it's dark. So there's no really way to look and see if any
3 injuries or anything that we could tell from, from the
4 outside. You know, 12 years old children aren't supposed to
5 die. So we knew it had something to do with, with the fire
6 most likely. So that's -- we ordered an autopsy at MUSC in
7 Charleston.

8 Q Were there any preliminary findings before the autopsy?

9 A The cause of death was listed as pending originally and
10 the, the -- actually the -- let's see. So the report, you
11 know, this has been since 2014. So there's been a lot of
12 time, but the preliminary result show the decedent died from
13 smoke inhalation and was the cause -- the cause of death is
14 listed as pending until all the test results came back.

15 Q Okay. And when the test results came back what was the
16 result?

17 A The result was inhalation of products of combustion. The
18 manner of death was a homicide.

19 Q Did you have occasion to speak with the child's mother on
20 scene?

21 A I did.

22 Q Did you notice anything about her demeanor?

23 A She really wasn't -- there wasn't much response as far
24 as, you know, her child had just passed away or, or anything
25 like that. It was just kind of just another day.

1 MR. STEPHENS: The Court's indulgence, Your Honor. No
2 further questions for Mr. Ridgeway.

3 BY MR. STEPHENS:

4 Q If you would answer any questions Mr. Wilson has.

5 THE COURT: Mr. Wilson, do you have any questions for Mr.
6 Ridgeway?

7 MR. WILSON, JR.: Just briefly, Judge.

8 CROSS EXAMINATION

9 BY MR. WILSON, JR.:

10 Q As coroner, your job is to go out and then to determine
11 manner of death basically.

12 A Right.

13 Q Is what you're telling the Court and the jury today;
14 correct?

15 A Yes. Yes, sir.

16 Q All right. You don't have any further information
17 regarding this matter or any connection -- well, let me ask
18 you this, did the -- did your office make any connection with
19 Randy Collins and this dead body?

20 A No, sir.

21 Q Okay. So you have no further information; correct?

22 A No, sir.

23 MR. WILSON, JR.: No further questions, Judge.

24 THE COURT: You may step down, sir. Thank you. Any
25 further need for the coroner?

1 MS. RICHARDSON: No, Your Honor.

2 MR. WILSON, JR.: No objection, Judge, to be released.

3 THE COURT: All right. You are released. Ladies and
4 gentlemen, I promised you that I wouldn't seat you for more
5 than about an hour and a half at the time. So I'm going to
6 let you take a mid-morning break real quick like a few
7 minutes. Whenever you're ready to come back out, let the
8 bailiff know whenever everyone's had an opportunity to refresh
9 themselves. Okay. All right. Ms. Richardson, Mr. Wilson,
10 I'm about to send you a communication. Please be aware that
11 it'll be coming in. All right.

12 (Whereupon, the following takes place outside the
13 presence of the jury.)

14 THE COURT: And we'll be at ease for about 10 minutes.

15 OFF THE RECORD

16 (On the record. The following takes place outside the
17 presence of the jury.)

18 MR. STEPHENS: Your Honor, if I may take up a matter, I
19 failed to move to move the Exhibit 13 or State's Exhibit 13
20 into evidence. I'd like to do that at this time.

21 THE COURT: I, I thought he said that there was no
22 objection to it.

23 MR. STEPHENS: Well, there was no objection at the time
24 that I was presenting it to the -- I never made the motion.

25 THE COURT: Okay. Well, he's moving to enter it.

1 MR. WILSON, JR.: Judge --

2 THE COURT: And that was the --

3 MR. WILSON, JR.: I, I don't have any objection.

4 THE COURT: It's entered. Okay.

5 MR. STEPHENS: Thank you, Your Honor.

6 (State's Exhibit Number 13 [Coroner's Report] entered
7 into evidence and appropriately marked.)

8 THE COURT: All right. Let's -- is the jury ready to
9 come in? Okay. Well, bring them in then.

10 (Whereupon, the following takes place in the presence of
11 the jury.)

12 THE COURT: All right. I think we have all of our jurors
13 and our alternates. I want to apologize. I -- it's come to
14 my attention that we didn't have any soft drinks or anything
15 back there for you. I've remedied that. They will, and when
16 you -- any time you want to come into the courtroom I have no
17 problem with you bringing bottled water. We try to keep the
18 courtroom nice and would rather you not bring any coffee or
19 soft drinks which can be spilled, but if you could -- if you
20 would like to bring in some bottled water that's fine. Okay.

21 Ms. Richardson, Mr. Stephens, witness?

22 MS. RICHARDSON: You ready, Your Honor?

23 THE COURT: Yes.

24 MS. RICHARDSON: The State calls Jennifer Dinkins.

25 WHEREUPON, Jennifer Dinkins is called to the stand, duly

1 sworn by the clerk and testified as follows:

2 THE CLERK: Would you please spell your last name for the
3 Court?

4 MS. DINKINS: D-I-N-K-I-N-S.

5 THE CLERK: And Jennifer is and what's your first --

6 MS. DINKINS: J-E-N-N-I-F-E-R.

7 THE CLERK: Okay. Thank you very much. Please have a
8 seat.

9 THE COURT: Ms. Richardson.

10 DIRECT EXAMINATION

11 BY MS. RICHARDSON:

12 Q Ms. Dinkins, where are you employed?

13 A National Security Adjusters.

14 Q Okay. And what do you do there?

15 A I'm an insurance adjuster.

16 Q And how long have you been doing that?

17 A I've been with them for 12 years.

18 Q Okay. And how long have you been in the insurance
19 business or investigations?

20 A I've been in the insurance business for over 30 years.

21 Q And as an adjuster did you have an opportunity to
22 investigate a claim made by Marissa Cohen?

23 A Yes, ma'am.

24 MR. WILSON, JR.: Your Honor, I would object to this
25 line. I don't know how this is relevant to my client's guilt

1 at all.

2 THE COURT: I'm not sure what we even have yet. Do you

3 --

4 MS. RICHARDSON: Your Honor, this -- these are proposed
5 or these are the application for insurance on the property,
6 declarations page and the investigation regarding the
7 insurance claim.

8 THE COURT: There is a conspiracy charge here. I'm going
9 to allow it. Okay.

10 MR. WILSON, JR.: Thank you, Your Honor.

11 BY MS. RICHARDSON:

12 Q Okay. First of all, Ms. Dinkins, let me show you what's
13 been marked as State's Exhibit Number 14. Can you tell me
14 what that is?

15 A This is an application for an insurance policy.

16 Q Okay. And who's that application from and to?

17 A It's for Marissa Cohen for National Security Fire and
18 Casualty.

19 Q Okay. And what's the property address?

20 A The property address is 10 James Drive, Andrews, South
21 Carolina.

22 Q And let me show you what's been marked as State's Exhibit
23 Number 15, and can you tell me what that is?

24 A This is evidence of payment of a partial payment. She
25 didn't pay annually. She paid looks like quarterly.

- 1 Q And she being Marissa Cohen?
- 2 A Marissa Cohen.
- 3 Q And on the policy you just mentioned?
- 4 A Yes, ma'am.
- 5 Q And State's Exhibit Number 16, can you identify that?
- 6 A This is the declarations page issued by National Security
- 7 Fire and Casualty.
- 8 Q Okay. To Marissa Cohen?
- 9 A To Marissa Cohen.
- 10 Q And State's Exhibit Number 17?
- 11 A This is my claim report from the fire that occurred at 10
- 12 James Drive.
- 13 Q In March of 2014?
- 14 A Correct.
- 15 Q Okay. And are all these documents kept in the regular
- 16 course of business and used by your in your investigation?
- 17 A Yes, ma'am.
- 18 MS. RICHARDSON: Your Honor, at this time I'd move
- 19 State's 14, 15, 16 and 17 into evidence.
- 20 THE COURT: Subject to your objection, Mr. Wilson?
- 21 MR. WILSON, JR.: That's correct, Your Honor.
- 22 THE COURT: And that would be relevancy?
- 23 MR. WILSON, JR.: Yes, Your Honor.
- 24 THE COURT: All right. And I would admit it.
- 25 MS. RICHARDSON: Okay.

1 (State's Exhibit Number 14 [Application for Insurance]
2 State's Exhibit Number 15 [Evidence of Payment], State's
3 Exhibit Number 16 [Declaration Page] and State's Exhibit
4 Number 17 [Claim Report] admitted into evidence and
5 appropriately marked.)

6 BY MS. RICHARDSON:

7 Q So let's first deal with State's Exhibit Number 14, and
8 you said that is the application for insurance?

9 A That is correct.

10 Q Okay. And the -- and I think we've already covered that
11 it was for 10 James Drive in Andrews?

12 A That is correct.

13 Q And who is the applicant?

14 A Marissa Cohen.

15 Q And what agency did she go and make this application?

16 A Let's see, she went through Andrews Insurance.

17 Q And what is the date of that application?

18 A The application was signed and dated on February 20th of
19 2014.

20 Q February 20th, 2014?

21 A Correct.

22 Q And what type of policy is that?

23 A This is a contents only policy.

24 Q And what is the amount of insurance?

25 A 25,000.

- 1 Q And that's a contents policy?
- 2 A Correct.
- 3 Q Kind of like a renter's policy?
- 4 A Correct.
- 5 Q All right. And then was there other coverages on the
- 6 policy?
- 7 A There are some coverages for personal liability and med
- 8 pay.
- 9 Q And State's Exhibit -- the next one, I believe we were at
- 10 15, State's Exhibit 15, and that is the receipt for payment?
- 11 A Correct.
- 12 Q Okay. And how much did this insurance cost her?
- 13 A The total premium was \$220 annually, and she paid a
- 14 quarterly installment of \$60.
- 15 Q So she paid \$60 on February 20th, 2014?
- 16 A Correct.
- 17 Q And that paid her up until when?
- 18 A That paid her through May 22nd, 2014.
- 19 Q And did she ever have to make another payment?
- 20 A The fire occurred prior to the next due payment.
- 21 Q And so if you would show us or explain to us what State's
- 22 Number 16 is.
- 23 A Number 16 was the declarations page issued by National
- 24 Security Fire and Casualty.
- 25 Q Okay. And was the date she actually got the policy the

- 1 same day she applied?
- 2 A Exactly, February 20th, 2014.
- 3 Q And the declarations page basically just means that's
- 4 when the insurance came into effect?
- 5 A Right. And it shows the coverage limits.
- 6 Q And had -- was there any more information of any prior
- 7 insurance on the property?
- 8 A According to the application, no.
- 9 Q Okay. When, when did you receive notification of a claim
- 10 on this insurance?
- 11 A I received the loss notice on April the 7th of 2014.
- 12 Q Okay. And again, the date of the fire was March 29th?
- 13 A The date of fire was March 29th. Correct.
- 14 Q And when were you assigned to the case?
- 15 A On April 7th, 2014.
- 16 Q And was there anything unusual about receiving the
- 17 complaint within -- or the loss within a week?
- 18 A The loss within the first month of the policy?
- 19 Q Yes.
- 20 A Yes. That is very -- that's very unusual.
- 21 Q And is that one of the reasons an adjuster was called
- 22 out?
- 23 A Well, we are called out on all fire claims, but we just
- 24 pay more attention to what's going on when it's a very fresh
- 25 policy.

1 Q And of course you learned that a child had died in the
2 fire?

3 A Yes, ma'am.

4 Q And when the claim -- so who would have made the claim
5 against the insurance company?

6 A Ms. Cohen.

7 Q And when did she do that again?

8 A She notified home office on April the 7th of 2014.

9 Q Okay. And did that -- was that significant to you in any
10 way?

11 A It was awfully quick in my opinion.

12 Q Given the circumstances?

13 A Given the circumstances, the death of her son, yes.

14 Q Okay. And so when did you make contact with her?

15 A I attempted to contact her on April the 8th of 2014 and I
16 had to leave her a voicemail and she called me back the next
17 day.

18 Q And what do you normally do to start investigating these
19 claims?

20 A I try to set up an inspection appointment with the actual
21 insured, in this case, Ms. Cohen, and then meet out at the
22 property.

23 Q And did you all do that?

24 A She was not in the state.

25 Q Where was she?

- 1 A She was in Kentucky.
- 2 Q So on April 7th she was already in Kentucky?
- 3 A When I talked to her, yes, ma'am, she was already in
- 4 Kentucky.
- 5 Q And did you still go and investigate or go inspect the
- 6 property?
- 7 A She authorized -- yeah. She authorized me to go ahead
- 8 and do the inspection without her being present.
- 9 Q And when did you do the inspection?
- 10 A On April 10th, 2014.
- 11 Q And did you take photographs of that?
- 12 A Yes, ma'am.
- 13 Q And are those attached to your report?
- 14 A Yes, ma'am.
- 15 Q And what did you find in your inspection?
- 16 A The home was an obvious total loss, and there's quite
- 17 extensive fire damage to what we could call the right end of
- 18 the house, the front right.
- 19 Q Okay. And how do you orient right and left? Is it
- 20 facing it, you know, facing the --
- 21 A We do it like a car.
- 22 Q Okay.
- 23 A You know, the right side would be passenger side. So
- 24 it'd be the same with the house. You'd turn it. The right
- 25 side would be -- if you're facing it it would be your left.

- 1 Q Okay. All right. And after you made the inspection did
2 you ask her to do anything?
- 3 A Yes, ma'am. She needed to complete an inventory sheet
4 for all the damaged items inside the home.
- 5 Q Okay. And did you send that to her?
- 6 A Yes. I did.
- 7 Q And did you get that back?
- 8 A Yes. I did.
- 9 Q All right. And what was listed on that inventory?
- 10 A She itemized several large TVs, looks like a wooden desk,
11 some CD players and bedroom set.
- 12 Q Okay. And what was the value of the items she submitted?
- 13 A The total value was \$11,325.
- 14 Q Okay. And when you send these contents lists to people
15 what do you, what do you tell them to do?
- 16 A They're to complete it out and identify what the item is,
17 tell me when they purchased it, where they purchased it from
18 and how much they purchased it for.
- 19 Q And do you usually just add up everything that's in the
20 house?
- 21 A Depending on the degree of the fire, yes.
- 22 Q Okay. So down to clothes like --
- 23 A Right.
- 24 Q -- six t-shirts or whatever --
- 25 A Right.

- 1 Q -- like that?
- 2 A Right.
- 3 Q Okay. Was there anything odd about what she completed?
- 4 A There's a lot odd about this list.
- 5 Q Tell me that. Tell me about that.
- 6 A One, there are no clothes. There's no food items. So
- 7 obviously nobody was living in the home. There were items
- 8 that I saw in my photos that aren't listed on here that were
- 9 severely damaged. It was a very -- this is a very generic
- 10 list, very quick, very generic.
- 11 Q Very quick?
- 12 A Yes.
- 13 Q And did your -- did the insurance company pay on the
- 14 claim?
- 15 A No, ma'am.
- 16 Q And that was based on the --
- 17 A Based on the charges.
- 18 Q -- why was that?
- 19 A Correct.
- 20 Q Since it was ruled an arson?
- 21 A Correct.
- 22 Q And did you close your investigation?
- 23 A I've closed my investigation. Yes.
- 24 Q And is that subject -- could that be reopened?
- 25 A Yes. It could.

1 Q And she could still make a claim against the insurance --

2 A Yes, ma'am.

3 Q -- and fight your finding?

4 A Yes, ma'am.

5 Q Okay. All right. I have no further questions. Answer
6 any questions that Mr. Wilson may have for you.

7 THE COURT: Mr. Wilson.

8 MR. WILSON, JR.: Your Honor, if it please the Court?

9 CROSS EXAMINATION

10 BY MR. WILSON, JR.:

11 Q Good morning, ma'am. How you doing?

12 A I'm fine. How are you?

13 Q Doing well. Now, the policy itself, the policy is a
14 contents only policy; right?

15 A Correct.

16 Q All right. And during your investigation you found out
17 that at some point in time they had basically taken all the
18 contents out of that house or most of it?

19 A It's hard to identify with the extent of the fire.

20 Q Okay. Well, let me ask you this, at some point in time
21 when Marissa Cohen took out the policy, when she got the
22 policy she didn't ask for a complete policy to cover the
23 actual entire trailer; correct?

24 A No. She did not own the home.

25 Q Okay.

- 1 A So she just wanted contents covered.
- 2 Q Just the contents covered; right?
- 3 A Correct.
- 4 Q All right. And then on the actual form itself you say
- 5 that the value of the items that she's asking for is 11,000
- 6 what, \$300?
- 7 A 11,325, I believe.
- 8 Q Okay. All right. And that's what she was asking for the
- 9 insurance company to pay her back?
- 10 A Correct.
- 11 Q Okay. Now, my question is this, did you ever have in
- 12 your investigation or in the insurance company's investigation
- 13 did my client's name ever come up, Randy Collins?
- 14 A No, sir.
- 15 Q Okay. Well, let me ask you this also then, who took that
- 16 policy out?
- 17 A Marissa Cohen.
- 18 Q Okay. And who made the claim on the policy?
- 19 A Marissa Cohen.
- 20 MR. WILSON, JR.: No further questions, Your Honor.
- 21 THE COURT: Ms. Richardson:
- 22 MS. RICHARDSON: Just to clarify real quick.
- 23 REDIRECT EXAMINATION
- 24 BY MS. RICHARDSON:
- 25 Q If she didn't own the home she couldn't get a policy for

1 the whole home; is that right?

2 A That is correct.

3 Q Okay. She had to have an insurable interest?

4 A That is correct.

5 Q And on what date did she submit the contents back to you,
6 the contents list?

7 A On May the 14th of 2014.

8 Q Okay. All right.

9 MS. RICHARDSON: I have no further questions. I'd ask
10 that she be released from her subpoena.

11 MR. WILSON, JR.: Judge, no further questions, Your
12 Honor, without objection.

13 THE COURT: You're released from your subpoena. Thank
14 you.

15 MS. RICHARDSON: The State calls Ms. Kellahan.

16 Whereupon, Joan Kellahan is called to the stand, duly
17 sworn by the clerk and testified as follows:

18 THE CLERK: Would you please spell your first name and
19 your last name for the Court?

20 MS. KELLAHAN: J-O-A-N, K-E-L-L-A-H-A-N.

21 THE CLERK: Thank you, Ms. Kellahan, if you would please
22 have a seat and move the mike up close.

23 DIRECT EXAMINATION

24 BY MS. RICHARDSON:

25 Q Ms. Kellahan, do you live in Georgetown County?

- 1 A No. I live in Williamsburg County.
- 2 Q Okay. And how long have you lived in this general area?
- 3 A Since 1958.
- 4 Q And what sort of business are you in?
- 5 A We own Rosemary Amusement Company in Andrews.
- 6 Q Okay. And what is that?
- 7 A That is an amusement, we, we put amusement devices, games
- 8 in local convenience stores, arcades, beach arcades and places
- 9 like that.
- 10 Q Okay. And do you have any other businesses that are
- 11 associated with Rosemary Amusements?
- 12 A We do. We also own the storage, Star Warehouse business
- 13 across the street from our business on the Georgetown Highway
- 14 in Andrews.
- 15 Q Okay. And did -- what is that address?
- 16 A The physical address is 7470 Georgetown Highway.
- 17 Q Okay. And that -- but that's in Andrews?
- 18 A Well, we're right out the -- right outside the city
- 19 limits.
- 20 Q Just right out between Andrews and Georgetown?
- 21 A Well, just probably a mile, not even a mile out the city
- 22 limits of Andrews.
- 23 Q And you brought some documents with you, some originals,
- 24 I believe?
- 25 A Yes, ma'am.

1 Q I'm going to show these to Mr. Wilson. He has the
2 copies.

3 MR. WILSON, JR.: Without objection, Your Honor.

4 MS. RICHARDSON: May I have these marked? Well, it's
5 stapled together so.

6 BY MS. RICHARDSON:

7 Q Okay. So this has been marked as State's Exhibit Number
8 18, and it's front and back. You've got two documents stapled
9 together; is that right?

10 A Right.

11 Q Okay. Tell me what those are.

12 A This is a contract that we require for any of the tenants
13 that rent our storage warehouses, and it just states who it,
14 who it's -- the contract is with, the identification of the
15 storage unit and then the signature of the tenant and one of
16 the representatives of the Star Warehouses, and the front side
17 is the payment schedule of when the payments were made and
18 when the account was set up.

19 Q Okay. And you keep those in the normal course of
20 business so you can keep up with the payments on your storage
21 units?

22 A Right.

23 Q Okay.

24 MS. RICHARDSON: And Your Honor, at this time I'd ask to
25 move that into evidence.

- 1 THE COURT: It's admitted without objection.
- 2 (State's Exhibit Number 18 [Storage Contract] admitted
- 3 into evidence and appropriately marked.)
- 4 BY MS. RICHARDSON:
- 5 Q Now, who is that contract for?
- 6 A This contract is for Marissa Cohen.
- 7 Q Okay. And when we're talking about storage units it's
- 8 just the general ones with like the garage type doors?
- 9 A Right.
- 10 Q Okay. And what did Ms. Cohen lease from you?
- 11 A She rented one of our 10 by 12 units, just one.
- 12 Q Okay. And what date did she do that?
- 13 A March the 24th, 2014.
- 14 Q Okay. And she made a payment on that date?
- 15 A She did.
- 16 Q And did she make regular payments on that?
- 17 A She did. She made regular payments every month.
- 18 Q Okay. And when did that terminate?
- 19 A She made her last payment for the month of August that
- 20 ended on September 1st, 2014.
- 21 Q Okay. And after that she would have moved the -- the
- 22 belongings would have been moved out?
- 23 A Right.
- 24 Q Okay. And do you have any information about what was
- 25 stored in there, anything like that?

1 A I do not.

2 Q Okay. I have no further questions. Answer any questions
3 Mr. Wilson may have for you.

4 THE COURT: Mr. Wilson.

5 CROSS EXAMINATION

6 BY MR. WILSON, JR.:

7 Q Good morning, Ms. Kellahan.

8 A Good morning.

9 Q Just a couple of questions, how were payments made to
10 your company?

11 A In this particular instance she made five payments.

12 Q Yes, ma'am.

13 A The first was with cash. There were three with either
14 check or money order.

15 Q Yes, ma'am.

16 A And the last one was in cash.

17 Q Okay. And when someone comes and pays with cash or money
18 order they actually come in person; right?

19 A Right.

20 Q Okay. And did you have an opportunity to meet with her
21 or see her come make those payments?

22 A She came in initially on March the 24th.

23 Q Yes, ma'am.

24 A But being it -- you know, people do come in and make
25 payments for other people --

- 1 Q Yes, ma'am.
- 2 A -- they make them themselves, I mean, after four years I
- 3 can't tell you exactly. The receipt is made every time to the
- 4 owner, the renter. So all of the receipts were made to
- 5 Marissa Cohen.
- 6 Q Very good. Let me ask you this, have you ever seen my
- 7 client, Randy Collins, before down at your place?
- 8 A I have not.
- 9 Q Okay. And, and this -- the actual renters for the actual
- 10 storage facility, how big was it, the one that she got?
- 11 A It was 10 by 12 feet.
- 12 Q Okay. And then the contents that she wants to put in
- 13 there she can put in there, whatever she wants to put in there
- 14 as long as it's not any contraband; right?
- 15 A Correct.
- 16 Q Okay. All right. And she rented this place for herself
- 17 based on your knowledge?
- 18 A As far as I know.
- 19 Q Okay. And you have no knowledge about anything further
- 20 in this matter; correct?
- 21 A I do not.
- 22 Q Thank you.
- 23 MR. WILSON, JR.: No further questions, Judge.
- 24 THE COURT: Ms. Richardson?
- 25 MS. RICHARDSON: No further questions. We'd ask that she

1 be excused from her subpoena.

2 THE COURT: Mr. Wilson?

3 MR. WILSON, JR.: Without objection, Your Honor.

4 THE COURT: You're excused. Thank you and you're
5 released from your subpoena.

6 A Thank you.

7 THE COURT: Bailiff, would you get the exhibit so that
8 you can give it to the court reporter, please? Thank you.

9 MS. RICHARDSON: The State calls Everette Langley.

10 THE COURT: Come around, Mr. Langley.

11 WHEREUPON, Everette Langley is called to the stand, duly
12 sworn by the clerk and testified as follows:

13 THE CLERK: Would you please and -- your first name and
14 your last name for the Court?

15 MR. LANGLEY: E-V-E-R-E-T-T-E, L-A-N-G-L-E-Y.

16 THE CLERK: Thank you very much, Mr. Langley. Please
17 have a seat.

18 DIRECT EXAMINATION

19 BY MS. RICHARDSON:

20 Q Mr. Langley, where do you live?

21 A I live in Maryville, Belle Isle down South Island Road.

22 Q Okay. And that's --

23 A Georgetown County, South Carolina.

24 Q All right. And that's just outside the city limits of
25 Georgetown?

- 1 A Yes, ma'am.
- 2 Q All right. And have you always been from Georgetown
- 3 County?
- 4 A No, ma'am. I live in Andrews.
- 5 Q Okay. And --
- 6 A I guess, guess that's Georgetown County.
- 7 Q That is. That is. And how long, how long have you lived
- 8 in Georgetown County?
- 9 A Most all my life.
- 10 Q Okay.
- 11 A And I moved off to Atlanta and I came back.
- 12 Q All right. And how old are you?
- 13 A 24.
- 14 Q Okay. And when you lived in Andrews where did you live?
- 15 A I live on 170 James Drive.
- 16 Q Okay. And whose house it that?
- 17 A My grandmother.
- 18 Q Okay. And did your uncle live there, too?
- 19 A Yes, ma'am.
- 20 Q Mr. Jerome Langley who testified earlier?
- 21 A Yes, ma'am.
- 22 Q Okay. And back in 2013 is that where you were living?
- 23 A Yes, ma'am.
- 24 Q Okay. And did you know Dave or known as Syience Coombs?
- 25 A Yes, ma'am. I did.

- 1 Q And tell me how you knew him.
- 2 A Oh, I took him to basketball practice every other day and
- 3 I cut his hair.
- 4 Q Okay. And he just lived right down the road from you?
- 5 A Yes, ma'am. Right there.
- 6 Q Okay.
- 7 A Two houses down.
- 8 Q And you said you cut his hair?
- 9 A Yes, ma'am.
- 10 Q You do a little barbering?
- 11 A Yes, ma'am.
- 12 Q Okay. And did you know his mother?
- 13 A I didn't know her well, but I seen her a few times.
- 14 Q Okay. And on the night of March 28th to the early morning
- 15 hours of March 29, 2014, do you remember that?
- 16 A Yes, ma'am. I do.
- 17 Q Okay. And what happened that morning?
- 18 A I was on my way from the movies, my wife and I, and I got
- 19 on the road and I saw a fire.
- 20 Q And where did you see a fire?
- 21 A At the house.
- 22 Q At Syience's house?
- 23 A Yes, ma'am.
- 24 Q Okay. And describe to me what you saw. How, how was the
- 25 fire? Was it coming out of the house or --

1 A I didn't actually like look, but I mean, it was a big
2 fire.

3 Q Okay.

4 A At that time.

5 Q So what did you do?

6 A I went home, told my uncle about it.

7 Q Okay. And he called 911?

8 A Yes, ma'am.

9 Q We heard that earlier. Okay. And but you knew that
10 Syience had lived there?

11 A Yes, ma'am.

12 Q Okay. Did you think anybody was at the house?

13 A No, ma'am. Because usually it's a car in the yard.

14 Q Okay. And did you have any knowledge about whether they
15 had moved out?

16 A No, ma'am, not to my knowledge.

17 Q Okay. Had you done any work or gotten payment from his
18 mother, from Syience's mother?

19 A Yes, ma'am. I helped her move.

20 Q Okay.

21 A I believe it was earlier that week.

22 Q Okay. What did you, what did you help them move?

23 A I'm not sure, but I know it was a washer and a dryer, but
24 I'm not sure of the other items.

25 Q Okay. And did you get paid to do that?

1 A Yes, ma'am.

2 Q And who helped you do that?

3 A Mano Brown.

4 Q Okay. And why, why did they ask you to help?

5 A I had a truck at the time.

6 Q Okay. Did you have any idea that Syience was in that
7 house?

8 A No, ma'am, none at all.

9 Q All right. I have no further questions. Answer any
10 questions that Mr. Wilson may have for you.

11 THE COURT: Mr. Wilson, you may examine.

12 MR. WILSON, JR.: Your Honor, if it please the Court?

13 THE COURT: Yes, sir.

14 CROSS EXAMINATION

15 BY MR. WILSON, JR.:

16 Q Mr. Langley, correct?

17 A Yes, sir.

18 Q Hey. Good morning to you.

19 A All right. Good morning to you.

20 Q Just a couple of questions I got.

21 A All right.

22 Q Let me ask you this, you helped Marissa Cohen move the
23 stuff out of the house?

24 A Yes, sir.

25 Q Okay. How much did she pay you for doing that?

- 1 A \$50.
- 2 Q Okay. How long did you all work that day?
- 3 A Probably work about two hours at the most.
- 4 Q Okay. And you said that you and Mano Brown also was
- 5 there to help you; right?
- 6 A Yes, sir.
- 7 Q Mano Brown, how do you know him?
- 8 A That's my cousin.
- 9 Q Okay. That's your cousin. Do you know Randy Collins?
- 10 A No, sir.
- 11 Q Did he help you all move that day? Did Marissa even talk
- 12 about him at all that day?
- 13 A No, sir.
- 14 Q Okay. All right. And, and I guess my last question
- 15 would be this, at any point in time during the time where you
- 16 were helping her move anything did you have any contact with
- 17 Randy Collins?
- 18 A No, sir.
- 19 Q Did you hear her talk to Randy Collins at all?
- 20 A No, sir.
- 21 Q Okay. And did you know that Randy Collins had a truck?
- 22 A No.
- 23 Q Okay. All right.
- 24 MR. WILSON, JR.: No further questions, Your Honor.
- 25 MS. RICHARDSON: No further questions and we'd ask that

1 he be released from his subpoena.

2 MR. WILSON, JR.: No objection.

3 THE COURT: You are released from your subpoena.

4 A All right.

5 THE COURT: Thank you, sir.

6 A Thank you.

7 MS. RICHARDSON: Thank you.

8 A All right.

9 MS. RICHARDSON: The State calls Charlene Scott.

10 WHEREUPON, Charlene Scott is called to the stand, duly
11 sworn by the clerk and testified as follows:

12 THE CLERK: Okay. Would you please spell your first name
13 for the Court?

14 MS. SCOTT: C-H-A-R-L-E-N-E.

15 THE CLERK: Thank you, Ms. Scott. If you'll please have
16 a seat.

17 DIRECT EXAMINATION

18 BY MS. RICHARDSON:

19 Q Ms. Scott, where do you live?

20 A In Andrews, South Carolina.

21 Q And how long have you lived in Andrews?

22 A All my life.

23 Q Okay. And how old are you?

24 A 32.

25 Q And what kind of work do you do?

- 1 A I work at Carolina Garden doing caregiver.
- 2 Q That's CNA type work?
- 3 A Yes.
- 4 Q Okay. And how long have you been doing that?
- 5 A For like two or three years.
- 6 Q And before that where did you work?
- 7 A Before that I had work at Andrew's Food Pantry.
- 8 Q Okay. Is that what's commonly referred to as the Super
- 9 Chick?
- 10 A Yes.
- 11 Q Okay. And what kind of business is that?
- 12 A It's -- it was a gas station/food pantry, but we, we had
- 13 stop selling gas. So it was just basically just a, a, a, you
- 14 know, convenience store, well, a pantry selling chicken.
- 15 Q Okay. And it's kind of famous for its chicken around
- 16 Andrews?
- 17 A Yes.
- 18 Q All right. And were you working there in March of 2014?
- 19 A Yes, ma'am.
- 20 Q Okay. And at that time did you all sell kerosene?
- 21 A Yes, ma'am.
- 22 Q Okay. And let me show you --
- 23 MR. WILSON, JR.: Without objection, Your Honor.
- 24 MS. RICHARDSON: Let me staple this together, and I'm
- 25 sorry, and this would be State's Exhibit Number 19. Okay.

1 BY MS. RICHARDSON:

2 Q Do you recognize that?

3 A Yes, ma'am.

4 Q Okay. Tell me what that is.

5 A That right there is the, the screen for the cashier.

6 Q Okay. Is it like a receipt?

7 A Yes.

8 Q Okay. And that's something that you would have kept or
9 the computers kept at the Super Chick or at the gas station?

10 A Yes. Because every week my manager she'll like do a
11 report.

12 Q Okay. All right. And is that -- did you identify that
13 with the police with Andrews?

14 A Yes, ma'am.

15 Q Okay. And that's dated March 28, 2014?

16 A Yes, ma'am.

17 Q Okay.

18 MS. RICHARDSON: Your Honor, at this time I'd offer
19 State's Exhibit Number 19 into evidence.

20 MR. WILSON, JR.: Without objection, Your Honor.

21 THE COURT: Without objection it's admitted.

22 (State's Exhibit Number 19 [Receipt - Super Check]
23 admitted into evidence and appropriately marked.)

24 BY MS. RICHARDSON:

25 Q Were you familiar with Syience or Dave Coombs, the child?

- 1 A Repeat that.
- 2 Q I said did you know who Dave Coombs was?
- 3 A I don't know her, but I have seen her.
- 4 Q Okay. But the --
- 5 A She had came in the store plenty of times.
- 6 Q Okay. But you knew who the child was?
- 7 A Yes, ma'am.
- 8 Q And explain to us how you knew who, who Syience was or
- 9 who the child was that passed away.
- 10 A He always used to play with my little nephew. They had
- 11 lived right down the street from each other.
- 12 Q Okay. And where did -- and that's your sister's child?
- 13 A Yes, ma'am.
- 14 Q Okay. And where did she live?
- 15 A I don't remember the address, but I know it was right
- 16 there on Jones Avenue -- I want to say 6 Miller [spelled
- 17 phonetically] Street or something like that.
- 18 Q But in that same area as where the fire was, James Avenue?
- 19 A Yes.
- 20 Q Okay. And when the police came to see you and asked you
- 21 about getting that receipt, who -- what is that receipt for?
- 22 A That receipt right there?
- 23 Q Yes.
- 24 A That was when she come purchase the kerosene.
- 25 Q Okay. And who came and purchased kerosene?

- 1 A I don't know her name, but it was her.
- 2 Q Okay. The mother of David Coombs?
- 3 A Dave. Yes.
- 4 Q Okay. And how did you remember that transaction?
- 5 A How I remember that transaction because when they talked
- 6 about what had happened and it was like you remember the lady
- 7 that came and purchased the kerosene.
- 8 Q Okay.
- 9 A And I was like, yes, I do. I remember.
- 10 Q Okay. And how did -- because how did -- it's actually in
- 11 two transactions?
- 12 A Yes, ma'am.
- 13 Q Okay. Tell me about that.
- 14 A When she came in I thought she say, "I wanted to purchase
- 15 \$3 kerosene." So I set it for \$3. She went outside, pump it.
- 16 Then she came back she said, "No, I told you \$20." So I be
- 17 like, "Well, I -- the only thing I took was \$3 out the
- 18 hundred dollars. So I'm going to reset it for \$17," and
- 19 that's what happened and she went back outside and pumped \$17
- 20 kerosene.
- 21 Q And so that made it kind of stand out in your mind?
- 22 A Yes.
- 23 Q Okay. And do the pumps, when you put the amount they
- 24 paid in, they cut off when you get to that amount?
- 25 A We had a separate little box and we'll set that, too.

1 Q Okay. So if she paid for \$3 she couldn't pump 20 unless
2 she came back in and asked you?

3 A Right. Yes, ma'am.

4 Q That's just a little safeguard to keep people from
5 running off with your kerosene?

6 A Yes. Yes, ma'am.

7 Q Okay. I have no further questions. Answer any questions
8 that Mr. Wilson may have for you.

9 CROSS EXAMINATION

10 BY MR. WILSON, JR.:

11 Q Ms. Scott, just very briefly, working as a cashier, you
12 say that Ms. Cohen, the lady Ms. Cohen came into actually buy
13 the kerosene; right?

14 A Yes, sir.

15 Q All right. Was anybody else in the store with her?

16 A No, sir.

17 Q All right. And let me ask you a question, if you would
18 stand just real briefly.

19 A Sir?

20 Q Would you stand up for me briefly so you can see him.
21 Did you see Randy Collins with her that day?

22 A No, sir.

23 Q Okay.

24 MR. WILSON, JR.: No further questions, Your Honor.

25 MS. RICHARDSON: No further questions and would ask that

1 she be released from her subpoena.

2 THE COURT: Mr. Wilson.

3 MR. WILSON, JR.: Without objection, Your
4 Honor.

5 THE COURT: You're released from your subpoena. Thank
6 you, ma'am.

7 A Okay. Do you need this?

8 MS. RICHARDSON: I'll, I'll take it.

9 THE COURT: You can hand it to the bailiff there.

10 MS. RICHARDSON: The State calls Benjamin Brown.

11 WHEREUPON, Benjamin Brown is called to the stand, duly
12 sworn by the clerk and testified as follows:

13 THE CLERK: Thank you, Mr. Brown. If you'll please have a
14 seat and talk into the mike we'll appreciate it.

15 DIRECT EXAMINATION

16 BY MS. RICHARDSON:

17 Q Mr. Brown, do you have a nickname?

18 A Yes, ma'am.

19 Q And what is that?

20 A Mano.

21 Q And that's what most people call you?

22 A Yes, ma'am.

23 Q Okay. And where do you live?

24 A I live at 704 Alder Avenue, but right now -- I was
25 staying. Right now I stay at 4 Riley Street.

- 1 Q Okay. And are both of those addresses in Andrews?
- 2 A Yes, ma'am.
- 3 Q Have you always lived in Andrews?
- 4 A No. I, I leave from Andrews in '86. I returned to
- 5 Andrews in 2005.
- 6 Q Okay. And what kind of work do you do?
- 7 A I do brick masonry work, Rush Masonry, Inc.
- 8 Q Okay. And do you know Marissa Cohen?
- 9 A Yes, ma'am.
- 10 Q How do you know her?
- 11 A I met her through my daughter's mother back in 2010.
- 12 Q Okay. And what kind of relationship did you have with
- 13 her?
- 14 A Well, I was used to help her, you know, around her house
- 15 cleaning up, cut her yard, stuff like that.
- 16 Q Okay. Do you do odd jobs like that for people?
- 17 A Yeah. I do yard work, you know, to this day for people
- 18 around their house, you know, paint, cut bushes, stuff like
- 19 that when I'm not working brick mason.
- 20 Q Okay. And did you do any work for her when she lived on
- 21 James Drive?
- 22 A Yes, ma'am. Yeah.
- 23 Q Okay. And would that have been back in March of 2014 or
- 24 so?
- 25 A Yes, ma'am. Uh-huh.

1 Q And did you do anything before the fire?

2 A Yeah. Yeah.

3 Q Okay. And were you doing some work for her shortly
4 before the fire?

5 A I did some -- well, I help her move some furniture out,
6 you know, to a storage.

7 Q All right. Tell me about that. How did you arrange
8 that?

9 A No. She just asked me one day to move some furniture,
10 and I got my little cousin because he had a truck and we just
11 moved some furniture and, you know, that was how that was
12 arranged. She just asked.

13 Q Okay. And where did, where did you move it to?

14 A To a storage on -- going to Georgetown Highway, I mean,
15 which is Andrews.

16 Q Okay. And prior to that did she ask you anything or talk
17 to you anything about something happening at her house?

18 A She told me that she was going to burn her house, burn
19 the trailer or whatever that was, a house or a trailer. She
20 told me that.

21 Q She told you she was going to burn it?

22 A Yeah. She told me she was going to burn the trailer. It
23 was after we move the furniture, you know, she told me she was
24 going to burn it.

25 MR. WILSON, JR.: Your Honor, I would object. You know

1 this is going to be hearsay evidence, Judge.

2 THE COURT: All right. Let's take the jury out for just
3 a moment.

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

6 THE COURT: And I assume -- I'm sorry. I assume that
7 you're offering this as statement made by co-conspirator
8 during the conspiracy; is that correct?

9 MS. RICHARDSON: Yes, under, under 801, I think it's
10 (2)(d)(e) that it would not be hearsay as statements of a co-
11 conspirator in furtherance of a conspiracy, and on the second
12 grounds, Your Honor, it would also be a statement against
13 penal interest made by a declarant who is unavailable due to
14 privilege.

15 THE COURT: All right. What do you say about that, Mr.
16 Wilson?

17 MR. WILSON, JR.: Your Honor, this, this particular
18 witness actually was at one point in time a suspect in this
19 matter, and in addition to that, he is now trying to bring in
20 the statement against my client that Marissa Cohen may or may
21 not have said to him. I think that going to the jury is --

22 THE COURT: Well, that, that would certainly be a matter
23 for cross examination. The question here is whether or not
24 this, in fact, was a statement made by her in the furtherance
25 of or during the commission of a conspiracy.

1 MR. WILSON, JR.: I agree.

2 THE COURT: What I heard him say was that she and was
3 moving the furniture with the intent to burn the house. Is
4 that -- isn't that what he said?

5 MR. WILSON, JR.: That's what he said, Judge.

6 THE COURT: Okay. Now, you're now switching back to a
7 403 argument, I believe; is that correct?

8 MR. WILSON, JR.: That's partially, yes, part of it,
9 yeah, Judge is going to be the 403. I don't know where this
10 conversation is going is my other issue. Now, if he's saying,
11 look, Marissa wanted to burn, she said she wanted to burn the
12 house, I don't care if he says that. My fear is that he's
13 going to say something else that we're not aware of. That's
14 my concern.

15 THE COURT: Well, okay, can, can you tell me, give me a
16 heads up, you know?

17 MR. WILSON, JR.: I don't know, Judge.

18 THE COURT: I don't either until the question is asked or
19 until he says it. Golly, it's kind of hard to rule.

20 MR. WILSON, JR.: I understand.

21 THE COURT: I mean, I don't know.

22 MS. RICHARDSON: Your Honor, that's the extent of what I
23 was going to elicit to him. I am not asking him for any
24 inculpatory statements against Randy Collins because I don't
25 believe that would be allowed under the rulings.

1 THE COURT: Okay. I think that it is admissible under
2 801(2)(d), not (d)(2), but (2)(d) or, excuse me, (2)(e) as a
3 statement by a co-conspirator or party during the course of or
4 in the furtherance of a commission, furtherance of a
5 conspiracy, also a statement against interest, which brings us
6 to 403. I think either one of those instances or, or
7 situations would make this non-hearsay. Under 403 the
8 question is whether or not the, the evidence should be
9 excluded because its probative value is substantially
10 outweighed by the danger of not prejudice but unfair
11 prejudice. Of course it's, it's highly prejudicial to your
12 client. It goes to the very crux of the matter, whether or
13 not there was some sort of conspiracy going on here. I would
14 -- you are offering it to establish the conspiracy; is that
15 correct?

16 MS. RICHARDSON: Yes, Your Honor, and I'm not offering it
17 to name him as a participant in the conspiracy. I'm not
18 offering it as an inculpatory statement against him as a
19 participant --

20 THE COURT: I understand that.

21 MS. RICHARDSON: -- but as Marissa Cohen as a
22 participant.

23 THE COURT: And this is how you would prove the
24 conspiracy. So I would think that it would have substantial
25 probative value in that regard and in that -- and we've heard

1 testimony about buying insurance policies and all that really
2 don't establish anything. We, we have that in almost -- if my
3 house burned down tomorrow you, you could say, you know, the
4 fact that I have fire insurance is evidence of, of some sort
5 of crime or conspiracy on my part. I think that even makes it
6 more important that we have here where she says she's going to
7 burn the house down. I think it's admissible and meets the
8 403 test. I don't think there's unfair prejudice here. It
9 simply establishes a plan, scheme, design on her part. I'm
10 sure you're going to tie it together later, but at this point
11 it doesn't tie in actually the Defendant. I'm sure Mr. Wilson
12 is going to ask him --

13 MR. WILSON, JR.: Thank you, Your Honor.

14 THE COURT: -- if he knows anything about it. Okay.

15 MR. WILSON, JR.: Thank you, Judge.

16 THE COURT: All right. Let's bring the jury back in.

17 MS. RICHARDSON: Before we bring them back in, Your
18 Honor, what time do you want to --

19 THE COURT: 12:30.

20 MS. RICHARDSON: Okay.

21 THE COURT: Okay. I'm going to probably break at 12:30.
22 All right. So and these witnesses are moving along quickly.
23 I hope that this one will as well.

24 Could you bring in the jury, please?

25 (Whereupon, the following takes place in the presence of

1 the jury.)

2 THE COURT: Okay. We've got everybody back in. We have
3 all our jurors and alternates now back in the courtroom. Ms.
4 Richardson, you may continue.

5 BY MS. RICHARDSON:

6 Q I don't remember exactly what point we left off, but she
7 --

8 THE COURT: I think your last question was, "Did she tell
9 you something and" --

10 Q And if you could just repeat that. What did she tell
11 you?

12 A She told me she was going to burn her house. Yeah.

13 Q And that's when you all were moving the stuff out?

14 A No. But that was -- oh, that was, you know, we moved the
15 furniture and then she told me that afterwards.

16 Q Okay. All right. I have no further questions. Answer
17 any questions Mr. Wilson may have for you.

18 THE COURT: Mr. Wilson.

19 CROSS EXAMINATION

20 BY MR. WILSON, JR.:

21 Q Good morning, Mr. Brown.

22 A Good morning.

23 Q Just briefly, I just have a few questions.

24 A Yes, sir.

25 Q You and Mr. Langley helped her that morning, right, move

- 1 her stuff out?
- 2 A Move furniture, yeah, for her.
- 3 Q Okay. And at some point in time you all were there for
- 4 how long?
- 5 A Probably not long, probably about two hours at the most.
- 6 Q All right. And she told you that she was going to burn
- 7 her house down?
- 8 A Yes. She told me that. You know.
- 9 Q Okay. All right. Do you know Mr. Collins?
- 10 A Yes, sir.
- 11 Q Okay. Could you stand up? You recognize him? You know
- 12 him?
- 13 A Yeah. I -- yeah, I know, I know him.
- 14 Q All right. Did she say Randy Collins was going to help
- 15 her or that he was assisting her?
- 16 A She never called nobody name. She never called his name.
- 17 Q Okay. All right. Now, originally, they also considered
- 18 you to be a suspect; didn't they?
- 19 A Yeah. Because I was hanging around her.
- 20 A Okay. Because you were hanging around her?
- 21 A Yes, sir.
- 22 Q All right. And the police came and talked to you
- 23 actually; didn't they?
- 24 A Yes, sir.
- 25 Q All right.

1 MR. WILSON, JR.: No further questions, Your Honor.

2 THE COURT: Ms. Richardson, anything further?

3 REDIRECT EXAMINATION

4 BY MS. RICHARDSON:

5 Q And when they, when the police came and talked to you
6 about where you were the night of the fire?

7 A Yes, ma'am.

8 Q Okay. And you were sick that night?

9 A I was sick that Friday night.

10 Q And you were with some family members?

11 A Yeah. I was with my first cousin.

12 Q Okay. And they were able to confirm that with the --

13 A Yeah. They confirmed that.

14 Q Okay. No further questions.

15 MR. WILSON, JR.: No further questions, Judge.

16 THE COURT: Ms. Richardson, do you need this witness
17 further?

18 MS. RICHARDSON: No, Your Honor, and I'd ask that he be
19 excused. I believe I'm holding him up from work.

20 MR. WILSON, JR.: Without objection, Your Honor.

21 THE COURT: All right. Sir, you're released from your
22 subpoena. Thank you.

23 THE COURT: Your next witness is how long?

24 MS. RICHARDSON: I am not exactly sure how long she's
25 going to be, so I'd ask that we could -- you were planning on

1 breaking at 12:30, if we could go ahead and break now.

2 THE COURT: Okay. We'll go ahead and break for lunch
3 now, and let's be back at 1:30. That's one -- that's an hour
4 and 15 minutes. The jury is excused until 1:30. Thank you.
5 All right. We'll be at ease.

6 OFF THE RECORD

7 (On the record. The following takes place outside the
8 presence of the jury.)

9 THE COURT: Okay. I sent you messages before lunch
10 concerning the suppression issue that we heard last thing last
11 evening, and I, I have actually had time to sort of think
12 about that, and as I said in my note, on its face from what I
13 heard I believe and still do that the affidavit is deficient
14 and does not support a search warrant. What gives me concern,
15 and, and maybe I'm thinking the wrong thing. From, from what
16 I heard from you earlier in other matters, are we talking
17 about cell records for that phone that relate to when, where,
18 to whom a call was made, third-party information held by the
19 phone company? Is that what you retrieved as a result of that
20 search warrant, Ms. Richardson?

21 MS. RICHARDSON: Yes, Your Honor, and also subscriber
22 information, but the search warrant had already identified
23 whose phone it was.

24 THE COURT: Had what?

25 MS. RICHARDSON: That it had -- the search -- the

1 THE COURT: Which photographs are we looking at? It
2 looks like we have --

3 MS. RICHARDSON: I think I've grabbed the wrong one here.
4 The State would seek to show three and remove the rest.

5 THE COURT: Okay. We've got which ones now? It's so
6 small I can't see it.

7 MS. RICHARDSON: I know. I'm bringing it up. I'm going
8 to have to switch out computers. This disk drive is so small
9 -- so slow. Your Honor, and I can handle a few witnesses, and
10 we can do this --

11 THE COURT: Okay. Well, we'll, we'll do it that way.

12 MS. RICHARDSON: Because I'm going to switch out
13 computers.

14 THE COURT: And I think it would be better to wait until
15 I see how you try to introduce it before I make that ruling
16 anyway. Okay? All right. Let's bring the jury in.

17 (Whereupon, the following takes place in the presence of
18 the jury.)

19 THE COURT: All right. We have everyone in the
20 courtroom. Ms. Richardson, you may proceed.

21 MS. RICHARDSON: Your Honor, the State calls Carolyn
22 Montgomery.

23 WHEREUPON, Carolyn Montgomery is called to the stand,
24 duly sworn by the clerk and testified as follows:

25 THE CLERK: Okay. And we're going to get you to spell

1 your first and last name for the court reporter.

2 MS. MONTGOMERY: C-A-R-O-L-Y-N, M-O-N-T-G-O-M-E-R-Y.

3 THE CLERK: Thank you very much.

4 THE COURT: Yes, ma'am.

5 DIRECT EXAMINATION

6 BY MS. RICHARDSON:

7 Q Ms. Carolyn, where do you live?

8 A 101 North Beech, apartment 3H in Andrews.

9 Q Okay. And what -- what's the name of those apartments?

10 A Arbor Place.

11 Q Okay. And is that commonly referred to as the projects
12 in Andrews?

13 A Yes.

14 Q Okay. And who do you live with?

15 A Frank Washington.

16 Q Okay. And do you know Marissa Cohen?

17 A Yes, ma'am.

18 Q Okay. And does she go sometimes by a different name?

19 A Tina.

20 Q That's her nickname?

21 A Yes.

22 Q Okay. And how do you know Ms. Marissa or Tina Cohen?

23 A She my cousin.

24 Q Okay. And what level, I mean, is it your mother or --

25 A Her grandfather is my mother's brother.

1 Q Okay. And so obviously you also knew Syience or Dave
2 Coombs?

3 A Right.

4 Q Okay. And what is your relationship with Mr. Washington?

5 A He's just a close friend that I take care of now, but
6 he's a good friend of the family.

7 Q Okay. And he and your husband were friends?

8 A Yes.

9 Q Okay. And your husband's deceased?

10 A He's dead.

11 Q Okay. And what's Mr. Washington's condition?

12 A Well, he's 80 years old now and he have memory loss and
13 rheumatoid arthritis.

14 Q Okay. And so you're kind of physically taking care of
15 him?

16 A Right.

17 Q All right. And you also have a disabled daughter, adult
18 daughter?

19 A Yes.

20 Q Okay. And so you don't work outside of the home?

21 A No.

22 Q You got --

23 A I'm disabled myself.

24 Q Okay. And you have plenty to do taking care of Mr.
25 Washington?

- 1 A Right.
- 2 Q Okay. Back in March of 2018 was there a time when
- 3 Marissa or Tina Cohen moved into Mr. Washington's house?
- 4 A Yes.
- 5 Q Okay. And how long was that before the fire?
- 6 A It was a couple of days.
- 7 Q Okay.
- 8 A If that.
- 9 Q Okay. So this is -- this complex is run by the Housing
- 10 Authority?
- 11 A It is regulated.
- 12 Q Okay. And do they have rules about having guests?
- 13 A Yes. They do.
- 14 Q What's that?
- 15 A A, a two weeks limit visitation.
- 16 Q Okay. And what sort of heating system do you have in the
- 17 housing project?
- 18 A Oh, we have central.
- 19 Q Central heat and air?
- 20 A Yes, ma'am.
- 21 Q Okay. Are you allowed to have any sort of other type
- 22 heaters?
- 23 A No, ma'am. Not at all.
- 24 Q Okay. Can you have a kerosene heater?
- 25 A No. No.

1 Q All right, and if you got caught with one what would
2 happen?

3 A You get evicted.

4 Q You get evicted. Okay. And so when Marissa moved in
5 there back in March of 2014, Marissa Tina Cohen was -- did she
6 bring a kerosene heater with her?

7 A No.

8 Q Okay. Now, when she moved in there who was with her?

9 A Syience and Rissa and I saw Devon like that night of the
10 fire when I saw him.

11 Q Okay.

12 A Is that --

13 Q Now, these jurors aren't as -- quite as familiar with
14 this family situation as I have become now. So tell me, you
15 said, so Marissa who goes by Tina, you all call her Tina.

16 A Tina.

17 Q All right. And you said Devon?

18 A Yeah. Devon was there the night of the fire but before
19 that I hadn't seen him.

20 Q Okay, and who is Devon?

21 A Devon is her son, Tina's son.

22 Q Okay. And he's -- he was older than Syience?

23 A Yes.

24 Q Okay. And then Syience who we know as Dave Coombs.

25 A Right.

- 1 Q And then you said Rissa?
- 2 A Marissa, her daughter name is Marissa.
- 3 Q Okay. So she also had a daughter with the same name as
- 4 her, Marissa?
- 5 A Exactly.
- 6 Q And she was younger than both boys?
- 7 A Right.
- 8 Q Okay. And how many bedrooms is this apartment?
- 9 A Two.
- 10 Q All right. So where did Marissa and these three
- 11 children, and when I say Marissa I mean the mama, Tina, where
- 12 did her and these three children stay in that apartment?
- 13 A Well, Frank, we call him AO [spelled phonetically], he
- 14 gave up the, the larger bedroom, and he moved in the smaller
- 15 one.
- 16 Q Okay.
- 17 A So they all had that bedroom because I went and got this
- 18 --
- 19 Q So four --
- 20 A -- other mattress where the boys were supposed to sleep
- 21 on the floor.
- 22 Q Okay. So four people in that one bedroom?
- 23 A Yes.
- 24 Q Okay. And on the night of the fire were you there? Were
- 25 you at that apartment?

- 1 A Yes. I was coming from the trailer because I went to get
2 a mattress, you know, to put in the bedroom for the boys.
- 3 Q Okay. And where were the boys?
- 4 A Devon was the only one there. Rissa and Tina, the
5 mother, they were in the bed and Devon was on the floor and I
6 brought the mattress in and that's when I asked where is
7 Syience.
- 8 Q Okay. And what did they say?
- 9 A She said -- well, Devon said he saw him at the rec. She
10 said, "Well, maybe he went to the house," and she was calling,
11 right, and I said, "Well, give me his number. I'll call and
12 I'll go get him."
- 13 Q Okay. And did you go get him?
- 14 A I left to go get, yeah, to go get him, but I heard all
15 the sirens and every --
- 16 Q Okay. And how did you go?
- 17 A On a bike.
- 18 Q Okay. And you were going to go get him on the bicycle?
- 19 A Yes.
- 20 Q And you heard the sirens before you could get there?
- 21 A Yes.
- 22 Q Okay. And then what happened?
- 23 A Then I got a call and my niece told me about the fire and
24 he was dead.
- 25 Q Okay. And did you go out to where the fire was?

- 1 A Yes.
- 2 Q And what about Tina or --
- 3 A She was there when I got there. She been calling me
- 4 while I was on the way there, but she was there.
- 5 Q Okay. And how was, how was she behaving?
- 6 A She wasn't. She was just like nothing, I mean.
- 7 Q And this is your cousin?
- 8 A My cousin.
- 9 Q And I notice how upset you are. You were real close to
- 10 Syience?
- 11 A Yes.
- 12 Q Ms. Carolyn, can you tell me what your phone number is?
- 13 A 843-833-9943.
- 14 Q 9943?
- 15 A Yes.
- 16 Q And that's the same number you had back then?
- 17 A Yes, ma'am.
- 18 Q And did you know anything about the arrangements or, or
- 19 who Tina was renting the trailer from?
- 20 A Tony, yes, our other cousin.
- 21 Q Okay. And what was his name?
- 22 A Tony Miller.
- 23 Q And where's he?
- 24 A Anthony Miller.
- 25 Q And where does he live? He live around here?

1 A He's in Philly.

2 Q Okay. And were they having any sort of problems over the
3 property?

4 A Yes.

5 Q And what was that?

6 A I don't know all the details, but I know they -- like
7 with the water because I had wired money to him from her and
8 she said she was going to move, but I, you know, they been
9 having arguments. I don't know what the whole deal is.

10 Q Okay. All right. I have no further questions. Answer
11 any questions that Mr. Wilson may have for you.

12 THE COURT: Ma'am.

13 A Thank you.

14 CROSS EXAMINATION

15 BY MR. WILSON, JR.:

16 Q Ms. Montgomery, this'll be very brief, ma'am. How you
17 doing today?

18 A All right.

19 Q All right. I just have a couple of questions. That
20 night when you went out there, you went out to the actual
21 building that was burning; correct?

22 A Yeah. It was already started before I got halfway there.

23 Q Okay. And you had an opportunity to observe Ms. Marissa
24 Cohen; correct?

25 A Oh, yes.

1 Q All right. And I'm not trying to put words in your mouth
2 but I want to know, you're saying that she basically showed no
3 emotion about what just happened to her son?

4 A Exactly.

5 Q Okay. All right. Now, did you see Randy Collins out
6 there that night?

7 A No.

8 Q Okay. All right. Do you know anything further about
9 this matter?

10 A No.

11 Q Okay. All right. No further questions, ma'am.

12 A Okay.

13 THE COURT: Ms. Richardson.

14 MS. RICHARDSON: The State calls Herman Collins.

15 THE COURT: How about Ms. Montgomery?

16 MS. RICHARDSON: Oh, I'm sorry. I'm jumping ahead of
17 myself, Your Honor. No further questions for her, and I'd ask
18 that she be released from her subpoena.

19 THE COURT: Mr. Wilson.

20 MR. WILSON, JR.: Without objection, Your Honor.

21 THE COURT: Ms. Montgomery, thank you. You're released
22 from your subpoena.

23 A Okay.

24 WHEREUPON, Herman Collins is called to the stand, duly
25 sworn by the clerk and testified as follows:

1 THE CLERK: Would you please spell your name for the
2 Court?

3 MR. COLLINS: H-E-R-M-A-N, C-O-L-L-I-N-S.

4 THE CLERK: Herman Collins?

5 MR. COLLINS: Yes, ma'am.

6 THE CLERK: Thank you. Please have a seat.

7 DIRECT EXAMINATION

8 BY MS. RICHARDSON:

9 Q And now you can scoot up just a little bit so that
10 microphone'll pick you up. Okay. You good?

11 A Yeah. You hear me?

12 Q I can hear you. All right. Mr. Collins, where do you
13 live?

14 A Andrews right now.

15 Q Okay. Are you from Andrews?

16 A Yes, ma'am.

17 Q All right. And that's where most of your family is?

18 A Yes, ma'am.

19 Q Okay. And how old are you?

20 A 34.

21 Q Okay. And what sort of work do you do?

22 A Welding.

23 Q And do you often go out of town for that?

24 A Yeah. I supposed to been there right now.

25 Q Yeah. You were supposed to be there all week; right?

- 1 A Yeah. All week.
- 2 Q Okay. And are you married?
- 3 A Yes, ma'am.
- 4 Q And what's your wife's name?
- 5 A Rose Anna Collins.
- 6 Q And do you all have children?
- 7 A Huh-uh.
- 8 Q Okay. And do you know Marissa or who they call Tina
- 9 Cohen?
- 10 A Yeah. I know her.
- 11 Q Okay. And tell me how you know her.
- 12 A That's Rose cousin.
- 13 Q Okay. So Tina is Rose's cousin?
- 14 A Yeah.
- 15 Q Okay. And tell me about Randy Collins. Do you know him?
- 16 A Yeah.
- 17 Q And tell me how you know him.
- 18 A That's my daddy brother. That's my uncle.
- 19 Q You've got to speak up just a little bit.
- 20 A Oh, that's, that's my uncle, my, my daddy's brother.
- 21 Q Okay. And your daddy's name?
- 22 A Herman.
- 23 Q So both of you are named Herman. Okay. So, you're
- 24 related to Randy Collins and your wife is related to Tina,
- 25 Marissa Cohen?

- 1 A Correct.
- 2 Q So obviously, you knew Syience or Dave Coombs?
- 3 A Yeah.
- 4 Q And do you remember back to the night he died?
- 5 A No. I wasn't --
- 6 Q You remember --
- 7 A I mean, yeah, I heard -- I wasn't here when it happened.
- 8 Q Okay. But you found out about it?
- 9 A Yeah.
- 10 Q Okay. Where were you and Rose living when that happened
- 11 back in 2014?
- 12 A In Longs, South Carolina.
- 13 Q Okay. In Horry County?
- 14 A Yeah.
- 15 Q Okay. And what were you all doing in Longs?
- 16 A She was over the Condo-World. We was working at the
- 17 Condo-World Motel. It's condos.
- 18 Q Okay. Can you scoot up just a little bit? It might just
- 19 be me. Okay. All right. And so you all were both working
- 20 together?
- 21 A Uh-huh. Yes, ma'am.
- 22 Q Okay. And did you all get a call about the fire and
- 23 about little Syience?
- 24 A Yeah. She did.
- 25 Q Okay. And so what did you do?

- 1 A I brought her to Andrews. I took her to Andrews.
- 2 Q So you took her to Andrews?
- 3 A Yeah.
- 4 Q Okay. And that was right after you heard about it?
- 5 A Yeah.
- 6 Q And where did you go first?
- 7 A I went to my uncle house, Uncle Randy house.
- 8 Q Okay. And was he there?
- 9 A Yeah.
- 10 Q All right. And when you got there, what was he doing?
- 11 A He was in the yard.
- 12 Q Okay. And how was, how -- what was his demeanor? How
- 13 was he acting?
- 14 A I mean, when I pull up he just, you know, he, he walked
- 15 to the car I guess because he know the car and he just told me
- 16 it was fucked up. I mean, excuse me. I didn't mean to say
- 17 it.
- 18 THE COURT: You may repeat exactly what he told you.
- 19 Q Yes.
- 20 A He just tell me --
- 21 Q Yeah. I know you have to say some profanity, but --
- 22 A He just tell me things fucked up, and --
- 23 Q Okay. And how was he acting? Did he appear to be happy
- 24 or sad or upset?
- 25 A Nah. He was -- he wasn't happy, I mean, sad, yeah.

- 1 Q Okay.
- 2 A Wasn't happy.
- 3 Q And did he say anything else?
- 4 A Nah. He didn't say nothing at that time.
- 5 Q Okay. And where was Rose at that time?
- 6 A She was in the car, the passenger side.
- 7 Q Okay. And after that what happened? Did you all stay at
- 8 Randy's or --
- 9 A I got out -- yeah, I got out and I, I stayed, you know,
- 10 and she left and went to wherever they was at, her family
- 11 members.
- 12 Q Okay. So you stayed at your Uncle Randy's?
- 13 A Yeah.
- 14 Q And she went over to her family, her side of the family?
- 15 A Yeah.
- 16 Q Okay. And did anybody else come over?
- 17 A I mean, there was quite a few people came over, you know.
- 18 Q Okay. And what about your other cousin, James Miller?
- 19 A Yeah. He was there.
- 20 Q Okay. And how was -- what was his demeanor?
- 21 A I mean, he was, you know, like -- I know something was
- 22 wrong.
- 23 Q And how could you tell something was wrong?
- 24 A Because he had a bottle of liquor.
- 25 Q And that was unusual?

- 1 A Yeah. For him.
- 2 Q Okay. And was, was something wrong with Randy, too?
- 3 A I mean, he was, you know, I could tell, you know,
4 something was bothering him, but you know, like I -- he, he
5 never just really just said anything, but I could just tell
6 something was bothering him.
- 7 Q Okay. And was everybody talking about what happened with
8 Syience?
- 9 A I mean, not everybody. I mean, but you know, I was just,
10 you know, people was out there and people was saying little
11 things, you know, stuff.
- 12 Q Okay. And as far as did you hear conversations between
13 Randy and James Miller?
- 14 A Yeah.
- 15 Q Okay.
- 16 A Well, I mean, I, you know, overheard James said something
17 but he wasn't supposed to -- he supposed to be at a birthday
18 party or something.
- 19 Q Okay. And what about Randy?
- 20 A Randy, he never really like said anything. He was just
21 like, you know, it just felt -- seem like it was like really
22 bothering him. So he -- you know what I mean? He didn't
23 really say nothing.
- 24 Q Okay. But he did say it's f'd up? That's the first
25 thing he said to you?

1 A Yes. That's, I mean, that's all he said to me.

2 Q And did he also say to you it wasn't supposed to happen
3 like that?

4 A Yeah. I overheard in the conversation to James, but --

5 Q Okay. And is it -- and this is all your family; right?

6 A Yeah.

7 Q And it's hard for you to be here today?

8 A I mean, yeah.

9 Q Okay. I have no further questions. Answer any questions
10 Mr. Wilson may have for you.

11 MR. WILSON, JR.: The Court's indulgence, Your Honor.

12 CROSS EXAMINATION

13 BY MR. WILSON, JR.:

14 Q Mr. Lamont?

15 A Herman.

16 Q Mr. Herman, how you doing, sir?

17 A I'm good.

18 Q I just have a few questions for you. On the night of the
19 fire you said there were -- everybody was talking about what
20 had happened; right?

21 A No. I didn't say -- I wasn't there the night of the
22 fire. I don't. Yeah.

23 Q Well, not the night of the fire. What night were you
24 there?

25 A I went there the next day and stayed for like not even an

- 1 hour during -- just like one, 2:00 o'clock.
- 2 Q Okay. But somebody had called you all and told you all
- 3 about what happened; right?
- 4 A They called my wife.
- 5 Q Okay. All right. This news -- and this is a small
- 6 community. Everybody knows everybody.
- 7 A Yeah. I know that.
- 8 Q And people were out there talking about what was going
- 9 on; right?
- 10 A Yeah.
- 11 Q Okay. All right. Did you know James Miller?
- 12 A Yeah. It's my cousin.
- 13 Q Okay. Now, during the conversation that you heard where
- 14 Randy Collins you say said it's f'd up, messed up or whatever
- 15 the language was that he used, did he say, "I went there and
- 16 burned that house down"?
- 17 A Nah. He ain't never said that.
- 18 Q Okay. But you did hear James say, "You know, she told
- 19 me" -- I want to make sure I get it right. You did hear her
- 20 say that -- you overheard James Miller say, "She said that
- 21 Syience wasn't supposed to be in the house."
- 22 A Yeah.
- 23 Q And that's what you told the police?
- 24 A I guess she the -- that's -- yeah. I talked to her.
- 25 Yeah.

1 Q Okay. All right. All right. But you didn't hear --
2 overhear Randy Collins say that; did you?

3 A Nah. I didn't -- nah. It wasn't him. It was James.

4 Q Okay. And so that conversation where he's saying it's
5 f'd up this is the next day after everybody knows what
6 happened?

7 A No. Yeah. This next day. Yeah.

8 Q All right. No further questions.

9 MS. RICHARDSON: If I can just clarify that.

10 REDIRECT EXAMINATION

11 BY MS. RICHARDSON:

12 Q So it was -- as soon as you all got the news you went
13 straight to Andrews?

14 A Yeah.

15 Q So it was the next morning?

16 A Yeah. The next morning, I guess after the fire, that
17 next morning, the next day.

18 Q Okay. So the fire happened early morning. It was after
19 daylight when you got there?

20 A Yeah. Yeah.

21 Q Okay. But it wasn't another overnight or a couple of
22 days?

23 A No. It was the next day.

24 Q Okay. And you did, you did give a statement to an
25 investigator with my office?

- 1 A Yeah. Yeah.
- 2 Q Okay. And you did tell him that your Uncle Randy said,
- 3 "Nephew, it's f'd up"?
- 4 A Yeah.
- 5 Q "Things weren't supposed to happen like that"?
- 6 A Yeah.
- 7 Q And that's what Randy said?
- 8 A No. The part when I said, "Wasn't supposed to happen," I
- 9 told them like that was a conversation that James was talking
- 10 after that fact. When Randy told me it was f'd, you know, he
- 11 just, he, he stopped talking to me.
- 12 Q Okay.
- 13 A And that's when James pulled up and him and James was
- 14 talking.
- 15 Q And him and James were talking about it.
- 16 A Yeah. Randy didn't say that. James said --
- 17 Q Okay.
- 18 A -- that about that part.
- 19 Q Okay. But the two of them were talking together?
- 20 A Yeah. They were talking.
- 21 Q Okay.
- 22 A But I mean.
- 23 Q And both of them were -- appeared to be upset?
- 24 A Yeah.
- 25 Q Okay.

1 A I mean, everybody was upset but you know, yeah.

2 Q Okay. Okay. I have no further questions.

3 MR. WILSON, JR.: Nothing further, Judge.

4 THE COURT: You may step down. Thank you. Will you need
5 this witness further?

6 MS. RICHARDSON: No, Your Honor.

7 THE COURT: Mr. Wilson?

8 MR. WILSON, JR.: Nothing, Your Honor, no objection.

9 THE COURT: You're released from your subpoena, sir. You
10 may leave.

11 MS. RICHARDSON: The State calls Rose Collins.

12 WHEREUPON, Rose Collins is called to the stand, duly
13 sworn by the clerk and testified as follows:

14 THE CLERK: Please have a seat, Ms. Collins. We're going
15 to pull this mike up to you.

16 DIRECT EXAMINATION

17 BY MS. RICHARDSON:

18 Q Ms. Collins, do you still live in South Carolina?

19 A No, ma'am.

20 Q Okay. And I can't help but notice that you have a mask
21 on. Can you tell us what's going on with your medical
22 condition?

23 A I have Hodgkin's lymphoma.

24 Q Okay. And you're undergoing some treatments?

25 A Yes, ma'am.

- 1 Q And that's why you have the mask on?
- 2 A Yes, ma'am.
- 3 Q Okay. And you are married to Herman Collins?
- 4 A Yes, ma'am.
- 5 Q Are the two of you still together?
- 6 A No, ma'am.
- 7 Q Okay. You're separated?
- 8 A Yes.
- 9 Q Okay. And how long have you been separated?
- 10 A A year.
- 11 Q I'm sorry?
- 12 A A year.
- 13 Q A year. Okay. And tell me if you know Marissa or Tina
- 14 Cohen?
- 15 A Yes, ma'am.
- 16 Q Tell me about that relationship. How, how do you know
- 17 her?
- 18 A Her mother is my mother's sister. She was put in foster
- 19 care when she was five, and my mother adopted her, but we're
- 20 still blood relatives. So we were raised as sisters.
- 21 Q And you're first cousins but you were raised as sisters?
- 22 A Yes. Our mothers are sisters. She was put in foster
- 23 care and then my mother adopted her. So we were raised as
- 24 sisters.
- 25 Q Okay. And when did she -- how old were you or were you

- 1 all when she came to live with you?
- 2 A About six or seven.
- 3 Q Okay. So you all just from childhood raised up together
- 4 as sisters?
- 5 A Yes.
- 6 Q Okay. And did you live around here?
- 7 A When I -- here? When?
- 8 Q When you -- as a child did you live here?
- 9 A No. No, ma'am. Philadelphia.
- 10 Q Okay. All right. And tell me about Marissa and you call
- 11 her Tina?
- 12 A Tina.
- 13 Q Okay. And she -- we've heard that she has -- we've heard
- 14 about three children, but there's actually a fourth?
- 15 A Yes.
- 16 Q Okay. And that's a older child?
- 17 A Yes. Garry.
- 18 Q Okay. And so you knew Dave or Syience really well?
- 19 A Yes.
- 20 Q Now, where did the name Syience come from?
- 21 A Syience is his middle name.
- 22 Q That is his middle name?
- 23 A Yes, ma'am.
- 24 Q Okay. It's just spelled a little different, with a Y; is
- 25 that right?

- 1 A Yes.
- 2 Q Okay. And so how did you meet Herman?
- 3 A I met him when I moved to Andrews for a little bit.
- 4 Q Okay. And is there also some connection between Herman
- 5 and Tina?
- 6 A No. We're married to family but we're not family. James
- 7 is my, my -- James Miller is my first cousin as well.
- 8 Q Okay.
- 9 A But they're related on two different sides of the family.
- 10 Herman's dad and James' dad are brothers.
- 11 Q Okay.
- 12 A His mother and my mother are sisters. So while they're
- 13 first cousins -- he and James are first cousins and me and
- 14 James are first cousins but from two different people, his dad
- 15 and my aunt.
- 16 Q So James was a mutual --
- 17 A If that -- you can understand that.
- 18 Q So James was -- James Miller was a mutual first cousin --
- 19 A Yes.
- 20 Q -- of yours, but you all obviously aren't related to each
- 21 other?
- 22 A We're not related at all.
- 23 Q Okay. Just on the other side of the family?
- 24 A Yes.
- 25 Q Okay. All right. So, so you know all the people who

- 1 were involved? You know Randy Collins?
- 2 A Yes.
- 3 Q And James Miller you knew?
- 4 A Yes.
- 5 Q All right. So at the time that Syience died where were
- 6 you living?
- 7 A I was living in Longs, South Carolina.
- 8 Q Okay. And you and Herman were working?
- 9 A I was on my way to work. I was on my way to work when I
- 10 found out.
- 11 Q Okay. And how did you find out about Syience?
- 12 A My daughter called to me. Apparently she had been trying
- 13 to get to me that night before, but I had my phone turned off.
- 14 Q Okay. And so when you found out, what did you do?
- 15 A I turnt back around and Herman's sister was driving, and
- 16 I had her turn back around and take me -- take her to the
- 17 house, and Herman drove me to Andrews.
- 18 Q Okay. And why did he drive you?
- 19 A My foot was broken.
- 20 Q Okay. And so but it was just the two of you that went?
- 21 A Yes.
- 22 Q And he was driving and where were you in the car?
- 23 A In the passenger seat.
- 24 Q Okay. And were you -- how were you sittid [sic] -- or
- 25 how were you seated in the car?

- 1 A I had my seat completely reclined and pushed to the back.
- 2 Q And so where did you go first?
- 3 A What, what they call the mill quarters. That's where
- 4 Randy live.
- 5 Q Okay. And when you got there who did you see?
- 6 A The only person that was there that I saw was Randy in
- 7 the yard and that was once he approached the car is when I saw
- 8 him.
- 9 Q Okay. And what happened when he approached the car?
- 10 What was his demeanor?
- 11 A When he -- I, I heard him before I saw him. He walked
- 12 up, and he said, "We fucked -- everything's f'd up. It wasn't
- 13 supposed to go down like that, nephew. We, we f'd up," and
- 14 then he got to the window, and when he saw me he stopped
- 15 talking, and he said, "Rose, did you hear about what
- 16 happened," and I said, "Yes. That's why I'm here."
- 17 Q Okay. And then, then what happened?
- 18 A Herman asked me was I going to be okay to make it from
- 19 the mill quarters to what they call the projects, Arbor Place
- 20 Apartments by myself, and I told him yes, and we, we switched
- 21 seats, seats. I went to Arbor Place Apartments and he stayed
- 22 there.
- 23 Q Okay. And was James Miller there when you left?
- 24 A No. He wasn't there when I left.
- 25 Q Okay. And again, tell me how Randy was acting.

- 1 A He, he sount [sic] sad and then look surprised when he
2 saw me. It just was he just seemed sad.
- 3 Q Okay. And was he crying or --
- 4 A No.
- 5 Q Okay. And when you left there you went where?
- 6 A To Arbor Place Apartments to where they told me Marissa
7 was.
- 8 Q Okay. And when you got there who was there?
- 9 A Carolyn Pope was in the house. The older man, I guess
10 the man whose apartment it was, I don't know him, and Marissa
11 and little Rissa.
- 12 Q Okay. And what did you do at that point?
- 13 A Went into the house and I hugged my cousin, my sister.
- 14 Q Okay. And did you talk with her?
- 15 A I asked her to come out to the car because, like I said,
16 I didn't know who house it was. So I told her to come out to
17 the car and we -- her and I went and sat in my car.
- 18 Q So you didn't know Mr. Washington or Ms. Pope --
- 19 A I don't know him, no.
- 20 Q -- real well?
- 21 A Huh-uh.
- 22 Q So you all went outside to have some privacy?
- 23 A Yes.
- 24 Q And tell me what happened then.
- 25 A She got in the car and we sat down. I cried and I asked

1 her -- I asked her, "What are we going to do without him," and
2 she said, "He wasn't supposed to be there."

3 Q Okay.

4 A And she just, she just looked straight ahead and she
5 repeated it about three or four more times. "He wasn't
6 supposed to be there, he wasn't supposed to be there."

7 Q Okay. And so after that what did you do?

8 A I told her she could use me while I was there to do the
9 hard stuff. I went -- drove her to McKnight Funeral Home to
10 start setting up the funeral arrangements. He directed me
11 that we needed to go to the police department to get a copy of
12 the fire report to take because I didn't know she was living
13 there already. I told her she would need to get a motel. So
14 we went to the police station to get a copy of the fire
15 report, and I went in and she and the police officers
16 instructed me that they couldn't give it to me because she
17 would have to deal with SLED.

18 Q Okay. And then after that what did you do?

19 A I sat with her for a little while longer, and I called
20 Herman. I told him something was wrong and I was wanted -- I
21 was ready to go home. I wanted to leave.

22 Q Okay. And what do you mean something was wrong?

23 A She, she never cried. I cried more than what she did. I
24 never cried. She just continued to talk about how he wasn't
25 supposed to be there, and I know, I know her. So I was just

1 ready to leave. I, I was getting angry and I wanted to
2 leave.

3 Q Okay. And did you know -- tell me about the house that
4 burned that she was living in. Whose house was that?

5 A My cousin Tony's.

6 Q And did you know anything about that arrangement?

7 A She was supposed to be buying a house from him, rent to
8 own. She started doing some work on it, and he went back on
9 his word. Instead of selling it to her he was -- told her she
10 could rent it. Some months before the fire she had asked me
11 to come over there and help her write up an agreement, type up
12 an agreement for her, a lease to -- rent to lease -- lease to
13 own agreement for him, and she gathered some old money orders
14 up and stuff like that, and in the contract it would say from
15 this amount of time to that amount of time she was to pay X
16 amount of money, and at the end of the -- that term she would
17 be able to buy the house. She was going to get it notarized
18 and everything and send it to him and start sending it that
19 way with her money orders, but in the end he wouldn't sign the
20 agreement.

21 Q And how did she react to that?

22 A She was angry, of course. She had over the years put
23 some money into the house and now it wasn't going to be hers.

24 Q And eventually you were aware that she was charged in
25 the, in the arson?

- 1 A Yes.
- 2 Q And also Mr. Collins?
- 3 A Yes.
- 4 Q And your cousin, Mr. Miller?
- 5 A Yes.
- 6 Q And did you talk with her any about the case?
- 7 A We never really had an out and out conversation about the
8 case. I went back to Longs, and eventually I got a phone call
9 from Marissa, and I guess it was pretty clear, and I guess she
10 had already heard that people were saying that they did it,
11 and it wasn't clear to me until she called me and she said --
12 she called me, actually, she didn't even ask for me. She
13 called me and said pop goes the weasel,
- 14 Q Tell me what pop goes the weasel means.
- 15 A Pop goes the weasel was something me and Marissa would
16 say to each other when we were children when somebody messed
17 with us. The other one would say pop goes the weasel. It
18 means we were going to fight that person. It was a childhood
19 thing. This was the first time I had heard it as an adult,
20 and I said, "Who, who, what are you talking about?" And she
21 said, "Mano. I need you to help me get rid of Mano because
22 he's the only one that can get me locked up."
- 23 Q Okay. I have no further questions. Answer any questions
24 that Mr. Wilson may have.

25

CROSS EXAMINATION

- 1 BY MR. WILSON, JR.:
- 2 Q I'm going to be very brief, ma'am. How you doing this --
- 3 the afternoon should I say?
- 4 A I'm well. Thank you.
- 5 Q That day in the car, I want to start there, and you all
- 6 pulled up to Randy Collins' house --
- 7 A Uh-huh.
- 8 Q -- you were actually leaned back in the car; right?
- 9 A Yeah.
- 10 Q Okay. And you couldn't see who was out -- else out in
- 11 the yard; is that fair to say?
- 12 A Not at that time. No.
- 13 Q Okay. So did you know James was there?
- 14 A James was not there.
- 15 Q Okay. All right. So when Randy Collins comes up to the
- 16 car, you say that he says, "This is fucked up. This is, you
- 17 know, this wasn't supposed to go down like this." Everybody
- 18 though in the community, including the family, and these all
- 19 -- these people all know each other; right?
- 20 A Right.
- 21 Q They've all been talking about this all night long, day
- 22 long; correct?
- 23 A Maybe. I'm not sure.
- 24 Q Well, you got a phone call about it; correct?
- 25 A Right. The morning, a few hours after it happened.

- 1 Q Who called you?
- 2 A My daughter did.
- 3 Q Okay. And where is she from?
- 4 A She's from Philadelphia but she was living in Andrews.
- 5 Q At the time?
- 6 A Yes.
- 7 Q All right. So the community was calling each other. I
- 8 mean, everybody was calling each other saying, look, Syience
- 9 had died and he was a loved person, obviously?
- 10 A Of course.
- 11 Q Yes, ma'am. All right. And then you just said something
- 12 that I found peculiar. You said that Marissa Cohen called you
- 13 and then asked you to help her get rid of Mano.
- 14 A Yes.
- 15 Q Who is Mano? Please tell the jury who Mano is.
- 16 A I don't know who Mano is. I don't know his real -- I've
- 17 seen him but I don't know his real name or anything like that.
- 18 Q Well, do you know Randy Collins at all?
- 19 A Yes.
- 20 Q Okay. Is Randy Collins referred to as Mano?
- 21 A No.
- 22 Q Okay. Were you in the courtroom earlier when Mr. Bobby I
- 23 think it's Bellamy or Brown testified?
- 24 A No.
- 25 Q Okay. All right.

1 MR. WILSON, JR.: No further questions, Your Honor.

2 THE COURT: Ms. Richardson.

3 MS. RICHARDSON: No further questions.

4 THE COURT: All right. You may step down. May she be
5 released?

6 MS. RICHARDSON: Yes, Your Honor.

7 MR. WILSON, JR.: Without objection, Your Honor.

8 THE COURT: Thank you, ma'am. You're released from your
9 subpoena.

10 MS. RICHARDSON: The State calls Ronald Witt.

11 WHEREUPON, Ronald Witt is called to the stand, duly sworn
12 by the clerk and testified as follows:

13 THE CLERK: Okay. Could you please state your name again
14 and spell it for the Court?

15 MR. WITT: Ronald Witt, R-O-N-A-L-D, W-I-T-T.

16 THE CLERK: Thank you, Mr. Witt. Please have a seat.

17 DIRECT EXAMINATION

18 BY MS. RICHARDSON:

19 Q Could you tell us where you're employed?

20 A I'm sorry?

21 Q Can you tell me where you're employed?

22 A I work for T-Mobile Metro.

23 Q Okay. And what do you do with T-Mobile?

24 A I am part of the law enforcement relations group, and I
25 work as a testifier.

1 Q And in that capacity are you also a custodian of records?

2 A Yes.

3 Q Okay. And T-Mobile keeps records regarding who
4 subscribes to their cell phone service?

5 A Yes.

6 Q Okay. And do they also keep records regarding your cell
7 phone, how often you use it, which numbers you call, that sort
8 of thing, just a -- like a detailed call log?

9 A Yes.

10 Q Okay. And were you asked to provide records in this case
11 for cell phone number 803-979-5314?

12 A Yes.

13 Q Okay. And let me show you --

14 MS. RICHARDSON: The Court's indulgence. I seem to have
15 put the copy somewhere.

16 BY MS. RICHARDSON:

17 Q Let me show you what's been marked as State's Exhibit
18 Number 20 for identification and can you tell me what that is?

19 A Yes. This is the first page is a subscriber information
20 page for the number you just read off and then the subsequent
21 pages after that is a historical summary of incoming and
22 outgoing call details and text messages for the timeframe
23 shown.

24 Q Okay. And what timeframe is that?

25 A The records start on the 1st of February, 2014, and go up

1 to and include the 5th of April 2014.

2 Q Okay. And who -- can you tell us who the phone is
3 subscribed to?

4 A The name on the account is Randy Cullens, C-U-L-L-E-N-S
5 [sic].

6 Q Okay. And is there any other identifying information on
7 there?

8 A Well, there's an internal number that we use. It
9 associates the information on the SIM card to the account and
10 then it shows the -- when the account was established.

11 Q Okay. And these records are kept in the normal course of
12 business?

13 A Yes.

14 MS. RICHARDSON: Your Honor, at this time I'd offer
15 State's Exhibit 20 into evidence.

16 MR. WILSON, JR.: Subject to objections we made earlier,
17 Judge.

18 THE COURT: All right, very well. Then it's admitted
19 subject to those objections.

20 (State's Exhibit Number 20 [Phone Records] admitted into
21 evidence and appropriately marked.)

22 BY MS. RICHARDSON:

23 Q Okay. And I'm going to have you refer to the second page
24 on this. And could you explain what these categories on this
25 phone record are? What is the first column?

- 1 A The first column at the top you'll see a legend that
- 2 explains each column, and the first one you'll see an
- 3 abbreviation. It says MSISDN. That stands for mobile
- 4 subscriber international subscriber directory number. It's
- 5 the phone number in question that the records were pulled for.
- 6 The next column you'll see the word type and it will indicate
- 7 whether it's a voice call and it'll say voice, and if it's a
- 8 text message you'll see an abbreviation of SMS, which stands
- 9 for short message service, again more commonly referred to as
- 10 a text message.
- 11 Q Okay. And again, but as far as the text messages it only
- 12 shows the numbers that the texts were between and not the
- 13 content of the actual message?
- 14 A Correct.
- 15 Q Okay.
- 16 A The next is the start time. It'll show two entries.
- 17 You'll see the date and then you'll see a time and it shows
- 18 the times in a.m. and p.m.
- 19 Q And is that in Eastern, Eastern Standard Time or what
- 20 time is that?
- 21 A Well, the time is based on the next to last column, which
- 22 is called the switch column, and for all the -- for the
- 23 records shown here they're all switches on the East Coast. So
- 24 it will be Eastern time.
- 25 Q Okay.

1 A The next column is the direction. It'll show if the
2 voice or text is either incoming or outgoing. Then you'll see
3 a column next to that. It says connected to. So this is the
4 number that's either calling into you or texting into or that
5 the phone number in question is either calling out to or
6 texting out to, and the next set of columns has to do with the
7 cell site location information. You'll see the next column is
8 the first tower LAC, which stand for the location area code,
9 and the next column after that is first tower cell ID. For
10 voice calls it shows, it shows the cell site information, and
11 these two unique numbers identify the particular cell site in
12 use for the voice call, and the next two columns is first
13 tower latitude and then first tower longitude. You will see
14 two data points. When you plot these on a map using a
15 standard mapping program it will show the specific location of
16 that antenna for that tower and the two columns previously
17 mentioned, and then you'll see that same information repeats
18 itself for the last tower. The first tower is when the call
19 initiates when you either hit send on your phone or you answer
20 the call, and when the call terminates it records that same
21 information, same tower information, and then the last, the
22 next to last column is switch. That's just part of the data
23 administration, shows where the signal after goes to the cell
24 site where it processes, and again, it also identifies the
25 time zone for the call or text, and the last column is

1 duration in minutes, and again, duration only applies to voice
2 calls, not to text.

3 Q I have no further questions. Answer any questions that
4 Mr. Wilson may have for you.

5 MR. WILSON, JR.: Your Honor, just briefly, Judge.

6 CROSS EXAMINATION

7 BY MR. WILSON, JR.:

8 Q Now, when you guys get a subpoena or when you get a
9 request from law enforcement regarding these records for phone
10 calls, you then turn that over to the prosecution or, excuse
11 me, to the police officers that request it; correct?

12 A Well, to the requesting agency, whomever it may be. Yes.

13 Q Okay. All right. And in this particular matter you
14 turned over calls that you say that Randy Collins or came from
15 Randy Collins' cell phone program or phone that you guys
16 obviously had service with him for; correct?

17 A Yes.

18 Q Okay. All right. And then that information, that
19 information would be accurate down to the time of the phone
20 calls; correct?

21 A Yes.

22 Q All right. So if I made a phone call at 12:35 p.m. then
23 it would denote on the actual records when I made that phone
24 call?

25 A Yes.

1 Q And then it would denote also if somebody was calling me;
2 correct?

3 A Yes.

4 Q So there's a column here which talks about outgoing and
5 ingoing phone calls?

6 A Yes.

7 Q Okay. On that particular day, did you turn over any
8 information, any text or verbal information between Randy
9 Collins and any other number?

10 A Well, the texts are shown on there as well, and as
11 previously mentioned from the Prosecutor's question, it only
12 shows the numbers sent to or received from, not the actual
13 content.

14 Q Not the content?

15 A Correct.

16 Q Okay. So what you're telling the jury is that you don't
17 know what was said between these people or even if those are
18 the people that are actually on the phone talking?

19 A Well, again, no content is, is part of the records, just
20 the number sent to and received from.

21 Q Thank you, sir. No further questions.

22 MS. RICHARDSON: We'd ask that he be released from his
23 subpoena.

24 MR. WILSON, JR.: Your Honor, no objection.

25 THE COURT: You are released from your subpoena. Thank

1 you, sir.

2 MS. RICHARDSON: And Your Honor, at this point we need to
3 address the matter we were discussing.

4 THE COURT: All right. Then why don't we let the jury
5 take their afternoon break then while we discuss that. All
6 right.

7 (Whereupon, the following takes place outside the
8 presence of the jury.)

9 THE COURT: All right.

10 MS. RICHARDSON: And Your Honor, if we could just take a
11 short break. I'm going to have to -- the disk drive on this
12 computer we were using is causing some problems and not
13 reading.

14 THE COURT: All right. Okay.

15 MS. RICHARDSON: We're going to switch them out.

16 THE COURT: All right. Okay.

17 OFF THE RECORD

18 (On the record. The following takes place outside the
19 presence of the jury.)

20 THE COURT: Okay. Are we ready?

21 MS. RICHARDSON: Yes, Your Honor. I apologize for the
22 technical issues.

23 THE COURT: All right.

24 MS. RICHARDSON: And I -- if you want to go ahead and
25 look at the three pictures.

1 THE COURT: Okay. Show them to me.

2 MS. RICHARDSON: And I've shown them to, to Mr. Wilson.

3 So there were -- we have deleted 11 photos of the victim and
4 that had been taken by SLED. The State would propose to enter
5 this one, which is photo number six on the flash drive, which
6 shows the location of the body and the lack of injuries to the
7 back.

8 THE COURT: Okay.

9 MS. RICHARDSON: Photo 11, which is a better picture
10 showing the step down area where the body was found, and
11 again, no injuries to the back or hand, and then number 36
12 which shows after the deceased was, was rolled over, no
13 injuries to the chest area.

14 THE COURT: Okay. Now, you keep saying the purpose in
15 showing these is to indicate no injury to the front or back,
16 no burn injuries; right or other injuries?

17 MS. RICHARDSON: Yes, Your Honor. To show that, you
18 know, because there are some kerosene heaters in, in the house
19 and that are located and you'll be able to see in some of the
20 pictures, to show that this wasn't a situation where the child
21 had attempted to light something or had caused an accidental
22 fire because he would have had injuries if there had been some
23 sort of explosion with the heater, he'd had injuries.

24 THE COURT: Okay. Let's see how probative that is. I
25 mean, is it an issue? Is it necessary to show or to, to prove

1 that there were no injuries otherwise? I would assume that
2 you're going to introduce these through your medical examiner
3 or you've already had your, your, your paramedics and all
4 testify. I mean, who's, who's going to introduce these?

5 MS. RICHARDSON: I'm going to have these introduced
6 through the SLED agents who took the crime scene photos with
7 the other crime scene.

8 THE COURT: Okay. All right.

9 MS. RICHARDSON: And to talk about how they used the
10 -- that was one of the things that they used in determining
11 that it was accidental and not incendiary is that the only
12 occupant of the home did not have any sort of explosions or
13 burns to him, to him.

14 THE COURT: Well, okay. Would the medical examiner need
15 them? Would the, would the prospector the -- who performed
16 the autopsy need them?

17 MS. RICHARDSON: Your Honor, the prospector would show
18 that the froth that, you know, was coming from the, the
19 child's mouth is in -- is an indication that he died from the
20 arson.

21 THE COURT: All right. Let me hear from you, Mr.
22 Wilson.

23 MR. WILSON, JR.: Judge, looking at the photos, I've
24 looked at one, two and three in that order. Two and three
25 concern me more than one. Two --

1 THE COURT: Which one's one, go back to one.

2 MR. WILSON, JR.: That's number one which shows the
3 original position, Judge. I think it's still, honestly,
4 prejudicial to show these photos. Again --

5 THE COURT: Well, I mean, certainly it's prejudicial.

6 MR. WILSON, JR.: Yes, sir.

7 THE COURT: It's proof against your client, but does --
8 is it unfair prejudice? I mean, that's the 403 standard.

9 MR. WILSON, JR.: Yes. Yes. And I do think it's
10 prejudicial obviously because what's going to end up happening
11 is --

12 THE COURT: I mean, she wouldn't introduce them if it
13 wasn't prejudicial, I mean, if it didn't support her case.

14 MR. WILSON, JR.: I agree. I agree.

15 THE COURT: I mean, all evidence can be considered that,
16 but the key is whether or not it's unfair prejudice, and
17 unfair prejudice is that prejudice which would suggest
18 something to the jury or cause the jury or lead the jury to an
19 improper conclusion or, or verdict. Isn't, isn't that sort of
20 the generic definition of unfair prejudice?

21 MR. WILSON, JR.: Yes, sir. I understand where the
22 Court's going. My concern is this, all the things they want
23 to prove they can get through the doctor or even the step down
24 can be talked about from anyone that --

25 THE COURT: What is the step down? I'm not

1 understanding.

2 MR. WILSON, JR.: It's, it's in number two, Judge,
3 picture number two.

4 THE COURT: Okay. Are you talking about a step down in
5 the floor?

6 MR. WILSON, JR.: Yeah.

7 MS. RICHARDSON: It just shows a little bit of the
8 orientation.

9 MR. WILSON, JR.: I mean, the probative value of that it
10 definitely is not, you know, worth the prejudice that it's
11 going to cause with this particular picture because this
12 picture shows, obviously, almost, you know, blood. It shows
13 obviously that something coming out of his mouth, shows his
14 burnt face. So, again, this is a fairly gruesome picture.

15 THE COURT: Did he have burns?

16 MR. WILSON, JR.: I think that's, you know, based on what
17 I read, you know, he had the soot and the -- he died from
18 inhalation, not from burning to death.

19 MS. RICHARDSON: It was post -- what they felt was
20 postmortem thermal burns, but not any deep burns.

21 THE COURT: From heat.

22 MS. RICHARDSON: Right.

23 THE COURT: From, from the heat in the room.

24 MS. RICHARDSON: Right.

25 THE COURT: Not necessarily direct contact with a flame.

1 MS. RICHARDSON: Correct. And the froth --

2 THE COURT: That's -- am I understanding you correctly?

3 MS. RICHARDSON: That's right, and the froth coming from
4 his mouth is one of the key signs in the cause of death.

5 THE COURT: Well, I mean, I could see if that is
6 something that the prospector would say, "Supports my
7 conclusion that death was by smoke inhalation and I based my
8 opinion on a photograph that was taken showing froth and blood
9 coming from the mouth, which is consistent with my diagnosis
10 or conclusion," I could -- I can see that photo having
11 probative value and something that the -- he might need to
12 show the jury, but how about number one? Can we go back?
13 Number one is for what reason?

14 MS. RICHARDSON: Your Honor, again, it shows the position
15 of where he was found, but it also shows a full length of on
16 the backside of the child's body from a distance.

17 THE COURT: And that is offered to prove, to prove that
18 he didn't have burns or --

19 MS. RICHARDSON: He didn't, he didn't and where he's
20 found in the location he didn't explode a kerosene heater on
21 himself. He didn't go in there and try to -- what shows that
22 he didn't accidentally at least from an explosion.

23 THE COURT: And how would that show that?

24 MS. RICHARDSON: Because if he had, from my
25 understanding, if he had tried to light the heater and it had

1 exploded he would have had deeper burns or marks of an
2 explosion.

3 THE COURT: And he, he would have had burns consistent
4 with contact with flame; right?

5 MS. RICHARDSON: Right.

6 THE COURT: With the flame. Okay.

7 MR. WILSON, JR.: Judge, that's --

8 THE COURT: Now, whether, whether it's -- you know,
9 probative value is often connected -- it can be probative but
10 its probative value is often connected with whether the issue
11 sought to be proved needs the -- the level of proof needed.
12 Okay.

13 MR. WILSON, JR.: Yes, sir.

14 THE COURT: And Mr. Wilson, let me ask you, is there any
15 issue in this case that the fire was not -- the, the -- was
16 not caused by the child or is there any issue that the child
17 died from any other cause than smoke inhalation?

18 MR. WILSON, JR.: Well, Your Honor, we're not contesting
19 the manner of death. We're not contesting or even saying or
20 trying to allude and I won't allude to this that the child may
21 have had anything to do with this fire whatsoever. That is
22 not our defense.

23 THE COURT: Well, well, what do you -- I mean, see that
24 lessens the probative value, Ms. Richardson. What do you say
25 about that?

1 MS. RICHARDSON: Your Honor, I still have the burden of
2 proof. I have to prove it --

3 THE COURT: I understand that.

4 MS. RICHARDSON: -- I don't want the jury speculating it
5 just because he doesn't raise it.

6 THE COURT: And you still got to prove it unless he
7 stipulates to it, and I'm, you know, I'm somewhere in between
8 here.

9 MS. RICHARDSON: And see, you know, and from my
10 perspective, you know, there are a bunch more close up, much
11 more detailed photos, and I understand. The State is also
12 trying to balance that, but you know, from the jury's
13 perspective, you know, I -- we could describe it all we want,
14 but seeing is believing, and you know, I feel that, you know,
15 the State has an opportunity or has an obligation to fully
16 present this case.

17 THE COURT: All right. Show me picture number three.
18 Okay. If the testimony develops as you say it will and your
19 SLED agents are going to testify that during their
20 investigation and their initial opinion that this was a
21 homicide because the child did not have -- did not appear to
22 have burns consistent with direct contact with, with a flame,
23 I am inclined to let you do one and three, but as to two I
24 don't think that's necessary unless your prospector who, who
25 performed the autopsy tells me that he or she based his or her

1 opinion on that photograph, and if that photograph shows
2 pertinent information that either supports or leads them to
3 the conclusion that this was an inhalation. Otherwise, I just
4 don't see the necessity of number two, and number three, I'm
5 just telling you conditionally that I think that it's, it's
6 admissible if the SLED agents tell me that, "This is what we
7 saw and this is what led us to certain conclusions." Okay.

8 MS. RICHARDSON: Yes, Your Honor.

9 THE COURT: And, and they're qualified to make -- give
10 those opinions. Okay.

11 MS. RICHARDSON: Okay. Yes, sir. So there will be one
12 SLED agent today and then another one tomorrow morning.

13 THE COURT: Okay. All right, Mr. Wilson. Okay. All
14 right.

15 MR. WILSON, JR.: Yes, Your Honor.

16 MS. RICHARDSON: I'm going to delete this. This is
17 picture number two. I'm going to go ahead and delete it. We,
18 because of the difficulties we were having with the CD reader,
19 we transferred all of the photos from a CD to a flash drive
20 which makes it a little easier.

21 THE COURT: Well, whatever that means, I am certain that
22 you have done the right thing.

23 MS. RICHARDSON: That means, hopefully, I won't have
24 trouble with them loading and dragging like we've been having.

25 THE COURT: All right. Let's bring the jury back in.