

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Florence County

Honorable Michael G. Nettles, Circuit Court Judge

GOWNDELL CADES,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2019-000108

APPENDIX

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STATE OF SOUTH CAROLINA	)	COURT OF GENERAL SESSIONS
	)	TWELFTH JUDICIAL CIRCUIT
COUNTY OF FLORENCE	)	CASE NO. 2013-GS-21-00485

STATE OF SOUTH CAROLINA,	)
	)
Plaintiff,	)

-vs-

TRANSCRIPT OF RECORD

GOWNDELL D. CADES,	)
	)
Defendant.	)

October 21-22, 2013
Florence, South Carolina

B E F O R E:

THE HONORABLE D. CRAIG BROWN, Judge; and a jury

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

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KRYSTAL J. SMITH
Court Reporter

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21	S-4	Lighter	84	105
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23				
24				
25				

1 OCTOBER 21, 2013

2 (WHEREAS this matter was scheduled for a trial, the
3 defendant appeared along with his counsel of record. The
4 hearing began at 11:39 a.m.)

5 THE COURT: All right. We are on the record with regards
6 to the State versus Gowndell Deon Cades. Just finished jury
7 selection upstairs and came down to tenth floor to give the
8 lawyers an opportunity to put some matters on the record. At
9 this time, I'm going to recognize Mr. Tucker. Anything you
10 want to put on the record at this time, Mr. Tucker?

11 MR. TUCKER: Yes, Your Honor. Pursuant to our earlier
12 discussion, the State intends to introduce some photographs
13 that were taken by Investigator Pat O'Hara.

14 THE COURT: All right.

15 MR. TUCKER: There are about 100 photos. What
16 Investigator O'Hara and I plan to do is to pick those out that
17 I think that he feels are most relevant and will aid him in
18 his testimony, make copies of those for the Court and for Ms.
19 Parrott to take a look at, and providing that there are no
20 issues with those, then those are the ones that we would admit
21 into evidence and publish for the jury.

22 THE COURT: Well, let me ask this question. Ms. Parrott,
23 you already got all the photographs?

24 MS. PARROTT: Well, that's actually a question I have for
25 him because we were talking about some pictures of some

1 knuckles earlier that were, I guess, put into evidence somehow
2 differently than the pictures that I got previously. So are
3 those pictures of the knuckles also on the disk that I've just
4 been handed?

5 MR. TUCKER: They aren't on the disk and what I plan to
6 do is print those and let you take a look at them.

7 MS. PARROTT: I can't speak for what I don't know, so.
8 Okay.

9 THE COURT: Question, why was this not -- stuff not
10 provided to Ms. Parrott before now?

11 MR. TUCKER: Your Honor, I just came into possession of
12 those myself. With regards to ---

13 THE COURT: Well, I mean whose fault is that?

14 MR. TUCKER: It would be mine, Your Honor.

15 THE COURT: Okay.

16 MR. TUCKER: There is also I think three statements that
17 were taken there at the scene that night of the victim in this
18 matter, Rachel Paul, Jarrell and Jaquan Mumford. Those we
19 have and those have been provided to Ms. Parrott. The State
20 would not intend to introduce those into evidence. All three
21 of those individuals we expect to testify so we plan to
22 introduce testimony only, not those statements.

23 THE COURT: Ms. Parrott?

24 MS. PARROTT: Your Honor, I have been provided with those
25 three statements, I believe last Thursday morning, along with

1 the CD with the pictures. That was last Thursday morning. If
2 there is nothing further than that, then -- I mean if they're
3 going to testify, then that's fine.

4 THE COURT: Okay. All right. Anything else?

5 MR. TUCKER: The only other thing, Your Honor, is there
6 is a drawing, or a CAD rendering, of an overview of the mobile
7 home that was set afire. We would just simply put that on
8 just for purposes of when witnesses are testifying. I think
9 certainly that will aid both the prosecution and the defense
10 when we are talking in the abstract about something.

11 MS. PARROTT: May I, Your Honor? Since this is the first
12 time I've seen any of this as well? (To defendant) Does this
13 look like an accurate portrayal of the layout? Here is the
14 bedroom, that's where they're saying the fire started, this is
15 the breaker box and this would be a door. That would be a
16 door, that's a bedroom and that's another bedroom. Is that
17 the layout?

18 (Whereupon, the defendant and his counsel confer off the
19 record.)

20 MS. PARROTT: Your Honor, my client tells me that this in
21 inaccurate. So it would be subject obviously to them laying
22 some sort of foundation for that.

23 THE COURT: All right. Well, subject to you laying
24 proper foundation, Mr. Tucker, I will reserve any ruling upon
25 the admissibility of it at this time.

1 MR. TUCKER: Thank you, Your Honor. And I believe those
2 are the only evidentiary matters we have. We do have a
3 lighter that we intend to introduce, but obviously we will lay
4 the proper foundation for that.

5 THE COURT: Ms. Parrott, anything? Thank you, Mr.
6 Tucker.

7 MS. PARROTT: Your Honor, in regards to my request for
8 Rule 5, as you see, of course, it's still being provided, but
9 whenever I spoke with Mr. Tucker, I believe it was Friday, I
10 asked him specifically about whether or not there was a crime
11 scene log and an evidence log in this matter and he told me
12 that he did not know of a crime scene log and did not have
13 one. So I would specifically ask again, if there is such a
14 ---

15 INVESTIGATOR O'HARA: Judge, on all my fire scenes, I
16 take control and there will be no evidence log or a crime
17 scene log on this.

18 THE COURT: Please identify -- I know who you are, but
19 identify yourself.

20 INVESTIGATOR O'HARA: I'm Investigator Pat O'Hara,
21 Florence County Sheriff's Office, fire and explosive
22 investigator.

23 THE COURT: Okay. Thank you, sir.

24 MS. PARROTT: And secondly, Your Honor, I did ask about
25 the evidence log and now I'm understanding that there was a

1 lighter and I was told that there were pictures of the mobile
2 home that were also part of that. Obviously, I'm not
3 consenting to the pictures yet since I haven't seen those, but
4 I am wanting to make sure that those are the only two items
5 that are in evidence, that were part of that.

6 MR. TUCKER: That were logged in at the Sheriff's Office,
7 Yes, Your Honor, that is correct.

8 MS. PARROTT: Is there anything else? Because
9 unfortunately, this is something we've been dealing with a lot
10 lately. Is there anything else that is out there?

11 MR. TUCKER: Not that the State is aware of.

12 THE COURT: Mr. O'Hara? Investigator O'Hara, is there
13 anything else out there?

14 INVESTIGATOR O'HARA: No, sir. This is -- I didn't even
15 know the pictures existed of his knuckles. The only thing I
16 knew was the lighter.

17 THE COURT: Okay.

18 INVESTIGATOR O'HARA: So this is also new to me. I have
19 not seen the pictures.

20 MR. TUCKER: Typically, what sometimes happens is that
21 the incident report may reference these pictures that were
22 taken, sometimes when you have two sets of investigators, here
23 Officer Gifford or Deputy Gifford took Mr. Cades into custody.
24 So he took a couple of pictures of the injuries to the hands.
25 Of course, Investigator O'Hara, when he arrives, he's

1 processing the scene in terms of an arson. So sometimes you
2 will have officers working independently of one another and
3 these things sometimes happen, but there again, these are just
4 pictures that were taken of Mr. Cades' hands on the night in
5 question by Deputy Gifford and we certainly anticipate being
6 able to lay a foundation.

7 THE COURT: All right. Who took these photo -- Officer
8 Cades? Who took the photographs that were provided to you
9 that you just got?

10 MR. TUCKER: The ones that were of the knuckles, that --
11 they were taken by Deputy Gifford, and he was one of the first
12 responders out there.

13 THE COURT: And when -- when did you get them?

14 MR. TUCKER: Today, Your Honor. Now, I was aware of
15 their existence I think last week -- about mid last week.

16 THE COURT: Ms. Parrott, anything else?

17 MS. PARROTT: Your Honor, he's referenced this before and
18 I just want to make -- you're saying you're not going to try
19 and do anything with this recording of Mr. Cades' statement;
20 correct?

21 MR. TUCKER: There is nothing that the State would intend
22 to introduce by way of the statement that Mr. Cades made.

23 THE COURT: Well, the State's witnesses need to stay away
24 from that, period.

25 MS. PARROTT: I'm going to try and listen to it. How

1 long is that statement, Pat, do you know?

2 INVESTIGATOR O'HARA: Five minutes.

3 MS. PARROTT: Okay. Thank you. And we've discussed this
4 prior to coming into the courtroom, Your Honor, but I also
5 wanted to just confirm. I believe that Mr. O'Hara is the only
6 one to have done some sort of arson report, I think it's a six
7 page arson report, and I just want to confirm that there is
8 nothing else from any other -- because EMS as well as Fire
9 were also on the scene. So is there any other report that's
10 out there?

11 MR. TUCKER: No, Your Honor. I can speak for that.
12 Essentially, what happened is the arson became apparent pretty
13 quickly when first responders arrived. They more or less
14 notified the Sheriff's Office and Investigator O'Hara rolled
15 out. So no one else conducted an arson investigation in terms
16 of this case that I'm aware of other than Investigator O'Hara.

17 MS. PARROTT: Okay.

18 THE COURT: Anything else, Ms. Parrott?

19 MS. PARROTT: Your Honor, he has other witnesses that he
20 is planning on calling that are not law enforcement and so I
21 would ask that an NCIC is to be provided for, and I believe it
22 is three, Rachel Paul, Jarrell Mumford, and Jaquan Mumford.

23 THE COURT: Jaquan? Okay. Mr. Tucker?

24 MR. TUCKER: We certainly have no problems providing
25 that, Your Honor.

1 MS. PARROTT: And then, Your Honor, lastly, should my
2 client choose to testify, I was looking at his prior record
3 and I would just like to go ahead and have on the record what
4 exactly, if he was to testify, the State would look to use to
5 impeach him.

6 MR. TUCKER: Your Honor, the State specifically is
7 looking at a 2011 conviction, which appears to be malicious
8 injury to personal property. Certainly, we think that would
9 be relevant and certainly appropriate, and as well as it looks
10 like a 2011 conviction for assault and battery second degree.
11 There is also a possession at the same time of what looks to
12 be cocaine base. He has other convictions that stretch back
13 further than that. It looks like he has a 2010 -- it looks
14 like it was a revocation of probation and that's predicated on
15 the conviction, it looks like, with possession of cocaine
16 base.

17 MS. PARROTT: I think it was actually the same cocaine
18 probation revocation that you're referencing in 2011.

19 MR. TUCKER: And that would be it, Your Honor.
20 Obviously, the State would take the position that if he
21 testifies, he puts his credibility at issue. Certainly, with
22 malicious injury to personal property and the drug use is
23 certainly something that the State would argue were relevant
24 and appropriate.

25 MS. PARROTT: And that is exactly why, Your Honor, I

1 wanted to go ahead and bring this up because as I see it, the
2 malicious injury to personal property is just a different way
3 of -- I guess arson really is just another way of doing
4 malicious injury to personal property; it's just a matter of
5 using a fire as alleged here as opposed to some other use of
6 force, Your Honor. And the assault and battery I believe is
7 also something that would be more prejudicial than probative
8 just because it tends to put his character in issue, which of
9 course, is not done. And then, of course, the possession of
10 cocaine, and I have -- according to Cheeseborough, that's not
11 to be used because that's not something about dishonesty or
12 truthfulness or if it goes to either one of those things and
13 it should not be used.

14 THE COURT: All right. Anything else, Mr. Tucker?

15 MR. TUCKER: No, Your Honor.

16 THE COURT: All right. I'll take it under consideration.
17 I'll look at it.

18 MS. PARROTT: All right. Thank you, Your Honor.

19 MR. TUCKER: That's all I have.

20 MS. PARROTT: That would be all, Your Honor.

21 THE COURT: I will say this, and I'll say it to
22 Investigator Gifford or Officer, Deputy, whatever his -- quote
23 unquote -- title is. You and I have had this discussion
24 before, Mr. Tucker. It is but it's not your responsibility
25 necessarily to go to the Sherriff's Office, to go to the City

1 Police Department, or whoever the investigating agency is, to
2 be sure that they've provided everything to you that defense
3 counsel's entitled to. While ultimately it does fall on you
4 certainly, I understand that it is their responsibility to
5 provide this information to you to give to defense counsel.
6 I'll allow -- certainly allow y'all to look at this material
7 over lunch, what's admissible and what's not. Law enforcement
8 can keep doing this if they so desire, but they run the risk
9 ;''of having something excluded because it's not timely
10 provided to defense counsel. It may not be an issue in this
11 case, but it certainly could be an issue at some point.

12 MR. TUCKER: Yes, sir.

13 MS. PARROTT: Your Honor, I mean I'm still not giving up
14 on whether or not I -- because I haven't seen the pictures, I
15 can't speak to it.

16 THE COURT: I know, I know, I know.

17 MS. PARROTT: Okay.

18 THE COURT: I'm just conveying that to Mr. Tucker to let
19 Mr. Gifford and whoever you feel like you need to know -- you
20 need to let know from there. I mean I understand they got a
21 lot of stuff to investigate; you got a lot of cases you
22 prosecute. At the end of the day, it's their responsibility
23 to get this information to you. All right.

24 MR. TUCKER: One o'clock?

25 THE COURT: One o'clock.

1 MS. PARROTT: Thank you, Your Honor.

2 (Whereupon, there is a break in the proceedings from
3 11:50 a.m. until 1:01 p.m.)

4 THE COURT: Is the State ready to proceed?

5 MR. TUCKER: We are, Your Honor. We are in the process
6 of trying to -- we were talking before we broke for lunch
7 about which pictures that Investigator O'Hara took would be
8 some that the State would be looking ---

9 MS. PARROTT: Okay. These are the ---

10 MR. TUCKER: Yeah, keep that.

11 MS. PARROTT: Okay. All right. Just checking.

12 MR. TUCKER: There were about a hundred pictures and
13 working with Investigator O'Hara over lunch, we've identified
14 -- I think that the total would be eighty-seven pictures that
15 the State would move into evidence. They are all included on
16 one big disk, but we've printed those off individually.
17 Again, these are pictures that according to Investigator
18 O'Hara would be necessary to show how the fire started, how it
19 progressed, because obviously we'd be arguing against an
20 accident or electrical cause or lightning, things of that
21 nature.

22 MS. PARROTT: Seriously?

23 INVESTIGATOR O'HARA: It's not the same picture though.
24 I mean obviously --

25 MS. PARROTT: It shows about ten more feet of the

1 trailer.

2 INVESTIGATOR O'HARA: I mean, Your Honor, by my job -- I
3 mean I'm doing what I need to. I'm showing every inch of the
4 trailer.

5 THE COURT: Okay. I'm not ---

6 MR. TUCKER: And like I said, these would -- we would be
7 able to move through pretty quickly, I believe, so even though
8 there'd be that many, I don't believe that we ---

9 THE COURT: Ms. Parrott, have you had a chance to look at
10 them with your client?

11 MS. PARROTT: Your Honor, I'm doing so now.

12 THE COURT: Okay.

13 (Whereupon, there is a pause in the proceedings for the
14 defendant and his counsel to confer.)

15 THE COURT: All right. Is the State ready to proceed?

16 MR. TUCKER: We are, Your Honor.

17 THE COURT: Ms. Parrott, is defense counsel ready to
18 proceed?

19 MS. PARROTT: One moment, Your Honor. Okay. Yes, Your
20 Honor, we're ready.

21 THE COURT: All right. Bring me the jury, please, sir.

22 THE BAILIFF: Yes, sir.

23 (Whereupon, the jury enters the courtroom at 1:11 p.m.)

24 THE COURT: All right. Mr. Benton? Where is Mr. Benton?
25 All right. Sir -- if you beside Mr. Benton would, come down

1 to this front seat. Mr. Benton, if you would, slide over one
2 seat. Mr. Benton, that is your assigned seat throughout the
3 trial of this case. Okay? Everybody else on the jury, you
4 can sit wherever you so desire when you come in and out of the
5 courtroom until I appoint a foreperson. When I appoint a
6 foreperson, they will sit where this young man is seated on
7 the front row closest to me, but as we come in -- you all come
8 in and out of the courtroom right now, you can sit wherever
9 you so desire except for Mr. Benton and except for the
10 foreperson once they are appointed.

11 Now, ladies and gentlemen, we are about to try the case
12 of the State of South Carolina versus Gowndell Deon Cades.
13 But before we begin this trial, I want to tell you -- and
14 before I go any further -- Madame Clerk, I need you to swear
15 the jury, please.

16 THE CLERK: If all of you will, please stand and raise
17 your right hand.

18 (Whereupon, the jury complies.)

19 THE CLERK: You shall well and truly try and a true
20 deliverance make between the State of South Carolina and the
21 prisoner at the bar whom you shall have in your charge and a
22 true verdict render according to the law and evidence, so help
23 you God. Please be seated.

24 (Whereupon, the jury complies.)

25 THE COURT: Now, before begin the trial of this case, I

1 want to tell you that this trial will probably be different
2 from what you might expect. Many people do not have the
3 chance to attend actual court sessions as you're doing now and
4 may think from watching television or movies or reading books
5 that trials are always full of high drama, intense action, and
6 riveting circumstances.

7 Now, while all of these things may be true at times, this
8 trial, ladies and gentlemen, is not for entertainment. It is
9 a fundamental part of our democracy, a search for the truth in
10 an effort to make sure that justice is done between the
11 parties before the Court. Searching for the truth and making
12 sure that justice is done is often slow, deliberate and
13 repetitive, the opposite of what you may have seen on
14 television, or in movies, or read in books.

15 This courtroom, ladies and gentlemen, is a place of honor
16 dedicated to the protection and preservation of citizens'
17 rights through what many have called the greatest justice
18 system ever created. The attorneys appearing before you are
19 advocates for the parties that they represent, but first and
20 foremost, they are officers of the court sworn to uphold the
21 integrity and fairness of our judicial system and to help you
22 in the search for the truth. You should expect them to be
23 professional, competent, and ethical in the representation of
24 their client's interest.

25 Now, what I will now say to you is intended to serve as

1 an introduction to the trial of this case. These remarks are
2 not a charge on the law in this case. I will instruct you on
3 the law applicable to this case at the end of the trial before
4 you retire to consider your verdict. This is merely an
5 explanation of the procedure that we will follow in the trial
6 of this case so that you may better understand what may be
7 happening.

8 The defendant is charged by an indictment in this court
9 with the offense of arson third degree, the elements of which
10 will be explained to you later. The indictment, ladies and
11 gentlemen, is simply the charge or the charging document by
12 which this case is brought into the court and it is not, in
13 any sense, evidence of any of the allegations that it
14 contains.

15 The defendant has pled not guilty to this indictment.
16 The State, therefore, has the burden of proving each of the
17 elements of the indictment beyond a reasonable doubt. It will
18 be your duty, ladies and gentlemen, to decide whether the
19 State has met that burden. Your purpose as jurors is to find
20 and determine the facts. You are the sole judge of the facts.
21 If at any time I make any comment regarding the facts, you
22 must disregard it. You are to determine the facts from the
23 testimony you hear and the other evidence introduced in court.
24 It is up to you to determine the inferences which you feel may
25 properly be drawn from the evidence. It is especially

1 important that you perform your duty of determining the facts
2 diligently and conscientiously because ordinarily there is no
3 way to correct an erroneous determination of the facts by a
4 jury.

5 On the other hand and with equal emphasis, the same law
6 that makes you the judge of the facts makes me the judge of
7 the law. The law as given by the Court is the only law that
8 you may consider. You must accept and follow it, even though
9 you may disagree with it. I cannot tell you what the facts
10 are and you cannot disagree with me about what the law is or
11 should be. Your job is to take the law as I give it to you
12 and apply it to facts as you find them from the testimony of
13 the witnesses and any other evidence that is introduced.
14 After doing that, you will render your verdict, a true and
15 just verdict under the -- under the solemn oath that you just
16 took as jurors.

17 Now, until I tell you to begin your deliberations, you
18 must not discuss this case with anyone, including your fellow
19 jurors, friends, family members and anyone involved in the
20 case. The attorneys and parties in this case have been
21 advised that they are not to talk to you at all. So if you
22 see anyone involved in the case and they don't speak to you,
23 they are not being unfriendly, they are simply following this
24 Court's instructions.

25 Now, during your deliberations, you may only discuss the

1 case in the jury room with your fellow jurors because they
2 have seen and heard the same evidence as you have. However,
3 you must not discuss the case with anyone other than your
4 fellow jurors until you have returned a verdict and the case
5 is at an end.

6 I remind you that must decide this case based solely on
7 the evidence presented here in this courtroom. This means
8 that during the trial, you must not conduct any independent
9 research about this case, the facts of this case, the evidence
10 presented in the case or the people or organizations involved
11 in any way in this case. Please do not try to find out
12 information from any source outside of this courtroom. In
13 other words, you must not look at dictionaries or other
14 reference materials, search the internet, websites or blogs,
15 or use any other electronic tools to get information about
16 this case to help you decide the case. You may not use
17 computers, telephones, cell phones, smart phones, tablets, the
18 internet or other tools of technology with communication
19 capabilities at any time while you are in the courtroom or
20 during your deliberations.

21 During your breaks for meals or overnight, if necessary,
22 you may use these devices. However, you must not use these
23 devices to communicate with anyone about the case until the
24 case is over. This means you must not use phone calls,
25 emails, text messages, instant messages, Twitter or any blog,

1 chat room or website, including Facebook, Google, Google Plus,
2 Myspace, LinkedIn, YouTube, or any social media websites to
3 send or receive information about this case. This includes
4 information about a party, a witness, an attorney or a court
5 officer, news accounts about the case, research on topics
6 raised, any topics you may think would be helpful in deciding
7 the case, or any testimony presented by any witness during the
8 trial.

9 I don't think you're going to see any or hear any, but
10 you're instructed not to read, listen to, or watch any news
11 reports about this case. This includes anything that may be
12 in the newspapers or on the internet, radio, or television.
13 You must not, ladies and gentlemen, consider anything you may
14 have read or heard about the case outside the courtroom,
15 whether before or during the trial. Information on
16 television, radio, the internet, or from other -- from some
17 other source might be wrong or incomplete. In our judicial
18 system, it is important that you are not influenced by
19 anything or anyone outside of this courtroom. If you become
20 aware of another juror's violation of these instructions,
21 please inform the Court immediately.

22 Now, it is important, ladies and gentlemen, that you keep
23 an open mind and not decide any issue in this case until all
24 of the evidence has been presented, the parties have made
25 their closing arguments, and I have instructed you on the law

1 in this case. It is your solemn responsibility to determine
2 the guilt or innocence of the defendant, and your verdict must
3 be based solely on the evidence as it is presented to you in
4 this trial and on the law as I instruct you during and at the
5 close of the trial.

6 Now, in just a moment, the solicitor or the prosecutor
7 will make what is called an opening statement in which he will
8 explain to you the issues in this case or at least what he
9 thinks the issues are in this case. The attorney for the
10 defendant may also make an opening statement, although she is
11 not required to do so. What the attorneys tell you during
12 their opening statements is not evidence in this case. It is
13 only their contention as to what the issues are. The evidence
14 in this case will be presented to you by testimony of sworn
15 witnesses from this witness stand and/or by exhibits that may
16 be introduced into evidence.

17 Now, from time to time during the trial, you may hear one
18 the attorneys say something like, Your Honor, I believe that
19 we have a question of law or a matter of law to discuss with
20 you, or Your Honor, may we approach the bench, or sometimes I
21 myself might find it necessary to excuse you from the
22 courtroom for a short while so the attorneys and I can discuss
23 a matter of law. The reason for this is because you are the
24 judge of the facts in this case and sometimes when I am
25 discussing matters of law with the attorneys, it may be

1 necessary for me to make some comment as to the facts in
2 connection with ruling whether or not a particular law
3 applies. I am not supposed to tell you what I think the facts
4 are, so I will excuse you from the courtroom while these
5 discussions take place so that in no way will you be
6 influenced by anything that I might say or do in connection
7 with the facts.

8 In determining what the true facts are in this case, you
9 must decide whether or not the testimony of the witnesses is
10 believable. It will be my responsibility to rule as a matter
11 of law as to whether certain testimony is admissible at all or
12 not admissible. But once the testimony is admitted, whether
13 or not you believe it is solely for you to determine. In
14 deciding whether to believe a witness, you have the right to
15 consider the interest of any witness, the bias of any witness,
16 the prejudice of any witness, the opportunity for the witness
17 to have seen the matters and things about which the witness
18 may testify and the way the witness acts on the witness stand.

19 You have the right to consider anything that is in the
20 record that will help you evaluate the testimony of the
21 witnesses. That means that it is your duty, ladies and
22 gentlemen, to pay close attention to these witnesses, to
23 observe the witnesses, to listen to the witnesses, and to pay
24 close attention to the attorneys and to the Court. Please
25 don't let your thoughts wander, but give strict attention to

1 the testimony in this case so that at the end of all the
2 testimony, after the arguments of counsel and the charge on
3 the law by the Court, you will then be in a position to
4 determine what the true facts are and to apply the law to
5 those facts and thus render a true and just verdict.

6 Now, later in this case, a foreperson will be selected to
7 preside over deliberations in the jury room. It will be the
8 foreperson's added responsibility to preside in the jury room
9 and be the jury spokesperson here in court. It will also be
10 the foreperson's responsibility or duty to write the verdict
11 on the verdict form, but I will give the foreperson further
12 instructions about that at the conclusion of this case. Now,
13 in order to preserve everyone's rights, I will give the
14 parties an opportunity to object to anything that I have said.
15 Any exception or objection to anything that I have said to the
16 jury by the State?

17 MR. TUCKER: No, Your Honor.

18 THE COURT: Defense counsel?

19 MS. PARROTT: No, Your Honor.

20 THE COURT: All right. Ladies and gentlemen, we will now
21 begin the trial of this case. Mr. Tucker, you are recognized
22 for opening statements.

23 OPENING STATEMENT BY THE STATE

24 MR. TUCKER: Compared to other houses in Florence County,
25 the one Rachel Paul lived in with her family wasn't very

1 fancy, but it was home. It was a place they lived, slept, and
2 they felt most safe, and it was all they had in the world with
3 it and its contents. And it all went up in smoke, flame, fire
4 and smoke.

5 Now, this is a case about a family losing everything they
6 have to flame, fire and smoke, but it wasn't a fire that was
7 started by faulty electrical wiring. It wasn't a fire started
8 by accident. It wasn't a fire started by lightning. This
9 fire was started by the anger and rage of one man, Gowndell
10 Hicks [sic].

11 November the 19th, 2012. I'm not sure if you folks
12 remember what you were doing or what happened to you on that
13 date, but Rachel Paul and her family will never forget it. It
14 started off just about like any other day: she goes to work,
15 she comes back, she goes out that evening with her then
16 boyfriend, off and on, Mr. Cades.

17 Now, Ms. Paul lives at [REDACTED] in Florence
18 County with her three -- or four children, two who are older
19 and two who were small, one ten and one two. Now, as couples
20 sometimes do, there was an argument that evening and it got
21 worse as they got home. Now, Mr. Cades lived there
22 periodically. He would come and go, but he didn't stay there
23 regularly, as you will hear from the witnesses.

24 Now, on November the 19th, 2012, the argument escalated to
25 the point where Ms. Paul told Mr. Cades, you've got to go.

1 Leave my house. And in a fit of rage and a fit of anger, he
2 left, but before he left, he went into a master bedroom, he
3 closed the door, and as you will hear from the other two young
4 men who were in that trailer, they will tell you they heard
5 him slamming and banging around as if he tearing the place
6 apart. He comes outside. There's a short, brief altercation
7 between he and one of the other young men and then he leaves.
8 They were relieved to begin with, but that relief was suddenly
9 and almost instantly replaced by sheer fear because the two
10 boys saw smoke and they smelled smoke coming from around the
11 door of the master bedroom from which Mr. Cades had just left.

12 Now, when Ms. Paul opens the door and looks in, she sees
13 that there is a fire in the closet that began with someone
14 starting a fire lighting her clothes. Now, the instincts of a
15 mother kicked in and she went in with her two sons and tried
16 to put the fire out. Now, they didn't have a fire
17 extinguisher so they did the best they could. They took a
18 comforter from the bed and tried to bat the flames down as
19 best they could, but they spread too quickly. It was all they
20 had in this world, that home and everything in it, but there
21 was something more valuable than that that caused them to
22 leave while that thing was still on fire and that was their
23 very lives.

24 So, Ms. Paul gathered up her four children and she got
25 outside as quickly as she could, and by that time the flames

1 had spread. Neighbors called 9-1-1 and despite the quick
2 arrival of fire department units, they weren't able to save
3 the home. It was a total loss, as was everything that was in
4 it.

5 Now, as sheriff's deputies respond, and you'll hear from
6 two of them who were first out there, one Jason Pate and the
7 other Mike Gifford, they encountered Ms. Paul and her four
8 kids. Deputy Gifford also encounters another individual,
9 Gowndell Cades, who was walking around in that area. Now, he
10 stops Mr. Cades, after a brief conversation after this had
11 gone out over the dispatch that this was the fellow that
12 started the fire, patted him down, took him into custody, and
13 they found a lighter on him that was logged into evidence.

14 Now, you'll also hear from Investigator Pat O'Hara, an
15 arson investigator with the Florence County Sheriff's Office,
16 and he'll tell you exactly what his investigation entailed and
17 what it revealed, that this wasn't a fire started by faulty
18 electrical wiring, this wasn't a fire started by accident, and
19 this wasn't a fire started by a lightning strike. This was a
20 fire started by the rage and anger of one man, Gowndell Cades.
21 You will hear the witnesses tell you, he goes into a bedroom,
22 he comes out, the place is on fire. Everybody else is
23 accounted for inside the trailer except for Mr. Cades. One
24 man's rage and anger. She told him to leave; he set the place
25 on fire as the evidence will show.

1 Her place wasn't fancy, but it was all they had, and it
2 was home until he burned it down. Now, they lost everything
3 they had in way of material possessions, but they hang on to
4 one thing that kind of sustains them, that's their belief that
5 the man that did this and the man responsible for their
6 predicament is going to be found guilty and he's going to be
7 held responsible.

8 THE COURT: Thank you, Mr. Tucker. Ms. Parrott?

9 MS. PARROTT: Thank you, Your Honor. May it please the
10 Court.

11 THE COURT: Yes, ma'am.

12 OPENING STATEMENT BY THE DEFENSE

13 MS. PARROTT: Mr. Prosecutor. Ladies and gentlemen,
14 thank you for your attention. Again, my name is Karen Parrott
15 and I am an attorney in the Public Defender's Office and I
16 represent Mr. Gowndell Cades. That is the person to whom Mr.
17 Tucker has been referring to and he is charged in this
18 incident. What I need you to understand, and what the judge
19 has already been instructing you about as well, is that just
20 because somebody is charged in an incident does not mean that
21 they are guilty. That is the reason why we have this
22 incredible process of justice and this trial.

23 So what I basically ask of you, as the judge has as well,
24 is I ask that you listen to every piece of information that's
25 going to be coming up in this court. If somebody was to hand

1 you a puzzle box and you were to start putting the puzzle
2 together, but you only looked at about half of the puzzle
3 pieces before you said all right, I'm done, it'd be an
4 incomplete puzzle; wouldn't it? What I'm asking you is to
5 always keep in mind that there's more than one side to a story
6 and you have to listen to all of the evidence to figure out
7 exactly what that story is. You have to look at all of the
8 pieces of the puzzle and put it together to get the whole
9 picture.

10 They have to prove beyond a reasonable doubt that he set
11 this fire. He did so with some -- with intent and malice and
12 all of these things that will be discussed with you and told
13 to you later. It is their burden to prove him guilty because
14 he is innocent until proven guilty, if they are allowed to
15 prove him guilty or if they do, and that always in your call.
16 As he comes in this courtroom, he is cloaked in innocence and
17 he remains cloaked in innocence up until, and if, you decide
18 that he is guilty, if you believe that the State has proven
19 their burden beyond a reasonable doubt.

20 I submit to you, ladies and gentlemen, that they will not
21 meet that burden. They will not be able to remove that cloak
22 of innocence that is on Mr. Cades. And I thank you for your
23 attention as we go through this process. Thank you.

24 THE COURT: Mr. Tucker? Thank you, Ms. Parrott.

25 MR. TUCKER: Thank you, Your Honor. May it please the

RACHEL PAUL - DIRECT EXAMINATION BY MR. TUCKER

1 Court. The State calls Rachel Paul to the stand.

2 THE CLERK: Ma'am, if you will, please go around and
3 place your left hand on the Bible and raise your right hand.
4 Do you swear the testimony you give in this case will be the
5 truth, the whole truth, and nothing but the truth, so help you
6 God?

7 THE WITNESS: Yes.

8 THE CLERK: Please be seated and state your full name for
9 the record.

10 THE WITNESS: My name is Rachel Viola Paul.

11 RACHEL PAUL, being first duly
12 sworn, testifies as follows:

13 DIRECT EXAMINATION

14 BY MR. TUCKER:

15 Q: Ms. Paul, where do you currently live?

16 A: I live in Florence on [REDACTED] [REDACTED] [REDACTED].

17 Q: Where do you work?

18 A: I work at the Discount Bread Store.

19 Q: And how long have you been there?

20 A: I've been there for about nine months.

21 Q: And you mentioned your address. How long have you been
22 living at that particular address?

23 A: For about eight months.

24 Q: I want to direct your attention back to November the 19th,
25 2012. Do you recall where you were living?

RACHEL PAUL - DIRECT EXAMINATION BY MR. TUCKER

- 1 A: Yes.
- 2 Q: Could you tell the jury, please?
- 3 A: [REDACTED] South Jeffords Street.
- 4 Q: Was there a particular lot number in there that you lived
- 5 at? Would [REDACTED] sound about right?
- 6 A: Yes.
- 7 Q: Now, for my purposes and so we can clarify for the jury,
- 8 what kind of -- is this a mobile home park or what kind
- 9 residence area is this?
- 10 A: It's a mobile home park.
- 11 Q: How long had you living at [REDACTED] South Jeffords?
- 12 A: I lived there for a month.
- 13 Q: Now, who lived there with you?
- 14 A: Me, my three boys, my two-year-old daughter, at the time,
- 15 and Mr. Gowndell Cades was in and out.
- 16 Q: Okay. When you say he was in and out, he didn't live
- 17 there regularly with you every night?
- 18 A: No. He was back and forth from me to his grandmother's.
- 19 Q: Okay. You mentioned your children. Could you again
- 20 state their ages?
- 21 A: Jaquan, he's eighteen now, he was seventeen at the time;
- 22 Jarrell, he's seventeen now, he was eighteen at the time;
- 23 Holiday, he's -- oh, he was sixteen at the time; Holiday, he's
- 24 ten now, he was nine at the time; and my daughter, Cathy,
- 25 she's three now, she was two at the time.

RACHEL PAUL - DIRECT EXAMINATION BY MR. TUCKER

1 Q: Okay. And all of those children lived there with you?

2 A: Yes.

3 Q: Now, the mobile home there, were you buying or renting
4 that?

5 A: I was renting.

6 Q: Okay. And how long had you lived there again?

7 A: One month. Right at a month.

8 Q: You mentioned Mr. Cades was staying there. Was his name
9 on the lease agreement?

10 A: No, sir.

11 Q: It was just you?

12 A: It was just me and my children.

13 Q: Okay. Now, I want to direct your attention back to
14 November the 19th, 2012. Do you recall what you were doing
15 that evening?

16 A: Yes.

17 Q: Could you tell the ladies and gentlemen of the jury,
18 please?

19 A: Well, we did -- we had breakfast that morning, just kind
20 of laid back being at home. I still had some things I had to
21 do. We had just moved in. I was trying to get settled in
22 still. We had to go out and make some runs. I let ---

23 Q: Now, when you say y'all had to go out, who do mean? You
24 and who else?

25 A: Me and Mr. Cades, we went out and made some runs, but the

RACHEL PAUL - DIRECT EXAMINATION BY MR. TUCKER

1 kids stayed home until we got back.

2 Q: Do you recall what time this was?

3 A: It was around about -- probably about four or five in the
4 afternoon.

5 Q: Now, had there been any problems with the -- between you
6 and Mr. Cades prior to arriving back home?

7 A: There was. We had a disagreement.

8 Q: Do you recall what the disagreement was about?

9 A: He had ran into one of his old female ex-girlfriends that
10 he had known before me and they were talking. I felt
11 uncomfortable. I wanted to leave and so we did leave, but on
12 the way in the car, we were arguing and, you know, it wasn't
13 nothing but a ten minute drive from where we were to home, so
14 we made it home, but we were still arguing. We argued outside
15 the car. We argued until he got in -- until we got back in
16 the house.

17 Q: Now, when you say you were arguing, you were mad?

18 A: I was upset.

19 Q: How about Mr. Cades? How would you describe his
20 demeanor?

21 A: He was mad.

22 Q: Now, did you ultimately both of you go inside the
23 residence?

24 A: Yes.

25 Q: What happened after that?

RACHEL PAUL - DIRECT EXAMINATION BY MR. TUCKER

1 A: We went into the bedroom and he had a few things there,
2 like a couple of change of clothes, couple days change of
3 clothes, a watch, a couple pairs of shoes, and I told him I
4 didn't think it was working out. I said I'd been through a
5 lot in my life with other guys and I wasn't fixing to go
6 through it again, that it was over. I said that we could
7 still be friends, but you have to go. I need for you to leave
8 because I ---

9 Q: How did he respond to that?

10 A: He didn't like it. He started talking about some money
11 that I had owed him or had taken from him or something and I
12 told him, look, I don't know nothing about money, just -- just
13 leave. I need you to go.

14 Q: And when you didn't give him the money, did that cause
15 him to become more angry?

16 A: Yeah, he was mad. He was mad about this money.

17 Q: Where were your other children? You say they were all
18 home when this was happening?

19 A: They -- my ten-year-old, he was in the -- in his bedroom.
20 I think he was playing a game. Jaquan and Jarrell had come up
21 to the front to the living room. Cathy, she had done -- she
22 -- I saw her, but she was in the living room watching cartoons
23 or something with Jaquan and Jarrell.

24 Q: Now, after this, after he asked for money and you tell
25 him you're not giving it to him and becomes more angry, what

RACHEL PAUL - DIRECT EXAMINATION BY MR. TUCKER

1 happened after that?

2 A: I didn't entertain it. I just left the bedroom. All I
3 wanted for him to do was get his things and leave. I left the
4 bedroom.

5 Q: Who was back there besides you and Mr. Cades, anybody?

6 A: Just me and Mr. Cades.

7 Q: So when you left out of the bedroom, Mr. Cades was back
8 there by himself?

9 A: He was by himself.

10 Q: Now, for purposes of why we're here, is the person known
11 to you at that time as Gowndell Cades sitting in this
12 courtroom?

13 A: Yes.

14 Q: Would you identify him, please?

15 A: He's right there.

16 Q: You've identified him sitting at the defense table next
17 to his attorney?

18 A: Yes.

19 MR. TUCKER: And, Your Honor, if the record could reflect
20 that she's identified Mr. Gowndell Cades for the record.

21 THE COURT: So noted for the record.

22 Q: Now, after you left and he's back in the bedroom, do you
23 recall what, if anything, happened after that?

24 A: I remember hearing some things being broke up. I had two
25 mirrors on the dresser. You know, dressers come with the

RACHEL PAUL - DIRECT EXAMINATION BY MR. TUCKER

1 mirror. I had one mirror was right there and one mirror was
2 there. I had a television. Sounded like he had broken the
3 mirrors to the dresser and busted the inner tube out to the
4 television because it was one of those old televisions. I
5 hadn't want to go in there because ---

6 Q: Why didn't you want to go in there?

7 A: I was scared. I didn't want to do anything that could
8 cause me to get hurt. We were fixing to call the police.

9 Q: Why didn't you?

10 A: Well, right when we was getting ready to call the police,
11 he leaves. From what I remember, he leaves out the back door.
12 My back door is right there by the bedroom.

13 Q: Okay. Now, once he leaves, did anything unusual or
14 noteworthy happen?

15 A: When he left all the lights were on -- left on in the
16 bedroom. There's a master bathroom in there, too. The master
17 bathroom light was on, too, when I remember I went in there,
18 but what brought my attention -- I wanted to -- when he left,
19 I wanted to go see what damage had been done. Before we even
20 went in there, we seen smoke coming from the top of the door
21 and from the bottom and I ---

22 Q: Did that cause you concern?

23 A: Yes. Yes, I knew something was on fire and I went --
24 immediately when I went in there, the closet was on fire.

25 Nothing but my clothes, they were all hung up. And my clothes

RACHEL PAUL - DIRECT EXAMINATION BY MR. TUCKER

1 were on fire.

2 Q: And you could see that plainly?

3 A: Yes. I seen -- I seen the door was open to the closet,
4 so all my clothes, my -- it was winter time, it was cold, so
5 all my jackets, my coats and stuff were on fire.

6 Q: So nothing on the floor of the closet? It was the
7 clothes hanging in the closet?

8 A: It was the clothes hanging in the closet.

9 Q: And those were your clothes?

10 A: Those were my clothes.

11 Q: What -- once upon seeing this, what if anything did you
12 do?

13 A: I thought that I could put it out. I took a comforter, a
14 blanket that I had on the bed, snatched it up and just started
15 just slamming, just hitting the fire.

16 Q: Where you able to put it out?

17 A: I couldn't put it out.

18 Q: Now, your two oldest sons, had they come to the back of
19 the trailer and in the bedroom with you to help you?

20 A: Yeah. Right.

21 MS. PARROTT: Objection, leading.

22 THE COURT: Rephrase your question.

23 Q: Do you recall where your two oldest sons were?

24 A: Yeah. They were up front in the living room as far as I
25 know, but they -- they had done seen the smoke and stuff, too.

RACHEL PAUL - DIRECT EXAMINATION BY MR. TUCKER

1 I didn't even have to call them. Jaquan was already in there.
2 Jarrell, he was getting Holiday. He was already calling
3 Holiday. I say, it's a fire, it's a fire, y'all we got to --
4 it's a fire, I got to put this out, I got to put this out. My
5 son was telling me, Ma, no, you can't put that out. It's
6 gone, you got -- you got to leave it alone. You can't put
7 that out. Get Cathy and get out of here. Get out of here.
8 Q: Now, when he mentioned get Cathy, to whom was he
9 referring?

10 A: My little girl. My little two-year-old daughter.

11 Q: Let me ask you this, Ms. Paul. At any point prior to
12 this, had you seen your two-year-old in that bedroom area back
13 there where the fire started?

14 A: No.

15 Q: Let me ask you this while we're on the subject. Have you
16 ever known your daughter, at that point, to play with matches
17 or to play with a lighter?

18 A: No, sir.

19 Q: Ever have any problems with her starting a fire?

20 A: No.

21 Q: Now, after this you mentioned that he was back there with
22 you and said you couldn't put it out. What, if anything, did
23 you do then?

24 A: It wasn't nothing left -- it was smoky, I couldn't hardly
25 see. It wasn't nothing left to do but to go, get out. Cathy

RACHEL PAUL - DIRECT EXAMINATION BY MR. TUCKER

1 -- I was the last one to leave. Cathy had already gotten out.
2 Jarrell took her out. Jaquan had hollered they had gotten
3 out. Jaquan came and come and get me out of there.
4 Q: Now, when you left, what, if anything, happened then?
5 A: When I left, I know they said that the fire department
6 had already been called. I was crying. I got my daughter; I
7 was holding her. The neighbor next door, I didn't even know
8 them, they took me into their house and that's all I remember.
9 I wasn't even outside the whole time. The kids were outside
10 upset. I had my daughter with me.
11 Q: Now, was it dark outside when all this was going on?
12 A: It was. It had done got dark.
13 Q: Could you see -- after you went in to the neighbor's,
14 could you see how far the flames had advanced in the home you
15 just left?
16 A: Yeah. I could see it. It was burning fast.
17 Q: How quickly did the fire department get out there? Do
18 you recall?
19 A: It must have took them about twenty or thirty minutes to
20 get there. I didn't know where they were coming from, but it
21 took them a long time to get there it seem to me.
22 Q: When they arrived, were they able to save anything in
23 terms of belongings or your home?
24 A: Couldn't save nothing. I thought I was going to lose my
25 car, it was parked so close to the trailer and, well, I didn't

RACHEL PAUL - DIRECT EXAMINATION BY MR. TUCKER

1 lose my car, it got damaged, but I -- nothing was saved as far
2 as the trailer. We -- we left with nothing but the clothes on
3 our back. I didn't even have shoes on. My little girl didn't
4 have shoes on.

5 Q: Now, with regards to Mr. Cades, after he left out of the
6 back exit, did you see him at all anymore that evening?

7 A: I didn't see him. My sons said they saw him. I didn't
8 see him because I didn't even -- I wasn't even out there.
9 When one of the police officers came and talked to me, they
10 came into the neighbor's house next door to talk to me because
11 I was inside. I just couldn't -- I was out of it. I couldn't
12 -- I'd never gone through a fire before and that was just
13 something that -- I was devastated and hurt.

14 Q: And just for clarification, Ms. Paul, I'm going to ask
15 you again. Who was in the back bedroom right before the fire
16 started?

17 A: It was Mr. Cades. He was in there by himself.

18 MR. TUCKER: Thank you. I believe that's all the
19 questions I have, Your Honor.

20 THE COURT: Cross examination.

21 MS. PARROTT: Thank you.

22 CROSS EXAMINATION

23 BY MS. PARROTT:

24 Q: Ms. Paul, whenever this occurred, you're saying that you
25 and he had been out and then had gotten back home around four

RACHEL PAUL - CROSS EXAMINATION BY MS. PARROTT

1 to five in the afternoon?

2 A: Mm-hmm. Yes, ma'am.

3 Q: Okay. Yeah, I've got to -- you can't say mm-hmm or uh-
4 huh just because she has to take it down; okay?

5 A: Okay.

6 Q: All right. So you're saying y'all got home around four
7 to five p.m.?

8 A: Yes, ma'am.

9 Q: All right. And then what time do you believe this fire
10 was -- was called out?

11 A: If I do recall, it was -- it had to have been like four.
12 It was still daylight. It had to been like four or five,
13 somewhere around there. I don't exactly remember what time it
14 was.

15 Q: You think the fire started around four or five p.m.?

16 A: Oh, no. The fire didn't start. No, ma'am, the fire
17 didn't start around that time. I don't know what time the
18 fire started. Everything happened so fast.

19 Q: It was already dark outside?

20 A: It was already dark outside when the fire did start.

21 Q: Okay. If I tell you around 10:20 in the evening, does
22 that sound about right?

23 A: Yes.

24 Q: Okay. So there's about five hours' time there that you
25 and he, even though y'all been fighting, y'all are still in

RACHEL PAUL - CROSS EXAMINATION BY MS. PARROTT

1 the same house together?

2 A: Yeah, but -- I got mixed up with the time because -- I
3 had to get mixed up with the time. It must have been later
4 then what -- when we got back.

5 Q: But you just testified that it was probably four or five
6 whenever you got back; right?

7 A: Well, I knew it wasn't exactly that time, but I knew it
8 was still daylight outside. You know --

9 Q: And this is November 19th ---

10 A: Yes.

11 Q: --- 2012; correct?

12 A: Yes.

13 Q: And in November, the sun sets a little bit earlier than
14 it does whenever it's June and July and August; right?

15 A: Yes. So it had to be later.

16 Q: Okay. Do you remember meeting with law enforcement when
17 this occurs?

18 A: They came in next door to the neighbor's house to talk to
19 me.

20 Q: You talked with Investigator -- excuse me, you talked
21 with Officer Pate?

22 A: I believe I did.

23 Q: Did you talk with Investigator O'Hara?

24 A: Yes, I believe I did.

25 Q: And do you remember giving statements to them?

RACHEL PAUL - CROSS EXAMINATION BY MS. PARROTT

1 A: Yes.

2 Q: Did either of those officers or anyone else pat you down?

3 A: Not that I remember.

4 Q: Whenever you gave them a statement, do you remember

5 telling Officer Pate that Mr. Cades shut the door and then

6 y'all saw smoke and then that's when he left?

7 A: Yes. That's pretty much how it happened. I mean I might

8 have didn't give that testimony exactly the way it's stated on

9 that paper, but that's pretty much what happened.

10 Q: So what you're telling me now is that Mr. Cades was still

11 in the room and still there whenever y'all saw the smoke?

12 A: Oh, no. He was done left. He -- we didn't see the smoke

13 until after he had gone out the back door.

14 Q: Do you remember telling Officer Pate though that -- that

15 you saw smoke and then he left?

16 A: No. I don't -- I remember -- I was out of it that night,

17 but I do remember when he left, that's when we saw the smoke.

18 That's when we saw the smoke. We didn't even see the flames

19 yet; we just saw the smoke.

20 Q: But you're saying now that you saw -- you saw the smoke

21 after he left, but at the time you told Officer Pate that you

22 saw the smoke and he was still there and then he left.

23 A: I may have told them that.

24 Q: Okay.

25 A: But it was through tears.

RACHEL PAUL - CROSS EXAMINATION BY MS. PARROTT

1 Q: All right. You were asking him to pack up his stuff?

2 A: Yes, ma'am.

3 Q: Okay. Do you remember telling him also that whenever
4 this happened that you left him in the room, you went into the
5 living room and I believe you're saying that Jaquan and
6 Jarrell, or your sons are already in the living room at the
7 time; correct?

8 A: Correct.

9 Q: So there was at least ten minutes that happened to pass?

10 A: I don't know how much time that it happened to pass
11 really.

12 Q: Okay. When y'all were arguing, were you arguing just in
13 the bedroom or did y'all argue from basically as soon as you
14 got out the car, or even in the car, all the way around the
15 house and everywhere else?

16 A: We were arguing in the car on the way back. We argued as
17 soon as we got back. I pulled up into the yard; we were
18 arguing outside. Then when we came in, we went straight to
19 the bedroom.

20 Q: Okay.

21 A: And we were arguing in the bedroom, but it didn't take
22 long for me to just tell him, I can't handle it, you need to
23 go.

24 Q: Okay. So you were more than upset, you were pretty mad
25 about what was going on if y'all were arguing for at least ten

RACHEL PAUL - CROSS EXAMINATION BY MS. PARROTT

1 minutes on the ride; right?

2 A: I was upset, but I just -- it wasn't an angry upset, it
3 just -- I knew it was something I wasn't going to be able to
4 handle.

5 Q: It was a jealous girlfriend upset?

6 A: Well, no, I wasn't jealous. I just knew that he wasn't
7 going to do right by me so I just asked him to leave.

8 A: Okay.

9 MS. PARROTT: Nothing further, Your Honor.

10 THE COURT: And redirect?

11 MR. TUCKER: Just one question, Your Honor.

12 REDIRECT EXAMINATION

13 BY MR. TUCKER:

14 Q: Ms. Paul, how would you characterize your mental state
15 that evening after having that house burn down around you like
16 that?

17 A: Wow. I woke up. I was woke up. Even though it was -- I
18 was out of it, I had never gone through something like that
19 before, it was a lot. I was concerned about my kids, my
20 children. I was glad that we all got out okay, but it was a
21 lot to take in, my mental state.

22 Q: Fair to say it was pretty traumatic for you?

23 A: Yeah. I would -- I would.

24 MR. TUCKER: I believe that's all the questions I have,
25 Your Honor.

JAQUAN MUMFORD - DIRECT EXAMINATION BY MR. TUCKER

1 THE COURT: Any recross?

2 MS. PARROTT: No, Your Honor.

3 THE COURT: Thank you ma'am, you may step down.

4 MR. TUCKER: Your Honor, I would ask if Ms. Paul can be
5 released from her subpoena.

6 THE COURT: Any objection?

7 MS. PARROTT: No, Your Honor.

8 THE COURT: Ma'am, you're excused, have no further
9 responsibility under your subpoena, you're free to go. Call
10 your next witness.

11 MR. TUCKER: Your Honor, at this time the State calls
12 Jaquan Mumford.

13 THE CLERK: Please place your left hand on the Bible and
14 raise your right hand. Do you swear the testimony you give in
15 this case will be the truth, the whole truth, and nothing but
16 the truth, so help you God?

17 THE WITNESS: Yes, ma'am.

18 THE CLERK: Please be seated and state your name for the
19 record.

20 THE WITNESS: Jaquan Mumford.

21 JAQUAN MUMFORD, being first duly
22 sworn, testifies as follows:

23 DIRECT EXAMINATION

24 BY MR. TUCKER:

25 Q: Mr. Mumford, how old are you?

JAQUAN MUMFORD - DIRECT EXAMINATION BY MR. TUCKER

1 A: Eighteen.

2 Q: Where do you live presently?

3 A: [REDACTED] right down the road from my mom.

4 Q: Okay. Do you live with your mom?

5 A: No, sir.

6 Q: Now, Rachel Paul, the lady that just testified, what

7 relationship, if any, is she to you?

8 A: She's my mom.

9 Q: Now, I want to direct your attention back to November the

10 19th, 2012. Do you recall where you were?

11 A: I can't ever forget it.

12 Q: Were you living with your mom at that point?

13 A: Yes, sir.

14 Q: Who else lived in that home with you?

15 A: Me, my brother, my two -- my two brothers, younger

16 brothers, my sister, and he was temporarily staying there.

17 Q: Now, when we're talking about this -- okay, it was [REDACTED]

18 South Jeffords Street, Lot [REDACTED]?

19 A: Yes, sir.

20 Q: And that's in Florence County as far as you know?

21 A: Yes, sir.

22 Q: All right. Now, you mentioned that you can't ever forget

23 it. Do you recall what happened that evening after Mr. Cades

24 and your mom got back?

25 A: I recall that whole day.

JAQUAN MUMFORD - DIRECT EXAMINATION BY MR. TUCKER

1 Q: Could you tell the Court what happened?

2 A: That whole day like we came home from school, it was an
3 ordinary day.

4 Q: What time do you normally get home from school?

5 A: Like the bus get there around 3:55 so we probably get in
6 the house probably like 3:58, four o'clock.

7 Q: Now, had your mom and Mr. Cades gotten back at this
8 point?

9 A: Mm-hmm. They had just gotten back from wherever they ---

10 Q: Who got back first, was it you or them?

11 A: They got back before I did and they were already arguing
12 about something that happened earlier that day. Apparently,
13 they went out to a retirement home called Southland, here in
14 Florence, and they got into an argument over a female and it
15 escalated into the point where it was back home and I am first
16 hearing when I came in the house.

17 Q: Okay.

18 A: So ---

19 Q: Do you recall where they were in the house when you first
20 came in?

21 A: In the master bedroom.

22 Q: Now, could you see them?

23 A: Mm-hmm.

24 Q: Okay. Could you describe what was going on? You
25 mentioned they were arguing?

JAQUAN MUMFORD - DIRECT EXAMINATION BY MR. TUCKER

1 A: I mean, my mama was basically telling him that she don't
2 got time for a dude who keep running around, stuff like that,
3 she don't got time for that. She -- she was trying to cut it
4 off, but at that time they really wasn't -- they was arguing,
5 but it was like minor, they were trying to fix it. So after
6 that they left and went somewhere else. I don't know if she
7 just forgot to tell y'all or didn't remember, but they left
8 and went somewhere else and came back, but by the time they
9 came back that second time, it was around dark and it seemed
10 like it escalated. Seem like they had gotten madder.

11 Q: All right. When they get back that second time, do you
12 recall, did they come in arguing?

13 A: Yeah. They came -- that was first thing off the top,
14 they came in arguing about the same issue, why is it that
15 every time she always catching him with another female, just
16 that and the third, arguing, arguing, okay.

17 Q: Do you recall where this argument was taking place inside
18 the home?

19 A: You can -- like where I was sitting at, the chair, the
20 living room chair was by the living room window, and in mobile
21 homes you can hear from inside out as well as vice versa, so I
22 could hear it from outside and it first started when they came
23 in through the back door.

24 Q: Now, where were they inside the mobile home there when
25 you came arguing, arguing, when they came back the second

JAQUAN MUMFORD - DIRECT EXAMINATION BY MR. TUCKER

1 time?

2 A: They came back in arguing.

3 Q: Okay. Did you recall or -- if they went back towards the
4 bedroom again arguing?

5 A: Mm-hmm. Yes, sir.

6 Q: What happened then?

7 A: They went back to the bedroom arguing and, like I said,
8 it escalated and so he started like he just basically removed
9 everybody from the bedroom and just started tearing up stuff.
10 I mean ---

11 Q: Now, you said he removed everyone from the bedroom, who
12 do you mean?

13 A: Like me and my brother. Literally, he physically removed
14 us from the bedroom. We had to get out.

15 Q: Now, when that happened, who was back in the bedroom at
16 this point?

17 A: After that, it was just him.

18 Q: Now, what, if anything, happened after that?

19 A: He was tearing up stuff. He punched holes in the
20 bathroom door. He broke the little inner tube, like my mama
21 said, at the front part of the TV, the face of it. He cracked
22 that and miraculously he threw stuff around, broke the two
23 mirrors that she had on her dresser.

24 Q: Now, would it be fair to say you were hearing this more
25 than seeing it?

JAQUAN MUMFORD - DIRECT EXAMINATION BY MR. TUCKER

1 A: No, I was -- yeah, I was hearing it, but once you go in
2 there you -- you actually seen it.

3 Q: Okay. Now, do you recall where your two other brothers
4 and your sister were when he was back in the bedroom?

5 A: Oh, my sister was up front. My little brother was back
6 in the room. I can't recall what he was doing. My brother
7 that was over there, that seventeen-year-old that is over
8 there, we was all in the living room because I was watching
9 wrestling that night.

10 Q: Now, do you recall at any point if Mr. Cades left?

11 A: Mm-hmm.

12 Q: Okay.

13 THE COURT: Is that a yes or a no?

14 A: Yes, sir.

15 THE COURT: Thank you.

16 Q: What happened when he left?

17 A: When he left, we looked at -- I just so happened because
18 I was still watching wrestling at the time, but I just so
19 happened out the corner of my eye to look at the bedroom and
20 saw smoke and so we went in there to kind of investigate to
21 see what was going on and we saw the right half side of the
22 closet on fire.

23 Q: Could you tell whether or not that it was your mom's
24 clothes on fire or what was going on in there?

25 A: You could tell it was pretty much most of her clothes

JAQUAN MUMFORD - DIRECT EXAMINATION BY MR. TUCKER

1 because he really didn't have really basically anything over
2 there but a couple of pair of change of clothes and like three
3 or four pairs of shoes. He really didn't have nothing in
4 there. Most of that stuff in that closet was hers.

5 Q: Now, when the fire was discovered at this point, wha,t if
6 anything, did you, your brother and your mother try to do?

7 A: Oh, I tried -- I tried to put it out. We -- she grabbed
8 the cover, I went in the kitchen and grabbed pots of water,
9 tried throwing it on that, but that wasn't working.

10 Q: Now, at some point did you -- your family leave the
11 residence?

12 A: Yes, sir.

13 Q: What happened then?

14 A: The fire, it got to the point where it was starting to
15 come out -- it was starting to shoot out the closet door and I
16 had to tell my mom it wasn't -- it wasn't no need to try to
17 put it out. It was -- it was going to spread regardless so I
18 had to get them out.

19 Q: Okay. Was everyone out of the residence at this point?

20 A: Yes, sir.

21 Q: Were you able to save anything from inside the home in
22 terms of belongings?

23 A: I did. She might not know about it, but the fire I'd say
24 was about thirty-five percent from the master bedroom to about
25 half way in-between the hall way and the kitchen. I ran back

JAQUAN MUMFORD - DIRECT EXAMINATION BY MR. TUCKER

1 in through the front door, ran all the way back to my bedroom
2 on the other side the trailer and grabbed my X-Box 360 and
3 went out the front door.

4 Q: Okay. Now, at this point had the fire department units
5 arrived on the scene?

6 A: No, sir.

7 Q: How long after you left out did they arrive?

8 A: I say about thirty to forty-five minutes. It was taking
9 them forever.

10 Q: Now, at this point, were you looking at the trailer?

11 A: Yes, sir.

12 Q: Could you see the flames coming out from the side or out
13 of the windows or anything like that?

14 A: You could see it coming from all over. The windows, you
15 could see it coming from top and it was any place that had a
16 place to escape to get air, it came out. You could see
17 flames.

18 Q: Now, at this point, do you recall seeing Mr. Cades at all
19 the rest of that evening?

20 A: Oh, yes, sir, many times. He came back a couple of
21 times.

22 Q: He came back to the scene a couple of times?

23 A: Yes, sir. He even -- they was even said that he brought
24 -- he came and brought some people ---

25 MS. PARROTT: Objection.

JAQUAN MUMFORD - DIRECT EXAMINATION BY MR. TUCKER

1 THE COURT: Hold on.

2 A: He came back ---

3 THE COURT: Hold on.

4 MR. TUCKER: Hold on for just a second, Mr. Mumford.

5 MS. PARROTT: May we approach?

6 THE COURT: Yeah.

7 (Whereupon, a bench conference is held in the presence of
8 the jury but out of the hearing of the jury as follows.)

9 MS. PARROTT: He was starting to say that he said
10 something or other or whatever. He's not testifying most
11 likely, or we don't even know that he is or isn't, I'm not
12 sure. He can say that he came back and all this. I don't
13 think he can say what he said.

14 THE COURT: He can say that he came back. I mean ---

15 MS. PARROTT: Right. I know about that, but he was
16 starting to say something else.

17 MR. TUCKER: And I can go around that, Your Honor.

18 (Whereupon, the bench conference ends.)

19 Q: Okay. Let's skip ahead, Mr. Mumford. After he comes
20 back, at any point do you recall speaking to law enforcement
21 that evening?

22 A: I want to say either officers, like the police officers,
23 but EMT's.

24 Q: Okay. Do you recall speaking to Investigator O'Hara
25 later on that evening or at some point thereafter?

JAQUAN MUMFORD - DIRECT EXAMINATION BY MR. TUCKER

1 A: No, sir.

2 Q: Okay. Now, with regards to where your sister was inside
3 the residence, again, was there any time that she was in that
4 back bedroom that you recall?

5 A: No, sir.

6 Q: Were you in that mobile home pretty much the entire
7 evening from about four o'clock on?

8 A: Yes, sir.

9 Q: And you're positive that you saw Mr. Cades come out of
10 the bedroom and then it was shortly thereafter that you saw
11 the smoke and then the flames?

12 A: Yes, sir.

13 MR. TUCKER: I believe that's all the questions I have,
14 Your Honor.

15 THE COURT: Cross examination.

16 CROSS EXAMINATION

17 BY MS. PARROTT:

18 Q: Mr. Mumford, you don't remember speaking with either
19 Investigator O'Hara, who's sitting here, or Officer Pate?

20 A: No, ma'am.

21 Q: So you don't remember telling them what your version of
22 the events were?

23 A: I mean I remember talking to EMT, but I don't remember
24 actually talking to actual law enforcement, no. No, ma'am.

25 Q: So is it your testimony that you did not tell Officer

JAQUAN MUMFORD - CROSS EXAMINATION BY MS. PARROTT

1 Pate that you saw smoke while Mr. Cades was still in the house
2 and then he left?

3 A: I'm -- I'm saying that I could have said -- I might have
4 said it, but I don't remember talking to them. I mean the
5 night was crazy. I may have said it on that night, but as far
6 I remember today, I don't remember saying that. I don't
7 remember talking to them.

8 Q: But you remember getting home around four o'clock in the
9 afternoon from school and your mom and Mr. Cades were already
10 there?

11 A: Yes, ma'am.

12 Q: And then it's a great deal of time later whenever this
13 incident actually occurs?

14 A: Yes, ma'am.

15 Q: Okay. Were you ever pat-searched at all?

16 A: No, ma'am.

17 Q: By any officers?

18 A: Not to my knowledge.

19 Q: Whenever Mr. Cades actually left the room, you say you
20 looked up and you saw some smoke towards the room. Whenever
21 you got in the room, did you go and get a pot of water first?

22 A: No, ma'am. My mama went for the comforter. She went for
23 her -- the thing that was closest.

24 Q: Okay. And you were right on her heels as y'all were
25 going in?

JAQUAN MUMFORD - CROSS EXAMINATION BY MS. PARROTT

1 A: Yes, ma'am.

2 Q: Okay.

3 A: She got in before I did.

4 Q: All right. And did you actually see an article of
5 clothing burning in the closet?

6 A: I saw like a couple of pieces burning clearly.

7 Q: Okay. How long was it between -- and was it ten minutes
8 or so as your mom testified ---

9 A: You mean ---

10 Q: --- between the times?

11 A: Between the fire starting?

12 Q: Between when he closed the door and was in the -- was in
13 the living room and then whenever y'all saw fire?

14 A: No. I'd say about five to seven minutes.

15 Q: Okay.

16 MS. PARROTT: Nothing further.

17 THE COURT: And redirect?

18 MR. TUCKER: Just briefly, Your Honor.

19 REDIRECT EXAMINATION

20 BY MR. TUCKER:

21 Q: Mr. Mumford, is it fair to say you were pretty
22 traumatized about what went on that evening?

23 A: Oh, yes, sir, of course. That was -- the house being
24 burnt down, we lost everything.

25 MR. TUCKER: Thank you, I believe that's all I have, Your

JAQUAN MUMFORD - RECROSS EXAMINATION BY MS. PARROTT

1 Honor.

2 THE COURT: Ms. Parrott?

3 MS. PARROTT: Your Honor, if I may.

4 RECROSS EXAMINATION

5 BY MS. PARROTT:

6 Q: Were you so traumatized that you couldn't give an
7 accurate version of the events to the officers as they talked
8 with you?

9 A: Oh, no, ma'am.

10 Q: Because -- so you would still say -- you would still say
11 that you were okay and in your right mind?

12 A: Yes, ma'am.

13 MS. PARROTT: Thank you.

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

15 MR. TUCKER: And, Your Honor, I would ask that Mr.
16 Mumford be released from his subpoena as well.

17 THE COURT: Any objection?

18 MS. PARROTT: No, Your Honor.

19 THE COURT: So granted. Call your next witness.

20 MR. TUCKER: Your Honor, at this time, the State would
21 Jarrell Mumford to the stand.

22 THE CLERK: Sir, if you will, please place your left hand
23 on the Bible and raise your right hand. Do you swear the
24 testimony you give in this case will be the truth, the whole
25 truth, and nothing but the truth, so help you God?

JARRELL MUMFORD - DIRECT EXAMINATION BY MR. TUCKER

1 THE WITNESS: Yes, ma'am.

2 THE CLERK: Please be seated and state your full name for
3 the record.

4 THE WITNESS: Jarrell Mumford.

5 JARRELL MUMFORD, being first
6 duly sworn, testifies as follows:

7 DIRECT EXAMINATION

8 BY MR. TUCKER:

9 Q: Mr. Mumford, how old are you now?

10 A: Seventeen.

11 Q: Do you still live at home with your mother?

12 A: Yes, ma'am. I mean yes, sir.

13 Q: Do you recall what address you're living now?

14 A: [REDACTED] or something
15 like that.

16 Q: Who all lives there now in that residence?

17 A: Me, my little brother, my baby sister, and my mama.

18 Q: Now, I want to direct your attention back to November the
19 19th, 2012. Do you recall where you were that evening,
20 particularly around four or five o'clock?

21 A: Yeah, I was in the living room.

22 Q: Now, when you say the living room, of the old residence
23 at [REDACTED] South Jeffords Street, Lot [REDACTED]?

24 A: Yes, sir.

25 Q: Do you recall who was there with you at that time?

JARRELL MUMFORD - DIRECT EXAMINATION BY MR. TUCKER

1 A: It was just basically -- you talking about just in the
2 living room?

3 Q: In the home itself?

4 A: Okay. It was just me, my brother, my baby sister and my
5 other little brother.

6 Q: Now, at some point did your mom and Mr. Cades come back
7 to that residence?

8 A: Yes. Yes, sir.

9 Q: Do you recall what happened then?

10 A: Well, they was already arguing like outside, like you can
11 hear them arguing through the trailer outside and, you know,
12 when they came back in, you know, they was just arguing,
13 arguing, arguing, and then, you know, they went into the
14 bedroom and then they was arguing in there. You know, we
15 could just hear them arguing in there.

16 Q: Could you hear what the argument was about?

17 A: Something about a girlfriend or something, like, you
18 know, she just wanted him to leave or something like that.

19 Q: Now, at some point, did you hear your mom ask him to
20 leave the residence?

21 A: Yeah. She told him that he got -- he had to go and get
22 out.

23 Q: Now, you heard your brother testify that they left and
24 then came back a second time. Do you recall that?

25 A: Yeah. That was after -- like I was telling you like what

JARRELL MUMFORD - DIRECT EXAMINATION BY MR. TUCKER

1 happened.

2 Q: I understand. Okay. Now, after you hear them arguing in
3 the bedroom, what, if anything, happened after that?

4 A: Oh well, you know, you know -- you know, after my mama
5 had came out the bedroom, you know, you can just hear stuff
6 breaking. You know, we was wondering like what he was doing
7 in there. You know, you heard like glass shattering and
8 everything and, you know, basically what happened was I guess
9 he was looking for something, you know. He came to me.
10 Because I went around there, he came to me like he met me in
11 the hallway. He was like asking me for money or something.
12 He jacked me up, asking me like, where's my money, where's my
13 money, and I didn't know what he was talking about.

14 Q: How would you describe the state at this point in terms
15 of how he was acting, demeanor-wise?

16 A: Oh, he was -- he was angry when he was asking me that.

17 Q: Now, after that, what happened then?

18 A: Then, you know, he went back into the bedroom and, you
19 know, I was, you know -- I was in the kitchen by the time
20 because the kitchen's like right there beside the living room.

21 Q: Do you recall where your two brothers and your little
22 sister was at this point?

23 A: Yeah. They were by me.

24 Q: Now, at any point up to this point, had you seen your
25 little sister or any of your other brothers back in the

JARRELL MUMFORD - DIRECT EXAMINATION BY MR. TUCKER

1 bedroom?

2 A: Well, not in the bedroom. You know, we was all around in
3 the living room.

4 Q: Now again, just so I'm clear, you mentioned that you were
5 home and they came home and you heard you brother testify that
6 they left and came back again; is that your recollection?

7 A: Yes.

8 Q: Now -- and so it was after they'd come home that second
9 time that the things were broken in the bedroom?

10 A: Yeah.

11 Q: Do you recall what time of the evening this was?

12 A: It had to be -- I mean because like one of my favorite
13 television shows on, it had to be like somewhere around nine
14 to ten. It had to be around at that time.

15 Q: This is when the argument the second time starts?

16 A: Yes.

17 Q: Now, at some point after you mentioned he came out to
18 hallway and asked you about some money, aggravated, then went
19 back into the bedroom. What happened then?

20 A: You know, he went -- I mean he came back out, like I'd
21 say about ten minutes, he came back out after that, ran back
22 out, and then, you know, my brother, my older brother, he was
23 like, you know, what is that, what is that. He had saw smoke
24 coming from the bedroom and they had rushed in and they had
25 tried to put it out or something, and ---

JARRELL MUMFORD - DIRECT EXAMINATION BY MR. TUCKER

1 Q: Where were you at when this was going on?

2 A: I was in the kitchen, you know. I didn't -- she told me
3 to keep Cathy away from stuff -- away from the flames and
4 everything. So I was in the kitchen.

5 Q: But you were able to smell the smoke and see the flames
6 from where you were?

7 A: Yeah, I saw it. I was right there, like right there.

8 Q: Now, what happens after that?

9 A: Basically what happened after that is, you know, I told
10 everybody, you know, Jaquan, he told my mama that, you know,
11 there wasn't no use in trying to put it out because you
12 couldn't. It had already started to spread from the closet
13 and everything so, you know, basically what happened is I went
14 out. I grabbed Kathy, I went out, knocked on the neighbor's
15 door, told them that there was a fire, you know, told them to
16 call the law and everything.

17 Q: Okay. Did you ever go back in the mobile home at this
18 point?

19 A: No, I didn't go back in.

20 Q: Do you recall how long it was before fire department
21 units arrived out there?

22 A: Ooh, it had to be a good twenty-five, thirty minutes.

23 Q: Okay. Now, could you see the mobile home fire from where
24 you were at this time?

25 A: Oh, yeah. It started coming through like -- like where

JARRELL MUMFORD - DIRECT EXAMINATION BY MR. TUCKER

1 the closet was, like the tin started burning like holes of
2 fire. You could see it just starting coming up out of -- out
3 of the trailer.

4 Q: Now, at some point after you leave the residence, do you
5 ever see Gowndell Cades anymore that after -- or that evening
6 rather?

7 A: Yeah, he was walking around. I remember the first time I
8 saw him. He came like from where the street was and he just
9 walked like right through, right there.

10 Q: But you didn't have any sort of interaction with him?

11 A: No. I just told the -- I just like -- I was just like,
12 yeah, there he go, there he go.

13 Q: Now, when you said that, to whom were you speaking?

14 A: There was like medical people out there around that time
15 -- around the time, yeah.

16 Q: Were you -- did you suffer any injuries?

17 A: No.

18 Q: Okay. As far as you know, did your mom, little sister or
19 two other brothers suffer any injuries?

20 A: No.

21 Q: Now, with regards to law enforcement, at some point that
22 evening, do you recall speaking to someone from the Sheriff's
23 Office?

24 A: I spoke to somebody.

25 Q: Okay. Do you recall what, if anything, you said to him?

JARRELL MUMFORD - DIRECT EXAMINATION BY MR. TUCKER

1 A: I was just -- because I already knew who it was, I was
2 just telling them that that he did it, you know. Basically, I
3 told them like his whole name and everything and that
4 basically that he did it.

5 Q: Now, when you said you told them he did it, to whom are
6 you referring?

7 A: Gowndell Cades.

8 Q: Okay, is that Mr. Cades sitting there at the defense
9 table?

10 A: Yes, sir.

11 Q: Were you able to save anything from the fire?

12 A: No. I didn't save anything. I didn't go back in.

13 Q: Okay. And you're fairly certain you didn't see your
14 sister in that back bedroom at any time that evening?

15 A: Yes, sir.

16 MR. TUCKER: Thank you. I believe that's all the
17 questions that I have, Your Honor.

18 THE COURT: Cross examination.

19 MS. PARROTT: Beg the Court's indulgence. I'm sorry.

20 CROSS EXAMINATION

21 BY MS. PARROTT:

22 Q: You stated that everybody -- well, everybody was removed
23 from the bedroom at one point by Mr. Cades?

24 A: That's what he stated. I didn't state that.

25 Q: So you think that's wrong?

JARRELL MUMFORD - CROSS EXAMINATION BY MS. PARROTT

1 A: I mean, no, I'm just saying that that's what he said. I
2 didn't say it. I mean it was right, but that's what he said.

3 Q: Okay. And at the time that this was supposed to have
4 occurred, you're in the living room watching TV; is that what
5 you're saying?

6 A: Yes, ma'am.

7 Q: And your brother is there with you along with -- or both
8 of your brothers and your little sister?

9 A: Well, my little brother, he was like in his room, and --
10 but my sister was around there with me.

11 Q: Okay. You just said -- you mentioned a little while ago,
12 that y'all were kind of all around, so y'all were just in the
13 -- in your house doing what you could or ---

14 A: That -- yeah, that was like after, you know, he started
15 it.

16 Q: Okay. Did anybody ever pat you down?

17 A: No, ma'am.

18 Q: So you just told them it was him and that was all you
19 said?

20 A: That was all I needed to say. I already knew who -- he
21 did it.

22 MS. PARROTT: Nothing further.

23 MR. TUCKER: Nothing on redirect, Your Honor.

24 THE COURT: Sir, you may step down. Thank you.

25 MR. TUCKER: And likewise, Your Honor, we would ask that

DEPUTY JASON PATE - DIRECT EXAMINATION BY MR. TUCKER

1 Mr. Jarrell Mumford be released from his subpoena.

2 THE COURT: Any objection?

3 MS. PARROTT: No, Your Honor.

4 THE COURT: Sir, you are released. You have no further
5 responsibilities regarding your subpoena. You're free to go.
6 Call your next witness.

7 MR. TUCKER: Your Honor, at this time we call Jason Pate
8 to the stand.

9 THE CLERK: Sir, if you will, please place your left hand
10 on the Bible and raise your right hand. Do you swear the
11 testimony you give in this case will be the truth, the whole
12 truth, and nothing but the truth, so help you God?

13 THE WITNESS: I do.

14 THE CLERK: Please be seated and state your full name for
15 the record.

16 THE WITNESS: Jason Pate.

17 DEPUTY JASON PATE, being first
18 duly sworn, testifies as follows:

19 DIRECT EXAMINATION

20 BY MR. TUCKER:

21 Q: Deputy Pate, although you're wearing a uniform and this
22 may seem like a silly question, but where do you work?

23 A: I work for the Florence County Sheriff's Office.

24 Q: How long have you worked for the Sheriff's Office?

25 A: Twelve years.

DEPUTY JASON PATE - DIRECT EXAMINATION BY MR. TUCKER

1 Q: Did you work in any other law enforcement agency prior to
2 going to work for the Sheriff's Office here in Florence?

3 A: No, sir.

4 Q: As part of your training when you become a deputy, do you
5 have to attend any sort of special training or schools?

6 A: Yes, sir.

7 Q: Could you tell me what that is?

8 A: I went to the South Carolina Criminal Justice Academy and
9 I've been to several other classes.

10 Q: Okay. And how long have -- what are your duties right
11 now I guess is what I'm trying to ask?

12 A: Okay. I'm a patrol deputy. I answer calls as they come
13 in through Florence County Dispatch.

14 Q: Now, were you working in that capacity on November the
15 19th, 2012?

16 A: Yes, sir.

17 Q: Do you recall receiving notification through dispatch to
18 respond to a structure fire?

19 A: I do.

20 Q: Do you recall what, if anything, you did after hearing
21 that?

22 A: I responded out and met with Lieutenant Dowdy with
23 Florence County EMS.

24 Q: Now, when you say you responded out, do you recall the
25 address to where you were directed?

DEPUTY JASON PATE - DIRECT EXAMINATION BY MR. TUCKER

1 A: It was [REDACTED].

2 Q: Now, when you -- do you recall what time you arrived on
3 the scene?

4 A: I want to say it was like 10:28 p.m.

5 Q: Now, do you recall what, if anything, you saw when you
6 first arrived?

7 A: Well, the firefighters was trying to extinguish the
8 residence. Florence County EMS was also on scene.

9 Q: Now, you mentioned that you made contact with someone
10 with EMS. Do you recall being directed around to where the
11 occupants of the residence were at that time?

12 A: Yes, sir.

13 Q: Where were they?

14 A: Two of them were in the back of the EMS unit.

15 Q: Do you recall which two?

16 A: Ms. Rachel Paul and it was a small child. I don't recall
17 which one.

18 Q: Do you recall speaking to Ms. Paul about the -- what had
19 happened and what was going on?

20 A: I do.

21 Q: Do you recall what she told you?

22 A: She told me that her and boyfriend, Mr. Cades, were
23 inside the residence and they were arguing. She also said
24 that her and the children were in the kitchen and he went into
25 the bedroom. She said she was going to give him some space so

DEPUTY JASON PATE - DIRECT EXAMINATION BY MR. TUCKER

1 he would calm down and she heard the bedroom door slam.

2 Q: And did she mention it was shortly thereafter that she
3 noticed the fire?

4 A: She stated that right after that, she began seeing smoke
5 coming from the bedroom.

6 Q: Now, when you say she identified her boyfriend as Mr.
7 Cades, do you recall if she ever identified him by a first
8 name as well?

9 A: Yes. She identified him as Gowndell Cades.

10 Q: Do you recall speaking to anyone else in the Paul family
11 or that's a resident of the home that was on fire?

12 A: Yes, sir. I spoke with her two sons.

13 Q: Do you recall what they told you?

14 A: Yes, sir. I spoke with Jaquan Mumford and he stated that
15 or he told me that his mother and Mr. Cades went to see his
16 mother earlier on Dargan Street and when they returned home
17 they were arguing.

18 Q: And she told you basically what happened there prompted
19 an argument?

20 A: Yes.

21 Q: Do you recall if they indicated that they saw Mr. Cades
22 in the back bedroom where the fire started?

23 A: Yes, they -- everyone said he was in the back bedroom and
24 left out.

25 Q: Did anyone mention anything about the young girl being

DEPUTY JASON PATE - DIRECT EXAMINATION BY MR. TUCKER

1 involved or possible starting the fire by accident?

2 A: No, sir.

3 Q: Do you recall when you saw her in the back of the EMS
4 unit that she was burned in any way or had any sort of
5 injuries?

6 A: I don't recall. She was crying.

7 Q: Just upset?

8 A: Yes, sir.

9 Q: Do you recall if you ever saw Mr. Cades that evening when
10 you were out there on the scene?

11 A: I did not.

12 Q: Do you recall about what -- as far as level of
13 involvement when you arrived out in terms of the fire and the
14 trailer, I mean was it already -- could you see flames?

15 A: Yeah. It was -- appeared to be a total loss.

16 Q: Did it appear that they had been able to get anything out
17 of the residence by way of personal possessions.

18 A: No, sir.

19 MR. TUCKER: I believe those are all the questions I
20 have, Your Honor.

21 THE COURT: Cross examination?

22 CROSS EXAMINATION

23 BY MS. PARROTT:

24 Q: Officer Pate, as far as your involvement in this case,
25 you wrote up a report; did you not?

DEPUTY JASON PATE - CROSS EXAMINATION BY MS. PARROTT

1 A: Yes, ma'am.

2 Q: Okay. And are you referring to that report as part of
3 your testimony here today?

4 A: Yes, ma'am.

5 Q: Okay. And been having reviewed that report, is it
6 correct and accurate to the best of your recollection and your
7 ability?

8 A: Yes, ma'am.

9 Q: Okay. Did you not write or did you find as part of your
10 investigation, Rachel Paul tells you that they began seeing
11 smoke coming from the bedroom and the subject ran out the back
12 door?

13 A: That's what she told me.

14 Q: Okay. And then whenever you continued as part of your
15 investigation, you also talked with Jaquan Mumford; didn't
16 you?

17 A: Yes, ma'am.

18 Q: Okay. And if you go down just a few more lines, and that
19 as part of your report, did you also write there, after they
20 heard some things being broken, Jaquan stated they began
21 seeing smoke coming from the bedroom and the subject left out
22 the back door?

23 A: Yes, ma'am.

24 Q: So in both of those instances, whenever you're
25 interviewing these people, what they're telling you is that he

DEPUTY JASON PATE - CROSS EXAMINATION BY MS. PARROTT

1 is still in the house whenever people start to see smoke;
2 correct?

3 A: Yes, ma'am.

4 Q: Okay. Did you search anybody or pat-search anyone down
5 that was talking to you as part of this investigation?

6 A: No, ma'am. I didn't.

7 Q: Whenever you were called on this case, you were called
8 out and told by dispatch that they were looking at this as an
9 intentional fire; didn't you?

10 A: I was. Yes, ma'am.

11 Q: And that's how you wrote your report up as this was an
12 intentional fire?

13 A: Yes, ma'am.

14 Q: And that was based on what they were being told as well?

15 A: Yes.

16 MS. PARROTT: I have nothing further, Your Honor.

17 THE COURT: Mr. Tucker?

18 MR. TUCKER: Just briefly on redirect.

19 THE COURT: Yes, sir.

20 REDIRECT EXAMINATION

21 BY MR. TUCKER:

22 Q: Deputy Pate, when you spoke to Ms. Paul and her two sons,
23 did they appear to be upset to you?

24 A: Yes, sir, they were.

25 MR. TUCKER: Thank you. I believe that's all I have.

DEPUTY JASON PATE - RECROSS EXAMINATION BY MS. PARROTT

1 THE COURT: Ms. Parrott?

2 RECROSS EXAMINATION

3 BY MS. PARROTT:

4 Q: Officer Pate, if they were so upset and they could not
5 talk with you, would you have not waited to interview them at
6 a later time?

7 A: Yes, ma'am.

8 Q: So they were able to talk with you and communicate fine?

9 A: They were able to talk, yes, ma'am.

10 MS. PARROTT: Thank you, Your Honor.

11 THE COURT: You may step down.

12 MR. TUCKER: And, Your Honor, I would ask if Deputy Pate
13 could be released from his subpoena.

14 THE COURT: Any objection?

15 MS. PARROTT: No, Your Honor.

16 THE WITNESS: Thank you.

17 THE COURT: Sir, you are free to go. Thank you for being
18 here.

19 MR. TUCKER: Your Honor, if we may approach?

20 THE COURT: Yes, sir.

21 (Whereupon, a bench conference is held in the presence of
22 the jury but out of the hearing of the jury as follows.)

23 MR. TUCKER: Your Honor, now might be a good time for
24 just a short break so I can find out where Deputy Gifford is
25 at. He's under a subpoena in the trial upstairs so maybe he's

1 up there. If you will, give me a few minutes to run him down
2 and get him situated.

3 (Whereupon, the bench conference ends.)

4 THE COURT: All right. Ladies and gentlemen, we are
5 going to take a break at this time. Please step to the jury
6 room. Do not discuss the case. Do not discuss the case.
7 I'll get you back out here as quickly as possible.

8 (Whereupon, the jury exits the courtroom at 2:20 p.m.)

9 THE COURT: We'll stand down for a few minutes.

10 (Whereupon, there is a break in the proceedings from 2:21
11 p.m. until 2:34 p.m.)

12 MR. TUCKER: Your Honor, before the jury comes out here,
13 there are a couple of matters I would like to go over just in
14 terms of clarity with regards to the pictures that
15 Investigator O'Hara took. There are about 87 different
16 pictures that were mentioned when the trial began this
17 afternoon. I didn't know what the Court's pleasure was, if
18 you wanted me to go ahead and submit these to be marked as
19 exhibits or whether you just wanted to keep it on disk so they
20 could look at it if they choose to. I certainly didn't know
21 what the Court's pleasure was with that.

22 THE COURT: MS. Parrott, what's your position?

23 MS. PARROTT: Just I guess for clarification, if you're
24 talking about putting them on a disk, you're talking about
25 redacting or taking out the ones that you are not submitting;

1 correct?

2 MR. TUCKER: We can do that. With regards to what's
3 already loaded up here, we can just agree the ones that we
4 take off, but again, in terms of getting that back there if
5 they want to, then it would almost impossible so, we would
6 have to have, I would think, at least a hard copy of the
7 pictures to send back to them.

8 MS. PARROTT: Then I guess it just makes more sense to me
9 to go ahead and mark the pictures.

10 THE COURT: Then mark the pictures and show them on the
11 video screen. Just, you know, make a point -- make a notation
12 for the record or state for the record, you know, what they
13 are viewing on the screen in conjunction with what he's
14 looking at as a hard copy. So ---

15 MR. TUCKER: And it's the State's intention to have
16 Investigator O'Hara just come down and as we're looking at
17 them, just pull them right off the screen. And like I said,
18 when you see what we're doing, we can skip over the ones that,
19 you know, we don't want to look at.

20 THE COURT: Okay. Any objection, Ms. Parrott?

21 MS. PARROTT: I'm not sure I understood that. Okay.

22 MR. TUCKER: They're small pictures. They wouldn't be
23 able to make them out with any clarity.

24 MS. PARROTT: Okay.

25 MR. TUCKER: So what we would be doing is just pulling up

1 the ones that we've agreed to or the ones that we put into
2 evidence at that time and he'll come down and he would be
3 testifying from that angle. He won't have the hard copy in
4 front of him. We'd have these for the jury if they wanted to
5 look at them during deliberations.

6 MS. PARROTT: Okay. I don't think that there was
7 anything on these pictures that was especially ---

8 MR. TUCKER: I saw nothing objectionable, but that's me.
9 You had an opportunity to look at them with your client.

10 MS. PARROTT: Okay.

11 THE COURT: All right. Anything else before I bring the
12 jury out?

13 MR. TUCKER: No, Your Honor.

14 THE COURT: Ms. Parrott, anything further?

15 MS. PARROTT: The knuckles photo that you're fixing to
16 try to get in through ---

17 MR. TUCKER: Right.

18 MS. PARROTT: --- Gifford?

19 MR. TUCKER: There is this one, Your Honor. I let Ms.
20 Parrott take a look at it. This would be the only photo that
21 we would be looking to introduce into evidence. This would be
22 the photo taken by Deputy Gifford when he first encountered
23 Mr. Cades and detained him.

24 THE COURT: All right. Can I see it? I can't -- Ms.
25 Parrott, you got an objection to it?

1 MR. PARROTT: No, Your Honor.

2 THE COURT: Okay. Can we go ahead and mark it?

3 MR. TUCKER: We can.

4 THE COURT: State's Exhibit Number what?

5 MR. TUCKER: The State would so move, Your Honor.

6 THE COURT: What exhibit is this, Madame?

7 THE COURT REPORTER: One.

8 THE COURT: State's exhibit number 1. Mark it on the --
9 that's fine right there.

10 MR. TUCKER: And while we're at it, Your Honor, if I
11 could ask this be made a -- an exhibit. I've not yet moved
12 into evidence. I'll lay a foundation when Investigator O'Hara
13 takes the stand.

14 THE COURT: Have all of these other pictures, 87 of them,
15 been ---

16 MR. TUCKER: They have not, Your Honor. I didn't know if
17 you wanted me to bring them up and let you pre-mark them or
18 you just wanted to let me move them in so she wouldn't have to
19 put but one tag on there.

20 THE COURT: Well, if you just want to put one tag, and
21 there's no way to reference for the record what exact picture
22 you're looking at as they pull them up to look at. So it can
23 be Exhibit 3-A, B, C, D, E, F, G, H, I, J, K, L, M, N, O, P,
24 all the way through, and then AA, BB, CC, DD. So everybody --
25 so the record is clear as to what photographs were being

1 viewed.

2 Ms. PARROTT: And, Your Honor, that would be my point
3 because I understand from Mr. Tucker that he and Investigator
4 O'Hara have gone through these pictures and I have gone
5 through those pictures with my client, but in all honesty,
6 Your Honor, some of those pictures I do believe to be
7 cumulative. Now, Mr. O'Hara or Investigator O'Hara says that
8 he's going to be able to lay a foundation for each one showing
9 something a little bit different.

10 THE COURT: Okay.

11 MS. PARROTT: So obviously, I'm -- I am objecting to them
12 at this time under the -- under the guise that they are
13 cumulative, but with the understanding that they may lay the
14 foundation that makes that go away. But, yes, I think with
15 that being my objection that you do end up having to mark each
16 one individually because I'm not sure that, quite honestly,
17 that some of those pictures they do seem to show quite the
18 same thing to me.

19 THE COURT: Okay. Well, I mean they need to be marked
20 and if you -- however you so desire, you have them entered.
21 However, provided you lay the foundation, but they have to be
22 marked so the record is abundantly clear on what O'Hara is
23 testifying to and what he is looking at so that we have a
24 clear record on that issue. Okay?

25 MR. TUCKER: Okay. She's making out the tags now, Your

1 Honor. You want me to hand them to her so she can affix them
2 now or ---

3 THE COURT: Yes. Let me hold them, Krystal. Let me ask
4 this question. I don't -- Mr. O'Hara -- Investigator, I don't
5 want the stickers affixed to the front. That may cover
6 something that you need for purposes of testifying to. So I
7 am going to ask that the court report place whatever exhibit
8 stickers on the back of them. All right? Any objection to
9 that, Ms. Parrott?

10 MS. PARROTT: No, Your Honor.

11 (Whereupon, the color photographs are marked as State's
12 Exhibit 3-A through 3-JJJJ.)

13 MR. TUCKER: And, Your Honor, there is one other
14 evidentiary matter with regards to the lighter that Deputy
15 Gifford testified to that he took off of Mr. Cades.
16 Obviously, Investigator O'Hara signed the lighter out of
17 evidence and brought it with him today. I would just need
18 Deputy Gifford in terms of laying a foundation to identify it
19 for purposes of how he is in the chain.

20 THE COURT: Okay.

21 MR. TUCKER: I didn't know if you wanted me to maybe mark
22 this State's Exhibit 4 I believe it would be?

23 THE COURT: Ms. Parrott?

24 MS. PARROTT: That's fine.

25 (Whereupon, the lighter is marked for identification as

1 State's Exhibit Number 4.)

2 THE COURT: Are you going to go through all of these with
3 Gifford as well?

4 MR. TUCKER: No, Your Honor. The only photo that I will
5 be attempting to introduce by way of Deputy Gifford would be
6 the single photo with the skinned knuckles.

7 THE COURT: All right. Well, let's go ahead. I can do
8 this while the jury's out here. My law clerk can do it while
9 their doing it. All right. Anything else before I bring the
10 jury out?

11 MR. TUCKER: Not from the State, Your Honor.

12 THE COURT: Ms. Parrott?

13 MS. PARROTT: Nothing, Your Honor.

14 THE COURT: Bring me the jury, please, sir.

15 (Whereupon, the jury enters the courtroom at 2:46 p.m.)

16 THE COURT: Mr. Tucker?

17 MR. TUCKER: Thank you, Your Honor. At this time, the
18 State calls Deputy Mike Gifford to the stand.

19 THE CLERK: Sir, if you will, please go around and place
20 your left hand on the Bible and raise your right hand. Do you
21 swear the testimony you give in this case will be the truth,
22 the whole truth, and nothing but the truth, so help you God?

23 THE WITNESS: I do.

24 THE CLERK: Please be seated and state your full name for
25 the record.

26

DEPUTY MICHAEL GIFFORD - DIRECT EXAMINATION BY MR. TUCKER

1 THE WITNESS: Deputy Michael Gifford.

2 DEPUTY MICHAEL GIFFORD, being
3 first duly sworn, testifies as follows:

4 DIRECT EXAMINATION

5 BY MR. TUCKER:

6 Q: Deputy Gifford, where do you work?

7 A: Florence County Sheriff's Office in the Patrol Division.

8 Q: How long have you been employed by the Sheriff's Office?

9 A: Three and a half years.

10 Q: Prior to that, did you have any law enforcement
11 experience?

12 A: I was a security officer at McLeod.

13 Q: Now, with regards to becoming a deputy, did you have to
14 attend the South Carolina Criminal Justice Academy?

15 A: I did.

16 Q: Did you successfully complete that?

17 A: I did.

18 Q: Now, turning your attention to November the 19th, 2012, in
19 the evening, do you recall if you were on duty?

20 A: I was.

21 Q: Specifically, do you recall responding to a structure
22 fire call that came out over dispatch?

23 A: I do.

24 Q: Do you recall what happened after that?

25 A: While I was in route to the incident location, I was told

DEPUTY MICHAEL GIFFORD - DIRECT EXAMINATION BY MR. TUCKER

1 to be on the lookout for a subject -- a black male subject
2 wearing certain clothes -- I don't remember what the clothes
3 were at this time -- possibly leaving the area, and once I was
4 about to turn on the street, I did observe the subject leaving
5 the area wearing that exact description of clothing.

6 Q: What, if anything, did you do at that point?

7 A: He was initially detained because he was the subject, and
8 ---

9 Q: Let me ask you this, do you recall how close he was in
10 terms of proximity to the structure fire at this point?

11 A: I would be guessing a couple hundred yards.

12 Q: Fairly close then it's fair to say.

13 A: Yes. On the same street, in fact.

14 Q: Okay. Now, once you detained the subject what, if
15 anything, did you do at that point?

16 A: I just -- I recall calling Investigator O'Hara, asking
17 what -- if he was indeed going to be somebody that we needed
18 to talk to. I was told he was. So he was handcuffed, checked
19 for tightness, double locked, transported back to the scene in
20 my patrol car.

21 Q: Now, prior to -- to putting him in your patrol car, did
22 you pat him down for anything?

23 A: I did.

24 Q: Do you recall once you patted him down what, if anything,
25 you found as a result of that?

DEPUTY MICHAEL GIFFORD - DIRECT EXAMINATION BY MR. TUCKER

1 A: A lighter.

2 Q: Okay.

3 MR. TUCKER: Your Honor, if I may approach?

4 THE COURT: Yes, sir.

5 Q: Deputy, I'm handing you what's been marked State's
6 Exhibit 4 and ask if you could look at it and see if you
7 recognize it?

8 A: It's a green lighter.

9 Q: Okay. Now, do you recall once you obtained or retrieved
10 the lighter -- you can stick it back in the bag if want --
11 what you did with it?

12 A: It was turned into evidence.

13 Q: Now, when you say turned into evidence, what's the
14 procedure there?

15 A: The procedure is I actually took the lighter down to the
16 Florence County Detention Center. It was -- I filled out an
17 evidence sheet stating who was turning it in, who I got it
18 from, where I got it from, and then it was actually placed
19 into a secured lockable locker.

20 Q: Okay. Do you know, based on your experience, what
21 happens once it's placed into the locker?

22 A: An evidence custodian will come in the next day or that
23 same day, depending on what time it is, and they will collect
24 it and put it into a larger locked office ---

25 Q: Okay. So that ---

DEPUTY MICHAEL GIFFORD - DIRECT EXAMINATION BY MR. TUCKER

1 A: --- where it's stored.

2 Q: Fair to say that once you put it in that lock-box, it's
3 fairly secure?

4 A: Yes, sir.

5 Q: Now, turning your attention back to when you encountered
6 the individual that you saw that matched the description, were
7 you able to positively identify him at some point?

8 A: As far as his name, no, but he matched the description of
9 the subject that I was supposed to be looking for while in
10 route to the incident location.

11 Q: Okay. Now, in addition to patting him down and
12 retrieving the green lighter, do you recall if you took any
13 pictures of this particular individual?

14 A: I did.

15 Q: Okay. Let me ask you first, do you see the individual
16 you encountered that night here in the courtroom?

17 A: Yes, sir. It's the defendant.

18 Q: Now, you mentioned you took a picture?

19 A: Yes, sir.

20 Q: Okay.

21 MR. TUCKER: If I may approach, Your Honor?

22 THE COURT: Yes, sir.

23 Q: And, Deputy, I'm showing you what's been marked as
24 State's Exhibit 1 and ask if you recognize it?

25 A: Yes, sir.

DEPUTY MICHAEL GIFFORD - DIRECT EXAMINATION BY MR. TUCKER

1 Q: And what is that that you're looking at?

2 A: It's a picture of the defendant's -- the tops of his
3 hands.

4 Q: Okay.

5 MR. TUCKER: Your Honor, at this time, the State would
6 move State's Exhibit 1 into evidence.

7 THE COURT: Any objection?

8 MS. PARROTT: No, Your Honor.

9 THE COURT: State's Exhibit Number 1 admitted into
10 evidence without objection.

11 MR. TUCKER: And I would also at this point, since Deputy
12 Gifford has the picture in front of him, if we could raise the
13 screen and we could have that picture published to the jury.

14 THE COURT: All right.

15 (Whereupon, State's Exhibit Number 1 is shown on the
16 screen and published to the jury)

17 Q: And, Deputy Gifford, you have the picture in front of
18 you. Could you describe for the folks of the jury what that
19 photo represents in terms -- you said it was the defendant's
20 hands?

21 A: Yes, sir.

22 Q: Could you describe what appears to be injuries to the
23 right hand?

24 A: Yes, sir. It appears he has at least four bloody
25 knuckles, two on the top, two on the bottom, and also the left

DEPUTY MICHAEL GIFFORD - DIRECT EXAMINATION BY MR. TUCKER

1 hand has at least one knuckle where the skin has been removed.

2 Q: Okay. And no doubt -- no doubt that was a picture taken
3 of the defendant's hands that evening?

4 A: Yes, sir.

5 MR. TUCKER: You can put that down.

6 Q: Deputy Gifford, did you have any other interaction with
7 this case other than detaining Mr. Cades and taking the
8 picture and taking the lighter?

9 A: And transporting to the detention center.

10 Q: Okay. Beyond that, did you have any other involvement
11 with this particular case?

12 A: No, sir.

13 MR. TUCKER: I don't believe I have any additional
14 questions, Your Honor.

15 THE COURT: Cross examination?

16 CROSS EXAMINATION

17 BY MS. PARROTT:

18 Q: Officer Gifford, you were told that you were responding
19 to an intentionally set fire; is that correct?

20 A: I don't believe I was told that at the time. It was just
21 a structure fire.

22 Q: Just a structure fire? Okay. And then you were told to
23 look out for Mr. Cades?

24 A: I was told to look out for a bravo mike wearing a
25 specific clothing description. I don't believe we had a name

DEPUTY MICHAEL GIFFORD - CROSS EXAMINATION BY MS. PARROTT

1 at that time.

2 Q: Okay. The specific clothing description, did it match
3 what Mr. Cades wore?

4 A: It did.

5 Q: Okay. Did you see any others around in that?

6 A: No, ma'am. He was the only person I encountered.

7 Q: So he's the only person that you were looking for really;
8 right? Once you found him, you didn't look for anyone else?

9 A: Not once he matched the description. No, ma'am.

10 Q: And you didn't talk with anybody else who was on scene?

11 A: No, ma'am.

12 Q: Okay. How often -- how long have you been a law
13 enforcement officer now?

14 A: Three and a half years with the Sherriff's Office.

15 Q: Is this the only lighter you've ever pulled off of
16 somebody?

17 A: No, ma'am.

18 MS. PARROTT: Nothing further.

19 THE COURT: Any redirect?

20 MR. TUCKER: No redirect, Your Honor. I would ask that
21 Deputy Gifford be released so he can head up to the eleventh
22 floor.

23 THE COURT: Any objection?

24 MS. PARROTT: No, Your Honor.

25 THE COURT: Sir, you're excused from having any further

INVESTIGATOR PAT O'HARA - DIRECT EXAMINATION BY MR. TUCKER

1 responsibilities in this courtroom. Have a good day.

2 THE WITNESS: Thank you.

3 MR. TUCKER: Your Honor, at this time the State calls
4 Investigator Pat O'Hara.

5 THE CLERK: Please go around and place your left hand on
6 the bible and raise your right hand. Do you swear the
7 testimony you give in this case will be the truth, the whole
8 truth, and nothing but the truth, so help you God?

9 THE WITNESS: I do.

10 THE CLERK: Please be seated and state your full name for
11 the record.

12 THE WITNESS: Patrick James O'Hara.

13 INVESTIGATOR PAT O'HARA, being
14 first duly sworn, testifies as follows:

15 DIRECT EXAMINATION

16 BY MR. TUCKER:

17 Q: Now, unlike the two colleagues that testified before you,
18 you are not wearing a uniform, Investigator O'Hara. Could you
19 tell the ladies and gentlemen of the jury where you work?

20 A: Sure. I work for the Florence County Sheriff's Office.
21 My current duties are -- is as an investigator and I deal with
22 fire and explosives and auto theft.

23 Q: How long have you been working for the Sheriff's Office?

24 A: I've been with the Sheriff's Department thirteen years.

25 Q: Prior to coming to work for the Sheriff's Office, did you

INVESTIGATOR PAT O'HARA - DIRECT EXAMINATION BY MR. TUCKER

1 have any other law enforcement experience?

2 A: I did.

3 Q: What was that?

4 A: I worked at Pamplico Police Department for three years.

5 Q: Now, you mentioned that you are an investigator now. Do

6 you recall what year that was that you became an investigator?

7 A: 2007.

8 Q: Specifically when you moved to investigations, were you

9 assigned any particular area of expertise?

10 A: Roughly end of 2007, 2008, I was assigned as the back-up

11 arson investigator. And then in 2008, I was assigned the

12 full-time arson and explosive investigator.

13 Q: Now, in addition to the normal training that one has to

14 have to become a certified police officer in South Carolina,

15 going to the academy so to speak, do you have any additional

16 training and certifications with regards to your specific area

17 of expertise?

18 A: Yes, I do.

19 Q: Could you tell the ladies and gentlemen of the jury a

20 little bit about it?

21 A: In 1998, I attended my first arson class. Then when I

22 came to work for the Sheriff's Department, I was a patrol

23 deputy, then a patrol sergeant, and in 2008 I went back to a

24 refresher arson class, and then in 2009 I then became a

25 certified fire and explosive investigator where I am still

INVESTIGATOR PAT O'HARA - DIRECT EXAMINATION BY MR. TUCKER

1 current today.

2 Q: Could you explain a little bit about what goes into and
3 what kind of training you have to have to become a certified
4 arson investigator?

5 A: You have to attend yearly training sessions along with
6 quarterly training sessions through two different
7 organizations. One is South Carolina IAAI, which is
8 international Association of Arson Investigators, and then the
9 next is NAFI, National Association of Fire Investigators,
10 where I'm a current member and that's where I hold my CFEI.

11 Q: Now, have you attended any sort of training sessions
12 recently?

13 A: Yes, we just -- I just returned from Myrtle Beach where
14 we were at a joint conference with North and South Carolina
15 IAAI.

16 Q: Now, in addition to your considerable training, how many
17 arson cases would you ball-park you've worked since becoming
18 the lead investigator?

19 A: I've worked roughly right at about 100 fire cases.

20 Q: Now, with regards to those fire cases, have they all
21 involved arson?

22 A: No, they have not.

23 Q: Could you tell the ladies and gentlemen of the jury about
24 some of the other cases not involving arson?

25 A: My primary duties is I do origin and cause, is when the

INVESTIGATOR PAT O'HARA - DIRECT EXAMINATION BY MR. TUCKER

1 fire department cannot determine the origin or cause, they
2 then call me out and that's my primary function is to
3 determine where it started and why it started. I investigate
4 anything from accidentally set fires, intentionally set fires,
5 fires which are undetermined which we just cannot determine
6 where it happened, and/or act of nature, lightning strikes, or
7 just something God did.

8 Q: Now, with regards to when you are assigned a case in
9 terms of being an arson investigator, what typically -- where
10 do you start at initially?

11 A: First thing happens is I have to be called out by
12 dispatch or from the deputy who's on scene, and basically they
13 tell me where they're at and that they need me to come out to
14 the fire scene, that it needs to be further -- the fire
15 department says it needs to be further investigated.

16 Q: Now, at that point, do you go ahead and make your mind up
17 that it's arson?

18 A: No, I do not.

19 Q: Okay. What typically do you do once you get the request
20 to respond?

21 A: Once I get on scene, I meet with the deputies. The
22 deputies then tell me, one, what fire department unit
23 responded, who is my point of contact with the fire
24 department, and then if there is any witnesses or if there is
25 the homeowner still there at the time of the fire.

INVESTIGATOR PAT O'HARA - DIRECT EXAMINATION BY MR. TUCKER

1 Q: Okay. Now, specifically I want to direct your attention
2 to November the 19th, 2012. Were you working as an arson
3 investigator with the Florence County Sheriff's office?

4 A: I was.

5 Q: Do you recall being assigned a structure fire in the
6 latter part of that evening?

7 A: I do.

8 Q: Do you recall what you did when you were first notified
9 and requested to come out?

10 A: I was notified to respond to [REDACTED] Lot [REDACTED] South Jeffords
11 Street ---

12 Q: And let me stop you there. Whereabouts is that? Is
13 that in Florence County?

14 A: That is in Florence County.

15 Q: And for those who probably don't know Florence County as
16 well as others, could you tell the ladies and gentlemen of the
17 jury roughly where that is in terms of Florence County?

18 A: To give you a good general from the airport, it's north
19 about two miles from the airport.

20 Q: Okay. Now, once you responded out, what, if anything,
21 did you do?

22 A: I then met with Deputy Pate. Deputy Pate advised me that
23 he was out at -- he was with the structure fire, that I needed
24 to meet with Chief John Delung of Windy Hill Fire Department
25 -- he was the Incident Commander -- and that there was three

INVESTIGATOR PAT O'HARA - DIRECT EXAMINATION BY MR. TUCKER

1 witnesses to the fire, Ms. Rachel Paul, and her two sons.

2 Q: Now, do you recall after being brief by Deputy Pate,
3 what, if anything, you did then?

4 A: I then when and spoke for a few minutes with Chief John
5 Delung. They were still actively battling this fire. They
6 had -- when I got on scene, they barely had it under control.
7 They were still working very intensely in the master bedroom
8 or the back bedroom, where they were focusing all their
9 efforts to. So they were still physically working as hard as
10 they could to get this fire out.

11 Q: Let me ask you in terms of what you saw when you arrived
12 in terms of the fire being -- was it completely engulfing the
13 trailer or what's your opinion with regards to that?

14 A: By the time I got there, the fire had already been
15 knocked down and the only thing they were doing was flipping
16 things, trying to get to the mop -- what they consider mop-up,
17 which is moving things around, trying to get to the bottom
18 side of the fire debris.

19 Q: Why do they do that?

20 A: Because there's still fire going underneath, just like if
21 you were to burn something in your yard, i.e. leaves, you
22 still have that fire underneath that protected, so that's what
23 they're doing there. Basically what we call it is rolling
24 everything over to put another layer of water on it.

25 Q: Now, once you made contact with Chief Delung, what, if

INVESTIGATOR PAT O'HARA - DIRECT EXAMINATION BY MR. TUCKER

1 anything, did you do at that point?

2 A: After talking to him and him telling me that they're
3 still working on this, then I went and spoke with Ms. Mumford
4 and her two sons.

5 Q: Do you recall where they were in relation to the
6 proximity to the fire at this point?

7 A: Yes. Ms. Paul was at a house right next door to hers.
8 She was sitting in the living room. It was cold out that
9 night. It was roughly about 47 degrees, so she was bundled.
10 The lady that had her had a blanket around her along with --
11 and she was cradling her baby.

12 Q: Do you recall what time of evening this was
13 approximately?

14 A: I want to say I think I got the call right around maybe
15 ten thirty, eleven o'clock, somewhere right in there.

16 Q: Now, prior to making contact with her, in terms of the
17 trailer, was it completely gone or was there -- was anything
18 salvageable?

19 A: The little bit that I could see that night, it looked
20 like it was a total salvage -- or total gone, but I could not
21 really make my full determination until I got inside.

22 Q: I understand. Now, when you encountered Ms. Paul for the
23 first time at a neighbor's house, what did you do?

24 A: I then got a recorded statement from Ms. Paul while she
25 was bundling up her baby, trying to, you know, get themselves

INVESTIGATOR PAT O'HARA - DIRECT EXAMINATION BY MR. TUCKER

1 back warm. I then talked to her and asked her if she was
2 capable to give me a statement, and at that time Ms. Paul gave
3 me a statement.

4 Q: Now, even though she was capable, I'm assuming she
5 indicated that she was capable of giving the statement?

6 A: Yes.

7 Q: Now, did she appear upset though given the trauma of the
8 evening?

9 A: She did appear to be upset.

10 Q: Now, you mentioned she was cradling a child?

11 A: Yeah. I believe it was a one-year-old at the time.

12 Q: Okay. Now, once she gave you a statement, what did she
13 tell you happened?

14 A: She told me that her and Mr. Cades were out on Dargan
15 Street, said they got into a verbal argument while out on
16 Dargan Street.

17 Q: Now, when you say Mr. Cades, to whom are you referring?

18 A: Mr. Gowndell Cades, the defendant.

19 Q: Okay. Now, continue, please.

20 A: She said on their ride home, they were continuing arguing
21 the whole time. She said that when they got home, they were
22 still arguing, just this time she felt that they were arguing
23 -- they went to the back bedroom to argue and by her account
24 it was a heated argument. She told me they were arguing.
25 Then at one point, Mr. Cades tells her that he wants his \$10

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1 and that he would leave. Ms. Paul does not -- from my
2 understanding, does not give him any money and she -- at some
3 point, she leaves the bedroom and then she tells me in the
4 taped statement, roughly ten minutes later Mr. Cades exits the
5 bedroom.

6 Q: Okay. Did she mention if anything unusual happened
7 shortly after Mr. Cades left the bedroom?

8 A: Yes. She said when Mr. Cades exited the bedroom and went
9 out the back door, which is the closest to their room, she
10 looked back and could see smoke and then also fire.

11 Q: Okay. Now, as an arson investigator, when you're taking
12 this kind of statement, what, if anything, are you looking
13 for?

14 A: I'm looking to see if there's any visible injuries on the
15 victim, to see if she's got any kind of burn marks, soot marks
16 where they were inhaling the smoke, to see if there is any
17 visible injuries.

18 Q: Now, what's the nature or what's the purpose of trying to
19 make that kind of observation?

20 A: Two things. One is, let you know, one, when they tell me
21 the statement that they were trying to knock the fire out, do
22 they have the injuries to indicate this. Second, how long
23 duration were they in the fire. As you're sitting in a fire,
24 you -- as stuff's putting off, it's putting off smoke, toxin,
25 and other stuff, little debris, and as you start inhaling it,

INVESTIGATOR PAT O'HARA - DIRECT EXAMINATION BY MR. TUCKER

1 it will start getting around your mouth and your nose.

2 Q: Okay. Based on what you saw at that point, was what she
3 was telling you consistent with what you were seeing in terms
4 of her physical state?

5 A: Yes, it was.

6 Q: All right. Now, after she tells you saw fire and she was
7 trying to knock it down, what, if anything, did she say
8 happened thereafter?

9 A: She said that they were unable to get the fire knocked
10 down and that at one point one of her sons she told me grabbed
11 her and got her out the house.

12 Q: Now, after speaking with her, were you able to make
13 contact with her two sons?

14 A: I was.

15 Q: Okay. Do you recall what, if anything -- let's begin
16 with Jaquan Mumford, told you?

17 A: Jaquan Mumford was outside. He was outside near the
18 ambulance. I then went and spoke with him and got a recorded
19 statement. He told me the same thing that -- him and his --
20 that Mr. Cades and his mother came home, they were fighting.
21 He said that they went to the master bedroom and he could hear
22 it was a very heated argument. A few minutes later, he says
23 his mom came out the bedroom and then it wasn't long after
24 that Mr. Cades then came out the bedroom and went out the back
25 door.

INVESTIGATOR PAT O'HARA - DIRECT EXAMINATION BY MR. TUCKER

1 Q: Okay. Now, when you're talking to him, are you making
2 this same kind of visual inspection that you did with Ms. Paul
3 with regards to any possible injuries?

4 A: I am.

5 Q: Based on what you saw, was what he was telling you
6 consistent with his physical state?

7 A: Yes, he had no -- nothing on him.

8 Q: Now, with regards to Ms. Paul and now Jaquan Mumford,
9 both of whom you've spoken to, at any time during your
10 interaction with them, did you pat any or either of these
11 subjects down?

12 A: No, I did not.

13 Q: Why not?

14 A: We don't pat victims down and at this time I knew that
15 they were victims. I had no other indication to prove
16 otherwise. So we typically do not pat victims down.

17 Q: Okay. After speaking to Jaquan Mumford, did you speak to
18 his brother, Jarrell?

19 A: I did.

20 Q: Do you recall what he told you?

21 A: Jarrell told me about the same thing as his brother.
22 That they were inside. Mr. Cades and his mom came home
23 fighting, went back into the bedroom. He said don't know how
24 long they were back there. A few minutes later, his mom comes
25 out and then he didn't really give me a time frame, but he

INVESTIGATOR PAT O'HARA - DIRECT EXAMINATION BY MR. TUCKER

1 said Mr. Cades came out also and went out the back door, and
2 when he looked back that he also could see the smoke and the
3 fire.

4 Q: Okay. Did you pat him down?

5 A: No, I did not.

6 Q: Why not?

7 A: Typically, they were being presumed as being victims and
8 we didn't have any reason to pat them down.

9 Q: Now, with regards to Jarrell Mumford making the same
10 visual inspection that you made of his brother and his mom,
11 was what his physical state consistent with what he was
12 telling you?

13 A: Yes, it was.

14 Q: Now, after you've spoken to these three individuals,
15 what, if anything, did you do?

16 A: Because the fire department was still battling and
17 working on the fire trying to get it out, we typically leave
18 and leave the fire department there. The reason we do it is
19 to let them do their job. They could have been on scene
20 another two to three hours, and for me to do my job, I need
21 some kind of light source. So that would be them keeping
22 there another four to five hours for me to do my job. So when
23 they got done, I told them to put tape around the house, and
24 it's basically fire department tape that says fire, please
25 keep out, and that tape was buried around the house.

INVESTIGATOR PAT O'HARA - DIRECT EXAMINATION BY MR. TUCKER

1 Q: Now, after leaving, did you do anything else in addition
2 to the investigation that evening?

3 A: It wasn't a short time later after I left the scene that
4 I was notified, I want to say by Deputy Gifford, that they had
5 Mr. Cades detained.

6 Q: Okay. Did Deputy Gifford mention to you that he had
7 taken a lighter off of Mr. Cades' person?

8 A: I do not recall that.

9 Q: Subsequently, did you learn that there was a lighter
10 taken off of Mr. Cades?

11 A: When I read his reports many days later.

12 Q: Okay. Now -- and coming here today, did you retrieve
13 anything out evidence?

14 A: I did. I retrieved a lighter that Mr. Gifford put into
15 evidence.

16 MR. TUCKER: Okay. And, Your Honor, if I may approach?

17 THE COURT: Yes, sir.

18 Q: Investigator O'Hara, I want to see if you recognize
19 what's been marked as the State's Exhibit 4?

20 A: That is the lighter that I took out of evidence.

21 Q: Okay.

22 MR. TUCKER: And, Your Honor, at this time the State
23 would move State's Exhibit 4 into evidence.

24 THE COURT: Any objection?

25 MS. PARROTT: No, Your Honor.

INVESTIGATOR PAT O'HARA - DIRECT EXAMINATION BY MR. TUCKER

1 THE COURT: Without objection, State's Exhibit 4 admitted
2 into evidence.

3 Q: Now, Investigator O'Hara, going back to after you spoke
4 to Deputy Gifford and then after that, what, if anything, did
5 you do?

6 A: I advised them due to it was a short time frame from when
7 the fire and everything happened, I then advised them to go
8 ahead and place Mr. Cades under arrest for Arson 3rd, and that
9 I would be down there in the morning to secure the warrants
10 and also talk to Mr. Cades.

11 Q: Okay. Now, let's jump ahead until you go out to the fire
12 I'm assuming to further your investigation?

13 A: I do. On 11/20, which is the very next day, I then went
14 back to [REDACTED] South Jeffords Street, Lot [REDACTED], where I conducted my
15 origin and cause investigation.

16 Q: Now, what is the very first thing when you're assessing
17 the scene as an arson investigator that you do?

18 A: First we do is we walk around the scene, look for any
19 physical hazards, hazards that are going to hurt me when I'm
20 trying to do my job, and then we look for any chemical
21 hazards, bio hazards, you know, anything that is still off-
22 gassing that could be toxic towards me.

23 Q: Did you find anything with regards to this scene?

24 A: On the outside of the trailer, no.

25 Q: Now, after you make that assessment, what, if anything,

INVESTIGATOR PAT O'HARA - DIRECT EXAMINATION BY MR. TUCKER

1 did you do?

2 A: The next thing we do is we then start photographing the
3 entire scene.

4 Q: Okay. Did you do that in this case?

5 A: I did.

6 Q: Do you recall how many pictures you took?

7 A: I took roughly right at about 100 pictures.

8 Q: Okay.

9 MR. TUCKER: And, Your Honor, at this time I would ask if
10 I could approach the witness and show him what's been marked
11 as State's Exhibit 3 and all the attachments thereto.

12 THE COURT: Yes, sir.

13 Q: If you would take a look at those?

14 (Whereupon, there is a pause in the proceedings as the
15 witness examines the 88 photographs.)

16 Q: Investigator O'Hara, do you recognize those pictures?

17 A: I do.

18 Q: What are they?

19 A: These are the pictures that I took of the fire scene on
20 the 20th of November.

21 Q: Now, do those pictures fairly and accurately represent
22 the scene as you saw it thereafter?

23 A: Yes, it does.

24 MR. TUCKER: Your Honor, at this time the State would
25 move those photos into evidence.

INVESTIGATOR PAT O'HARA - DIRECT EXAMINATION BY MR. TUCKER

1 THE COURT: Any objection?

2 MS. PARROTT: Your Honor, objection on the basis of
3 cumulative.

4 MR. TUCKER: And obviously, Your Honor, the State's
5 position is until Office O'Hara testifies we don't know -- I
6 think that's a bit premature. Obviously, Investigator O'Hara
7 took them for a reason and I think that we ought to let the
8 jury hear why and how it furthers his investigation.

9 THE COURT: I'll admit the photographs subject to defense
10 counsel's objection. They are admitted.

11 (Whereupon, State's Exhibits 3-A through 3-JJJJ, the 88
12 photographs, are admitted without objection.)

13 MS. PARROTT: Thank you, Your Honor.

14 Q: Investigator O'Hara, I want to ask you, did you prepare
15 any sort of a CAD rendering or a CAD drawing with regards to
16 the scene?

17 A: Yes, sir. After we photograph and everything, I then
18 measure the trailer, not to scale, I get the best measurements
19 I can, and then I go back to a -- what -- I have a 3-D home
20 drawing design on my computer, and then I sit down and draw
21 out the structure.

22 Q: Did you do one in this particular case?

23 A: I did.

24 MR. TUCKER: If I may approach, Your Honor?

25 THE COURT: Yes, sir.

INVESTIGATOR PAT O'HARA - DIRECT EXAMINATION BY MR. TUCKER

1 Q: And I want to show you what's been marked as State's
2 Exhibit 2 and ask if you recognize it?

3 A: Yes, I do.

4 Q: And what is it of?

5 A: This is a not-to-scale drawing of [REDACTED] South Jeffords
6 Street.

7 MR. TUCKER: Your Honor, at this time the State would
8 move State's Exhibit 2 into evidence.

9 THE COURT: Any objection:

10 MS. PARROTT: Yes, Your Honor.

11 THE COURT: Can I see the exhibit? Can y'all approach?

12 (Whereupon, a bench conference is held in the presence of
13 the jury but out of the hearing of the jury as follows.)

14 THE COURT: What's your objection?

15 MS. PARROTT: Your Honor, there's been nobody that's
16 testified about what the locations of the bedrooms are so
17 that's simply conjecture based on what he's seen.

18 MR. TUCKER: Certainly, I think based on his
19 investigation, Your Honor, he can testify what the placement
20 was with regards to where the bedrooms are. It's not like it
21 was a maze that got set fire and he's having to reconstruct I
22 mean.

23 THE COURT: That's subject to your objection.

24 MS. PARROTT: Okay. Thank you, Judge.

25 (Whereupon, the bench conference ends.)

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1 THE COURT: Over defense counsel's objection, admitted.

2 Q: Now, Investigator O'Hara, I want to go back to -- you're
3 out. You're about ready to make your outside preliminary
4 assessment. You're about to enter the structure. Is that
5 what you testified to?

6 A: After we do our outside assessment, we then before -- we
7 do a quick also assessment on the inside to see if there's any
8 harm that's going to -- physical or chemical harms inside the
9 trailer.

10 Q: Okay.

11 MR. TUCKER: And at this time, Your Honor, I would ask
12 that the screen be put up and Investigator O'Hara step down
13 and we walk through the photos that he took as he's entering
14 and in furtherance of his investigation that's been admitted
15 into evidence.

16 THE COURT: All right.

17 MR. TUCKER: So we can keep these straight.

18 (Whereupon, the photographs in evidence are shown on the
19 screen to the jury.)

20 Q: Investigator O'Hara, can you tell the ladies and
21 gentlemen of the jury what we're looking at there?

22 A: What we're looking at, this is -- because I didn't know
23 what side they used as the front and back, I labeled this as
24 side A.

25 THE COURT: Hold on a minute. According to the photos

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1 that were admitted into evidence, what exhibit is that, Mr.
2 Tucker?

3 MR. TUCKER: This is 3-A, Your Honor. I'm sorry.

4 THE COURT: All right. Please note for the record as you
5 ask him -- ask Investigator O'Hara questions about various
6 photos that it is noted for the record what exhibits he's
7 referring to. All right?

8 MR. TUCKER: Yes, sir.

9 THE COURT: Thank you.

10 MR. TUCKER: And for the record, Your Honor, this is 3-A.

11 THE COURT: Thank you.

12 A: In 3-A, what you're seeing is -- I deemed this to go
13 ahead and be the front side where I'm going to start my
14 initial investigation. I determined that this would be the
15 best door for me to go inside the trailer and exit the trailer
16 when necessary. This picture also shows you the fire patterns
17 here along the metal. As the fire starts progressing this way
18 towards -- towards the other end of the trailer, see, you see
19 different outlooks on the trailer of different burn patterns
20 and as it's starting -- the fire is starting to go from this
21 way to the opposite end of the trailer.

22 Q: Now, where you were pointing and we can clarify that a
23 little bit later, but you say it was down on this end?

24 A: This end, if you look at this as the front, this is what
25 I deemed to be the front door, this would be the master

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1 bedroom right towards this end, and then this end would be
2 also considered the living room and then that is the kitchen
3 and then further back this way would be the living and the
4 other bedroom.

5 Q: So based on your assessment of that photo, it appears as
6 if the fire started in the master bedroom?

7 A: No. This just shows -- you can't determine that at this
8 time. All it's showing is that we definitely got fire moving,
9 which would be from my right to left in this pattern.

10 Q: Gotcha.

11 MR. TUCKER: (To screen operator) If we could advance
12 that, please? 3-B?

13 Q: And I'm showing you what's been marked as State's Exhibit
14 3-B.

15 A: State's exhibit 3-B is a better picture of -- now, this
16 is the bedroom. This is where the fire department had to pull
17 out to get in to help extinguish. This is more -- this would
18 be about right where the closet would be so you get another
19 burn pattern of this area and you see over here you got a
20 ventilation effect and that's where the smoke and everything
21 is trying to escape from the trailer. Again, this is a
22 picture of the -- of the door that I entered and exited from.

23 Q: Okay.

24 MR. TUCKER: And if we could advance to the next?

25 Q: And showing you what's been marked State's Exhibit 3-C.

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1 A: 3-C is now pulling more this way and as you take
2 pictures, we then crop more of trailer down now towards where
3 you see the kitchen now starting to bring in more, and you
4 start seeing more of the ventilation effects. The reason --
5 and this window, why it's melted out, is this is what we call
6 a ventilation. The fire vented from this window and when you
7 heard the witnesses testify they saw fire coming from this,
8 this was a ventilation effect and that's why you have this
9 damage up around here.

10 Q: Now, is there any significance to that in and of itself
11 regarding the ---

12 A: Just showing the ventilation and how the fire vented and
13 how it was still progressing, still searching, still
14 maneuvering.

15 Q: All right.

16 MR. TUCKER: 3-D, advance it.

17 Q: And we're looking at what's been marked as State's
18 Exhibit 3-D.

19 A: This is now you're starting to move into -- into the
20 living room. As you see, you got more burn patterns here as
21 the fire is progressing. You now got part of the window and
22 you start to see more ventilation effects where the window was
23 melted and you have fire shooting out of this window.

24 Q: Okay. No doubt again based upon what you testified ---

25 A: The fire's still progressing in this fashion from right

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1 to left.

2 Q: Okay.

3 MR. TUCKER: And if we could look at what's been marked
4 State's Exhibit 3-E.

5 Q: Next photo?

6 A: This is just giving you a better picture. This would be
7 the living room area and it's just giving you a better picture
8 of how the fire vented out of this window and as you can see,
9 the fire is starting -- now here it was started -- it was at
10 the bottom and now you start to see the patterns as it is
11 starting to stay up high because now as you move down, the
12 smoke and heat is still built up in the top and it hasn't
13 dropped down to put any fire patterns along this wall.

14 Q: And again, is this consistent with your earlier
15 assessment of moving right to left?

16 A: Yes, it is.

17 Q: Okay.

18 MR. TUCKER: And if we could see what's been marked as
19 State's Exhibit 3-F?

20 A: And this is just a good overall shot of what I saw that
21 morning. And what you see here is still you got your fire
22 moving from right to left and as you could see, it's coming
23 down and then it starts coming back up and from the
24 ventilation effects. So all you see is fire moving from right
25 to left.

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1 Q: Okay.

2 MR. TUCKER: And if we could look at what's been marked
3 as State's Exhibit 3-G?

4 A: This is showing that window again and it's showing how
5 only thing you got is a little bit of smoke release here, and
6 that's showing that the fire never made it really past here
7 down to this end.

8 Q: Any idea what could have caused it not to progress?
9 Would it be fire department intervention at this point or is
10 the fire running out of fuel?

11 A: No. The fire is not running out of fuel. This would be
12 about the time that the fire department arrived and they're
13 slowly starting to put water on this.

14 Q: Okay.

15 MR. TUCKER: If we could look at next photo, what's been
16 marked as State's Exhibit 3-H?

17 A: Again, you got the more ventilation effects here. You
18 got smoke and then as you start seeing the smoke stopping up
19 here. So that was a good significance to see, and you'll see
20 more on the inside of where it's quit venting so that means
21 the heat transfer is not getting that far yet.

22 Q: Okay. What -- explain -- what would cause that for it to
23 ---

24 A: That's caused that it just hasn't found an escape route.
25 It's not hot enough. There's not enough soot yet and it just

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1 hasn't escaped yet from this end of the trailer.

2 MR. TUCKER: And if we could look at the next photo,
3 what's been marked State's Exhibit or State's Evidence 3-I?

4 A: Again, you got -- this would be a bathroom window. this
5 was open and that's why you have this, and that is the only
6 area.

7 Q: Okay. And again, this is where the fire department was
8 working?

9 A: It had -- yeah. This had leaked past so it didn't have
10 to get -- try to get escape. This was already open. So I
11 mean it's -- it's a bathroom fan so it just automatically
12 opened.

13 MR. TUCKER: And if we could look at the next what's been
14 marked State's Exhibit 3-J?

15 A: This is just the end of the trailer. You can see you got
16 just a little bit showing where it's barely -- it's creeped
17 down to this end.

18 Q: And I know we're getting ahead of ourselves, but what is
19 on this end of the trailer down here since we're looking at
20 it?

21 A: This would have been a bedroom at this end of the trailer
22 and this would be the front, the tongue, and you've still got
23 the fire line that's still holding it up.

24 MR. TUCKER: And if we could take a look at what's been
25 marked as State's Exhibit 3-K, next photo?

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1 A: This is what I considered now -- side -- this was A, that
2 was B. This is now side C, and side C you're just seeing how,
3 up until here you've got the power poles so what we looked,
4 you got -- it did have active power going to it fed by
5 Progress Energy.

6 Q: Is that important to your investigation?

7 A: It is. What we look for is, you know, one, did this
8 house have power going to because that can be an effect.
9 Something could have happened. So we do want to know, okay,
10 did it have active power going to it? Was there a meter in
11 it? Did the meter have what they call the yellow tab, which
12 is if you have service disconnected, instead of pulling your
13 meter now, they put the tabs in it. So that's significant in
14 that this house did have active power.

15 Q: Okay.

16 MR. TUCKER: And if we could look at the next photo,
17 what's been marked as State's Exhibit 3-L?

18 A: This is a long shot now. Now you're starting to look
19 back and you're starting to see this would have been another
20 door that would go into it. These two were bedrooms and now
21 you start to see more of the fire on this side also where it
22 had fuel. This are all ventilation effects here, because you
23 can see the fire never really got progressed to this far.
24 That's why these two windows are intact and that's why you
25 start to see everything in here.

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1 Q: Okay.

2 MR. TUCKER: If we could look at the next photo, what's
3 been marked State's Exhibit 3-M?

4 A: This is a shot here of showing more of the damage. This
5 is still very significant in fire investigation power, but in
6 here we're looking more at the door to see that you got the
7 ventilation effects, to see, okay, this door is gone, it
8 vented, and that's what we're -- that's what this picture is
9 representing.

10 Q: Okay.

11 MR. TUCKER: And if we could look at the next photo,
12 what's been marked State's Exhibit 3-N?

13 A: And this is just an onside view. So what I'm doing is
14 every time I move taking pictures, I'm moving down and the
15 camera -- I'm back far enough where I'm just not focusing on
16 one little inch, I'm focusing on as many feet as I can. And
17 what I'm trying to do is incorporate is each time we go down
18 is to keep tying in that I'm still at the same trailer, I
19 haven't moved. Nothing else has come into effect and now
20 you're starting to see more of the effects here of your
21 windows missing, an air conditioner still sitting there. So
22 that tells me that, you know, there wasn't too much damage
23 here that so the air conditioner would be sitting here.

24 Q: Okay. And if I could direct your attention to the bottom
25 left-hand corner, those two openings at the bottom of the

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1 trailer. Could you explain what those are?

2 A: That was the underpinning that had melted away and just
3 due to heat and that's common in these kind of trailer fires.

4 Q: In and of itself, does that tell you anything in terms of
5 where the fire started?

6 A: No. That just shows that -- all this tells me is you can
7 see somehow some debris got out here and it just melted it.

8 Q: Okay.

9 MR. TUCKER: And if we could look at the next photo,
10 what's been marked State's Exhibit 3-O?

11 A: So now we're back -- so now we've now got more
12 incorporated into this back bedroom. So now you're starting
13 to see more lines here and there's a better picture, but as
14 you start seeing the lines, everything's starting to come back
15 to this bedroom. This is the kitchen. This is where it had
16 an exhaust fan over the stove, and that went away and melted
17 pretty quick, which that's why you have the drop down and then
18 you see more of the windows melted and gone away.

19 MR. TUCKER: And if we could take a look at what's been
20 marked as State's Exhibit 3-P?

21 A: And now this is that far in. This is the master bedroom
22 where the fire is. Again, you're still showing where the fire
23 is venting out of these two windows. This one a lot more than
24 this one, but it still shows your fire progression is going in
25 this direction.

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1 Q: Now, as you're taking these pictures and you're
2 conducting your investigation from the outside only, are you
3 able to draw any sort of conclusions at this point?

4 A: I'm starting to look at everything that's pointing to it.
5 What we're looking at is patterns, is just on the outside
6 looking at the metal that we need to concentrate all our
7 efforts into this area.

8 Q: Okay.

9 MR. TUCKER: Now, if we could look at the next photo,
10 what's been marked State's Exhibit 3-Q?

11 A: This is just a long shot for me at this far corner, and
12 basically what this picture represents more is you're seeing
13 the lines. And these are heat lines from the inside and
14 you'll see better, but these are the lines showing from the
15 metal coming back in to this way, and you see where it -- some
16 of the fire and smoke vented out of here out of one of the
17 vents.

18 Q: Okay.

19 MR. TUCKER: And if we could look at the next photo,
20 what's been marked State's Exhibit 3-R?

21 A: The same thing, the only difference we had a little bit
22 more shadowing effect than what I wanted, but it's still -- it
23 shows significance for us as, you know, we're coming back and
24 everything's coming back to this bedroom. It's a little bit
25 more closer up to see some patterns here and to look at the

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1 patterns here at this window.

2 Q: And what, if anything, are those telling you?

3 A: It's telling me that this area has had the most fuel

4 source and another picture on the inside will show why.

5 You'll see -- you see a lot of this damage here.

6 Q: Now, when you say fuel source, for me and for the ladies

7 and gentlemen of the jury, what does that mean?

8 A: A fuel source is anything that is combustible material,

9 anything that will sustain fire and hold fire for a long

10 progression, and when you get inside, you'll start seeing the

11 fuel sources inside this bedroom.

12 MR. TUCKER: And if we could take a look at what's been

13 marked as State's Exhibit 3-S?

14 A: Again, this is still giving you a better replica of this

15 window showing that this is the -- these two are the master

16 bedroom windows. This is showing the debris that would have

17 had to be removed by fire department, so you're seeing more of

18 the fire shooting out of this window.

19 Q: Okay.

20 MR. TUCKER: If we could take a look at what's been

21 marked as State's Exhibit 3-T?

22 A: And then this is a long shot view. I took this one

23 because you can still see some pretty good angles of the fire

24 of everything coming back towards this way. Also, it's on the

25 D side of the trailer. See, you're starting to see smoke in

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1 this -- coming out of this back side.

2 Q: Okay.

3 MR. TUCKER: And if we could take a look at the next
4 photo, State's Exhibit 3-U?

5 A: This was done by fire department. The fire department
6 had to do that to try to help to help extinguish some of this
7 back side, and you'll see this, fire department also did that,
8 and what they're trying to do is they were having trouble
9 getting into this so they're having to extinguish water here
10 and what was giving them so much trouble is right along this
11 wall is a bed and on the inside photos you'll see that the bed
12 was kind of blocking a lot of them from getting in there and
13 extinguishing in this side right here.

14 MR. TUCKER: And can we take a look at the next photo,
15 what's been marked State's exhibit 3-V?

16 A: This photo is significant because every time in a fire
17 investigation, we photograph how we go inside the trailer. So
18 basically what I'm doing is I'm standing back and I'm taking a
19 photo before I go inside the trailer and what you see is the
20 ceiling part with just a few joists with some charring and up
21 in the -- in the little bit of the roof here it shows that you
22 can see the intense heat that it -- that it had.

23 Q: Now, and again this is the door that ---

24 A: That I would consider side A. And this is the door that
25 I made entry into.

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1 Q: Okay. And again, just so I'm oriented correctly, the
2 master bedroom would be to the right of that door?

3 A: The master bedroom would be down towards this end.

4 Q: Okay.

5 MR. TUCKER: And if we could look at the next photo which
6 is 3-W?

7 A: This is the flooring of me going into this and that's
8 showing that, you know, we have a lot of debris sitting here.
9 This was the laundry room so you get a little bit of that --
10 of the laundry room. We're also looking here to see was this
11 house set intentionally. What we're looking for is a pour
12 pattern or an unusual shaped pattern. So what I'm looking for
13 on this photo also down here, did anybody take any kind of
14 accelerant and run it from the bedroom and run it out to the
15 steps and then sit down here and set it on fire. And as you
16 can see, that didn't happen because this whole bottom piece is
17 still intact, and in the next picture you'll see the steps and
18 the steps are still intact. So that was -- that's the
19 significance of this picture.

20 Q: Okay.

21 MR. TUCKER: And if we could look at what's State's
22 Exhibit 3-X, the next picture?

23 A: Again, here's your steps. So if this was a pour pattern
24 which somebody intentionally poured something, you would see a
25 flame coming down here and also possible burn patterns on

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1 these steps where they're burned out. Again, you don't see
2 any of that. So that leads to tell me right now in the back
3 of mind, I'm thinking okay, we don't have anybody pouring
4 anything, but that still doesn't mean that somebody did not
5 set this house on fire.

6 Q: Okay.

7 MR. TUCKER: And if we could look at the next photo,
8 which is 3 -- State's Exhibit 3-Y?

9 A: This just shows better of the steps to make it -- just to
10 show you that there is nothing on the steps, and that's
11 significant to us, again, we make sure that nobody poured any
12 kind of accelerants going up the steps and that's the
13 significance of that one.

14 Q: Okay.

15 MR. TUCKER: And if we could look at what's been marked
16 State's Exhibit 3 -- I'm sorry ---

17 A: And it also shows that the barrier tape is still up and
18 that also -- it kind of shows that we know, yes, you can go in
19 and out, but we know -- but we feel confident that nobody cut
20 or manipulated that tape or tried to get in.

21 Q: Okay.

22 MR. TUCKER: And if we could look at the next photo,
23 what's been marked as State's Exhibit 3-Z?

24 A: Now I'm on the inside of the trailer. I'm standing right
25 at that door I just showed you. And this immediate picture

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1 would be me standing inside the door shooting back to the back
2 bedrooms here. This would be the living room. A couch is
3 here. You see a chair, what's some -- possibly looks to be
4 like an entertainment center, and then there's the other door
5 that would lead to the street.

6 Q: Okay. So that would be back if we were coming through
7 the door coming back towards the left?

8 A: Back towards the left.

9 Q: Okay.

10 MR. TUCKER: And if we could look at the next photo,
11 what's been marked State's Exhibit 3-AA?

12 A: This is showing another view. As I was -- as you can
13 see, is when I first did -- I shoot straight as to my left.
14 This one now I panned more, which now captures more of the
15 living room and you can start seeing the difference here --
16 the studs here, how they have minor charring. You got this
17 bedroom that's got minor -- that you can see the fire slowly
18 coming down.

19 So that's -- this picture is showing how you got the fire
20 progressing from the master bedroom back to the other bedrooms
21 and how as fire comes down it hits an object, fire rolls. So
22 now we got the fire, it hit, it's starting to come down, and
23 now it's starting to char these. As you can see, there's
24 minor damage here. You got damage here because of the
25 ventilation. The fire's going out through here and that's why

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1 you got a lot of damage here. This is a -- what I was -- went
2 and looked at is to be like a small wraparound couch or a U-
3 shaped couch.

4 Q: Now, if for someone of the inside of the trailer, would
5 the shear heat be the only thing you'd have to worry about?

6 A: No.

7 Q: In terms of a danger to you?

8 A: This would have -- due to home structures nowadays, we
9 all want to be in comfort in heat, so not only do you have the
10 heat, you have gas being let go, and also the smoke.

11 Q: Would any of -- all of those pose any sort of danger to
12 someone on the inside?

13 A: It would kill you.

14 Q: Okay.

15 MR. TUCKER: And if we could advance to what's been
16 marked State's 3-BB?

17 A: This is showing the flooring. This is significant also
18 because, one, we want to make sure that there's no kind of
19 pour patterns or unusual shaped patterns on this floor. So
20 it's very significant in fire investigation because you would
21 see pour patterns or what we call or describe as unusual
22 shaped patterns on this floor and you don't see any of that.

23 Q: Now, at this point, not seeing those particular pour
24 patterns, are you starting to form any sort of hypothesis
25 about what happened?

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1 A: My hypothesis is coming that this is more of the fire
2 moving from the master bedroom forward. The fire is not
3 started in this area, that this is what we call secondary.
4 As the fire is moving, it's still -- this is what it's doing.
5 So I'm leaning towards this is not the area I need to focus
6 on, but I still have to note it and still look at it.

7 Q: Okay.

8 MR. TUCKER: If we could move to what's now been marked
9 State's Exhibit 3-CC.

10 A: That's now moving more into the kitchen. You can see the
11 air conditioning coils here, and that's moving more into the
12 kitchen, and just looking at the flooring, you still see that
13 we have no unusual shaped patterns on the floor. You see a
14 better record of this couch, and this is what we would
15 describe as fuel loads. This couch is a fuel load. This is a
16 fuel load. So with the couches you not only got a wood
17 construction couch but also the cushions. The cushions are
18 made of a polystyrene foam which has -- I hate to say it --
19 basically got a gasoline or a form of some kind of fuel in it,
20 is what makes the polystyrene foam. So those are combustible
21 materials also and you see some of it still left, but you also
22 see that the couch is still in effect, so that tells us that
23 the fire is not in here because if so, then all this would not
24 be intact where you could recognize it.

25 Q: Okay.

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1 MR. TUCKER: And if we could look at what's marked
2 State's Exhibit 3-DD?

3 A: Again, we have to show the floor. And here's what we're
4 starting to see is you're starting to see there's your coil,
5 here's your stud wall, and what we're looking for is this line
6 coming up. What we're looking to see is there any arcing in
7 this -- in this line or anything in here that could say, okay,
8 what caused this, why? So what we're looking for is arcing or
9 any kind of mechanical break in this and it -- towards the end
10 right here, you do see some mechanical break and that what we
11 contest is something fell down and broke it. When the copper
12 gets to an expanded temperature and something hits it, it will
13 break.

14 Q: Now, you mentioned the arcing. What are you looking at
15 in terms of to see whether or not there is any arcing? What's
16 the purpose of that?

17 A: The purpose is, if there's any arcing on this, there is a
18 form that we can use, it's called arc mapping. And basically
19 what you do is you start here and you tie the wire tight and
20 then you look back to see is there any more arcing, and we
21 contribute it like a fire hose. If you've got a fire house or
22 a water hose and you've got arcing here and arcing here, that
23 tells you that you still have power back here. If you have
24 arc here and no arc here, it means this killed it. So you
25 have nothing in-between here and if you do find arcing in

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1 between here, you've now got to find out if it was any kind of
2 cross lines. And in this one you can see that there is
3 nothing here.

4 Q: So at this point, you're trying to eliminate possible
5 causes in addition to trying to find out what actually started
6 the fire?

7 A: I am.

8 Q: Okay. And you're trying to eliminate by looking at that,
9 some sort of an electrical cause?

10 A: I'm trying to -- I'm not an electrical engineer. I don't
11 rule anything electrical, but if I start seeing a lot of
12 arcing and other stuff in outlets, or stuff plugged into this
13 and it looks like it could be from that area, then that would
14 be ruled an undetermined fire and we'd call -- have somebody
15 else come in, i.e. an electrical engineer or a master
16 electrician to come in and look at it.

17 Q: Did you have to call in a master electrician in this
18 case?

19 A: No, I did not.

20 Q: Okay.

21 MR. TUCKER: If we could advance to what's been marked
22 State's Exhibit 3-EE.

23 A: This is straight on. This is looking in. As you can see
24 the studs here, how you've got the charring coming down. This
25 would be the laundry room and you've got the wiring coming

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1 down and you've also got some more mechanical break here in
2 the wiring, but this picture shows the laundry room area.

3 Q: Okay.

4 MR. TUCKER: And if we could advance to 3-FF?

5 A: Again, you can start seeing more of the laundry room.
6 Looking at this, there was a wall here, and this wall -- now
7 you're starting to head into the master bedroom. There's more
8 of the kitchen appliances and the wall here. So now we're
9 starting to go more into that master bedroom.

10 Q: Okay.

11 MR. TUCKER: And if we could advance to 3-GG?

12 A: Again, that's just me still standing at the door. I had
13 not moved anywhere yet from any of these pictures from that
14 door and now I'm panning more towards the right and you can --
15 you know, you see more of the master bedroom. You're seeing
16 more -- a little bit of furniture right here, the bed frame,
17 some of the headboard.

18 Q: And while all these pictures might look similar, each and
19 every one is telling you something a little different?

20 A: Every one is telling me something different. Not -- as I
21 start moving, you start to see some more lines here. You're
22 seeing the charring, you're seeing -- you know, why is this
23 clean board? Why is this here? So every picture is
24 significant to know, okay, as I'm moving why -- why did this
25 window and why did all the fire shoot out of here? Well, you

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1 got a cabinet -- or not a cabinet, but you had some kind of
2 chest of drawers here. So that was -- that caught on fire.
3 That was a fuel load. So you have stuff like that sitting in
4 front of these doors and that's what's causing a lot of this,
5 of going out the windows.

6 Q: Okay.

7 MR. TUCKER: And if we could look at the next photo, 3-
8 HH?

9 A: And this is still -- me still standing at the door and
10 now you're seeing more of the bed frame. You're seeing what
11 we're looking for as you see the bed start leaning down this
12 way. A lot of times, this will tell you in the nature of if
13 there's a fire in that room, your bedsprings will start
14 collapsing and the bed -- it's just like a light bulb. The
15 bed will slowly start going towards the fire. If there was
16 any light bulbs left in this house, light bulbs are glass, it
17 takes a lot of heat to move them or to make them. So what
18 happens in fire scenes is the glass will go right to the heat
19 and the bed is actually doing the same thing. This bed is
20 slowly coming down to the corner and it's going right into
21 this area.

22 Q: And what, if anything, does that suggest to you?

23 A: It suggests that this is a significant area where we need
24 to look. We can slowly see a little burnout here, and there's
25 better pictures of it, but this an area that we need to try to

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1 concentrate as best as we can.

2 Q: Okay. And again, this is in the master bedroom?

3 A: This is in the master bedroom.

4 Q: Okay.

5 MR. TUCKER: And if we could advance to 3-JJ [sic]?

6 (Whereupon, State's Exhibit Number 3-II is shown on the
7 screen in the courtroom.)

8 A: Again, now you're starting to see the burnout which this
9 is something that needs to be looked at. Why did this happen?
10 We don't take that this is just -- this is where it happened;
11 we now have to determine why did this happen. Was there
12 something sitting there, clothes, to cause this burnout?

13 Q: Did your investigation reveal what was actually in this
14 particular area?

15 A: Talking to the witnesses and the victim, this would have
16 been right about where the closet would be, in this area.

17 Q: All right.

18 MR. TUCKER: And if we could look at 3-JJ?

19 A: And this is -- this is showing more of the flooring in
20 that bedroom -- in the -- I'm sorry, yeah, in that laundry
21 room. So all you're seeing is now the floor and it's showing,
22 you know, one, you know, that there is no kind of patterns or
23 anything like that.

24 Q: Okay.

25 MR. TUCKER: And if we could look at the next photo,

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1 State's Exhibit 3-KK?

2 A: Again, the same thing. It's just instead of now being
3 straight down, we now moved to catch a little bit more of the
4 flooring in here and still we're also looking for the same
5 thing, looking at this wall stud, seeing, okay, there was a
6 stud wall here so that did separate and you're looking at any
7 kind of problems down here.

8 Q: Okay.

9 MR. TUCKER: And if we could look at the next photo, 3-
10 LL?

11 A: Again, this picture was taken. As you can see, you've
12 got wire laying across here and that wire ran all the way back
13 into the bedroom. You can see a little bit of crossing here
14 where the wires crossed and did arc and you can see where they
15 melted together. Now, that is consistent with having power in
16 the house, fire -- having fire penetrated and it now coming
17 together.

18 Q: Okay.

19 MR. TUCKER: If we could kind of zoom back in?

20 A: And that's also in the laundry room area.

21 Q: Okay. And that's what I was getting at. With regards to
22 this photo, what was particular here? Obviously, there were
23 no appliances in the back bedroom or main bedroom?

24 A: No. This would have been still the laundry room. I want
25 to say this was possibly the washing machine. I can't

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1 remember right off hand, but this would have been the laundry
2 room and this would have been the wall that would have kept it
3 in-between the master bedroom and the laundry room.

4 Q: Okay.

5 MR. TUCKER: If we could look at the next photo, 3-MM?

6 A: Again, now I'm just showing more of effect of this and
7 bringing more of this into play because this is significant
8 for us. We're trying to follow this electrical line. Did it
9 go back to here, where it goes. So that's what we're
10 incorporating all this whole picture in.

11 Q: Okay.

12 MR. TUCKER: And if we could look at the next photo, 3-
13 NN?

14 A: Now we're looking as -- now I'm going -- instead of going
15 what we call medium height or my height of line of vision, now
16 I'm taking a photo of the floor area, also still looking to
17 see if there is any unusual shaped patterns beside this burn-
18 out, and if -- just seeing -- looking at the wall studs and
19 seeing the amount of char on these wall studs.

20 Q: Okay.

21 MR. TUCKER: The next photo, 3-00?

22 A: Now I'm starting to move into the trailer and I'm going
23 -- I'm into the kitchen area and this picture is shooting down
24 the hallway going towards these bedrooms.

25 Q: Okay.

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1 MR. TUCKER: And if we could look at 3-PP?

2 A: This is me standing within this range and now I'm looking
3 more at this wall trying to get it better of how the fire came
4 down. You still see the ceiling fan is still intact and that
5 -- that's significant also because it tells us that you did
6 not have direct flame in here or this would be sitting on the
7 ground. We're also looking at the rafters because you can
8 start seeing now how you've got some charring here on the
9 rafters and now as you get moved to this one it starts to go
10 away. This one is somewhat intact and now you start to move
11 to these are intact. So that tells me that it still has
12 wallboard and that's the fire coming down into this.

13 Q: Okay.

14 MR. TUCKER: If we could look at the next photo, 3-QQ?

15 A: This is the door that was leading out to the street.
16 What we're looking at is, one, you know, what was in this
17 area, two, the ventilation effects of the fire coming out, and
18 the paneling here, how it had something protecting this but
19 yet how these burnt. So we're looking at that and that's what
20 this picture is showing.

21 Q: Now, again, at this point are these photos telling you
22 anything in terms of ---

23 A: It's still telling me how the fire progressed from the
24 master bedroom, progressed from the right to the left.

25 Q: Okay.

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1 MR. TUCKER: And if we could look at the next photo, 3-
2 SS?

3 A: Again, this is me more into the living room area and now
4 I'm taking back the pictures and you can start seeing more of
5 the charring, how the fire stayed high and it's slowly coming
6 down, and you see -- you still the outline. You see the
7 outlines here of the charring and, you know, this is
8 significant that this is still intact. It's still holding
9 this up. So that -- that's very significant that everything
10 I'm still looking at, it's still what the witnesses are
11 telling me, that the fire's in the master bedroom and the
12 fire's progressed from right to left.

13 Q: Okay.

14 MR. TUCKER: If we could look at the next photo, State's
15 Exhibit 3-TT?

16 A: Looking into the kitchen area, as you can see, you've got
17 the hood that's still up so this is saying we don't have a
18 kitchen fire. The hood would be gone. You'll see more of
19 this gone in kitchen fires. You wouldn't have cabinets. All
20 these cabinets would be gone. This back of the couch would be
21 gone. So that's significant in saying, okay, we're not really
22 looking at a kitchen fire. We're still looking at what the
23 witnesses told us is everything is in the master bedroom.

24 Q: Okay.

25 MR. TUCKER: The next photo, State's Exhibit 3-UU?

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1 A: Again, I'm still in there and we turn back and we look
2 back and you start seeing a little bit more. You got the
3 water heater here that shows a little bit. You got the line
4 and you can tell that's a -- that's a plastic red line and
5 it's still somewhat intact. So that says you didn't have a
6 kitchen fire. You've got the copper going into it. So that
7 still tells us, okay, we're not looking at a kitchen fire or
8 you would see a lot -- water would be shooting out of this at
9 the time of the picture.

10 Q: Okay.

11 MR. TUCKER: If we could look at next photo, State's
12 Exhibit 3-VV?

13 A: Standing back and now you're getting a bigger overall
14 picture of what I'm looking at. Standing in the living room
15 looking back towards the master bedroom, you now start to get
16 a better overall of what the fire was doing and how it was --
17 how it was coming in towards the living room area.

18 Q: Okay.

19 MR. TUCKER: If we could look at the next photo, 3-WW?

20 A: Now I'm turned back and we're going back down this
21 hallway again and this is roughly three or four steps. You
22 still see you got the electrical light here. The bulbs are
23 melted. So that was significant also looking at it that it
24 did have enough heat to melt, but it wouldn't --
25 unfortunately, it was gone before I got there so I couldn't

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1 see which way the bulb was melting, if it was melting towards
2 the master bedroom because you can see it had already broke
3 and fell.

4 Q: Okay.

5 MR. TUCKER: If we could look at the next photo, 3-XX?

6 A: This is still further going down the hallway. As you can
7 see, you got, you know, just a little bit here. This is what
8 we could call a line of demarcation. This is about where
9 everything stopped. As you can see, you've got the fire --
10 you've got the fire stopping, you've got intense heat, and
11 this is where the fire department gets in and starts battling
12 the fire and everything is slowly starting to stop here with
13 fire.

14 Q: Okay.

15 MR. TUCKER: Next photo, State's Exhibit 3-YY?

16 A: And this is a bedroom. This was one of the bedrooms as
17 we went into the hallway. This bedroom would have been
18 immediately to my right as I'm walking down the hallway. This
19 wall was the wall that was up to the living room and you can
20 see how it just -- you've just got small lines in here, how
21 this room didn't have a lot of heat in it. I didn't happen to
22 list if he had his door open or closed, but by looking at
23 this, this room would have been somewhat sealed off and the
24 only reason why you've got the heat coming in here is because
25 this wall was penetrated and that's why you've slowly got the

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1 heat coming in and you just see it -- it starts dark here and
2 it get light. So that's the heat rolling as it's coming down
3 the wall.

4 Q: Okay.

5 MR. TUCKER: And next photo, State's Exhibit 3-ZZ?

6 A: And this is the door. This door would have been -- I'm
7 -- it would have probably been closed because you had the
8 lines in the hallway, so that was the door.

9 Q: Okay.

10 MR. TUCKER: And headed for home stretch now, State's
11 Exhibit 3-AAA?

12 A: This is moving down further. This is another bedroom.
13 You can see that this room just had smoke damage to it and
14 then you see the line. This is how far that the smoke came
15 down. So that's significant in showing us how far the toxic
16 smoke did reach into this room.

17 MR. TUCKER: And State's exhibit 3-BBB?

18 A: Another picture of the room showing you a better
19 description. And this room would have been right next to the
20 other one so you're still seeing the lines here. A little bit
21 of heat damage, but this room would have been open.

22 MR. TUCKER: State's Exhibit 3-CCC?

23 A: This was a bathroom. This would have been the bathroom,
24 not the picture on A side, but this was another bathroom.
25 When you went past the two bedrooms, you had an enclosed with

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1 no window bathroom, and you can see the significance in this.
2 It's got some heat. This door was open so you got some heat
3 going on in here.

4 MR. TUCKER: The next photo, State's exhibit 3-DDD?

5 A: This is the very back bedroom. As you can see, you got
6 melting here so it did have heat. This door was open. You
7 also got the lines here of the paint bubbling or the wallpaper
8 bubbling, and all this is soot. So it shows you how much soot
9 and how much gas was being produced in this house.

10 Q: Someone trapped in that bedroom while all this was going
11 on, if they weren't burnt, most likely what would have
12 happened?

13 A: If they would have been asleep, not awake, they probably
14 would have suffered smoke inhalation and probably would have
15 been still laying there.

16 MR. TUCKER: State's Exhibit 3-EEE, next photo?

17 A: This is just giving you more of the bubbling effect of
18 the wall showing you the heat. Showing you the lines or the
19 pillars, all the soot, and showing the lines down here of
20 where everything stopped.

21 MR. TUCKER: Next photo, State's Exhibit 3-FFF?

22 A: This is still -- this is me standing in the room shooting
23 out and then what you see is this is the hallway. The door
24 that was open, you can see the line of all the heat damage,
25 and then this is the hall -- going back into the hallway. So

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1 we're at the far end of the trailer at the last bedroom.

2 MR. TUCKER: State's Exhibit 3-GGG?

3 A: So now I'm coming out and we shoot -- we shoot the full
4 length of the hallway to kind of show, okay, this is -- you
5 know, everything filters from this way and that's what this
6 picture's showing, how everything's coming from the master
7 bedroom coming back into this other bedroom.

8 MR. TUCKER: Next photo, State's Exhibit 3-HHH?

9 A: This is as we're -- as we're going into it. We then take
10 this picture and this significance is it just shows more of
11 your lines and what we look for is depth of char. So we're
12 looking at charring here, this wall missing, and how this is
13 clean board. Water protected that, but we're looking at depth
14 of charring now on these.

15 Q: Okay.

16 MR. TUCKER: Next photo, 3-III?

17 A: Now we're slowly getting into the master bedroom. This
18 would have been roughly right at -- where I'm standing, this
19 would have been the wall that was protecting it. As you can
20 see, the wall is gone. You got this small piece that this
21 piece was laying over and it was burned all the way up top.
22 You've got charring here and also here. You've got burning
23 along here and now we could contribute that because in this
24 back window there was a dresser somewhere right up in this
25 area. Also a closet as you can see the closet rack, so you

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1 had like a -- probably a little small closet in this area.

2 Q: Okay.

3 MR. TUCKER: If we could advance to 3-JJJ?

4 A: Now we're showing more of this master bedroom. This --
5 we're getting back into the area of origin. So now we're
6 starting to photograph every inch of this bedroom to, one,
7 determine was the fire started on this side or was the fire
8 started on this side. Even though the witnesses told us the
9 fire started near the closet, we still -- I take what they
10 account, but, I also wanted to know why did this burn, what
11 caused this to do what it did. And by her witness testimony
12 what she told me or by her -- what she told me is that when
13 she was beating it out, she was beating it out with a quilt or
14 a comforter. By doing that, she was fanning the fire also
15 taking all that debris throwing it over here. So if she would
16 have left it alone and got the fire department there, most --
17 what we could probably contribute is probably half of this
18 would have been saved and may not have been as bad, but
19 because she fueled the fire by fanning it, giving it oxygen,
20 it already had the fuel, what she's doing now is just throwing
21 debris -- fire debris, also embers on this other side causing
22 this also to catch.

23 Q: Now, in your experience as an arson investigator, is that
24 a common reaction that Ms. Paul had with regards to seeing a
25 fire and trying to put it out in that fashion?

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1 A: Yes. That is a common reaction for most people.

2 Q: Okay.

3 MR. TUCKER: If we could advance to 3-KKK?

4 A: This is just showing the -- still that opening. The bed
5 -- headboard of a bed here. You can see it -- start seeing a
6 little more of the dresser, the bed, the clothing, and that
7 burned out hole in this area.

8 Q: Now, these photos are again telling you what with regards
9 to where the fire started?

10 A: It -- everything's now starting -- where we're looking at
11 is the bed, how this is still intact. What we're starting to
12 look at -- and even the bed frame, you can see some of the
13 bedframe is still very much intact, but yet you see some of
14 the bedframe right here gone. So that tells us that the fire
15 was down up in this area consistent with what the witnesses
16 told us.

17 Q: Okay.

18 MR. TUCKER: If we can look at 3-LLL?

19 A: Now we're getting into more of what the witnesses told
20 us. This panel box is included. That panel box does become
21 important to note.

22 Q: In what way?

23 A: What we're looking for in this panel box is, one, is
24 there any kind of arc map -- not arc mapping, but any kind of
25 arcing. Is there anything on this electrical box that would

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1 say, okay, the fire could have started in this panel box? And
2 as you see -- all's you see is fire damage on the outside of
3 this and these breakers were still intact. When fire
4 penetrates the plastic breakers, they become very brittle and
5 break. And as you can see, the breakers are still in pretty
6 good shape. That's contributed with that door being closed.

7 MR. TUCKER: If we could look at the next photo, 3-MMM?

8 A: That's going back -- the reason we're going back here is
9 because this was what I deemed to be another closet looking at
10 that closet rack. So we're looking at here to make sure,
11 okay, was there anything in here that started this fire. So
12 we to have start eliminating all the areas to make sure was it
13 here and not here. So this is what I'm starting to do now is
14 starting to eliminate all these areas.

15 Q: Now, at this point is everything that the victims told
16 you consistent with what you're seeing?

17 A: So far, yes.

18 MS. PARROTT: Objection, bolstering.

19 THE COURT: Hold on a minute. Can the lawyers approach?

20 (Whereupon, a bench conference is held in the presence of
21 the jury but out of the hearing of the jury as follows.)

22 MS. PARROTT: My objection is bolstering.

23 MR. TUCKER: I'm just asking if everything he's -- up to
24 this point of his investigation, is it consistent with what
25 they have told him.

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1 MS. PARROTT: Glad we approached so we could whisper
2 since you can talk in full voice.

3 THE COURT: Hush.

4 MR. TUCKER: You mean like that?

5 (Whereupon, the bench conference ends.)

6 THE COURT: Ladies and gentlemen, can y'all step to the
7 jury room for just a minute? Do not discuss the case.

8 (Whereupon, the jury exits the courtroom at 3:57 p.m.)

9 THE COURT: Y'all don't have to stand up here anymore
10 since they're out of the courtroom. State your objection for
11 the record.

12 MS. PARROTT: Your Honor, my objection is bolstering.

13 THE COURT: And your response, Mr. Tucker?

14 MR. TUCKER: Your Honor, I merely asked Investigator
15 O'Hara if everything up to this point of his investigation as
16 illustrated with the photos is consistent with what the
17 witnesses have told him. I don't think that's improper
18 bolstering at all. I think that's just asking him from his
19 investigative point of view whether everything that has been
20 told to him by the witnesses is consistent.

21 MS. PARROTT: Your Honor, if I may?

22 THE COURT: Yes.

23 MS. PARROTT: This is just feeding back into what I was
24 arguing about the pictures to begin with, Your Honor. The
25 fact is that these are cumulative. You can hear Mr. -- excuse

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1 me -- Investigator O'Hara say that this is just a slightly
2 different view and that this is consistent with, and Mr.
3 Tucker has been asking him consistently through the testimony
4 about whether or not this was consistent with this or
5 consistent with that, and he's been leading him about this
6 stuff. So at this point, I think every line of this testimony
7 basically has been either bolstering or cumulative.

8 MR. TUCKER: And certainly, Your Honor, all I've done is
9 ask him with regards to the photos that he took, as he
10 conducted this investigation, the photo evidence is integral
11 and essential to his investigation and the conclusions that he
12 reached therefrom. So this is not bolstering. It's not
13 anything of the kind.

14 THE COURT: All right. Objection overruled. I'll allow
15 him to testify as to whether or not his findings based upon
16 his experience, based upon what he's trained to do, was
17 consistent with what was being told to him by the witnesses.
18 Now, I think that's -- I think that's proper here based upon
19 what the evidence he's seeing. Because if it wasn't
20 consistent with what he was told, you'd certainly be in a
21 position to argue that. I think it's proper so I will allow
22 it.

23 Now, with regards to the two of you back and forth with
24 each other at the bench up here just now, I'm not going to
25 tolerate in this courtroom. You all have disagreements about

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1 evidence coming in, what my rulings may be, what my rulings
2 may not be. Personal disagreements and jabs or whatever you
3 want to call it back and forth up here at the bench, I'm not
4 going to tolerate it.

5 MR. TUCKER: Yes, sir.

6 THE COURT: Am I clear on that, Mr. Tucker?

7 MR. TUCKER: Absolutely.

8 THE COURT: Ms. Parrott?

9 MS. PARROTT: Yes, Your Honor.

10 THE COURT: All right. We'll stand down for just a
11 minute. You can step down, but do not discuss your testimony
12 with anybody.

13 THE WITNESS: Yes, sir.

14 (Whereupon, there is a break in the proceedings from 4:00
15 p.m. until 4:05 p.m.)

16 THE COURT: Is the State ready to proceed?

17 MR. TUCKER: Ready, Your Honor.

18 THE COURT: Is defense counsel ready to proceed?

19 MS. PARROTT: Yes, Your Honor.

20 THE COURT: Bring me the jury, please, sir.

21 THE BAILIFF: Yes, sir.

22 (Whereupon, the jury enters the courtroom at 4:07 p.m.)

23 THE COURT: All right. Mr. Solicitor, you may continue.

24 CONTINUED DIRECT EXAMINATION

25 BY MR. TUCKER:

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1 Q: Investigator O'Hara, could you step back down, please? I
2 think that the last question that I asked was everything to
3 this point in terms of what the witnesses said is consistent
4 with your investigation?

5 A: So far, yes.

6 MR. TUCKER: If we could advance to the next, 3-NNN?

7 A: This is significant. This is a little dresser that she
8 had sitting at what I believe to be the doorway, and what
9 you're seeing is where it came down. This dresser was
10 somewhat protected and you can see the top of it. It looks to
11 be like a TV sitting on up top of it. There was a TV. You
12 can see the tube and some of the components. So this TV was
13 why this -- you see this still protected and the fire is still
14 moving across it and that's why this is significantly burnt.

15 Q: Okay.

16 MR. TUCKER: And the next, State's Exhibit 3-000?

17 A: More of the cabinets. What we're looking at is still the
18 flooring area where we have to determine if, one, to make sure
19 nothing is on this floor that would cause or rule out anything
20 that the witnesses tell us. So what we're still doing is
21 still examining the floor with the -- with what I'm doing and
22 then we photograph it. So we're examining the floor as we go,
23 and this floor is slowly starting to get weak and it's
24 starting to give away.

25 Q: Okay.

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1 MR. TUCKER: And the next photo, 3-PPP?

2 A: So now I'm standing further and we're shooting more back
3 to this. I needed to try to see this cabinet. So what we're
4 doing is we're showing this cabinet more and showing more of
5 the box spring and mattress. As you can see, you've got
6 drawers pulled all out of here, but this is significant.
7 We're showing of how fire did not really penetrate this, but
8 yet how you got this corner penetrated. So it's still
9 consistent of everything that fire still backed down in this
10 side.

11 MR. TUCKER: And the next photo, State's Exhibit 3-QQQ?

12 A: So now we've moved. We're now photographing and what
13 we're looking for is in this area and you can start see the
14 clothing, the debris, and now you start seeing this burned out
15 hole a little bit more and you start seeing small outlines of
16 the closet, but you can start seeing the clothing here, how
17 it's piled up.

18 MR. TUCKER: And the next photo, State's Exhibit 3-RRR?

19 A: So now we're looking at -- and this is significant
20 because what we're looking for -- and this is a good picture.
21 You know, why did this happen? And this is called a saddle
22 burn on this floor joist.

23 Q: Would you explain that?

24 A: What we're looking for -- a saddle burn is -- if there's
25 a fire and it comes from top to bottom, it burns out in a U

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1 shape just like a saddle, but if the fire comes from the
2 underneath side of it, then it burns in an upward U shape. So
3 what we're looking for is we're looking to see, it's not
4 completely burnt, but yet you can see the depth of char here
5 and you can see how the fire's coming from top to bottom, and
6 that's significant telling us that the fire started here in
7 this -- and that's fall-down coming down here, and you can see
8 a little bit more.

9 Q: And is that consistent with what an earlier witness
10 testified to with regards to the clothes being the start of
11 the fire?

12 A: That the fire is in the bedroom, that the fire is in this
13 bedroom area, yes, that is still very consistent.

14 Q: Okay.

15 MR. TUCKER: And State's Exhibit 3-SSS, please.

16 A: So now we're looking at this panel box because it is in
17 this room and this panel box and you start seeing the wire
18 start becoming what we need to rule out because that's part of
19 it. You know, if we can rule that something happened in here,
20 then we have to rule this as an undetermined fire. So we
21 start looking and you start seeing no visible damage to this
22 which is very significant to us. You see the breakers, you
23 start seeing all the lines, and you see mechanical breaks.
24 You see a little bit of melting here where it broke, but most
25 of all this is mechanical break of where it is consistent with

INVESTIGATOR PAT O'HARA - DIRECT EXAMINATION BY MR. TUCKER

1 things falling down on it in the fire because this is where
2 the fire is at just on the other side of this panel box.

3 MR. TUCKER: And the next photo, State's Exhibit 3-TTT?

4 A: This is a more close up of how -- as the fire started
5 progressing through this house what should happen is your
6 breakers start tripping, which is killing power towards the
7 house. And this is very significant because now it starts
8 telling us that the power of -- the breakers did what they
9 were supposed to and they started tripping and -- back it down
10 a little bit more -- and as you start seeing -- you start
11 seeing some of the paint to your left of the panel box and
12 that's also very significant showing that the fire was not
13 inside this panel box. It was not on the front side of this
14 panel box. Unfortunately, I could not get to the back side of
15 the panel box because the floor did give way on me several
16 times.

17 MR. TUCKER: The next photo, State's Exhibit 3-UUU?

18 A: So now we're -- so now I'm trying to get as close as I
19 can into this area and now you start to see more of the
20 outline of the closet and it's -- I know it's hard to see, but
21 you start seeing a little bit more of the closet, the debris,
22 the fire, of everything of where it started in here and how it
23 came up into the bedroom.

24 Q: Okay.

25 MR. TUCKER: And the next photo, State's Exhibit 3-VVV?

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1 A: So now we have to rule this out. This becomes very
2 significant in this -- in this burned out hole. I have to
3 rule this out. What was here? What caused this? And that's
4 why -- the reason why this picture's taken is we have to --
5 what was here or what was laying here to cause this to happen.

6 Q: And were you able to do that?

7 A: Basically, we could come up with is you see some
8 clothing, a little bit of paper and clothing here, and that's
9 where it sustained a lot of fire where it just sat there and
10 burned for a long time. We couldn't determine if that's where
11 the fire a hundred percent started, but yet we can attribute
12 the clothes burning and that's what caused this. Before the
13 fire department got there is the fire sitting there burning
14 for a significant time. It burned through the floor, which is
15 -- in this floor is you could see a little bit right here,
16 it's what's called pressed wood. Pressed wood is nothing but
17 saw dust compressed with glue. Ninety-nine percent of the
18 trailers from this year, '99 up to about 2005 and even a
19 little past that, all have this pressed wood material inside
20 of it for flooring.

21 Q: Okay. So that I'm clear, are you saying that the fire
22 started there and burned up or something burned ---

23 A: No.

24 Q: --- and it fell down and that's what was smoldering and
25 burning?

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1 A: No. The fire did not -- we're saying the fire -- we
2 believe the fire did not start here. We're believing that
3 this is the fall down of clothing and paper and other items
4 and it sat there for a long period of time and burned and
5 that's what burned out this hole.

6 Q: Okay.

7 MR. TUCKER: And the next photo, State's Exhibit 3-WWW?

8 A: I was able to slide in through the -- through the laundry
9 room area and get over here. What this picture is showing is
10 you're seeing more of the cabinetry here. You see that she
11 did have some clothing in here and also what we're looking for
12 is this. We're looking for the damage to these studs and
13 trying to get as close as I can to this side of the room.
14 Basically, this has to be ruled out also, is when you have a
15 fire you have to listen to their statements, what they tell
16 you, but you also have to let the fire patterns tell you and
17 rule out everything in this structure fire.

18 Q: Now, at this point in your investigation, were you able
19 to do that?

20 A: I was able to rule out that the fire -- because the bed
21 frame is still intact, we still have intact cabinets, less --
22 very minor damage to these. It's more damage up as the
23 ventilation. I was able to rule that the fire was definitely
24 not on this side, that this was probably a secondary effect
25 from the fire being fanned with the blanket and embers and

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1 everything being thrown over, that this was a secondary fact.

2 Q: Okay.

3 MR. TUCKER: And the next photo, State's exhibit 3XXX?

4 A: This is -- you also want to show the headboard and any
5 time in a fire you want to show the mattress, box spring, and
6 what we're showing here is how you still got some of the
7 headboard and wallboard behind it and so that's still
8 consistent of we're ruling -- now we've now taken this out. I
9 can now take out this half of the trailer. So now we're now
10 focusing more towards this half.

11 Q: Okay.

12 MR. TUCKER: And the next photo, State's Exhibit 3-YYY?

13 A: Now I'm trying to get into this corner as deep as I can.
14 You can see by the heavy damage, especially right in here,
15 this is your significance of your fire. What we're looking
16 for is the depth of char on these. The depth of char is
17 that's where fire sustained at it longer. And so what you're
18 looking at is to see, as the fire starts you can see down here
19 there is hardly any damage, but as you move up, you've got
20 more damage. So that tells us that we're looking at maybe the
21 fire starting somewhere right around this board, which would
22 be consistent of what would be in your closet, clothing,
23 shirts, and that kind of stuff.

24 MR. TUCKER: And State's Exhibit 3-ZZZ?

25 A: Again, this is still very significant. We still have to

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1 show the depth of char to every board to show, okay, now you
2 got these burned out little one by fours that the siding is
3 hooked to. This is still very important because this helps us
4 get into the area of origin where we need to look at. You got
5 this board holding the panel box burned out. You still got
6 this side as much of the panel box you can. You know, you can
7 see that, you know, it did have some heat damage and fire
8 damage, but yet you no arcing, no nothing in here, so we're --
9 so we're taking this out of play.

10 MR. TUCKER: 3-AAAA State's Exhibit.

11 A: This is very significant. It's more of the depth of
12 char. This tells us more. As we start moving this way, the
13 depth of char gets greater; you move back this way, the depth
14 of char gets -- gets less. So this is very significant in
15 fire investigation as this helps us pinpoint and gets us down
16 to where we need to go, where this -- where did this fire
17 start, and all this is showing everything is coming. You got
18 the corner and then here, so everything is coming back right
19 back in here, and that is very significant.

20 Q: Okay.

21 A: Because this is going right back to what the witness told
22 me the whole time.

23 MR. TUCKER: State's Exhibit 3-BBBB?

24 A: Now we're giving you a close up version as best as I can
25 of that fire being in this closet, the burn patterns along the

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1 wall, the burn patterns coming up here. So that's also very
2 significant and that's going exactly to what the witness is
3 telling us.

4 MR. TUCKER: State's Exhibit 3-CCCC?

5 A: Now I'm moving away from the burn pattern. I wanted --
6 you know, what -- what did this? So now we have to rule what
7 -- what did this, what caused these patterns on this side
8 also? So as you can see, you start seeing a lot of fire
9 damage along these and that's the fire starting to spread
10 going down that hallway.

11 MR. TUCKER: State's Exhibit 3-DDDD?

12 A: Back in this corner again. We needed to rule out was
13 there anything along this bottom corner, electrical boxes,
14 anything like that in this bottom corner and as you can see,
15 there are no electrical lines going along this wall or in the
16 closet. The only electrical line was which was right here at
17 the front of the closet.

18 MR. TUCKER: 3-EEEE?

19 A: Again, we have to show all this corner. You got fire
20 damage here from the fire department and all your fire is
21 coming right back to here and that's still very significant
22 because you got clothing, burnt clothing. You've got burnt
23 other debris down here that we weren't able to tell you what
24 it is because it was so far burnt. So that's very significant
25 that what the witness said, that the fire is in the closet or

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1 at or near the closet, is consistent to what they're telling
2 us.

3 Q: Okay.

4 MR. TUCKER: The next picture, State's Exhibit 3-FFFF?

5 A: Now you start seeing more because we were able to get --

6 I was able to zoom up more and get along this bottom wall.

7 You see no electrical lines so that ruled any kind of

8 electrical activity along that wall.

9 MR. TUCKER: State's Exhibit 3-GGGG?

10 A: This photo was taken because this is the top part and the

11 reason why this was taken is you have electrical lines with

12 mechanical break and down here at the bottom, you've got a

13 little bit of melting here, and that's significant because we

14 want -- that has to be documented to also make sure that

15 nothing electrical happened up in here and that had to be

16 ruled out.

17 Q: Okay.

18 MR. TUCKER: State's Exhibit 3-HHHH?

19 A: This is just showing more of the fire as it progressed

20 into this -- into this -- this was still the master bedroom.

21 So you got the fire progressing, hitting the top, and if you

22 notice, this is the aluminum top with cool seal on top of it,

23 and so what's that doing is this is showing you how the fire

24 came up here and penetrated and it's just rolling along this

25 top of how you got the calcium burns in here of what -- this

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1 is called clean burns, and so that's what's showing is how
2 your fire is progressing, rolling on the top and coming up and
3 out into the hallway.

4 MR. TUCKER: State's Exhibit 3-IIII?

5 A: This is looking further back, looking more at the
6 trusses, the depth of the char, how you got all this damage to
7 these trusses. So that's the significance of those as we're
8 looking at the depth of char on this, and still everything's
9 going and it's significant because we have to look at all this
10 to put us back into that area.

11 MR. TUCKER: And 3-JJJJ?

12 A: Depth of char. Depth of char showing the ratio here of
13 everything going into that hallway along that closet, how you
14 got the fire up along the joists, how you got burn here. That
15 would go about right around the closet area. So this is very
16 significant because it also takes us right back and it ties
17 into everything the witness said, is everything is coming
18 right back into this area, which is very significant.

19 Q: And Investigator O'Hara, I want you to take a look at
20 what's been marked as State's Exhibit 2. And this is an
21 overview of what we just looked in detail with regards to the
22 photographs; correct?

23 A: Correct.

24 Q: And just the purpose of putting this up is so that we can
25 orient what they saw in terms of all the pictures from an

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1 overhead view. If you're looking at that, where would the
2 master bedroom be located?

3 A: This would be the master bedroom. This was the little
4 breaker box that I was showing you. This would be the two
5 windows in the master bedroom along with the dresser here. I
6 did not put the dresser there. And then right in this area,
7 we don't say -- we don't bring and say, this is exactly where
8 the fire started because we're not there. I didn't see
9 exactly where it started, but we know by everything that the
10 fire started somewhere in this area right around -- right
11 around in here.

12 Q: And what was that area particularly?

13 A: That's called the area of origin. Area of origin is
14 where the fire started.

15 Q: Is that also the closet area of that master bedroom?

16 A: That is also the closet area.

17 Q: Okay. And with regards to all the damage being in that
18 particular area of the trailer; correct?

19 A: Correct.

20 Q: Okay. I believe that's all I have with regards to this.
21 And if you would take your seat please.

22 (Whereupon, the witness complies.)

23 Q: Now, Investigator O'Hara, I just have just a few --
24 couple of more questions for you. Part of your investigation,
25 would it entail looking at a possible motive for arson, like

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1 insurance or things like that?

2 A: Yes, it does.

3 Q: Did you investigate that aspect of this particular case?

4 A: I did. We found out very early on she did not have any
5 renter's insurance. So that ruled out that the victim would
6 intentionally set her house on fire. She had no motive or no
7 means to gain anything for her setting her house on fire.

8 Q: Okay. Now, with regards to your conclusion of what --
9 after this analysis that we just went through for the jury,
10 what was your conclusion with regards to cause and origin?

11 A: Taking into account the witness statements from Ms. Paul
12 and her son and seeing the fire scene, I was able to determine
13 that the area of origin was in the master bedroom in that
14 closet, and this was set intentionally by possibly an open
15 flame source, i.e. lighter, to set clothing and other debris
16 on fire and what's caused this fire.

17 Q: Okay.

18 MR. TUCKER: Your Honor, at this time, the State would
19 move into evidence what's been marked State's Exhibit 2 and
20 what's also been marked State's exhibit 3-A through 3-JJJJ.

21 THE COURT: Any objection?

22 MS. PARROTT: Objection's as previously noted.

23 THE COURT: So noted for the record. Over the objection
24 of defense counsel, exhibits are admitted into evidence.

25 MR. TUCKER: And, Your Honor, I believe that's all the

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1 questions I have of Investigator O'Hara.

2 THE COURT: All right. Cross examination?

3 CROSS EXAMINATION

4 BY MS. PARROTT:

5 Q: Investigator O'Hara, I believe you've already stated, but
6 I want to make sure. You didn't pat down anyone that you went
7 and talked to on this night; correct?

8 A: Correct.

9 Q: Okay. And you're stating that because you were told that
10 Mr. Cades was the suspect?

11 A: No. I didn't know who the suspect was at the time until
12 I interviewed Ms. Paul and then she told me that Mr. Cades was
13 the -- was the one who set it on fire.

14 Q: Right. And that's what I'm saying is that they told you
15 who he was and so that's who you identified as the suspect in
16 this matter; correct?

17 A: Correct.

18 Q: Okay. And you were called out because of your being an
19 arson investigator; correct?

20 A: A fire investigator, yes, ma'am.

21 Q: Okay. And you interviewed Rachel Paul, as well as Jaquan
22 Mumford and Jarrell Mumford; correct?

23 A: Correct.

24 Q: Okay. And you took those as taped statements?

25 A: I did.

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1 Q: And do you recall that Ms. Paul told you that she saw
2 smoke and then Mr. Cades walked out of the house?

3 A: No. Ms. Paul did not tell me that.

4 Q: You took a taped statement; correct?

5 A: I did.

6 Q: Have you listened to that taped statement prior to you
7 coming here today?

8 A: I have.

9 Q: Okay. And you believe that -- do you think that's
10 incorrect?

11 A: By my accounts and my report, she did not tell me that
12 that the -- she did not tell me that.

13 Q: Did you review that taped statement prior to coming into
14 court today?

15 A: No, I did not.

16 Q: Okay.

17 A: I reviewed my notes.

18 Q: Okay. And you also looked at Mr. -- both of Mr.
19 Mumford's; correct?

20 A: I did.

21 Q: And as part of their statements, did one of them tell you
22 that he actually ran to the neighbor and called for -- called
23 the fire department? That would be Jarrell?

24 A: He did.

25 Q: Okay. So he wasn't there the whole time that this was

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1 going on; was he?

2 A: He ran after the fire was in progress and then ran to go
3 get help, yes.

4 Q: Okay. But he didn't stay outside or stay with his mom or
5 anything like that?

6 A: I'm not following your question.

7 Q: He didn't stay on scene. He went next door or somewhere
8 else to a neighbor to call?

9 A: Next door was five feet away.

10 Q: Okay. But he was still not right there watching it the
11 whole time; correct?

12 A: No.

13 Q: Okay. Did Jarrell also tell you that his mom got so mad
14 that she broke Mr. Cades' phone?

15 A: No, he did not tell me that.

16 Q: Okay. And again, when you were preparing for today, all
17 you did was look over your report, you didn't listen to the
18 tapes?

19 A: I looked at my report, yes.

20 Q: Okay. Now, your fire investigation that you did with all
21 of these pictures, what it told you was that a fire was set
22 and what you believe was intentionally set; correct?

23 A: Listening to the witness statements and taking into
24 account of everything, I believe that this fire was
25 intentionally set with an open flame lighter.

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1 Q: But it doesn't tell you who did it; did it? Not by the
2 evidence that you've seen there?

3 A: No evidence tells you what did it. You have to take into
4 account the witness statements and where -- what they're
5 telling you to be true.

6 Q: So without a witness telling you that -- without a
7 witness giving you Mr. Cades' name, you have nothing that
8 pointed to him; would you?

9 A: Correct.

10 MS. PARROTT: Your Honor, if we may approach?

11 THE COURT: Yes, ma'am.

12 (Whereupon, a bench conference is held in the presence of
13 the jury but out of the hearing of the jury as follows.)

14 THE COURT: Yes?

15 MS. PARROTT: The statements that Mr. O'Hara took are not
16 reflecting the same thing as what is being stated here and so
17 now I feel like I must -- do you have those statements?

18 MR. TUCKER: I provided it to you.

19 MS. PARROTT: I know and I've got my copy. I just didn't
20 know if you had your copy up here with you.

21 MR. TUCKER: Not up here.

22 MS. PARROTT: Okay. If I can have just a minute to talk
23 with my client, Your Honor?

24 MR. TUCKER: I take it you're done with ---

25 MS. PARROTT: Well, I'm just -- that's what I'm ---

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1 MR. TUCKER: All right.

2 MS. PARROTT: Just one second, Your Honor.

3 THE COURT: Do you want me to send them out while you
4 talk to him? I mean how long do you need to talk to him is
5 what I'm getting at?

6 MS. PARROTT: Never mind, I'll just get through it.
7 Okay.

8 (Whereupon, counsel confer off the record.)

9 (Whereupon, the bench conference ends.)

10 Q: You arrived on scene after everything was -- or basically
11 everything was already done; correct? The fire department was
12 putting it -- putting out last embers or ---

13 A: Talking about on the 19th?

14 Q: Right.

15 A: I arrived when they were still working on it, yes.

16 Q: Okay. And then whenever you left that night, you didn't
17 leave anybody in charge of that crime scene; did you?

18 A: The fire department was still on scene.

19 Q: But you didn't leave an officer to stay there and stand
20 guard until you could be there the next day?

21 A: No.

22 Q: Okay. So you don't know what happens after you leave
23 obviously; do you?

24 A: Don't need to. I mean -- no samples were taken so that
25 there was no need to leave somebody posted.

1 MS. PARROTT: Your Honor, I beg the Court's indulgence?

2 THE COURT: Yes, ma'am.

3 MS. PARROTT: Your Honor, I've got no further questions
4 for Investigator O'Hara.

5 THE COURT: Any redirect?

6 MR. TUCKER: None, Your Honor.

7 THE COURT: Sir, you may step down. Thank you. Call
8 your next witness.

9 (Whereupon, the witness leaves the stand at 4:31 p.m.)

10 MR. TUCKER: Your Honor, at this point, the State would
11 rest.

12 THE COURT: All right. Ladies and gentlemen, the State
13 has presented its case and what we are going to do at this
14 time is I am going to excuse you all for the balance of today.
15 It's a little after four thirty. There are some matters of
16 law that we need to take up with regards -- we need to take up
17 outside of your presence, so I'm going to excuse you rather
18 than have you wait back there while we do this. I am going to
19 ask that you be back tomorrow morning at nine thirty -- at
20 nine thirty and we will resume the trial of this case at that
21 time.

22 As I told you from the outset, do not discuss the case
23 with anyone. Do not do any independent investigation on your
24 own. You're to decide this case based solely -- based solely
25 on the testimony from this witnesses stand and any evidence or

1 exhibits that are admitted into evidence. Okay. I will see
2 you all tomorrow morning. Please be back at nine thirty in
3 the morning?

4 THE JUROR: In this courtroom?

5 THE COURT: Yes, sir. Courtroom number -- on this floor.
6 Tenth floor.

7 (Whereupon, the jury exits the courtroom at 4:33 p.m.)

8 THE COURT: All right. Anything at this time from
9 defense counsel?

10 MS. PARROTT: Your Honor, I would make a motion for a
11 directed verdict. I don't believe in any -- in any of the
12 evidence that has been presented here today that they have
13 presented information that goes to the malice of -- that would
14 necessarily be required by the indictment nor have they met
15 their burden of showing that this is an arson set by Mr.
16 Cades.

17 THE COURT: All right. Mr. Tucker, anything?

18 MR. TUCKER: Your Honor, briefly. I think every witness
19 that testified from a private witness standpoint indicated
20 that Mr. Cades went into the back bedroom, he leaves, within a
21 short time, smoke and fire was discovered, and that ultimately
22 is what consumed the mobile home. Certainly with Investigator
23 O'Hara, certainly we have shown by what I think an
24 overwhelming amount of evidence that the fire was
25 intentionally set and obviously that Mr. Cades was the one who

1 did it. He was stopped and had the lighter on his person
2 within a few hundred feet. So certainly we argue that the
3 State has more than met its burden with regards to the
4 directed verdict motion. Also with regards to malice, I
5 certainly think malice -- I would argue it's not necessarily
6 required for this particular arson third charge, but certainly
7 malice can be implied or inferred based on the fact that he
8 set fire to a trailer that had four occupants, one of whom was
9 a two-year-old child.

10 THE COURT: Well, based upon what I've heard here today,
11 the Court is concerned with the existence of evidence, not its
12 weight. If there is any direct or substantial circumstantial
13 evidence tending to prove the guilt of the accused or from
14 which guilt may fairly and logically be deduced, it should be
15 submitted the jury. I certainly believe that there is
16 substantial circumstantial evidence based upon the testimony
17 that been elicited from that witness stand that would warrant
18 the case going to the jury. Therefore, I am going to
19 respectfully deny your motion for directed verdict.

20 MS. PARROTT: Thank you, Your Honor.

21 THE COURT: Anything else?

22 MR. TUCKER: Nothing from the State, Your Honor.

23 THE COURT: All right.

24 MS. PARROT: No. No, Your Honor.

25 THE COURT: Well, let me say this and with regard to the

1 -- Mr. Cades' prior record that was brought up before trial
2 started, I'll tell you so that you all can prepare
3 accordingly. With regards to that pending whether or not he
4 takes the stand, I do not believe that the prior drug offense
5 would be admissible. It does not go to truthfulness. I do
6 not believe that the assault and battery would be admissible
7 based upon the rules, and I am still considering whether this
8 malicious injury to personal property would be admissible.
9 But after looking at it over the lunch break, I do not believe
10 right now that I'm going to admit it. I will give you all the
11 overnight if you'd like to find something or give me something
12 -- some further case law to look at with regards to that, Mr.
13 Tucker.

14 MR. TUCKER: Yes, sir.

15 THE COURT: And what I am going to do before we break for
16 the balance of the evening is I'm going to advise Mr. Cades of
17 his rights.

18 MS. PARROTT: Mr. Cades, if you'll stand up.

19 THE COURT: Place him under oath, please.

20 THE CLERK: Sir, please raise your right hand. Do you
21 swear to tell the truth, the whole truth, and nothing but the
22 truth, so help you God?

23 THE DEFENDANT: Yes, ma'am.

24 THE COURT: You can put your hand down. Sir, you are
25 Gowndell Deon Cades?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: At this time, I'm going to explain to you
3 certain of your rights. If you do not understand anything I
4 say, please let me know. If you want me to explain anything
5 in more detail, please let me know as well. Do you understand
6 that?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: All right. We have now reached the stage of
9 the trial where you may present your defense. You have the
10 right to claim the protections given to you by the Fifth
11 Amendment to the Constitution of the United States and this
12 amendment states in part that no person -- no person shall be
13 compelled in any criminal case to be a witness against
14 himself. This means that you cannot be required to testify in
15 this case. You have the right to testify on your own behalf.
16 However, no one -- no one can make you testify. This is a
17 personal right and no one can waive this right except you.

18 If you decide to testify, you will be subject to the same
19 rules that govern other witnesses and you may be examined and
20 cross examined on any relevant issue in this case. In
21 addition, if you have any convictions involving dishonesty or
22 false statement or for -- of for crimes punishable by
23 imprisonment for more than one year and this Court determines
24 that the probative value of admitting this evidence outweighs

1 its prejudicial effect to you, the solicitor will be able to
2 introduce your record to attack your credibility.

3 If you decide to testify, this decision on your part must
4 be freely, voluntarily, and intelligently made with knowledge
5 of the protections given to you by the Fifth Amendment and the
6 consequences of your decision to testify. If you decide not
7 to testify, I will instruct the jurors that they cannot give
8 the fact that you did not testify any consideration
9 whatsoever, and that there is to be absolutely -- absolutely
10 no prejudice to you because you did not testify. It is left
11 entirely up to you whether or not you testify. You may talk
12 with your attorney, your family, your friends, or anyone else,
13 but the final decision as to whether or not you testify, that
14 decision is left entirely up to you. Do you understand what
15 I've explained to you?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: Do you have any questions about what I've
18 explained to you?

19 THE DEFENDANT: No, sir.

20 THE COURT: Well, what I am going to do is I am going to
21 give the overnight break to talk with your lawyer. Have you
22 discussed with your lawyer at this point whether or not you're
23 going to testify?

24 THE DEFENDANT: Yes, sir.

1 THE COURT: All right. Well, I'm going to give you the
2 overnight break as well to further discuss this issue with
3 your lawyer and further consider whether or not you intend or
4 want to testify, but I will expect an answer from you first
5 thing in the morning before we resume the trial of your case.
6 Do you understand?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: All right. You may sit down. Thank you,
9 sir. Is there anything further from the State at this time?

10 MR. TUCKER: No, Your Honor.

11 THE COURT: Defense counsel?

12 MS. PARROTT: No, Your Honor.

13 THE COURT: All right. We'll stand at ease. I would ask
14 that the lawyers be back here at nine o'clock in the morning.
15 With regards to a charge in this case, any specific requested
16 charge for me to decide at this point?

17 MR. TUCKER: Nothing out of the ordinary as far as the
18 State goes, Your Honor.

19 THE COURT: All right.

20 MS. PARROTT: I don't believe so Your Honor.

21 THE COURT: All right. Well, we'll put together a charge
22 and we'll go over it in the morning before we start. All
23 right. Thank you.

24 MR. TUCKER: Thank you.

25 THE COURT: I'll ask y'all be back here at nine o'clock

1 in the morning. All right. Lawyers, court personnel, nine
2 o'clock.

3 (Whereupon, there is a break in the proceedings from 4:40
4 p.m. until the next morning.)

5 OCTOBER 22, 2013

6 (Whereupon, the proceedings resume at 9:05 a.m.)

7 THE COURT: All right. I believe my clerk gave you all
8 the charge to look at. Do you have it, Ms. Parrott?

9 MS. PARROTT: I do, Your Honor.

10 THE COURT: Okay. While you're looking through that, Mr.
11 Cades, if you'd stand, please, sir.

12 (Whereupon, the defendant complies.)

13 THE COURT: I remind you, you're still under oath, okay?
14 Yesterday before we left, I advised you of your constitutional
15 rights and gave you the overnight to speak with your lawyer
16 and whoever else you so desired concerning your right to
17 testify. Have you had an opportunity to do that, Mr. Cades?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Do you need any additional time to talk to
20 your lawyer?

21 THE DEFENDANT: No, sir.

22 THE COURT: Is it your desire to testify or not testify
23 in the trial of your case?

24 THE DEFENDANT: I will not.

25 THE COURT: You're not going to testify?

1 THE DEFENDANT: No, sir.

2 THE COURT: Now, is that decision not to testify your
3 decision and your decision alone after consultation with your
4 counsel?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Okay. Nobody's forced you or put any
7 pressure on you to make that decision here today?

8 THE DEFENDANT: No, sir.

9 THE COURT: Sir?

10 THE DEFENDANT: No, sir.

11 THE COURT: Has anybody put any force, pressure or
12 intimidated you in any way to make that decision?

13 THE DEFENDANT: No, sir.

14 THE COURT: That is your decision alone?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Okay. All right. Thank you, sir. You may
17 be seated.

18 (Whereupon, the defendant complies.)

19 MS. PARROTT: Judge, if we may?

20 THE COURT: Yes, ma'am.

21 MS. PARROT: Okay. In looking at it, you had included a
22 section on prior record and witnesses and we didn't have
23 anybody to testify with that so ---

24 THE COURT: Yeah. She put that in there ---

25 MS. PARROTT: Thinking there might be ---

1 THE COURT: --- pending what ---

2 MS. PARROTT: Right.

3 THE COURT: The only other thing was -- I think that was
4 the only thing that needed to be taken out.

5 MS. PARROTT: Right.

6 THE COURT: We talked about that this morning and that
7 was based on what he was going to do. So she will take that
8 out and put page numbers on here in case I were to get it
9 mixed up or something.

10 MS. PARROTT: Okay.

11 THE COURT: But I think that's it.

12 MS. PARROTT: Okay.

13 THE COURT: There is not any lesser included here. I
14 mean it's straight up arson third or not. You got this on the
15 record? So each of you have had an opportunity to look at the
16 verdict forms; is that right Mr. Tucker?

17 MR. TUCKER: That's correct.

18 THE COURT: Ms. Parrott?

19 MS. PARROTT: Yes, Your Honor.

20 THE COURT: Any objection by either one of you to the
21 verdict form?

22 MR. TUCKER: No, Your Honor.

23 MS. PARROTT: No, Your Honor.

24 THE COURT: With regards to the jury charge, now let me
25 ask specifically, did y'all look at this circumstantial

1 evidence -- direct and circumstantial evidence charge?

2 Because the law has somewhat changed on that. I don't think
3 the prior direct and circumstantial evidence charge is bad
4 law, but the case says if defense counsel requests it, then
5 the charge is circumstantial evidence. Did you specifically
6 look at that, Ms. Parrott?

7 MS. PARROTT: No, I don't think I did. I think I just ---

8 THE COURT: Let me let you look at that.

9 MS. PARROTT: I skimmed thinking that was probably --
10 okay.

11 THE COURT: Yeah. That's the new circumstantial evidence
12 charge.

13 (Whereupon, there is a pause in the proceedings as
14 counsel reviews the charge.)

15 MS. PARROTT: Okay.

16 THE COURT: I mean that's the new circumstantial evidence
17 charge ---

18 MS. PARROTT: Yeah.

19 THE COURT: --- as I understand it.

20 MR. TUCKER: Yes, sir.

21 MS. PARROTT: Okay.

22 THE COURT: Any objection on that?

23 MS. PARROTT: No.

24 THE COURT: All right. So each of the lawyers have had
25 an opportunity to review the jury charge. The only thing that

1 needs to be taken out of the jury charge is this prior record
2 of the witness, which was left in there pending my decision --
3 whether it was the defendant's decision to testify -- my
4 decision as to whether or not I was going to allow any prior
5 record in, and defendant's decision whether or not to testify.
6 That would be removed from the jury charge. Prior record of
7 the witness would be removed since it is not relevant in this
8 particular case. Other than that which will be removed, any
9 exception or objection to the charge by the State?

10 MR. TUCKER: No, Your Honor.

11 THE COURT: Defense counsel?

12 MS. PARROTT: No, Your Honor.

13 THE COURT: All right. I will certainly give you -- each
14 of you an opportunity at the conclusion of my charge -- if
15 something comes up that y'all think of at the conclusion of my
16 charge to make any objections or exceptions at that time.
17 Now, when the jury comes out, Ms. Parrott, do you intend to
18 put any evidence up?

19 MS. PARROTT: No, Your Honor.

20 THE COURT: All right. And you can rest and just simply
21 renew your motions and we'll go right into closing arguments
22 started by Mr. Tucker. You get final argument since you
23 didn't put any evidence in.

24 MR. TUCKER: Now, I do subscribe to the ladies first
25 philosophy, Your Honor.

1 THE COURT: Well that's -- I appreciate that.

2 MS. PARROTT: I appreciate the civility, but I decline.

3 THE COURT: How long do you expect on closing arguments?

4 MR. TUCKER: Twenty minutes tops, Your Honor.

5 MS. PARROTT: Yeah. I don't like long closings or
6 openings.

7 THE COURT: All right. Well, Mr. Tucker, followed by Ms.
8 Parrott and then my charge on the law. There's no need to
9 bring the jury in and run them right back out. Just make a
10 note for the record to protect your client's interest as far
11 as making those ---

12 MS. PARROTT: Objections.

13 THE COURT: --- appropriate motions.

14 MS. PARROTT: Okay.

15 THE COURT: And renew your prior objections as well.
16 Okay?

17 MS. PARROTT: Okay.

18 THE COURT: And my rulings will remain the same, but then
19 we'll go right into closing arguments and charge of the law.
20 Okay?

21 MS. PARROTT: All right.

22 MR. TUCKER: Okay.

23 THE COURT: All right. Anything else before we step down
24 and ---

25 MS. PARROTT: I have nothing.

1 THE COURT: --- we resume at 9:30?

2 MR. TUCKER: Yes, sir.

3 MS. PARROTT: Thank you.

4 THE COURT: Okay. All right. We'll stand down. Thank
5 you.

6 (Whereupon, there is a break in the proceedings from 9:11
7 a.m. until 9:30 a.m.)

8 THE COURT: All right. Anything from the State before I
9 bring the jury out?

10 MR. TUCKER: No, Your Honor.

11 THE COURT: Defense counsel?

12 MS. PARROTT: No, Your Honor.

13 THE COURT: All right. Mr. Sammy, bring the jury,
14 please, sir.

15 (Whereupon, the jury enters the courtroom at 9:30 a.m.)

16 THE COURT: All right. Ms. Smith? Ms. Smith, I'm
17 appointing you as the forelady of this jury. If you'll come
18 sit -- if you'll -- I would pick someone that's at the total
19 other end of the jury box. I'm sorry. I'm appointing you as
20 the foreperson of this jury and that will be your assigned
21 seat throughout the remainder of this trial.

22 THE FOREPERSON: All right. Thank you.

23 THE COURT: Okay. All right. At this time, we are going
24 to continue to trial of the case. Ms. Parrott, you are
25 recognized.

1 MS. PARROTT: Your Honor, at this time defense rests.

2 THE COURT: All right. Ladies and gentlemen, you all
3 have heard all the testimony and all the evidence that's going
4 to be presented during the trial of this case. The only
5 remaining portion that we have to do is closing arguments and
6 my charge on the law to you. I will remind you, ladies and
7 gentlemen, that arguments of counsel is not evidence in this
8 case. It's not evidence in this case. At this time I'm going
9 to recognize the State. Mr. Tucker, you're recognized for
10 closing arguments.

11 MS. PARROTT: Your Honor, I'm sorry. May I please also
12 renew any prior motions that have been made as part of my
13 trial?

14 THE COURT: So noted for the record. Your prior motions
15 are noted for the record and my previous rulings remain the
16 same, but your objections and motions are noted for the
17 record. Thank you, Ms. Parrott.

18 MS. PARROTT: Thank you, Your Honor.

19 CLOSING ARGUMENT BY THE STATE

20 MR. TUCKER: She told him it was over and he flew into a
21 rage. She told him she didn't want to see him anymore and he
22 got angry and smashed her TVs and things in the back bedroom.
23 She told him to get out of her house and he burned it down.

24 Now, it's ironic that we are trying this case just before
25 Halloween because really what we are talking about is a

1 monster story. Now, if I'd of said that to you yesterday
2 during my opening, you might have looked at me a little funny,
3 but after hearing all the testimony and looking at all the
4 evidence that you've seen, there can be no doubt what this is.
5 When Gowndell Cades went in that back bedroom, slammed that
6 door, took a lighter and set fire to Rachel Paul's clothes in
7 that closet and thereby igniting that whole trailer, he
8 unleashed a monster.

9 Now, it wasn't monster with fur, it wasn't a monster with
10 fangs, and it wasn't a monster with claws. This one had
11 smoke, heat, and flame and every bit as deadly as anything
12 you're liable to see by way of a monster on TV or in the
13 movies. It consumes everything it touches. Everything in its
14 path, it destroys. Anyone caught in the way, it would have
15 killed. This is a monster that will feel no pity, has no
16 remorse, and you can't do anything with it except try to fight
17 it as best you can which is what Rachel Paul and her kids
18 tried to do that evening in an attempt to save what little she
19 had because it was all she had in the world, that home and
20 everything in it.

21 Now, folks, this case comes down to two questions really:
22 was it arson and, if it was, who did it? Now, to answer to
23 the first question, we must look at the last witness to
24 testify for the State, and in this case that was Investigator
25 Pat O'Hara. Now, he told you he is an arson investigator,

1 certified, qualified, and knows what he's doing..

2 We got a glimpse of how thorough an arson investigation
3 can be because he took almost eighty-eight photographs and we
4 went through those yesterday, and I know it was a lot of
5 photos to look at and have explained to you, but each and
6 every one told a story. Each and every one told something
7 that the previous photo did not. And when you step back and
8 you look at everything, all in its total, it tells you one
9 thing. Everything that Rachel Paul said to Investigator
10 O'Hara that night was corroborated and backed up by what he
11 found by way of his investigation. Everything that Jaquan
12 Mumford told Investigator O'Hara was backed up and
13 corroborated by his investigation and his findings.
14 Everything that Jarrell Mumford told Investigator O'Hara was
15 backed up and qualified through his investigation.

16 Now, folks, I'm not going to sit here and go through each
17 and every photo. You'll have these photos back here with you
18 when you deliberate. I want you to pay particular attention
19 to the ones towards the rear, the ones in the main bedroom,
20 because that tells the story.

21 Now, Investigator O'Hara told you that he pulled up, he
22 spoke to everybody that night, but he didn't make any
23 conclusions. That was one factor, what the witnesses and the
24 victims told him. One factor. He goes out the next day when
25 the scene is clear, when he can see what's he's doing, when

1 the smoke has died down and there are no hot spots in that
2 trailer, and he can conduct a proper, thorough investigation.
3 He goes out and starts at the outside. Now again, he went
4 with no preconceived notions about making my mind up before I
5 get there. He went there hoping that that trailer was going
6 to tell him something and it told him a bunch.

7 He starts with the outside and he looks and he can tell
8 you, based on the photos, the fire started in the main
9 bedroom, back towards the closet area. Just like Rachel Paul
10 said it was, just like Jaquan Mumford said it was, just like
11 Jarrell Mumford said it was. He walked you through as the
12 fire kind of progressed through the trailer. The heat
13 patterns, the burn patterns, the lack of any burn pattern --
14 or of pour patterns, which would indicate the presence of some
15 sort of an accelerant. He walked you all the way around that
16 trailer and showed you this is how the fire started and this
17 is how it progressed. It got so hot, this is what happened.
18 A thorough investigation before he even sets one foot inside,
19 which he ultimately does, and you saw those pictures as well.

20 It's a monster story because look at what that trailer
21 was reduced to. Nothing short of a monster could do something
22 like that. Now, when we're young we believe in monsters, but
23 when we get a little older, we get more mature and we forget
24 about it. But folks, this was a monster. It destroyed
25 everything that it touched and it put everyone in its path in

1 danger.

2 Now, Investigator O'Hara told you that as he went in he
3 could tell you about where the fire started and more
4 importantly he told us what wasn't the responsible factor in
5 this fire. It was not electrical in nature; it wasn't an
6 accident; it wasn't the result of a lightning strike. It was
7 a deliberately set fire. It was set by taking an open flame
8 and sticking it to some clothing in a closet in the back main
9 bedroom, just like Rachel Paul said it did, just like Jaquan
10 Mumford said, and just like Jarrell Mumford said. A complete
11 and thorough investigation and you heard what his conclusion
12 was. It's arson. There goes the first question and the judge
13 will tell about what arson third is and the elements of it.

14 But the first questioned answered, but we turn to the
15 second question. If it's arson, who did it? Let's talk
16 motive, let's talk means, and let's talk opportunity. Now,
17 Rachel Paul said that she got into an argument with her
18 boyfriend of about a month, Gowndell Cades. Now, that
19 argument escalated when they were yelling, when they got home
20 into the trailer, and at some point Gowndell Cades goes back
21 to the main bedroom and he's throwing stuff around. We hear
22 things being smashed and then he comes out, slams the door and
23 leaves without a hey, see ya later, you might want to go in
24 there and check out that bedroom, you might -- I've set a fire
25 back there, nothing. He unleashed a monster and he left, like

1 a coward, and left them to deal with it.

2 Now, we know that there's some corroboration there
3 because again, look at what Deputy Gifford told you. When he
4 stopped Gowndell Cades about thirty-five -- forty minutes
5 later, he told you that Gowndell Cades had injuries to his
6 hands and he took a picture of it. Take a look at it. He
7 didn't just get those walking down the street. He got those
8 by smashing things up in that back bedroom just like Rachel
9 Paul said he did, just like Jaquan Mumford said, and just like
10 Jarrell Mumford said. Corroboration.

11 Now, also there was a lighter found on Gowndell Cades.
12 Now, interestingly enough, no cigarettes or anything else why
13 you would use a lighter, he has a lighter on him. Folks, I
14 want you to take a look at that lighter. It doesn't look like
15 much. It looks like something you'd buy at a convenience
16 store for less than a dollar, but from that, he unleashed a
17 monster. Just like rubbing a lamp and a genie pops out and
18 you can't put him back; just like Pandora when she opened that
19 box and all those horrors come spilling out and she can't get
20 them back in there. Corroboration.

21 Ms. Paul told you he comes out, within minutes they smell
22 smoke, she opens the door, she goes in there and her closet
23 with her clothes is on fire. Folks, if she wanted to start a
24 fire -- and I hate to say this, but I'm married for almost
25 twenty years and I can tell you my wife loves clothes. I dare

1 say if she was going to set fire to our house, her clothes
2 would be the last thing to go. She's not going to
3 intentionally set fire to her stuff.

4 Now, when Ms. Paul goes in, instinctively because she's
5 got small kids in the house, she starts to fight that fire.
6 Regardless of a monster, if it'd been a grizzly bear I'd dare
7 say she'd have done the same thing. But she picked up a
8 comforter and she tried to fight that fire as best she could.
9 Now, you heard Investigator O'Hara say, inadvertently she kind
10 of fanned the flames, you know, because when she was beating
11 it out, she was throwing some of the sparks and some of embers
12 back over her head, back to the other side of the room, and it
13 spread the fire in that direction.

14 What choice did she have? That monster threatened
15 everything she had. It wasn't a lot, but it was home and it
16 was everything they owned. And more importantly, it
17 threatened her family so she would have fought to the death I
18 dare say, and she almost did. Now, Jaquan Mumford, he tells
19 you the same thing more or less.

20 Now, Ms. Parrott may get up here and say, well, you know
21 you told this investigator that it was four o'clock when it
22 might have been five and you said it might light outside, but
23 it was actually dark. Folks, when you're battling a monster
24 in your house and you're fighting for your life and for
25 everything that you own, I dare say maybe one or two facts may

1 skip your mind or you may be confused about certain things.
2 But the most important fact they were all consistent with.
3 Gowndell Cades, in that back bedroom, he comes out after
4 smashing things up, slams the door, leaves, within minutes
5 smoke, heat, flame. The monster is roaring.

6 Now, Jarrell Mumford, he tells you almost the same thing.
7 Again, he was there. There was a confrontation. I think Mr.
8 Cades had asked him about some money, but the most important
9 thing that he told you was exactly what Jaquan Mumford said,
10 exactly what Rachel Paul said. Gowndell Cades goes in that
11 back bedroom, slams the door, they hear a commotion, he comes
12 out, goes out without so much as a, hey, goodbye, you might
13 want to check this out back there. He left and left them to
14 deal with it. But he tells you the same thing.

15 Pat O'Hara's investigation tells you the same things.
16 Let's talk motive. Ms. Paul, why would she set fire to her
17 trailer? To get back at Mr. Cades? She loses everything she
18 owns and it ain't much, but it's all she's got. What possible
19 motive would she have to set fire to her own trailer? And as
20 you heard one of the other deputy's say when he saw her, she
21 didn't even have any shoes on her feet. She had the clothes
22 on her back, but she had the most precious thing in the world
23 to her. She had her two-year-old child and she was wrapped up
24 with it. Now that's a mama. Why would she set fire to her
25 trailer? It doesn't make any sense.

1 There were six people in that trailer when that fire
2 started. Five of them family, five of them loved each other,
3 and Gowndell Cades. Why would Jaquan Mumford set fire to that
4 trailer? Again, everything he owns is in there, everything he
5 loves is there. Now, he did tell you that he ran back in
6 there to get his X-Box. My son is eighteen and I can tell you
7 he probably would have done the same thing. I'm sure if his
8 mama had of saw him, she probably would have tackled him and
9 wrung his neck, but to an eighteen-year-old kid, an X-Box is
10 important. Why would he set fire to a trailer? Everything he
11 owns, everything he loves is inside. Jarrell Mumford, the
12 same thing. Why would he set fire to the trailer? Everything
13 he owns, everything he loves is inside. A nine-and-a-half-
14 year-old boy, why would he do it? A two-year-old child? I
15 don't think so.

16 The only person with motive, means, and opportunity is
17 Gowndell Cades. She told him it was over and he got angry.
18 She told him to leave her house; he burned it down. Ms. Paul
19 has no renter's insurance. She is out of everything that she
20 loves in terms of material possessions. It wasn't much, but
21 it was all that she had. She stood to gain nothing. If
22 anything, she is at zero with regards to what she has.

23 I had a friend, he practiced law here in Florence County.
24 He was a prosecutor, he was a defense lawyer, probably
25 forgotten more about practicing law than I will ever know.

1 About three years ago, his house burned down and I distinctly
2 remember talking to him when he was looking at renting a house
3 from a friend of mine. He and his wife were standing there
4 and it was right before Christmas, and his wife started
5 talking about how bad the house was burned and they lost
6 everything. Her biggest concern was that she had her kids
7 coming in and all the Christmas presents went up. So she
8 broke down crying and then he broke down crying. And this was
9 a man's man, let me tell you. But when we got him kind of
10 separated, we were talking in terms of how he could go on, he
11 said something very fierce. He said, you know, I have stood
12 next to guys who have been sentenced to death, I have
13 prosecuted guys and sent them away for the rest of their
14 lives, and I tell you this is -- this is something I've never
15 experienced. How do you go on when you wake up one morning
16 and you don't have any shoes, you don't have any underwear,
17 you don't even have a toothbrush. Everything you have is
18 gone. He said there's no feeling like it in the world. It is
19 awful.

20 If he was still alive, I probably would call him and tell
21 him I think there was something that could have been worse.
22 It could have been somebody intentionally setting that fire
23 that burned your house down. You can ask Ms. Paul; she
24 experience it firsthand. Motive, means, opportunity. He had
25 it all. They had none of that. Now, after the fire, he

1 leaves. Not so much as telling them a thing about, hey, you
2 might want to call the fire department, you might want to get
3 out of this house. He left like a coward and left them there
4 to battle that monster.

5 Deputy Gifford tells you when he encountered Mr. Cades,
6 he was about two -- three hundred yards away, if that. He was
7 still on the same street, on Jeffords. Now, you heard Rachel
8 Paul, you heard Jarrell Mumford, you heard Jaquan Mumford tell
9 you, that from the time the fire started until the fire
10 department was notified, it took them about twenty-five --
11 thirty minutes. If he had left and hadn't had anything to do
12 with what just went on, why was he still that close? He could
13 have kept walking. He could have been half a mile to a mile
14 away. He hung around for a reason. He wanted to see his
15 handy work. If he wasn't going to live there, he was going to
16 make sure they weren't going to live there either, and he
17 wanted to stay around and see it.

18 She told him it was over; he flew into a rage. She told
19 him to get out of her house; folks, he burned it down. It's
20 time now to hold this man responsible. Hold him responsible
21 for turning loose a monster on a family of five, a single mom
22 with two small children and two teenagers in the house. He
23 took everything in this world from her, not the important
24 things in terms of loved ones, but every material possession
25 she had, up in smoke. He walked away. Hold this man

1 responsible today. At least give Ms. Paul and her two sons
2 and her other two that are at home a sense of justice because
3 Lord knows they deserve it.

4 THE COURT: Ms. Parrott?

5 CLOSING ARGUMENT BY THE DEFENSE

6 MS. PARROTT: Thank you, Your Honor. May it please the
7 Court. Ladies and gentlemen, I want to thank you for your
8 attention. Although this has been a short trial, it still
9 something that as you've heard, you've heard six different
10 witnesses now and they've given you different accounts of what
11 has occurred. The reason why they're giving you different
12 accounts is because they all have different memories. They
13 have different memories because this isn't the story.

14 If you remember what I told you when we first started
15 this, I told you that sometimes people like to put together a
16 puzzle. You've got to have all the pieces of the puzzle to
17 get the full picture. So what I submit to you is, you still
18 don't have all of the pieces of this puzzle.

19 They're relying on the fact that Mr. Cades and she had an
20 argument so therefore he must be the one at fault. It's two
21 people to take and make an argument. No one ever said that he
22 had any of his clothes or his things when he was leaving the
23 trailer that day. His stuff burned in that trailer, too,
24 because you heard them say he had some things in that house.
25 His stuff burned, too. Maybe whenever he's leaving, maybe

1 that makes him a coward for not grabbing a child and saying
2 come on, let's get out whenever he saw smoke. Maybe that
3 makes him somebody that didn't take care of the children.

4 Maybe by having a lighter on him, he's somebody that had
5 just run out of his cigarettes. You don't throw away your
6 lighter at the same time that you run out of your cigarettes.
7 You just wait and go get some more cigarettes. You still got
8 your lighter. Having a lighter on you does not make you an
9 arsonist. Having a fight with your girlfriend does not make
10 you an arsonist. Leaving the trailer because you're scared
11 does not make you an arsonist.

12 They want you to look at this and say, well, no, because
13 of everything that was going on and because of that fight,
14 he's the only one who would have had to have done something
15 about it. No. We're dealing with a lady who's mad because
16 there's a girlfriend possibly out there or another girl that
17 he's talking to. They've been fighting maybe as long as
18 before four o'clock to as much as ten o'clock that night.
19 Because quite honestly, I can't make sense of their timeline.

20 The question was one of them gets home off the bus, he's
21 already heard them arguing. She says we were arguing in the
22 car and then we were arguing in the house, but we were arguing
23 only in the back bedroom. They said they heard them arguing
24 for hours. Is it six hours that they argued? Was it just a
25 little while? Did he leave before the fire was started? Did

1 he leave once it had started?

2 All of these questions are reasonable doubt. None of
3 them have an exact answer. Was there smoke already there?
4 Don't know. Because he stays around, does that make him an
5 arsonist? No. Maybe he's still sitting there. She's told
6 him to leave; she doesn't want him to be there. He doesn't
7 want to be there because they've been fighting for however
8 long they've been fighting, but he also doesn't want to see
9 them get hurt. So he's staying around to see what happens.
10 Staying there doesn't make you an arsonist.

11 Maybe the children got tired because they heard them
12 fighting for so long. Maybe they wanted to get rid of his
13 stuff, too. I'm not arguing about the fact that there's a
14 fire. I'm not arguing over the fact that there was a fire set
15 in the master bedroom in that closet. Maybe it was his stuff
16 that was supposed to be burned, but not hers. Maybe they're
17 trying to get rid of all traces of him and then the fire got
18 worse. Maybe it spread and nobody was counting on the fact
19 that it would spread. And nobody then was counting on the
20 fact that when you fanned it that way, instead of putting it
21 out and just getting rid of his stuff, you've now made the
22 whole thing explode over your head basically as in the rafters
23 of the trailer.

24 You heard the investigator say, all those pictures, none
25 of those say Gowndell Cades did this. The only people who say

1 Gowndell Cades did this are also the people who would have a
2 reason to lie and say that -- and cover up for themselves.
3 There's no evidence that he did this except their words.
4 They're family so even though it's multiple people saying it,
5 I will submit to you that that's basically one person's word
6 versus his word, and one person versus another person is not
7 beyond a reasonable doubt. That is reasonable doubt.

8 They asked about who all was in the house, who all was in
9 the room. One person says he made us all leave the room.
10 Another one says we were all over the house. Was it ten
11 minutes that he was in the room alone or did he immediately
12 come out? Every single one of these questions is suspicion.
13 There's no proof.

14 You heard him say -- you heard the investigator take you
15 through the process of elimination for an arson. Basically
16 that there were eighty-eight pictures that he showed you to
17 prove that that fire was intentionally set. What you also
18 heard was that it was called out first thing to law
19 enforcement as an intentional fire. That first responding
20 officer, Officer Pate, wrote it up in his report, which he's
21 been trained to do, that it was an intentional fire. They
22 never looked for anybody else. They didn't pat anybody else
23 down. There wasn't a BOLO or a "be on the lookout" for anyone
24 else. They described him. You heard one of the -- one of the
25 children say, I told them all I needed to say. I gave them

1 his name. That's all I needed to say. Nobody else was patted
2 down. Nobody else was looked at for lighters, matches or
3 whatever else there may have been. They just focused on him,
4 shifting it all off of themselves and putting it all on him.

5 What I submit to you, ladies and gentlemen, is that there
6 are eighty-eight pictures that are eighty-eight pieces of a
7 puzzle that's not just an eighty-eight piece puzzle. There's
8 a lot more questions out there that have not been answered and
9 because of that, that's reasonable doubt and because of that
10 also, you must find Gowndell Cades not guilty.

11 CHARGE ON THE LAW BY THE COURT

12 THE COURT: All right. Ladies and gentlemen, it is now
13 my duty as the trial judge under the Constitution of this
14 state to charge and instruct you on the law applicable to this
15 case. It is your duty as jurors to accept and apply the law
16 as I will now state it to you. Furthermore, it is your
17 exclusive duty to decide all the issues of fact in this case,
18 and to determine the effect, value, weight, and truth of the
19 evidence. Both the State and the defendant have a right to
20 expect that you will carefully consider and evaluate the
21 evidence and apply the law of this case to it, so that in the
22 end both the State of South Carolina and the defendant will
23 receive a fair and impartial trial. I want you to understand
24 that when I use the word defendant, I refer to Gowndell Deon
25 Cades.

1 The charge alleged in the indictment is arson third
2 degree. Now, to this charge, the defendant has entered a plea
3 of not guilty. This plea of not guilty places the burden of
4 proof on the State to prove the guilt of the defendant to you,
5 the jury, beyond a reasonable doubt.

6 Now, the fact the defendant was arrested, charged and
7 indicted in this case is not evidence in this case and cannot
8 be considered by you as evidence of guilt in this case, nor
9 does it create any presumption or inference of guilt. The
10 indictment is simply the formal written instrument which
11 contains the charges or charge made against the defendant. It
12 is the formal document by which this case is brought into this
13 court.

14 It is vital that you understand that the defendant is
15 presumed under the law to be innocent of this charge. The
16 defendant has no obligation to prove his innocence. It is a
17 fundamental rule of our law that a defendant, irrespective of
18 the seriousness of the charge against him, is always presumed
19 innocent of the crime for which he is charged, unless and
20 until his guilt has been proven by evidence that satisfies
21 you, the jury, beyond a reasonable doubt.

22 The presumption of innocence is not a mere legal theory
23 or a legal phrase. The presumption of innocence is very
24 important and you need to understand that this presumption
25 accompanies the defendant from the time of his arrest and the

1 appearance of his attorney on his behalf in this court and
2 continues with the defendant even after you retire to the jury
3 room to deliberate. In other words, the defendant receives
4 the benefit of the presumption of innocence until the very end
5 of this trial, when you, the jury, will deliberate upon the
6 evidence and decide whether the state has proven his guilt
7 beyond a reasonable doubt.

8 Thus, in summary, it is important to understand that
9 a defendant is not required to prove his innocence. Instead,
10 the State is required by law to prove every essential element
11 of the offense charged against the defendant by evidence which
12 satisfies you of his guilt beyond a reasonable doubt. Only
13 then can you convict the defendant and find him guilty.

14 Now what is a reasonable doubt in the law? A reasonable
15 doubt is the kind of doubt that would cause a reasonable
16 person to hesitate to act. Proof beyond a reasonable doubt is
17 proof that leaves you firmly convinced of the defendant's
18 guilt.

19 Now, there are very few things in this world that we know
20 with absolute certainty. So even in criminal cases the law
21 does not require proof that overcomes every possible doubt.
22 However, if based on your consideration of the evidence, you
23 are firmly convinced that the defendant is guilty of the crime
24 charged, you must find him guilty. If, on the other hand, you
25 think there is a real possibility that he is not guilty, you

1 must give him the benefit of the doubt and find him not
2 guilty.

3 Jurors, please understand that reasonable doubt may arise
4 from evidence which has been presented in the case or from the
5 lack of evidence in the case. It is your responsibility to
6 determine whether or not reasonable doubt exists as to the
7 guilt of this defendant.

8 I charge you that the defendant is entitled to every
9 reasonable doubt arising in the whole case. If, upon any
10 issues of fact essential to conviction and a verdict of
11 guilty, you have a reasonable doubt as to how that issue
12 should be resolved, it would be your duty to resolve that
13 reasonable doubt in favor of the defendant.

14 Now, there are two types of evidence which are generally
15 presented during a trial, direct evidence and circumstantial
16 evidence. Direct evidence directly proves the existence of a
17 fact and does not require deduction. Circumstantial evidence
18 is proof of a chain of facts and circumstances indicating the
19 existence of a fact.

20 Crimes may be proven by circumstantial evidence. The law
21 makes no distinction between the weight or value to be given
22 to either direct or circumstantial evidence. However, to the
23 extent the State relies on circumstantial evidence, all of the
24 circumstances must be consistent with each other and when
25 taken together point conclusively to the guilt of the accused

1 beyond a reasonable doubt. If these circumstances merely
2 portray the defendant's behavior as suspicious, the proof has
3 failed.

4 The State has the burden of proving the defendant guilty
5 beyond a reasonable doubt. This burden rests with the State
6 regardless of whether the State relies on direct evidence,
7 circumstantial evidence, or some combination of the two.

8 Now, during this trial, you and I have had separate
9 duties to perform. As the trial judge, it is my
10 responsibility to preside over this trial, and I also have the
11 duty to rule upon the admissibility of the evidence offered
12 during the process of this trial. In that regard, you are to
13 disregard -- excuse me, you are to consider only the competent
14 evidence before you, and you are to disregard from your mind
15 any testimony ordered stricken from the record of this case
16 during the progress of the trial, if there was any. And you
17 are to consider only the testimony which has been presented
18 from this witness stand, together with any exhibits admitted
19 into the record of this case and any stipulations of counsel
20 made into the record.

21 Furthermore, I have the additional duty to charge you on
22 the applicable law of this case and, in that regard, I am the
23 sole judge of the law of this case. It is your duty to accept
24 and apply the law as I state it to you. If you have any
25 preconceived ideas as to what the law is or what the law ought

1 to be and it does not agree with what I tell you the law is,
2 you are obligated under your oath to abandon these
3 preconceptions, because you are sworn to accept the law
4 precisely as I state it to you.

5 Now, in this trial you are the sole and exclusive judge
6 of the facts and I am the judge of the law. Do not infer that
7 I have any opinion about the facts in this case from anything
8 that I have said during the course of this trial in ruling
9 upon the admissibility of evidence or otherwise, or from
10 anything that I say during the course of this charge to you.
11 In this regard, the law simply does not permit me to have an
12 opinion about the facts. As jurors, it is your duty alone to
13 determine the effect, value, weight, and truth of the evidence
14 presented during the course of this trial.

15 Now, in determining what the facts in this case are, you
16 must judge the credibility, which simply means the
17 believability, of the witnesses and the value of weight to be
18 given to their testimony. You alone must decide the force,
19 effect, and truth of the testimony.

20 Now, in making this decision there are many things you
21 may, and should, take into consideration, such as the
22 appearance and manner of the witness on the stand, a
23 characteristic often referred to as the demeanor of the
24 witness. Was the witness forthright or hesitant? Was the
25 witness' testimony consistent or did it contain discrepancies?

1 What was the ability of the witness to know the facts about
2 which he or she testified? Did the witness have a cause or
3 reason to be biased and prejudiced in favor of the testimony
4 that he or she gave? Was the testimony of the witness
5 corroborated or made stronger by other testimony and evidence
6 or was it made weaker or impeached by such other testimony and
7 evidence?

8 As jurors, please understand you have the right to
9 believe a small portion of a witness' testimony and discard
10 the larger portion or vice versa. You may believe all of a
11 witness' testimony or none. You may believe the testimony of
12 a single witness against that of many witnesses or the other
13 way around.

14 In exercising your mental processes and attempting to
15 decide the truth, the law simply requires that you exercise
16 your good judgment, your common sense, your sense of logic and
17 reason, and your experiences in life. You then apply these
18 attributes to the evidence and apply the law as I state it to
19 you, and thus arrive at a verdict.

20 Now, during the course of this trial, ladies and
21 gentlemen, you heard the testimony of police officers. Please
22 understand that the testimony of a police officer is not
23 entitled to more weight than that of any other witness. You
24 are the sole judges of the credibility of witnesses, and you
25 are not to give more weight to a police officer's testimony

1 solely because he or she is a police officer. Rather, you
2 should judge an officer's testimony by the same standards that
3 you apply to all other witnesses.

4 Now, I instruct you, ladies and gentlemen, and I
5 emphasize that the fact that the defendant did not testify is
6 not a factor to be considered by you in any way in your
7 deliberations and in your consideration on the question of the
8 guilt or the innocence of the defendant. It must not be
9 considered by you in any manner whatsoever. I repeat, under
10 your oath, you are to draw no conclusion whatsoever from the
11 fact that the defendant in this case did not testify. The
12 fact that the defendant did not testify should not even be
13 discussed in the jury room. The burden of proof, as I have
14 stated to you, is on the State. The defendant is not required
15 to prove his innocence. The burden of proof remains on the
16 State to prove guilt beyond a reasonable doubt.

17 Now, in order to establish criminal liability, criminal
18 intent is required. For example, the mental state required to
19 be proven by the State for a particular crime might be
20 purpose, intent, knowledge, recklessness, or criminal
21 negligence. Criminal intent must be proven by the state
22 beyond a reasonable doubt. Criminal intent is always a matter
23 that must be determined by the jury from the circumstances
24 surrounding the situation.

25 There is no way, ladies and gentlemen, to prove intent to
26 a mathematical certainty. There is no way that medical

1 science can dissect a person's brain and determine what the
2 person had in mind. So the law says that criminal intent may
3 be inferred from the circumstances shown to have existed.
4 This is how you make a determination of whether or not the
5 element requiring intent was present. It is not necessary to
6 establish intent by direct and positive evidence, but intent
7 may be established by inference in the same way as any other
8 fact by taking into consideration the acts of the parties and
9 all the facts and circumstances of the case. Criminal intent
10 is a mental state, a conscious wrongdoing. It is up to you to
11 determine what the defendant intended to do based on the
12 circumstances shown to have existed.

13 Criminal intent can arise from action or a failure to
14 act. It may arise from negligence, recklessness, or
15 indifference to duty or to consequences that is considered by
16 the law to be the equivalent of criminal intent.

17 Now, in order to prove third degree arson, the State must
18 prove beyond a reasonable doubt that the defendant willfully
19 and maliciously caused an explosion, set fire to, burned,
20 caused to be burned, aided, counseled, or procured the burning
21 of certain properties. Willfully means that it was not done
22 by accident, but was done knowingly and intentionally. It
23 must be shown that the burning was by the willful act of some
24 person and not as a result of a natural or accidental cause.

25 Maliciously means with hatred, ill will, or hostility
26 toward another person. A person who intentionally does a

1 wrongful act without legal justification or excuse does the
2 act maliciously. A malicious burning is an act done with a
3 condition of mind that shows a heart bent on mischief, showing
4 a design to do an intentional wrong act toward another or
5 toward the public, without any legal justification or excuse.
6 This malice need not be express, but may be inferred.

7 Burning means actual combustion of some portion of a
8 piece of property. It is not necessary that the property be
9 consumed or destroyed. Charring of the material of which the
10 property is constructed or a change in the fiber or
11 composition of the structure is required for a burning.
12 Singeing, smoking, blistering, scorching, or discoloring by
13 the heat, however, is not enough to constitute a burning.

14 Next, the State must prove beyond a reasonable doubt that
15 the property which was burned was a dwelling house, building,
16 structure, or any other property. A dwelling house is a
17 building in which a person ordinarily sleeps.

18 Finally, the State must prove beyond a reasonable doubt
19 that the explosion or burning directly or indirectly resulted
20 in bodily injury to a person or dam -- or damage to the
21 property.

22 Now, ladies and gentlemen, I am now drawing near the end
23 of my charge and I want you to clearly understand that you are
24 not partisans or advocates for the State of South Carolina or
25 the defendant. You do not serve as jurors to reward your

1 friends or punish your enemies. In this regard, you have been
2 selected by both the State and the defendant to be fair and
3 impartial jurors.

4 It is your duty by your joint deliberations to determine
5 the truth in this case, giving to the defendant the benefit of
6 every reasonable doubt on each and every issue. Then, to the
7 facts which you determine to be true, you should take and
8 apply the law which has been given to you by this Court and
9 thus arrive at a verdict which speaks the truth in this case.
10 In fact, the word verdict, which has a Latin derivative, means
11 a true saying. Thus, when you have accomplished these
12 responsibilities, you will have satisfied your oath as jurors
13 and you will have discharged your duty to this Court.

14 Now, Madame Forelady, once you retire to the jury room,
15 the bailiff will give the verdict form to you. When you, the
16 jury, arrive at a verdict as to the offense charged in this
17 case, you, Madame Forelady, will write your verdict on the
18 form. If the State has failed -- if the State has failed to
19 prove the guilt of the defendant beyond a reasonable doubt,
20 your verdict will be two words, not guilty. Likewise, if the
21 State has proved the guilt of the defendant beyond a
22 reasonable doubt, your verdict will be one word, guilty. Once
23 a decision has been made, check whichever choice is the
24 verdict of the jury.

25 The verdict that you render, ladies and gentlemen in this

1 case must be the verdict of each and every juror. It must be
2 your unanimous verdict. All twelve jurors must agree on the
3 verdict which you authorize the forelady to write for the
4 jury.

5 Now, Madame Forelady and ladies and gentlemen of the
6 jury, I want you to further understand that the order in which
7 the choices of verdict appear on the verdict form are not
8 suggestive of any verdict on the part of this Court. The
9 verdict in this case is to be determined by you, the jury, not
10 the Court. Furthermore, ladies and gentlemen, please
11 understand that even though I will give the verdict form to
12 the forelady, it is not her verdict alone. It is the verdict
13 of all twelve of you, and I emphasize again it must be
14 unanimous.

15 Ladies and gentlemen, I am also going to give you a copy
16 of these instructions in written form. During your
17 deliberations, you may refer to the instructions to guide your
18 decision making. You must consider the instructions as a
19 whole and not follow some and ignore others. Please return
20 these instructions to the Court, Madame Forelady, at the time
21 that your verdict is rendered.

22 Now, I am going to ask you at this time to retire to the
23 jury room, but do not begin your deliberations until you are
24 instructed to do so. The law requires that I now consult with
25 the attorneys to make sure that I have not left anything out

1 of these instructions. After I have spoken with the
2 attorneys, the bailiff will bring in a copy of these
3 instructions, the verdict form, and the items of evidence and
4 instruct you to begin your deliberations.

5 Also, Madame Forelady, during your deliberations should
6 you have any questions, a piece of paper and pen or pencil
7 will be provided. It will your responsibility to reduce such
8 questions to writing, sign and date it, knock on the door, let
9 the bailiff know you have a question, give it to him, and
10 he'll get it to me and I'll answer it on however I deem
11 appropriate to answer it. Okay?

12 Now, once you all have reached a verdict as well, knock
13 on the door, let the bailiff know that you have reached a
14 verdict and I will get you back into the courtroom as quickly
15 as possible. Let me ask this before I ask you to retire to
16 the jury room, everybody on the jury feeling okay?

17 (Whereupon, the jurors murmur in response.)

18 THE COURT: Okay. All right. At this time, I'm going to
19 ask you to step to the jury room. Do not begin your
20 deliberations until you are instructed to do so.

21 (Whereupon, the jury exits the courtroom at 10:16 a.m.)

22 THE COURT: Any exception or objection to the charge by
23 the State?

24 MR. TUCKER: No, Your Honor.

25 THE COURT: Defense counsel?

1 MS. PARROTT: No, Your Honor.

2 THE COURT: Can y'all approach just a minute. Y'all need
3 to make sure all items of evidence are there. On page 13 of
4 the jury charge, it refers to the forelady as his. I'm
5 correcting it to her.

6 MS. PARROTT: Okay.

7 THE COURT: Before I send the charge back, unless y'all
8 don't mind it going back like that.

9 MS. PARROTT: I don't care.

10 MR. TUCKER: I don't have any problem with that, Your
11 Honor.

12 MS. PARROTT: You're just sending the lighter though.
13 You're not sending this back, too, are you?

14 MR. TUCKER: That's fine with me.

15 MS. PARROTT: Yeah. This is evidence sheet I was asking
16 about. Where are the pictures that weren't marked? Maybe
17 that would be easier.

18 MR. TUCKER: We didn't print those off.

19 MS. PARROTT: You didn't even print those?

20 MR. TUCKER: Uh-uh.

21 MS. PARROTT: Oh, okay, good. All right.

22 THE COURT: Why don't you go ahead and pull the alternate
23 out, Mr. Benton, and let him go?

24 (Whereupon, the alternate enters the courtroom at 10:21
25 a.m.)

1 THE COURT: Come on up here, Mr. Benton. How you doing?
2 I'm going to let you go ahead and go. That's the reason I
3 asked everybody of the jury if they feel okay before I send
4 them back. Our law does not allow the alternate to remain in
5 the jury room once the case goes to the jury for
6 deliberations. So I'm going to let you go. I appreciate you
7 being up here the last day and a half. I'm going to need you
8 to be back here on the tenth floor tomorrow morning at nine
9 thirty.

10 THE ALTERNATE JUROR: Back here in the same courtroom?

11 THE COURT: Yes, sir. In this same courtroom where we
12 will select another jury at that time and try another case. I
13 want to thank you for being here and I look forward to seeing
14 you in the morning. Thank you.

15 (Whereupon, alternate juror exits the courtroom.)

16 THE COURT: Now, you can take that back along with the
17 items of evidence ---

18 THE BAILIFF: Yes, sir.

19 THE COURT: --- and they can begin their deliberations.

20 (Whereupon, the jury deliberations begin at 10:22 a.m.)

21 (Whereupon, there is a break in the proceedings from
22 10:22 a.m. until 11:01 a.m.)

23 THE COURT: All right. I've been advised that there is a
24 verdict. I will remind everybody in the courtroom, whatever
25 the verdict is, you keep your emotions in check regardless of

1 what the verdict is. Your failure to keep your emotions in
2 check could result in you being held in contempt of court and
3 sentenced to a period of incarceration and/or fined by the
4 Court. Anybody that does not believe they keep their emotions
5 in check, it's now your opportunity to leave this courtroom.
6 All right. Anything from the State before I bring the jury
7 in?

8 MR. TUCKER: No, Your Honor.

9 THE COURT: Defense counsel?

10 MS. PARROTT: No, Your Honor.

11 THE COURT: Bring me the jury, please, sir.

12 THE BAILIFF: Yes, sir.

13 (Whereupon, the jury enters the courtroom at 11:02 a.m.)

14 THE COURT: Madame Clerk.

15 THE CLERK: Madame Forelady, have you reached a verdict?

16 FORELADY: Yes, ma'am.

17 (Whereupon, the verdict form is delivered to the Court
18 and then delivered to the clerk.)

19 THE COURT: You may publish the verdict.

20 VERDICT OF THE JURY

21 THE CLERK: The State of South Carolina, County of
22 Florence, in the Court of General Sessions, Indictment Number
23 2012-GS-21-520, the State of South Carolina versus Gowndell
24 Deon Cades. As to the charge of arson third degree in
25 violation of South Carolina Code of Law 16-11-110(c), we, the

1 jury, unanimously find the defendant, Gowndell Deon Cades,
2 guilty, dated October 22nd, 2013, signed Sharon Smith,
3 foreperson. Members of the -- members of the jury, if this is
4 your verdict, please raise right hand.

5 (Whereupon, all jurors raise right hand.)

6 THE CLERK: That is everyone, Judge.

7 THE COURT: All right. Anything from defense counsel at
8 this time?

9 MS. PARROTT: No, Your Honor.

10 THE COURT: All right. Ladies and gentlemen, I want to
11 thank you for your service on this case. Thank you for your
12 attentiveness throughout the trial of this case. What I'm
13 going to do now, you all have fulfilled your responsibilities
14 in this case. It is now the Court's responsibility to impose
15 sentence. Now, you all have the right the stay here during
16 sentencing. However, you may leave. It's entirely up to you.

17 I will give you an opportunity to leave at this time if
18 you so desire, but I will tell you this. I have been
19 instructed to advise you that you need to be back here at nine
20 thirty in the morning. At nine thirty in the morning, we're
21 going to pick another jury and we're going to try another
22 case. Okay? You saw that when we -- when I went through the
23 qualification process yesterday, I'm not exactly sure how
24 many, I want to say it's approximately 150 people are summoned
25 for jury duty, and I've always been told whether it's a party

1 or whatever, you can expect about one-third showing up for
2 whatever reason and that's about -- we had about fifty people
3 here yesterday after we got through the qualification process.

4 I want to thank you for your service on this case. It
5 will be necessary that you return at nine thirty in the
6 morning. As I told you from the outset yesterday during the
7 qualification process, I do my best to try not to keep you up
8 here any longer than absolutely necessary and so I will give
9 you an opportunity at this time to leave if you so desire.
10 However, if you want to remain ---

11 THE JUROR: Your Honor, we go back to the eleventh floor?

12 THE COURT: Tenth floor. Be in this courtroom. They're
13 trying a case on the eleventh floor so -- thank you for asking
14 that. You'll be on the tenth floor here again tomorrow.
15 You'll be seated out there and we'll move forward in selecting
16 another jury and try another case in the morning. You all are
17 free to go. Thank you for being here.

18 (Whereupon, the jury is released at 11:05 a.m.)

19 MR. TUCKER: Judge, give me a minute to go get a plea
20 sheet or a sentencing sheet. I never print those off ahead of
21 time because it's bad luck. Give me two minutes.

22 THE COURT: All right. We'll stand down while he goes and
23 gets a sentencing sheet.

24 (Whereupon, there is a break in the proceedings from
25 11:06 a.m. until 11:14 a.m.)

1 THE COURT: All right. Mr. Tucker?

2 MR. TUCKER: Thank you, Your Honor. Your Honor, with
3 regards to Mr. Cades, the prior record is pretty extensive
4 going back to 1992. It looks like he was convicted of
5 possession of burglary tools and also assault and battery of a
6 high and aggravated nature. It looks like he received a YOA
7 sentence. In 1996, it looks like there was another assault
8 and battery of a high and aggravated nature. It looks like he
9 got ten years.

10 THE COURT: When was that?

11 MR. TUCKER: That was in '96, and then looks there was a
12 parole revocation that followed that. It looks like there
13 were multiple convictions on that and looks like in '94 --
14 '95, that was the parole revocation and it looks like in 2010
15 there was a possession of one gram of meth, cocaine base, and
16 looks like a burglary second, but it's not showing a
17 disposition on the burglary, but it looks like he got eighteen
18 months and terminate probation. Looks like in 2011 he was
19 convicted of assault and battery second degree and I believe
20 those are the most recent, Your Honor.

21 THE COURT: All right. Before I impose sentence, do any
22 of the victims in this case wish to say anything?

23 MR. TUCKER: No, Your Honor. In talking to Ms. Paul, she
24 didn't want to personally address the Court. She did want me
25 to convey, however, obviously the facts are before the Court

1 and he's been found guilty. One of the things obviously is
2 this could have easily been four counts of murder if that fire
3 had gotten out of hand and they'd been trapped and it somehow
4 had gotten behind them. So I point that out in addition to
5 his lengthy record. I'm not sure if Investigator O'Hara wants
6 to add anything to that.

7 INVESTIGATOR O'HARA: No, sir, Your Honor.

8 THE COURT: All right. All right. Anything else Mr.
9 Tucker?

10 MR. TUCKER: No, Your Honor.

11 THE COURT: All right. Ms. Parrott, I'll be happy to
12 hear from you?

13 MS. PARROTT: Your Honor, he is in on a bench warrant at
14 this time and so as part of this also we have prepared an
15 order for the bench warrant to be lifted. The total amount of
16 time that he has done between the time that he was -- whenever
17 he was originally arrested as well as the time now that he's
18 in on the bench warrant, would be a total of 128 days, Your
19 Honor. I have spoken with him about the fact that this does
20 carry up to 15 years and I've talked with him about the fact
21 that he has ten days to appeal and he has told me that he
22 understood what that means.

23 He and I have also talked about this case. He's a
24 lifelong resident of Florence, Your Honor. And based on all
25 the information and evidence that's been presented to you, I

1 would ask that you consider his prior record, which is -- as
2 the solicitor says, it does have some on it, but most of it is
3 a good amount old, Your Honor, and not much of it is recent
4 history. So I would ask if you would consider all that in
5 imposing your sentence here today.

6 THE COURT: Thank you, Ms. Parrot. Mr. Cades, anything
7 you want to tell me? I'd be happy to hear from you. However,
8 I don't want you to say anything that could affect any issues
9 pertaining to appeals that you may or may not file, but
10 certainly you have a right to say something if you so desire.

11 MS. CADES: I don't have anything to say.

12 THE COURT: Sir?

13 MR. CADES: I don't have anything to say.

14 (Whereupon, there is a pause in the proceedings.)

15 SENTENCE OF THE COURT

16 THE COURT: All right. On Indictment 2013-GS-21-485, the
17 defendant is committed to the State Department of Corrections
18 for a period of 15 years, giving him credit for 128 days.
19 I've signed the order lifting the bench warrant. Good luck to
20 you, Mr. Cades.

21 MR. TUCKER: Thank you, Your Honor.

22 MS. PARROTT: Thank you, Your Honor.

23 (Whereupon, the proceedings end at 11:18 p.m.)

24

25 --- END REQUESTED TRANSCRIPT ---

1 STATE OF SOUTH CAROLINA)
2) CERTIFICATE
3 COUNTY OF FLORENCE)
4

5 I, the undersigned, Krystal J. Smith, Official Court
6 Reporter for the Twelfth Judicial Circuit of the State of
7 South Carolina, do hereby certify that the foregoing is a
8 true, accurate, and complete Transcript of Record of all the
9 proceedings had and evidence introduced in the hearing of the
10 above captioned case, relative to appeal, in the Court of
11 General Sessions for Florence County, South Carolina, on the
12 21st and 22nd days of October, 2013.

13 I do further certify that I am neither of kin, counsel,
14 nor interest to any party hereto.

15

16

Krystal J. Smith

17

Court Reporter

18

19 Florence, South Carolina

20 February 20, 2014

21

22

23

24

25

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Florence County

D. Craig Brown, Circuit Court Judge

THE STATE OF SOUTH CAROLINA,

RESPONDENT,

V.

GOWNDELL DEON CADES,

APPELLANT

APPELLATE CASE NO. 2013-002327

ANDERS BRIEF OF APPELLANT

KATHRINE H. HUDGINS
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1343

ATTORNEY FOR APPELLANT

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TABLE OF AUTHORITIES**Cases**

<u>Fontaine v. Peitz</u> , 291 S.C. 536, 354 S.E.2d 565 (1987)	6
<u>Samples v. Mitchell</u> , 329 S.C. 105, 495 S.E.2d 213 (Ct.App.1997).....	6
<u>State v. Kornahrens</u> , 290 S.C. 281, 350 S.E.2d 180 (1986).....	6
<u>State v. Smith</u> , 276 S.C. 494, 280 S.E.2d 200 (1981).....	6

STATEMENT OF ISSUE ON APPEAL

Did the trial judge err in admitting, over objection as being cumulative, all 88 color photos taken by the arson investigator at the scene of the mobile home fire?

STATEMENT OF THE CASE

On March 28, 2013, the Florence County Grand Jury indicted Cades for arson third degree, indictment #2013-GS-21-00485. On October 21, 2013, Cades proceeded to jury trial before the Honorable D. Craig Brown. Karen Parrott represented Cades at trial. Todd Tucker prosecuted the case. The jury returned a verdict of guilty. Judge Brown sentenced Cades to fifteen (15) years in prison. A timely notice of intent to appeal was served on October 23, 2013. This appeal follows.

ARGUMENT

The trial judge erred in admitting, over objection as being cumulative, all 88 color photos taken by an investigator at the scene of the mobile home fire.

The jury found Cades guilty of setting a fire in his girlfriend's mobile home. Investigator Pat O'Hara, an arson investigator with the Florence County Sheriff's Office, investigated the fire and testified at trial. Investigator O'Hara was not qualified as an arson expert. At trial the State moved to admit in evidence 88 color photos taken by Investigator O'Hara of the scene of the mobile home fire. (Tr. p. 107, line 2 – 25). Appellant objected stating, "Your Honor, objection on the basis of cumulative." (Tr. p. 108, lines 2-3). Appellant objected to the 88 photos earlier stating, "And, Your Honor, that would be my point because I understand from Mr. Tucker that he and Investigator O'Hara have gone through these pictures and I have gone through these pictures with my client, but in all honesty, Your Honor, some of those pictures I do believe to be cumulative. Now, Mr. O'Hara or Investigator O'Hara says that he's going to be able to lay a foundation for each one showing something a little bit different." (Tr. p. 83, lines 2-9). Counsel argued that some of the photos showed the same thing. (Tr. p. 83, lines 11-18).

The prosecutor told the judge, "And obviously, Your Honor, the State's position is until Officer O'Hara testified, we don't know – I think that's a bit premature. Obviously, Investigator O'Hara took them for a reason and I think we ought to let the jury hear why and how it furthers his investigation." (Tr. p. 108, lines 4-8). The trial judge admitted all 88 color photos without requiring the State to explain why all 88 were necessary. The judge stated, "I'll admit the photographs subject to defense counsel's objection. They are admitted." (Tr. p. 108, lines 9-10). The trial judge erred in admitted all 88 color photos.

Rule 403, SCRE states that “[a]lthough relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.” The relevancy, materiality, and admissibility of photographs as evidence are matters left to the sound discretion of the trial court. State v. Kornahrens, 290 S.C. 281, 350 S.E.2d 180 (1986), cert. denied, 480 U.S. 940, 107 S.Ct. 1592, 94 L.Ed.2d 781 (1987). The failure to exercise discretion, however, is itself an abuse of discretion. Samples v. Mitchell, 329 S.C. 105, 495 S.E.2d 213 (Ct.App.1997). See also Fontaine v. Peitz, 291 S.C. 536, 538, 354 S.E.2d 565, 566 (1987)(“When the trial judge is vested with discretion, but his ruling reveals no discretion was, in fact, exercised, an error of law has occurred.”); State v. Smith, 276 S.C. 494, 498, 280 S.E.2d 200, 202 (1981)(“It is an equal abuse of discretion to refuse to exercise discretionary authority when it is warranted as it is to exercise the discretion improperly.”).

In the present case the judge failed to exercise his discretion and determine the probative value, if any, of admitting all 88 color photos. Any probative value of admitting all 88 color photos was substantially outweighed by the danger of undue prejudice, due to the sheer volume of photos of the burned motor home, and the needless presentation of cumulative evidence.

CONCLUSION

Based on the above argument, Appellant's sentence and conviction should be reversed and the case remanded for a new trial.

Respectfully submitted,


Kathrine H. Hudgins
Appellate Defender

ATTORNEY FOR APPELLANT

This 24th day of October, 2014.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Florence County

D. Craig Brown, Circuit Court Judge

THE STATE OF SOUTH CAROLINA,

RESPONDENT,

V.

GOWNDELL DEON CADES,

APPELLANT

APPELLATE CASE NO. 2013-002327

PETITION TO BE RELIEVED AS COUNSEL

Counsel for Gowndell D. Cades states:

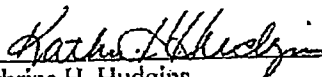
1. She is Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent appellant.

2. She has reviewed the record of appellant's trial before Judge D. Craig Brown, which was held on October 22, 2013, and, in her opinion, the appeal is without legal merit sufficient to warrant a new trial.

3. She has, pursuant to Anders v. California, 386 U.S. 738, 87 S.Ct. 1396 (1967), briefed an arguable legal issue which arose during the course of the trial.

WHEREFORE, she asks the Court to relieve her as counsel for Gowndell D. Cades.

Respectfully submitted,


Kathrine H. Hudgins
Appellate Defender

ATTORNEY FOR APPELLANT

This 24th day of October, 2014.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Florence County
D. Craig Brown, Circuit Court Judge

THE STATE OF SOUTH CAROLINA,

RESPONDENT,

V.

GOWNDELL DEON CADES,

APPELLANT

APPELLATE CASE NO. 2013-002327

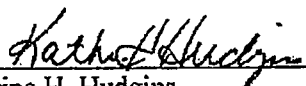
**DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL**

Appellant proposes the following be included in the Record on Appeal:

- (1) True-billed indictment and sentencing sheet;
- (2) Trial transcript;
- (3) State's Exhibit #3 – 88 color photos – to be transported.

I certify that this designation contains no matter which is irrelevant to this appeal.

October 24th, 2014



Kathrine H. Hudgins
Appellate Defender

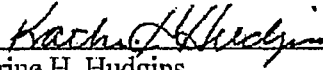
South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1343

Attorney for Appellant

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Anders Brief of Appellant complies with Rule 211(b), SCACR, and the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

October 24, 2014



Kathrine H. Hudgins
Appellate Defender

S.C. Commission on Indigent Defense
Division of Appellate Defense
1330 Lady Street, Suite 401
Post Office Box 11589
Columbia, South Carolina 29211-1589

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Florence County
D. Craig Brown, Circuit Court Judge

THE STATE OF SOUTH CAROLINA,

RESPONDENT,

V.

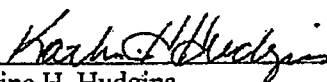
GOWNDELL DEON CADES,

APPELLANT

APPELLATE CASE NO. 2013-002327

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Anders Brief of Appellant and Designation of Matter in the above referenced case has been served upon Salley W. Elliott, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and a copy of the Anders Brief of Appellant and Designation of Matter and Record on Appeal have been served on Gowndell D. Cades, #197569 at Kershaw Correctional Institution, this 24th day of October, 2014.


Kathrine H. Hudgins
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 24th day of October, 2014.


_____(L.S.)
Notary Public for South Carolina
My Commission Expires: October 24, 2021



SCCID

SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

Division of Appellate Defense
1330 Lady Street, Suite 401
Columbia, South Carolina 29201-3332
Post Office Box 11589
Columbia, South Carolina 29211-1589
Telephone: (803) 734-1330
Facsimile: (803) 734-1397

Robert M. Dudek, Chief Appellate Defender
Wanda H. Carter, Deputy Chief Appellate Defender

October 24, 2014

Mr. Gowndell D. Cades #197569
Kershaw Correctional Institution
4848 Gold Mine Highway
Kershaw, SC 29067-8069

Re: Your appeal

Dear Mr. Cades:

Enclosed please find a copy of the Anders Brief of Appellant in your case, which I have filed with the South Carolina Court of Appeals. The Court will write to you in the future eliciting any **written memorandum** you may want to submit for the Court's consideration of your appeal. That memorandum should be sent to the Court of Appeals, and **not to me**. The petition to be relieved is a standard part of the Anders procedure, it does not mean that I do not wish to represent you.

Please contact me if you have any questions.

Sincerely,

Kathrine H. Hudgins
Appellate Defender

KHH/khh

Enclosure

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State, Respondent,

v.

Gowndell Deon Cades, Appellant.

Appellate Case No. 2013-002327

Appeal From Florence County
D. Craig Brown, Circuit Court Judge

Unpublished Opinion No. 2015-UP-185
Submitted March 1, 2015 – Filed April 8, 2015

APPEAL DISMISSED

Appellate Defender Kathrine Haggard Hudgins, of
Columbia; and Gowndell Deon Cades, pro se, for
Appellant.

Attorney General Alan McCrory Wilson, Chief Deputy
Attorney General John W. McIntosh, and Senior
Assistant Deputy Attorney General Salley W. Elliott, all
of Columbia; and Solicitor Edgar Lewis Clements, III, of
Florence, all for Respondent.

FILED
2015 MAY -4 PM 12:59
CONNIE REEL-SHEARIN
CCCP & GS
FLORENCE COUNTY, SC

PER CURIAM: Dismissed after consideration of Appellant's pro se brief and review pursuant to *Anders v. California*, 386 U.S. 738 (1967). Counsel's motion to be relieved is granted.¹

APPEAL DISMISSED.

THOMAS, KONDUROS, and GEATHERS, JJ., concur.

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.

FORM 5

STATE OF SOUTH CAROLINA

COUNTY OF Florence

2015 MAY 14

IN THE COURT OF COMMON PLEAS

MR. GOWNDOLL CADES 197569
 Full name and prison number (if any) of Applicant.

CONNIE
 FLORENCE

2015 CP 21 1303

GOWNDOLL CADES v.

State of South Carolina

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay fees and costs of the proceedings. When the application is completed the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Effingham, SC
2. Name and location of Court which imposed sentence Florence
3. Name(s) of co-defendant(s) (if any) _____
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2013-GS-21-00485, 3rd degree Arson
 - (b) _____
 - (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) 29 October 2013, 15 years imprisonment w/credit
 - (b) for 128 days

Revised 3/2003

- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty ☒ _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
yes
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. State of South Carolina, Court of Appeals; Florence County
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. Appeal Dismissed
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. 8 April 2015
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. Anders v California, 386 U.S. 738 (1967)
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) _____
- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- (a) ineffective counsell by public defender
 (b) _____
 (c) _____

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

- (a) My attorney knew nothing of the case, untill the
 (b) day of the trial
 (c) _____

12. Prior to this application have you filed with respect to this conviction:

- (a) any petition in a State Court under South Carolina Law? YES
 (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO
 (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO
 (d) any other petitions, motions or applications in this or any other Court? NO

13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:

- (a) the specific nature thereof:
 i. Arson, 3rd degree
 ii. _____
 iii. _____
 iv. _____
 (b) the name and location of the Court in which each was filed:
 i. South Carolina, Court of Appeals; Florence County
 ii. _____
 iii. _____
 iv. _____
 (c) the disposition thereof:
 i. Appeal Dismissed
 ii. _____
 iii. _____

- iv. _____
- (d) the date of each such disposition:
 - i. Submitted March 1, 2015 - Filed April 8, 2015
 - ii. _____
 - iii. _____
 - iv. _____
- (e) if known, citations of any written opinions or orders entered pursuant to each such disposition:
 - i. Dismissed after consideration of Appellant's
 - ii. Pro se brief and Review pursuant to
 - iii. Anders v. California, 386 U.S. 738 (1967).
 - iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

NO

15. If you answered "yes" to (14) identify:

- (a) which grounds have been presented:

- i. _____
- ii. _____
- iii. _____

- (b) the proceedings in which each ground was raised:

- i. _____
- ii. _____
- iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

- (a) _____
- (b) _____
- (c) _____

17. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? _____
- (b) your trial, if any? Yes
- (c) your sentencing? Yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? _____
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? _____

18. If you answered "yes" to one or more parts of (17), list:

- (a) the name and address of each attorney who represented you:
 - i. Appellate Defender Kathrine Haggard Hudgins of
Columbia
 - ii. KAREN PARROTT, Esquire Attorney for the
Defendant Florence
 - iii. _____
- (b) the proceedings at which each such attorney represented you:
 - i. KAREN PARROTT represented my case in Florence
And Kathrine Haggard Hudgins was my
 - ii. Appellate Defender.
 - iii. _____

19. State clearly the relief you seek in filing this application:

Overturn my Case

20. Are you now under sentence from any other court that you have not challenged?

STATE OF SOUTH CAROLINA)

County of Florence)

VERIFICATION

I, , being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Laundell Cader

SWORN to and subscribed before me this 29th
day of April, 2015.

Catharine A. Connor (L.S.)
Notary Public

My Commission Expires: My Commission Expires December 22, 2017

FILED
2015 MAY -4 PM 4:14
CORRE REEL-SHEAFER
CCRP & GS
FLORENCE COUNTY, SC

**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, _____, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Sawndee Cades
Applicant

SWORN or affirmed to and subscribed before me this
29 day of April, 2015.

Catharine A. Conway
Notary Public

My Commission Expires: ~~My Commission Expires December 23, 2017~~

FILED
2015 MAY -4 PM 4:14
CONNIE REEL-SHEARIN
CCCP & GS
FLORENCE COUNTY, SC

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF FLORENCE	)	TWELTH JUDICIAL CIRCUIT
	)	
Gowndell Cades, #197569,	)	2015-CP-21-1303
	)	
Applicant,	)	
	)	
v.	)	RETURN
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
_____	)	

In response to the post-conviction relief application filed on May 4, 2015, the Respondent would show this Court:

I.

Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the orders of commitment from the Florence County Clerk of Court. Applicant was indicted at the April 2013 term of the Florence County Grand Jury for one count of Arson, 3rd degree (2013-GS-21-00485). Karen Parrot, Esquire, represented him. On October 21-22, 2013, Applicant proceeded to trial before The Honorable D. Craig Brown. The jury found Applicant guilty as indicted and Judge Brown sentenced Applicant to a term of imprisonment of fifteen years.

Applicant filed a timely notice of appeal. The appeal was perfected by Katherine Haggard Hudgins, Esquire, of South Carolina Office of Appellate Defense. The South Carolina Court of Appeals affirmed Applicant's conviction March 1, 2015. State v. Cades, Op. No. 2015-UP-185 (S.C. Ct. App. 2015). The Remittitur was returned on April 28, 2015.

Attached herewith and incorporated herein by reference are the records of the Florence County Clerk of Court regarding the subject conviction, Applicant's records from the Department of Corrections, Applicant's appellate records, the application, and the plea transcript. Respondent

reserves the right to amend this Return upon receipt of any relevant materials.

II.

In his application for post conviction relief, Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Ineffective Assistance of Counsel

- a. "My attorney knew nothing of the case, until the day of the trial."

Any claims not specifically enumerated in the PCR application or amendments will be opposed by the State at an evidentiary hearing, and the State will seek summary dismissal of vague or general claims at an evidentiary hearing. S.C. Code §17-27-50. All amendments should be made well in advance of an evidentiary hearing by counsel of record. Rule 11, SCRCP.

III.

Respondent submits that Applicant's claim of ineffective assistance of trial counsel is without merit. In a PCR action, the applicant bears the burden of proving the allegations in his or her application. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) (citing Griffin v. Martin, 278 S.C. 620, 300 S.E.2d 482 (1983)). Where the application alleges ineffective assistance of trial counsel as a ground for relief, the applicant must prove "counsel's conduct so undermined the proper functioning of the adversarial process" that the proceedings "cannot be relied upon as having produced a just result." Id. (citing Strickland v. Washington, 466 U.S. 668, 686 (1984)).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Id. (citing Strickland, 466 U.S. at 687). The court strongly presumes trial counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Id. (citing Strickland, 466 U.S. at 690). The applicant

must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of trial counsel. Id. at 117, 625. First, the applicant must prove trial counsel's performance was deficient. Id. Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." Id. (citing Strickland, 466 U.S. at 688). Second, counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. at 117-18, 625.

Respondent submits Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of trial counsel probably raises questions of fact the record does not conclusively refute. Accordingly, Respondent requests an evidentiary hearing to fully resolve this issue. *See* Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

Each and every allegation contained within the application not hereinbefore expressly admitted, qualified or explained is hereby denied.

V.

WHEREFORE, Respondent requests an evidentiary hearing for the purpose of determining whether Applicant's trial counsel was ineffective.

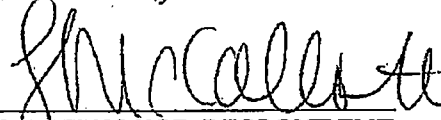
Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

JOHANNA VALENZUELA
Senior Assistant Deputy Attorney General

LINDSEY A. MCCALLISTER
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

11/18, 2016

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF FLORENCE	)	
	)	
	)	2015-CP-21-1303
GOWNDELL CADES, 197569,	)	
	)	
Applicant,	)	
	)	
vs	)	AFFIDAVIT OF SERVICE BY MAIL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Return** on the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Mr. Jonathan D. Waller, Esquire
 Giese Law Firm
 1315 Blanding Street
 Columbia, SC 29201

DATED this 18th day of November, 2016.


 Mallory Morris, Legal Assistant
 For Respondent

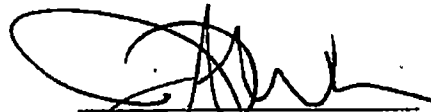
STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	TWELFTH JUDICIAL CIRCUIT
COUNTY OF FLORENCE	)	
Gowndell Cades, #197569,	)	AMENDMENT TO APPLICATION FOR
	)	POST CONVICTION RELIEF
Applicant,	)	
	)	
Vs.	)	Case No. 2015-CP-21-1303
	)	
State of South Carolina	)	
	)	
Respondent.	)	

Applicant, by and through his Attorney, Jonathan D. Waller, Esquire, would amend his Application for Post Conviction Relief filed on May 4, 2015, by adding the claims of ineffective assistance of to question 10 and by adding the following specific prayers for relief to his original allegations:

1. As to representation rendered by Karen Parrott, Esquire:
 - a. Counsel was ineffective for failing to meet with Applicant prior to the commencement of trial.
 - b. Counsel was ineffective for failing to provide adequate notice of trial to Applicant.
 - c. Counsel was ineffective for failing to object to the testimony of Investigator Pat O'Hara as giving expert testimony without being so qualified.
 - d. Counsel was ineffective for failure to move for mistrial when the State loudly reasserts an improper question, in the presence of the jury, while the judge is considering counsel's objection to improper bolstering.

- e. Counsel was ineffective for failure to object to improper comments made during the State's closing argument.

Respectfully submitted,



Jonathan D. Waller
Waller Law Group
1116 Blanding Street
Suite 2B
Columbia, South Carolina 29201
ATTORNEY FOR APPLICANT

January 25, 2018

Columbia, South Carolina

State of South Carolina	)	Court of Common Pleas
	)	Twelfth Judicial Circuit
County of Florence	)	Case No. 2015-CP-21-01303
	)	
Gowndell Cades,	)	
	)	
Applicant,	)	
	)	
-vs-	)	Transcript of Record
	)	
The State of South Carolina,	)	
	)	
Respondent.	)	
	)	

January 31, 2018
 Florence, South Carolina

B E F O R E:

The Honorable Michael G. Nettles, Judge

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

Jonathan Waller, Esquire
 Attorney for the Applicant

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 Circuit Court Reporter

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<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>

(No Exhibits Presented)

COURT REPORTER LEGEND

dashes	--	intentional or purposeful interruption
		or change in thought
ellipses	. . .	trailing off
[ph]		phonetically written
[sic]		written as said

1 JANUARY 31, 2018

2 (WHEREUPON, the proceedings began at 3:24 p.m. The
3 applicant was present, along with his counsel of
4 record.)

5 THE COURT: All right. You may call your next case.

6 MS. MCCALLISTER: May we approach, Your Honor?

7 THE COURT: Yes.

8 (WHEREUPON, a bench conference was held off the record,
9 after which the proceedings resumed as follows.)

10 THE COURT: All right. Ms. Oppenheimer, you're
11 recognized. If you could, call the case, cite the civil
12 action number and a little bit about the procedural history,
13 and then we'll hear from Mr. Waller.

14 MS. OPPENHEIMER: May it please the Court.

15 THE COURT: Yes.

16 MS. OPPENHEIMER: My name is Kelly Oppenheimer. Myself
17 and Assistant Attorney General Lindsay McCallister will be
18 representing the State in this next matter. The next matter
19 is Gowndell Cades versus the State of South Carolina, Docket
20 Number 2015-CP-21-1303.

21 During its April 2013 term, the Florence County Grand
22 Jury indicted applicant for arson in the third degree
23 following a fire occurring at his girlfriend's home. Karen
24 Parrott from the Florence County Public Defender's Office
25 represented him.

1 On October 21st through 22nd, 2013, applicant proceeded to
2 a jury trial before the Hon. D. Craig Brown. The jury
3 convicted applicant as indicted, and Judge Brown sentenced
4 him to 15 years' imprisonment.

5 Applicant filed a timely notice of appeal, and appellate
6 defender Kathrine Hudgins perfected an Anders appeal on
7 applicant's behalf. Thereafter, the South Carolina Court of
8 Appeals dismissed applicant's appeal and granted counsel's
9 request to withdraw. The remittitur was issued on April 28th,
10 2015.

11 On May 4th, 2015, applicant filed this application for
12 post-conviction relief. The State made its return on
13 November 18th, 2016, requesting an evidentiary hearing be held
14 and thereafter, through his counsel, applicant amended his
15 application for post-conviction relief on January 25th, 2018.

16 Applicant is represented by Jonathan Waller, and he and
17 Mr. Cades are both present here today.

18 THE COURT: All right. Do we have some transcript or
19 some paperwork?

20 MS. MCCALLISTER: Oh, I'm sorry. I didn't hand you up
21 your packet.

22 THE COURT: All right. Mr. Waller, you're recognized.

23 MR. WALLER: Thank you, Your Honor. May it please the
24 Court.

25 Your Honor, Mr. Cades filed an application for post-

1 conviction relief. After meeting with Mr. Cades and
2 conducting my own investigation, I filed some amendments to
3 that application.

4 Your Honor, the grounds we are proceeding on today are:

5 That counsel was ineffective for failing to meet
6 with applicant prior to commencement of the trial;

7 That counsel was ineffective for failing to provide
8 adequate notice of the trial to the applicant;

9 That counsel was ineffective for failing to object
10 to the testimony of Inv. Pat O'Hara as giving expert
11 testimony without being so qualified;

12 Counsel was ineffective for failure to move for a
13 mistrial when the State loudly reasserted an improper
14 question in the presence of the jury while the judge was
15 considering counsel's objection;

16 And finally, that counsel was --

17 THE COURT: Repeat that one again.

18 MR. WALLER: Counsel was ineffective for failure to move
19 for a mistrial when the State loudly reasserted an improper
20 question in the presence of the jury while the judge was
21 considering counsel's objection to an improper bolstering.

22 THE COURT: Okay.

23 MR. WALLER: They approached the bench, Your Honor, and
24 he repeated his question loud enough for everybody to hear
25 it.

1 THE COURT: Okay.

2 MR. WALLER: And finally, Your Honor, that counsel was
3 ineffective for failure to object to improper comments made
4 during the State's closing argument.

5 THE COURT: Very good. All right. You may call your
6 first witness.

7 MR. WALLER: Thank you, Your Honor. I would call
8 Gowndell Cades.

9 THE COURT: Yes, sir. Have a -- place your left hand on
10 the Bible and raise your right hand as the clerk administers
11 the oath.

12 THE CLERK: Do you swear or affirm to tell the truth,
13 the whole truth, and nothing but the truth, so help you God?

14 THE APPLICANT: Yes, ma'am.

15 THE CLERK: Thank you.

16 THE COURT: Have a seat in the witness chair. Pull up
17 real close to that microphone and speak loudly, clearly, and
18 slowly in order that we can hear everything that you have to
19 say, and let's start with your full name.

20 THE APPLICANT: Gowndell Deon Cades.

21 THE COURT: C-a-d-e-s?

22 THE APPLICANT: Yes, sir.

23 THE COURT: Very good.

24 MR. WALLER: Thank you, Your Honor. May it please the
25 Court.

GOWNDELL CADES - DIRECT BY MR. WALLER

1 GOWNDELL CADES, being first
2 duly sworn, testified as follows:

3 DIRECT EXAMINATION

4 BY MR. WALLER:

5 Q: Good afternoon, Mr. Cades. How are you doing today?

6 A: All right.

7 Q: Mr. Cades, I know you've been sitting there for a long
8 time, but we're -- we're here today. Mr. Cades, what -- I
9 want to take you back to when you were first arrested. Okay?
10 Do you recall being arrested?

11 A: (No verbal response.)

12 Q: Okay. I need you to answer either yes or no --

13 A: Yes, sir. Yes, sir.

14 Q: -- so the court reporter -- just so she can take it all
15 down.

16 A: Yes, sir.

17 Q: What were you arrested for?

18 A: Third-degree arson.

19 Q: Okay. That was the only charge?

20 A: Yes, sir.

21 Q: Okay. When you were first arrested, did you have an
22 attorney?

23 A: No, sir.

24 Q: Okay. When did you get an attorney?

25 A: I guess about two months -- two or three months after --

GOWNDELL CADES - DIRECT BY MR. WALLER

1 after my arrest, I think.

2 Q: Okay. Let me ask you this. Were you -- were you given
3 a bond after you were arrested?

4 A: Yeah.

5 Q: Were you --

6 A: Yes, sir.

7 Q: Were you able to make that bond?

8 A: Yes, sir.

9 Q: Okay. When you bonded out, did you -- did you make
10 contact with the Public Defender's Office?

11 A: I called one time, but I couldn't get in contact with
12 nobody. So after that was when they locked me back up.

13 Q: Okay. When you say you called one time, did you leave
14 any contact information or anything like that?

15 A: I think I left my -- my phone number.

16 Q: Okay. Did you ask anybody to call you?

17 A: I asked Ms. Karen.

18 Q: Okay. So when you called, you discovered that she was
19 your lawyer?

20 A: Yeah. I found that out. I think I found that out when
21 I was in the county because I believe I had wrote her a
22 letter telling her that I wasn't going to plead guilty to
23 something I didn't do.

24 Q: Okay. Let me get the timeline straight, if I can.

25 A: It's been about two months.

GOWNDELL CADES - DIRECT BY MR. WALLER

1 Q: So when you were first arrested, you spent about two
2 months in the county you said?

3 A: Yeah.

4 Q: So while you were there, you found out that she was
5 representing you?

6 A: Yes, sir.

7 Q: Then you made bond and then how long were you out before
8 your trial started?

9 A: Probably about -- it had to have been, like, 10 -- I
10 want to say 10 months. I want to say 10 months.

11 Q: Okay.

12 A: Ten months out.

13 Q: So just over a year total?

14 A: Yeah.

15 Q: Okay. So from the time you found out Ms. Parrott
16 represented you until your trial started, how many times did
17 you meet with her?

18 A: None.

19 Q: Okay. You said you wrote her a letter saying you were
20 not going to plead guilty?

21 A: Yes, sir.

22 Q: Okay. Did you ever speak with her on the phone?

23 A: No, sir.

24 Q: Okay.

25 A: I tried to contact her though. When I was out on bond,

GOWNDELL CADES - DIRECT BY MR. WALLER

1 I tried to contact her.

2 Q: So other than that, the phone call to the Public
3 Defender's Office and the letter saying that you were not
4 going to take a plea, did you ever have any other
5 communication with her?

6 A: No, sir.

7 Q: Okay. You mentioned a phone call. Did you try any
8 other ways to get in touch with her or the Public Defender's
9 Office while you are out?

10 A: No, sir. Just the phone call.

11 Q: All right. When you were -- how did you find out your
12 case was going to trial?

13 A: The day of my trial, the day I had to pick a jury, pick
14 the 12.

15 Q: Okay. Well, how did you find out?

16 A: That was, like, October the 23rd or something like that
17 of 2013.

18 Q: How did you get notice?

19 A: They came and got me from the county jail.

20 Q: Okay. How did you end up back in the county jail?

21 A: Oh, I was on a public drunk charge.

22 Q: Okay. How long had you been back in on the public drunk
23 charge?

24 A: It had to have been -- it was in -- it was in October,
25 October of 2013.

GOWNDELL CADES - DIRECT BY MR. WALLER

1 Q: Okay. So not long?

2 A: Not long, no.

3 Q: Okay. Do you -- when you got locked back up, did you
4 reach out to Ms. Parrott at that point?

5 A: No.

6 Q: Okay. Did you see her or anyone else from the Public
7 Defender's Office or an investigator in the pod or anything
8 like that?

9 A: No, sir.

10 Q: Okay. When you -- when your trial started, when you got
11 transported over for your trial, what did you think was going
12 to happen?

13 A: I thought they was going to come at me with a good plea
14 at first.

15 Q: Did you know your trial was going to start that day?

16 A: No.

17 Q: How did you find out your trial was going to start?

18 A: She told me. She told me. She told me when they came
19 and got me from the county, from Effingham.

20 Q: She told you when you got here?

21 A: Yeah, when I got here that day, you know.

22 Q: So when you got to the courthouse for your trial, that
23 was the first you knew of your trial?

24 A: That was the first I knew of everything. Yes, sir.

25 Q: Okay. What did you know about your case at that point?

GOWNDELL CADES - DIRECT BY MR. WALLER

1 A: I didn't know. The only thing I knew was what the
2 writeup said.

3 Q: Okay. Like, on your warrant?

4 A: The warrant, yeah.

5 Q: Okay. Did you have a -- did you have any copies of the
6 discovery or anything like that?

7 A: No, sir.

8 Q: Okay. Had you seen anything other than the first
9 warrant?

10 A: That's it.

11 Q: Okay. When you got over here to the courthouse, did you
12 and Ms. Parrott have a chance to talk about anything?

13 A: Briefly. Like, we ain't really talked. It wasn't
14 really nothing. We ain't talked. We ain't talked about
15 anything.

16 Q: Okay.

17 A: I be telling her --

18 Q: You said briefly. How long was briefly?

19 A: About a couple minutes.

20 Q: Okay. Because your trial was getting ready to start?

21 A: Yeah. The trial was getting together.

22 Q: Okay. So you didn't really know anything about any
23 preparation for trial --

24 A: No.

25 Q: -- or anything like that?

GOWNDELL CADES - DIRECT BY MR. WALLER

1 A: No, sir.

2 Q: Okay. Your trial lasted more than one day; is that
3 right? Just into the second day?

4 A: Yeah.

5 Q: Okay.

6 A: That's it.

7 Q: Did you and Ms. Parrott have a chance to talk either at
8 lunch or after court ended?

9 A: No.

10 Q: Okay. Mr. Cades, what -- what's your understanding of
11 what Ms. Parrott did to represent you?

12 A: What my understanding of what she did to represent me?

13 Q: Yes, sir. What did she do to help defend you?

14 A: Ain't gave me no type of arrangements like that right
15 there.

16 Q: Okay. So you don't know what she did?

17 A: No, I ain't know nothing.

18 Q: Okay. And ultimately, you were convicted?

19 A: (No verbal response.)

20 Q: Okay. All right. Mr. Cades, I've asked you all the
21 questions that I have for you. Is there anything you can
22 think of that I've left out that the judge needs to know?

23 A: That's it.

24 THE COURT: Any questions, Ms. McCallister? I mean Ms.
25 Oppenheimer?

GOWNDELL CADES - CROSS BY MS. OPPENHEIMER

1 MS. OPPENHEIMER: Briefly.

2 CROSS-EXAMINATION

3 BY MS. OPPENHEIMER:

4 Q: So you were bonded out initially; correct? After your
5 arrest?

6 A: Yes, ma'am.

7 Q: And you only called Ms. Parrott one time?

8 A: One time. Yes, ma'am.

9 Q: Okay. You didn't try and get in touch with her after
10 that, after you hadn't heard back from her?

11 A: No. Because I was in and out the county jail.

12 Q: Did you ever go to her office?

13 A: No, ma'am.

14 Q: Did you -- you wrote her one letter?

15 A: I wrote her. Yeah, I did wrote her one letter while I
16 was in the county jail. I wrote her telling her about me not
17 pleading guilty to the charges that I didn't committed.

18 Q: And how long were you out on bond before you went back
19 to county?

20 A: About -- like I say, about two months. Probably about
21 two months, a month or so. I don't know.

22 Q: And during that time, you only tried to talk to her
23 once?

24 A: Once, yeah.

25 Q: Okay. Did you always want a trial?

GOWNDELL CADES - CROSS BY MS. OPPENHEIMER

1 A: Yeah. From the beginning, yeah. From the start.

2 Q: So you weren't going to entertain any plea offers from
3 the State?

4 A: No, none. I mean if she would have -- if they would
5 have came to me with time served or a year of probation or
6 something like that, yeah, I probably would plead to that,
7 but other than that, no. Zero to 15. I'm not pleading to
8 that.

9 MS. OPPENHEIMER: I beg the Court's indulgence.

10 No further questions.

11 THE COURT: Any redirect?

12 MR. WALLER: Nothing further, Your Honor.

13 THE COURT: You may step down. Thank you, sir.

14 You may call your next witness, Mr. Waller.

15 MR. WALLER: Your Honor, the applicant would call Karen
16 Parrott.

17 THE COURT: Ms. Parrott, please come forward, and I'll
18 remind you that you're still under oath.

19 THE WITNESS: Thank you, Your Honor.

20 MR. WALLER: Thank you, Your Honor. May it please the
21 Court.

22 THE COURT: Yes.

23 KAREN PARROTT, being
24 previously duly sworn, testified as follows:

25 DIRECT EXAMINATION

KAREN PARROTT - DIRECT BY MR. WALLER

1 BY MR. WALLER:

2 Q: Good afternoon, Ms. Parrott. How are you today?

3 A: Good afternoon, sir.

4 Q: I'm going to hand you a copy of the transcript.

5 A: Okay. Thank you.

6 Q: Ms. Parrott, what do you recall of the allegations
7 against Mr. Cades?

8 A: Mr. Cades lived with a woman, Rachel Paul, and there
9 were minor children that were also present in that house. I
10 believe it was three. It might've been four, but anyway,
11 multiple minor children that were in the home. And the place
12 where they were living burned and it was a question of who
13 did it. They accused Mr. Cades of having done it, and Mr.
14 Cades told me that he thought that she did it.

15 Q: Okay. And Mr. Cades testified a few minutes ago that he
16 bonded out and attempted to contact you one time maybe by
17 letter and one time by telephone. Did you have any contact
18 with him directly while he was bonded out?

19 A: No. He -- well, yes. Excuse me. I'm sorry. He was
20 arrested in this case on November the 20th and we sent him
21 copies of his discovery on January the 30th because he had
22 written me saying that he wanted a copy of his discovery. He
23 bonded out on February the 25th, I believe it was. Excuse me.
24 We held his preliminary hearing on February the 26th where he
25 did not show.

KAREN PARROTT - DIRECT BY MR. WALLER

1 And then on March the 27th, he did come in for his docket
2 appearance and I met with him then and further discussed his
3 case with him, which he already had a full copy of his
4 discovery. And that's when he told me that he wanted a
5 trial, and I explained to him the problem with his view was
6 that getting a jury to believe that a mom would light a
7 trailer on fire with all of her children inside and that I
8 didn't think a jury would buy that.

9 And I gave him a letter that I give to all of our
10 clients on their docket appearance date which sets out the
11 next court terms for the rest of the year usually or for at
12 least the terms that we have and have notice of and tells --
13 and gives them the number that they are to call so that they
14 come into court and are responsible for having to come to
15 court.

16 He was put on the list for court on April the 2nd and
17 April the 3rd and did not show either day, and they then
18 looked at putting him on the trial list for August.

19 Q: Okay. So other than the one meeting at one of his
20 docket appearances, that's the only time you had direct
21 contact with him?

22 A: Yes. Because he didn't show at any other time when he
23 was put on the list or had an opportunity to.

24 Q: Okay. When -- when the trial started, what had you done
25 at that point to prepare for trial?

KAREN PARROTT - DIRECT BY MR. WALLER

1 A: I had gone over all of his information, which this
2 wasn't a case or a question of if it burned or how it burned
3 or whatever. It was a question of just did you believe who
4 did it. That's the only -- that was the only question that
5 this came down to because there was no question as to who all
6 was in the trailer at the time because the -- at least one of
7 the children was saying that he had already left out of the
8 house whenever they noticed that the smoke was happening.

9 He said that, no, he was still in the house whenever
10 they saw the smoke and that he had left out and he just
11 didn't take anybody else with him. So he took care of
12 himself, but didn't worry with them. So it really wasn't a
13 question of if it burned, how it burned, what it burned or
14 anything like that. It was just a matter of who did you
15 believe did it.

16 Q: Okay. Do you recall Inv. Pat O'Hara testifying?

17 A: I do.

18 Q: Okay. Inv. O'Hara was the fire investigator; is that
19 right?

20 A: An arson investigator, yes.

21 Q: Okay.

22 A: Still is.

23 Q: Inv. O'Hara was never qualified as an expert in arson or
24 in arson investigations. Do you have any concern with him
25 not being qualified and still giving conclusions that the

KAREN PARROTT - DIRECT BY MR. WALLER

1 case was arson as opposed to other fires?

2 A: No.

3 Q: Okay. Was there a trial strategy behind it or you just
4 didn't consider that a problem?

5 A: Well, I believe -- I mean I don't believe that you have
6 to be an expert to talk about when -- to talk about your
7 level or your specification or your specialty actually.

8 Excuse me. Your specialty.

9 Because as an arson investigator, he has gotten certain
10 training that makes him where he is their person who goes out
11 on those calls. There's one for SLED. There's one from the
12 Sheriff's Office that I know about, you know, that that's
13 what they do. They get special training that goes along with
14 that. We get plenty of cases in not only arson, but sex
15 crimes, violent crimes, all those sorts of things where those
16 people have special training that goes with their field, but
17 it does not make them an expert.

18 Q: Okay. Do you recall -- and if I can get you to turn to
19 page 144 of the transcript?

20 A: Okay.

21 Q: Do you recall -- and it continues on to page 145. Your
22 objection -- objection begins at line 18.

23 A: Yes.

24 Q: Do you recall this incident, for lack of a better word?

25 A: Yes.

KAREN PARROTT - DIRECT BY MR. WALLER

1 Q: How loudly did the assistant solicitor repeat his
2 question while at the bench whispering?

3 A: I mean it was obviously loud enough to where I felt like
4 it -- you know, I commented on it.

5 Q: Okay.

6 A: It was not a full -- it's not in full voice like I'm
7 speaking here, but to say that it was like a stage whisper
8 possibly, yes, I do think it would qualify as something like
9 that.

10 Q: Okay.

11 THE COURT: Was the question -- typically, it's the
12 answer that's objectionable, not the question. How -- how
13 prejudicial was the question?

14 THE WITNESS: And that's -- I don't believe it was
15 enough to amount to a mistrial, Your Honor. Otherwise, I
16 would have made that -- that motion, but --

17 MR. WALLER: And, Your Honor, for the record, the
18 question is: Now, at this point, is everything that the
19 victims told you consistent with what you're seeing?

20 BY MR. WALLER:

21 A: And so my objection was bolstering. And when we
22 approached, Judge Brown was asking us about that question and
23 really it was about -- this all centered on the fact that
24 they had come up with 88 pictures -- 87 pictures, somewhere
25 along in there, and had turned those over. And my problem

KAREN PARROTT - DIRECT BY MR. WALLER

1 with that was that I wasn't necessarily seeing that there was
2 anything too much different in all of those pictures.

3 And so it looked like they were piling on, which is why
4 I was saying that these things were cumulative and this is
5 bolstering and this is trying to make this seem like it was
6 worse than -- I mean it certainly was bad enough as it was
7 because the house burned, but that that was my concern was
8 that this was trying to play on more of the emotions of the
9 jury as opposed to appealing to the intellect.

10 Q: It was 80-something pictures in a relatively small
11 mobile home; is that correct?

12 A: Correct.

13 Q: Okay. So there was definite overlaps of the pictures?

14 A: Yes. I mean it literally was let me take a few steps
15 and take another picture.

16 Q: Okay. All right. Ms. Parrott, if I could get you to
17 turn to page 185 -- excuse me -- 184, line 25, and continuing
18 on to page 185, line 1. It's the closing argument of the
19 State.

20 The comment from the solicitor was that he, being Mr.
21 Cades, unleashed the monster and he left like a coward and
22 left them to deal with it. Do you have any reason to object
23 to them calling Mr. Cades a coward?

24 A: No.

25 Q: Okay. Was there a strategy behind not objecting to

KAREN PARROTT - DIRECT BY MR. WALLER

1 that?

2 A: I think that -- I mean I think it's entirely -- I think
3 if you underestimate a jury on how they may feel about
4 somebody, then you do a disservice to your client. And so if
5 part of my argument was that he selfishly may have run out of
6 the house and not alerted anyone that he was doing so so that
7 he left the minor children and this woman in this house when
8 a fire was starting -- okay?

9 Assuming -- and this is all about the fact that he
10 didn't start it. Okay? She started it, but he didn't try to
11 save anybody either. So it doesn't make him look like the
12 best person. I think you have to kind of give that a little
13 bit to the jury but still argue that you may not like him,
14 but it doesn't make him guilty of this offense.

15 Q: The State contended that he did start it?

16 A: Right. But he said he did not, and I tried to argue
17 that every single other person in that house had as much
18 opportunity, if not just as much as he did, except for the
19 teeny tiny little one.

20 Q: Okay. And to that end, on page 190, line 3 to line 4,
21 essentially the same comment. Did you, again, not have any
22 cause to object to essentially the same -- same term?

23 A: No. I mean it's the same thing because it's argument.
24 They don't have to believe this.

25 Q: Okay.

KAREN PARROTT - CROSS BY MS. MCCALLISTER

1 MR. WALLER: I beg the Court's indulgence, please.

2 THE COURT: Yes.

3 MR. WALLER: Thank you, Ms. Parrott. Nothing further.

4 THE WITNESS: Thank you.

5 THE COURT: Ms. Oppenheimer? Ms. McCallister?

6 MS. MCCALLISTER: Thank you, Your Honor. We're
7 switching it up.

8 CROSS-EXAMINATION

9 BY MS. MCCALLISTER:

10 Q: Okay. So you've testified a little bit about your --
11 your contacts that you had -- that you had with Mr. -- with
12 Mr. Cades before trial. Did he ever indicate to you anything
13 other than that he wanted to go to trial?

14 A: No.

15 Q: Okay. And he indicated that very early on in your
16 representation; is that correct?

17 A: When he came to his docket appearance on March the 27th.
18 Excuse me.

19 Q: Okay. So -- so this was a trial case from the get-go
20 for you --

21 A: Yes.

22 Q: -- in how you were preparing?

23 A: I'm sorry.

24 Q: Right?

25 A: Yes.

KAREN PARROTT - CROSS BY MS. MCCALLISTER

1 Q: Okay. And I think you said that you gave him a phone
2 number that he could call in to see if his case was on the
3 trial roster; is that right?

4 A: Yeah. Well, it's not even for the trial roster. It's
5 for -- our clients are given a phone number to call and they
6 are supposed to call every single night that we are in court
7 on the Friday that starts before court at least. Hopefully,
8 they'll do that.

9 Q: Okay.

10 A: But every single night while we are in court for however
11 long the courtroom is, they are supposed to call and find out
12 if they are supposed to appear in court the next day.

13 Q: Okay. And you said it was -- I'm sorry if I'm getting
14 confused. You said that it was -- it was actually on for an
15 April term at first; is that correct?

16 A: No, no. He was put on that list to come in to see what
17 he wanted to do with his case because the solicitor is the
18 one who puts them on this list and then my secretary puts
19 them on this recording.

20 Q: Okay.

21 A: But the solicitor had put him down for him to come in to
22 court on April the 2nd and April the 3rd and he did not show
23 either day.

24 Q: Okay. And so then after the April term, the next time
25 it was called to court was August; is that correct?

KAREN PARROTT - CROSS BY MS. MCCALLISTER

1 A: That's correct. Well, it's actually for the September
2 term, but he was being put on as a trial at that time. And
3 so I sent a letter to him on August the 21st, I believe it
4 was. If you'll give me one second?

5 And I did talk with him a couple of other times on the
6 phone, but yes, on August the 26th, 2013, I sent him my
7 standard letter saying that the judge has scheduled a roster
8 meeting on September the 3rd at 8:30 a.m. for all cases
9 scheduled for trial. You are required to be at this meeting.
10 If you fail to appear for this meeting, a bench warrant will
11 be issued for your arrest.

12 Q: Okay. And did that letter come back as undeliverable?

13 A: No.

14 Q: Okay.

15 A: And actually, I also included a sheet with that same
16 phone number and those same trials again in that. So he had
17 gotten two of those by that point.

18 Q: Okay. And ultimately, by the time of trial, he was in
19 jail on unrelated charges; correct?

20 A: He was arrested on September the 23rd for public drunk,
21 trespassing, indecent exposure, and the General Sessions
22 bench warrant from this case.

23 Q: Okay. And you were notified that he had been picked up?

24 A: I tend to check bookings multiple times daily. And so I
25 saw it and printed this out on September the 27th.

KAREN PARROTT - CROSS BY MS. MCCALLISTER

1 Q: Okay. So by the time of trial, you knew where he was to
2 locate him to prepare for trial?

3 A: Right. And he still wanted to go to trial.

4 Q: Okay. So after he was picked up, you were able to have
5 some communication with him?

6 A: I don't recall how much, but yes, I did.

7 Q: Okay. And --

8 A: And he still wanted to go to trial.

9 Q: Okay. The objection that you made about the bolstering
10 that was brought up, what was the -- what was the judge's
11 ruling on your objection that you made?

12 A: Overruled.

13 Q: Okay. And -- okay. In terms of the -- the issue of Mr.
14 O'Hara's testimony, your defense essentially was to say that
15 it was one of the other family members or Ms. Paul who had
16 set the fire; correct?

17 A: Correct.

18 Q: And so you never denied that the fire was set
19 intentionally?

20 A: No. And I argued that in closing.

21 Q: Okay. So the issue of whether it was an arson or not
22 was not a contested issue during the case?

23 A: No.

24 Q: Okay. And so I think Mr. Waller asked you about --
25 about the conclusion that he was -- that he made and

KAREN PARROTT - CROSS BY MS. MCCALLISTER

1 testified to and you -- and that didn't cause you any concern.
2 because -- because him testifying to that didn't -- didn't
3 damage your defense in any way, him saying it was an arson?
4 A: That's correct.
5 Q: Okay. And in terms of -- in terms of his being an
6 expert, he did -- he did testify to the fact that he had
7 received this special training that you're talking about;
8 correct?
9 A: Yes.
10 Q: That he was current on his certifications and that he
11 had taken classes and things of that nature; correct?
12 A: Yes.
13 Q: Okay.
14 A: I believe so.
15 Q: And regardless, just assuming for the sake of argument
16 if you took his testimony out completely from the trial and
17 he was never there, there was still the evidence of the three
18 witnesses; correct?
19 A: Yes.
20 Q: So the three victims all testified that it was Mr. Cades
21 who set the fire, not anybody else; correct?
22 A: That's correct.
23 Q: And then the circumstances surrounding Mr. Cades' arrest
24 where he had a lighter in his pocket when he was arrested;
25 correct?

KAREN PARROTT - CROSS BY MS. MCCALLISTER

1 A: And he was arrested right there near the scene and had
2 been seen on the scene watching the fire, watching the
3 trailer burn.

4 Q: Okay. And that arrest happened fairly immediately while
5 the fire was still going?

6 A: Yes, yes.

7 Q: Okay.

8 A: Or right there around that.

9 Q: So there was significant evidence even without the
10 testimony of Mr. O'Hara?

11 A: Yes.

12 Q: Okay. And in terms of the solicitor's closing and the
13 use of calling him -- calling Mr. Cades a coward, essentially
14 -- that was sort of essentially your defense, was it not,
15 that he -- that he just left out of there because he was
16 scared and he was trying to get himself out; correct?

17 A: That's correct.

18 Q: Okay. So you don't necessarily object to that
19 qualification because you guys were kind of admitting to
20 that; correct?

21 A: That's correct.

22 Q: Okay.

23 MS. MCCALLISTER: I think that's all the questions I
24 have Your Honor.

25 THE COURT: Mr. Waller?

1 MR. WALLER: I have nothing further for this witness,
2 Your Honor.

3 THE COURT: You may step down.

4 THE WITNESS: Thank you, Your Honor.

5 THE COURT: All right. Mr. Waller, I'm going to ask is
6 there any other witnesses?

7 MR. WALLER: No further witnesses, Your Honor.

8 THE COURT: Okay. Good.

9 MS. MCCALLISTER: No, Your Honor.

10 THE COURT: All right. Mr. Waller, I'm going to ask if
11 you can -- we'll start out with the very first allegation.
12 We'll allow you to set forth what the first allegation is and
13 what your argument is with regard to that, and I'm going to
14 let Ms. McCallister and/or Ms. Oppenheimer weigh in on your
15 position.

16 MR. WALLER: Thank you, Your Honor.

17 The testimony of Mr. Cades was that he was incarcerated
18 or in the detention center for approximately two months
19 before bonding out. He testified, although there was a
20 discrepancy between the testifying witnesses, that he was not
21 able to meet with Ms. Parrott at the time, but he was aware
22 that she was his attorney. Ms. Parrott, I believe, cited one
23 meeting and also had provided him with discovery at that
24 time.

25 When he bonded out, they were able to meet, according to

1 her testimony, one time when he came to court for an
2 appearance. He testified they did not have an opportunity to
3 meet, Your Honor, and then when he was picked back up close
4 in time to the trial, Mr. Cades testified he did not meet
5 with her.

6 Ms. Parrott testified that they had some level of
7 communication, but she did not recall what that was but that
8 she was aware he still wanted to proceed to trial. Your
9 Honor, I think as you get down to the throes of getting ready
10 for trial, you need to meet with your client.

11 THE COURT: Okay. What do you have to say about that,
12 Ms. Oppenheimer?

13 MS. OPPENHEIMER: Your Honor, the applicant testified
14 that he only attempted to contact Ms. Parrott one time, and
15 Ms. Parrott, in the alternative, she testified that she
16 called him, she gave him a number to call every single night
17 to see if he was supposed to come into court. That he failed
18 to appear in court several times when he was supposed to be
19 there.

20 That she did meet with him. She explained to him kind
21 of what was going on and she did send him her standard
22 letter. It wasn't returned back to her office undeliverable
23 at all, and I think based on the testimony of Ms. Parrott,
24 she did her due diligence.

25 THE COURT: And essentially what you're saying is that

1 there was a period of time he was out on bond and it was
2 incumbent upon him to come and see Ms. Parrott; is that
3 correct?

4 MS. OPPENHEIMER: Correct.

5 THE COURT: How long a period of time was he out on
6 bond?

7 MR. WALLER: I believe he testified about 10 months is
8 what his testimony was.

9 THE COURT: Okay. Very good.

10 MS. OPPENHEIMER: So he was out on bond for about seven
11 months. He bonded out in February and then was picked back
12 up in September, about seven months by our calculation.

13 THE COURT: All right. Very good. Would you like to
14 weigh in on that, Ms. McCallister?

15 MS. MCCALLISTER: No, Your Honor. I think she covered
16 it. I think it's applicant's -- applicant has the obligation
17 to stay in touch with his attorney to let her know if he's
18 moving around, changing locations, changing phone numbers.
19 It's his obligation to let her know that and to be able to
20 get in touch -- so that she can get in touch with him. And
21 she testified she sent the letters to the address she had.
22 They weren't returned. He wasn't showing up for court when
23 he had the opportunity to come and meet with her.

24 THE COURT: Very good. All right.

25 The second one, Mr. Waller?

1 MR. WALLER: Thank you, Your Honor.

2 The testimony was that Mr. Cades was picked back up on
3 other charges, a public conduct --

4 THE COURT: All right.

5 MR. WALLER: -- or public drunkenness charge, that he
6 was in the detention center for a while. He testified he
7 didn't know about court until he got here. Ms. Parrott
8 testified that she had communication with him but didn't
9 remember what level it was, but that he indicated he still
10 wanted to go to trial.

11 Your Honor, certainly while he is bonded out, there is a
12 responsibility on him to communicate with his lawyer. When
13 he's in the detention center, he can't go anywhere. He's
14 limited as far as being able to reach out.

15 Your Honor, if he -- Ms. Parrott testified that he was
16 provided a number to call for the remainder of the year and
17 call every night when court was supposed to start. That's
18 not necessarily being given notice.

19 THE COURT: Okay. All right. The second allegation is
20 what?

21 MR. WALLER: That was my argument on the second
22 allegation.

23 THE COURT: Okay. All right. It sounded like it was
24 all the same, kind of. All right. Well, give me the third
25 one?

1 MR. WALLER: Your Honor, it was regarding the testimony
2 of Inv. Pat O'Hara. Your Honor, arson is certainly a legal
3 conclusion to be drawn. I'm not challenging whatsoever that
4 he would have been qualified to give expert opinion testimony
5 had he been offered as an expert, but it's incumbent on the
6 party presenting the evidence or soliciting the opinion
7 testimony to qualify him as such. I don't think that he's
8 allowed to give opinion testimony until he is qualified as an
9 expert.

10 THE COURT: Okay. What does the State have to say about
11 that?

12 MS. MCCALLISTER: Well, Your Honor, I think Ms. Parrott
13 explained her reasoning and that she didn't necessarily see
14 that as expert testimony and, in addition, I think
15 importantly that wasn't -- the fact of whether it was arson
16 or not was not a fact that was in dispute at this trial. The
17 only issue was essentially who the arsonist was.

18 And so I don't see how there's any prejudice whatsoever
19 to that testimony, especially when taken with all the other
20 evidence in the record from the three other witnesses, the
21 circumstances surrounding his arrest with -- with the
22 lighter, and I think, you know, Mr. Waller says he's not --
23 he's not challenging that he would've been qualified. Then I
24 don't see what the prejudice would be in that event.

25 THE COURT: Mr. Waller, do you think that it would've

1 advanced your client's position if he would have made him go
2 through the gyrations of not only qualifying him as an expert
3 but emphasizing that and then cementing the fact that it was,
4 indeed, an arson? How would that benefit your client?

5 MR. WALLER: Your Honor --

6 THE COURT: As a matter of fact, most times when you get
7 an expert jammed down your throat, most of the time you stand
8 up and say we stipulate to the qualifications and just kind
9 of gloss over it, and it helps your case rather than get them
10 up there and talk about how smart they are.

11 MR. WALLER: Your Honor, and that may have been the
12 case. However, the rules of evidence are in place for a
13 reason.

14 THE COURT: Well, they're in there for a reason because
15 you can't allow people just to render opinions, but if it --
16 if you know that they are going to be qualified as an expert,
17 does it help your case to require them to go through that
18 gyration?

19 MR. WALLER: Your Honor, I think under our -- under our
20 rules, they are required to.

21 THE COURT: Okay. All right. What's the -- what's the
22 next one?

23 MR. WALLER: Your Honor, the failure to move for a
24 mistrial. Your Honor.

25 THE COURT: It was over -- it was over the question?

1 MR. WALLER: It was over the question and I suppose the
2 answer that would have been resulting from that, Your Honor.
3 It was asking whether the -- whether the witnesses -- what
4 they had said were consistent with what he had seen.

5 THE COURT: All right. And he --

6 MR. WALLER: It was overruled, Your Honor.

7 THE COURT: Okay. All right. What does the State have
8 to say about the question?

9 MS. MCCALLISTER: Well, Your Honor, it was overruled.
10 She made the objection. It was overruled. And at that
11 point, it's preserved. I don't think she has to do anything
12 to preserve that at that point. The Court thought the
13 question was proper and allowed the solicitor to ask it.

14 THE COURT: So you're saying it's a legal question that
15 should have been dealt with on appeal?

16 MS. MCCALLISTER: Yes. If the -- if the appellate
17 attorney had wanted to raise that issue, I think Ms. Parrott
18 had done her job of making sure that it was preserved.

19 THE COURT: Okay. I think specifically his objection is
20 that she made the objection, then he said it real loud again,
21 the question itself, and he's maintaining that she should
22 have moved for a mistrial because he repeated the question.

23 MS. MCCALLISTER: Right. But I still -- I don't see how
24 that's -- if the question itself is proper and the trial
25 court overruled the objection to it, then there's no --

1 there's no prejudice from it being repeated.

2 THE COURT: Very good. Good point. Very good point.

3 All right. Next? Next matter?

4 MR. WALLER: Your Honor, this is the final -- final
5 allegation. Your Honor, twice during the solicitor's closing
6 arguments, he refers to the defendant in this -- in that
7 case, the applicant in this case, as a -- as a coward.

8 Your Honor, in arson, character is not in question. The
9 applicant did not present a case. He didn't testify. Any
10 cross-examination that might've been done by Ms. Parrott as
11 to the other witnesses would not have risen to the level of
12 inserting his character into the considerations of the jury
13 and certainly not the Solicitor's Office.

14 I think it was -- it was highly improper to call the
15 defendant a coward and it wasn't necessary. They had several
16 other witnesses testifying to the facts and circumstances of
17 the case. There was no need to do that, Your Honor.

18 THE COURT: Okay. All right. What do you have to say
19 about that from the State, Ms. McCallister?

20 MS. MCCALLISTER: Well, Your Honor, I think Ms. Parrott
21 -- Ms. Parrott explained, you know, that that was essentially
22 the way that they were explaining his absence and his flight
23 from the trailer. That the witnesses testified that he -- he
24 just left out of there and left everybody else in there, and
25 they needed to explain why that was.

1 And that was essentially their explanation, that he was
2 saving himself. So they didn't -- they didn't necessarily
3 object to that characterization because it was a way for them
4 to explain why he would have fled the scene essentially.

5 THE COURT: Very good.

6 MR. WALLER: Your Honor, just if I can address one thing
7 with that. Your Honor, there's a big difference between a
8 person fleeing a fire that's already been set and a person
9 setting a fire and then fleeing. That's how the solicitor
10 characterized it.

11 THE COURT: All right. Anything further from anybody?

12 MR. WALLER: Nothing further from the applicant, Your
13 Honor.

14 MS. MCCALLISTER: No, Your Honor.

15 RULING

16 THE COURT: Mr. Waller, you have presented your case
17 very well in a convincing way. However, I am going to deny
18 your motion for post-conviction relief.

19 The issue with regard to the amount of contact the
20 applicant had with her [sic] lawyer to a large extent is --
21 is laid at the hands of the defendant himself. He was out on
22 a bond for an extended period of time. Not only did he not
23 come and talk with his lawyer, but he failed to appear for
24 court.

25 And there were a number of attempts to contact him.

1 They called him. He failed to appear on call to court.

2 There were a number of letters sent.

3 And a defendant cannot sit back and -- and not
4 participate in their own defense. They have to come and
5 avail themselves of the services of the -- of their lawyer,
6 public defender or otherwise.

7 With regard to the issue of Pat O'Hara being qualified
8 as an expert, I find that, number one, to be harmless. It
9 would not have changed the outcome of the case. As a matter
10 of fact, I think it's legitimate trial strategy not to
11 emphasize the fact that Pat O'Hara and what he had to say was
12 bolstered by the fact that he's an expert in the area of
13 arson.

14 And I think it's also paramount that everybody,
15 including the defendant, agreed that the fire was set and
16 that it was, indeed, an arson. It makes no sense to object
17 to a categorization as it being an arson.

18 I find that the question with regard to whether or not
19 the pictures were consistent with what had been said there to
20 date I think probably is an objectionable question, and I'm
21 not really passing on whether or not the judge made the right
22 ruling. However, as far as the effectiveness of trial
23 counsel, she did what she needed to do to preserve that for
24 appeal. And I don't anticipate that it would have made a
25 difference in the outcome of the case, that particular

1 snippet of the trial.

2 As far as the categorization of the defendant as a
3 coward played within -- played into the theory of the defense
4 and, taking the argument as a whole, was harmless.

5 And I'm going to ask Ms. McCallister to prepare an order
6 to that effect. Send a copy of that to Mr. Waller to ensure
7 that the order accurately reflects my ruling here today.

8 Anything further from you, Mr. Waller?

9 MR. WALLER: Nothing further, Your Honor.

10 THE COURT: Anything from the defense?

11 MS. MCCALLISTER: Your Honor, just to clarify, in your
12 first ruling about the contact pretrial, that he has to avail
13 himself of the services of the attorney, then I think there
14 was also the issue about whether he had notice of the trial
15 date.

16 THE COURT: Oh, and he did, indeed, have notice of the
17 trial date. I think that was given to him by letter and
18 verbally from defense counsel.

19 MS. MCCALLISTER: Thank you, Your Honor.

20 THE COURT: All right. Anything from the State?

21 MS. MCCALLISTER: Nothing further, Your Honor.

22 (WHEREUPON, the proceedings ended at 4:11 p.m.)

23

24 --- END REQUESTED TRANSCRIPT ---

25

State of South Carolina)

) Certificate

County of Florence)

I, the undersigned, Krystal J. Smith, Notary Public and Official Court Reporter for the Twelfth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing pages, numbered 1 through 40, constitute a true, accurate, and complete Transcript of Record of all the proceedings had and evidence introduced in the hearing of the above captioned case, relative to appeal, in the Court of Common Pleas for Florence County, South Carolina, on the 31st day of January, 2018.

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

s/Krystal J. Smith

Court Reporter

Florence, South Carolina

June 7, 2019

STATE OF SOUTH CAROLINA
COUNTY OF FLORENCE

FILED

) IN THE COURT OF COMMON PLEAS
) TWELFTH JUDICIAL CIRCUIT

2019 JAN 16 PM 2:12

Gowndell Cades, #197569,

) C.A. No. 2015-CP-21-1303

Applicant,

) DORIS BOULOS O'HARA

) CCJP & GS

) FLORENCE COUNTY, SC

) ORDER OF DISMISSAL

v.

State of South Carolina,

Respondent.

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed by Gowndell Cades (Applicant) on May 4, 2015. Respondent made its Return on November 18, 2016. An evidentiary hearing into the matter was convened on January 31, 2018, at the Florence County Courthouse before the undersigned. Jonathan Waller, Esquire, represented Applicant. Lindsey A. McCallister, Esquire, of the South Carolina Attorney General's Office, represented Respondent.

At the hearing, Applicant testified on his own behalf. Karen Parrott, Esquire, Applicant's trial counsel also testified. This Court also had before it a copy of the records of the Florence County Clerk of Court, Applicant's appellate records, records from the South Carolina Department of Corrections, the application, Respondent's Return, and the trial transcript.

PROCEDURAL HISTORY

Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the orders of commitment from the Florence County Clerk of Court. Applicant was indicted at the April 2013 term of the Florence County Grand Jury for one count of Arson, 3rd degree (2013-GS-21-00485). Karen Parrot, Esquire, represented him. On October 21-22, 2013, Applicant proceeded

to trial before The Honorable D. Craig Brown. The jury found Applicant guilty as indicted and Judge Brown sentenced Applicant to a term of imprisonment of fifteen years.

Applicant filed a timely notice of appeal. The appeal was perfected by Katherine Haggard Hudgins, Esquire, of South Carolina Commission on Indigent Defense - Appellate Defense Division. The South Carolina Court of Appeals affirmed Applicant's conviction March 1, 2015. State v. Cades, Op. No. 2015-UP-185 (S.C. Ct. App. 2015). The Remittitur was returned on April 28, 2015.

SUMMARY OF FACTS ADDUCED AT TRIAL

On November 19, 2012, Rachel Paul (Paul) was renting a mobile home on South Jeffords Street in Florence, in which she lived with her four children. Tr. pp. 34-35. Paul and Applicant were in a relationship, and Applicant was "in and out" of the home, though his name was not on the rental agreement. Tr. pp. 35-36. On the day of the fire, Paul and Applicant got into an argument, and Paul told Applicant she did not think their relationship was working out and asked him to leave the home. Tr. pp. 37-38. Applicant began demanding money he claimed Paul owed him, but Paul told him she did not know anything about it and left the bedroom. Tr. pp. 37-39.

Once Paul left the bedroom, Applicant was alone the room. Tr. p. 39. Paul's two older sons¹ and her daughter were in the living room; her youngest son was in his own bedroom. Tr. p. 38. Paul could hear items being broken in the bedroom, and as she began to call the police, Applicant suddenly left using the back door. Tr. pp. 39-40. Immediately thereafter, Paul saw smoke coming from the top and bottom of the bedroom door, and when she went into the bedroom, the closet was on fire. Tr. p. 40. Paul and her children attempted to put the fire out by smothering

¹ Paul's two oldest sons also testified at trial and confirmed the same general version of events – there was an argument, Applicant left, and they saw smoke coming from the bedroom a few minutes later. Tr. pp. 51-70.

it with the comforter from the bed. Tr. p. 41. They were unsuccessful, and eventually the house became so smoky they were forced to leave. Tr. pp. 42-43. Paul testified it took twenty to thirty minutes for the fire department to arrive, by which time the entire trailer was lost. Tr. p. 43. Paul and her children were left with only the clothes they were wearing at the time. Tr. p. 44. Additionally, Paul's car was damaged by the heat and flames because it was parked so close to the trailer. Tr. pp. 43-44.

Deputy Mike Gifford, of the Florence County Sheriff's Office, responded to the call regarding a structure fire, and while en route to the scene, he heard a "bolo" come across his radio for a black male wearing certain clothing, possibly leaving the area. Tr. pp. 86-87. As Deputy Gifford was turning onto South Jeffords Street, approximately 100 yards from the fire, he spotted a man matching the description of the person described in the bolo alert. Tr. p. 87. Deputy Gifford detained the man and patted him down. Tr. p. 87. As a result of the pat-down search, Gifford discovered a lighter in the man's pocket, which he turned into evidence. Tr. p. 87. Gifford identified Applicant as the man he saw that night. Tr. p. 89.

Investigator Pat O'Hara, also of the Florence County Sheriff's Office, was assigned to the case as an arson investigator. Tr. pp. 93-97. O'Hara testified he had worked at least 100 fire cases, though not all involved arson, and he was a certified fire and explosives investigator. Tr. p. 94-95. O'Hara testified his job is to figure out the origin and/or the cause of a fire when the fire department is unable to do so. Tr. pp. 95-96. O'Hara interviewed Paul and her two oldest sons on scene that night, and they all gave a similar story regarding an argument, Applicant leaving the trailer, and then seeing smoke. Tr. pp. 99-103. O'Hara testified he was notified Applicant had been detained and a lighter was recovered from him. Tr. p. 105. At that time, O'Hara instructed officers to place Applicant under arrest for third-degree arson. Tr. p. 106.

O'Hara went back to the scene the next day to conduct an "origin and cause investigation." Tr. p. 106. He testified he did not find any physical or biohazards and was able to photograph the scene thoroughly. Tr. p. 106. O'Hara explained his investigation revealed the fire was concentrated in the master bedroom, which showed signs of containing the most fuel source. Tr. pp. 120-21. O'Hara further explained he was checking to see if any accelerant had been poured from the bedroom throughout the house; and he did not find any evidence to support that theory. Tr. pp. 123-24. O'Hara testified it appeared the fire progressed from the bedroom in the back of the house to the front, consistent with the witness statements. Tr. pp. 135-37. Ultimately, O'Hara concluded the fire started somewhere in the master bedroom closet area, and he determined it was intentionally set by an open-flame source. Tr. p. 160. O'Hara also testified part of his job was to determine motive, and since Paul did not have renter's insurance, he determined she would not have intentionally set the house on fire. Tr. p. 159.

The jury convicted Applicant as indicted, and Judge Brown sentenced him to fifteen years' imprisonment. Tr. pp. 210-15.

ALLEGATIONS

In his original application for post-conviction relief, Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Ineffective Assistance of Counsel
 - a. "My attorney knew nothing of the case, until the day of the trial."

On January 25, 2018, Applicant, through PCR counsel, amended his application to include the following allegations: failure to meet with Applicant prior to trial, failure to provide adequate notice of trial to Applicant, failure to object to the testimony of Investigator Pat O'Hara as giving expert testimony, failure to move for a mistrial when the State asserted an improper question, and

failure to object to the State's closing.

At the evidentiary hearing, counsel for Applicant informed the Court he intended to proceed only on the allegations listed in the amendment application. Therefore, this Court finds Applicant has waived and abandoned all the other claims against trial counsel listed in his original application, and those allegations are hereby denied and dismissed with prejudice.

SUMMARY OF TESTIMONY

Applicant testified he was appointed an attorney two to three months after his arrest on this charged. Applicant testified he was given a bond and was released. Applicant then testified he wrote Counsel a letter while he was still in jail and then called the Public Defender's Office and left a message for Counsel once he was released. Applicant testified he was out on bond for ten months prior to trial and he only attempted to contact Counsel with that single phone call. According to Applicant, the letter he wrote while still in jail informed Counsel he did not wish to plead guilty, and he wanted a trial. Applicant testified he was later arrested on unrelated charges, but he never had any further contact with Counsel or anyone else from the Public Defender's Office. According to Applicant, he only found out about his trial on this arson charge when officers came to get him from the jail and transported him to the courthouse.

Applicant testified he never saw discovery with the exception of the arrest warrant. Applicant further testified he only spoke with Counsel for a few minutes at the courthouse, and they never talked during breaks in the trial. Applicant testified Counsel did not do anything to help defend him, and he did not know anything she had done to prepare for trial.

Counsel testified she was appointed to Applicant's case on November 20, 2012, and sent discovery to him on January 30, 2013. According to Counsel's testimony, Applicant posted bond on February 25, 2013, then did not show up at his preliminary hearing the next day. Counsel

testified Applicant was present for a docket appearance on March 27, 2013, at which time he told her again he wanted a trial. Counsel testified she advised Applicant she did not think the jury would believe Ms. Paul had set the fire. Counsel further testified she explained to Applicant the phone number he needed to call each day to find out if his case was on the trial list for a specific term. Counsel testified Applicant did not appear during the next term in April, so she did not have a chance to speak with him further. Counsel also testified when Applicant's case was continued to the September/October term, she mailed him a letter informing him of the new date on August 21, 2013, which was not returned. She also testified she spoke to Applicant "a couple" times on the phone and had communication with him after she found out he was back in jail on the other charges. According to Counsel, Applicant at all times indicated he wanted a trial.

Counsel testified the only issue in Applicant's case was who set the fire – him or Ms. Paul. Counsel testified there was no question of fact regarding who was in the trailer, but there were some inconsistencies between witness statements regarding the timing of the fire. Counsel testified she was not concerned about O'Hara testifying to the cause of the fire as arson without being qualified as an expert because that was not a contested issue. Further, Counsel testified although O'Hara had some specialized training, she did not believe he needed to be qualified as an expert in order to testify about his investigation. She further testified there was significant evidence pointing to Applicant as the perpetrator even without O'Hara's testimony as all three testifying victims named him, and he was found on the scene with a lighter in his pocket.

Counsel also testified she did not believe a mistrial was warranted when the State repeated an objectionable question in full voice during a bench conference. Counsel testified she objected to the question as bolstering, and her objection was overruled. Finally, Counsel testified she did not object to the State's characterization of Applicant as a "coward" in closing because that was

essentially his defense – that he did not start the fire, but when he realized what was happening, he fled to save himself and did not help get anyone else out.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony and arguments presented at the PCR hearing. This Court has further had the opportunity to observe each witness who testified at the hearing and to closely pass upon their credibility. This Court has weighed the testimony accordingly. Set forth below are the relevant findings of fact and conclusion of law as required by S.C. Code Ann. § 17-27-80.

In a post-conviction relief action, the applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, an applicant must prove “counsel’s conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result.” Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. at 443, 334 S.E.2d at 814. The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. Courts presume counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. at 689. An applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of trial counsel. Id. at 117, 386 S.E.2d at 625. First, an applicant must prove counsel’s performance was deficient. Id. Under this prong, the court measures an attorney’s performance by its “reasonableness under professional norms.” Id. (quoting Strickland, 466 U.S. at 688).

Second, counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

Ineffective Assistance of Trial Counsel

Regarding Applicant's claims of ineffective assistance of counsel, this Court finds Applicant has failed to meet his burden of proof. "Counsel's performance is accorded a favorable presumption, and a reviewing court proceeds from the rebuttable presumption that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Strickland, 466 U.S. at 690. There is a strong presumption that trial counsel's decisions are based on tactical strategy rather than neglect. Yarborough v. Gentry, 540 U.S. 1, 8 (2003). "Accordingly, when counsel articulates a valid reason for employing a certain strategy, such conduct will not be deemed ineffective assistance of counsel." Smith v. State, 386 S.C. 562, 567, 689 S.E.2d 629, 632 (2010) (citing Caprood v. State, 338 S.C. 103, 110, 525 S.E.2d 514, 517 (2000)). See also Stokes v. State, 308 S.C. 546, 419 S.E.2d 778 (1992) (holding where counsel articulates valid reasons for employing certain strategy, such conduct will not be deemed ineffective assistance of counsel); Ingle v. State, 348 S.C. 467, 470, 560 S.E.2d 401, 402 (2002) (holding counsel may avoid a finding of ineffectiveness if he articulates a valid reason for using a certain strategy). Counsel's strategy is reviewed under "an objective standard of reasonableness." Magazine v. State, 361 S.C. 610, 617, 606 S.E.2d 761, 764 (2004).

1. Failure to meet with Applicant prior to trial/ provide adequate notice of trial

This Court finds Counsel was not deficient in handling her communications with Applicant prior to trial, and the responsibility for the lack of communication falls on Applicant. This Court finds credible Counsel's testimony she attempted to contact Applicant, but he failed to appear on

several occasions. Further, Applicant was out on bond for an extended period of time and only made one attempt, via phone, to contact Counsel. This Court finds Applicant had a responsibility to keep in touch with Counsel, and he failed to do so. Further, the Court finds Applicant was notified of his expected trial date by orally and in writing. Therefore, because Counsel was not deficient, Applicant has failed to meet his burden of proof, and this allegation shall be dismissed.

2. Failure to object to the testimony of Investigator Pat O'Hara as giving expert testimony

This Court finds Counsel articulated a reasonable trial strategy regarding the testimony of Investigator O'Hara in choosing not to emphasize O'Hara as an expert, which may bolster the jury's opinion of his testimony. That the fire was caused by arson was not a contested issue at trial, and O'Hara's determination of arson was not based on any physical evidence, but rather the accounts of the victims. Tr. pp. 161, 164. This Court further finds any error in failing to allow O'Hara's testimony without qualifying him as an expert was harmless and made no difference in the outcome of the trial, and therefore, even if Counsel was deficient in failing to object, there was no prejudice to Applicant. See Rule 602, SCRE (a witness may testify to any matter within his or her personal knowledge). Therefore, this allegation shall be dismissed.

3. Failure to move for a mistrial when the State asserted an improper question

This Court finds the State's question to O'Hara as to whether the pictures were consistent with witness accounts was objectionable. Counsel did was required of her to preserve the issue for appellate review as she objected to the question and was overruled. On appeal, Applicant would be required to show the trial court's denial of the motion would have amounted to an abuse

of discretion in order to meet his burden of proving prejudice from Counsel's failure to make the motion. Farley v. State, 418 S.C. 255, 266, 792 S.E.2d 226, 232 (2016). This Court finds Applicant suffered no prejudice, and the question made no difference in the outcome of trial. Accordingly, this allegation shall be dismissed.

4. Failure to object to the State's closing argument

Finally, this Court finds no deficient in Counsel's failure to object to the State's closing argument in which the solicitor referred to Applicant as a "coward." On such claims, Applicant has the burden of proving "the solicitor's comments so infected the trial with unfairness as to make the resulting conviction a denial of due process." Humphries v. State, 351 S.C. 362, 373, 570 S.E.2d 160, 166 (2002). As Counsel explained, this characterization actually played into Applicant's defense. Further, the Court finds no error when read in the context of the entire argument. Therefore, this Court finds Counsel's conduct was not deficient in failing to object, nor was Applicant prejudiced by the remark. This allegation shall be dismissed.

CONCLUSION

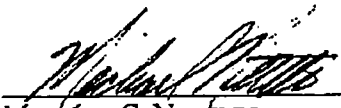
For all the foregoing reasons, this Court finds and concludes Applicant has not established any constitutional violations or deprivations which would require this court to grant his application. Counsel was not deficient in any manner, nor was Applicant prejudiced by Counsel's representation. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

This Court notes Applicant must file and serve a notice of appeal within thirty days from PCR counsel's receipt of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), Applicant has a right to appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides that if Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. The application for post-conviction relief is denied and dismissed with prejudice; and
2. Applicant shall be remanded to the custody of the Respondent.

AND IT IS SO ORDERED.


 MICHAEL G. NETTLES
 Presiding Circuit Court Judge
 Twelfth Judicial Circuit

1-10-, 2019

FILED

2019 JAN 16 PM 2:12

DORIS POULOS O'HARA
 CGCP & GS
 FLORENCE COUNTY, SC

WITNESSES

Pat O'Hara

Florence County Sheriff



Todd Tucker

ARREST WARRANT NUMBER

2012A2110200622

ACTION OF GRAND JURY



TRUE BILL

Quinn Murphy
Foreperson of Grand Jury
Date: 3/22/13

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2013-GS-21-00485

The State of South Carolina

County of

FLORENCE

COURT OF GENERAL SESSIONS

APRIL **TERM** **2013**

THE STATE

vs.

GOWNDELL DEON CADES

Indictment for

ARSON THIRD DEGREE

2013 MAR 28 PM 1:08
CONNIE REEL-SHEARIN
SCJP & GS
FLORENCE COUNTY-SC

FILED

STATE OF SOUTH CAROLINA)
COUNTY OF FLORENCE)

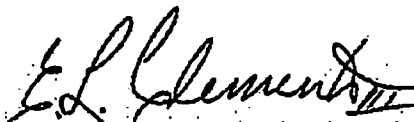
INDICTMENT FOR
ARSON THIRD DEGREE

At a Court of General Sessions, convened on MARCH 28, 2013 the Grand Jurors of FLORENCE County present upon their oath:

COUNT ONE-ARSON THIRD DEGREE

That GOWNDELL DEON CADES did in Florence County, South Carolina, on or about November 19, 2012, willfully and maliciously cause an explosion, set fire to, burn or cause to be burned, or aided, counseled or procured the burning of a residence located at [REDACTED] South Jeffords Street, Florence, South Carolina, that was occupied by the victim RACHEL PAUL in violation of §16-11-110(c), S. C. Code of Laws, (1976), as amended).

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



E.L. Clements, III
TWELFTH CIRCUIT SOLICITOR